

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

B E T W E E N:

CANADIAN WESTERN BANK

Applicant

and

**INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX
INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC.,
11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC.,
2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC.,
2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC.,
2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC.,
2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC.,
421 WHARNCLIFFE LTD. and 425 WHARNCLIFFE ROAD INC.**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY
AND INSOLVENCY ACT, RSC 1985, c. B-3*, AS AMENDED; AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, RSO 1990, c. C.43, AS AMENDED**

**MOTION RECORD OF THE RECEIVER,
MNP LTD.**

(Returnable May 29, 2023)

May 24, 2023

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AND TO:	1000017398 ONTARIO INC. 53 Celestine Drive Etobicoke, ON M9R 3N2 Attention: Mohammad Khalid Raja <i>Secured Creditor of Index Foods Inc. and Index International Inc.</i>
AND TO:	2851605 ONTARIO INC. 101-101 Westmore Drive Etobicoke, ON M9V 3Y6 Attention: Mohammad Shafique <i>Secured Creditor of 2700774 Ontario Inc.</i>
AND TO:	2851606 ONTARIO INC. 101-101 Westmore Drive Etobicoke, ON M9V 3Y6 Attention: Mohammad Shafique <i>Secured Creditor of 2723710 Ontario Inc.</i>
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	<p>Attention: General Counsel <i>Franchisor</i></p>
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TAB 1

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

B E T W E E N:

CANADIAN WESTERN BANK

Applicant

and

INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC., 2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC., 421 WHARNCLIFFE LTD. and 425 WHARNCLIFFE ROAD INC.

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE COURTS OF JUSTICE ACT, RSO 1990, c. C.43, AS AMENDED*

NOTICE OF MOTION

(Returnable May 29, 2023)

MNP LTD., in its capacity as receiver (the “**Receiver**”) of the Respondents will make a motion to a Judge of the Commercial List, on Monday, May 29, 2023 at 9:45 a.m., or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard *(choose appropriate option)*

- In writing under subrule 37.12.1(1) because it is [insert on consent, unopposed or made without notice];
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;

[X] By video conference.

THE MOTION IS FOR Orders:

1. abridging the time for service and filing of this Notice of Motion and the Motion Record such that the Motion is properly returnable on May 29, 2023 and dispensing with further service thereof;
2. approving the First Report of the Receiver dated May 23, 2023 (the “**First Report**”) and the activities and recommendations of the Receiver described therein;
3. approving the Sale Process outlined in the First Report and authorizing the Receiver to carry out the Sales Process described in the First Report;
4. approving the sale of the property owned by 421 Wharncliffe Ltd. (the “**Debtor**”) known municipally as 421 Wharncliffe Road South, London, Ontario, and legally described as, PT LT 1, PL 29, PTS 1 & 2, 33R5153 & PT 2, 33R5487 S/T 837774 if any, S/T 583284 if any; London/Westminster (PIN 08398-0360 (LT)) (the “**421 Property**”), on the terms set out in the Agreement of Purchase and Sale dated March 29, 2023 between the Debtor and Muhammad Saleem (in trust for a corporation to be formed, the “**Purchaser**”), as amended by the First Amendment to Agreement of Purchase and Sale dated May 15, 2023 between the Purchaser and Receiver (the “**Sale Transaction**”):
5. authorizing the Receiver to complete the Sale Transaction;
6. upon delivery of a certificate by the Receiver confirming the completion of the Sale Transaction, vesting in the Purchaser, the right, title and interest of Debtor in and to the 421 Property free and clear of all encumbrances, estates, rights, title, liens, interest and claims, save and except for certain permitted encumbrances; and
7. such further relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. Pursuant to an Order of the Honourable Mr. Justice Penny dated May 8, 2023, MNP Ltd. was appointed as Receiver of all of the Respondents' assets, property and undertakings;
2. Prior to the Receiver's appointment, the Debtor and Purchaser entered into an Agreement of Purchase and Sale pursuant to which the Debtor agreed to sell the 421 Property to the Purchaser;
3. On May 15, 2023, the Purchaser and Receiver entered into the First Amendment to the Agreement of Purchase and Sale, pursuant to which, *inter alia*, the Purchaser and Receiver ratified the Agreement of Purchase and Sale subject to an increase in the amount of the deposit payable by the Purchaser and conditional upon obtaining an order of the court approving the sale of the 421 Property on the terms set out in the Agreement of Purchase and Sale, as amended;
4. The purchase price payable under the Sale Transaction is reasonable for the 421 Property that is subject to the Sale Transaction;
5. The Receiver does not believe that further exposure of the 421 Property will result in superior offers;
6. Canadian Western Bank ("CWB"), the first ranking mortgagee registered on title to the 421 Property consents to the Sale Transaction;
7. CWB is expected to suffer a significant shortfall in the recovery of its secured indebtedness and is the only party with an economic interest in the Sale Transaction;
8. The proposed sale process recommended by the Receiver in the First Report is reasonable in the circumstances given the nature of the Respondents' businesses and assets;

9. Section 249 of the *Bankruptcy and Insolvency Act*; and
10. Rules 3.02(1), 16.08 and 37 of the *Rules of Civil Procedure*.
11. Such further and other grounds as the lawyers may advise.

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

1. The First Report of the Receiver dated May 23, 2023; and
2. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

May 23, 2023

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Lawyers for the Receiver

TO: **SERVICE LIST**

CANADIAN WESTERN BANK
Applicant

-and- INDEX HOLDING GROUP INC. et al.
Respondents

Court File No. CV-23-00698447-00CL

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

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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TAB 2

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

BETWEEN:

CANADIAN WESTERN BANK

Applicant

- and -

**INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC.,
INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO
INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO
INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO
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INC., 2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO
INC., 421 WHARNCLIFFE LTD. AND 425 WHARNCLIFFE ROAD INC.**

Respondents

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

**FIRST REPORT OF MNP LTD. AS RECEIVER AND MANAGER OF THE ASSETS,
UNDERTAKINGS AND PROPERTIES OF
THE RESPONDENTS**

May 23, 2023

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APPENDICES

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INTRODUCTION

1. On May 8, 2023, MNP Ltd. (“**MNP**”) was appointed as the receiver and manager (the “**Receiver**”) without security, of the assets, undertakings and properties (the “**Property**”) of Index Holding Group Inc., Index Group of Companies Inc., Index International Inc., Index Foods Inc., 2640179 Ontario Inc., 11030434 Canada Ltd., 2700774 Ontario Inc., 2700767 Ontario Inc., 2683960 Ontario Ltd., 11030418 Canada Inc., 2723710 Ontario Inc., 2718366 Ontario Inc., 2737332 Ontario Inc., 2737334 Ontario Inc., 2723714 Ontario Inc., 2723716 Ontario Inc., 2737338 Ontario Inc., 2790760 Ontario Inc., 2775290 Ontario Inc., 2775296 Ontario Inc. and 421 Wharncliffe Ltd. (the “**Index Group**” or the “**Companies**”) by order (the “**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). A copy of the Appointment Order and its corresponding endorsement is attached as **Appendix “A”**.

2. The circumstances leading to the appointment of the Receiver are set out in the affidavit of Tyson Hartwell of Canadian Western Bank (“**CWB**”) sworn April 27, 2023, filed in support of the Appointment Order (the “**Hartwell Affidavit**”).

3. The Companies are either federally or provincially incorporated entities that operated up to six Popeye’s Louisiana Kitchen (“**Popeye’s**”) and two Denny’s Restaurants (“**Denny’s**”) franchises in and around the Greater Toronto Area.

4. 421 Wharncliffe Ltd. (“**421 Wharncliffe**”) is the registered owner of a vacant lot located at 421 Wharncliffe Road South, London, Ontario. (the “**421 Property**”)

5. At the time of the Receiver’s appointment, the leases to three of the Companies’ Popeye’s locations were terminated by the respective landlords. The table below summarizes the Index Group entities that operate Popeye’s and Denny’s franchises, their location and status at the date of the Receiver’s appointment.

	Entity	Franchisee	Location	Status
1.	2775290 Ontario Inc.	Denny’s	Brantford	Operating
2.	11030344 Canada Ltd.	Denny’s	Burlington	Operating
3.	2790760 Ontario Inc.	Denny’s	Newmarket	Under construction
4.	2775296 Ontario Inc.	Denny’s	Rexdale	Under construction
5.	2723716 Ontario Inc.	Denny’s	Woodbine Markham	Under construction
6.	2700774 Ontario Inc.	Popeye’s	Oshawa	Operating

	Entity	Franchisee	Location	Status
7.	Index Foods Inc.	Popeye's	Dundas Whitby	Operating
8.	Index International Inc.	Popeye's	Dundas Oshawa	Operating
9.	11030418 Canada Inc.	Popeye's	Baldwin St. Brooklyn	Lease terminated pre receivership – closed
10.	2700767 Ontario Inc.	Popeye's	Napanee	Lease terminated pre receivership – equipment sold permanently closed
11.	2683960 Ontario Ltd.	Popeye's	Uxbridge	Lease terminated pre- receivership – equipment sold permanently closed

PURPOSE OF THIS REPORT

6. The purpose of the Receiver’s first report, (the “**First Report**”) is to update the Court with respect to:

- (a) the Receiver’s initial activities since its appointment;
- (b) review an offer received for of the 421 Property and the Agreement of Purchase and Sale dated March 29,, 2023 (the “**421 APA**”) entered into between the Receiver and Muhammad Saleem, in trust for a corporation to be formed, as purchaser (the “**Purchaser**”), as amended by the First Amendment to Agreement of Purchase and Sale dated May 15, 2023 between the Receiver and the Purchaser in respect of the 421 Property and the transaction contemplated therein (the “**Transaction**”). A copy of the 421 APA, as amended is attached as **Appendix “B”**;
- (c) the Receiver’s proposed sale process (the “**Sale Process**”) for the Companies’ Popeye’s and Denny’s franchise operations and the Companies’ other Property;
- (d) the Receiver’s recommendation for an order (s), *inter alia*:
 - i. approving and authorizing the Receiver to complete the 421 APA, as amended and approving the Transaction set out therein;
 - ii. authorizing the Receiver to take such steps as are necessary and appropriate to facilitate the closing the Transaction;

- iii. vesting 421 Wharncliffe's right, title and interest, if any, in and to the 421 Property in the Purchaser, free and clear of any encumbrances, save and except as otherwise contemplated by the 421 APA;
- iv. approving the Sale Process as set out herein and instructing the Receiver to complete the Sale Process;
- v. approving the First Report and the activities of the Receiver as set out herein; and
- vi. such other matters considered relevant to the Receiver's administration of this proceeding.

TERMS OF REFERENCE

7. Capitalized terms not otherwise defined herein shall have the meaning ascribed to that term pursuant to the Sale Process.

8. In preparing the First Report, the Receiver has relied on unaudited financial and other information regarding the Companies and their assets which includes, but is not limited to, the following information (collectively, the "**Information**"):

- (a) as provided by the Companies, which includes the Books and Records;
- (b) as provided by CWB and its legal counsel, Cassels Brock Blackwell LLP ("**Cassels**");
- (c) as provided by Popeye's and Denny's franchisors;
- (d) obtained in discussions and negotiations with the Purchaser of the 421 Property;
- (e) as provided by management that was retained by the Receiver to manage the operating Popeye's locations;
- (f) obtained in discussions with various parties that contacted the Receiver as prospective purchasers of certain of the Companies' franchise locations;
- (g) as provided by the landlords of the Companies' locations;
- (h) obtained by attending at the Companies' Popeye's and Denny's locations;

- (i) as provided by former employees of the Index Group that were retained by the Receiver on a contract basis; and
 - (j) as otherwise available to the Receiver and its counsel.
2. Except as described in this First 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 the Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada.
9. All currency references are in Canadian Dollars unless otherwise specified.

ACTIVITIES TO DATE

10. The Receiver's activities since its appointment have concentrated on:
- (a) taking possession and control of the Companies' assets and restaurant operations;
 - (b) confirming insurance coverage for the Companies assets and restaurant operations;
 - (c) negotiating and entering into the Popeye's Management Agreement with DHS as set out below in paragraphs 12 and 13;
 - (d) meeting with the Companies' active employees to explain the nature and purpose of the Receiver's appointment and retaining all available employees as more fully set out below in paragraphs 17 and 18;
 - (e) contacting and corresponding with all of the Companies' landlords to advise of the Receiver's appointment and discussing the Receiver's proposed realization strategy;
 - (f) contacting and corresponding with the Companies' food and other service providers to ensure that these supplies/services continue to be provided on an uninterrupted basis;
 - (g) converting the Companies known bank accounts to deposit only and having the balances remitted to the Receiver on an on-going basis;

- (h) arranging for the redirection of payments from Uber Eats, Door Dash and Skip the Dishes to the Receiver's accounts;
- (i) arranging for the release of amounts due to the Companies from credit and debit card payment processors to the Companies' accounts controlled by the Receiver;
- (j) attending to various discussions with prospective purchasers regarding the Sale Process and responding to due diligence inquiries as well as conducting inspections of the Companies' business locations;
- (k) filing Receivership Reports based on available information
- (l) negotiating the 421 APA; and
- (m) preparing this First Report.

Popeye's Franchises

11. Prior to its appointment, the Receiver met with the Popeye's Franchisor to discuss the status of the Companies' operating Popeye's locations (the "**Operating Popeye's**") and the various issues related to continuing those operations.

12. It was agreed by all parties including CWB that preventing a shutdown of the Operating Popeye's and completing a going-concern sale(s) to an approved Popeye's franchisee would most likely maximize realizations and be in the interest of all parties. In addition, it was agreed that the Receiver would retain an experienced Popeye's franchisee to manage these locations.

13. The Popeye's Franchisor provided the Receiver with a list of seven Popeye's franchisees operating in Durham Region and surrounding regions that it recommended be retained to manage the Operating Popeye's.

14. Following discussions with these parties, on May 8, 2023, the Receiver entered into a management agreement (the "**Popeye's Management Agreement**") with Dahiem's Management Services Inc. ("**DHS**") that owns and operates over 20 Popeye's franchises to manage the Operating Popeye's. In summary, DHS as agent of the Receiver, assumed full management responsibility other than payment of payroll and operating expenses. DHS's monthly management fee is \$2,000 per location plus disbursements and HST. A copy of the Popeye's Management Agreement is attached as **Appendix "C"**.

Denny's Franchises

15. Following service of CWB's Notice of Motion and Application for the Receiver's appointment, the Receiver met with the Denny's Franchisor to discuss the status and continuation of the operations of the Companies' Denny's locations (the "**Operating Denny's**").

16. Unlike the Popeye's Franchisor, the Denny's Franchisor did not suggest any of its franchisees that might be interested in entering into a management agreement for the Operating Denny's. Based on discussions and assessments with the current management of these locations, the Receiver is continuing operations with the current management team in place.

Employees

17. Following its appointment, the Receiver's representative attended at each Operating Popeye's and Denny's to, among other things, meet with the employees on site to advise of the Receiver's appointment, introduce DHS and discuss the continuation of operations. At that time, the Receiver was advised that almost all employees' biweekly pay was outstanding for between four to six weeks.

18. The Receiver obtained the available payroll records and determined that payroll arrears for these five locations were in the range of approximately \$150,000. CWB advanced \$125,000 by way of a Receiver's Certificate that in combination with funds retrieved from the Companies' bank accounts has allowed the Receiver to pay most of the payroll arrears.

421 APA

19. On March 29, 2023, 421 Wharnclyffe accepted a conditional offer to sell the 421 Property for \$550,000 pursuant the 421 APA. On May 1, 2023, a \$10,000 deposit was delivered by the Companies' principal on behalf of the Purchaser to CWB. A copy of the 421 APA is attached as **Appendix "B"**.

20. On or about May 13, 2023, the Receiver discussed the status of the proposed transaction with the Purchaser and his counsel. Based on those discussions, the Receiver and Purchaser executed a First Amendment to Agreement of Purchase and Sale (the "**First Amendment**") that, among other things:

- (a) increased the Purchaser's deposit to \$50,000 in total;
- (b) confirmed that the Purchaser waived its conditions to closing; and

- (c) changed the closing date to no later than 48 hours after the Court's Approval of the 421 APA.

A copy of the First Amendment is attached as **Appendix "D"**.

21. A Copy of the parcel register in respect of the 421 Property is attached as **Appendix "E"**. As appears from the parcel register, CWB has registered a first-ranking mortgage on title to the 421 Property in the principal amount of \$1.1 million. Apart from the mortgage in favour of CWB, the only other encumbrances registered on title to the 421 Property are an Order of the Corporation of the City of London in respect of certain work required at the 421 Property, and a right of way in favour of J. Bottom Holdings Limited. A Copy of the Order of the Corporation of the City of London (the "**421 Order**") registered on title to the 421 Property is attached as **Appendix "F"**. A copy of the Notice registered on title to the 421 Property in respect of the right of way in favour of J. Bottom Holdings Limited is attached as **Appendix "G"**.

22. The 421 Order appears to relate to a structure on the Property which no longer exists, and accordingly, the Receiver is seeking to have the 421 Order removed from title.

23. The Receiver recommends that the Court approve the 421 APA, as amended and authorize the Receiver to complete the Transaction set out therein, for the following reasons:

- (a) the Companies negotiated the 421 APA and are in support of its completion;
- (b) the 421 Property was listed for sale by 421 Wharnccliffe prior to the Receiver's appointment; and
- (c) the Companies' secured debt to CWB is currently in excess of approximately \$7.5 million. Based on the Receiver's initial review of the potential realizations from the Companies' assets and operations, CWB will likely suffer a significant shortfall on its security. CWB supports completion of the Transaction.

PROPOSED SALE PROCESS

24. The Appointment Order, among other things, authorizes the Receiver to market and sell the Property which includes the Operating Popeye's and Denny's Franchises.

25. With respect to a marketing and solicitation strategy for the Property, the Receiver consulted with CWB and the Popeye's and Denny's Franchisors regarding a sale process. The Franchisors' consent is required for the assignment of the franchise agreement as a condition of the sale of existing franchise location. Specifically, the Franchisors have advised the Receiver that unless a prospective purchaser of a franchise location is already or is easily approved by the Franchisor, the approval process could take between six to eight weeks with no certainty of approval. The Receiver also considered implementing a marketing and solicitation process with the support of MNP LLP's internal corporate finance group that has the necessary food service industry experience to actively market and solicit interest in the Property.

26. After considering the foregoing, the Receiver has determined that the most reasonable and commercially efficient approach to market and solicit interest in the Property would be to have the Receiver implement a Sale Process targeted only those entities that are approved Denny's and Popeye's franchisees and entities that operate food service franchises that would be quickly approved by the franchisors.

27. The Receiver has developed the proposed Sale Process to solicit bids by a set bid deadline. The Receiver is of the view that the proposed Sale Process balances the need to have a sale accomplished in a reasonably short timeframe that limits the costs associated with continuing operation of the Companies' businesses against the desire to properly expose the Property to the most likely acceptable purchasers to maximize recoveries for the stakeholders.

28. The Receiver seeks Court approval for the Sale Process. A copy of the Sale Process, including a bidding procedure, is attached to this Report as **Appendix "H"**.

29. In summary, the Sale Process would commence upon the issuance by this Court of an order approving the Sale Process (the "**Commencement Date**") and be conducted on the following timeline (capitalized terms are as defined in the Sale Process):

Event		Timeline
1	Receiver to prepare the list of Prospective Purchasers, the Teaser, the NDA, the Data Room, CIM, APS, and draft advertisements	In process
2	Publish notice of the sale in a nationally circulated food service trade journal and website.	During the week of June 5, 2023
3	Publish notice of the sale on the Receiver's website and through the Insolvency Insider e-mail publication	Commencing on June 5, 2023
4	Distribute Teaser and the NDA to those identified as Prospective Purchasers	Commencing on June 5, 2023
5	Commence distribution of CIM and providing data room access to Prospective Offerors, after receiving executed copy of NDA (subject to the Receiver's discretion as outlined herein)	Commencing on June 5, 2023
6	Plan and provide tours of the Index Group's operations	From June 13 to June 29, 2023
7	Discussion with Prospective Offerors to provide updates and to resolve their queries	From June 13 to June 30, 2023
8	Deadline for submission of Offers	July 4, 2023 at 5:00 PM (Toronto Time) (the "Deadline")
9	Acceptance of Successful Offer(s)	Up to 10 days after the Deadline
10	Court motion to approve Successful Offer(s)	As soon as possible after acceptance
11	Complete transaction(s)	Within 5 days after Court Approval, expected to be no later than July 30, 2023

30. Although the Sale Process establishes the Deadline, the Receiver also seeks the flexibility to be able to accept any bid received at any time, terminate the proposed Sale Process at any time and immediately enter into discussions with a bidder with a view to finalizing the transaction contemplated by such bid.

31. The Sale Process also provides for the comparison of multiple offers inherently maximizing sale value. The Receiver's proposed Sale Process will also limit the due diligence period required by prospective purchasers during which time the Property would be essentially "off the market", if being sold by a business broker.

32. The Receiver is satisfied that the Sale Process represents a commercially reasonable and efficient process which allows for sufficient time for the Property to be exposed to the market in order to maximize the value of the Property. The Sale Process is supported by CWB.

CONCLUSION AND RECOMMENDATION

33. Based on the foregoing and as outlined in this First Report, the Receiver respectfully requests that this Court issue an order:

- (a) approving and authorizing the 421 APA, as amended and approving the Transaction set out therein;
- (b) authorizing the Receiver to take such steps as are necessary and appropriate to facilitate the closing of the Transaction;
- (c) approving the Receiver's proposed Sales Process;
- (d) vesting 421 Wharncliffe's right, title and interest, if any, in and to the 421 Property in the Purchaser, free and clear of any encumbrances, save and except as otherwise contemplated by the 421 APA; and
- (e) approving this First Report and the activities of the Receiver as set out herein.

All of which is respectfully submitted this 23rd day of May 2023.

MNP LTD.

**Court-appointed Receiver and Manager of
Index Holding Group Inc. and certain of its related and affiliated entities**

Per:



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

APPENDIX A

International Inc., Index Foods Inc., 2640179 Ontario Inc., 11030434 Canada Ltd., 2700774 Ontario Inc., 2700767 Ontario Inc., 2683960 Ontario Ltd., 11030418 Canada Inc., 2723710 Ontario Inc., 2718366 Ontario Inc., 2737332 Ontario Inc., 2737334 Ontario Inc., 2723714 Ontario Inc., 2723716 Ontario Inc., 2737338 Ontario Inc., 2790760 Ontario Inc., 2775290 Ontario Inc., 2775296 Ontario Inc. and 421 Wharnccliffe Ltd. (collectively, the “Debtors”), or any one or more of them, and in all proceeds arising therefrom; and (b) the real property municipally known as 421 Wharnccliffe Road South, London, Ontario, and as legally described as PT LT 1, PL29, PTS 1&2, 33R5153 & PT2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER (the “421 Real Property”, and together with the Personal Property, the “Property”), was heard this day by judicial teleconference via Zoom at Toronto, Ontario.

ON READING the affidavit of Tyson Hartwell sworn April 27, 2023 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and such other parties listed on the Counsel Slip, no one appearing although duly served as appears from the affidavits of service of Stephanie Fernandes sworn April 28, 2023, May 1, 2023 and May 3, 2023 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 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 the Property of the Debtors.

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, including without limitation the Debtors' bank accounts related to the Property wherever located;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, or any one or more of them, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform or disclaim any contracts of the Debtors, or any one or more of them, in respect of the Property;
- (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 purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors, or any one or more of them, with respect to the Property or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors, or any one or more of them, with respect to the Property and to exercise all remedies of the Debtors, or any one or more of them, in collecting such monies, including, without limitation, to enforce any security held by the Debtors, or any one or more of them;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors, or any one or more of them, with respect to the Property;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, or any one or more of them, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, or any one or more of them, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; 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.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to consult with the Applicant on all matters relating to the Property and the receivership, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (p) to apply for any permits, licences, approvals or permissions with respect to the Property as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors, or any one or more of them;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, or any one or more of them, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors, or any one or more of them;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors, or any one or more of them, may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel, shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to

the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, or any one or more of them, 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.

8. THIS COURT ORDERS that all Persons, including without limitation, the Debtors and all entities affiliated (as such term is defined in the *Business Corporations Act* (Ontario)) with Index Holding Group Inc. (collectively, the "Index Group"), and each of them, shall be required to cooperate, and share information, with the Receiver, in connection with all books and records, contracts, agreements, permits, licenses and insurance policies and other documents in respect of the Debtors, or any one or more of them, and the Property. In addition to the foregoing, general cooperation and information sharing requirements, the Index Group, or any of them, shall be required to do the following: (a) in respect of any and all such contracts, agreements, permits, licenses and insurance policies and other documents: (1) maintain them in good standing and provide immediate notice and copies to the Receiver of any communications received from regulators, providers, lessors or franchisors in respect thereof; (2) provide immediate notice to the Receiver of any material change and/or pending material change to the status quo in respect thereof; and (3) provide thirty (30) days' written notice to the Receiver of any renewal date, termination date, election date or similar date in respect thereof; and (b) assist, and cooperate with, the Receiver in obtaining any further permits and licenses that may be required in the Receiver's discretion, acting reasonably, in consultation with the Applicant.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

10. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors, or any one or more of them, or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors, or any one or more of them, or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. THIS COURT ORDERS that all rights and remedies against the Debtors, or any one or more of them, the Receiver, or affecting the Property, including, without limitation, licenses and permits, 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 Debtors, or any one or more of them, to carry on any business which the Debtors, or any one or more of them, is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors, or any one or more of them, from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

12. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, or any one or more of

them, in respect of the Property without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. THIS COURT ORDERS that all Persons, including, without limitation, the Index Group, having oral or written agreements with the Debtors, or any one or more of them, in connection with or relating to the Property or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors, or any one or more of them, in connection with or relating to the Property are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors', or any one or more of their, current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors, or any one or more of their, 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

14. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part in connection with or relating to the Property, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net

of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. THIS COURT ORDERS that all employees of the Debtors, or any one or more of them, shall remain the employees of such Debtor until such time as the Receiver, on behalf of the Debtors, or any one or more of them, 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

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. 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

18. 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

19. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in

priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. THIS COURT ORDERS that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. 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

22. 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 \$250,000 (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, fees, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. 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.

24. 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.

25. 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

26. THIS COURT ORDERS that The Guide Concerning Commercial List E-Service (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 <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) 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/Index-Group-et-al.

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors', or any one or more of their, creditors or other interested parties at their respective addresses as last shown

on the records of the Debtors, or any one or more of them, 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

28. 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.

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors, or any one or more of them. For greater certainty, the Property shall remain subject to the terms of this Order including without limitation paragraph 3 hereof and, subject to further Court Order, shall not vest in MNP as trustee in bankruptcy of the Debtors, or any one or more of them.

30. 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.

31. 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.

32. THIS COURT ORDERS that the Applicant shall have its costs of this Application, 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 Debtors, or any one or more of their estates, with such priority and at such time as this Court may determine.

33. 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.

34. THIS COURT ORDERS that this Order is effective from today's date and it is not required to be entered.



SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that MNP Ltd., the receiver (the "Receiver") of (a) all of the properties, assets and undertaking (collectively, the "Personal Property") of Index Holding Group Inc., Index Group of Companies Inc., Index International Inc., Index Foods Inc., 2640179 Ontario Inc., 11030434 Canada Ltd., 2700774 Ontario Inc., 2700767 Ontario Inc., 2683960 Ontario Ltd., 11030418 Canada Inc., 2723710 Ontario Inc., 2718366 Ontario Inc., 2737332 Ontario Inc., 2737334 Ontario Inc., 2723714 Ontario Inc., 2723716 Ontario Inc., 2737338 Ontario Inc., 2790760 Ontario Inc., 2775290 Ontario Inc., 2775296 Ontario Inc. and 421 Wharnccliffe Ltd. (collectively, the "Debtors"), or any one or more of them, and in all proceeds arising therefrom; and (b) the real property municipally known as 421 Wharnccliffe Road South, London, Ontario, and as legally described as PT LT 1, PL29, PTS 1&2, 33R5153 & PT2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER (the "421 Real Property", and together with the Personal Property, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of _____, 20__ (the "Order") made in an application having Court file number CV-●, 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:

CANADIAN WESTERN BANK

- and -

INDEX HOLDING GROUP INC., et al.

Applicant

Respondents

Court File No. CV-23-00698447-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(APPOINTING RECEIVER)**

Cassels Brock & Blackwell LLP

2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Jeremy Bornstein LSO #: 65425C
Tel: 416.869.5386
jbornstein@cassels.com

Stephanie Fernandes LSO #: 85819M
Tel: 416.860.6481
sfernandes@cassels.com

Lawyers for the Applicant

APPENDIX B

3. **NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.** Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.:
(For delivery of Documents to Seller)

FAX No.: **416-630-0444**
(For delivery of Documents to Buyer)

Email Address:
(For delivery of Documents to Seller)

Email Address: **ik@royallepage.ca**
(For delivery of Documents to Buyer)

4. **CHATELS INCLUDED:**

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. **FIXTURES EXCLUDED:**

6. **RENTAL ITEMS (Including Lease, Lease to Own):** The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.


7. **HST: If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price.** The Seller will not collect HST if the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA registration, a warranty that the Buyer shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Seller in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the transaction is not subject to HST. Any HST on chattels, if applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S):



INITIALS OF SELLER(S):



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8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 24 day of April, 2023, (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there

are no outstanding work orders or deficiency notices affecting the property, that its present use (Commercial Investment) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telecommunication services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telecommunication lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Ontario. Unless otherwise agreed to by the lawyers, such exchange of Requisite Deliveries shall occur by the delivery of the Requisite Deliveries of each party to the office of the lawyer for the other party or such other location agreeable to both lawyers.

12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller.

14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S):

SC

INITIALS OF SELLER(S):

AM

- 15. PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
- 16. DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O. 1990.
- 17. RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada;
(b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
- 18. ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
- 19. TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
- 20. PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
- 21. TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Lynx high value payment system as set out and prescribed by the *Canadian Payments Act (R.S.C., 1985, c. C-21)*, as amended from time to time.
- 22. FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless the spouse of the Seller has executed the consent hereinafter provided.
- 23. UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing urea formaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains urea formaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
- 24. LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
- 25. CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
- 26. AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
- 27. ELECTRONIC SIGNATURES:** The parties hereto consent and agree to the use of electronic signatures pursuant to the *Electronic Commerce Act, 2000, S.O. 2000, c17* as amended from time to time with respect to this Agreement and any other documents respecting this transaction.
- 28. TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S):

SC

INITIALS OF SELLER(S):

AM

29. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein. SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

Witness lines for Saleem Chaudhry (Buyer/Authorized Signing Officer) and a witness, dated 03/30/2023.

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal: Witness lines for Abdul Muqeet (Seller/Authorized Signing Officer) and a witness, dated 03/30/2023.

SPOUSAL CONSENT: The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O.1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

Witness lines for Spouse, dated 03/30/2023.

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at 1:15 PM this 03/30/23 day of 2023.

(Signature of Seller) Abdul Muqeet

INFORMATION ON BROKERAGE(S) Listing Brokerage, Co-op/Buyer Brokerage: Royal LePage Downsview Realty, Irshad Khalid (Salesperson/Broker/Broker of Record Name), 416-630-2555.

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer. Abdul Muqeet, 03/30/2023 (Seller) 421 Wharncliffe Road Ltd.

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer. Saleem Chaudhry, 03/30/2023 (Buyer) Muhammad Saleem (In Trust to Form a Corp)

FOR OFFICE USE ONLY COMMISSION TRUST AGREEMENT

To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale: In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust. DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale. Acknowledged by: Irshad Khalid (Authorized to bind the Co-operating Brokerage)

Schedule A

Agreement of Purchase and Sale – Commercial

Form 500

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER: Muhammad Saleem (In Trust to Form a Corp), and

SELLER: 421 Wharncliffe Ltd.

for the purchase and sale of 421 Wharncliffe Road South London

ON dated the 29 day of March, 2023

Buyer agrees to pay the balance as follows:

The Buyer agrees to pay the balance of the purchase price, subject to adjustments, by bank draft or certified cheque, to the Seller on the completion of this transaction.

This Offer is conditional upon the Buyer arranging, at the Buyer's own expense, a new charge mortgage from a Canadian Bank/Lender, satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller within 20 days upon acceptance of this offer, that this condition is fulfilled, if this conditions is not waived within the time frame, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller within the time period stated herein.

This Offer is conditional upon the approval of the terms hereof by the Buyer's Solicitor. Unless the Buyer gives notice in writing delivered to the Seller within 10 days, that this condition is fulfilled, if this conditions is not waived within the time frame, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller within the time period stated herein.

Any notice relating hereto or provided for herein shall be in writing. This Offer, any counter offer, notice of acceptance thereof, or any notice shall be deemed given and received, when hand delivered to the address for service provided herein or, where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address


This form must be initialled by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

SC

INITIALS OF SELLER(S):

AM

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Confirmation of Co-operation and Representation Buyer/Seller

Form 320
for use in the Province of Ontario

BUYER: Muhammad Saleem (In Trust to Form a Corp)

SELLER: 421 Wharncliffe Ltd.

For the transaction on the property known as: 421 Wharncliffe Road South London ON

DEFINITIONS AND INTERPRETATIONS: For the purposes of this Confirmation of Co-operation and Representation: "Seller" includes a vendor, a landlord, lessor or a prospective seller, vendor, landlord or lessor and "Buyer" includes a purchaser, tenant, lessee or a prospective buyer, purchaser, tenant or lessee and "sale" includes a lease, and "Agreement of Purchase and Sale" includes an Agreement to Lease. Commission shall be deemed to include other remuneration.

The following information is confirmed by the undersigned salesperson/broker representatives of the Brokerage(s). If a Co-operating Brokerage is involved in the transaction, the brokerages agree to co-operate, in consideration of, and on the terms and conditions as set out below.

DECLARATION OF INSURANCE: The undersigned salesperson/broker representative(s) of the Brokerage(s) hereby declare that he/she is insured as required by the Real Estate and Business Brokers Act, 2002, (REBBA).

1. LISTING BROKERAGE

- a) The Listing Brokerage represents the interests of the Seller in this transaction. It is further understood and agreed that:
- 1) The Listing Brokerage is not representing or providing Customer Service to the Buyer.
(If the Buyer is working with a Co-operating Brokerage, Section 3 is to be completed by Co-operating Brokerage)
 - 2) The Listing Brokerage is providing Customer Service to the Buyer.
- b) **MULTIPLE REPRESENTATION:** The Listing Brokerage has entered into a Buyer Representation Agreement with the Buyer and represents the interests of the Seller and the Buyer, with their consent, for this transaction. The Listing Brokerage must be impartial and equally protect the interests of the Seller and the Buyer in this transaction. The Listing Brokerage has a duty of full disclosure to both the Seller and the Buyer, including a requirement to disclose all factual information about the property known to the Listing Brokerage. However, the Listing Brokerage shall not disclose:
- That the Seller may or will accept less than the listed price, unless otherwise instructed in writing by the Seller;
 - That the Buyer may or will pay more than the offered price, unless otherwise instructed in writing by the Buyer;
 - The motivation of or personal information about the Seller or Buyer, unless otherwise instructed in writing by the party to which the information applies, or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
 - The price the Buyer should offer or the price the Seller should accept;
 - And; the Listing Brokerage shall not disclose to the Buyer the terms of any other offer.
- However, it is understood that factual market information about comparable properties and information known to the Listing Brokerage concerning potential uses for the property will be disclosed to both Seller and Buyer to assist them to come to their own conclusions.

Additional comments and/or disclosures by Listing Brokerage: (e.g., The Listing Brokerage represents more than one Buyer offering on this property.)

2. PROPERTY SOLD BY BUYER BROKERAGE – PROPERTY NOT LISTED

- The Brokerage does represent the Buyer and the property is not listed with any real estate brokerage. The Brokerage will be paid
(does/does not)
- by the Seller in accordance with a Seller Customer Service Agreement
- or: by the Buyer directly

Additional comments and/or disclosures by Buyer Brokerage: (e.g., The Buyer Brokerage represents more than one Buyer offering on this property.)

INITIALS OF BUYER(S)/SELLER(S)/BROKERAGE REPRESENTATIVE(S) (Where applicable)


BUYER


CO-OPERATING/BUYER BROKERAGE


SELLER


LISTING BROKERAGE

3. Co-operating Brokerage completes Section 3 and Listing Brokerage completes Section 1.

CO-OPERATING BROKERAGE - REPRESENTATION:

- a) The Co-operating Brokerage represents the interests of the Buyer in this transaction.
- b) The Co-operating Brokerage is providing Customer Service to the Buyer in this transaction.
- c) The Co-operating Brokerage is not representing the Buyer and has not entered into an agreement to provide customer service(s) to the Buyer.

CO-OPERATING BROKERAGE - COMMISSION:

- a) The Listing Brokerage will pay the Co-operating Brokerage the commission as indicated in the MLS® information for the property to be paid from the amount paid by the Seller to the Listing Brokerage.
(Commission As Indicated In MLS® Information)
- b) The Co-operating Brokerage will be paid as follows:

Additional comments and/or disclosures by Co-operating Brokerage: (e.g., The Co-operating Brokerage represents more than one Buyer offering on this property.)

Commission will be payable as described above, plus applicable taxes.

COMMISSION TRUST AGREEMENT: If the above Co-operating Brokerage is receiving payment of commission from the Listing Brokerage, then the agreement between Listing Brokerage and Co-operating Brokerage further includes a Commission Trust Agreement, the consideration for which is the Co-operating Brokerage procuring an offer for a trade of the property, acceptable to the Seller. This Commission Trust Agreement shall be subject to and governed by the MLS® rules and regulations pertaining to commission trusts of the Listing Brokerage's local real estate board, if the local board's MLS® rules and regulations so provide. Otherwise, the provisions of the OREA recommended MLS® rules and regulations shall apply to this Commission Trust Agreement. For the purpose of this Commission Trust Agreement, the Commission Trust Amount shall be the amount noted in Section 3 above. The Listing Brokerage hereby declares that all monies received in connection with the trade shall constitute a Commission Trust and shall be held, in trust, for the Co-operating Brokerage under the terms of the applicable MLS® rules and regulations.

SIGNED BY THE BROKER/SALESPERSON REPRESENTATIVE(S) OF THE BROKERAGE(S) (Where applicable)

Royal LePage Downsview Realty.
(Name of Co-operating/Buyer Brokerage)

2784 Keele Street Toronto ON M3M 2G2

Tel: 416-630-2555 Fax: 416-630-0444

Irshad Khalid 03/30/2023
(Authorized to bind the Co-operating/Buyer Brokerage) (Date)

Irshad Khalid
(Print Name of Salesperson/Broker/Broker of Record)

.....
(Name of Listing Brokerage)

.....


Tel: Fax:

.....
(Authorized to bind the Listing Brokerage) (Date)


.....
(Print Name of Salesperson/Broker/Broker of Record)

CONSENT FOR MULTIPLE REPRESENTATION (To be completed only if the Brokerage represents more than one client for the transaction)

The Buyer and Seller consent with their initials to their Brokerage representing more than one client for this transaction.



INITIALS OF BUYER(S)



INITIALS OF SELLER(S)

ACKNOWLEDGEMENT


I have received, read, and understand the above information.

Saleem Chaudhry 03/30/2023
(Signature of Buyer) (Date)

.....
(Signature of Buyer) (Date)

Abdul Muqeeet 03/30/2023
(Signature of Seller) (Date)

.....
(Signature of Seller) (Date)

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Amendment to Agreement of Purchase and Sale - Commercial

Form 570

for use in the Province of Ontario

BETWEEN:

BUYER: Muhammad Saleem (In Trust to Form a Corp)

AND

SELLER: 421 Wharncliffe Ltd.

RE: Agreement of Purchase and Sale - Commercial (Agreement) between the Seller and Buyer, dated the 29 day of March, 2023,

concerning the property known as 421 Wharncliffe Road South

London

ON

as more particularly described in the aforementioned Agreement.

The Buyer and Seller herein agree to the following amendment(s) to the aforementioned Agreement:

Delete

This Offer is conditional upon the Buyer arranging, at the Buyer's own expense, a new charge mortgage from a Canadian Bank/Lender, satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller within 20 days upon acceptance of this offer, that this condition is fulfilled, if this conditions is not waived within the time frame, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller within the time period stated herein.

This Offer is conditional upon the approval of the terms hereof by the Buyer's Solicitor. Unless the Buyer gives notice in writing delivered to the Seller within 10 days, that this condition is fulfilled, if this conditions is not waived within the time frame, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller within the time period stated herein.

Insert:

This Offer is conditional upon the Buyer arranging, at the Buyer's own expense, a new charge mortgage from a Canadian Bank/Lender, satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller within 25 days upon acceptance of this offer, that this condition is fulfilled, if this conditions is not waived within the time frame, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller within the time period stated herein.

INITIALS OF BUYER(S):

SC

INITIALS OF SELLER(S):

MS

IRREVOCABILITY: This Offer to Amend the Agreement shall be irrevocable by Buyer (Seller/Buyer) until 5.00 (a.m./p.m.) on the 07 day of April, 2023, after which time, if not accepted, this Offer to Amend the Agreement shall be null and void.

For the purposes of this Amendment to Agreement, "Buyer" includes purchaser and "Seller" includes vendor. Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective solicitors who are hereby expressly appointed in this regard.

All other Terms and Conditions in the aforementioned Agreement to remain the same.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

(Witness)
(Witness)
Authentisign
Saleem Chaudhry
(Buyer/Seller/Authorized Signing Officer) (Seal) May 05, 2023 (Date)

I, the Undersigned, agree to the above Offer to Amend the Agreement.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

(Witness)
(Witness)
Authentisign
[Signature]
(Buyer/Seller/Authorized Signing Officer) (Seal) May 06, 2023 (Date)

The undersigned spouse of the Seller hereby consents to the amendment(s) hereinbefore set out.

(Witness) (Spouse) (Seal) (Date)

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at 4:30 PM (a.m./p.m.) this May 06, 2023 day of, 20.....

Authentisign
[Signature]
(Signature of Seller or Buyer)

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Amendment to Agreement and I authorize the Brokerage to forward a copy to my lawyer.
[Signature]
May 06, 2023
(Seller) 421 Wharncliffe Road Ltd. (Date)
(Seller) (Date)
Address for Service
(Tel. No.)
Seller's Lawyer
Address
Email
(Tel. No.) (Fax. No.)

I acknowledge receipt of my signed copy of this accepted Amendment to Agreement and I authorize the Brokerage to forward a copy to my lawyer.
Saleem Chaudhry
May 05, 2023
(Buyer) Muhammad Saleem (In Trust to Form a Corp) (Date)
(Buyer) (Date)
Address for Service
(Tel. No.)
Buyer's Lawyer
Address
Email
(Tel. No.) (Fax. No.)

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Waiver Agreement of Purchase and Sale - Commercial

Form 573

for use in the Province of Ontario

BUYER: Muhammad Saleem (In Trust to Form a Corp)

SELLER: 421 Wharncliffe Ltd.

REAL PROPERTY: 421 Wharncliffe Road South

London

ON

In accordance with the terms and conditions of the Agreement of Purchase and Sale - Commercial dated the 29 day of March,

2023, regarding the above property, I/We hereby waive the condition(s) which read(s) as follows:

This Offer is conditional upon the Buyer arranging, at the Buyer's own expense, a new charge mortgage from a Canadian Bank/Lender, satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller within 25 days upon acceptance of this offer, that this condition is fulfilled, if this conditions is not waived within the time frame, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller within the time period stated herein.

All other terms and conditions in the aforementioned Agreement of Purchase and Sale - Commercial to remain unchanged.

For the purposes of this Waiver, "Buyer" includes purchaser, and "Seller" includes vendor.

DATED at Mississauga, Ontario, at 5.00 this 22 day of April 2023
(a.m./p.m.)

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

(Witness) Saleem Chaudhry (Buyer/Seller/Authorized Signing Officer) (Seal) April 22, 2023 (Date)

(Witness) _____ (Buyer/Seller/Authorized Signing Officer) (Seal) (Date)

Receipt acknowledged at 7:30 PM this 22nd day of April 2023 by:

Print Name: Abdul Muqet Signature: [Signature]

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Amendment to Agreement of Purchase and Sale - Commercial

Form 570

for use in the Province of Ontario

BETWEEN:

BUYER: Muhammad Saleem (In Trust to Form a Corp)

AND

SELLER: 421 Wharncliffe Ltd.

RE: Agreement of Purchase and Sale - Commercial (Agreement) between the Seller and Buyer, dated the 29 day of March, 2023,

concerning the property known as 421 Wharncliffe Road South

London ON as more particularly described in the aforementioned Agreement.

The Buyer and Seller herein agree to the following amendment(s) to the aforementioned Agreement:

Delete

Deposit Payable to Royal LePage Downsview Realty Inc.

Completion Date: May, 2023

Insert:

Deposit Payable to Canadian Western Bank.

Completion Date: May 23, 2023

INITIALS OF BUYER(S): 

INITIALS OF SELLER(S): 

IRREVOCABILITY: This Offer to Amend the Agreement shall be irrevocable by Buyer (Seller/Buyer) until 5.00 (a.m./p.m.) on the 28 day of April, 2023, after which time, if not accepted, this Offer to Amend the Agreement shall be null and void.

For the purposes of this Amendment to Agreement, "Buyer" includes purchaser and "Seller" includes vendor. Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective solicitors who are hereby expressly appointed in this regard.

All other Terms and Conditions in the aforementioned Agreement to remain the same.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

(Witness)
 (Witness)
 (Buyer/Seller/Authorized Signing Officer) Saleem Chaudhry (Seal) April 26, 2023 (Date)
 (Buyer/Seller/Authorized Signing Officer) (Seal) (Date)

I, the Undersigned, agree to the above Offer to Amend the Agreement.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

(Witness)
 (Witness)
 (Buyer/Seller/Authorized Signing Officer) (Seal) April 26, 2023 (Date)
 (Buyer/Seller/Authorized Signing Officer) (Seal) (Date)

The undersigned spouse of the Seller hereby consents to the amendment(s) hereinbefore set out.

(Witness) (Spouse) (Seal) (Date)

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at 5.00 PM (a.m./p.m.) this April 26, 2023 day of April 26, 2023, 20.....

(Signature of Seller or Buyer) Saleem Chaudhry (Seal) (Date)


ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Amendment to Agreement and I authorize the Brokerage to forward a copy to my lawyer.

(Seller) 421 Wharncliffe Road Ltd. April 26, 2023 (Date)
 (Seller) (Date)
 Address for Service (Tel. No.)
 Seller's Lawyer
 Address
 Email
 (Tel. No.) (Fax. No.)

I acknowledge receipt of my signed copy of this accepted Amendment to Agreement and I authorize the Brokerage to forward a copy to my lawyer.

(Buyer) Saleem Chaudhry April 26, 2023 (Date)
 (Buyer) Muhammad Saleem (In Trust to Form a Corp) (Date)
 Address for Service (Tel. No.)
 Buyer's Lawyer
 Address
 Email
 (Tel. No.) (Fax. No.)

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APPENDIX C

MANAGEMENT AGREEMENT

THIS AGREEMENT made as of the 8th day of May 2023.

BETWEEN:

MNP Ltd., in its capacity as Court – Appointed Receiver of 2700774 Ontario Inc. o/a Popeye’s at 22 Stevenson Rd, Oshawa, Index Foods Inc. o/a Popeye’s at 965 Dundas St. W., Whitby and Index International Inc. o/a Popeye’s at 1525 Dundas St., Oshawa (collectively the “**Debtors**”), and not in its personal capacity,

(hereinafter called “**MNP**”)

-and-

Dahiem’s Management Services Inc.

(hereinafter called the “**Manager**”)

WHEREAS by Order of the Ontario Superior Court of Justice granted on the 8th day of May, 2023, MNP was appointed Receiver of all the property, assets and undertaking of the Debtors.

AND WHEREAS the parties mutually desire that the Manager manage the Popeye’s restaurants located at 22 Stevenson Rd. Oshawa, 965 Dundas St. W, Whitby and 1525 Dundas St., Oshawa (collectively the “**Restaurants**”) owned by the Debtors for and on behalf of MNP.

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, the parties covenant and agree as follows:

ARTICLE 1 TERM OF AGREEMENT

1.1 Term of Agreement

The term of agreement (the “**Term**”) shall commence on May 8, 2023, at the time at which the receivership appointment became effective and shall continue until the effective date of any termination pursuant to and in accordance with the terms hereof.

1.2 Minimum Term

The Manager undertakes to continue this Agreement for a minimum of three months.

1.3 Termination by MNP

This agreement may be terminated at any time, at the option of MNP in their sole and unfettered discretion, by giving not less than 5 days prior written notice of such termination to the Manager.

ARTICLE 2 ENGAGEMENT OF MANAGER

2.1 Engagement of Manager

MNP hereby engages the Manager to act as the manager of the Restaurants during the Term upon and subject to the terms and conditions set out in this agreement. The Manager hereby accepts such engagement and agrees, during the Term, on behalf of and for the account of MNP, to operate and manage the Restaurant and to perform all duties and provide all management services necessary or appropriate for the operation and management of the Restaurants (collectively, the “**Management Services**”) including, without limitation, the following:

- a) the selection, supervision, direction, training and assignment of the duties of all such employees as are necessary and appropriate for the proper operation and maintenance of the Restaurants;
- b) the provision of a weekly summary of payroll hours per location indicating the hours worked per day for each employee for the previous week. The summary shall be for the week ending on the Friday and provided to the Receiver by the following Monday at noon for each location;
- c) supervision, direction and control of the collection, receipt of and giving of receipts for all services or income of any nature derived from the operation of the Restaurants;

- d) supervising, approving and submitting for payment all expenses incurred in the operation of the Restaurants including, without limitation, inventory supplies, garbage removal, franchise related fees, promotional and advertising costs, other than those required pursuant to the terms of the Franchise Agreement;
- e) arranging for such repairs and replacements as are necessary for the proper operation of the Restaurants and the maintenance thereof in a good state of repair. If the cost of any individual repair is expected to exceed \$250, consent of the Receiver shall be required in advance;
- f) the purchasing of such inventories, provisions, supplies and equipment as are reasonably necessary for the proper and efficient maintenance and operation of the Restaurants with approval in advance from MNP for any unusual expenditures in excess of \$250; and,
- g) the preparation and delivery to MNP, on a daily basis, of a sales and cash reconciliation report from the POS system in the ordinary course.

2.2 Authority of Manager

Notwithstanding any other provision contained in this agreement, the authority and discretion of the Manager in relation to the management of the Restaurants in accordance with this agreement shall at all times be subject to and limited by the terms of the appointment of MNP as Receiver of the Debtors.

2.3 Manager as Agent for MNP

In taking any action pursuant to and in accordance with this Agreement, the Manager will be acting only as agent for MNP and nothing in this Agreement shall be construed as creating a partnership or joint venture or employment or any other relationship between the parties hereto except that of principal and agent. Neither the Manager nor any of its officers, directors, or employees shall be considered as employees of MNP.

2.4 Manager's Obligations on Termination

The Manager agrees that at the end of the Term it shall promptly deliver to MNP all bookkeeping and accounting data and records, agreements, vouchers, invoices, memoranda, correspondence, files and other documents and information pertaining to the Restaurants and the Manager's management thereof, all as required by MNP.

2.5 Compensation to the Manager

The Manager shall be entitled to a management fee of \$2,000 per month per restaurant plus applicable HST and such fee shall be prorated accordingly and payable monthly in arrears. The Manager shall submit a monthly invoice for the provision of its services to MNP in its capacity as the Receiver of the individual debtor company.

ARTICLE 3 OPERATIONAL MATTERS

3.1 Bank Account

MNP shall establish one or more accounts in the name of MNP with TD Bank located at 220 Commerce Valley Dr. W., Markham ON (the "**Bank Accounts**"). The Bank Accounts shall be used by MNP and the Manager for the purposes of from time to time (a) collecting all income, fees, receipts, refunds, rebates, repayments, credits, deposits, security deposits, as well as all other revenue of any kind derived from the Restaurants, including, but not limited to, any proceeds under any insurance policies attached to the Restaurants, and any proceeds from the disposition of the property of the Debtors (collectively, the "**Receipts**") and (b) disbursing all such Receipts in accordance with the terms of this Agreement.

3.2 The Bank Accounts shall be the only repository of the Receipts.

3.3 Signing Authority. The Bank Accounts shall specify and record that all disbursements from such account, whether by cash, cheque, bank draft, wire transfer, debit, transfer or the like, shall at all times require the signature of MNP.

ARTICLE 4 ADDITIONAL OBLIGATIONS

4.1 The Manager agrees that it will carry out the Management Services in accordance with all directions received from MNP and in accordance with the operating regulations and requirements in the franchise and licensing agreements between the Debtors and Popeyes Louisiana Kitchen, Inc.

4.2 The Manager acknowledges that in performing its obligations and duties hereunder, it will develop and acquire experience and knowledge with respect to the business of the Debtors. The Manager agrees that such knowledge and experience will be used solely and exclusively in furtherance of the business interests of the Debtors, and not in any manner which would be detrimental to the Debtors.

4.3 The Manager shall not, without the prior written consent of MNP, directly or indirectly, participate in the ownership of, or derive any benefit from, any entity which does business with the Debtors.

4.4 The Manager acknowledges that in the course of performing its duties, it will have access to confidential information concerning the activities, business operations, and customers of the Debtors (the " **Information** "). The Manager agrees to keep the Information confidential and will not disclose the Information to any person or use the Information for any purpose other than the discharge of its obligations under this Agreement.

ARTICLE 5 BOOKS AND RECORDS

5.1 Maintenance of Records

The Manager shall at all times maintain appropriate records in accordance with good accounting practice wherein it incurs income and expenses of the Restaurants and all transactions it enters into in performing and observing its obligations pursuant to this Agreement shall be kept separate and apart from other properties owned, operated or managed by it. MNP and its authorized representatives shall have the right at all reasonable times and intervals to inspect such books and records, and also all agreements, vouchers, invoices, memoranda, correspondence, files and other documents and information pertaining to the Restaurants and the management thereof, and the Manager shall make available to MNP such information and material as MNP or its authorized representative may require for the purposes of any such inspection.

ARTICLE 6 INDEMNITIES

6.1 Status of Manager

It is understood and agreed that the Manager in performing the Management Services pursuant to and in accordance with this Agreement shall act in all respects as agent of MNP and not as an independent contractor.

6.2 Indemnity in Favour of MNP

The Manager agrees to indemnify and save MNP harmless from all costs, claims and damages which may arise from the Manager's failure to observe and perform its obligations pursuant to this Agreement promptly and in accordance with the terms hereof or from any negligence, malfeasance or wilful misconduct of the Manager. The Manager's agreement to indemnify MNP and save it harmless shall not extend to liability arising from any negligence, malfeasance or wilful misconduct of MNP.

6.3 Survival of Indemnities

The Manager and MNP agree that the Manager's agreement to indemnify and save MNP harmless provided for in this Article shall survive the termination of this Agreement notwithstanding any contrary provision contained in the Agreement.

6.4 Notice

The Manager agrees to notify MNP promptly of any suit, proceeding or action commenced or taken or threatened against MNP or the Manager or otherwise pertaining to the Restaurant of which the Manager is or becomes aware.

CONDITIONS

7.1 This Agreement is conditional upon the receipt by MNP of the written acknowledgment and approval of this Agreement by Popeyes Louisiana Kitchen, Inc., and until receipt of the written approval hereof from Popeyes Louisiana Kitchen, Inc., this Agreement shall be of no force or effect.

ARTICLE 7 GENERAL PROVISIONS

8.1 Force Majeure

If the performance by the Manager of any of its obligations under this Agreement is prevented or delayed by reason of any flood, riot, fire, strike, explosion, war or other cause beyond the reasonable control of the Manager, then and in every such event, such prevention or delay shall not be deemed a breach of this Agreement to the extent that it results from such causes. Forthwith upon the occurrence of any such event, the Manger shall notify MNP of the nature and extent thereof. In the event that any of such causes results in substantial interference

with the operations of the Restaurants, then MNP and the Manager will negotiate in good faith and attempt to agree upon a per diem rate for any of the Management Services which the Manager is still required to perform during such period of substantial interference.

8.2 Time of Essence

Time shall be of the essence of this Agreement.

8.3 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and there are no other representations, warranties, undertakings or agreements between the parties relating to the subject matter hereof, whether written or oral.

8.4 Notices

a) Any notice or other communication to be given hereunder to any of the parties hereto shall be in writing and delivered personally, or sent by telecopy or facsimile transmission to such party at its number set out below, or if postal services and deliveries are then operating, mailed by registered mail to such party at its address set out below, namely:

MNP Ltd.
1900 – 1 Adelaide Street East
Toronto Ontario
M5C 2V9

Attention: Deborah Hornbostel
Email: deborah.hornbostel@mnp.ca

To the Manager:

Dahiem's Management Services Inc.

Attention: Dahiem Mumtaz
Email: dahiem.mumtaz@gmail.com

or at such address as the part to whom such notice or other communication is to be given may have designated by notice so given to the other parties hereto.

b) Any notice or other communication given as aforesaid shall be deemed to have been given on the date of delivery if delivered in person, or on the first business day next following the date of sending if sent by telecopy or facsimile transmission, or if mailed, on the third business day following the date of mailing if postal service and deliveries are then operating.

8.5 Proper Law

This Agreement shall be construed in accordance with, and be governed in all respects by, the laws of the Province of Ontario and the laws of Canada applicable therein.

8.6 Counterparts

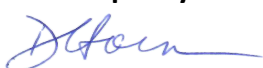
This Agreement may be executed in one or more counterparts, each of which counterparts so executed shall constitute and be deemed to be an original, and all of which together shall constitute one and the same agreement.

8.7 Successors and Assigns

This Agreement shall inure to the benefit of and be binding on the successors and permitted assigns of the parties hereto.

Executed at Toronto, this 8th day of May, 2023.

MNP Ltd., Receiver of 2700774 Ontario Inc., Index Foods Inc. and Index International Inc. and not in its personal capacity

Per: 

Deborah Hornbostel
Senior Vice-President

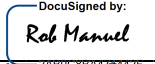
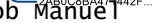
Dahiem's Management Services Inc.

Per: _____
Dahiem Mumtaz
President

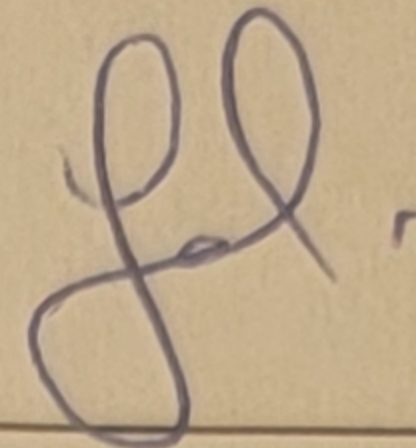
Popeyes Louisiana Kitchen, Inc. is signing this Agreement solely for the purpose of Section 7.1.

Acknowledged And Approved this _ day of May, 2023.

Popeyes Louisiana Kitchen, Inc.

Per:  _____
Name:  Rob Manuel
Title: General Manager - Canada
I have authority to bind the Corporation

Dahiem's Management Services Inc.

Per:  _____
Dahiem Mumtaz
President

Popeyes Louisiana Kitchen, Inc. is signing this Agreement solely for the purpose of Section 7.1.

Acknowledged And Approved this _ day of May, 2023.

Popeyes Louisiana Kitchen, Inc.

Per: _____
Name: _____
Title: _____
I have authority to bind the Corporation

APPENDIX D

First Amendment to Agreement of Purchase and Sale (the ‘First Amendment’)

Dated May 15, 2023.

BETWEEN:

**MUHAMMAD SALEEM (in trust for a Corporation to be formed)
(the “Buyer”)**

- and -

**MNP LTD. (in its capacity as Court Appointed Receiver of 421 Wharncliffe Ltd.)
(the “Seller”)**

Whereas:

- A. The parties entered into an Agreement of Purchase and Sale dated March 29, 2023 (the “**Original Agreement**”) to sell the property located at 421 Wharncliffe Road South, London, Ontario (the “**Property**”).
- B. The parties have agreed to amend the Agreement on the terms and conditions herein.

For good and valuable consideration,

- 1 **Definitions.** Capitalized Terms not otherwise defined herein shall have the meanings ascribed to such terms in the Original Agreement.
- 2 **Seller:** The Seller has been appointed receiver of 421 Wharncliffe Ltd. by a Receivership Order dated May 8, 2023 giving the Seller the power to sell the Property. The Seller in its capacity as Court Appointed Receiver of 421 Wharncliffe Ltd. and the Buyer hereby ratifies, confirms and affirms the terms of the Original Agreement, as amended by this First Amendment (collectively, the “**Agreement**”).
- 3 **Deposit:** The parties hereby agree that the deposit is increased to \$50,000.00 and these funds shall be held by the solicitors for the Seller, Dickinson Wright LLP, in trust. The deposit is to be wired to Dickinson Wright LLP, in trust, by no later than 5:00 p.m. on Thursday May 11, 2023.
- 4 **Completion Date:** The parties hereby agree that the closing date is to be the later of: (i) May 23, 2023; or the date which is 48 hours after the approval by the Ontario Superior Court of Justice (the “**Court Approval**”) of the Agreement.
- 5 **Conditional:** The parties hereby agree that the Agreement is conditional upon the Seller obtaining Court Approval of the Agreement. In the event that Court Approval is not obtained

by June 30, 2023, then the Deposit shall be returned to the Buyer, and the Agreement shall be of no further force and effect, except for any provision which expressly survives the termination of the Agreement.

- 6 **Confirmation:** The Buyer hereby confirms and agrees that there are no conditions in favour of the Buyer and the Agreement is unconditional, except as provided in paragraph 5 above.
- 7 **No other Amendments.** Except as amended by this Amendment, all other terms and conditions of the Agreement shall remain in full force and effect, and time shall remain of the essence.

THE PARTIES HAVE SIGNED BELOW to indicate their agreement.

Signatures on the next page.

Taj Ahmad

Witness

9/15/2023

(Taj Ahmad)

Saleem

MUHAMMAD SALEEM

Dated
May 15, 2023

**MNP LTD. (in its capacity as Court
Appointed Receiver of 421 Wharncliffe
Ltd.)**

By:



Name: Jerry Henechowicz
Title: Senior Vice-President

APPENDIX E

LAND
 REGISTRY
 OFFICE #33

08398-0360 (LT)

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

PROPERTY DESCRIPTION: PT LT 1, PL 29, PTS 1 & 2, 33R5153 & PT 2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY ; LONDON/WESTMINSTER

PROPERTY REMARKS:

ESTATE/QUALIFIER:
 FEE SIMPLE
 LT CONVERSION QUALIFIED

RECENTLY:
 FIRST CONVERSION FROM BOOK

PIN CREATION DATE:
 1994/04/25

OWNERS' NAMES
 421 WHARNCLIFFE LTD.

CAPACITY SHARE
 ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1994/04/25 ON THIS PIN **WAS REPLACED WITH THE "PIN CREATION DATE" OF 1994/04/25** ** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) ** **SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO: ** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES * ** AND ESCHEATS OR FORFEITURE TO THE CROWN. ** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF ** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY ** CONVENTION. ** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES. **DATE OF CONVERSION TO LAND TITLES: 1994/04/25 **						
77753	1955/12/20	BYLAW				C
119427	1959/04/23	BYLAW				C
CORRECTIONS: 'DATE OF REGN.' CHANGED FROM '1959/04/29' TO '1959/04/23' ON 1990/11/22 BY BRUCE BURT.						
161524	1962/02/16	BYLAW				C
33R5153	1982/02/22	PLAN REFERENCE				C
33R5487	1982/12/29	PLAN REFERENCE				C
33R11809	1994/10/27	PLAN REFERENCE				C
LT377222	1995/03/03	NOTICE		BLAKE, ERNEST E. G.	J. BOTTOM HOLDINGS LIMITED	C
REMARKS: 37829 AND WU42424						

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.

* 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
ER1340884	2020/12/04	TRANSFER <i>REMARKS: PLANNING ACT STATEMENTS.</i>	\$650,000	421 WHARNCLIFFE INC.	421 WHARNCLIFFE LTD.	C
ER1443829	2022/03/02	CHARGE	\$1,100,000	421 WHARNCLIFFE LTD.	CANADIAN WESTERN BANK	C
ER1443830	2022/03/02	NO ASSGN RENT GEN <i>REMARKS: ER1443829.</i>		421 WHARNCLIFFE LTD.	CANADIAN WESTERN BANK	C
ER1490874	2022/09/22	APL GOVT ORDER <i>REMARKS: PROPERTY STANDARDS ORDER</i>		THE CORPORATION OF THE CITY OF LONDON		C
ER1514998	2023/02/28	NOTICE <i>REMARKS: ER1443829</i>		421 WHARNCLIFFE LTD.	CANADIAN WESTERN BANK	C

APPENDIX F

Properties

PIN 08398 - 0360 LT
Description PT LT 1, PL 29, PTS 1 & 2, 33R5153 & PT 2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY ; LONDON/WESTMINSTER
Address 421 WHARNCLIFFE RD S
LONDON

Applicant(s)

This Order/By-law affects the selected PINs.

Name THE CORPORATION OF THE CITY OF LONDON
Address for Service P.O. Box 5035, London, ON N6A 4L9
This document is being authorized by a municipal corporation Karen Chambers, Property Standards Officer.
This document is not authorized under Power of Attorney by this party.

Statements

This application is based on a government/authority order See Schedules. The order is still in full force and effect.

Signed By

Sachit Tataavarti-Bharatam 300 Dufferin Ave Suite1014, P.O. acting for Signed 2022 09 22
Box 5035 Applicant(s)
London
N6A 4L9

Tel 519-661-4940

Fax 519-661-5530

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

CITY OF LONDON 300 Dufferin Ave Suite1014, P.O. Box 2022 09 22
5035
London
N6A 4L9

Tel 519-661-4940

Fax 519-661-5530

Fees/Taxes/Payment

Statutory Registration Fee \$66.30
Total Paid \$66.30

THE CORPORATION OF THE CITY OF LONDON

ORDER

Issued Pursuant to Subsection 15.2(2) of the Ontario Building Code Act, S.O.1992, c.23

ORDER NUMBER: PV 22-027267

DATE ISSUED: August 10, 2022

ISSUED TO: 421 Wharnccliffe Ltd
421 Wharnccliffe Rd S
LONDON ON N6J 2M6

MUNICIPAL ADDRESS: 421 Wharnccliffe Rd S., London ON

LEGAL DESCRIPTION: PLAN 29 PT LOT 1 RP 33R5153 PART 2 RP 33R5487 PART 2 REG
17273.00SF 87.10FR D

BE ADVISED that on **August 10, 2022** an inspection of the above-noted property revealed the property does not conform to the standards prescribed in The City of London Property Standards By-Law CP-24.

The particulars of the repairs to be made are set out in the "Schedule of Repairs to be Made", attached hereto, and forming part of this **ORDER**.

You are Hereby Ordered to carry out the repairs as set out in the "Schedule of Repairs to be Made" or the site is to be cleared of all buildings, structures, debris or refuse. This **ORDER** shall be complied with and the property brought into conformance with the standards prescribed in the Property Standards By-law on or before **August 29, 2022**.

Where it has been determined that the repairs or clearance as set out in this Order have not been carried out in accordance with this **ORDER** as confirmed or modified, in addition to any possible court action, The Corporation of the City of London may carry out the repairs or clearance at the owner's expense. The Corporation of the City of London shall have a lien on the land for the amount spent on the repairs or clearance and the amount shall have priority lien status as described in section 1 of the *Municipal Act, 2001*. The amount may be added to the tax roll of the property.

You are Hereby Advised that if you are not satisfied with the terms or conditions of this **ORDER**, **you may appeal** by sending a notice of appeal, including grounds for appeal and applicable fee, to the City Clerk's Office, Room 308, City Hall, PO Box 5035, London, Ontario, N6A 4L9. The Hearing fee is \$150.00, as set out in the Fees and Charges By-Law.


TAKE NOTICE that the final day to give notice of **APPEAL FROM THIS ORDER** shall be **August 29, 2022**.

In the event that no appeal is received within the above prescribed period, the **ORDER** shall be deemed to be confirmed and shall be final and binding. You are expected to comply with the terms and conditions of this **ORDER** to avoid any possible enforcement actions being taken.

Where a permit is required to carry out a repair required to comply with this Order, it is the responsibility of the owner to obtain any such permit.

Failure to comply with this ORDER may result in enforcement action being taken.

DATED AT LONDON, ONTARIO, this 10th day of August 2022.



KAREN CHAMBERS
PROPERTY STANDARDS OFFICER

"SCHEDULE OF REPAIRS TO BE MADE"

<u>Municipal Address</u>	421 Wharncliffe Rd S	File No. PV 22-027267
<u>Date of Inspection</u>	August 10, 2022	
<u>Owner</u>	421 Wharncliffe Ltd 421 Wharncliffe Rd S LONDON ON N6J 2M6	
1) <u>Non-conformance:</u>	Damaged walls and foundation.	
By-law Section:	4.2 Foundation, Walls, Columns, Beams, Floor and Roof Slabs	
	4.2.1 Foundation, Walls - Maintained	
	All exterior surfaces on a building shall be maintained.	
Repair to be made:	Remove/repair damaged walls, floor and foundation comply with the CP-24 by-law.	
2) <u>Non-conformance:</u>	Damaged windows.	
By-law Section:	4.3 Doors, Windows and Skylights	
	4.3.2 Doors, Windows - Maintained	
	All exterior surfaces on a building shall be maintained.	
Repair to be made:	Repair/remove damaged doors to comply with the CP-24 by-law.	
3) <u>Non-conformance:</u>	Damaged roof.	
By-law Section:	4.4 Roofs and Roof Structures	
	4.4.1 Roof/Related Roof Structure	
	All exterior surfaces on a building shall be maintained.	
Repair to be made:	Repair/remove damaged roof to comply with the CP-24 by-law.	

For properties with Heritage designation, or that fall within a designated Heritage area, Section 2.7 of By-law CP-24 will apply and a Heritage alteration permit may be required. Please contact a Heritage Planner at 519-661-4980 for more information.

No order made under section 15.2 of the Building Code Act in respect of a Part IV heritage property or a Part V heritage property shall state that the site is to be cleared of all buildings or structures and left in a graded and levelled condition. That part of an order in respect of a Part IV heritage property or a Part V heritage property that states that a site is to be cleared of all buildings or structures and left in a graded and levelled condition is of no force or effect.

August 10, 2022
KC:sb

APPENDIX G

(1) Registry Land Titles (2) Page 1 of 3 pages

(3) Property Identifier(s) **08398 0360** Block **08398 0358** Property Additional: See Schedule

(4) Nature of Document
APPLICATION TO REGISTER NOTICE OF UNREGISTERED ESTATE, RIGHT, INTEREST OR EQUITY Section 71 of Act

(5) Consideration
Dollars \$

(6) Description
Firstly: Part of Lot 1, Plan 29, (formerly Township of Westminster), City of London, County of Middlesex, designated as Parts 1 and 2 on Reference Plan 33R-5153 and Part 2 on Reference Plan 33R-5487.
Secondly: Part of Lot 1, Plan 29, (formerly Township of Westminster), City of London, County of Middlesex, designated as Part 4 on Reference Plan 33R-5153.

(7) This Document Contains: (a) Redescription New Easement Plan/Sketch (b) Schedule for: Description Additional Parties Other

FOR OFFICE USE ONLY

377222

CERTIFICATE OF RECEIPT
MIDDLESEX NO. 33 (LONDON)

'95 MAR 3 12 11

Smith
LAND REGISTRAR

New Property Identifiers Additional: See Schedule

Executions Additional: See Schedule

(8) This Document provides as follows:
TO: The Land Registrar for the Land Titles Division of Middlesex (No. 33)
J. Bottom Holdings Inc. has an unregistered estate, right, interest or equity in respect of the land secondly described in Box (6) hereof registered in the name of Ernest E. G. Blake.
And hereby applies under Section 71 of the Land Titles Act for the entry of a notice of claim in favour of the owner of lands firstly described in Box (6) over the lands secondly described in Box (6) hereof in the register for both parcels.
Evidence in support of this application is a Notice of Claim under Section 113(2) of the Registry Act, attached.

Continued on Schedule

(9) This Document relates to instrument number(s) **37829 and WU42424**

(10) Party(ies) (Set out Status or Interest)
Name(s) Signature(s) Date of Signature Y M D
J. BOTTOM HOLDINGS LIMITED Per: *Frank Sinasac* 1995 02 17
(Applicant) Frank Sinasac, President
I have authority to bind the Corporation.

(11) Address for Service **421 Wharncliffe Road South, London, Ontario, N6J 2M6**

(12) Party(ies) (Set out Status or Interest)
Name(s) Signature(s) Date of Signature Y M D
BLAKE, Ernest E. G. (Owner)

(13) Address for Service **78 Compton Crescent, London, Ontario, N6C 4G1**

(14) Municipal Address of Property
MULTIPLE Eastern Road London, Ontario
ok to form & content mv

(15) Document Prepared by:
Barry R. Card
McCARTHY TETRAULT
Suite 2000,
One London Place
255 Queens Avenue
London, Ont. N6A 5R8
per mv

Fees and Tax	
Registration Fee	<i>50</i>
Total	

Additional Property Identifier(s) and/or Other Information

NOTICE OF CLAIM

NOTICE is hereby given by J. Bottom Holdings Limited under Subsection 113(2) of the Registry Act of a claim under Instrument Number 37829 dated the 12th day of February, 1937 and registered the 26th of May, 1938 on the following land:

Part of Lot 1, Registered Plan Number 29, (formerly in the Township of Westminster), City of London, County of Middlesex, designated as Part 4 on Reference Plan 33R-5153 (the "Lands").

The particulars of the claim are as follows:

1. The claimant is entitled to the use and enjoyment of a right-of-way over the lands described above by virtue of the express grant made in Instrument Number 37829.
2. The right-of-way is referenced in documents registered on title to other lands abutting the Lands and in particular, in the deed dated the 1st day of March, 1945 and registered on the 5th day of March, 1945 as Instrument Number WU42424 being the deed transferring the Lands to Ernest E. G. Blake, the registered owner of the Lands.
3. The right-of-way has been openly used and enjoyed by J. Bottom Holdings Limited and its predecessors in title and there has been no conflicting evidence which has been registered on title any time after the expiration of the notice period under Section 113 of the Registry Act.

The address for service of the claimant is 421 Wharncliffe Road South, London, Ontario, N6J 2M6.

Dated at London, Ontario, this 17 day of February, 1995.

J. BOTTOM HOLDINGS LIMITED

Per: Frank Sinašac
Frank Sinašac, President

I have authority to bind the Corporation.

Additional Property Identifier(s) and/or Other Information

AFFIDAVIT IN SUPPORT OF NOTICE OF CLAIM UNDER SUBSECTION 113(2) OF THE ACT

I, Frank Sinasac, of the City of London, in the County of Middlesex, MAKE OATH AND SAY:

- 1. I am the claimant whose claim is more particularly described in the attached Notice of Claim.
2. The particulars as set out in the attached Notice of Claim are true and subsisting and the claim and the time for registering a Notice of Claim under subsections 113(2) and (3) of the Registry Act have not expired.

SWORN before me at the)
City of London, in the)
County of Middlesex, this 17 day of)
February, 1995.)
[Signature])
A Commissioner, etc.)

[Signature]
FRANK SINASAC

APPENDIX H

Index Holding Group Inc. and Certain of its Related and Affiliated Entities

Sale Process

Purpose

1. The proposed sale process (the “**Sale Process**”) for certain assets of the Index Holding Group Inc. and certain of its related and affiliated entities (collectively the “**Index Group**”) for sale of its assets and business (collectively, the “**Assets**”) would be conducted by MNP Ltd. in its capacity as court-appointed receiver and manager (the “**Receiver**”) with the input and assistance of Dickinson Wright LLP (the “**Legal Counsel**”), and in consultation with Canadian Western Bank (“**CWB**”), in accordance with the terms and timeline set out below.
2. Any contemplated sale shall be subject to approval by the Court.
3. Unless otherwise indicated herein, any event that occurs on a day that is not a business day shall be deemed to occur on the next business day.
4. Notwithstanding anything contained herein, the Receiver shall have the right to enter into an exclusive transaction for the sale of the Property, or any portion thereof, outside the Sale Process prior to the selection of a Successful Offeror.

Sale Process Procedures

5. The Receiver, in conjunction with MNP LLP’s food services and corporate finance groups will compile a list of prospective purchasers that are most likely to be acceptable as franchisees for the operations of the Popeye’s Louisiana Kitchen and/or Denny’s restaurants owned by Index Group that are the subject of this sale (together with any other party expressing an interest in the Property, the “**Prospective Purchasers**”). The Receiver will make reasonable efforts to canvass the interest, if any, in the Property, of all Prospective Purchasers.
6. The sale of the Property will be on an “as is, where is” basis without representations or warranties of any kind, nature or description by the Receiver, or any of their respective directors, officers, partners, employees, agents, advisors or estates, except to the extent as may be set forth in a Successful Offer (as defined herein), and approved by the Court. By submitting a bid, each Prospective Offeror (as defined herein) shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its

Index Holding Group Inc. and Certain of its Related and Affiliated Entities

Sale Process

bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Property or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Process or as set forth in a Successful Offer and approved by the Court.

7. The Receiver will distribute to Prospective Purchasers an interest solicitation letter (“**Teaser**”) which will provide an overview of this opportunity. A Confidentiality and Non-Disclosure Agreement (“**NDA**”) will also be distributed to the Prospective Purchasers. Prospective Purchasers will be required to sign the NDA in order to gain access to confidential information and to commence performing due diligence, if the Receiver determines that such Prospective Purchaser has a bona fide interest in the purchase of the Property (each Prospective Purchaser who signs a NDA being a “**Prospective Offeror**”). All NDA’s shall enure to the benefit of any purchaser of the Property.

8. The Receiver will provide to each Prospective Offeror: (i) a confidential information memorandum (“**CIM**”) prepared with information available to the Receiver, (ii) access to a secure electronic data room (the “**Data Room**”) established by the Receiver with information and documentation in the possession of the Receiver (which will include certain relevant and customary financial, operational and other information regarding the Property), and (iii) a proposed form of agreement of purchase and sale with the Receiver named as vendor (the “**APS**”).

9. The Receiver will also facilitate, due diligence by Prospective Offerors, including arranging site visits, as the Receiver determines appropriate. The Receiver may also attend such site visits as it considers appropriate.

10. Notwithstanding paragraph 8 above, the Receiver shall have the right to deny or limit any Prospective Offeror's access to confidential information, which may include denying access to confidential information, if in the Receiver’s reasonably held view such Prospective Offerors are not likely to be serious about submitting an offer for the Property.

11. The Receiver makes no representation or warranty as to the information to be provided through this due diligence process or otherwise.

Index Holding Group Inc. and Certain of its Related and Affiliated Entities

Sale Process

Timeline

12. A chart summarizing the material timelines for the Sale Process is set out below:

Event		Timeline
1	Receiver to prepare the list of Prospective Purchasers, the Teaser, the NDA, the Data Room, CIM, APS, and draft advertisements	Commencing on June 5, 2023
2	Publish notice of the sale in a nationally circulated food service trade journal and website.	During the week of June 5, 2023
3	Publish notice of the sale on the Receiver's website and through the Insolvency Insider e-mail publication	Commencing on June 5, 2023
4	Distribute Teaser and the NDA to those identified as Prospective Purchasers	Commencing on June 5, 2023
5	Commence distribution of CIM and providing data room access to Prospective Offerors, after receiving executed copy of NDA (subject to the Receiver's discretion as outlined herein)	Commencing on June 5, 2023
6	Plan and provide tours of the Index Group's operations	From June 13 to June 29, 2023
7	Discussion with Prospective Offerors to provide updates and to resolve their queries	From June 13 to June 30, 2023
8	Deadline for submission of Offers	July 4, 2023 at 5:00 PM (Toronto Time) (the " Deadline ")
9	Acceptance of Successful Offer(s)	Up to 10 days after the Deadline
10	Court motion to approve Successful Offer(s)	As soon as possible after acceptance
11	Complete transaction(s)	Within 5 days after Court Approval, expected to be no later than July 30, 2023

Index Holding Group Inc. and Certain of its Related and Affiliated Entities

Sale Process

13. Subject to any Order of the Court, the dates set out in the Sale Process may be extended by the Receiver, in its sole discretion acting reasonably, in consultation with CWB, all with a view of maximizing the value of the Property.

Submission of Offers

14. The Receiver shall seek binding offers and accompanying material from Prospective Offerors (a “**Binding Offer**”) in accordance with the timeline set out above that provides for:

- (a) delivery of the Binding Offer by the Prospective Offeror on or before the Deadline;
- (b) the identity of each person or entity (including its shareholders) that is sponsoring or participating in the Binding Offer and the complete terms of such participation, evidence of corporate authority, and proof of such offeror's financial ability to perform the proposed transaction to the satisfaction of the Receiver, acting reasonably;
- (c) in the form of a binding offer capable of acceptance and irrevocable for a period of 15 days after the Deadline;
- (d) all Binding Offers are to be accompanied by a deposit (the “**Deposit**”) in the form of a wire transfer (to a bank account specified by the Receiver), in an amount equal to at least 10% of the total consideration contained in the Binding Offer;
- (e) is substantially in the form of the APS, with any changes to the Binding Offer blacklined against the Receiver’s form of APS;
- (f) includes an acknowledgement and representation that the Prospective Offeror: (i) it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its bid, (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents, the Property and/or any other assets to be acquired and liabilities to be assumed in making its bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the business and/or assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, except as expressly stated in any definitive documents;
- (g) is not conditional upon:
 - (i) the outcome of any further due diligence;
 - (ii) obtaining financing;
 - (iii) approval by either the Denny’s or Popeyes Franchisor; and

Index Holding Group Inc. and Certain of its Related and Affiliated Entities

Sale Process

- (iv) any other conditions to closing, except the usual limited conditions such as the issuance by the Court of an order approving the transaction and vesting title in and to the purchaser.

15. Each offer submitted in accordance with paragraph 14 above shall be a “Qualified Offer” and each such offeror a “Qualified Offeror”, as determined by the Receiver.

16. The Receiver may determine whether to entertain Binding Offers for the Property that do not conform to one or more of the requirements specified herein and deem such Binding Offers to be a Qualified Offer.

Post-Offer Deadline Procedure

17. If one or more Qualified Offers are received the Receiver may:

- (a) accept one (or more, if for distinct transactions) Qualified Offer(s) (the “**Successful Offer**” and each Qualified Offeror making the Successful Offer(s) being a “**Successful Offeror**”) and take such steps as are necessary to finalize and complete an agreement for the Successful Offer(s) with the Successful Offeror(s); or
- (b) continue negotiations with a selected number of Qualified Offerors (collectively, “**Selected Offerors**”) with a view to finalizing one or more agreements with one or more Selected Offerors.

18. The Receiver shall not be under any obligation to accept the highest or best (or any) Qualified Offer and any selection of the Successful Offer(s) and the Selected Offeror(s) shall be entirely in the discretion of the Receiver, in consultation with the Legal Counsel. For greater certainty, the Receiver is hereby permitted to decline acceptance of any and all offers, including Qualified Offers.

19. A Binding Offer may not be withdrawn, modified or amended without the written consent of the Receiver prior to the Successful Offer being determined. Any such withdrawal, modification or amendment made without the written consent of the Receiver prior to the Successful Offer being determined shall result in the forfeiture of such Prospective Offeror’s deposit as liquidated damages and not as a penalty.

20. No one, including any Prospective Purchasers, Prospective Offerors, Qualified Offerors or Successful Offerors, shall be entitled to nor permitted any break, termination or similar fee or reimbursement of any kind. For greater certainty, all such persons shall be responsible for their own fees and costs of any kind, including those relating to any due diligence they may have performed, and any offers they each may make.

21. In the event a Qualified Offeror is not selected as a Successful Offeror, the Deposit shall be returned to the Qualified Offeror as soon as reasonably practicable.

Index Holding Group Inc. and Certain of its Related and Affiliated Entities

Sale Process

Other Terms

22. If a Successful Offeror breaches its obligations under the terms of its offer, and if the Receiver chooses not to proceed with the Successful Offeror, any Deposit submitted in connection with the Successful Offer shall be forfeited to the Receiver as liquidated damages and not as a penalty.

23. The Receiver may in consultation with CWB: (a) determine which Qualified Offer, if any, is the highest or otherwise best offer, (b) reject at any time before the issuance and entry of an order approving a Successful Offer, any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Sale Process or any order of the Court, or (iii) contrary to the best interests of the receivership estate, and (c) may modify the Sale Process or impose additional terms and conditions on the sale of the Property, acting reasonably.

24. The Receiver shall not have any liability whatsoever to any person or party, including without limitation any Prospective Purchasers, Prospective Offerors, Qualified Offerors or Successful Offers, Turuss, or any creditor or other stakeholder, for any act or omission related to the Sale Process. By submitting a bid, each Prospective Offeror shall be deemed to have agreed that it has no claim against the Receiver for any reason whatsoever.

25. Following the selection of the Successful Offer(s), and subject to the timeline set out above, the Receiver shall bring a motion to the Court (the "Approval Motion") for an order, substantially in the form of the Approval and Vesting Order attached to the APS, and authorizing the Receiver to take such further actions as may be necessary or appropriate, to give effect to the Successful Offer(s) and vest the Receiver's interest in the Property in the Successful Offeror(s).

26. Following the granting of any Approval and Vesting Order by the Court, the Receiver shall complete the transaction of purchase and sale in accordance with the timeline set out above.

27. Notwithstanding anything else contained herein, if it becomes evident to the Receiver that no Qualified Offers will be received, the Receiver, may terminate the Sale Process.

28. There shall be no amendments to this Sale Process, including for greater certainty the process and procedures set out herein, without further order of the Court. Notwithstanding the foregoing, the Receiver in consultation with CWB, shall be permitted at any time, whether before or after the Deadline to extend the dates in the Sale Process by a total of up to three (3) weeks without further order of the Court.

29. Sale Process is solely for the benefit of the Receiver, and nothing contained in the Sale Process Order or this Sale Process shall create any rights in any other person or bidder (including without limitation rights as third party beneficiaries or otherwise).

TAB 3

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

THE HONOURABLE)
)
JUSTICE KIMMEL) MONDAY, THE 29TH
 DAY OF MAY, 2023

B E T W E E N:

(Court Seal)

CANADIAN WESTERN BANK

Applicant

and

**INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX
INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC.,
11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC.,
2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC.,
2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC.,
2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC.,
2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC.,
421 WHARNCLIFFE LTD. and 425 WHARNCLIFFE ROAD INC.**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY
AND INSOLVENCY ACT, RSC 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, RSO 1990, c. C.43, AS AMENDED***

APPROVAL AND VESTING ORDER

THIS MOTION, made by MNP Ltd. in its capacity as the Court-appointed receiver (the “**Receiver**”) of the Respondents, including lands and premises legally described in Schedule A hereto and municipally known as 421 Wharncliffe Road South, London, Ontario (the “**421 Property**”) for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) in respect of the property (the “421 P between the 421 Wharncliffe Ltd. (the “**Debtor**”) and Muhammad Saleem (in trust for a corporation to be formed, the “**Purchaser**”) dated March 29, 2023, as amended by

the First Amendment to Agreement of Purchase and Sale dated May 15, 2023, between the Receiver and the Purchaser (the “**Sale Agreement**”) and appended to the First Report of the Receiver dated May 23, 2023 (the “**First Report**”), and vesting in the Purchaser, the right, title and interest of the Debtor in and to the 421 Property, was heard this day via judicial video conference via zoom, at Toronto, Ontario.

ON READING the First Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although served as appears from the affidavit of L. Nicole Lee sworn May 23, 2023, filed:

1. THIS COURT ORDERS that that the time for service of the Receiver’s Notice of Motion and Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

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

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule B hereto (the “**Receiver’s Certificate**”), all of the right, title and interest of the Debtor in and to the 421 Property shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and

whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Penny dated May 8, 2023; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the “Encumbrances”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the 421 Property are hereby expunged and discharged as against the Property.

4. THIS COURT ORDERS that upon the registration in Land Registry Office for the Land Titles Division of London/ Westminster of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser, as the owner of the 421 Property in fee simple, and is hereby directed to delete and expunge from title to the 421 Property all of the Claims listed in Schedule C hereto.

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

6. THIS COURT ORDERS that, notwithstanding:

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

the vesting of the 421 Property in the Purchaser, pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of any of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

8. THIS COURT ORDERS that the First Report, and the activities of the Receiver described therein, be and are hereby approved.

9. THIS COURT ORDERS that the Sale Process outlined in the First Report in respect of certain assets, property and undertakings of the Respondents be and is hereby approved and the Receiver is hereby authorized to carry out and complete the Sale Process described in the First Report.

Schedule A – Property

PT LT 1, PL 29, PTS 1 & 2, 33R5153 & PT 2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER

PIN 08398-0360(LT)

Schedule B – Form of Receiver’s Certificate

Court File No. CV-23-00698447-00CL

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

B E T W E E N:

CANADIAN WESTERN BANK

Applicant

and

INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC., 2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC., 421 WHARNCLIFFE LTD. and 425 WHARNCLIFFE ROAD INC.

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE COURTS OF JUSTICE ACT, RSO 1990, c. C.43, AS AMENDED*

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an the Order of the Honourable Mr. Justice Penny of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated May 8, 2023, MNP Ltd. was appointed receiver (the “**Receiver**”) of the certain properties of 421 Wharncliffe Ltd. (the “**Debtor**”) and the other Respondents herein.

B. Pursuant to an Order of the Court dated May 29, 2023, the Court approved the transaction (the “**Transaction**”) contemplated in an Agreement of Purchase and Sale dated March 29, 2023 between the Debtor and Muhammad Saleem (in trust for a corporation to be formed, the “**Purchaser**”) as amended by the First Amendment to the Agreement of Purchase and Sale dated

May 15, 2023 between the Receiver and the Purchaser (the “**Sale Agreement**”), and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the real property known as PT LT 1, PL 29, PTS 1 & 2, 33R5153 & PT 2, 33R5487 S/T 837774 if any, S/T 583284 if any; London/Westminster (PIN 08398-0360(LT)) described more particularly in the Sale Agreement (the “**421 Property**”), which vesting is to be effective with respect to the Property 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 Property; and (ii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Receiver has received the Purchase Price for the 421 Property payable pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at _____ [TIME] on _____ 2023.

[Signature follows on page 2 of this Certificate]

**MNP LTD., solely in its capacity as Receiver
of the other Respondents, and not in its
personal capacity.**

Per: _____

Name:

Title:

Schedule C

REGISTRATIONS TO BE DELETED FROM PIN 08398-0360 (LT)

1. Charge registered March 2, 2022 as Instrument No. ER1443829 in favour of Canadian Western Bank
2. Notice of Assignment of Rents General registered March 2, 2022 as Instrument No. ER1443830 in favour of Canadian Western Bank
3. Order registered September 22, 2022 as Instrument No. ER1490874 in favour of the Corporation of the City of London

**Schedule D – Permitted Encumbrances, Easements
and Restrictive Covenant related to the Real Property
REGISTRATIONS TO BE PERMITTED ON PIN 08398-0360 (LT)**

1. Notice registered March 3, 2022 as Instrument No. LT377222 in favour of J. Bottom Holdings Limited

CANADIAN WESTERN BANK
Applicant

-and- INDEX HOLDING GROUP INC. et al.
Respondents

Court File No. CV-23-00698447-00CL

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

PROCEEDING COMMENCED AT
TORONTO

ORDER

DICKINSON WRIGHT LLP

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Lawyers for the Receiver

Email for parties served:
Service List

TAB 4

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

<u>THE HONOURABLE</u>)	<u>MONDAY, THE 29TH</u>
)	
THE HONOURABLE)	WEEKDAY, THE #
)	
JUSTICE _____ <u>KIMMEL</u>)	DAY OF MONTH <u>MAY</u> , 20YR <u>2023</u>

B E T W E E N:

PLAINTIFF

(Court Seal)

Plaintiff

CANADIAN WESTERN BANK

Applicant

-and-

DEFENDANT

INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC., 2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC., 421 WHARNCLIFFE LTD. and 425 WHARNCLIFFE ROAD INC.

Respondents

Defendant

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE COURTS OF JUSTICE ACT, RSO 1990, c. C.43, AS AMENDED

APPROVAL AND VESTING ORDER

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ MNP Ltd. in its capacity as the Court-appointed receiver (the "~~Receiver~~") ~~of the undertaking, property and assets of [DEBTOR]~~ (the "~~Debtor~~" "Receiver") of the Respondents, including lands and premises legally described in Schedule A hereto and municipally known as 421 Wharncliffe Road South, London, Ontario (the "421 Property") for an order, *inter alia*, approving the sale transaction (the "Transaction")

contemplated by an agreement of purchase and sale (the "~~“Sale Agreement”~~") in respect of the property (the “421 P between the 421 Wharncliffe Ltd. (the “Debtor”) and Muhammad Saleem (in trust for a corporation to be formed, the “Purchaser”) dated March 29, 2023, as amended by the First Amendment to Agreement of Purchase and Sale dated May 15, 2023, between the Receiver and [NAME OF the Purchaser] (the "~~Purchaser~~") dated [DATE] "~~Sale Agreement~~") and appended to the First Report of the Receiver dated [DATE] May 23, 2023 (the "~~First Report~~"), and vesting in the Purchaser, the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the “Purchased Assets”) of the Debtor in and to the 421 Property, was heard this day at 330 University Avenue, via judicial video conference via zoom, at Toronto, Ontario.

ON READING the First Report and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] L. Nicole Lee sworn [DATE] May 23, 2023, filed¹:

1. THIS COURT ORDERS that that the time for service of the Receiver’s Notice of Motion and Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. ~~1.~~ THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,² and the execution of the Sale Agreement by the Receiver³ 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

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

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

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

necessary or desirable for the completion of the Transaction and for the conveyance of the ~~Purchased Assets~~Property to the Purchaser.

3. ~~2.~~ THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule ~~A~~B hereto (the "Receiver's Certificate"), all of the ~~Debtor's~~ right, title and interest ~~in and to the Purchased Assets described in the Sale Agreement [and listed on Schedule B hereto]~~⁴ of the Debtor in and to the 421 Property 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"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable ~~Justice [NAME]~~Penny dated ~~[DATE]~~May 8, 2023; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D hereto) and, for greater certainty, this Court orders that all of the Encumbrances

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

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

affecting or relating to the ~~Purchased Assets~~421 Property are hereby expunged and discharged as against the ~~Purchased Assets~~Property.

4. ~~3.~~ THIS COURT ORDERS that upon the registration in ~~the~~ Land Registry Office for the ~~[Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver]~~[Land Titles Division of {LOCATION} London/ Westminster of an Application for Vesting Order in the form prescribed by the *Land Titles Act* ~~and/or the *Land Registration Reform Act*]~~⁶, the Land Registrar is hereby directed to enter the Purchaser, , as the owner of the ~~subject real~~421 Property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the ~~Real~~421 Property all of the Claims listed in Schedule C hereto.

~~4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ 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 sale⁸, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.~~

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's⁹ Certificate, forthwith after delivery thereof.

⁶~~Elect the language appropriate to the land registry system (Registry vs. Land Titles).~~

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

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

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

6. ~~7.~~ THIS COURT ORDERS that, notwithstanding:

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

the vesting of the ~~Purchased Assets~~421 Property in the Purchaser, pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of any of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

7. ~~9.~~ 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.

8. THIS COURT ORDERS that the First Report, and the activities of the Receiver described therein, be and are hereby approved.

9. THIS COURT ORDERS that the Sale Process outlined in the First Report in respect of certain assets, property and undertakings of the Respondents be and is hereby approved and the Receiver is hereby authorized to carry out and complete the Sale Process described in the First Report.

Schedule A – Property

PT LT 1, PL 29, PTS 1 & 2, 33R5153 & PT 2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER

PIN 08398-0360(LT)

Revised: January 21, 2014

Schedule B – Form of Receiver’s Certificate

Court File No. CV-23-00698447-00CL

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

B E T W E E N:

PLAINTIFF

CANADIAN WESTERN BANK

Applicant

Plaintiff

–and–

DEFENDANT

**INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX
INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC.,
11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC.,
2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC.,
2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC.,
2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC.,
2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC.,
421 WHARNCLIFFE LTD. and 425 WHARNCLIFFE ROAD INC.**

Defendant

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY
AND INSOLVENCY ACT, RSC 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, RSO 1990, c. C.43, AS AMENDED***

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an the Order of the Honourable ~~[NAME OF JUDGE]~~ of Mr. Justice Penny of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated ~~[DATE OF ORDER], [NAME OF RECEIVER]~~ May 8, 2023, MNP Ltd. was appointed ~~as the~~ receiver (the “Receiver”) of the ~~undertaking, certain~~ propertyies and assets of [DEBTOR] of 421 Wharncliffe Ltd. (the “Debtor”) and the other Respondents herein.

B. Pursuant to an Order of the Court dated ~~[DATE]~~ May 29, 2023, the Court approved the transaction (the “Transaction”) contemplated in an Agreement of Purchase and Sale dated March 29, 2023 between the Debtor and Muhammad Saleem (in trust for a corporation to be formed, the

“Purchaser”) as amended by the First Amendment to the Agreement of Purchase and Sale ~~made as of [dated OF AGREEMENT] (the “Sale Agreement”)~~ May 15, 2023 between the Receiver ~~[Debtor]~~ and ~~[NAME OF the Purchaser]~~ (the ~~“Purchaser”~~ “Sale Agreement”), and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the ~~Purchased Assets~~ real property known as PT LT 1, PL 29, PTS 1 & 2, 33R5153 & PT 2, 33R5487 S/T 837774 if any, S/T 583284 if any; London/Westminster (PIN 08398-0360(LT)) described more particularly in the Sale Agreement (the “421 Property”), which vesting is to be effective with respect to the ~~Purchased Assets~~ Property upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the ~~Purchased Assets~~; (ii) ~~that the conditions to Closing as set out in section • of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii)~~ Property; and (ii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The ~~Purchaser has paid and the~~ Receiver has received the Purchase Price for the ~~Purchased Assets~~ 421 Property payable ~~on the Closing Date~~ pursuant to the Sale Agreement;
2. The conditions to Closing as set out in ~~section • of~~ the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ ~~[DATE]~~ _____ 2023.

[Signature follows on page 2 of this Certificate]

~~[NAME OF RECEIVER]~~, MNP LTD., solely
in its capacity as Receiver of the ~~undertaking,~~
~~property and assets of [DEBTOR]~~ other
Respondents, and not in its personal capacity.

Per: _____

Name:

Title:

Revised: January 21, 2014

Schedule B—Purchased AssetsC

REGISTRATIONS TO BE DELETED FROM PIN 08398-0360 (LT)

1. Charge registered March 2, 2022 as Instrument No. ER1443829 in favour of Canadian Western Bank
2. Notice of Assignment of Rents General registered March 2, 2022 as Instrument No. ER1443830 in favour of Canadian Western Bank
3. Order registered September 22, 2022 as Instrument No. ER1490874 in favour of the Corporation of the City of London

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

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

~~(unaffected by the Vesting Order)~~

REGISTRATIONS TO BE PERMITTED ON PIN 08398-0360 (LT)

1. Notice registered March 3, 2022 as Instrument No. LT377222 in favour of J. Bottom Holdings Limited

CANADIAN WESTERN BANK
Applicant

-and- INDEX HOLDING GROUP INC. et al.
Respondents

Court File No. CV-23-00698447-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

ORDER

DICKINSON WRIGHT LLP

Barristers & Solicitors

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Tel: [416-646-4608](tel:416-646-4608)

Lawyers for the Receiver

Email for parties served:

Service List

CANADIAN WESTERN BANK
Applicant

-and- INDEX HOLDING GROUP INC. et al.
Respondents

Court File No. CV-23-00698447-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**MOTION RECORD OF THE RECEIVER,
MNP LTD.**

A DICKINSON WRIGHT LLP

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Commerce Court Postal Station
Toronto, ON M5L 1G4

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Lawyers for the Receiver

Email for parties served:
Service List