

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

BANK OF MONTREAL

Applicant

and

**ARRRC INTERNATIONAL INC., AGRICULTURE TECHNOLOGY INCORPORATED,
2265469 ONTARIO INC., 2292760 ONTARIO INC. and 2517748 ONTARIO INC.**

Respondents

**FOURTH AND FINAL REPORT TO THE COURT SUBMITTED BY MNP LTD.,
IN ITS CAPACITY AS RECEIVER OF
ARRRC INTERNATIONAL INC., AGRICULTURE TECHNOLOGY INCORPORATED,
2265469 ONTARIO INC., 2292760 ONTARIO INC. and 2517748 ONTARIO INC.**

February 28, 2019

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1.1 Introduction

- 1.1.1** ARRRC International Inc. (“**ARRRC**”) is a real estate holding company and sole title holder of the lands municipally known as 329 County Road 34, Ruthven Ontario (the “**329 Property**”). The 329 Property is comprised of 26.42 acres improved with multiple outbuildings, including three private residences. ARRRC leases the 329 Property exclusively to Agriculture Technology Incorporated (“**ATI**”).
- 1.1.2** ATI’s primary business is the handling of plant materials and growing media removed from local greenhouse growers at the end of the crop cycle. Services offered by ATI include agriculture material handling, organic and substrate recycling, wood grinding and soil screening. Related businesses include plastic recycling, bio-fiber production, bio-fuel compounding and garden products.
- 1.1.3** 2517748 Ontario Inc., operating as City Recycle (“**251**”) operates as a waste disposal, processing and recycling transfer station from leased lands municipally known as 1153 Tecumseh Rd, Windsor Ontario (“**Tecumseh Property**”).
- 1.1.4** 2265469 Ontario Inc. o/a as AR3C (“**226**”) provides management services to ARRRC, ATI and 251.
- 1.1.5** 2292760 Ontario Inc. o/a WECO2 (“**229**”) is a non-operating company.
- 1.1.6** ARRRC, ATI, 251, 226 and 229 (collectively, the “**Companies**”) are all related private corporations having common ownership and directors.

The directors of the Companies are:

- (i) Mr. Matthew Posthumus;
- (ii) Mr. Steve Posthumus;
- (iii) Mr. Luke Posthumus; and
- (iv) Mr. Mark Posthumus (together, the “**Posthumus Family**”).

- 1.1.7** Bank of Montreal (“**BMO**” or the “**Bank**”) is the senior secured lender to the Companies. In aggregate, the Companies are indebted to BMO for approximately \$14,838,000, plus interest and costs.
- 1.1.8** The debt owing to BMO is secured by the following:
- (i) A collateral charge registered against the 329 Property in the principal amount of \$12,800,000; and
 - (ii) General security agreements from each of the Companies.

- 1.1.9** On April 3, 2018, the Companies advised BMO that the businesses were experiencing financial distress caused by the activities of the Ministry of Environment and the Town of Kingsville and, as a result, operations had effectively ceased. On April 4, 2018, BMO issued demands for payment and notices of intention to enforce security to the Companies.
- 1.1.10** On April 18, 2018, the Honourable Justice Pattillo of the Ontario Superior Court of Justice issued an Order (the “**Appointment Order**”) appointing MNP Ltd. as receiver (the “**Receiver**”) of the assets, undertakings and properties of the Companies. A copy of the Appointment Order and the endorsement of Justice Pattillo is attached as **Appendix A**. The Appointment Order is substantially in the form of the Model Receivership Order.
- 1.1.11** The Appointment Order authorized, but did not obligate, the Receiver, among other things, to do the following where the Receiver considers it necessary or desirable:
- (i) Take possession of and exercise control over the property of the Companies;
 - (ii) Manage, operate and carry on the businesses of the Companies;
 - (iii) Initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings then pending or thereafter instituted with respect to the Companies, their property or the Receiver, and to settle or compromise any such proceedings; and,
 - (iv) Market any or all of the property of the Companies and negotiate such terms and conditions of sale as the Receiver may deem appropriate.
- 1.1.12** The Receiver has submitted three previous reports to this Court as follows:
- (i) Report dated June 19, 2018 (the “**First Report**”) which included a confidential supplement. A copy of the First Report, without appendices, is attached as **Appendix B**. A copy of the Order approving the First Report and the endorsement of Justice McEwen dated July 26, 2018 approving the First Report is attached as **Appendix C**.
 - (ii) Report dated August 20, 2018 (the “**Second Report**”). A copy of the Second Report, without appendices, is attached as **Appendix D**. A copy of the Order approving the Second Report and the endorsement of Justice Hainey dated August 30, 2018 is attached as **Appendix E**.
 - (iii) Report dated November 21, 2018 (the “**Third Report**”) which included a confidential supplement. A copy of the Third Report, without appendices, is attached as **Appendix F**. A copy of the Order approving the Third Report and the endorsement of Justice Hainey dated December 4, 2018 is attached as **Appendix G**.

1.2 Purpose of the Receiver's Fourth Report

1.2.1 This constitutes the Receiver's fourth and final report to the Court (the "**Fourth Report**") in this matter and is filed to:

- (i) Report on the Receiver's activities since the Third Report;
- (ii) Update the Court on the outcome of the transaction approved in the December 4, 2018 Order which, if completed, would have resulted in the assignment by BMO of its debt and security and the discharge of the Receiver; and
- (iii) Obtain an Order,
 - (a) approving the Fourth Report and the confidential supplement thereto, along with the activities of the Receiver detailed therein;
 - (b) approving the Agreement of Purchase and Sale made between the Receiver, as vendor, and 2674913 Ontario Ltd. ("267"), as purchaser, dated January 31, 2019 and authorizing the Receiver to complete the transaction contemplated therein (the "**Transaction**");
 - (c) vesting in 267 the Companies' right, title and interest in and to the assets which are the subject of the Transaction;
 - (d) sealing the Confidential Supplement to the Fourth Report until completion of the Transaction or further Order of the Court;
 - (e) approving the Receiver's Statement of Receipts and Disbursements as at February 28, 2019 and its Projected Final Statement of Receipts and Disbursements;
 - (f) approving the fees and disbursements of the Receiver and its legal counsel, including the fees and disbursements to be incurred to the completion of these proceedings;
 - (g) authorizing and directing the Receiver to distribute the net proceeds of the estate as outlined in the Fourth Report;
 - (h) authorizing the Receiver to assign to BMO the promissory note to be delivered by the Purchaser upon the completion of the Transaction; and
 - (f) effective upon the filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the receivership of the Companies have been completed to the satisfaction of the Receiver, discharging MNP Ltd. from liability, save and except for gross negligence or wilful misconduct.

2.0

Receiver's activities since the Second Report

2.1 Environmental – Leachate Pad and Lagoons

- 2.1.1 ATI's processing facility at the 329 Property is equipped with a 7-acre cement holding pad ("Pad") which is utilized to stockpile unprocessed agriculture by-product. The Pad and two large reservoirs ("Lagoons") collect precipitation run-off. The resulting liquid ("Leachate") is deemed by the Ministry of Environment and Climate Change ("MOE") to be 'Non-Agriculture Sourced Material' ("NASM").
- 2.1.2 Since the Third Report the Receiver oversaw the removal of approximately 522,000 gallons of NASM from the Lagoons. NASM was applied to local farmland in accordance with protocols required pursuant to the *Nutrient Management Act*.
- 2.1.3 Members of the Posthumus family continue to monitor and manage the Pad and Lagoons.
- 2.1.4 MOE officials attend the 329 Property regularly to inspect the status of the 329 Property, and specifically Pad and Lagoons Leachate levels. The MOE last visited the 329 Property on February 5, 2019 and reported Leachate levels remain below freeboard range.

2.2 Government Accounts

- 2.2.1 Since the Third Report, the Canada Revenue Agency ("CRA") completed its audit of the Companies' HST accounts. CRA is asserting deemed trust claims for unremitted HST owed by the Companies as follows:
- (i) ATI - \$329,329
 - (ii) ARRRC - \$65,549
 - (iii) 226 - \$38,422
 - (iv) 229 - \$6,010
 - (v) 251 - \$32,908.
- 2.2.2 CRA also completed its audit of the Companies' source deduction accounts. CRA is asserting deemed trust claims for unremitted source deductions owing by the Companies as follows:
- (i) ATI - \$9,714
 - (ii) ARRRC - \$7,462
 - (iii) 226 - \$38,206
 - (iv) 229 - \$55,152
 - (v) 251 - \$30,486.
- 2.2.3 Copies of CRA's proofs of claim for the source deduction deemed trust amounts and HST deemed trust amounts are attached as **Appendix H**.

2.2.4 Since the Third Report, the Companies' former accountant, Collins Barrow LLP ("Collins") finalized ATI's 2017 income tax return which, if accepted by CRA, would result in a refund of approximately \$246,000. Although the return is pending review and not finalized, CRA has advised the Receiver of its intention to set off the refund against ATI's HST and source deduction arrears.

2.3 2435895 Ontario Inc. and waste bins

2.3.1 As discussed in earlier reports, ATI owns or leases approximately 40 roll off waste bins ("Bins") that are in the possession of and remain subject to an ongoing dispute with ATI's former landlord, 243589 Ontario Inc. ("243") for the premises located at 1593 County Road 32, Kingsville. Following the Receiver's appointment 243 refused to deliver up possession of the Bins to the Receiver. The Receiver brought a motion for an Order requiring 243 to deliver up possession of the Bins. That motion was adjourned on August 30, 2018. Since then, the Receiver and 243 have had ongoing discussions to settle the dispute in a commercially reasonable manner; however, the Receiver and 243 have been unable to reach mutually acceptable terms. Following the making of the Order of Justice Hainey dated December 4, 2018 in connection with the Third Report, 243 served a notice under the *Repair and Storage Liens Act* of its intention to keep the Bins in purported enforcement of a storer's lien. The notice was served in contravention of the stay of proceedings in the Appointment Order and was later withdrawn.

2.3.2 Of the 40 Bins in the possession of 243, approximately 14 are leased from Blueshore Leasing ("Blueshore") and National Leasing ("National") and approximately 26 are owned by ATI.

2.3.3 Counsel for the Receiver has advised Blueshore and National of 243's claimed storer's lien, the proposed Transaction, and the Receiver's inability to successfully settle with 243. Receiver's counsel asked the leasing companies for direction on how they would like to resolve 243's claim and suggested they may wish to resolve the lien issue themselves rather than incur ongoing costs to have the Receiver involved. Unless otherwise agreed by Blueshore and National, it is the Receiver's intention to cease efforts to repatriate the Bins or resolve the matter with 243, either by agreement or court order, and leave this issue to the leasing companies to resolve with 243 directly.

3.0

Assignment of BMO debt

3.1 Status of debt assignment

- 3.1.1 As reported in the Third Report, the Bank was approached by Maynbridge Capital Inc. (“**Maynbridge**”) to purchase the Bank’s debt and security. The Bank and Maynbridge entered into a Secondary Debt Sale Trade Confirmation dated November 16, 2018 (the “**Trade Confirmation**”), under the terms of which Maynbridge agreed to purchase the indebtedness owing by the Companies to the Bank and the security held by the Bank for that indebtedness.
- 3.1.2 On December 4, 2018 Justice Hainey made an order discharging the Receiver subject to the completion of the Trade Confirmation.
- 3.1.3 Maynbridge did not waive certain conditions to which the Trade Confirmation was subject. Accordingly, the Trade Confirmation did not proceed, and the receivership continued.

4.1 Proposed sale of assets to 267

4.1.1 On December 17, 2018, the Receiver notified Matthew Posthumus (“**Posthumus**”) that Maynbridge had abandoned the Trade Confirmation and confirmed that there was no possibility the transaction would be revived. During this discussion, Posthumus advised that he remained interested in purchasing the Companies’ assets. Posthumus undertook to present a formal offer and deliver a cash deposit within a couple days to affirm his interest.

4.1.2 As discussed in previous reports to the Court, Posthumus had previously submitted offers to purchase the Companies’ assets during the Receiver’s sale solicitation process. Those offers were conditional on financing. Posthumus was never able/willing to waive the financing conditions and the offers did not proceed.

4.1.3 On December 19, 2018, Posthumus submitted an offer on behalf of a corporation to be formed for the purchase of the Receiver’s right, title and interest in certain of the Companies’ assets. In consultation with the Bank, the Receiver negotiated terms for the sale of the assets over the following weeks. On January 30, 2019, the Receiver accepted Posthumus’ offer and entered into an Agreement of Purchase and Sale with 267, a corporation of which Posthumus is president.

4.1.4 A redacted copy of the Agreement of Purchase and Sale is attached as **Appendix I**. To protect disclosure of the purchase price pending the completion of the Transaction, the purchase price has been redacted. An unredacted copy of the Agreement of Purchase and Sale is contained in the Confidential Supplement to the Fourth Report (the “**Confidential Supplement**”). Because of its commercially sensitive nature, the Receiver is requesting the Court keep the Confidential Supplement sealed pending the closing of the Transaction or further court order.

4.1.5 As provided for in the Agreement of Purchase and Sale, 267 has agreed to purchase the Companies’ right, title and interest in and to the following assets of the Companies:

- The 329 Property;
- All owned machinery, vehicles, equipment, fixtures and furniture situate at the 329 Property;
- An action commenced by ATI against the Town of Kingsville, Essex-Windsor Solid Waste Authority, David Gibson, Michael Arthur, Dan Digiovanni and Todd Pepper under court file number CV-10-15347 at Windsor (the “**Kingsville Action**”);
- ATI’s interest in certain equipment leases;

(collectively the “**Assets**”).

4.1.6 In support of the Receiver’s request that the Court approve the Agreement of Purchase and Sale and authorize the Receiver to complete the Transaction, the Receiver notes the following:

- (i) As discussed in earlier reports, the Receiver conducted an extensive marketing campaign to sell the Assets. The Receiver’s marketing efforts have been exhausted and there is no other viable proposal available at this time.

- (ii) The Bank is the senior lender to the Companies and is the only stakeholder which has any practical economic interest in the Assets. The Bank supports the proposed sale.

5.0

Final Statement of Receipts and Disbursements

5.1 Statement of Receipts and Disbursements

5.1.1 Receiver's Statement of Receipts and Disbursements as at February 28, 2019 is attached as **Appendix J**. The following is a summary of receipts and disbursements as at February 28, 2019:

5.2 Receipts

5.2.1 Receipts of \$148,274 were realized from the sale of inventory, collection of accounts receivable and the return of a retainer paid to a private investigator by ATI prior to the receivership. \$200,000 was advanced by the Bank under Receiver's Certificates to fund expenses in the receivership.

5.3 Disbursements

5.3.1 The Receiver has made disbursements of \$334,350, primarily for:

- (i) draining the Lagoons in accordance with the NASM Plan;
- (ii) Contract labour wages paid to the Posthumus Family;
- (iii) Legal fees paid to Wilms & Shier Lawyers LLP for assistance in a hearing before the MOE Environmental Review Tribunal, as discussed in the First Report;
- (iv) Retainer paid to Collins Barrow to finalize ATI's 2017 financial statements and prepare a corporate tax return; and
- (v) Utilities and other occupancy costs.

5.3.2 Assuming the Transaction is approved and completed, the estimated expenses to complete the administration of the estate are as follows:

- (i) Professional fees owing for tax preparation of \$9,000;
- (ii) Consultant wages to monitor the 329 Property, Pad and Lagoons of \$9,000;
- (iii) Pro-rata equipment lease obligations of \$15,000;
- (iv) Costs associated with third NASM application totalling \$54,448;
- (v) Real property holding costs for insurance and utilities of \$80,725;
- (vi) Professional fees as discussed in Section 6 of this report of approximately \$399,059.

5.4 Projected Final Statement of Receipts and Disbursements

5.4.1 The Receiver has included in the Confidential Supplement its Projected Final Statement of Receipts and Disbursements.

6.0

Receiver and its Counsel's Accounts

- 6.1.1** As required in the Appointment Order, the Receiver is seeking approval of its accounts and the accounts of its legal counsel for the receivership period to date and the estimated fees and disbursements for the Receiver and its legal counsel to complete the receivership proceeding.
- 6.1.2** The Court has previously approved the Receiver's accounts totalling \$242,950, inclusive of disbursements and HST, for the period ending November 15, 2018 and the accounts of the Receiver's legal counsel totalling \$52,914, inclusive of the disbursements and HST, for the period ending October 31, 2018.
- 6.1.3** The Receiver has submitted two invoices since the Third Report as follows:

Invoice Date	Period	Amount (\$)
December 21, 2019	November 20 – December 20, 2018	\$13,560.00
February 28, 2019	December 21 – February 28, 2019	\$16,950.00

The invoices, together with the Receiver's affidavit of verification of fees, are attached as **Appendix K**.

- 6.1.4** The Receiver will incur further fees and disbursements to finalize the administration of this estate, including, without limitation, completing the Transaction, delivering possession and control of the assets and records to 267, coordinating the release of any leased assets not assumed by 267, filing of all final HST returns, preparing and lodging the Receiver's Notice to Creditors pursuant to section 246 of the BIA, and all other final administrative matters. The Receiver estimates that these further fees and disbursements will total \$15,000, excluding disbursements and taxes (the "**Receiver Fee Accrual**").
- 6.1.5** Miller Thomson LLP ("**MT**"), the Receiver's legal counsel, has submitted two invoices since the Third Report as follows:

Invoice Date	Period	Amount (\$)
December 20, 2018	October 31 – December 20, 2018	\$17,340.00
December 31, 2018	December 21 – December 31, 2018	\$132.21
February 27, 2019	January 1, 2019 – February 22, 2019	\$15,662.00

The invoices, together with MT's affidavit of verification of fees, are attached as **Appendix L**.

- 6.1.6** MT will incur further fees and disbursements to finalize the administration of this estate, including, without limitation, filing and attending on the motion for approval of the Final Report, completing the Transaction (if approved), and the filing of the Discharge Certificate in connection with the Discharge Order. MT estimates that these further fees and disbursements will total \$20,000, excluding disbursements and taxes (the “**MT Fee Accrual**”).
- 6.1.7** It is the Receiver’s opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work done by the Receiver and MT in connection with the receivership during the relevant periods. The Receiver recommends approval of the Professional Fees, including the Receiver Fee Accrual and MT Fee Accrual, by the Court.

7.0

Recommended Distribution

7.1 Secured Creditor Registrations

7.1.1 The Assets consist of personal property of ATI and the 329 Property.

7.1.2 The following is a summary of the *Personal Property Security Act (Ontario)* ("PPSA") registrations against ATI as at February 25, 2019

REGISTRATION NO.	SECURED PARTY	COLLATERAL CLASSIFICATION
20141009 1458 6005 5919	NATIONAL LEASING GROUP INC.	EQUIPMENT, MOTOR VEHICLE INCLUDED
20141103 1945 1531 5719	BLUESHORE LEASING LTD.	EQUIPMENT
20141112 1022 6005 6521	NATIONAL LEASING GROUP INC.	EQUIPMENT
20150318 1030 8077 6388 20150319 1432 8077 6552 20150319 1432 8077 6553	RCAP LEASING INC.	EQUIPMENT, ACCOUNTS, OTHER, MOTOR VEHICLE INCLUDED
20160307 1413 5064 8306	WELLS FARGO EQUIPMENT FINANCE COMPANY	EQUIPMENT, MOTOR VEHICLE INCLUDED
20160307 1256 5064 8303	WELLS FARGO EQUIPMENT FINANCE COMPANY	INVENTORY, EQUIPMENT, ACCOUNTS, OTHER, MOTOR VEHICLE INCLUDED
20160311 1038 5064 8465	WELLS FARGO EQUIPMENT FINANCE COMPANY	INVENTORY, EQUIPMENT, ACCOUNTS, OTHER, MOTOR VEHICLE INCLUDED
20160331 1104 5064 9609	WELLS FARGO EQUIPMENT FINANCE COMPANY	EQUIPMENT, MOTOR VEHICLE INCLUDED
20160404 1636 8077 3992	JOHN DEERE CANADA ULC	EQUIPMENT, OTHER, MOTOR VEHICLE INCLUDED
20160429 1139 6005 7452 20170217 1235 6005 3065	NATIONAL LEASING GROUP INC.	EQUIPMENT
20160629 1935 1531 9007	NORTH SHORE TRANSPORT FINANCE LTD. BLUESHORE TRANSPORT FINANCE LTD.	EQUIPMENT, MOTOR VEHICLE INCLUDED

20160704 1354 6005 8869	NATIONAL LEASING GROUP INC.	EQUIPMENT
20160808 0933 1616 9372	GREAT LAKES LEASING A DIVISION OF 1354439 ONTARIO INC.	EQUIPMENT, OTHER
20161021 1402 1462 5228	ECHELON INSURANCE	OTHER
20170227 1936 1531 2753	BLUESHORE LEASING LTD.	EQUIPMENT, MOTOR VEHICLE INCLUDED
20170227 1431 6005 3208	NATIONAL LEASING GROUP INC.	EQUIPMENT
20170302 1528 6005 3269	NATIONAL LEASING GROUP INC.	EQUIPMENT
20170629 1933 1531 9658	BLUESHORE LEASING LTD.	EQUIPMENT
20170629 1038 8077 6699	RCAP LEASING INC.	EQUIPMENT, ACCOUNTS, OTHER
20170731 1933 1531 8128	BLUESHORE LEASING LTD.	EQUIPMENT
20170814 1440 1530 2082 20170818 1941 1531 8428	CWB MAXIUM FINANCIAL INC.	EQUIPMENT, OTHER
20171003 1932 1531 2267	BLUESHORE LEASING LTD.	EQUIPMENT
20171027 1019 9243 0553	AXIOM LEASING INC.	EQUIPMENT, OTHER
20171121 0916 1590 6841	NICAS INVESTMENTS LTD.	ACCOUNTS, OTHER
20190225 1204 1590 0678 (late renewal of 20140206 1323 1532 6647)	BANK OF MONTREAL/BANQUE DE MONTREAL	INVENTORY, EQUIPMENT, ACCOUNTS, OTHER, MOTOR VEHICLE INCLUDED
20190225 1209 1590 0679 (late renewal of 20131217 1545 1590 3347)	BANK OF MONTREAL	INVENTORY, EQUIPMENT, ACCOUNTS, OTHER, MOTOR VEHICLE INCLUDED
20190225 1612 1031 6491	HER MAJESTY IN RIGHT OF ONTARIO REPRESENTED BY THE MINISTER OF FINANCE	INVENTORY, EQUIPMENT, ACCOUNTS, OTHER

7.1.3 A copy of the PPSA search against ATI as of February 26, 2019 is attached as **Appendix M**.

7.1.4 Attached as **Appendix N** is a copy of the parcel register for the 329 Property as at February 25, 2019 which shows the following registered encumbrances;

Instrument	Registration Number	Party	Date	Amount
Bylaw	R37 6613		January 25/67	N/A
Plan Reference	12R759		March 13/73	N/A
Notice	CE405504	The Corporation of the Town of Kingsville	Dec 8/09	N/A
Notice	CE594394	The Corporation of the Town of Kingsville	Dec 12/13	N/A
Charge	CE667434	BMO	July 17/15	\$12,800,000
Notice of Assignment of Rents	CE667435	BMO	July 17/15	N/A
Notice of Lease	CE688842	Paid 4 Power Investments Inc.	Nov 18/15	N/A
Notice of Security Interest	CE788281	CWB Maximum Financial Inc.	Aug 22/17	N/A
Notice of Security Interest	CE804622	Blueshore Leasing Ltd.	Nov 21/17	N/A
Application for Court Order	CE874633	Ontario Superior Court of Justice	Feb 25/19	N/A

Of the registered encumbrances against the 329 Property only the Charge and Assignment of Rents (instrument numbers CE667434 and CE667435) and the Notice of Lease in favour of Paid4Power Investment Inc. (instrument number CE688842) are to be vested out on the completion of the Transaction.

7.2 Independent Legal Opinion and BMO Security

7.2.1 The Receiver's independent legal counsel, Miller Thomson LLP ("MT"), has reviewed the security registrations against the Companies, in favour of BMO, and various equipment lessors (Axiom Leasing Inc., Blueshore Leasing Ltd., CWB Maximum Financial Inc., RCAP Leasing Inc., National Leasing Group Inc., Great Lakes Leasing, a division of 1354439 Ontario Inc., Blueshore Transport Finance Ltd., John Deere ULC and Wells Fargo Equipment Finance Company, collectively the "Equipment Lessors"). Subject to the customary assumptions and

qualifications, MT has provided an opinion that a) BMO's security registered against the 329 Property is valid and enforceable, b) BMO has a valid and perfected security interest in the personal property of the Companies, c) each of the Equipment Lessors has a valid and perfected purchase money security interest in its specific collateral and, d) the Equipment Lessor's purchase money security interests have priority over BMO's security interest in the Equipment Lessors' specific collateral.

7.2.2 A copy of the MT security opinion dated July 5, 2018 was previously filed with the Court with the Second Report. A copy of the MT Security Opinion is attached as **Appendix O**.

7.2.3 Subsequent to the date of the MT Security Opinion, the two BMO registrations against ATI under the PPSA (registration numbers 20131217 1545 1590 3347 and 20140206 1323 1532 6647) lapsed on December 17, 2018 and February 6, 2019, respectively. Late renewals of those registration were filed on February 25, 2019. As reflected on the PPSA search attached as Appendix M, there were no intervening registrations during the lapse period.

7.3 Receiver's Proposed Distribution

7.3.1 All of the assets realized by the Receiver were owned by ARRRC (the 329 Property) and ATI (the personal property). There were no realizations from the assets of 229, 226 and 251.

7.3.2 The Assets included in the Transaction consist of the 329 Property, owned machinery, equipment, vehicles and furniture of ATI, the Kingsville Action and ATI's rights under certain equipment leases. The Assets do not include the personal property which is subject to the claims of Equipment Lessors.

7.3.3 Based on MT's review and the searches completed, other than government priority claims, the Receiver is not aware of any charges against the Assets in priority to BMO.

7.3.4 CRA has a priority charge over the proceeds of the ATI assets for its source deduction and HST deemed trust claims. Those claims are \$9,714 and \$329,329, respectively.

7.3.5 The only asset of ARRRC being realized upon is the 329 Property. The indebtedness of ARRRC to BMO is secured by a charge registered against the 329 Property in the principal amount of \$12,800,000 (the "**ARRRC Mortgage**"). The ARRRC Mortgage was registered on July 17, 2015. CRA has claimed a deemed trust for unremitted source deductions owing by ARRRC of \$7,462.66. The amount allocated to the 329 Property in the Transaction is significantly less than the amount secured by the ARRRC Mortgage. As the ARRRC Mortgage pre-dates the ARRRC source deduction arrears, BMO's claim under the ARRRC Mortgage appears to be in priority to CRA's deemed trust claim.

7.3.6 It is the Receiver's understanding that ATI and ARRRC will be making assignments in bankruptcy prior to the completion of the Transaction. Should that occur, CRA's deemed trust claims for unremitted HST will cease to be effective. In those circumstances, only the CRA deemed trust claim in respect of ATI for unremitted source deductions will have priority over the BMO security.

7.3.7 Based upon the foregoing, the Receiver proposes the following distributions of the proceeds remaining in the receivership estate after payment of all costs and expenses, including the Professional Fees:

- (i) \$200,000, plus interest thereon, to BMO in satisfaction of the Receiver's Borrowings/Certificates;
- (ii) \$9,714 to CRA in satisfaction of its source deduction deemed trust claim in respect of ATI;
- (iii) \$329,329 to CRA in satisfaction of CRA's HST deemed trust claim in respect of ATI unless ATI is bankrupt prior to such distribution being made; and
- (iv) The balance to BMO (the balance payable to BMO will include the \$329,329 payable to CRA on account of CRA's HST deemed trust claim in respect of ATI in the event that ATI is bankrupt prior to such distribution being made).

7.3.8 The Receiver anticipates a refund of the net HST paid by the Receiver following CRA's assessment of the 2017 tax return. Upon receipt, the Receiver proposes to pay those funds directly to BMO without further court application.

7.3.9 Other than set out herein, the Receiver does not anticipate receiving any further funds in the estate.

7.3.10 A portion of the purchase price for the Transaction is to be satisfied by way of a promissory note from 267 to be delivered on closing. As part of the distribution of the proceeds in the estate, the Receiver intends to assign that promissory note to BMO.

8.1.1 Prior to the Receiver's discharge, the Receiver proposes to attend to the following matters:

- (i) the completion of the Transaction;
- (ii) payment of the distributions set out above;
- (iii) other residual and/or administrative matters in connection with the receivership; and
- (iv) filing of the Receiver's discharge certificate.

8.1.2 Subject to the completion of the matters above, the Receiver requests to be discharged of its duties.

9.1 We submit this Fourth Report to the Court and respectfully request that the Court make an order as requested in paragraph 1.2.1 above.

All of which is respectfully submitted this 28th day of February 2019.

**MNP Ltd. in its capacity as Receiver of
ARRRC International Inc., Agriculture Technology Incorporated, 2265469 Ontario Inc.,
2292760 Ontario Inc., and 2517748 Ontario Inc.
and not in its personal capacity**



**Per: Robert W. Smith CPA, CA, CIRP, LIT
Senior Vice President**