

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

and

**NAUSS PLUMBING & HEATING INC.**

Respondent

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**MOTION RECORD OF THE RECEIVER  
(Returnable May 7, 2021)**

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Receiver and Manager of Nauss  
Plumbing & Heating Inc.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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## **TAB 1**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

and

**NAUSS PLUMBING & HEATING INC.**

Respondent

**NOTICE OF MOTION**

MNP Ltd., in its capacity as the Court-appointed Receiver and Manager (the “**Receiver**”) of Nauss Plumbing & Heating Inc. (“**Nauss**”), will make a motion to a Judge on Friday, May 7, 2021 at 10:00 a.m. or as soon after that time as the motion can be heard, at 155 Elm Street, Sudbury, Ontario, said motion to be heard via videoconference, due to the COVID-19 pandemic.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally

**THE MOTION IS FOR:**

1. An order abridging the time for service and validating service of the Motion Record, if necessary, and dispensing with any further service of the Motion Record, such that this motion is properly returnable on Friday May 7, 2021;

2. An order substantially in the form appended to the Motion Record at Tab 3 and in particular:

- (a) approving a transaction of purchase and sale (the “**Transaction**”) contemplated by an Asset Purchase Agreement (the “**Sale Agreement**”) between the Receiver and 2819163 Ontario Limited, with any non-material amendments as may be appropriate in the view of the Receiver, and authorizing and directing the Receiver to take such steps as are necessary to complete the Transaction; and
- (b) an order vesting the Purchased Assets, as that term is defined in the Sale Agreement, in and to 2819163 Ontario Limited, free and clear of any and all claims, subject to certain assumed liabilities and permitted encumbrances, as set out in the Sale Agreement.

3. An order substantially in the form appended to the Motion Record at Tab 4 and in particular:

- (a) approving a transaction of purchase and sale (the “**Transaction**”) contemplated by an Asset Purchase Agreement (the “**Sale Agreement**”) between the Receiver and Lyudmyla Tereshchenko, in trust, and 11993330 Canada Inc., with any non-material amendments as may be appropriate in the view of the Receiver, and authorizing and directing the Receiver to take such steps as are necessary to complete the Transaction; and
- (b) an order vesting the Purchased Assets, as that term is defined in the Sale Agreement, in and to 11993330 Canada Inc., free and clear of any and all claims,

subject to certain assumed liabilities and permitted encumbrances, as set out in the Sale Agreement.

4. An order substantially in the form appended to the Motion Record at Tab 5 and in particular:

- (a) approving a transaction of purchase and sale (the “**Transaction**”) contemplated by an Asset Purchase Agreement (the “**Sale Agreement**”) between the Receiver and Darcy Paul Mullen and XMD Inc., with any non-material amendments as may be appropriate in the view of the Receiver, and authorizing and directing the Receiver to take such steps as are necessary to complete the Transaction; and
- (b) an order vesting the Purchased Assets, as that term is defined in the Sale Agreement, in and to XMD Inc., free and clear of any and all claims, subject to certain assumed liabilities and permitted encumbrances, as set out in the Sale Agreement.

5. An Order substantially in the form appended to the Motion Record at Tab 6 and in particular:

- (a) approving the Second Report of the Receiver dated May 4, 2021 (the “**Second Report**”), and the decision, conduct, and activities of the Receiver as set out therein;
- (b) sealing Confidential Appendix #1 to the Second Report until the earlier of 60 days from the filing of the last Receiver’s Certificate or further order of the Court;

- (c) A order distributing certain proceeds of sale to the Applicant (CIBC), 739572 Ontario Limited, and Kora Management Ltd., as set out in the Second Report;
  - (d) approving the fees and disbursements of the Receiver and the fees and disbursements of its counsel Audaxlaw PC; and
  - (e) approving the Receiver's Interim Statement of Receipts and Disbursements.
6. such further and other relief as counsel may advise and this Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The Receiver was appointed as receiver and manager of Nauss on November 13, 2020 by order of the Honourable Justice Hennessy.
2. Upon appointment, the Receiver took control of Nauss' business and assets, in particular, four (4) parcels of real property in and around the Sudbury area from which Nauss operated its business.
3. As part of its mandate, the Receiver listed the four (4) parcels of real property for sale. One property – the Lasalle Property – was sold and a sale approval and vesting order was obtained on February 26, 2021. The transaction closed on March 1, 2021.
4. Sale agreements for the remaining three (3) properties, with three (3) separate purchasers, were signed in April 2021. The Receiver seeks approval and vesting orders for each of the three (3) transactions.

5. The Receiver also seeks the sealing of Confidential Appendix #1 to the Second Report as it relates to the Receiver's sales efforts and the monetary value of various offers. The sealing of the confidential appendix is necessary to protect the integrity of the Receiver's sales efforts and there is no material prejudice to any creditor with respect to the relief sought in connection therewith.

6. With the sale of the remaining properties, the Receiver proposes distributing proceeds of sale to secured creditors, with sufficient holdbacks for CRA's claim, which has yet to be settled, as well as for administrative and other costs. The Receiver has received opinions from its counsel regarding the validity and enforceability of the secured claims of the Applicant, 739572 Ontario Limited, and Kora Management Ltd..

7. With respect to the foregoing and of its administration of the estate, the Receiver has acted honestly and in good faith and has dealt with the property of Nauss in a commercially reasonable manner, as is set out in greater detail in the Second Report.

8. Rules 2.03, 3.02, and 37 of the Rules of Civil Procedure.

9. Sections 100 and 101 of the Courts of Justice Act, R.S.O. 1990, c C43, as amended.

10. Section 243 of the Bankruptcy and Insolvency Act, R.S.C. 1985, as amended.

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



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

1. the Second Report of the Receiver; and
2. such further and other material as counsel may advise and this Court permits.

May 4, 2021

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**CANADIAN IMPERIAL BANK OF  
COMMERCE**

- and -

**NAUSS PLUMBING AND HEATING INC.**

**Court File No: CV-19-8866-0000**

**Applicant**

**Respondent**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at:  
**SUDBURY**

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**NOTICE OF MOTION  
(MAY 7, 2021)**

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## TAB 2

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

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

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

and

**NAUSS PLUMBING & HEATING INC.**

Respondent

**SECOND REPORT TO THE COURT OF MNP LTD IN ITS CAPACITY AS RECEIVER  
AND MANAGER OF THE ASSETS, UNDERTAKINGS, AND PROPERTIES OF  
NAUSS PLUMBING & HEATING INC.**

May 4, 2021



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## **APPENDICES**

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- Appendix “B” – First Report of the Receiver (without Appendices)**
- Appendix “C” – Administrative Order dated February 26, 2021**
- Appendix “D” – Approval and Vesting Order dated February 26, 2021**
- Appendix “E” – Naus Bankruptcy Order dated February 26, 2021**
- Appendix “F” – Notice to Customers dated November 23, 2021**
- Appendix “G” – Notice to Customers dated April 21, 2021**
- Appendix “H” – Interim Statement of Receipts and Disbursements**
- Appendix “I” – Receiver’s Accounts**
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- Appendix “K” – CRA’s Property Claim**
- Appendix “L” – CIBC Payout Statement**
- Appendix “M” – 739572 Ontario Limited Payout Statement**
- Appendix “N” – Kora Management Ltd Payout Statement**
- Appendix “O” – Espanola Property Title Abstract**

**Appendix “N” – Jennica Springs Property Title Abstract**

**Appendix “N” – Arena Property Title Abstract**

**CONFIDENTIAL APPENDICES**

**Confidential Appendix “1”: Confidential Supplement to the Second Report**

## INTRODUCTION

1. On November 13, 2020 (Date of Appointment), the Ontario Superior Court of Justice (the “**Court**”) made an order (the “**Appointment Order**”), *inter alia*, appointing MNP Ltd. (“**MNP**”) as receiver and manager (the “**Receiver**”) of all the assets, undertakings and properties (“**Assets**”) including real property (the “**Properties**”) of Nauss Plumbing & Heating Inc. (“**Nauss**” or the “**Company**”) acquired for, or used in relation to the business carried on by the Company. A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. Nauss is a private Ontario corporation that operated its businesses from the following four (4) locations that it held title to in and around Sudbury, Ontario:
  - a) plumbing and heating contracting from 2590 Lasalle Boulevard, Sudbury, Ontario (the “**Lasalle Property**”);
  - b) plumbing and heating contracting also known as Garnet Plumbing from 551 Centre Street, Espanola, Ontario (the “**Espanola Property**”);
  - c) a spring water bottling facility operating as Jennica Springs from its location at 1330 North Road, Markstay, Ontario (the “**Jennica Springs Property**”); and
  - d) a storage facility for boats, all terrain vehicles, recreational and other vehicles (collectively the “**Customers Equipment**”) from a former hockey arena located at 7 Millichamp Street, Markstay, Ontario (the “**Arena Property**” and together with the Lasalle Property, Espanola Property and the Jennica Springs Property, hereinafter collectively referred to as, the “**Properties**”).
3. The circumstances leading to the appointment of the Receiver, are set out in the Affidavit of Sieg Flatt, sworn November 19, 2019 (the “**Flatt Affidavit**”) in support of the initial Receivership Application, brought by the Canadian Imperial Bank of Commerce (“**CIBC**” or the “**Applicant**”).

4. A copy of the Appointment Order, together with related Court documents and all reports with respect of this matter are available on the Receiver's website, which can be found at [www.mnpdebt.ca/nauss](http://www.mnpdebt.ca/nauss).
5. On February 19, 2021 the Receiver filed its first report (the "**First Report**") to provide information to the Court in support of the Receiver's request for orders, *inter alia*:
  - a) approving the First Report and the decisions, conduct, and activities of the Receiver as set out therein;
  - b) approving the Lasalle Sale Agreement and the Sale Transaction (as defined in the First Report);
  - c) authorizing the Receiver to take such steps as are necessary and appropriate to facilitate the closing of the Sale Transaction; and
  - d) vesting title in and to the Lasalle Property or as it may direct, free and clear of any encumbrances, save and except as otherwise contemplated by the Lasalle Sale Agreement.

A copy of the First Report (without appendices) is attached as **Appendix "B"**.

6. On February 11, 2021, CIBC filed a Bankruptcy Application in respect of Nauss naming MNP as the proposed Trustee, subject to affirmation at the First Meeting of Creditors. The Bankruptcy Application was heard concurrently with the Receiver's motion on February 26, 2021.
7. On February 26, 2021, the Court issued orders:
  - a) providing the relief sought by the Receiver in respect of its administration of these proceedings (the "**Administrative Order**");
  - b) approving the Lasalle Sale Agreement and Sale Transaction and vesting title of the Lasalle Property in the Purchaser (the "**Lasalle AVO**"); and
  - c) adjudging Nauss bankrupt ("**Nauss Bankruptcy Order**").

Copies of the Administrative Order, Lasalle AVO Order and Nauss Bankruptcy Order are attached as **Appendices "C", "D" and "E"**, respectively.

8. It should be noted by the Court that this receivership has occurred against the backdrop of the COVID-19 pandemic, resultant state of emergency and "Stay at Home" orders

as declared by the Province of Ontario, which has, at times, added to the complexity of the receivership in order to ensure that the operation of the Properties conformed with applicable COVID-19 safety requirements (the “**Covid Requirements**”).

## **PURPOSE OF THIS REPORT**

9. The purposes of this the Receiver’s second report (the “**Second Report**”) are to:
- a) provide the Court with an update in respect to:
    - i. the activities of the Receiver since the date of the First Report;
    - ii. realizations from the Company’s Assets and Properties including from the completion of the Lasalle Sale Transaction;
    - iii. the offers received for Espanola, Jennica Springs and Arena Properties (collectively the “**Remaining Properties**”);
    - iv. an Asset Purchase Agreement dated April 21, 2021 (the “**Espanola Sale Agreement**”) entered into between the Receiver, as vendor, and 2819163 Ontario Inc. or its assignee as purchaser (the “**Espanola Purchaser**”) and the transaction contemplated therein (the “**Espanola Sale Transaction**”);
    - v. an Asset Purchase Agreement dated April 22, 2021 (the “**Jennica Springs Sale Agreement**”) entered into between the Receiver, as vendor, and Lyudmyla Tereshchenko, in trust and her nominee, 11993330 Canada Inc. as purchaser (the “**Jennica Springs Purchaser**”) and the transaction contemplated therein (the “**Jennica Springs Sale Transaction**”);
    - vi. an Asset Purchase Agreement dated April 22, 2021 (the “**Arena Sale Agreement**”) entered into between the Receiver, as vendor, and Darcey Paul Mullen and his nominee, XMD Inc., as purchaser (the “**Arena Purchaser**”) and the transaction contemplated therein (the “**Arena Sale Transaction**”);
    - vii. the security granted by the Company to each of CIBC, 739572 Ontario Limited (“**739572**”) and Kora Management Ltd. (“**Kora**” and collectively with CIBC and 739572 the “**Secured Creditors**”) and other potential statutory claims that may have priority to any of the Secured Creditors’ security;

- b) provide information to the Court in support of the Receiver's request for orders, *inter alia*,
- i. approving the Second Report and the decisions, conduct, and activities of the Receiver as set out therein;
  - ii. approving each of the Espanola, Jennica Springs and Arena Sale Agreements (collectively the "**Remaining Properties Sale Agreements**") and respective sale transactions (the "**Remaining Properties Sale Transactions**");
  - iii. authorizing the Receiver to take such steps as are necessary and appropriate to facilitate the closing the Remaining Properties Sale Transactions;
  - iv. vesting title in and to the Remaining Properties to or as it may direct, free and clear of any encumbrances, save and except as otherwise contemplated by the Remaining Properties Sale Agreements;
  - v. sealing the **Confidential Appendix "1"** (the "**Confidential Supplement**") until such time as the sale of all of the Remaining Properties are closed or by further order of the Court;
  - vi. approving the Receiver's Interim Statement of Receipts and Disbursements dated April 30, 2021; and
  - vii. approving the fees and disbursements of the Receiver and its counsel Audaxlaw LLP ("**Audax**") as set out in this Report and the Fee Affidavits of Jerry Henechowicz and Arturo Pugliese (collectively, the "**Fee Affidavits**");
  - viii. approving a distribution to the Secured Creditors subject to the Receiver maintaining a suitable holdback in respect of potential priorities and administrative expenses of these proceedings (the "**Holdback**"); and
  - ix. such other relief as the Court deems appropriate in the circumstances

#### **DISCLAIMER AND TERMS OF REFERENCE**

10. In preparing this Report, the Receiver has relied on information (the "**Information**") regarding the Company, the Assets and Properties:

- a) included in the Application/Motion Records and other materials filed with the Court in connection with these proceedings, including the Flatt Affidavit;
  - b) provided by the Company's directors and management and its legal counsel,
  - c) the Applicant and its respective legal counsel, Gowlings WLG LLP ("**Gowlings**");
  - d) located in Nauss' available books and records;
  - e) provided by Royal LePage North Heritage Realty ("**LePage**") and RE/MAX Crown Realty (1989) Inc., ("**Remax**" and with LePage the "**Realtors**"); and
  - f) otherwise made available or provided to the Receiver and its counsel.
11. Except as described in this Second Report, the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada Handbook.
12. This Second Report should be read in conjunction with the Confidential Supplement.
13. All currency references contained herein are in Canadian Dollars, unless otherwise specified. All capitalized terms not otherwise defined herein shall have the meanings as defined in the Appointment Order, unless otherwise specified.

## **RECEIVER'S ACTIVITIES**

14. Since the date of the First Report, the Receiver's activities have concentrated upon:
- a) completing the Lasalle Sale Transaction;
  - b) negotiating the Remaining Properties Sale Agreements as described in greater detail below;
  - c) facilitating a trust examination by the Canada Revenue Agency ("**CRA**") regarding Nauss' liability for unremitted employee source deductions;

- d) corresponding with the Company's creditors, unsecured creditors, and other stakeholders regarding the status of these proceedings;
- e) communicating with the owners of Customer Vehicles (as defined below) in storage at the Arena Property and establishing a protocol for the release of the Customer Vehicles that complies with Covid Requirements;
- f) maintaining the Receiver's website regarding these proceedings [www.mnpdebt.ca/nauss](http://www.mnpdebt.ca/nauss);
- g) reviewing, approving, and paying the Properties' on-going operating costs; and
- h) preparing this Second Report and reviewing all Court materials filed in connection with this motion.

## ASSET REALIZATIONS

15. Net proceeds from the realizations of the Assets and Properties to April 30, 2021 are summarized in the table below:

Bank accounts	\$ 590
Accounts receivable	78,084
Deposits	3,355
Sales of assets	41,000
Lasalle property	511,849
	<b>634,878</b>

## THE PROPERTIES

### Completion of the Lasalle Transaction

16. On March 1, 2021 the Lasalle transaction was completed and the Receiver's Certificate confirming closing of this transaction was filed with the Court on March 3, 2021. Following traditional adjustments for a real estate transaction of this type and payment of Realtor commissions, net proceeds of \$511,849.22 were remitted to the Receiver.

### The Remaining Properties



17. As set out in the First Report, on December 8, 2020, the Receiver entered into Listing Agreements with Remax for the Remaining Properties that initially were scheduled to expire on February 28, 2021 but were extended to April 30, 2021. The listing agreements provide for a 4.5% commission to be shared between the listing and buyer's brokers. The Listing Prices for the Remaining Properties were as follows:

<b>Property</b>	<b>Listing Price</b>
Espanola	\$ 399,900
Jennica Springs	\$ 299,900
Arena	\$ 999,900
	<b>\$ 1,699,700</b>

### **Remaining Properties Sale Agreements**

18. Remax solicited multiple offers (the “**Offers**”) for the Remaining Properties in late January and February 2020. All of the Offers were submitted on standard Ontario Real Estate Association forms, contained various conditions and were accompanied by a deposit.
19. The Offers received for the Remaining Properties and the Remaining Properties Sale Agreements are reviewed and summarized in the Confidential Supplement attached as **Confidential Appendix “1”**.

### **Remaining Properties Sale Agreements**

20. The Receiver, in consultation with the Applicant, ultimately accepted the offers of the Espanola, Jennica Springs and Arena Purchasers (collectively the “Remaining Properties Purchasers”) and negotiated the Remaining Properties Sale Agreements copies of which are included in the Confidential Supplement and all include the following material terms:

- a) **Purchase price:** the final purchase price Remaining Properties Sale Agreements attached as Confidential Supplement and subject to closing adjustments for standard closing adjustments for a real property sale;
- b) **Conditions upon:**

- i. in the case of the Arena Property, the Purchaser's inspection and investigation of the property and its title by May 28, 2021;
  - ii. the Court's approval of the Remaining Properties Sale Agreements and issuance of a vesting order substantially in the form attached to the Remaining Properties Sale Agreements; and
  - iii. the closing of the contemplated transactions by June 23, 2021, May 11, 2021 and May 11, 2021 for the Arena, Jennica Springs and Espanola Properties, respectively.
- c) **Representations and Warranties:** consistent with the standard terms of an insolvency transaction, i.e. on an "as is, where is" bases, with limited representations and warranties.

#### **Remaining Properties Sale Agreements Recommendation**

21. The Receiver recommends that the Court approve the Remaining Property Sale Agreements and authorize the Receiver to complete the Remaining Properties Sale Transactions contemplated sale transactions and vesting title to the Remaining Properties to the respective purchasers for the following reasons:
- a) the Receiver was authorized to market the Remaining Properties by the Appointment Order;
  - b) the market was widely canvassed by Remax;
  - c) the Remaining Properties Sales Transactions represents the highest and best offer in the circumstances;; and
  - d) the Applicant and other Secured Creditors have advised that they support these transactions.
22. In the Receiver's opinion, the Remaining Properties Sale Transactions represents the best and highest offer for these Properties and the sale process and listing of this Properties was fair and reasonable. The Receiver , through Remax as its agent, made sufficient effort to obtain the best price and has not acted improvidently. Accordingly,

the Receiver respectfully requests that the Court approve the Remaining Properties Sale Transactions, grant an order vesting the right, title and interest in the Remaining Properties to the respective Purchasers and authorize the Receiver to take all steps necessary to complete the Remaining Property Sales Transactions.

## **CONFIDENTIAL APPENDICES**

23. The Receiver is of the view that Confidential Supplement should remain sealed until the earlier of 60 days following the closing of the last of the Remaining Properties' respective Sale Transactions or further order of the Court, as the information contained therein is commercially sensitive and could prejudice the sale of the Remaining Properties in the event the Sale Transactions do not close.
24. The Receiver does not believe that any party will suffer prejudice if the Confidential Appendices are sealed in this manner.

### **Arena Property (Stored Equipment)**

25. On November 23, 2020, the Receiver sent a notice to the parties storing their equipment at the Arena Property (the "**Storage Customers**") to, among other things, advise of the Receiver appointment and to have them confirm to the Receiver that their equipment not being insured by the Receiver. A copy of this notice is attached as **Appendix "F"**.
26. To date substantially all of the Storage Customers have confirmed as requested.
27. Historically, given the nature of the items in storage, equipment would be released from the Arena in mid to late April. On April 21, 2021, the Receiver sent a notice to the known Storage Customer advising that, among other thing, due to the Ontario Government Emergency Orders and the "Stay at Home" orders, the Receiver would only release and equipment in storage to those customer's requiring the equipment considered essential for their personal safety and well being. A copy of this notice is attached as **Appendix "G"**.

28. Following multiple discussions and correspondence with certain Storage Customers and MNP LLP enterprise risk consulting group that have specific accreditations and experience in this area, the Receiver is establishing a protocol for the release of equipment at the Arena on a scheduled “Curb Side” program. Priority is being given to those Storage Customers that have indicated the stored equipment is essential for their personal safety and well being. In addition, the Receiver has advised Storage Customers that they will be required to pay a release fee of between \$75.00 to \$100.00 per unit plus HST to reimburse the Receiver for the estimated costs incurred storing and releasing their equipment through the Receivership.

### **INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS**

29. Attached as **Appendix “H”** is the Receiver’s Interim Statement of Receipts and Disbursements for the period of November 13, 2020 to April 30, 2021. During this period receipts were \$814,928.64 and disbursements were \$247,115.32 resulting in an excess of receipts over disbursements of \$567,813.32.

### **PROFESSIONAL FEES**

30. To date, the Receiver’s accounts have been taxed through to February 10, 2021. The Receiver’s has since issued accounts totalling \$42,942.83 comprising \$37,514.00 for fees, \$488.50 for disbursements and HST of \$4,940.33 for the period February 11 to April 30, 2021. Copies of the Receiver’s Accounts, together with a summary of the accounts, total billable hours charged and the average hourly rate, are set out in the Affidavit of Jerry Henechowicz sworn May 3, 2021, attached hereto as **Appendix “I”**.

31. Audax has previously been taxed through to January 31, 2021. Audax has since issued accounts of the Receiver’s Counsel, Audax, totalling \$26,395.74 in fees and disbursements and \$3,335.05 in HST for a total of \$29,730.83 for the period of February 7, 2021 to March 30, 2021. Attached hereto as **Appendix “J”** is a copy of the Fee Affidavit of Arturo Pugliese sworn May 3, 2021, attaching the Audax’s Account and a summary of the personnel, hours and hourly rates described in the Audax’s Account.

32. The average hourly rates for the Receiver and Audax for the referenced billing periods were \$475.16 and \$416.94, respectively.
33. The Receiver is of the view that the hourly rates charged by Audax are consistent with the rates charged by corporate law firms practicing in the area of insolvency in the region and that the fees charged are reasonable and appropriate in the circumstances.

## **STATUTORY PRIORITIES**

### **Unremitted Employee Source Deductions**

34. On April 22, 2021, Canada Revenue Agency (“CRA”) issued its proof of claim for unremitted employee source deductions (the “**Property Claim**”) totalling \$240,070.28 for the period ended December 31, 2019 (the “**2019 Property Claim**”). A copy of the 2019 Property Claim is attached as **Appendix “K”**.
35. CRA has not yet completed its trust examination for 2020. Based on the Receiver’s review of the Company’s payroll records and consultations with CRA, the estimate additional Property Claim for 2020 is approximately \$45,000. In total, CRA’s total estimated Property Claim is approximately \$300,000.
36. As CRA has not yet completed its review of Nauss, the Receiver makes no determination at this time with regards to CRA’s Property Claim – both in terms of amount and priority vis-a-vis other creditors. The Receiver will do so once CRA has completed its review.

### **HST**

37. On April 9, 2021, CRA issued a Notice of (Re) Assessment totalling \$212,829.34 in respect of the Company’s liability for unremitted HST up to the Date of Receivership. In light, of the Company’s bankruptcy, CRA’s claim has been relegated to an unsecured status and ranks subordinate to the claims of the Secured Creditors.

## **Employee WEPP Claims**

38. Following its appointment, the Receiver paid all non-related employees any outstanding wages and vacation pay. In its administration of the WEPP program, the only claims filed by employees were for unpaid termination pay and accordingly unsecured liabilities. The Receiver does not anticipate any priority claims in respect of WEPP.

## **SECURED CREDITORS AND MORTGAGEES**

39. As security for the Company indebtedness, Nauss provided CIBC with:

- a) a general security agreement in respect of all of the personal property of Nauss the terms of which are incorporated within the credit agreements (the "**CIBC GSA**");
- b) a charge/mortgage in the principal amount of \$583,000.00 against the Arena Property (the "**Arena Charge**");
- c) a charge/mortgage in the principal amount of \$206,000.00 against the Espanola Property (the "**Espanola Charge**"); and
- d) a charge/mortgage in the principal amount of \$210,000.00 against the Lasalle Property (the "**Lasalle Charge**" and together with the Arena Charge and the Espanola Charge, hereinafter collectively referred to as, the "**CIBC Mortgages**").

40. The indebtedness to CIBC as at May 3, 2021 totals \$1,106,242.01 plus any accruing interest as set out on CIBC's payout statement attached as **Appendix "L"**.

41. 739572 an unrelated entity to the Company holds as security for the Company's indebtedness of approximately \$73,000 plus any accruing arrears:

- a) a charge/mortgage in the principal amount of \$65,000.00 against the Jennica Springs Property (the "**Jennica Charge**"); and

- b) charges/mortgages against each of the Arena, Lasalle and Espanola Properties that ranks behind CIBC on these Properties.
42. The indebtedness to 739572 as at December 8, 2021 totals \$70,959.47 plus any accruing interest as set out on 739572's payout statement attached as **Appendix "M"**.
43. Kora an unrelated entity to the Company holds as security for the Company's indebtedness of approximately \$25,000 plus any accruing arrears a charge/mortgage in the principal amount of \$25,000.00 against the Jennica Springs Property (the "**Jennica 2<sup>nd</sup> Charge**");
44. The indebtedness to Kora as at April 30, 2021 totals \$25,440 plus any accruing interest as set out on Kora's payout statement attached as **Appendix "N"**.
45. A copy of the title abstract for each of the Espanola Property, the Jennica Springs Property, and the Arena Property is attached as **Appendices "O", "P", and "Q"**.
46. Audax has reviewed the Secured Creditors security and has opined, subject to the usual assumptions and qualifications, that their security as set out above is valid and enforceable in accordance with their terms.

## **HOLDBACK AND DISTRIBUTION**

47. The Receiver recommends, in light of the above, that it be authorized to distribute:
- a) \$70,959.47 plus any per diem interest to 739572 on account of the Jennica Charge;
  - b) \$25,440.00, plus any per diem interest, to Kora on account of the Jennica 2<sup>nd</sup> Charge; and
  - c) all remaining funds to CIBC to the maximum amount of the Company's indebtedness to CIBC subject to the Receiver maintain a sufficient holdback to cover the amount of CRA's Property Claim, once determined, estimated future professional fees, and any other contingencies that may arise.

## CONCLUSION AND RECOMMENDATION

48. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make order granting the relief detailed in paragraph 9 (b) of this Report.

All of which is respectfully submitted, this 4<sup>th</sup> day of May, 2021.

**MNP LTD.,**

Solely In Its Capacity As Court-Appointed

Receiver And Manager Of Nauss Plumbing & Heating Inc.

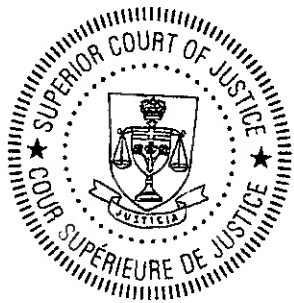
And Not In Its Personal Or Corporate Capacity

Per: 

Jerry Henechowicz CPA, CA, CIRP, LIT  
Senior Vice President



# **APPENDIX A**



Court File No. CV-19-8866-0000

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE  
JUSTICE HENNESSY

)  
)  
)

FRIDAY, THE 13<sup>th</sup>  
DAY OF NOVEMBER, 2020

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

**ORDER**  
(appointing Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing MNP Ltd. ("**MNP**") as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of Nauss Plumbing & Heating Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 155 Elm Street, Sudbury, Ontario.

ON READING the affidavit of Heather Fisher sworn October 30, 2020, and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant and those other parties listed on the counsel slip, and on being advised that the Debtor and 739572 Ontario Limited ("**739**") do not oppose the within Order, no one else appearing for any other party although duly served as

appears from the affidavit of service of Heather Fisher sworn October 30, 2020 and on reading the consent of MNP to act as the Receiver,

### SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and 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, MNP is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor and all proceeds thereof (collectively, the "**Property**"), including but not limited to the lands and premises listed in Schedule "**B**" hereto (the "**Schedule "B" Real Property**") and the lands and premises listed in Schedule "**C**" hereto (the "**Schedule "C" Real 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 cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, real estate brokers, 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 receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (f) to settle, extend or compromise any indebtedness owing to the Debtor;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (h) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (i) 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;
- (j) 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 \$50,000; 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.
- (k) 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;
  - (l) 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;
  - (m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property including as against the Real Property;
  - (n) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
  - (o) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (p) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (q) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

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

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.
5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

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

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

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

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

9. THIS COURT ORDERS that, except as otherwise permitted by paragraph 10 of this Order, no Proceeding against or in respect of the Debtor or the Property shall be commenced or

continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

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

10. THIS COURT ORDERS that, except as otherwise provided in this paragraph 10, 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. Notwithstanding anything otherwise contained in this paragraph 10, in relation to its Charge/Mortgage registered in favour of 739, as Instrument No. SD342507, on September 5, 2017 (the "739 Charge"), 739 shall be at liberty to (i) issue a notice of intention to enforce security pursuant to section 244 of the BIA, (ii) issue a notice of sale under mortgage in respect to the Schedule "C" Property, and (iii) to list the Schedule "C" Real Property for sale under power of sale, upon giving the Receiver 30 days prior written notice if 739 is not satisfied with the Receiver's marketing and sale efforts in relation to thereto.

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

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

### **CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized



banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that, except as otherwise provided for in this paragraph 13, 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. Any rents, funds, monies or other forms of payments received or collected by the Receiver from and after the making of this Order in relation to the Schedule "C" Real Property, shall be deposited into an account to be opened by the Receiver (the "**Schedule "C" Real Property Account**") and the monies standing to the credit of the Schedule "C" Real Property Account shall be paid by the Receiver to 739 and shall be applied by 739 on account of the indebtedness owing under the 739 Charge.

### **EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related

liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

#### **PIPEDA**

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

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

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

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

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

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

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that, save except with respect to the Schedule "C" Real Property and the proceeds thereof, 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. With respect to the Schedule "C" Real Property and the proceeds thereof, the Receiver's Charge shall form a second charge on the Schedule "C" Real Property, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but otherwise subject to the 739 Charge and 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 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 \$70,000 (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 739 Charge over the Schedule "C" Real Property, 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 with the following URL: [www.MNPdebt.ca/Nauss](http://www.MNPdebt.ca/Nauss).

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

### **GENERAL**

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

28. THIS COURT ORDERS that the Receiver is hereby authorized and empowered, but not obligated, to cause the Debtor to make an assignment in bankruptcy and nothing in this Order shall prevent the Receiver from acting as trustee in the Debtor's bankruptcy.

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

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

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

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

*PC Hennessy J*

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ENTERED AT SUDBURY  
on Friday, November 13th, 2020  
Court No. 7712  
by: **Chelsea Borton**

**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that MNP Ltd., the receiver (the "**Receiver**") of the assets, undertakings and properties Nauss Plumbing & Heating Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (the "**Court**") dated the \_\_\_ day of \_\_\_\_\_, 2019 (the "**Order**") made in an action having Court file number \_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

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

MNP Ltd., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

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



## **SCHEDULE "B"**

### **DESCRIPTION OF SCHEDULE "B" REAL PROPERTY**

1. The lands and premises municipally known as 551 Centre Street, Espanola, Ontario and legally described as:
  - **PIN 73407-0024 (LT):** PCL 10208 SEC SWS; PT LT 8 CON 5 MERRITT AS IN LT64894 EXCEPT PT 1 53R13128 & PT 153R17437; S/T PT 2 & 3 53R13128 AS IN LT696426; ESPANOLA
2. The lands and premises municipally known as 2590 Lasalle Blvd., Sudbury, Ontario and legally described as:
  - **PIN 73564-0117 (LT):** PCL 18965 SEC SES; PT LT 9 CON 6 NEELON AS IN LT 109921 EXCEPT LT 1 PL M861; S/T LT80621; GREATER SUDBURY
3. The lands and premises municipally known as 7 Millichamp Street, Markstay, Ontario, and legally described as:
  - **PIN 73484-0035 (LT):** PCL 53626 SEC SES; FIRSTLY: LT 22 PL M1034 HAGAR; SECONDLY: PT LT 12 CON 3 HAGAR PT 1, 53R16102; MARKSTAY-WARREN

**SCHEDULE "C"**

**DESCRIPTION OF SCHEDULE "C" REAL PROPERTY**

The lands and premises municipally known as 1330 North Road, Markstay, Ontario, and legally described as PIN **73488-0010 (LT)**: PCL 51424 SEC SES; PT LT 12 CON 1 LOUGHRIN PT 1 & 2 53R15954; MARKSTAY-WARREN

CANADIAN IMPERIAL BANK OF COMMERCE

- and -

Court File No. CV-8866-0000

NAUSS PLUMBING & HEATING INC.

Respondent

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

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

**RECEIVERSHIP ORDER**

**GOWLING WLG (CANADA) LLP**  
Barristers & Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto ON M5X 1G5

**Haddon Murray (#61640P)**  
Tel: 416-862-3604  
Fax: 416-862-7661  
haddon.murray@gowlingwlg.com

Solicitors for the Applicant

## **APPENDIX B**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

and

**NAUSS PLUMBING & HEATING INC.**

Respondent

**FIRST REPORT TO THE COURT OF MNP LTD IN ITS CAPACITY AS RECEIVER  
AND MANAGER OF THE ASSETS, UNDERTAKINGS, AND PROPERTIES OF  
NAUSS PLUMBING & HEATING INC.**

February 19, 2021

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## INTRODUCTION

1. On November 13, 2020, the Ontario Superior Court of Justice (the “**Court**”) made an order (the “**Appointment Order**”), *inter alia*, appointing MNP Ltd. (the “**Receiver**”) as receiver and manager of all the assets, undertakings and properties (“**Assets**”) including real property (the “**Properties**”) of Nauss Plumbing & Heating Inc. (“**Nauss**” or the “**Company**”) acquired for, or used in relation to the business carried on by the Company. A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. Nauss is a private Ontario corporation that operated its businesses from four (4) locations that it holds title to in and around Sudbury, Ontario:
  - a) plumbing and heating contracting from 2590 Lasalle Boulevard, Sudbury, Ontario (the “**Lasalle Property**”);
  - b) plumbing and heating contracting also known as Garnet Plumbing from 551 Centre Street, Espanola, Ontario (the “**Espanola Property**”);
  - c) a spring water bottling facility operating as Jennica Springs from its location at 1330 North Road, Markstay, Ontario (the “**Jennica Springs Property**”);
  - d) and a storage facility for boats, all terrain vehicles, recreational and other vehicles (collectively the “**Customers Equipment**”) from a former hockey arena located at 7 Millichamp Street, Markstay, Ontario (the “**Arena Property**” and together with the Lasalle Property, Espanola Property and the Jennica Springs Property, hereinafter collectively referred to as, the “**Properties**”).
3. As set out in further detail below, since its appointment on November 13, 2020, the Receiver has suspended the Company’s operations, taken possession and control of the Assets, including the Properties, and undertaken those additional steps considered necessary to safeguard and protect the Assets and Properties.
4. It should be noted by the Court that this receivership has occurred against the backdrop of the COVID-19 pandemic and resultant state of emergency as declared by the Province of Ontario, which has, at times, added to the complexity of the receivership in order to ensure



that the operation of the Properties conformed with applicable COVID-19 safety guidelines.

### **Circumstances Leading to the Receiver's Appointment**

5. The circumstances leading to the appointment of the Receiver, are set out in the Affidavit of Sieg Flatt, sworn November 19, 2019 (the "**Flatt Affidavit**") in support of the initial Receivership Application, brought by the Canadian Imperial Bank of Commerce ("**CIBC**" or the "**Applicant**"), including the following:
  - a) as of November 17, 2019, Nauss was indebted to CIBC in the approximate amount of \$930,00 plus accruing interest and all other charges and expenses of enforcement (the "**Indebtedness**");
  - b) as security for the Indebtedness, Nauss provided CIBC with:
    - i. a general security agreement in respect of all of the personal property of Nauss the terms of which are incorporated within the credit agreements (the "**CIBC GSA**");
    - ii. a charge/mortgage in the principal amount of \$583,000.00 against the Arena Property (the "**Arena Charge**");
    - iii. a charge/mortgage in the principal amount of \$206,000.00 against the Espanola Property (the "**Espanola Charge**");
    - iv. a charge/mortgage in the principal amount of \$210,000.00 against the Lasalle Property (the "**Lasalle Charge**" and together with the Arena Charge and the Espanola Charge, hereinafter collectively referred to as, the "**CIBC Mortgages**");
  - c) Nauss was in default of both the CIBC GSA and each of the CIBC Mortgages and appeared to owe CRA approximately \$350,000 in respect of unremitted source deductions.
6. A copy of the Appointment Order, together with related Court documents and all reports with respect of this matter are available on the Receiver's website, which can be found at [www.mnpdebt.ca/nauss](http://www.mnpdebt.ca/nauss).

## PURPOSE OF THIS REPORT

7. The purpose of this the Receiver's first report (the "**First Report**") is to:
- a) update the Court with respect to:
    - i. the activities of the Receiver since the date of the Appointment Order;
    - ii. the Company's Assets and Properties and realizations to-date;
    - iii. other issues the Receiver has responded to in connection with the Properties and termination of the Company's operations;
    - iv. review the listing proposals obtained from for each of the Properties from Royal LePage North Heritage Realty ("**LePage**") and RE/MAX Crown Realty (1989) Inc., ("**Remax**" and together with LePage, hereinafter collectively referred to as the "**Realtors**") as well as the listings agreements entered into with Remax for the sale of each of these Properties;
    - v. the offers received for the Lasalle and Espanola Properties; and
    - vi. an Asset Purchase Agreement dated January 15, 2021 (the "**Lasalle Sale Agreement**") entered into between the Receiver, as vendor, and Barker Brothers Inc. or its assignee as purchaser (the "**Purchaser**") and the transaction contemplated therein (the "**Sale Transaction**");
  - b) provide information to the Court in support of the Receiver's request for orders, *inter alia*,
    - i. approving the First Report and the decisions, conduct, and activities of the Receiver as set out therein;
    - ii. approving the Lasalle Sale Agreement and the Sale Transaction;
    - iii. authorizing the Receiver to take such steps as are necessary and appropriate to facilitate the closing of the Sale Transaction;
    - iv. vesting title in and to the Lasalle Property or as it may direct, free and clear of any encumbrances, save and except as otherwise contemplated by the Lasalle Sale Agreement;
    - v. sealing the **Confidential Appendices "1", "2", "3" and "4"** noted in this Report until such time as the sale of all of the Properties are closed or by further order of the Court;

- vi. authorizing the Receiver to repay to 11993330 Canada Inc. a deposit of \$82,000 paid by 11993330 Canada Inc. in connection with an incomplete transaction, discussed in greater detail below;
- vii. approving the fees and disbursements of the Receiver and its counsel Audaxlaw PC (“**Audax**”) as set out in this Report and the Fee Affidavits of Jerry Henechowicz and Arturo Pugliese, respectively (collectively, the “**Fee Affidavits**”); and
- viii. approving the Receiver’s Interim Statement of Receipts and Disbursements dated February 12, 2021; and
- ix. such other relief as the Court deems appropriate in the circumstances.

#### **DISCLAIMER AND TERMS OF REFERENCE**

8. In preparing this Report, the Receiver has relied on information (the “**Information**”) regarding the Company, the Assets, and Properties:
  - a) included in the Application/Motion Records and other materials filed with the Court in connection with these proceedings, including the Flatt Affidavit;
  - b) provided by the Company’s directors and management and its legal counsel,
  - c) the Applicant and its respective legal counsel, Gowlings WLG LLP (“**Gowlings**”);
  - d) located in Nauss’ available books and records;
  - e) provided by the Realtors; and
  - f) otherwise made available or provided to the Receiver and its counsel.
9. Except as described in this Report, the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada Handbook.

10. All currency references contained herein are in Canadian Dollars, unless otherwise specified. All capitalized terms not otherwise defined herein shall have the meanings as defined in the Appointment Order, unless otherwise specified.

## RECEIVER'S ACTIVITIES

11. Since its appointment, the Receiver's activities have concentrated upon:

- a) taking possession and control of the Assets and Properties;
- b) changing locks and arranging for required security patrols of the Properties;
- c) continuing insurance coverages in place as well as arranging for insurance coverage for certain of the Assets and Properties that were uninsured as of the date of the Receiver's appointment;
- d) retaining certain employees and contractors of Nauss to update payroll records, determine the amount of outstanding wages and vacation pay including issuing T4's and Records of Employment, assist in accounts receivable collections and facilitate safeguarding and protection of the Assets and Properties;
- e) identifying and conducting an inventory count of all Customer Equipment located at the Arena Property and notifying the known owners of this equipment of the Receiver's appointment as described below in paragraph 42;
- f) obtaining appraisals for the Company's inventories, equipment, vehicles and installation trucks;
- g) obtaining listing proposals for each of the Properties from the Realtors entering into Listing Agreements with Remax;
- h) pursuant to the authorized sale transaction limits without Court approval (individual and aggregate of \$50,000) as set-put in paragraph 3(j)(i) of the Appointment Order, negotiated and completed four (4) sales transactions for certain of the Assets

totalling \$47,000. These four (4) sale transaction are discussed in greater detail later in this Report;

- i) preparing statutory notices and filings pursuant to Section 245 and 246(1) of the *Bankruptcy and Insolvency Act* (the “BIA”);
- j) corresponding with secured creditors, unsecured creditors, and other stakeholders regarding the status of these proceedings;
- k) maintaining the Receiver’s website regarding these proceedings [www.mnpdebt.ca/nauss](http://www.mnpdebt.ca/nauss);
- l) reviewing, approving, and paying various operating costs;
- m) negotiating of the Lasalle Sale Agreement as described in greater detail below; and
- n) preparing this First Report and reviewing all Court materials filed in connection with this motion.

## **ASSET REALIZATIONS**

### **Bank Accounts**

12. The Company maintained bank accounts at the Royal Bank of Canada in Sudbury, Ontario. (the “RBC Accounts”). Following its appointment, the Receiver arranged for RBC Accounts to be changed to deposit only and all funds to be remitted to the Receiver. On January 6, 2021, \$17,469.26 was remitted to the Receiver from the RBC Accounts representing post receivership collections along with \$590.45 from the Company’s savings account.

### **Accounts Receivable**

13. Based on the Company’s records and in consultation with the former employee that was responsible for accounts receivable collections, a total of \$103,659.55 appeared to be collectable of which \$77,936.81 has been collected by the Receiver as of the date of this

First Report. Collection efforts are continuing in respect of the remaining potentially collectable accounts receivable.

**Projects in Progress**

14. Following its appointment, the Receiver along with the Company’s management reviewed the status of the projects in progress (the “**Projects**”), costs to complete, customer’s willingness to accept the completed projects without post service guarantees and the likely recoveries. In addition, the Receiver reviewed with the Company’s insurers whether there was suitable liability coverage in place for any Projects completed by the Receiver.
15. Based on the above review, the Receiver estimated maximum potential net recoveries from the Projects totaled approximately \$21,000. Based on the concerns and risks set out above, the Receiver concluded that it was not economically feasible and practical to complete the Projects.
16. On or about December 10, 2020, Marley Mechanical Ltd. (“**Marley**”), a company owned and operated by the Company’s principal, Mr. Dennis Groves (“**Groves**”), offered to acquire the Receiver’s interests in the Projects, if any, for \$10,000 plus applicable HST. Given the issues noted above and in an effort to maximize the realizations from the Projects, the Receiver, in consultation with CIBC, accepted the offer from Marley.
17. A copy of the Asset Purchase Agreement regarding the Projects dated December 18, 2020 Between the Receiver as Vendor and Marley is attached as **Appendix “B”**.

**Appraisal of Inventory, Equipment and Service Trucks**

18. The Receiver obtained an appraisal of the gross forced liquidation value (the “**GFLV**”) of the Company’s inventory, equipment, and service trucks from Canam-Appraiz Inc. (“**Canam**”) a copy of which is attached as **Appendix “C”** and summarized below:

	<b>Location</b>			<b>Total</b>
	<b>Lasalle &amp; Espanola</b>	<b>Arena</b>	<b>Jennica Springs</b>	
Inventory & Equipment	\$ 29,100	\$ 23,700	\$ 8,750	\$ 61,550
Service Trucks	22,500			\$ 22,500
	<b>\$51,600</b>	<b>\$ 23,700</b>	<b>\$ 8,750</b>	<b>\$ 84,050</b>

## **Inventory and Equipment**

19. The Receiver with the assistance of the Realtors obtained offers for the inventory and equipment (collectively the “**Inventory**”) from prospective purchasers of the Properties and other parties that contacted the Receiver. These offers were reviewed with Canam and CIBC and it was agreed that in light of multiple locations, the appraisals, the costs of moving the Inventory to a single location for an auction or liquidation sale, the selling costs, the COVID restrictions and limited number of likely purchasers, the Receiver accepted an offer from the Northland Group of Companies Ltd. (“**Northland**”) to purchase the Inventory located only at the Lasalle and Espanola Properties for \$22,000 plus applicable HST. In addition, Northland agreed to these Properties’ premises in a broomswept workman like condition by no later than January 21, 2021. A copy of the Bill of Sale dated December 29, 2020 between the Receiver as Vendor and Northland as Purchaser is attached as **Appendix “D”**.

## **Service Trucks**

20. At the Receiver’s appointment date, four (4) Econoline vans that were each more than 10 years old and not running were parked across the street from the Lasalle Property on the property of McDowell Brothers Industries Inc. (“**McDowell**”). McDowell provided the Receiver documentation that indicated that Nauss owed \$1,137 for outstanding parking and storage fees (the “**Storage Fees**”) which constituted a possessory Repair and Storage Lien against these units.
21. Since the vehicles had a GFLV of \$2,000, by email dated January 15, 2021, McDowell agreed that it would dispose of these units and remit any surplus in excess of the outstanding Storage Fees to the Receiver. The Receiver has not yet received McDowell’s accounting for the disposition of these service trucks and is following up. A copy of the Receiver’s email confirmation to McDowell is attached as **Appendix “E”**.

22. The Realtors also solicited offers from prospective purchasers of the Properties for the nine (9) remaining service trucks at the Lasalle and Espanola Properties that have an GFLV of \$18,500. The best offer for these units was \$12,000 plus applicable HST from Marley.
23. Given the relatively low value of the remaining service truck and taking in consideration the potential holding and selling costs, the Receiver, in consultation with CIBC, accepted Marley's offer to purchase the nine (9) remaining service trucks at the Lasalle and Espanola Properties.
24. A copy of the Bill of Sale dated February 8, 2021 regarding these units between Marley as Purchaser and the Receiver as Vendor is attached as **Appendix "F"**.

### **Goodwill and Intellectual Property**

25. The Receiver sought offers for the Company's goodwill and intellectual property related the plumbing and heating businesses (the "**Plumbing IP**") from all potential purchasers of the Lasalle and Espanola Properties as well as others known to the Receiver from its local Sudbury office.
26. The Receiver received one offer as potential purchasers advised they were of the view that since Groves, had, in their opinion, effectively continued Nauss' business under Marley, the Plumbing IP had only a nominal value. The Receiver only received one offer for this asset and completed the sale of the Plumbing IP for \$3,000 plus applicable HST to Mr. John Law. A copy of the Bill of Sale dated December 29, 2020, is attached as **Appendix "G"**.

## **THE PROPERTIES**

### **Listing Proposals and Agreements**

27. The Receiver obtained listing proposals from two well know commercial realtors in the Sudbury region. A summary of the listing proposals is attached as **Confidential Appendix "1"**.
28. Following consultations with CIBC, on or about November 25, 2020, the Receiver entered into Listing Agreements with Remax. The Listing Agreements continue until February 28,



2021 and include up to a 4.5% commission to be shared between the listing and buyer's brokers. The Listing Prices are set out below:

<b>Property</b>	<b>Listing Price</b>
Lasalle	\$ 499,900
Espanola	\$ 399,900
Jennica Springs	\$ 299,900
Arena	\$ 999,900
	<b>\$ 2,199,600</b>

**Lasalle Property**

29. Three (3) competitive offers were received for the Lasalle Property by December 8, 2020 as summarized in attached **Confidential Appendix "2"**.
30. On December 10, 2020, the Receiver sent each of the prospective purchasers that had submitted an offer to provide their final and best offer by December 16, 2020.
31. The Receiver, in consultation with the Applicant, ultimately accepted the revised offer of Barker Bros Ltd. and negotiated the Lasalle Sale Agreement dated January 15, 2021, a copy of which is attached as **Confidential Appendix "3"**. The Lasalle Sale Agreement includes the following material terms:
  - a) **Purchase price:** the final purchase price in the Lasalle Sale Agreement attached as **Confidential Appendix "3"** and subject to closing adjustments for standard closing adjustments for a real property sale;
  - b) **Conditions upon:**
    - i. the Purchaser's inspection and investigation of the property and its title by February 5, 2021, that was subsequently waived on February 4, 2021;
    - ii. the Court's approval of the Lasalle Sale Agreement and issuance of a vesting order substantially in the form attached to the Lasalle Sale Agreement; and
    - iii. the closing of the contemplated transaction by March 1, 2021.

- c) **Representations and Warranties:** consistent with the standard terms of an insolvency transaction, i.e. on an “as is, where is” bases, with limited representations and warranties.

### **Lasalle Sale Agreement Recommendation**

32. The Receiver recommends that the Court approve the Lasalle Sale Agreement and authorize the Receiver to complete the Sale Transaction and vesting title to the Lasalle Property in the Purchaser for the following reasons:

- a) the Receiver was authorized to market this Property by the Appointment Order;
- b) the market was widely canvassed by Remax;
- c) the Purchase Price is significantly higher than the listing price/selling price suggested in both Listing Proposals;
- d) the Sale Transaction represents the highest and best offer with the highest likelihood of closing; and
- e) the Applicant has advised that it supports the Sale Transaction.

33. In the Receiver’s opinion, the Sale Transaction represents the best and highest offer for the Property and the sale process and listing of this Property was fair and reasonable. The Receiver made sufficient effort to obtain the best price and has not acted improvidently. Accordingly, the Receiver respectfully requests that the Court approve the Sale Transaction, grant an order vesting the right, title and interest in the Lasalle Property to the Purchaser and authorize the Receiver to take all steps necessary to complete the Sale Transaction.

### **Espanola Property**

34. Mr Aaron Scully (“Scully”), the principal of a Ford truck dealership that operates on the adjacent property submitted an “as is, where is” offer for the Espanola Property that was substantially less than the listing price. Scully advised that extensive environmental

remediation was required on his property and the offer reflected an estimate of the environmental remediation costs to be incurred for the Espanola Property.

35. Based on the above, the Receiver commissioned Pinchin Environmental Ltd. (“**Pinchin**”) to complete a Phase II environmental assessment of the Espanola Property. On February 16, 2021, the Receiver has advised by Pinchin that its testing did not uncover environmental contamination that would require remediation. Accordingly, the Receiver has instructed Remax to resume its sales efforts for the Espanola Property.

### **Jennica Springs**

36. On November 3, 2020, the Company entered into a conditional Asset Purchase Agreements with 11993330 Canada Inc. (“**119 Canada**”) for the Jennica Springs and Arena Properties as well as the Jennica Springs assets and business on a going-concern basis. The contemplated transactions were subject to various conditions and were scheduled to close on or about the November 18, 2020. A copy of these agreements is attached as **Confidential Appendix “4”**.

37. Following its appointment, the Receiver, contacted 119 Canada and its counsel, Moutsatsos Laakso Alexander LLP, to confirm whether they wished to complete the transaction. Following multiple discussions, 119 Canada withdrew its offer.

38. On December 22, 2020, 119 Canada’s deposits paid to the Company’s counsel, totalling \$82,000 was remitted to the Receiver. Accordingly, the Receiver with the consent of the Bank, recommends that the Court authorize the Receiver to return the \$82,000 deposit to 119 Canada.

39. Although there have been multiple showings and interest in this property and the Jennica Springs assets and business, no other offers have been submitted to date.

### **Arena Property**

40. Following its appointment, the Receiver attended at the Arena Property and completed an inventory of all the Customer Equipment on site. The estimated annual storage revenue is between \$20,000 to \$30,000.

41. Based on discussions with Groves and review of the Company's limited records regarding the Customer Equipment, it was determined that customers had agreed that any equipment store on site was not being insured by the Company. In addition, the Receiver confirmed with the Company's current insurer, that there was no insurance of any kind for the Arena Property or its contents. Insurance coverage for the Arena Property and the Company's assets being stored on site was subsequently put in place.
42. On November 23, 2020, the Receiver sent a notice to the parties storing their equipment at the Arena Property to, among other things, advise of the Receiver's appointment and to have them confirm to the Receiver that their equipment not being insured by the Receiver. A copy of this notice is attached as **Appendix "H"**.
43. To date, substantially all of the customers have confirmed as requested.

#### **CONFIDENTIAL APPENDICES**

44. The Receiver is of the view that **Confidential Appendices "2" and "3"** should remain sealed until the earlier of 60 days following the closing of the Sale Transaction or further order of the Court, as the information contained therein is commercially sensitive and could prejudice the sale of the Lasalle Property in the event the Sale Transaction does not close.
45. The Receiver is of the view that **Confidential Appendices "1" and "4"** should remain sealed until further order of the Court, as the information contained therein is commercially sensitive and relates to the as of yet unsold properties, as well as the Lasalle Property.
46. The Receiver does not believe that any party will suffer any material prejudice if the Confidential Appendices are sealed in this manner.

#### **INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS**

47. Attached as **Appendix "I"** is the Receiver's Interim Statement of Receipts and Disbursements for the period of November 13, 2020 to February 12, 2021. During this period receipts were \$209,344.59 and disbursements were \$61,882.95 resulting in an

excess of receipts over disbursements of \$147,461.64. The balance is exclusive of the \$52,500 deposit from the Purchaser which is currently being held in trust by Audax.

## **PROFESSIONAL FEES**

48. The Receiver's accounts total \$116,090.34 comprising \$97,602.50 for fees, \$5,132.31 for disbursements and HST of \$13,355.53 for the period September 4, 2020 to February 10, 2021. Copies of the Receiver's Accounts, together with a summary of the accounts, total billable hours charged and the average hourly rate, are set out in the Affidavit of Jerry Henechowicz sworn February 19, 2021, attached hereto as **Appendix "J"**.
49. The accounts of the Receiver's Counsel, Audax, total \$8,981.73 in fees and disbursements and \$1,161.49 in HST for a total of \$10,143.22 for the period of November 16, 2020 to January 28, 2021. Attached hereto as **Appendix "K"** is a copy of the Fee Affidavit of Arturo Pugliese sworn February 19, 2021, attaching the Audax's Account and a summary of the personnel, hours and hourly rates described in the Audax's Account.
50. The average hourly rates for the Receiver and Audax for the referenced billing periods were \$342.65 and approximately \$460.00, respectively.
51. The Receiver is of the view that the hourly rates charged by Audax are consistent with the rates charged by corporate law firms practicing in the area of insolvency in the region and that the fees charged are reasonable and appropriate in the circumstances.

## **STATUTORY PRIORITIES**

### **Unremitted Employee Source Deductions and HST**

52. On February 16, 2021, a representative of Canada Revenue Agency ("**CRA**") contacted the Receiver to arrange a trust examine of the Company's payroll and HST accounts. In addition, the CRA representative advised that subject to completion of a trust examine for 2019 and 2020:
  - a) the Company's current liability for unremitted employee source deductions, employer contributions, penalties and interest totals approximately \$428,000;

- b) that only four (4) remittances out of the required eleven (11) for 2020 were received by CRA; and
- c) with the respect to unremitted HST, the current balance including penalties and interest totals approximately \$181,000 and that no filings or remittances were made by the Company in 2020.

#### **Employee WEPP Claims**

53. Following its appointment, the Receiver paid all non-related employees any outstanding wages and vacation pay. In its administration of the WEPP program, the only claims filed by employees were for unpaid termination pay. Accordingly, the Receiver does not anticipate any priority claims in respect of WEPP.

#### **BANKRUPTCY APPLICATION**

54. Gowlings as counsel to CIBC has advised the Receiver that contemporaneously with this motion by the Receiver, it will be bring its own motion seeking an order adjudging Nauss bankrupt.
55. MNP has also consented to act as Trustee should the Court issue an order adjudging the Company bankrupt. In the regard, since the Company's creditors have been already been advised of these Receivership proceedings, MNP in is capacity proposed Trustee recommends that to promote efficiency and costs, the required mailing of the Notice of the First Meeting of Creditors (the "Notice") that normally includes a copy of the Company's Statement of Affairs, Proof of Claim form and Form of Proxy (collectively the "Forms"), be limited to the Notice including directions to download the Forms.

#### **SECURED CREDITORS AND MORTGAGEES**

56. Attached hereto as **Appendix "L"** is a copy of the PPSA Report for Nauss.

57. Attached here to as **Appendices “K”, “M”, “N”, and “O”** are copies of the parcel registers for each of the Lasalle Property, the Espanola Property, the Arena Property, and the Jennica Springs Property, respectively.
58. The Applicant holds as security for the Company’s indebtedness, a GSA, the Arena Charge, the Espanola Charge; and the Lasalle Charge.
59. 739572 Ontario Limited (“**739572**”) which the Receiver understands is not related to Nauss, holds as security for the Company’s indebtedness of approximately \$73,000 plus any accruing arrears:
- a) a charge/mortgage in the principal amount of \$65,000.00 against the Jennica Springs Property (the "**Jennica Charge**"); and
  - b) charges/mortgages against each of the Arena, Lasalle and Espanola Properties that are registered behind CIBC on these Properties.
60. The Receiver’s counsel is in the process of reviewing the security documents of CIBC and of 739572.

## **CONCLUSION AND RECOMMENDATION**

61. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make order granting the relief detailed in paragraph 7(b) of this Report.

All of which is respectfully submitted, this 19<sup>th</sup> day of February, 2021.

**MNP LTD.,**  
Solely In Its Capacity As Court-Appointed  
Receiver And Manager Of Nauss Plumbing & Heating Inc.  
And Not In Its Personal Or Corporate Capacity

Per:



Jerry Henechowicz CPA, CA, CIRP, LIT  
Senior Vice President

# **APPENDIX C**



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE            )            DAY, THE 26TH DAY OF  
K.E. CULLIN                            )            FEBRUARY, 2021  
  )

BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

and

**NAUSS PLUMBING & HEATING INC.**

Respondent

**ADMINISTRATIVE ORDER**

**(February 26, 2021)**

**THIS MOTION**, made by MNP Ltd., in its capacity as court appointed receiver and manager (the “**Receiver**”), for an order approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**Asset Purchase Agreement**”) between the Receiver and Barker Bros Inc. dated January 15, 2021, and an order vesting in Barker Bros Realty Incorporated, the nominee of Barker Bros Inc. (the “**Purchaser**”), all of Nauss Plumbing & Heating Inc.’s (“**Nauss**”) right, title, benefit and interest in and to the assets described in the Asset Purchase Agreement (the “**Purchased Assets**”) and other relief, was heard this day, via videoconference. due to the COVID-19 pandemic.

**ON READING** the First Report of the Receiver dated February 19, 2021 (the “**First Report**”), and on hearing the submissions of counsel for the Receiver, the Applicant, and any such other counsel as were present, no one appearing for any other person on the service list,

although properly served as appears from the affidavit of Angela Makris sworn February 23, 2021 filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and of the Motion Record herein, be and is hereby validated and abridged so that this Motion is properly returnable today and hereby dispenses with any further service hereof.
2. **THIS COURT ORDERS AND DECLARES** that the First Report and the decisions, conduct, and activities set out therein be and are hereby approved.
3. **THIS COURT ORDERS** that Confidential Appendices #2 and #3 to the First Report be and are hereby sealed until the earlier of 60 days from the date of this order or further order of the Court.
4. **THIS COURT ORDERS** that Confidential Appendices #1 and #4 to the First Report be and are hereby sealed until further order of the Court.
5. **THIS COURTS ORDERS AND DIRECTS** that the Receiver repay the \$82,000 deposit paid by 11993330 Canada Inc. to Nauss in connection with proposed, but not completed, sale transactions that had been entered into between 11993330 Canada Inc. and Nauss prior to the receivership.
6. **THIS COURT ORDERS AND DECLARES** that the fees and disbursements of the Receiver and its counsel Audaxlaw PC as set out in the First Report be and are hereby approved.
7. **THIS COURT ORDERS AND DECLARES** that the Receiver's Interim Statement of Receipts and Disbursements as set out in the First Report be and are hereby approved.



---

CANADIAN IMPERIAL BANK OF  
COMMERCE

- and -

NAUSS PLUMBING & HEATING INC.

Court File No: CV-19-8866-0000

Applicant

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at:  
**SUDBURY**

**ADMINISTRATIVE ORDER  
(FEBRUARY 26, 2021)**

**AUDAXLAW PC**  
Barristers and Solicitors  
300 Bloor Street West  
Suite 670 West Tower  
Toronto, Ontario, M8X 2X2

**Frank Spizzirri, CS**  
LSO No. 37327F  
Tel: (416) 862-8329  
Fax: (416) 597-8330

**Lawyers for the Court-Appointed  
Receiver, MNP Ltd.**

## **APPENDIX D**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE            )            DAY, THE 26TH DAY OF  
K.E. CULLIN                            )            FEBRUARY, 2021  
  )

BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

and

**NAUSS PLUMBING & HEATING INC.**

Respondent

**SALE APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by MNP Ltd., in its capacity as court appointed receiver and manager (the “**Receiver**”), for an order approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**Asset Purchase Agreement**”) between the Receiver and Barker Bros Inc. dated January 15, 2021, and an order vesting in Barker Bros Realty Incorporated, the nominee of Barker Bros Inc. (the “**Purchaser**”), all of Nauss Plumbing & Heating Inc.’s (“**Nauss**”) right, title, benefit and interest in and to the assets described in the Asset Purchase Agreement (the “**Purchased Assets**”) and other relief, was heard this day, via videoconference, due to the COVID-19 pandemic.

**ON READING** the First Report of the Receiver dated February 19, 2021 (the “**First Report**”), and on hearing the submissions of counsel for the Receiver, the Applicant, and any such other counsel as were present, no one appearing for any other person on the service list,

although properly served as appears from the affidavit of Angela Makris sworn February 23, 2021 filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and of the Motion Record herein, be and is hereby validated and abridged so that this Motion is properly returnable today and hereby dispenses with any further service hereof.
2. **THIS COURT ORDERS** that unless otherwise defined herein or the context otherwise requires, capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement.
3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Asset Purchase 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.
4. **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 Nauss's right, title, benefit and interest in and to the Purchased Assets described in the Asset Purchase Agreement, and more particularly set out in **Schedule D**, 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 Receivership Order dated November 13, 2020; (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 B** 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 C**) 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.

5. **THIS COURT ORDERS** that upon the registration in the applicable land registry office or land titles office of a transfer/deed of land or equivalent document, or of an application for registration of this Order in the applicable prescribed form, the applicable land registrar or equivalent official is hereby directed to enter the Purchaser as the owner of the subject 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** hereto.
6. **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.
7. **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 Nauss's records pertaining to Nauss's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by Nauss.
8. **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 Nauss and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of Nauss;

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 Nauss and shall not be void or voidable by creditors of Nauss, 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.

9. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of section 6(3) of the *Retail Sales Act (Ontario)*.

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

A handwritten signature in black ink, consisting of a large, stylized letter 'S' with a horizontal line extending to the right.



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

Court File No. CV-19-00008866-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

and

**NAUSS PLUMBING & HEATING INC.**

Respondent

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Hennessey of the Ontario Superior Court of Justice (the “**Court**”) dated November 13, 2020, MNP Ltd. was appointed as receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Nauss Plumbing & Heating Inc. (“**Nauss**”).

B. Pursuant to an Order of the Court dated February 26, 2021, the Court approved the agreement of purchase and sale made as of January 15, 2021 (the “**Asset Purchase Agreement**”) between the Receiver and Barker Bros Inc. and provided for the vesting in, Barker Bros Realty Incorporated, the nominee of Barker Bros. Inc. (the “**Purchaser**”), pursuant to an Assignment and Assumption Agreement dated February \_\_, 2021, of all of Nauss’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 the Asset 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 Asset Purchase 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 Asset Purchase Agreement;
2. The conditions to closing as set out in the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser, respectively; 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].

**MNP LTD. solely in its capacity as receiver and manager of NAUSS HEATING & PLUMBING INC., and not in any other capacity**

Per:

\_\_\_\_\_

Name:

Title:

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

SD341554 – Charge – From NAUSS PLUMBING & HEATING INC. to CANADIAN IMPERIAL BANK OF COMMERCE

SD341555 – Notice of Assignment of Rents – General – from NAUSS PLUMBING & HEATING INC. to CANADIAN IMPERIAL BANK OF COMMERCE

SD342507 – Charge – From NAUSS PLUMBING & HEATING INC. to 739572 ONTARIO LIMITED

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

**(unaffected by the Vesting Order)**

LT80621 – Transfer Easement – The Hydro-Electric Power Commission of Ontario

LT386617 – Notice – Airport Zoning Regulation

**Schedule D – Description of Lands**

**PIN 73564-0117 (LT): PCL 18965 SEC SES; PT LT 9 CON 6 NEELON AS IN LT 109921  
EXCEPT LT 1 PL M861; S/T LT80621; GREATER SUDBURY**

**CANADIAN IMPERIAL BANK OF  
COMMERCE**

- and -

**NAUSS PLUMBING & HEATING INC.**

**Applicant**

**Respondent**

**Court File No: CV-19-8866-0000**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at:  
**SUDBURY**

**SALE APPROVAL AND  
VESTING ORDER  
(FEBRUARY 26, 2021)**

**AUDAXLAW PC**

Barristers and Solicitors  
300 Bloor Street West  
Suite 670 West Tower  
Toronto, Ontario, M8X 2X2

**Frank Spizzirri, CS**

**LSO No. 37327F**

**Tel: (416) 862-8329**

**Fax: (416) 597-8330**

**Lawyers for the Court-Appointed  
Receiver, MNP Ltd.**

# **APPENDIX E**

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

***IN THE MATTER OF the Bankruptcy of NAUSS PLUMBING & HEATING INC.***  
*having a head office in the City of Sudbury,  
in the City of Greater Sudbury,  
Province of Ontario*

THE HONOURABLE JUSTICE                     )  
   )  
K.E. CULLIN   )  
   )  
   )  
   )  
   )  
FRIDAY, THE 26<sup>TH</sup>  
DAY OF FEBRUARY, 2021

**APPLICATION UNDER section 43(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985,  
c. B-3, as amended**



**BANKRUPTCY ORDER**

**ON THE APPLICATION** of Canadian Imperial Bank of Commerce (“CIBC”), a creditor, of the City of Toronto, in the Province of Ontario, filed on February 11, 2021;

**AND UPON READING** the Application and the Affidavit of Verification of Sieg Flatt, sworn February 10, 2021 and the Consent of MNP Ltd.;

**AND UPON HEARING** the submissions of counsel for CIBC;

**AND** it appearing to the court that an act of bankruptcy has been committed in that Nauss Plumbing & Heating Inc. (“Nauss”) has ceased to meet its liabilities generally as they have become due;

1. **THIS COURT HEREBY ORDERS** that Nauss is adjudged bankrupt and a Bankruptcy Order is hereby made against Nauss.



2. **THE COURT FURTHER ORDERS** that MNP Ltd. be appointed as Trustee of the estate of the bankrupt (the "**Trustee**").
3. **THE COURT FURTHER ORDERS** that the Trustee is authorized to send notice of the first meeting of creditors (the "**Notice**") in the manner prescribed by section 102 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") by sending the Notice together with directions to download documents to accompany the notice set out in section 102(2) of the BIA (the "**Forms**").
4. **THE COURT FURTHER ORDERS** that service of the Notice in the manner prescribed in paragraph 3 of this Order shall constitute compliance by the Trustee with section 102(2) of the BIA.
5. **THE COURT FURTHER ORDERS** that the Trustee give security in cash or by bond or suretyship without delay, in accordance with subsection 16(1) of the BIA.
6. **THE COURT FURTHER ORDERS** that the costs of the Applicant Creditor be paid out of the estate of the bankrupt on taxation of the estate.



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**IN THE MATTER of the Bankruptcy of NAUSS PLUMBING & HEATING INC.**  
having a head office in the City of Sudbury, in the City of Greater Sudbury, Province of Ontario

Court File No. B-3003-21

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

**PROCEEDING COMMENCED AT  
SUDBURY**

**BANKRUPTCY ORDER**

Suite 1600, 1 First Canadian Place  
100 King Street West  
Toronto ON M5X 1G5  
Canada

**Haddon Murray (LSO#61640P)**  
Tel: 416-862-3604  
*haddon.murray@gowlingwlg.com*

Lawyers for the creditor, Canadian Imperial Bank of  
Commerce

File Number: H218127

## **APPENDIX F**



**By Email:  
And Registered Mail**

November 23, 2020

Dear Sir or Madam:

**Receivership of Nauss Heating & Plumbing Inc. (“Nauss”)  
Property Stored at 7 Millichamp Street, Markstay, Ontario**

On November 13<sup>th</sup>, 2020, MNP Ltd. was appointed as the receiver and manager (the “Receiver”) of Nauss by Order of the Ontario Superior Court of Justice. A copy of the Order and other public information regarding these proceedings is available at [www.mnpdebt.ca/nauss](http://www.mnpdebt.ca/nauss).

Nauss owns and operated a building located at 7 Millichamp Street in Markstay, Ontario that was previously an ice arena, (the “Arena”). Nauss leased space in the Arena for the storage of boats, cars, recreational vehicles and other items (each a “Stored Vehicle” and together the “Stored Vehicles”) owned by third parties. Nauss’ records indicate that you may own and store the item set out below at the Arena:

•  
Nauss’ records also indicate that you are aware that and have confirmed that all Stored Vehicles at the Arena are not insured in any way by Nauss. While the Receiver has taken those steps considered reasonably necessary to take possession and control of Arena including Stored Vehicles, the Receiver is not insuring any Stored Vehicle.

**Take notice it is your responsibility to maintain adequate insurance coverage on your Stored Vehicle(s). Neither Nauss nor the Receiver are providing any insurance coverage on the Stored Vehicles.**

Please complete and return the acknowledgement on the following page as soon as possible. In the interim, the Receiver is developing a plan for the disposition of the Nauss’ assets and the Arena.

Should you have any questions or concerns, please email the Receiver at [NaussPlumbing@mnp.ca](mailto:NaussPlumbing@mnp.ca).

Yours very truly,

**MNP Ltd.**  
Court Appointed Receiver and Manager of  
Nauss Heating & Plumbing Inc.

Per:  
Jerry Henechowicz CPA, CA, CIRP, LIT  
Senior Vice-President



LICENSED INSOLVENCY TRUSTEES  
SUITE 300, 111 RICHMOND STREET W, TORONTO ON, M5H 2G4  
1.877.251.2922 T: 416.596.1711 F: 416.596.7894 [MNPdebt.ca](http://MNPdebt.ca)



**ACKNOWLEDGEMENT AND CONFIRMATION**

The undersigned acknowledges and confirms receipt of the above correspondence from MNP Ltd. in its capacity as Court Appointed Receiver and Manager of Nauss Heating & Plumbing Inc. and confirms that it is the sole responsibility of the undersigned to maintain insurance for any boats, cars, recreational vehicles and other items stored at the Arena.

Date: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Witness



**LICENSED INSOLVENCY TRUSTEES**  
SUITE 300, 111 RICHMOND STREET W, TORONTO ON, M5H 2G4  
1.877.251.2922 T: 416.596.1711 F: 416.596.7894 [MNPdebt.ca](http://MNPdebt.ca)

## **APPENDIX G**



**By Email:  
And Regular Mail**

April 21, 2021

**TO ALL STORAGE CUSTOMERS**

Dear Sir or Madam:

**Receivership of Nauss Heating & Plumbing Inc. ("Nauss")  
Property Stored at 7 Millichamp Street, Markstay, Ontario**

As you are aware, on November 13<sup>th</sup>, 2020, MNP Ltd. was appointed as the receiver and manager (the "Receiver") of Nauss by Order of the Ontario Superior Court of Justice. A copy of the Order and other public information regarding these proceedings is available at [www.mnpdebt.ca/nauss](http://www.mnpdebt.ca/nauss).

Nauss owned and operated a storage facility located at 7 Millichamp Street in Markstay, Ontario that was previously an ice arena, (the "Arena"). You have confirmed that you are storing your equipment at the Arena:

On April 7, 2021, as you may be aware, Ontario has implemented another state of emergency and stay-at-home order to combat COVID-19 – Ontario Stay at Home Order. The additional measures include a stay-at-home order for at least 28 days requiring everyone to remain at home with exceptions for essential purposes. More recently, this Ontario Government order has now been extended for a further two weeks until May 20, 2021 including further restrictions on Ontario resident's movement.

Historically, you would have removed your equipment from the Arena during the month of April. However in light of the Ontario Stay at Home Orders, the Receiver takes the position that to prevent further spread of the Covid-19 virus and its variants, while these Orders are in force, the Receiver will only allow for the removal and release of your equipment from the Arena if you can clearly demonstrate that the equipment is essential for your personal safety and wellbeing. Should you believe that is the case, please email details to the Receiver at [jerry.henechowicz@mnp.ca](mailto:jerry.henechowicz@mnp.ca).

If there is any change to the Government of Ontario Orders we will be in touch. Should you have any questions or concerns regarding the above, please contact the undersigned at the email address above.

Yours very truly,

**MNP Ltd.**  
Court Appointed Receiver and Manager of  
Nauss Heating & Plumbing Inc.

Per:  
Jerry Henechowicz CPA, CA, CIRP, LIT  
Senior Vice-President



**ACCOUNTING > CONSULTING > TAX**  
300 – 111 RICHMOND STREET W, TORONTO, ON M5H 2G4  
1.877.251.2922 P: 416.596.1711 F: 416.596.7894 [mnp.ca](http://mnp.ca)

## **APPENDIX H**



**Receivership of Nauss Plumbing & Heating Inc.  
Interim Statement of Receipts and Disbursements  
As At April 30, 2021**

	<u>Note</u>
<b>Receipts</b>	
Deposits re:property sales	175,500.00
Pre appointment accounts receivables	78,083.86
Net Sale proceeds Sudbury Property (2590 Lasalle Boulevard, Sudbury)	511,849.00
Sale of assets	41,000.00
HST collected	4,550.00
Deposits refunded	3,355.33
Cash on Hand	590.45
	<u>814,928.64</u>
<b>Disbursements</b>	
Insurance	24,737.42
Receiver fees & disbursements	102,734.81
Outside consulting & casual labour	7,886.33
Pre appointment wage arrears	9,801.98
Espanola environmental assessment	14,653.00
Municipal taxes	4,823.05
Appraisals	3,500.00
HST paid	22,899.02
legal	35,377.47
Utilities	7,529.75
Commissions	1,462.00
Security	1,026.55
Repairs and maintenance	9,797.40
Mail redirection	599.75
Bank charges	215.25
Filing fees	71.54
	<u>247,115.32</u>
<b>Excess of Receipts over Disbursements</b>	<b>1. <u>567,813.32</u></b>

**Notes**

1. Excludes any bank charges incurred or interest earned after March 31, 2021.

# APPENDIX I

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF THE RECEIVERSHIP OF  
NAUSS PLUMBING & HEATING INC.  
OF THE CITY OF GREATER SUDBURY  
IN THE PROVINCE OF ONTARIO

**AFFIDAVIT OF JERRY HENECHOWICZ**  
(Sworn May 4, 2021)

I, Jerry Henechowicz, of the City of Markham, in the Province of Ontario,

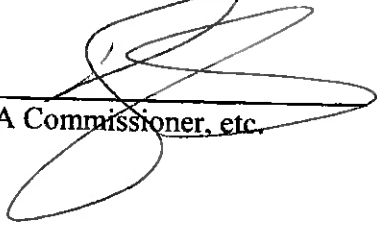
**MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Senior Vice President and a licensed Trustee with MNP Ltd. the Court-appointed receiver and manager (the “**Receiver**”) of Nauss Plumbing & Heating Inc. (the “**Company**”) and as such have knowledge of the matters deposed to herein, except where such knowledge is stated to be based on information and belief, in which case I state the source of the information and verily believe such information to be true.
2. The Receiver was appointed, without security, of the assets, property and undertaking of the Company by Order of the Court dated November 13, 2020.
3. The Receiver has prepared two Statement of Account in connection with its appointment as Liquidator detailing its services rendered and disbursements incurred for the period February 11 to April 30, 2021. Attached hereto and marked as Exhibit “A” to this my Affidavit is a summary of the Statements of Account.
4. Attached hereto and marked as Exhibit “B” are copies of the Statements of Account. The average hourly rate in respect of the account is \$475.16.
5. This Affidavit is made in support of a motion to, *inter alia*, approve the receipts and disbursements of the Receiver and its accounts.

SWORN before me by video conference)

From )

this 4<sup>th</sup> day of May, 2021 )

  
A Commissioner, etc. )

  
\_\_\_\_\_  
**JERRY HENECHOWICZ**

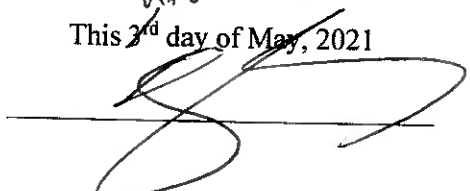
Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF JERRY HENECHOWICZ

Sworn before me by video conference

This <sup>12</sup>3<sup>rd</sup> day of May, 2021



Commissioner for taking Affidavits, etc

**RECEIVERSHIP OF NAUSS PLUMBING & HEATING INC.  
SUMMARY OF RECEIVER AND MANAGERS ACCOUNTS  
FOR THE PERIOD FEBRUARY 11 TO APRIL 30, 2021**

<b>DATE</b>	<b>INV #</b>	<b>PERIOD ENDED</b>	<b>HOURS</b>	<b>FEEES</b>	<b>DISB.</b>	<b>HST</b>	<b>TOTAL</b>
31-Mar-21	9708475	10-Mar-21	42.80	20,939.00	-	2,722.07	23,661.07
01-May-21	9821778	30-Apr-21	36.15	16,575.00	488.50	2,218.26	19,281.76
			<b>78.95</b>	<b>37,514.00</b>	<b>488.50</b>	<b>4,940.33</b>	<b>42,942.83</b>
Average Hourly Rate			<u><b>475.16</b></u>				

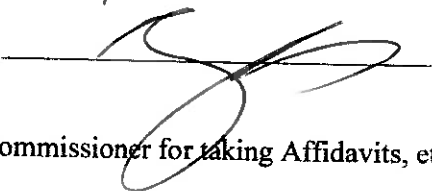
Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF JERRY HENECHOWICZ

Sworn before me by video conference

This <sup>4th</sup> 3rd day of May, 2021

  
Commissioner for taking Affidavits, etc

# Invoice



Invoice Number : 9708475

Client Number : 0799331

Invoice Date : Mar 31 2021

Invoice Terms : Due Upon Receipt

---

Nauss Plumbing & Heating Inc.  
c/o MNP LTD.  
300-111 Richmond Street West  
Toronto, ON M5H 2G4

## For Professional Services Rendered :

Professional services as Court Appointed Receiver of Nauss Plumbing & Heating Inc. for the period February 12 to March 10, 2021 as set out on the attached time and billing summary 20,939.00

Harmonized Sales Tax : 2,722.07

Total (CAD) : 23,661.07

HST Registration Number 103697215 RT 0001

Invoices are due and payable upon receipt.

Thank you for your business. We  
sincerely appreciate your trust in us.

Licensed Insolvency Trustees  
111 RICHMOND STREET WEST, SUITE 300;  
TORONTO ON; M5H 2G4  
P: (416) 596-1711 F: (416) 596-7894 [www.MNPDebt.ca](http://www.MNPDebt.ca)



**MNP LTD****COURT APPOINTED RECEIVER OF NAUSS PLUMBING & HEATING INC.****FOR THE PERIOD ENDED MARCH 10, 2021**

<b>DATE</b>	<b>PROFESSIONAL</b>	<b>HOURS</b>	<b>DESCRIPTION</b>
11-Feb-2021	Jerry Henechowicz	1.10	Drafting of first report re activities
11-Feb-2021	Patricia Ball	.20	cheque requests
11-Feb-2021	Robert Wiley	.50	looking through and assembling vehicle information
11-Feb-2021	Robert Wiley	.30	call GSU add email Jerry re same
12-Feb-2021	Jerry Henechowicz	1.80	Calls with CRA, drafting of first report, arranging for removal of assets, follow up on Environmental assessment
12-Feb-2021	Robert Wiley	.20	meet with security, get keys to get them to pull out vehicles at Espanola.
12-Feb-2021	Robert Wiley	.20	emails with jerry re vehicles
13-Feb-2021	Jerry Henechowicz	4.00	Drafting of 1st Report
14-Feb-2021	Jerry Henechowicz	3.50	Drafting of First Report
15-Feb-2021	Jerry Henechowicz	3.50	Drafting of First Report
16-Feb-2021	Jerry Henechowicz	1.30	Updates to Report
16-Feb-2021	Jim Guo	.50	chqs req
16-Feb-2021	Robert Wiley	.40	Prep documents to support transfer of vehicles and meet w/ Denis & provide info for Lasalle Vehicles.
16-Feb-2021	Robert Wiley	.50	call w/ Jerry re vehicles, write in seller information & co-ordinate with Denis
17-Feb-2021	Jerry Henechowicz	1.10	Completion of truck sales, notification to insurance
18-Feb-2021	Jerry Henechowicz	1.50	Additional edits to report, review with counsel, calls with realtor on status of sales efforts, update with Pinchin and email to Gowlings and CIBC
18-Feb-2021	Robert Wiley	.20	discussion with Security wrt barrel frozen outside of the bays at espanola, its from pinchin engineering, they will remove, and security will pull the vans out next time
19-Feb-2021	Jerry Henechowicz	2.50	Final edits and completion of report for sale approval, update call with Realtor
19-Feb-2021	Matthew Lem	2.10	Review of draft second report
22-Feb-2021	Jerry Henechowicz	1.10	Multiple emails and calls related to closing of Lasalle Property, arranging issuance of T4's
22-Feb-2021	Jim Guo	.30	chqs req
22-Feb-2021	Robert Wiley	.30	call from Denis, emails with Jerry and draft vehicle transfer doc
22-Feb-2021	Robert Wiley	.20	discussion with john and email to shame to see if barrel in front of bay has been moved

## MNP LTD

## COURT APPOINTED RECEIVER OF NAUSS PLUMBING &amp; HEATING INC.

## FOR THE PERIOD ENDED MARCH 10, 2021

DATE	PROFESSIONAL	HOURS	DESCRIPTION
23-Feb-2021	Robert Wiley	.30	meet with Denis get him the plates and get him to sign vehicle disclaimer form
23-Feb-2021	Robert Wiley	.90	Discussion with Wendi, get Payroll Summary and call a few places to get quotes on junk removals, email to Marie Re RBC bank balance.
23-Feb-2021	Robert Wiley	.20	call w/ Jonathon and get some extra keys to security
23-Feb-2021	Robert Wiley	.50	calls with Jerry an Marty
23-Feb-2021	Robert Wiley	.40	call w/ jerry leave message with bookkeeper to call back re T4 summary, get Irma info and provide to Jerry
23-Feb-2021	Robert Wiley	.50	get computers, find key for cube van, go through building to see if everything has been taken.
24-Feb-2021	Jerry Henechowicz	.50	Follow up on various items related to Court Attendance and offer for Espanola
24-Feb-2021	Robert Wiley	.20	text from Denis, call Jon to get vehicle keys, email Jerry wrt vehicle keys
25-Feb-2021	Jerry Henechowicz	.70	Review of offers for Espanola and approval love same by CIBC,
25-Feb-2021	Patricia Ball	.10	Jan bank rec
25-Feb-2021	Robert Wiley	.20	meet with security to get them additional keys for espanola, organize getting all vehicle keys back tonight to give to Denis.
25-Feb-2021	Robert Wiley	.40	calls from security re espo vehicles, & dis / Jerry
26-Feb-2021	Jerry Henechowicz	1.30	Attending to Sale Approval Motion, suggestions for redrafts of bankruptcy orders, review and execution of lasalle closing documents
26-Feb-2021	Robert Wiley	.60	walkthrough and discussion with Northland, email to jerry, call around for quotes on snowplowing at espanola
26-Feb-2021	Robert Wiley	.20	pull copy of employee T4
27-Feb-2021	Robert Wiley	.20	got vehicles keys to Denis, correspondence w/ snowplowing for 551 centre
28-Feb-2021	Jerry Henechowicz	.40	Payment of operation expenses, responding to Jennica Springs offer
28-Feb-2021	Robert Wiley	.60	travel back from lasalle
28-Feb-2021	Robert Wiley	.50	go through building, call from then to snowplow guy for espo, call from terry, email Jerry re same
01-Mar-2021	Jerry Henechowicz	.60	Calls and emails related to closing of LaSalle Property
01-Mar-2021	Patricia Ball	.30	input cheque requisitions
01-Mar-2021	Robert Wiley	.20	emails call w/ Marty get bins taken care of.
01-Mar-2021	Robert Wiley	.20	another call from day, can't be picked up until later today / tomorrow morning now discussion with Marty, got him to go back out there to remove the other furniture.

MNP LTD

COURT APPOINTED RECEIVER OF NAUSS PLUMBING & HEATING INC.

FOR THE PERIOD ENDED MARCH 10, 2021

DATE	PROFESSIONAL	HOURS	DESCRIPTION
02-Mar-2021	Jim Guo	.50	chqs req
03-Mar-2021	Jerry Henechowicz	1.90	Multiple calls and emails related to sale of Espanola and Jennica springs, release of Pinchin Survey
03-Mar-2021	Patricia Ball	.10	Input Receipt Voucher
03-Mar-2021	Jim Guo	.20	chqs req
03-Mar-2021	Robert Wiley	.20	call around for more junk companies
04-Mar-2021	Robert Wiley	.50	several calls from VYW wrt junk removal, discussion with Terry. Later Terry called needing the ESA report from Pinchin asap for the sale, track a copy down and send to him.
05-Mar-2021	Robert Wiley	.60	various calls from people, call w/ terry, organize RBC as in out of town next week. Call Moore propane, email back Toronto insolvency ppl
08-Mar-2021	Matthew Lem	.20	Discussion with T. Zuk re offers received; discussion with J. Henechowicz re same.
08-Mar-2021	Brigen Peters	.50	Pickup cheque at RBC and Deposit cheque at TD
10-Mar-2021	Jerry Henechowicz	.80	Multiple calls re property sales and 2590 Lasalle

42.80

BILLING SUMMARY			
PROFESSIONAL	HOURS	HOURLY RATE	AMOUNT
Brigen Peters	0.50	150.00	75.00
Jerry Henechowicz	27.60	590.00	16,284.00
Jim Guo	1.50	190.00	285.00
Matthew Lem	2.30	590.00	1,357.00
Patricia Ball	0.70	190.00	133.00
Robert Wiley	10.20	275.00	2,805.00
<b>Total</b>	<b>42.80</b>		<b>20,939.00</b>

# Invoice



Invoice Number : 9821778

Client Number : 0789331

Invoice Date : May 1 2021

Invoice Terms : Due Upon Receipt

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Nauss Plumbing & Heating Inc.  
c/o MNP LTD.  
300-111 Richmond Street West  
Toronto, ON M5H 2G4

## For Professional Services Rendered :

Professional services as Court Appointed Receiver of Nauss Plumbing & Heating Inc. for the period ended April 30, 2021 as set out on the attached time and billing summary. 17,063.50

Harmonized Sales Tax : 2,218.26

Total (CAD) : 19,281.76

HST Registration Number : 103897215 RT 0001

Invoices are due and payable upon receipt.

Thank you for your business. We sincerely appreciate your trust in us.

Licensed Insolvency Trustees  
111 RICHMOND STREET WEST, SUITE 300;  
TORONTO ON; M5H 2G4  
P: (416) 596-1711 F: (416) 596-7894 www.MNPDebt.ca

**MNP LTD  
COURT APPOINTED RECEIVER OF NAUSS PLUMBING & HEATING INC.**

**FOR THE PERIOD ENDED APRIL 30, 2021**

<b>DATE</b>	<b>PROFESSIONAL</b>	<b>HOURS</b>	<b>DESCRIPTION</b>
11-Mar-2021	Jerry Henechowicz	.70	On going negotiations for Property sales and giving directions to Realtor
12-Mar-2021	Jerry Henechowicz	.30	Emails re Arena with Realtor
15-Mar-2021	Jerry Henechowicz	.50	Update call with Frank Spizziri
16-Mar-2021	Jerry Henechowicz	.50	Follow up on status of sale agreements and closings
16-Mar-2021	Patricia Ball	.20	Process cheque requisitions
16-Mar-2021	Jim Guo	.40	chq req
17-Mar-2021	Patricia Ball	.20	process cheque requisition
17-Mar-2021	Jim Guo	.20	chq req
22-Mar-2021	Jerry Henechowicz	.50	Multiple calls regarding pending sales and clearing of 2590 Lasalle Blvd,
23-Mar-2021	Jerry Henechowicz	.60	Multiple calls and emails related to vacating 2590 Lasalle
23-Mar-2021	Patricia Ball	.20	process cheque requisitions
23-Mar-2021	Robert Wiley	.30	call w/ Kyle, emails, with Kyle & jerry, give Kyle from VYW the go ahead for tomorrow.
23-Mar-2021	Robert Wiley	.20	discussion with Jerry and call Kyle re 2590 lot clean up
23-Mar-2021	Matthew Lem	.10	Commission affidavit
24-Mar-2021	Jerry Henechowicz	.80	Preparation and sending or R&D to CIBC and Gowlings, review of issues on sales of properties, execution of authorizations
24-Mar-2021	Patricia Ball	.10	Process cheque requestion
24-Mar-2021	Jim Guo	.20	chq run
24-Mar-2021	Robert Wiley	.50	discussion it Kyle and jerry last night & discussion with Kyle today and figuring out what is going on at the lot to appease the lawyers.
25-Mar-2021	Jerry Henechowicz	1.00	Preparation for and call with CIBC and Gowlings to review Receivership status, updates with realtors, responding to emails on vacating Sudbury property
25-Mar-2021	Patricia Ball	.20	Input cheque requisitions
25-Mar-2021	Trina Bumingham	1.00	Bank Cheque Requisitions drafted for Mac property (x3) and Hydro One; Emailed approved requisitions to P. Ball for processing; Saved copies to the directory.
26-Mar-2021	Jerry Henechowicz	.50	Sending of updated R&D and ERV to CIBC, status update with Frank Spizziri, information needs of prospective purchasers
26-Mar-2021	Jim Guo	.20	chq run

**MNP LTD  
COURT APPOINTED RECEIVER OF NAUSS PLUMBING & HEATING INC.**

**FOR THE PERIOD ENDED APRIL 30, 2021**

<b>DATE</b>	<b>PROFESSIONAL</b>	<b>HOURS</b>	<b>DESCRIPTION</b>
26-Mar-2021	Robert Wiley	.20	calls from random ppl who are inquiring about balances etc.
26-Mar-2021	Robert Wiley	.30	get espanola vehicles stuff together and contact Denis topic up from Sudbury office (all vehicles outside).
29-Mar-2021	Jerry Henechowicz	.50	Responding to enquiries from purchasers and calls with CRA
29-Mar-2021	Patricia Ball	.20	input receipt voucher and cheque requisitions
29-Mar-2021	Jim Guo	.20	chq run
29-Mar-2021	Robert Wiley	.30	call / on hold to get quote for hazardous pickup couldn't get through so sent info to get return call. get quote from Kyle.
29-Mar-2021	Trina Burningham	.25	Bank Cheque Requisition drafted and emailed to J. Henechowicz for review and approval; Copy saved to directory; Approval forwarded to P. Ball for processing; Copies saved to directory.
30-Mar-2021	Jerry Henechowicz	.30	Update call with CRA to finalized Trust exam
30-Mar-2021	Robert Wiley	.20	call, couldn't get through send email to K Thompson on quote.
30-Mar-2021	Robert Wiley	.20	emails etc, discussion with Kyle
05-Apr-2021	Jerry Henechowicz	.30	Follow up with realtor and Spizzirri on status of sales, calls from Arena storage customers
06-Apr-2021	Jerry Henechowicz	.70	preparation of information for CRA audit and efiting of same
06-Apr-2021	Patricia Ball	.20	process cheque requisitions
06-Apr-2021	Tanya Liu	.20	Q from Robert re payroll transaction in QBO
06-Apr-2021	Robert Wiley	.40	discussion with Jerry, start pulling payroll, discuss if we can pull staff to help facilitate the removal of assets from the warehouse.
06-Apr-2021	Robert Wiley	.50	discussion with preparer, pulling GL details from QB, trying to find a way to see if they have a summary by employee.
06-Apr-2021	Robert Wiley	.30	call from Terry re espanola keys, looking for keys, Terry didn't return them as he noted, he gave them to Northland. trying to get him a copy as he needs them for something related to the Espanola sale.
07-Apr-2021	Jerry Henechowicz	.70	Follow up on sales with realtor, drafting of notice to vehicle storage customers,
07-Apr-2021	Robert Wiley	.30	get key cut for Terry, he doesn't have his espanola key. Meet with Terry re same
08-Apr-2021	Jim Guo	.20	chq run
08-Apr-2021	Robert Wiley	.20	call from KTR
09-Apr-2021	Jerry Henechowicz	.30	Emails related to sale issues
12-Apr-2021	Jerry Henechowicz	.80	Multiple emails with realtor and purchasers on completion of proposed transaction

**MNP LTD  
COURT APPOINTED RECEIVER OF NAUSS PLUMBING & HEATING INC.**

**FOR THE PERIOD ENDED APRIL 30, 2021**

<b>DATE</b>	<b>PROFESSIONAL</b>	<b>HOURS</b>	<b>DESCRIPTION</b>
13-Apr-2021	Jerry Henechowicz	.40	Update email to CIBC and Gowlings re priority obligations, call with Eric Rockefeller
14-Apr-2021	Jerry Henechowicz	.50	Calls from Arena customers, updates on sales from realtor
15-Apr-2021	Jerry Henechowicz	.50	Calls with Arena Customers, update with Frank Spizziri on timeline to close sales
15-Apr-2021	Robert Wiley	.30	calls and emails
15-Apr-2021	Robert Wiley	.30	call from fired up old customers.
16-Apr-2021	Jerry Henechowicz	.80	Updates on sales and aps, calls with realtor and Frank Spizziri
16-Apr-2021	Robert Wiley	.40	Various calls wrt assets in warehouse
18-Apr-2021	Robert Wiley	.30	Discussion with the RMP and email to Jerry, looking through new voicemails on the same wrt asset removal
19-Apr-2021	Jerry Henechowicz	2.30	Drafting of second report
19-Apr-2021	Jim Guo	.20	chq run
19-Apr-2021	Robert Wiley	.20	email from inventory guy a few more calls about the warehouse assets.
20-Apr-2021	Jerry Henechowicz	1.10	Payment of expense, calls with CRA, update to second report, drafting of Arena releases
20-Apr-2021	Patricia Ball	.20	Process cheque requisition
20-Apr-2021	Jim Guo	.20	chq run
21-Apr-2021	Jerry Henechowicz	1.30	Review of emails from purchasers, calls from storage customers, review of agreements, update with CRA
21-Apr-2021	Trina Burningham	.25	Document uploaded to Firmex webpage.
21-Apr-2021	Trina Burningham	.75	Email blast for Notice to Storage Customers drafted and emailed to all storage customers; Additional emails received from J. Henechowicz - Notice emailed to added recipients;
22-Apr-2021	Jerry Henechowicz	.60	Receipt of CRA Property Claim, review of sales status, email update to CIBC
22-Apr-2021	Patricia Ball	.20	Process cheque requisitions
23-Apr-2021	Jerry Henechowicz	.40	Updates on sales with Frank Sprizziri, responses to Storage Customers,
23-Apr-2021	Patricia Ball	.10	Cheq Requisition
24-Apr-2021	Cliff Trollope	1.20	review of Ontario COVID 19 restrictions and advice with options
26-Apr-2021	Cliff Trollope	.80	call and discussion with Jerry.
26-Apr-2021	Jerry Henechowicz	1.10	Update with Frank Spizziri on status of sales, multiple calls and emails from storage customers

**MNP LTD  
COURT APPOINTED RECEIVER OF NAUSS PLUMBING & HEATING INC.**

**FOR THE PERIOD ENDED APRIL 30, 2021**

<b>DATE</b>	<b>PROFESSIONAL</b>	<b>HOURS</b>	<b>DESCRIPTION</b>
26-Apr-2021	Patricia Ball	.20	Process cheque requisition
26-Apr-2021	Jim Guo	.20	chq run
26-Apr-2021	Robert Wiley	.50	call w/ Jerry look for asset warehouse info, give Denis a call to locate keys and update on his normal process.
27-Apr-2021	Jerry Henechowicz	1.10	Ongoing updates and completion of sale agreements, responding to storage customers, review and call with CRA re source trust examine and reporting to CIBC
27-Apr-2021	Robert Wiley	.20	calls wrt assets at the warehouse
28-Apr-2021	Jerry Henechowicz	.50	Execution of completed bills of sale, responding to Storage Customer enquiries,
28-Apr-2021	Robert Wiley	.20	check out parking lot, take pictures
29-Apr-2021	Jerry Henechowicz	.60	Review and execution of final APS' for Jennica Springs and Espanola
30-Apr-2021	Jerry Henechowicz	.50	Execution of APS, emails with storage customers, call with Sudbury office.
30-Apr-2021	Robert Wiley	.40	calls wrt warehouse, call with Denis and email correspondence with Tony re getting his vehicle out this weekend.
30-Apr-2021	Robert Wiley	.20	discussion with Jerry and email

**32.65**

<b>BILLING SUMMARY</b>			
<b>PROFESSIONAL</b>	<b>HOURS</b>	<b>HOURLY</b>	<b>AMOUNT</b>
Cliff Trollope	2.00	590.00	1,180.00
Jerry Henechowicz	20.70	590.00	12,213.00
Jim Guo	2.00	190.00	380.00
Matthew Lem	0.10	590.00	59.00
Patricia Ball	2.00	190.00	380.00
Robert Wiley	6.90	275.00	1,897.50
Tanya Liu	0.20	190.00	38.00
Trina Burningham	2.25	190.00	427.50
<b>Total</b>	<b><u>36.15</u></b>		<b><u>16,575.00</u></b>

**DISBURSEMENTS**

Travel and mileage 488.50

**TOTAL FEES AND DISBURSEMENTS** 17,063.50



## **APPENDIX J**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

and

**NAUSS PLUMBING & HEATING INC.**

Respondent

**AFFIDAVIT OF ARTURO PUGLIESE  
(Sworn May 3, 2021)**

I, **ARTURO PUGLIESE**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the principal of Audaxlaw PC ("**Audax**") and as such I have personal knowledge of the matters to which I hereinafter depose, save and except those matters based upon information and belief, in which case I have stated the source of such facts, all of which I verily believe to be true.
2. Pursuant to an order of the Court dated November 13, 2020, MNP Ltd. ("**MNP**") was appointed receiver and manager of all of the assets, undertakings and properties of Nauss Plumbing & Heating Inc., MNP retained Audax as its counsel in this matter.

3. Attached hereto and marked as **Exhibit "A"** to this my affidavit a copy of the invoice issued by Audax for fees and disbursements incurred by Audax in respect of this proceeding for the period February 7, 2021 to March 02, 2021 (the "**First Period**"). The total fees charged for the First Period are \$17,000.00, plus disbursements of \$1,494.75 and HST of \$2,310.04 for a total of \$20,804.79. A copy of the fee summary is also attached thereto. The average hourly rate charged during the First Period was approximately \$388.57.

4. Attached hereto and marked as **Exhibit "B"** to this my affidavit a copy of the invoice issued by Audax for fees and disbursements incurred by Audax in respect of this proceeding for the period March 1, 2021 to March 30, 2021 (the "**Second Period**"). The total fees charged for the Second Period are \$7,870.50, plus disbursements of \$30.49 and HST of \$1,025.05 for a total of \$8,926.04. A copy of the fee summary is also attached thereto. The average hourly rate charged during the Second Period was approximately \$490.00.

5. The invoices are a fair and accurate description of the services provided and the amounts charged by Audax for the two (2) Periods.

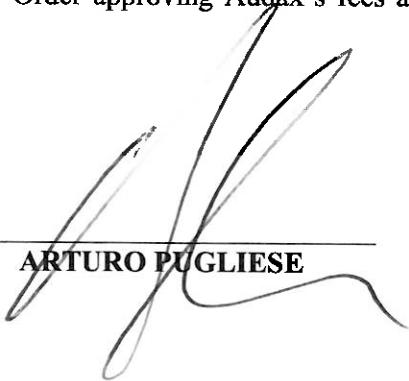
6. I make this affidavit in support of a motion for an Order approving Audax's fees and disbursements and for no other or improper purpose.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario,  
this 3<sup>rd</sup> day of May, 2021



A Commissioner, etc.

)  
)  
)  
)  
)  
)  
)  
)



ARTURO PUGLIESE

Caterina Marzulli, a Commissioner, etc.,  
Province of Ontario,  
for Arturo R. Pugliese, Lawyer o/a AUDAXlaw.  
Expires June 4, 2022.

**THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF ARTURO PUGLIESE SWORN BEFORE ME  
THIS 3rd DAY OF MAY, 2021**



---

A Commissioner, etc.

Caterina Marzulli, a Commissioner, etc.,  
Province of Ontario,  
for Arturo R. Pugliese, Lawyer o/a AUDAXlaw.  
Expires June 4, 2022.

**Arturo R. Pugliese o/a AUDAX Law  
Barrister & Solicitor**

3300 Bloor Street West, Suite 670  
West Tower  
Toronto, ON M8X 2X2

Phone: 416-862-8329

Fax: 416-862-8330

MNP Ltd.

Mar 11, 2021

111 Richmond Street West  
Suite 300

Toronto, ON M5H2G4 Canada

File #: 21-203

**Attention:** Jerry Henechowicz

Inv #: 3048

**RE:** MNP Ltd., in its capacity as court appointed receiver and manager of  
NAUSS PLUMBING & HEATING INC.

<u>Date</u>	<u>Description</u>	<u>Hours</u>	<u>Lawyer</u>
Feb-07-21	correspondence regarding waiver of conditions and next steps from purchaser; correspondence from/to purchaser's counsel regarding purchaser nominee and closing agenda	0.60	FS
Feb-09-21	correspondence to/from Sudbury courthouse regarding sale approval motion;	0.80	FS
Feb-10-21	correspondence to/from CIBC's counsel regarding receiver's report; correspondence to/from CIBC's counsel	0.80	FS
Feb-11-21	correspondence from S. Alexander regarding closing agenda and assignment of purchase agreement to nominee; exchange of correspondence with CIBC's counsel; call with CIBC's counsel; correspondence to Sudbury courthouse	1.20	FS
Feb-12-21	call to Sudbury courthouse to discuss bringing motion with trial co-ordinator's office; correspondence to courthouse; draft motion materials and draft order	1.70	FS
Feb-16-21	call with M. Petrovic re: closing agenda; call with F. Spizzirri re: deal structure; exchange of correspondence with J. Henechowicz regarding draft First Report of the Receiver; exchange of correspondence with M. Petrovic regarding closing; revise First Report; call with A. Pugliese regarding terms of sale;	0.50 1.40	ARP FS

	call with F. Spizzirri re: closing agenda and Assignment and Assumption Agreement;	0.20	MP
	review closing agenda and discussing with F.Spizzirri; review Assignment and Assumption Agreement provided by purchaser solicitor and providing comments; review Asset Purchase Agreement; email correspondence with purchaser solicitor;	1.40	MP
Feb-17-21	correspondence with F.Spizzirri re: file; call with A. Pugliese re: closing agenda; revise and finalize notice of motion and two orders; revise First Report	2.10	FS
	obtain updated PIN Parcels for 4 properties; obtain updated PPSA search;	0.20	MP
Feb-18-21	revise and finalize First Report and Appendices; exchange of correspondence with J. Henechowicz	1.40	FS
Feb-19-21	finalize motion record and draft orders; discussions with J. Henechowicz regarding finalizing motion materials; co-ordinate service of motion record; call to purchaser's counsel	2.40	FS
	contact tax departments re: order tax certificates;	0.10	MP
Feb-22-21	exchange of correspondence with Sudbury courthouse regarding booking motion date; draft factum and review caselaw for factum	2.50	FS
Feb-23-21	meet with F. Spizzirri and M. Petrovic review file and closing matters;	1.00	ARP
	review Receiver closing documents and amendments;	0.60	ARP
	finalize factum and assemble book of authorities; call with purchaser's counsel regarding closing and sale approval and vesting order motion; exchange of correspondence with J. Henechowicz regarding transaction; co-ordinate delivery of hard copy of motion materials	2.10	FS
	prepare tax certificate requests to City of Sudbury, Markstay-Warren and Espanola and arrange for order;	0.30	MP
	prepare draft closing documents of Receiver;	0.80	MP
	draft letter to SCJ Dawn Williamson;	0.80	MP
	assemble cases for factum;	3.50	MP
Feb-24-21	meet with M. Petrovic and F. Spizzirri re: outstanding matters;	0.60	ARP

	review factum; exchange of correspondence with Sudbury courthouse regarding filing of motion materials and providing to judge; exchange of correspondence with CIBC's counsel	1.20	FS
	contact City of Sudbury re: tax certificate and obtain verbal confirmation of taxes; prepare draft of Statement of Adjustments;	0.50	MP
	meet with A. Pugliese and F. Spizzirri re: file;	0.60	MP
	request commission statement; correspondence with A. Pugliese re: draft documents; revise and finalize draft documents; call with R. O'Bonsawin from MLA Law re: closing agenda;	1.50	MP
Feb-25-21	review closing documents and to meet with M. Petrovic;	0.50	ARP
	co-ordinate service of factum and book of authorities and exchange of correspondence with counsel regarding motion attendance; correspondence to/from D. Preger regarding motion; correspondence to J. Henechowicz; correspondence to counsel for CIBC regarding next day motions – review security documents and prepare security opinions regarding CIBC and 739572 Ontario Limited	5.20	FS
	finalize closing documents and review with A. Pugliese; review purchaser draft documents;	0.80	MP
Feb-26-21	prepare draft Trust Ledger; review and amend Trust Ledger;	0.30	ARP
	prepare for and attend court via zoom; discussion with J. Henechowicz before court regarding court submissions; correspondence to purchaser's counsel regarding orders obtained; discussion with J. Henechowicz regarding secured claims review; participate in call regarding real estate closing;	1.60	FS
	set up signing appointment and finalize signing documents; meet with J. Henechowicz via video conference to sign documents; prepare and revise Trust Ledger and review with A. Pugliese;	0.75	MP
Mar-01-21	all correspondance with M. Petrovic and F. Spizzirri re: closing matters and possible extension;	1.20	ARP
	review correspondence from court and entered orders; discussion with M. Petrovic regarding closing	0.40	FS

	review correspondence from the Sudbury courthouse and review sale approval and vesting order, administrative order and bankruptcy order; discussions regarding closing with M. Petrovic and possible delay in closing; exchange of correspondence with J. Henechowicz and call with J. Henechowicz: review draft closing extension letter and discussion with M. Petrovic; review correspondence regarding completion of closing	0.70	FS
	correspondence with purchaser's solicitor re: closing documents; correspondence re: Receiver's Certificate; correspondece with realtor re: keys; arrange for closing of transaction and discuss with F.Spizzirri and A. Pugliese re: closing.	1.50	MP
Mar-10-21	Professional Courtesy Discount of \$3,395.00		FS

<b>Total Hours</b>	43.75
<b>Total Fees</b>	\$17,000.00
<b>HST on Fees</b>	\$2,210.00

**DISBURSEMENTS**

	<b><u>Disbursements</u></b>	<b><u>Receipts</u></b>
Tax/Status Certificate*	301.00	
Feb-22-21 Courier	34.84	
Courier	32.16	
Feb-23-21 Binding	152.75	
Courier	27.41	
Filing Fee - Motion Record*	320.00	
Feb-24-21 PPSA Search	28.64	
Title Searches - Stat Fees*	39.20	
Title Searches	91.40	
Transaction Levy: Statement of Claim	100.00	



Mar-01-21	Transaction Levy: Deed/Transfer (DT) for Transferor	65.00	
	Photocopies, Postage, and Fax	30.00	
	Do Process	129.00	
	File Storage	50.00	
Mar-02-21	Bank Charges*	65.00	
	Courier	28.35	
	<b>Total Disbursements</b>	<u>\$1,494.75</u>	<u>\$0.00</u>
	<b>HST on Disbursements</b>	\$100.04	
	<b>Total Fees, Disbursements &amp; HST</b>		<u>\$20,804.79</u>
	 <b>Balance Due Now</b>		 <u>\$20,804.79</u>

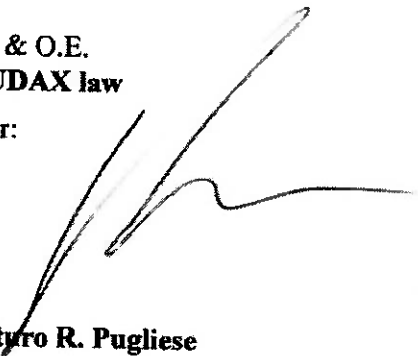
Total HST: \$2,310.04

HST #: 87666 6710 RT0001

\* tax-exempt

E. & O.E.  
AUDAX law

Per:



**Arturo R. Pugliese**

Accounts due when rendered. Interest will be charged at the rate of 2.50% per annum (or as otherwise permitted by the Courts of Justice Act, or at law) on unpaid fees, charges and disbursements, calculated from a date that is one month after this statement is delivered.

**TRUST STATEMENT**

		<b><u>Disbursements</u></b>	<b><u>Receipts</u></b>
Jan-19-21	Received From: Nicholas Kuchtaruk and Sophia Moutsatsos Funds Received on Account		52,482.50
Mar-01-21	Received From: Moutsatsos Laakso Alexander LLP Funds Received on Account		473,279.85
Mar-02-21	Paid To: Re/Max Crown Realty (1989) Inc.	25,213.13	
	Funds Disbursed on Account		
	Paid To: MNP Ltd.	500,549.22	
	Funds to Client		
	Total Trust	\$525,762.35	\$525,762.35
	<b><u>Trust Balance</u></b>		<b><u>\$0.00</u></b>

### SUMMARY OF FEES

<u>Professional/Year of Call</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Fees</u>	<u>HST</u>	<u>Total</u>
Frank Spizzirri, CS (1995)	26.1	\$ 550.00/hr	\$ 14,355.00	\$ 1,866.15	\$ 16,221.15
Arturo Pugliese	4.7	\$ 596.28/hr	\$ 2,802.52	\$ 364.33	\$ 3,166.85
Maja Petrovic	12.95	\$ 250.00/hr	\$ 3,237.50	\$ 420.88	\$ 3,658.38
<b>Pre-Discount Total</b>	<b>43.75</b>		<b>\$ 20,395.00</b>	<b>\$ 2,623.08</b>	<b>\$ 22,801.03</b>
Less Discount			\$ 3,395.00	\$ 441.35	\$ 3,836.35
<b>TOTAL</b>			<b>\$ 17,000.00</b>	<b>\$ 2,210.00</b>	<b>\$ 19,210.00</b>

**THIS IS EXHIBIT "B" REFERRED TO IN THE  
AFFIDAVIT OF ARTURO PUGLIESE SWORN BEFORE ME  
THIS 3rd DAY OF MAY, 2021**



---

A Commissioner, etc.

Caterina Marzulli, a Commissioner, etc.,  
Province of Ontario,  
for Arturo R. Pugliese, Lawyer o/a AUDAXlaw.  
Expires June 4, 2022.

**Arturo R. Pugliese o/a AUDAX Law  
Barrister & Solicitor**

3300 Bloor Street West, Suite 670  
West Tower  
Toronto, ON M8X 2X2

Phone: 416-862-8329

Fax: 416-862-8330

MNP Ltd.

Mar 31, 2021

111 Richmond Street West  
Suite 300  
Toronto, ON M5H2G4 Canada

File #: 20-296

**Attention:** Jerry Henechowicz

Inv #: 3068

**RE:** Counsel to Court-Appointed Receiver

<u>Date</u>	<u>Description</u>	<u>Hours</u>	<u>Lawyer</u>
Mar-01-21	deal with post-closing matters; discussion with M. Petrovic regarding closing extension and extension agreement; exchange of correspondence regarding closing; exchange of correspondence with T. Zuk regarding sale of 551 Centre Street property	1.30	FS
Mar-02-21	in house correspondence regarding post-closing matters and filing of receiver's certificate; exchange of correspondence with S. Title regarding status; review revised offer for Jennica Springs property and exchange of correspondence regarding same with T. Henechonicz	1.40	FS
Mar-03-21	review 551 Centre Street offer; review title abstract for 551 Centre Street; draft APA for 551 Centre Street; discussion with A. Pugliese	2.20	FS
Mar-04-21	review comments from M. Petrovic regarding 551 Centre Street APA; revise 551 Centre Street APA	0.70	FS
Mar-08-21	exchange of correspondence with S. Alexander regarding post-closing matters on LaSalle property	0.40	FS
Mar-09-21	exchange of correspondence with S. Title regarding status of LaSalle post-closing matter	0.40	FS
Mar-10-21	exchange of correspondence with T. Zuk regarding APAs for 551 Centre Street and Jennica Springs property; exchange of correspondence with S. Alexander regarding	1.10	FS

Mar-11-21	LaSalle property; exchange of correspondence with counsel to purchaser of 551 Centre Street exchange of correspondence regarding post-closing clean up of LaSalle property with receiver and purchaser's counsel; revise 551 Centre Street APA and send to counsel	1.40	FS
Mar-15-21	further exchange of correspondence with S. Alexander regarding LaSalle property; exchange of correspondence with counsel regarding 551 Centre Street Property	0.80	FS
Mar-16-21	review Jennica Springs and Arena property offers; exchange of correspondence with J. Henechowicz; call to J. Henechowicz	0.80	FS
Mar-17-21	exchange of correspondence with counsel to purchaser of 551 Centre Street	0.40	FS
Mar-18-21	exchange of correspondence regarding clean up of LaSalle Property	0.40	FS
Mar-19-21	correspondence from T. Zuk regarding deposit for Arena property	0.20	FS
Mar-21-21	correspondence from T. Zuk regarding purchaser of Arena property	0.20	FS
Mar-22-21	exchange of correspondence with counsel for purchaser of Arena property; review title abstract for Arena property and draft Arena property APA and send to counsel; draft Jennica Springs property APA and send to counsel	0.40	FS
Mar-23-21	exchange of correspondence with S. Alexander; call with T. Zuk and correspondence with T. Zuk	0.70	FS
Mar-24-21	exchange of correspondence with L. Rubinoff	0.60	FS
Mar-26-21	call with M. Spiegel from Kora Management and exchange of correspondence from M. Spiegel; correspondence to counsel for Jennica Springs purchaser; correspondence to counsel for Arena property purchaser	0.90	FS
Mar-29-21	review Kora Management loan documents; revise 551 Centre Street APA and recirculate; correspondence to counsel to purchaser of Jennica Springs property; correspondence to counsel for Arena property purchaser	1.60	FS
Mar-31-21	Professional Courtesy Discount of 874.50		FS

<b>Total Hours</b>	15.90
<b>Total Fees</b>	\$7,870.50
<b>HST on Fees</b>	\$1,023.17

**DISBURSEMENTS**

	<u>Disbursements</u>	<u>Receipts</u>
Mar-30-21 Corporate Profile Report	14.49	
Corporate Profile Report - Gov/ Fees *	16.00	
<b>Total Disbursements</b>	\$30.49	\$0.00
<b>HST on Disbursements</b>	\$1.88	
<b>Total Fees, Disbursements &amp; HST</b>		\$8,926.04
 <b>Balance Due Now</b>		 \$8,926.04

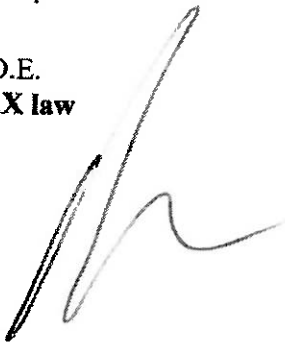
Total HST: \$1,025.05

HST #: 87666 6710 RT0001

\* tax-exempt

E. & O.E.  
AUDAX law

Per:



**Arturo R. Pugliese**

Accounts due when rendered. Interest will be charged at the rate of 2.50% per annum (or as otherwise permitted by the Courts of Justice Act, or at law) on unpaid fees, charges and disbursements, calculated from a date that is one month after this statement is delivered.

**SUMMARY OF FEES**

<b><u>Professional/Year of Call</u></b>	<b><u>Hours</u></b>	<b><u>Hourly Rate</u></b>	<b><u>Fees</u></b>	<b><u>HST</u></b>	<b><u>Total</u></b>
Frank Spizzirri, CS (1995)	15.90	\$ 550.00/hr	\$ 8,745.00	\$ 1,136.85	\$ 9,881.85
<b>Pre-Discount Total</b>	<b>15.90</b>		<b>\$ 8,745.00</b>	<b>\$ 1,136.85</b>	<b>\$ 9,881.85</b>
Less Discount			\$ 874.50	\$ 113.68	\$ 955.81
<b>TOTAL</b>			<b>\$ 7,870.50</b>	<b>\$ 1,023.17</b>	<b>\$ 8,926.04</b>



**CANADIAN IMPERIAL BANK OF  
COMMERCE**

**Applicant**

- and -

**NAUSS PLUMBING & HEATING INC.**

**Respondent**

**Court File No: CV-19-8866-0000**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at:  
**SUDBURY**

**AFFIDAVIT OF ARTURO  
PUGLIESE  
(SWORN MAY 3, 2021)**

**AUDAXI LAW PC**  
Barristers and Solicitors  
300 Bloor Street West  
Suite 670 West Tower  
Toronto, Ontario, M8X 2X2

**Frank Spizzirri, CS**  
**LSO No. 37327F**  
Tel: (416) 862-8329  
Fax: (416) 597-8330

**Lawyers for the Court-Appointed  
Receiver, MNP Ltd.**

## **APPENDIX K**



Canada Revenue Agency  
Agence du revenu  
du Canada

Tax Centre  
Hamilton ON L8R 3P7

April 22, 2021.

NAUSS PLUMBING & HEATING INC.  
C/O MNP LTD.  
300 - 111 RICHMOND ST W  
TORONTO ON M5H 2G4

Account Number  
10383 9965 RP0001

Dear Jerry Henechowicz:

Re: NAUSS PLUMBING & HEATING INC.  
of the City of Sudbury in the Province of Ontario  
Date of the bankruptcy: February 26, 2021

Please find enclosed our claim and supporting schedule in the above-noted insolvency event for the amount of \$430,963.65.

Issue dividend payment directly to the Receiver General quoting the account number shown on the schedule.

Please send individual, corporate and payroll dividend payments to:

Canada Revenue Agency  
PO BOX 3800 STN A  
Sudbury ON P3A 0C3

Please send goods and services tax/harmonized sales tax (GST/HST) remittances, including dividend payments to the applicable tax centre (shown on your client's GST/HST return).

If you need more information about this claim, such as a more detailed breakdown of the debt, please contact the undersigned at one of the telephone numbers provided in this letter.

Yours truly,

N. Radovanovic  
Insolvency Officer

Enclosure(s)

**Canada**

National Insolvency Office  
55 Bay Street North  
Hamilton ON L8R 3P7

Local : 416-997-1102  
Fax : 416-954-8411  
Web site : [canada.ca/taxes](http://canada.ca/taxes)

ATTACHMENT PAGE 1

Account Number

10383 9965 RP0001

Proof of Claim (Form 31)  
(Sections 50.1, 81.5, 81.6, subsections 65.2(4), 81.2(1), 81.3(8),  
81.4(8), 102(2), 124(2), 128(1), and paragraphs 51(1)(e)  
and 66.14(b) of the Act)

Send all notices or correspondence regarding this claim to the following address:

Canada Revenue Agency  
Shawinigan National Verification and Collection Centre  
Insolvency Intake Centre  
Collections Directorate  
4695 Shawinigan-Sud Blvd.  
Shawinigan QC G9P 5H9

Attention: K. Figaszewska

In the matter of the bankruptcy of NAUSS PLUMBING & HEATING INC. of the City of Sudbury in the Province of Ontario, and the claim of Her Majesty the Queen in Right of Canada as represented by the Minister of National Revenue, creditor.

I, N. Radovanovic, of the City of Hamilton in the Province of Ontario, do hereby certify:

1. That I am a collections officer of the Canada Revenue Agency.
2. That I have knowledge of all the circumstances connected with the claim referred to below.
3. That the debtor was, at the date of the bankruptcy namely the 26th day of February 2021, and still is, indebted to the creditor in the sum of \$430,963.65, as specified in the statement of account attached and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled.
4. (X) UNSECURED CLAIM of \$190,893.36. That in respect of this debt, I do not hold any assets of the debtor as security.

(X) PROPERTY CLAIM of \$240,070.28.

That property holding a value equal to the debt enumerated in the Schedule "A" was in possession of the debtor and still remains in the possession of the debtor and (or) the trustee. The claimant hereby claims an interest in all assets of the debtor up to the value of the property claim shown. The claimant is entitled to demand from the trustee the return of the property.

ATTACHMENT PAGE 2

Account Number

10383 9965 RP0001

5. That, to the best of my knowledge, the above-named creditor is not related to the debtor within the meaning of section 4 of the Act, and has not dealt with the debtor in a non-arm's length manner.

6. That the following are the payments that I have received from, and the credits that I have allowed to the debtor within the three months immediately before the date of the initial bankruptcy event within the meaning of section 2 of the Act.

-NIL-

7. Whenever the trustee reviews the financial situation of a bankrupt to redetermine whether or not the bankrupt is required to make payments under section 68 of the Act, I request to be informed, pursuant to paragraph 68(4) of the Act, of the new fixed amount or of the fact that there is no longer surplus income.

I request that a copy of the report filed by the trustee regarding the bankrupt's application for discharge pursuant to subsection 170(1) of the Act be sent to the above address.

Sworn before me at the City of Hamilton in the Province of Ontario, on the 22nd day of April 2021.

.....  
Commissioner of Oaths

.....  
Signature of Claimant

Gordon Arthur Tebbutt,  
a Commissioner, etc., Province of  
Ontario, for the Government of  
Canada, Canada Revenue Agency.  
Expires April 24, 2021.

ATTACHMENT PAGE 3

Account Number

10383 9965 RP0001

Schedule "A"

Name: NAUSS PLUMBING & HEATING INC.

Unsecured claim

Income Tax Act  
 (relating to payroll deductions for non deemed trust)  
 Account number: 10383 9965 RP0001  
 Assessed period(s): 2016-2019  
 Principal: \$49,754.308  
 Penalty and interest: \$141,139.06

Total: \$190,893.36

Total Unsecured claim \$190,893.36

Secured claim

Income Tax Act  
 (relating to payroll deductions)  
 Account number: 10383 9965 RP0001  
 Assessed period(s): 2016-2019  
 Principal: \$240,070.28  
 Penalty and interest: \$0.00

Total: \$240,070.28

Total Secured claim \$240,070.28

Sworn before me at the City of Hamilton in the province of Ontario, on the 22nd day of April 2021.

Commissioner of Oaths

Signature of Claimant

Gordon Arthur Tebbutt,  
a Commissioner, etc., Province of  
Ontario, for the Government of  
Canada, Canada Revenue Agency.  
Expires April 24, 2021.

# **APPENDIX L**



**SCHEDULE A  
STATEMENT OF ACCOUNT**

**Re: Canadian Imperial Bank of Commerce and Nauss Plumbing & Heating Inc.**

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**Line of Credit (#03892/24-53711)**

Principal outstanding	\$51,885.18
Accrued interest	\$3,567.14
Interest accrues at CIBC's prime rate of interest plus 1.000% per year (per diem \$4.91)	

**Business Term Loan (#03892/2548054)**

Principal outstanding	\$833,111.13
Accrued interest	\$74,670.16
Interest accrues at CIBC's prime rate of interest plus 1.000% per year (per diem \$78.75)	

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<b>Total indebtedness as at February 26, 2021</b>	<b>\$963,233.61</b>
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Legal fees	\$83,060.98
Disbursements	\$46,344.55
Taxes	\$16,560.56

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<b>Total costs</b>	<b>\$145,966.09</b>
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<b>TOTAL OUTSTANDING</b>	<b>\$1,109,199.70</b>
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Eric Rockefeller  
Gowling WLG (Canada) LLP  
Counsel to and agent for  
Canadian Imperial Bank of Commerce

I have authority to bind the Bank.  
e. & o.e.

:CM



## **APPENDIX M**

**739572 ONTARIO LIMITED**  
**17 KINGS INN TRAIL**  
**THORNHILL, ONTARIO, L3T 1T6**  
**Tel. (905) 882-1047 – Fax. (905) 882-4738**

**STATEMENT FOR POWER OF SALE PURPOSES**

**December 8, 2020**

**M. Lloyd Rubinoff, BA., L.L.B.**  
**300 John Street, Ste. 402**  
**Thornhill, Ont. L3T 5W4**

**Re: FIRST MORTGAGE FINANCING**  
**1330 NORTH RD., LOUGHRIN, CONCESSION 1 PARTS 1 & 2**  
**MARKSTAY, ONTARIO WITH BLANKET SECOND MORTGAGES**  
**OVER 2590 LASALLE BOULEVARD, SUDBURY, ONTARIO AND**  
**7 MILLICHAMP STREET, MARKSTAY, ONTARIO**

<b>Principal Amount of First Mortgage</b> <b>As of November 1, 2020</b>	<b>\$65,570.95</b>
<b>Interest Paid to November 1, 2020</b>	
<b>Interest from November 2, 2020 to December 8, 2020</b> <b>(37 days @ \$17.06/day)</b>	<b>\$ 631.22</b>
<b>3 Months Penalty (Interest Only)</b>	<b>\$ 1,557.30</b>
<b>Retainer for Lawyer Paid to Rubinoff Law</b>	<b>\$ 3,000.00</b>
<b>Statement Fee</b>	<b>\$ 200.00</b>
<b>Total Payable to 739572 Ontario Limited</b> <b>On December 8, 2020</b>	<b>\$70,959.47</b>

**Per Diem: \$17.23**

  
**M. Capozzi**

**E.&O.E.**

## **APPENDIX N**

# KORA MANAGEMENT LTD.

1374 Arlington Blvd. Sudbury, ON, P3E 6H8  
PHONE 705-675-2251 FAX 705-675-6302  
E-mail: mrspeigel@koramgt.com Web Site: www.koramgt.com

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## PAYOUT STATEMENT 1330 North Road, Markstay, ON

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As of April 30, 2021

Principal	\$24,000.
Interest, beginning Nov 1, 2020 - 6 months @ \$240.00 = <u>\$ 1,440</u>	\$25,440.00
Per diem	\$7.89

## **APPENDIX O**



PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND  
REGISTRY  
OFFICE #53

73407-0024 (LT)

PAGE 1 OF 1  
PREPARED FOR M3ja0001  
ON 2021/05/04 AT 09:15:43

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

PROPERTY DESCRIPTION: PCL 10208 SEC SWS; PT LT 8 CON 5 MERRITT AS IN LT64894 EXCEPT PT 1 53R13128 & PT 1 53R17437; S/T PT 2 & 3 53R13128 AS IN LT696426; ESPANOLA

PROPERTY REMARKS:  
ESTATE/QUALIFIER:  
FEB SIMPLE  
ABSOLUTE

RECENTLY:  
FIRST CONVERSION FROM BOOK  
CAPACITY SHARE

OWNERS' NAMES  
NAUSS PLUMBING & HEATING INC.

PIN CREATION DATE:  
2004/03/29

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHRD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2004/03/26 **						
LT172839	1961/04/11	TRANSFER REMARKS: AMENDED UNDER LT437463		*** COMPLETELY DELETED ***	TARICANI FUELS LIMITED	
53R13128	1990/12/20	PLAN REFERENCE		TARICANI LIMITED	NAUSS PLUMBING & HEATING INC.	C
SD341680	2017/08/22	TRANSFER REMARKS: PLANNING ACT STATEMENTS.	\$275,000	NAUSS PLUMBING & HEATING INC.	CANADIAN IMPERIAL BANK OF COMMERCE	C
SD341681	2017/08/22	CHARGE	\$206,000	NAUSS PLUMBING & HEATING INC.	CANADIAN IMPERIAL BANK OF COMMERCE	C
SD341684	2017/08/22	NO ASSIGN RENT GEN REMARKS: SD341681.		NAUSS PLUMBING & HEATING INC.	CANADIAN IMPERIAL BANK OF COMMERCE	C

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

## **APPENDIX P**



Ontario ServiceOntario

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND  
REGISTRY  
OFFICE #53

73488-0010 (LT)

PAGE 1 OF 2  
PREPARED FOR M0100001  
ON 2021/05/04 AT 09:10:48

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

PROPERTY DESCRIPTION: PCL 51424 SEC 5E3; PT LT 12 CON 1 LOUGHRAN PT 1 & 2 53R15954; MARKSTAY-WARREN

PROPERTY REMARKS: CONSENT IN LT845284 AND LT845285. CORRECTION: DOCUMENT LT905251 ADDED TO 73488-0010 ON 2013/09/19 AT 14:10 BY PREVOST, COLETTE.

ESTATE/QUALIFIER: FFF STMPLE ABSOLUTE  
RECENTLY: FIRST CONVERSION FROM BOOK  
PIN CREATION DATE: 2003/11/24

OWNERS' NAMES: NAUSS PLUMBING & HEATING INC.  
CAPACITY SHARE: ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
LT812363	1995/09/22	NICE AGRMT AM CH				
	REMARKS: LT701397					
53R15954	1997/04/08	PLAN REFERENCE				
LT845284	1997/05/08	TRANSFER			JENNICA SPRINGS LTD.	C
	REMARKS: PLANNING ACT CONSENT					
LT845285	1997/05/08	TRANSFER			JENNICA SPRINGS LTD.	
	REMARKS: PLANNING ACT CONSENT					
LT845286	1997/05/08	CHARGE			CAISSE POPULAIRE STE. ANNE DE SUDBURY LIMITEE	
LT905251	2000/11/23	CHARGE			ECONOMIC PARTNERS-SUDBURY EAST/WEST NIESSING INC.	
SD103624	2008/01/21	JR'S ORDER			LAND REGISTRAR	
	REMARKS: DELETING NOTICE LT812363 SINCE THE CHARGE THAT IT RELATES TO HAS BEEN DISCHARGED FROM THE PIN.					
SD172494	2010/05/19	DISCH OF CHARGE			CAISSE POPULAIRE STE. ANNE DE SUDBURY LIMITEE	
	REMARKS: LT845286.					
SD172497	2010/05/19	TRANSFER	\$115,338		JENNICA SPRINGS LTD.	C
	REMARKS: PLANNING ACT STATEMENTS				NAUSS PLUMBING & HEATING INC.	
SD172500	2010/05/19	CHARGE				
	REMARKS: PLANNING ACT STATEMENTS					

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
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73488-0010 (LT)

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT / CHKD
SD231146	2012/07/19	LIEN		NAUSS PLUMBING & HEATING INC.	JENNICA SPRINGS LTD.	
	REMARKS: EMPLOYER HEALTH TAX ACT			*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE		
SD253813	2013/06/28	DISCHARGE INTEREST		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE		
	REMARKS: SD231146.			*** COMPLETELY DELETED *** ECONOMIC PARTNERS-SUDBURY EAST/WEST NIPISSING INC.		
SD259304	2013/09/19	DISCH OF CHARGE		*** COMPLETELY DELETED *** NAUSS PLUMBING & HEATING INC.	739572 ONTARIO LIMITED	
	REMARKS: LT905251.			*** COMPLETELY DELETED *** JENNICA SPRINGS LTD.		
SD294630	2015/05/29	CHARGE		*** COMPLETELY DELETED *** 739572 ONTARIO LIMITED		
	REMARKS: SD172500.			*** COMPLETELY DELETED *** NAUSS PLUMBING & HEATING INC.		
SD294752	2015/05/29	DISCH OF CHARGE		*** COMPLETELY DELETED *** 739572 ONTARIO LIMITED		
	REMARKS: SD294630.			*** COMPLETELY DELETED *** NAUSS PLUMBING & HEATING INC.		
SD341777	2017/08/24	DISCH OF CHARGE	\$70,000	NAUSS PLUMBING & HEATING INC.	739572 ONTARIO LIMITED	C
SD342507	2017/09/05	CHARGE	\$24,000	NAUSS PLUMBING & HEATING INC.	KORA MANAGEMENT LTD.	C
SD342517	2017/09/05	CHARGE				

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
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## **APPENDIX Q**



Ontario ServiceOntario

LAND REGISTRY OFFICE #53

73484-0035 (LT)

FARCL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER  
PAGE 1 OF 3  
PREPARED FOR M010001  
ON 2021/05/04 AT 09:09:41

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

PROPERTY DESCRIPTION: PCL 53626 SEC 5S; FIRSTLY: LT 22 PL M1034 HAGAR; SECONDLY: PT LT 12 CON 3 HAGAR PT 1, 53R16102; MARKSTAY-WARREN

PROPERTY REMARKS:  
ESTATE/QUALIFIER:  
FEE SIMPLE  
ABSOLUTE

RECENTLY:  
FIRST CONVERSION FROM BOOK

CAPACITY SHARE

OWNERS' NAMES  
NAUSS PLUMBING & HEATING INC.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
<b>** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2003/11/21 **</b>						
53R16102	1997/10/21	PLAN REFERENCE				
LT913574	2001/06/22	TRANSFER			1468605 ONTARIO LIMITED	C
REMARKS: PLANNING ACT STATEMENTS						
LT913575	2001/06/22	CHARGE		*** COMPLETELY DELETED ***	CAISSE POPULAIRE DE VERNER LIMITED	
LT913576	2001/06/22	CHARGE		*** COMPLETELY DELETED ***	ECONOMIC PARTNERS-SUDBURY EAST/WEST NIPISSING INC.	
LT913577	2001/06/22	NOTICE OF LEASE		*** COMPLETELY DELETED ***	THE CORPORATION OF THE MUNICIPALITY OF MARKSTAY WARREN	
LT924300	2002/01/16	NOTICE		*** COMPLETELY DELETED ***	THE CORPORATION OF THE MUNICIPALITY OF MARKSTAY WARREN	
REMARKS: LT913575, LT913577						
LT924301	2002/01/16	NOTICE		*** COMPLETELY DELETED ***	THE CORPORATION OF THE MUNICIPALITY OF MARKSTAY WARREN	
REMARKS: LT913576, LT913577						
SD18696	2005/05/19	CHARGE		*** COMPLETELY DELETED ***	CAISSE POPULAIRE DE VERNER LIMITEE	
SD20233	2005/06/08	DISCH OF CHARGE		*** COMPLETELY DELETED ***		
REMARKS: RE: LT913575						
SD36134	2005/12/02	DISCH OF CHARGE		*** COMPLETELY DELETED ***		
REMARKS: ECONOMIC PARTNERS-SUDBURY EAST/WEST NIPISSING INC.						

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Ontario ServiceOntario

LAND REGISTRY OFFICE #53

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER  
PAGE 2 OF 3  
PREPARED FOR Major0001  
ON 2021/05/04 AT 09:09:41

73484-0035 (IT)

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
SD170125	2010/04/19	APL (GENERAL)		*** COMPLETELY DELETED *** 1468605 ONTARIO LIMITED		
		REMARKS: DELETE IT913577, IT924300 61T924301				
SD170244	2010/04/20	TRANSFER	\$285,000	1468605 ONTARIO LIMITED	NAUSS PLUMBING & HEATING INC.	C
		REMARKS: PLANNING ACT STATEMENTS				
SD170245	2010/04/20	CHARGE		*** COMPLETELY DELETED *** NAUSS PLUMBING & HEATING INC.	CAISSE POPULAIRE D'ALBAN LIMITEE	
SD170246	2010/04/20	CHARGE		*** COMPLETELY DELETED *** NAUSS PLUMBING & HEATING INC.	1468605 ONTARIO LIMITED	
SD170377	2010/04/22	DISCH OF CHARGE		*** COMPLETELY DELETED *** CAISSE POPULAIRE DE VERNER LIMITEE		
		REMARKS: SD18696.				
SD186293	2010/11/04	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** 1468605 ONTARIO LIMITED	NETZGER, DORIS	
		REMARKS: SD170246.				
SD224135	2012/04/26	LIEN		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUEHER MAJESTY THE QUEEN IN RIGHT OF CANADA A		
		REMARKS: INCOME TAX ACT				
SD224136	2012/04/26	LIEN		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		
		REMARKS: EXCISE TAX ACT				
SD231146	2012/07/19	LIEN		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE		
		REMARKS: EMPLOYER HEALTH TAX ACT				
SD253813	2013/06/28	DISCHARGE INTEREST		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE		
		REMARKS: SD231146.				

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
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73484-0035 (1F)

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
SD286848	2014/12/22	DISCHARGE INTEREST REMARKS: SD224135.		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		
SD286849	2014/12/22	DISCHARGE INTEREST REMARKS: SD224136.		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		
SD290822	2015/03/19	CHARGE		*** COMPLETELY DELETED *** NAUSS PLUMBING & HEATING INC.	LPMARKE HOLDINGS INC. 2441436 ONTARIO LTD.	
SD290866	2015/03/19	DISCH OF CHARGE REMARKS: SD170245.		*** COMPLETELY DELETED *** CAISSE POPULAIRE D'ALBAN LIMITEE		
SD290869	2015/03/19	DISCH OF CHARGE REMARKS: SD170246.		*** COMPLETELY DELETED *** METZGER, DORIS		
SD341549	2017/08/21	CHARGE	\$583,000	NAUSS PLUMBING & HEATING INC.	CANADIAN IMPERIAL BANK OF COMMERCE	C
SD341553	2017/08/21	NO ASSGN RENT GEN REMARKS: SD341549		NAUSS PLUMBING & HEATING INC.	CANADIAN IMPERIAL BANK OF COMMERCE	C
SD341775	2017/08/24	DISCH OF CHARGE REMARKS: SD290822.		*** COMPLETELY DELETED *** LEMARKE HOLDINGS INC. 2441436 ONTARIO LTD.		
SD342507	2017/09/05	CHARGE	\$70,000	NAUSS PLUMBING & HEATING INC.	739572 ONTARIO LIMITED	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES. IN ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
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**CANADIAN IMPERIAL BANK OF  
COMMERCE**

**NAUSS PLUMBING AND HEATING INC.**

- and -

**Court File No: CV-19-8866-0000**

**Applicant**

**Respondent**

---

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at:  
**SUDBURY**

---

**SECOND REPORT OF THE  
RECEIVER DATED MAY 3, 2021**

---

**AUDAXLAW PC**  
Barristers and Solicitors  
300 Bloor Street West  
Suite 670 West Tower  
Toronto, Ontario, M8X 2X2

**Frank Spizzirri, CS**  
**LSO No. 37327F**  
Tel: (416) 862-8329  
Fax: (416) 597-8330

**Lawyers for the Court-Appointed  
Receiver, MNP Ltd.**

## **TAB 3**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE            )           FRIDAY, THE 7TH DAY OF  
  )           MAY, 2021  
  )

BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

and

**NAUSS PLUMBING & HEATING INC.**

Respondent

**SALE APPROVAL AND VESTING ORDER**

**(551 Centre Street Property)**

**THIS MOTION**, made by MNP Ltd., in its capacity as court appointed receiver and manager (the “**Receiver**”), for an order approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**Asset Purchase Agreement**”) between the Receiver and 2819163 Ontario Inc., dated April 21, 2021, and an order vesting in 2819163 Ontario Inc. (the “**Purchaser**”), all of Nauss Plumbing & Heating Inc.’s (“**Nauss**”) right, title, benefit and interest in and to the assets described in the Asset Purchase Agreement (the “**Purchased Assets**”) and other relief, was heard this day, via videoconference, due to the COVID-19 pandemic.

**ON READING** the Second Report of the Receiver dated May 3, 2021 (the “**Second Report**”), and on hearing the submissions of counsel for the Receiver and any such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of \_\_\_\_\_ sworn May 4, 2021 filed:



1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and of the Motion Record herein, be and is hereby validated and abridged so that this Motion is properly returnable today and hereby dispenses with any further service hereof.
2. **THIS COURT ORDERS** that unless otherwise defined herein or the context otherwise requires, capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement.
3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Asset Purchase 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.
4. **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 Nauss's right, title, benefit and interest in and to the Purchased Assets described in the Asset Purchase Agreement, and more particularly set out in **Schedule D**, 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 Receivership Order dated November 13, 2020; (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 B** 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 C**) 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.

5. **THIS COURT ORDERS** that upon the registration in the applicable land registry office or land titles office of a transfer/deed of land or equivalent document, or of an application for registration of this Order in the applicable prescribed form, the applicable land registrar or equivalent official is hereby directed to enter the Purchaser as the owner of the subject 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** hereto.
6. **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.
7. **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 Nauss's records pertaining to Nauss's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by Nauss.
8. **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 Nauss and any bankruptcy order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made in respect of Nauss;

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 Nauss and shall not be void or voidable by creditors of Nauss, 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.

9. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of section 6(3) of the *Retail Sales Act* (Ontario).
  10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
-

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

Court File No. CV-19-00008866-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

and

**NAUSS PLUMBING & HEATING INC.**

Respondent

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Hennessey of the Ontario Superior Court of Justice (the “**Court**”) dated November 13, 2020, MNP Ltd. was appointed as receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Nauss Plumbing & Heating Inc. (“**Nauss**”).

B. Pursuant to an Order of the Court dated May 7, 2021, the Court approved the agreement of purchase and sale made as of April 21, 2021 (the “**Asset Purchase Agreement**”) between the Receiver and 2819163 Ontario Inc., and provided for the vesting in and to, 2819163 Ontario Inc. (the “**Purchaser**”), of all of Nauss’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 the Asset 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 Asset Purchase 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 Asset Purchase Agreement;
2. The conditions to closing as set out in the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser, respectively; 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].

**MNP LTD. solely in its capacity as receiver and manager of NAUSS HEATING & PLUMBING INC., and not in any other capacity**

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

Name:

Title:

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

SD341681 – Charge – From NAUSS PLUMBING & HEATING INC. to CANADIAN IMPERIAL BANK OF COMMERCE

SD341684 – Notice of Assignment of Rents – General – from NAUSS PLUMBING & HEATING INC. to CANADIAN IMPERIAL BANK OF COMMERCE

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

**(unaffected by the Vesting Order)**

None

**Schedule D – Description of Lands**

**PIN 73407-0024 (LT):** PCL 10208 SEC SWS; PT LT 8 CON 5 MERRITT AS IN LT64894  
EXCEPT PT 1 53R131128 & PT 1 53R17437; S/T PT 2 & 3 53R13128 AS IN LT696426;  
ESPANOLA



**CANADIAN IMPERIAL BANK OF  
COMMERCE**

**NAUSS PLUMBING & HEATING INC.**

- and -

**Court File No: CV-19-8866-0000**

**Applicant**

**Respondent**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at:  
**SUDBURY**

**SALE APPROVAL AND VESTING  
ORDER  
(551 CENTRE STREET PROPERTY)  
(MAY 7, 2021)**

**AUDAXLAW PC**  
Barristers and Solicitors  
300 Bloor Street West  
Suite 670 West Tower  
Toronto, Ontario, M8X 2X2

**Frank Spizzirri, CS**  
**LSO No. 37327F**  
Tel: (416) 862-8329  
Fax: (416) 597-8330

**Lawyers for the Court-Appointed  
Receiver, MNP Ltd.**

**TAB 4**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE            )           FRIDAY, THE 7TH DAY OF  
  )           MAY, 2021  
  )

BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

and

**NAUSS PLUMBING & HEATING INC.**

Respondent

**SALE APPROVAL AND VESTING ORDER**

**(1330 North Road Property)**

**THIS MOTION**, made by MNP Ltd., in its capacity as court appointed receiver and manager (the “**Receiver**”), for an order approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**Asset Purchase Agreement**”) between the Receiver and Lyudmyla Tereshchenko, in trust, dated April 22, 2021, and an order vesting in 11993330 Canada Inc., the nominee of Lyudmyla Tereshchenko, in trust (the “**Purchaser**”), all of Nauss Plumbing & Heating Inc.’s (“**Nauss**”) right, title, benefit and interest in and to the assets described in the Asset Purchase Agreement (the “**Purchased Assets**”) and other relief, was heard this day, via videoconference, due to the COVID-19 pandemic.

**ON READING** the Second Report of the Receiver dated May 3, 2021 (the “**Second Report**”), and on hearing the submissions of counsel for the Receiver and any such other counsel

as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of \_\_\_\_\_ sworn May 4, 2021 filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and of the Motion Record herein, be and is hereby validated and abridged so that this Motion is properly returnable today and hereby dispenses with any further service hereof.
2. **THIS COURT ORDERS** that unless otherwise defined herein or the context otherwise requires, capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement.
3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Asset Purchase 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.
4. **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 Nauss's right, title, benefit and interest in and to the Purchased Assets described in the Asset Purchase Agreement, and more particularly set out in **Schedule D**, 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 Receivership Order dated November 13, 2020; (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 B** 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 C**) 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.

5. **THIS COURT ORDERS** that upon the registration in the applicable land registry office or land titles office of a transfer/deed of land or equivalent document, or of an application for registration of this Order in the applicable prescribed form, the applicable land registrar or equivalent official is hereby directed to enter the Purchaser as the owner of the subject 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** hereto.
6. **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.
7. **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 Nauss's records pertaining to Nauss's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by Nauss.
8. **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 Nauss and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of Nauss;

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 Nauss and shall not be void or voidable by creditors of Nauss, 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.

9. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of section 6(3) of the *Retail Sales Act* (Ontario).
  10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
-

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

Court File No. CV-19-00008866-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

and

**NAUSS PLUMBING & HEATING INC.**

Respondent

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Hennessey of the Ontario Superior Court of Justice (the “**Court**”) dated November 13, 2020, MNP Ltd. was appointed as receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Nauss Plumbing & Heating Inc. (“**Nauss**”).

B. Pursuant to an Order of the Court dated May 7, 2021, the Court approved the agreement of purchase and sale made as of April 22, 2021 (the “**Asset Purchase Agreement**”) between the Receiver and Lyudmyla Tereshchenko, in trust, and provided for the vesting in and to, 11993330 Canada Inc., the nominee of Lyudmyla Tereshchenko, in trust (the “**Purchaser**”), of all of Nauss’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 the Asset 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 Asset Purchase 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 Asset Purchase Agreement;
2. The conditions to closing as set out in the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser, respectively; 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].

**MNP LTD. solely in its capacity as receiver and manager of NAUSS HEATING & PLUMBING INC., and not in any other capacity**

Per:

\_\_\_\_\_

Name:

Title:



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

SD342507 – Charge - From NAUSS PLUMBING & HEATING INC. to 739572 ONTARIO LIMITED

SD342517 – Charge - From NAUSS PLUMBING & HEATING INC. to KORA MANAGEMENT LTD.

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

**(unaffected by the Vesting Order)**

None

**Schedule D -- Description of Lands**

**PIN 73488-0010 (LT):** PCL 51424 SEC SES; PT LT 12 CON 1 LOUGHRIN PT 1 & 2 53R15954;  
MARKSTAY-WARREN

**CANADIAN IMPERIAL BANK OF  
COMMERCE**

- and -

**NAUSS PLUMBING & HEATING INC.**

**Court File No: CV-19-8866-0000**

**Applicant**

**Respondent**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at:  
**SUDBURY**

**SALE APPROVAL AND VESTING  
ORDER  
(1330 NORTH ROAD PROPERTY)  
(MAY 7, 2021)**

**AUDAXLAW PC**  
Barristers and Solicitors  
300 Bloor Street West  
Suite 670 West Tower  
Toronto, Ontario, M8X 2X2

**Frank Spizzirri, CS**  
**LSO No. 37327F**  
Tel: (416) 862-8329  
Fax: (416) 597-8330

**Lawyers for the Court-Appointed  
Receiver, MNP Ltd.**

## TAB 5

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE            )           FRIDAY, THE 7TH DAY OF  
  )           MAY, 2021  
  )

BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

and

**NAUSS PLUMBING & HEATING INC.**

Respondent

**SALE APPROVAL AND VESTING ORDER**

**(7 Millichamp St. Property)**

**THIS MOTION**, made by MNP Ltd., in its capacity as court appointed receiver and manager (the “**Receiver**”), for an order approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**Asset Purchase Agreement**”) between the Receiver and Darcy Paul Mullen, dated April 22, 2021, and an order vesting in XMD Inc., the nominee of Darcy Paul Mullen (the “**Purchaser**”), all of Nauss Plumbing & Heating Inc.’s (“**Nauss**”) right, title, benefit and interest in and to the assets described in the Asset Purchase Agreement (the “**Purchased Assets**”) and other relief, was heard this day, via videoconference, due to the COVID-19 pandemic.

**ON READING** the Second Report of the Receiver dated May 3, 2021 (the “**Second Report**”), and on hearing the submissions of counsel for the Receiver and any such other counsel

as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of \_\_\_\_\_ sworn May 4, 2021 filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and of the Motion Record herein, be and is hereby validated and abridged so that this Motion is properly returnable today and hereby dispenses with any further service hereof.
2. **THIS COURT ORDERS** that unless otherwise defined herein or the context otherwise requires, capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement.
3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Asset Purchase 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.
4. **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 Nauss's right, title, benefit and interest in and to the Purchased Assets described in the Asset Purchase Agreement, and more particularly set out in **Schedule D**, 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 Receivership Order dated November 13, 2020; (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 B** 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 C**) 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.

5. **THIS COURT ORDERS** that upon the registration in the applicable land registry office or land titles office of a transfer/deed of land or equivalent document, or of an application for registration of this Order in the applicable prescribed form, the applicable land registrar or equivalent official is hereby directed to enter the Purchaser as the owner of the subject 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** hereto.
6. **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.
7. **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 Nauss's records pertaining to Nauss's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by Nauss.
8. **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 Nauss and any bankruptcy order issued pursuant to any such applications; and



(c) any assignment in bankruptcy made in respect of Nauss;

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 Nauss and shall not be void or voidable by creditors of Nauss, 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.

9. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of section 6(3) of the *Retail Sales Act* (Ontario).
  10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
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**Schedule A – Form of Receiver’s Certificate**

Court File No. CV-19-00008866-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

and

**NAUSS PLUMBING & HEATING INC.**

Respondent

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Hennessey of the Ontario Superior Court of Justice (the “**Court**”) dated November 13, 2020, MNP Ltd. was appointed as receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Nauss Plumbing & Heating Inc. (“**Nauss**”).

B. Pursuant to an Order of the Court dated May 7, 2021, the Court approved the agreement of purchase and sale made as of April 22, 2021 (the “**Asset Purchase Agreement**”) between the Receiver and Darcy Paul Mullen, and provided for the vesting in and to, XMD Inc., the nominee of Darcy Paul Mullen (the “**Purchaser**”), of all of Nauss’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 the Asset 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 Asset Purchase 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 Asset Purchase Agreement;
2. The conditions to closing as set out in the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser, respectively; 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].

**MNP LTD. solely in its capacity as receiver and manager of NAUSS HEATING & PLUMBING INC., and not in any other capacity**

Per:

\_\_\_\_\_

Name:

Title:

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

SD341549 – Charge – From NAUSS PLUMBING & HEATING INC. to CANADIAN IMPERIAL BANK OF COMMERCE

SD341553 – Notice of Assignment of Rents – General – from NAUSS PLUMBING & HEATING INC. to CANADIAN IMPERIAL BANK OF COMMERCE

SD342507 – Charge - From NAUSS PLUMBING & HEATING INC. to 739572 ONTARIO LIMITED

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

**(unaffected by the Vesting Order)**

None

**Schedule D – Description of Lands**

**PIN 73484-0035 (LT):** PCL 53626 SEC SES; FIRSTLY LT 22 PL M1034 HAGAR;  
SECONDLY: PT LT 12 CON 3 HAGAR PT 1, 53R16102; MARKSTAY-WARREN

**CANADIAN IMPERIAL BANK OF  
COMMERCE**

- and -

**NAUSS PLUMBING & HEATING INC.**

**Court File No: CV-19-8866-0000**

**Applicant**

**Respondent**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at:  
**SUDBURY**

**SALE APPROVAL AND VESTING  
ORDER  
(7 MILLICHAMP ST. PROPERTY)  
(MAY 7, 2021)**

**AUDAXLAW PC**  
Barristers and Solicitors  
300 Bloor Street West  
Suite 670 West Tower  
Toronto, Ontario, M8X 2X2

**Frank Spizzirri, CS**  
**LSO No. 37327F**  
Tel: (416) 862-8329  
Fax: (416) 597-8330

**Lawyers for the Court-Appointed  
Receiver, MNP Ltd.**

**TAB 6**



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE            )            DAY, THE 26TH DAY OF  
  )            FEBRUARY, 2021  
  )

BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

and

**NAUSS PLUMBING & HEATING INC.**

Respondent

**ADMINISTRATIVE ORDER**

**(May 7, 2021)**

**THIS MOTION**, made by MNP Ltd., in its capacity as court appointed receiver and manager (the “**Receiver**”), for: i) orders approving three (3) sale transactions, as set out in the Receiver’s notice of motion dated May 3, 2021, together with respective orders vesting title in the purchasers, or their nominees, of all of Nauss Plumbing & Heating Inc.’s (“**Nauss**”) right, title, benefit and interest in and to the assets described in the respective asset purchase agreements; and ii) an order for related and other relief, including an interim distribution to certain creditors, was heard this day, via videoconference, due to the COVID-19 pandemic.

**ON READING** the Second Report of the Receiver dated May 3, 2021 (the “**Second Report**”), and on hearing the submissions of counsel for the Receiver and any such other counsel as present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of \_\_\_\_\_ sworn May \_\_\_\_\_, 2021 filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and of the Motion Record herein, be and is hereby validated and abridged so that this Motion is properly returnable today and hereby dispenses with any further service hereof.
  2. **THIS COURT ORDERS AND DECLARES** that the Second Report and the decisions, conduct, and activities set out therein be and are hereby approved.
  3. **THIS COURT ORDERS** that Confidential Appendix #1 to the Second Report be and are hereby sealed until the filing of the last Receiver's Certificate in respect of the three (3) sales set out in the Second Report or further order of the Court.
  4. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to payout out portions of the proceeds of sales in its possession as set out in the Second Report.
  5. **THIS COURT ORDERS AND DECLARES** that the fees and disbursements of the Receiver and its counsel Audaxlaw PC as set out in the Second Report be and are hereby approved.
  6. **THIS COURT ORDERS AND DECLARES** that the Receiver's Interim Statement of Receipts and Disbursements as set out in the Second Report be and are hereby approved.
-

**CANADIAN IMPERIAL BANK OF  
COMMERCE**

- and -

**NAUSS PLUMBING & HEATING INC.**

**Court File No: CV-19-8866-0000**

**Applicant**

**Respondent**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at:  
**SUDBURY**

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**ADMINISTRATIVE ORDER  
(MAY 7, 2021)**

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**AUDAXLAW PC**  
Barristers and Solicitors  
300 Bloor Street West  
Suite 670 West Tower  
Toronto, Ontario, M8X 2X2

**Frank Spizzirri, CS**  
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**Lawyers for the Court-Appointed  
Receiver, MNP Ltd.**

**CANADIAN IMPERIAL BANK OF  
COMMERCE**

- and -

**NAUSS PLUMBING AND HEATING INC.**

**Court File No: CV-19-8866-0000**

**Applicant**

**Respondent**

---

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at:  
**SUDBURY**

---

**MOTION RECORD  
(MAY 7, 2021)**

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**AUDAXLAW PC**  
Barristers and Solicitors  
300 Bloor Street West  
Suite 670 West Tower  
Toronto, Ontario, M8X 2X2

**Frank Spizzirri, CS**  
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**Lawyers for the Court-Appointed  
Receiver, MNP Ltd.**