

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

B E T W E E N:

**BANK OF MONTREAL**

Applicant

and

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

Respondents

**THIRD 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.**

November 21, 2018

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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 lands municipally known as 329 County Road 34, Ruthven Ontario (the “**329 Property**”). The 329 Property is comprised of 26.42 acres of land and has been improved with multiple outbuildings, including three private residences. ARRRC leases the 329 Property exclusively to Agriculture Technology Inc. (“**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 City.
- 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.
- 1.1.8** The debt owing to BMO is secured by the following:
- (i) A collateral charge registered against the Property in the principal amount of \$12,800,000;
  - (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 Companies. A copy of the Appointment Order and the endorsement of Justice Pattillo are 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 business of the Companies;
  - (iii) 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 Companies, the 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 two previous reports to this Court as follows:
- (i) Report dated June 19, 2018 (the “**First Report**”) which included a confidential supplemental report to the Court. 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 (“McEwen Order”)**.
  - (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 (“Hainey Order”)**.

## **1.2 Purpose of the Receiver's Third Report**

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

- (i) Report on the Receiver's activities since the Second Report;
- (ii) Provide an update to the Court on the Receiver's sale solicitation process ("**SSP**");
- (i) Obtain an Order approving the Final Report and the confidential supplement thereto, along with the activities of the Receiver detailed therein;
- (ii) Obtain approval of the Receiver's Statement of Receipts and Disbursements for the period April 18, 2018 to November 21, 2018;
- (iii) Obtain approval of the fees and disbursements of the Receiver and its legal counsel, including the Fee Accrual (as defined and described herein); and
- (iv) Obtain an Order discharging MNP as Receiver and releasing MNP from all matters and liability in connection with the receivership.

## 2.0

## *Receiver's activities since the Second Report*

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### 2.1 Environmental – Leachate Pad and Lagoons

- 2.1.1** As discussed in the First Report and Second Report, 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 Second Report the Receiver organized the removal of approximately 600,000 gallons of NASM from the Ponds. NASM was applied to local farmland in accordance with protocols pursuant to the Nutrient Management Act ("**NMA**").
- 2.1.3** Members of the Posthumous family retained by the Receiver have continued 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 November 6, 2018 and reported Leachate levels remain below freeboard range.
- 2.1.5** Approximately one million gallons of Leachate has been removed from Lagoons between May 29 and August 24, 2018. Lagoon Leachate levels continue to rise in conjunction with area precipitation. The Receiver has been required to organize regular NASM applications to manage Leachate Levels and prevent containment breach resulting from rising levels of Leachate. NASM can only be removed and applied to approved fields when field and weather conditions permit. Present conditions are ideal to apply a further 500,000 gallons of NASM. To mitigate the risk of containment breach occurring between now and spring 2019 (when additional capacity will be required to manage spring thaw run off) the Receiver has organized a third NASM application. The third NASM application will be completed prior to December 1, 2018 being the final deadline to apply NASM in accordance with the NMA.

### 2.2 Government Accounts

- 2.2.1** Canada Revenue Agency ("**CRA**") has completed its audit of the Companies source deduction accounts and confirms the following deemed trust priority claims for unremitted source deductions:
- (i) Agriculture Technology Inc. - \$9,714
  - (ii) ARRC International Inc. - \$7,462
  - (iii) 2265469 Ontario Inc. - \$38,206
  - (iv) 2292760 Ontario Inc. - \$55,152
  - (v) 2517748 Ontario Inc. - \$30,486

A copy of CRA's Statement of Trust Examination is attached as **Appendix F**.

**2.2.2** CRA has completed a preliminary review of the Companies HST accounts and has assessed the following deemed trust priority claim for HST:

- (i) Agriculture Technology Inc. - \$317,705
- (ii) ARRC International Inc. - \$687,680
- (iii) 2265469 Ontario Inc. – credit balance of \$31,249
- (iv) 2292760 Ontario Inc. - \$59,959
- (v) 2517748 Ontario Inc. - \$29,174

A copy of CRA's HST Audit Statement is attached as **Appendix G**.

**2.2.3** The Receiver has reviewed preliminary audit results with respect to ATI and believes a detailed review of company records is necessary to confirm the reasonableness of CRA's assessment and calculation of sales and input tax credits allowances. Accordingly, the Receiver has requested the audit not be finalized before allowing ATI and the Receiver enough time to investigate CRA's assessment/reassessment of several reporting periods.

**2.2.4** ATI's former accountant, Collins Barrow LLP ("Collins"), was engaged to file ATI's income tax return and final pre-receivership HST remittance. Collins is still in the process of finalizing ATI's returns; however, based on preliminary calculations the Receiver expects a corporate income tax refund of approximately \$250,000. CRA is entitled to apply (setoff) corporate income tax credits against all ATI HST and source deduction arrears. The available credit balance after setoff is then refunded to the tax debtor. As a result, the net credit refund available to ATI is contingent on the results of the HST audit.

### **2.3 2435895 Ontario Inc. and waste bins**

**2.3.1** As discussed in the Second Report, the Companies occupied leased premises at 1593 County Road 34, Kingsville, Ontario ("**1593 Property**") pursuant to terms contained in an Offer to Lease agreement between the property's owner, 2435895 Ontario Inc. ("**243**") and ATI. ATI is the owner of forty 40' roll off waste containers ("**Subject Property**"). Through the ordinary course of business, the Subject Property came to be situated at the 1593 Property. There being no economic benefit to assume the terms of ATI's tenancy, the Receiver did not occupy the 1593 Property and began coordinating a possession exercise to secure and repatriate the Subject Property. 243 refused to allow the Receiver to take possession of the Subject Property. In the Second Report the Receiver requested a Court Order compelling 243 to deliver up the Subject Property. 243 remains in possession of the Subject Property. This issue was adjourned on consent to allow 243's newly appointed legal counsel to review the issue. Since the Second Report, the Receiver and 243 have entered preliminary discussions to settle possession rights in a commercially reasonable manner; however, at the time of this report 243 and the Receiver have not agreed to mutually acceptable terms.



## **2.4 Offshore bank account**

**2.4.1** The Receiver has recently learned of the existence of an offshore bank account held at a CIBC branch located in the Turks and Caicos in which the Companies may have an interest. The Receiver understands there is approximately \$75,000 USD on deposit (“**Offshore Proceeds**”). The Receiver’s counsel has written to CIBC regarding the account and to confirm if the Offshore Proceeds constitute property of the Companies which are subject to the provisions of the Appointing Order. No response has yet been received from CIBC.

## **2.5 Wage Earner Protection Program**

**2.5.1** As set out in the First Report the Receiver initiated the claims process for former employees of the Companies under WEPP who had claims for unpaid wages, vacation, termination and severance pay (collectively “**Wages**”).

**2.5.2** The Receiver is aware of the following payments made to former employees under WEPP:

- (i) Agriculture Technology Inc. - \$18,806
- (ii) 2265469 Ontario Inc. – \$10,285
- (iii) 2292760 Ontario Inc. - \$6,235
- (iv) 2517748 Ontario Inc. - \$5,479

**2.5.3** Total known payments made by HRSDC to employees amount to \$40,805. HRSDC payments are in respect of termination pay outstanding only. Under the Wage Earner Protection Program Act and section 81.4 of the BIA, payments for termination pay rank as unsecured claims.

- 3.1.1** Pursuant to the Initial Order, the Receiver was authorized to market any or all of the assets and operations of the Companies (the “**Assets**”), including advertising and soliciting offers and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
- 3.1.2** The First Report outlined the SSP undertaken by the Receiver for the Assets and undertakings of the Companies. The SSP was approved by the Court in the McEwen Order. The original deadline for the submission of proposals was 2:00 pm on July 27, 2018 (“**First Bid Deadline**”). The First Bid Deadline provided prospective bidders six weeks from the time of the Receiver’s initial contact to complete due diligence.
- 3.1.3** In its Second Report the Receiver provided the following information with respect to its actions to market the sale of Assets:
- The total number of potentially interested parties who were contacted with the opportunity and that executed confidentiality agreements;
  - A description of advertising publications; and
  - Details regarding its management of prospective purchaser queries, and information and asset viewing requests.
- 3.1** The Receiver’s marketing campaign resulted in several proposals being received by the First Bid Deadline. Having regard to the proposals received and the expressed desire of certain interested parties to conduct further due diligence, the Receiver sought Court approval for an extension to the proposal deadline from the First Bid Deadline to 2:00 pm on September 11, 2018 (“**Second Bid Deadline**”). The extension to the deadline for proposals to the Second Bid Deadline was approved by the Court in the Hainey Order. On July 31, 2018 the Receiver contacted all parties that had executed a Non-Disclosure Agreement to advise of the bid extension deadline and welcomed parties to revisit the data room dedicated to the SSP.
- 3.2** Prior to the expiry of the Second Bid Deadline the Receiver received three proposals, one of which was submitted by Mr. Matthew Posthumous, on behalf of a corporation to be formed. Each of the interested parties again expressed a need to conduct further due diligence in advance of finalizing their respective offers. Accordingly, throughout the SSP the Receiver extended the bid deadline to 2:00 pm on October 26, 2018 (“**Third Bid Deadline**”). The second extension granted offerors a further 45 days from the Second Bid Deadline to conduct additional due diligence. On September 17, 2018 the Receiver contacted the three parties which submitted proposals to advise of the bid extension deadline. The Bank supported the further extension of the bid deadline.
- 3.3** The SSP did not result in any viable offer for the Assets. Details of the offers submitted are discussed in the Receiver’s Confidential Supplemental Report to this Final Report (“**Confidential Supplement**”).

## 4.0

## *Assignment of Bank Indebtedness*

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- 4.1.1** Following the results of the SSP and expiry of the Third Bid Deadline, the Bank was approached by an arms-length, unrelated third party, Maynbridge Capital Inc. (“**Maynbridge**”) to purchase the Bank’s debt and security. The Bank and Maynbridge subsequently 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.
- 4.1.2** At the request of Maynbridge, the purchase price to be paid under the Trade Confirmation is to be kept confidential. Details of same are therefore presented to Court in the Confidential Supplement. A redacted copy of the Trade Confirmation is attached as **Appendix H**. An unredacted copy of the Trade Agreement is included in the Confidential Supplement.
- 4.1.3** The assignment of the Bank’s debt and security pursuant to the Trade Confirmation is to be completed on or before December 14, 2018. The transaction is subject to the following conditions:
- (i) Maynbridge confirming the amount owing to the Bank and its satisfactory review of the credit documents;
  - (ii) The discharge of the Receiver;
  - (iii) Approval of Maynbridge’s credit committee; and
  - (iv) Negotiation, execution and delivery of assignment agreements and transfer documentation.
- 4.1.4** The Bank wishes to complete the assignment of its debts and security pursuant to the Trade Confirmation and is not prepared to support any of the offers submitted by the Third Bid Deadline in preference to completing the assignment of its debt and security to Maynbridge.
- 4.1.5** In the event that the assignment is not completed, the receivership would remain ongoing. In that event, the Receiver will report promptly to the Service List and the Court on the further steps to be taken in the receivership. In support of the Order sought to discharge the Receiver and conclude the receivership, the Receiver notes the following:
- (i) As discussed in the Second Report, the Receiver’s counsel has provided an opinion that the Bank’s security is valid and enforceable as against the Companies, subject to the usual assumptions and qualifications;
  - (ii) A rigorous marketing process was carried out by the Receiver to optimize the realization of the Assets. The Receiver’s marketing efforts have been exhausted, with no viable proposal for the Assets being received to date;
  - (iii) The Bank is the senior lender to the Companies and is most impacted by the realization of the Assets; and
  - (iv) Other than equipment lessors and lenders which have an interest in a specific piece or pieces of equipment or chattel, the Bank is the only stakeholder which has any practical economic interest in the Assets.

- 4.1.6** Subject to the completion of the assignment by the Bank of its debt and security pursuant to the Trade Confirmation, the Receiver is seeking a full and final discharge of its duties and obligations under the Appointment Order. Upon discharge, the receivership administration will end and the Assets and undertakings of the Companies will revert back to the Companies and their secured creditors. The completion of the assignment and discharge of the Receiver will not alter the priorities or prejudice the rights of the equipment lessors and those lenders having an interest in a specific piece of pieces of equipment or other chattel.
- 4.1.7** The conclusion of the receivership also leaves open the possibility of the business carried on by the Companies being salvaged and providing continuing employment, rather than the Assets being liquidated and dispersed.

## 5.0

## *Statement of Receipts and Disbursements*

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- 5.1.1** **Appendix I**, attached, is a summary of the Receiver's Final Statement of Receipts and Disbursements for the period April 18 to November 15, 2018.
- 5.1.2** In addition to advances from the Bank under Receiver Certificates totalling \$185,000, the Receiver has generated receipts of \$154,997, primarily from the sale of inventory and collection of accounts receivable.
- 5.1.3** The Receiver has made disbursements to date of \$288,553, primarily for:
- (i) draining the Lagoon Leachate levels in accordance with NASM Plan;
  - (ii) Contract labour wages paid to the Posthumous Family;
  - (iii) Legal fees paid to Wilms & Shier Lawyers LLP for assistance the MOE Environmental Review Tribunal, as discussed in the First Report;
  - (iv) Retainer paid to Barrow to finalize the 2017 financial statements and prepare a corporate tax return; and
  - (v) Utilities and other occupancy costs.
- 5.1.4** The Receiver has included provisional costs ("**Final Costs**"), including costs incurred but not yet paid for, plus costs yet to be incurred to finalize the administration of this estate. The estimated Final Costs are as follows:
- (i) Costs to remove approximately 500,000 gallons of Leachate from the Lagoon totalling \$60,000;
  - (ii) Real property holding costs for insurance and utilities of \$26,980;
  - (iii) Pro-rata equipment lease obligations of \$15,000;
  - (iv) Professional fees owing for tax preparation of \$9,000;
  - (v) Professional fees as discussed in Section 6 of this report of \$285,363. Of this amount \$202,262 was approved in the Second Report. The Receiver is seeking approval of the remaining \$59,602 in this Final Report.
  - (vi) Professional fee accrual to finalize administration as discussed in section 6 of this report \$23,500.
- 5.1.5** These are the known Final Costs, totalling \$396,343, as of the date of this report. There may yet be additional costs that arise which the Receiver is obligated to pay.
- 5.1.6** The Bank has agreed to fund the Final Costs after the Debt Assignment.

## 6.0

## *Receiver and its Counsel's Accounts*

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- 6.1.1** As required in the Initial Order, the Receiver is seeking the approval of its accounts and the accounts of its legal counsel for the receivership period to date.
- 6.1.2** The Receiver has submitted one invoice since the Second Report, for the period August 1, 2018, November 15, 2018 in the amount of \$40,000 inclusive of disbursements and before HST. The invoice, together with the Receiver's affidavit of verification of fees, is attached as **Appendix J**.
- 6.1.3** The Receiver will incur further fees and disbursements to finalize the administration of this estate, including, without limitation, returning possession and control of the assets and records to the Companies, 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 \$10,000, excluding disbursements and taxes (the "**Receiver Fee Accrual**").
- 6.1.4** Miller Thomson LLP ("MT"), the Receiver's legal counsel, has submitted three invoices since the Second Report as follows:

<b>Invoice Date</b>	<b>Period</b>	<b>Amount (exclusive of HST)</b>
August 22, 2018	July 1, 2018 to July 31, 2018	9,061.82
September 30, 2018	August 1, 2018 to September 30, 2018	8,200.06
October 31, 2018	October 1, 2018 to October 31, 2018	<u>2,340.00</u>
		<u>19,601.88</u>

- 6.1.5** 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 and the filing of the Discharge Certificate in connection with the Discharge Order. MT estimates that these further fees and disbursements will total \$13,500, excluding disbursements and taxes (the "**MT Fee Accrual**"). The aforementioned invoices, together with MT's affidavit of verification of fees, are attached as **Appendix K**.
- 6.1.6** 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.

- 7.1 We submit this Final Report to this Honourable Court and respectfully requesting this Honourable Court to make an order:
- (i) Approving the Final Report and the confidential supplement thereto, along with the activities of the Receiver detailed therein;
  - (ii) sealing the Confidential Supplement;
  - (iii) Approving the Receiver's Statement of Receipts and Disbursements for the period August 14, 2018 to November 21, 2018;
  - (iv) Approving the fees and disbursements of the Receiver and its legal counsel, including the Receiver Fee Accrual and MT Fee Accrual; and
  - (v) Subject to the completion of the assignment by the Bank of its debt and security pursuant to the Trade Confirmation, discharging MNP as receiver and releasing MNP from all matters and liability in connection with the receivership.

All of which is respectfully submitted this 21<sup>st</sup> day of November 2018.

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



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