

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

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

FURTHER SUPPLEMENTARY MOTION RECORD

October 30, 2020

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

Haddon Murray (LSO# 61640P)
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Lawyers for the Applicant,
Canadian Imperial Bank of Commerce

TO: **THE SERVICE LIST**

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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INDEX

Tab	Description
1.	Further Supplementary Affidavit of Heather Fisher sworn October 29, 2020
A	Exhibit "A" - Application Record filed November 19, 2019
B	Exhibit "B" - Supplementary Application Record file November 25, 2019
C	Exhibit "C" - Factum filed November 25, 2019
D	Exhibit "D" - Book of Authorities filed November 25, 2019
E	Exhibit "E" - Motion Record filed February 4, 2020
F	Exhibit "F" - Factum filed February 12, 2020
G	Exhibit "G" - Book of Authorities filed February 12, 2020
H	Exhibit "H" - Supplementary Motion Record filed February 28, 2020
I	Exhibit "I" - Endorsement of Justice Kurke dated February 21, 2020

J	Exhibit "J" - Letter from Haddon Murray to the Court dated March 6, 2020
K	Exhibit "K" - Second Supplementary Affidavit of Heather Fisher sworn March 5, 2020
L	Exhibit "L" - Endorsement of Justice Gauthier dated October 5, 2020
M	Exhibit "M" - Email from Counsel to the Debtor to Haddon Murray dated April 24, 2020
N	Exhibit "N" - April Proposed Transaction
O	Exhibit "O" - Email correspondence between Counsel for the Bank and counsel for the Debtor regarding concerns with the April Proposed Transaction
P	Exhibit "P" - Email from CIBC with approximate total indebtedness dated October 27, 2020

Court File No. CV-19-00008866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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**FURTHER SUPPLEMENTARY AFFIDAVIT OF HEATHER
FISHER
(Sworn October 30, 2020)**

I, Heather Fisher, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am an Associate at Gowling WLG (Canada) LLP, counsel for the Applicant, Canadian Imperial Bank of Commerce (the "**Bank**"). As such, I have personal knowledge of the matters contained in this Affidavit. Where I do not have personal knowledge, I have stated the source of my information and believe the information to be true.

-2-

2. This Affidavit is sworn in support of the Bank's motion for:
 - (a) an Order pursuant to a settlement agreement and consent dated November 28, 2019, appointing MNP Ltd. ("**MNP**") as receiver and manager ("**Receiver**") over the assets, undertakings and properties ("**Property**") of the Respondent, Nauss Plumbing & Heating Inc. ("**Nauss**" or the "**Debtor**");
 - (b) in the alternative, that the application to appoint the Receiver be heard on its merits together with this motion;
 - (c) the costs of this Motion on a substantial indemnity basis; and,
 - (d) such further and other Relief as to this Honourable Court may seem just.

History of the Proceeding

3. The parties have attended before this Court on multiple occasions over the past year to address an application to appoint a Receiver and a related motion to enforce a settlement agreement. To assist the Court and to provide a single source for the relevant materials, I provide a brief overview of the proceeding, including attaching the materials filed to date and providing further facts that have arisen since the last hearing date.

(i) Receivership Application

4. The Bank brought an application to appoint MNP as Receiver over the Property of the Debtor (the "**Receivership Application**"). The application was scheduled to be heard on November 29, 2019.

-3-

5. The Bank filed the following materials in relation to the Receivership Application:
- (a) Application Record, filed November 19, 2019, containing the (a) Notice of Application, (b) Affidavit of Sieg Flatt, sworn November 19, 2019, and (c) Draft Order;
 - (b) Supplemental Application Record, filed November 25, 2019, containing the Affidavit of Sieg Flatt, sworn November 25, 2019; and
 - (c) Factum and Book of Authorities, filed November 25, 2019.

Attached as **Exhibits "A", "B", "C", and "D"** are the Application Record, Supplemental Application Record, Factum, and Book of Authorities, respectively.

6. As set out in my affidavit sworn January 29, 2020 (the "**January 29 Affidavit**"):
- (a) On November 28, 2019, the parties entered into a settlement agreement (the "**Settlement Agreement**") whereby:
 - (i) the Applicant consented to the adjournment of the hearing until January 10, 2020; and
 - (ii) the Debtor consented to the appointment of MNP as Receiver at the hearing rescheduled on January 10, 2020 unless it fully repaid its indebtedness to the Applicant or provided a commitment letter for financing of the indebtedness by the same date; (**Exhibit "B" to the January 29 Affidavit**)

-4-

- (b) On January 9, 2020, counsel for the Debtor consented to the form and content of a draft order appointing MNP as Receiver over the Property in accordance with the terms of the Settlement Agreement; (**Exhibits “C” and “D” to the January 29 Affidavit**)
- (c) By January 10, 2020, the Debtor did not provide the Applicant with full repayment of the indebtedness to the Applicant or a commitment letter for financing of the indebtedness as per the terms of the Settlement Agreement;
- (d) At 9:27 a.m. on January 10, 2020, after the Receiver and I had flown to Sudbury in respect of the Application, the Debtor advised counsel to the Applicant he would seek a further adjournment of the matter, notwithstanding the consent; (**Exhibit “F” to the January 29 Affidavit**)
- (e) At the hearing on January 10, 2020, I appeared on behalf of the Bank for the appointment of the Receiver on consent. Counsel for the Debtor sought an adjournment on the basis of two proposed transactions. I opposed the adjournment on the basis that the agreement would not be sufficient to pay out the Bank, that the parties had entered into the Settlement Agreement, and the Bank had serious concerns about the transactions closing. Justice Cornell stated that he could not hear any issue relating to the proposed transactions because it was not in evidence before the Court and ordered that the application be adjourned *sine die* to

-5-

permit a motion to be brought to enforce the alleged Settlement Agreement. (**Exhibit “G” to the January 29 Affidavit**)

(ii) Motion to Enforce Settlement Agreement

7. Pursuant to the endorsement of Justice Cornell dated January 10, 2020, the Bank subsequently brought a motion to enforce a settlement agreement and, in the alternative, to have the original application to appoint the Receiver be heard on its merits together with the motion (the **“Motion to Enforce”**). The Bank filed the following materials in relation to the Motion to Enforce:

- (a) Motion Record, filed February 4, 2020, containing the (i) Notice of Motion, and (ii) Affidavit of Heather Fisher, sworn January 29, 2020;
- (b) Factum and Book of Authorities, filed February 12, 2020; and
- (c) Supplementary Motion Record, filed February 28, 2020, containing the Supplementary Affidavit of Heather Fisher, sworn February 20, 2020 (the **“February 20 Affidavit”**).

Attached as **Exhibits “E”, “F”, “G”, and “H”** are the Motion Record, Factum, Book of Authorities, and Supplementary Motion Record, respectively.

8. The Motion to Enforce was scheduled to proceed on February 21, 2020. As set out in my February 20 Affidavit, on February 20, 2020, counsel for the Debtor sent an email to Haddon Murray, copying me, requesting a further adjournment of this matter to allow for the potential completion of three proposed transactions. As with the first proposed

transactions, the terms of these transactions would not be sufficient to pay out the indebtedness to the Bank and the Bank had serious concerns about the transactions closing.

9. The Motion to Enforce did not proceed on February 21, 2020 as Justice Kurke indicated at the motion that he had a conflict and could not hear the matter. Attached as **Exhibit "I"** is the endorsement of Justice Kurke, dated February 21, 2020 (the "**Endorsement**").

10. The Motion to Enforce was adjourned tentatively to March 6, 2020 with a peremptory date of March 20, 2020.

11. Counsel for the Bank was unable to attend the March 6, 2020 motion date due to inclement weather. As a result, the Motion to Enforce was adjourned to March 20, 2020. Attached as **Exhibit "J"** is the letter from Haddon Murray, counsel to the Bank, to the Court dated March 6, 2020 advising the counsel for the Bank was unable to attend due to inclement weather.

12. On March 16, 2020, Ontario courts closed due to COVID-19. The Motion to Enforce was adjourned until further notice.

13. In anticipation of the March motion date, I swore the Second Supplementary Affidavit of Heather Fisher, sworn March 5, 2020 (the "**March 5 Affidavit**") to provide the Court with an update of the events that had taken place in the intervening dates between appearances. My March 5 Affidavit was not served or filed as a result of the adjournments. Attached as **Exhibit "K"** is a copy of my March 5 Affidavit.

14. The parties attended a pre-motion conference with Justice Gauthier on October 5, 2020. At the conference, counsel for the Debtor, once again, advised of a proposed transaction. Justice Gauthier directed that a new date for the motion be set and that the Debtor must file any responding materials seven days prior to the motion date. No responding materials are to be accepted on or after that date. Attached as **Exhibit "L"** is the Endorsement of Justice Gauthier, dated October 5, 2020.

April 2020 Proposed Transaction

15. On April 24, 2020 at 3:07 p.m., counsel for the Debtor sent an email to Haddon Murray, counsel for the Bank (the "**April 24 Email**"), which attached an Agreement of Purchase and Sale for 7 Millichamp Street, Markstay, Ontario (the "**April Proposed Transaction**"). Attached as **Exhibits "M"** and "**N"** are copies of the April 24 Email and the April Proposed Transaction, respectively.

16. The same day, Haddon Murray requested additional information regarding the status of the April Proposed Transaction and any additional sales or refinancing being pursued. Further to this email correspondence, on April 27, 2020, Haddon Murray outlined a non-exhaustive list of concerns with the April Proposed Transaction, reiterated his request for additional information about the April Proposed Transaction, and requested the Debtor be advised of the Bank's concerns and requests for additional information. I am advised by Haddon Murray that he did not receive a response to this April 27, 2020 email. Attached as **Exhibit "O"** is a copy of the email correspondence between counsel for the Bank and counsel for the Debtor regarding the April Proposed Transaction.

-8-

17. The April Proposed Transaction would not repay the indebtedness to the Bank. As at October 27, 2020, the total indebtedness to the Bank was approximately \$1,070,073.20, including accrued interest and legal fees paid to date. Attached as **Exhibit "P"** is an email from the Bank setting out the approximate total indebtedness as at October 27, 2020.

18. The April Proposed Transaction contemplated the sale of 7 Millichamp Street for \$850,000.00. After the payment of the CRA Debt, the Markstay North Road Debt and the Property Tax Debt (totalling approximately \$601,031.63 as of November 19, 2019, the date the affidavit of Sieg Flatt was sworn), the April Proposed Transaction would have resulted in a total payment to the Bank of approximately \$469,041.63. The April Proposed Transaction was not completed before the required Completion Date.

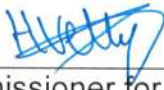
Prejudice to the Bank

19. In addition to the accrual of interest and potential CRA liability and erosion of the Bank's collateral discussed at paragraph 39 of the Affidavit of Sieg Flatt, sworn November 19, 2019, both counsel for the Bank and the proposed Receiver have attended in Sudbury on multiple occasions and have incurred fees as a result.

20. I am informed by Sieg Flatt that the Debtor has not made any payments to the Bank since the start of these proceedings.

21. This Affidavit is sworn in support of the Bank's application to enforce the Settlement Agreement or, in the alternative, the Bank's application to appoint a Receiver and for no other or improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on October 30, 2020.



Commissioner for Taking Affidavits
(or as may be)

}



HEATHER FISHER

This is Exhibit A referred to in the
Affidavit of Heather Fisher
sworn before me this
30th day of October, 2020

A handwritten signature in blue ink, appearing to read "H. Fisher", is written over a horizontal line.

A Commissioner for Taking Affidavits (or as may be)

Court File No. CV-19-8866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:**CANADIAN IMPERIAL BANK OF COMMERCE****Applicant****- and -****NAUSS PLUMBING & HEATING INC.****Respondent**

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

APPLICATION RECORD

November 19, 2019

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Lawyers for the Applicant**TO: THE SERVICE LIST**

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Email: melnorth@bellnet.ca

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Jerry Henechowicz
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Proposed Receiver

AND TO: CANADA REVENUE AGENCY C/O DEPARTMENT OF JUSTICE
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Counsel to the Minister of National Revenue

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Office of Legal Services
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AND TO: FORD CREDIT CANADA COMPANY
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AND TO: 739572 ONTARIO LIMITED
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AND TO: KORA MANAGEMENT LTD.
1374 Arlington Boulevard
Sudbury, ON P3E 6H8

Court File No. CV- CV-19-8866-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

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INDEX

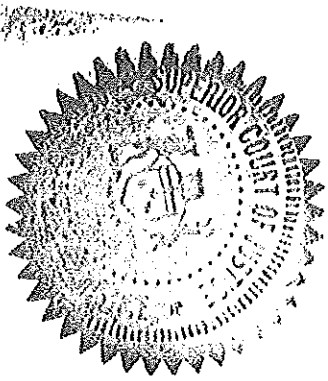
Tab	Document
1.	Notice of Application
2.	Affidavit of Sieg Flatt sworn November 19, 2019
A.	Exhibit "A" - Corporate Profile Report obtained November 4, 2019
B.	Exhibit "B" - Credit Agreement dated August 9, 2017 and Small Business Credit Terms & Conditions
C.	Exhibit "C" - Statement of Accounts of Nauss as at November 17, 2019
D.	Exhibit "D" - Charge/mortgage against the Markstay Millichamp Property
E.	Exhibit "E" - Charge/mortgage against the Espanola Property

F.	Exhibit "F" -	Charge/mortgage against the Sudbury Property
G.	Exhibit "G" -	Ontario PPSA search against Nauss with a file currency date of November 3, 2019
H.	Exhibit "H" -	Title search against the Markstay Millichamp Property as of November 4, 2019
I.	Exhibit "I" -	Title search against the Espanola Property as of November 4, 2019
J.	Exhibit "J" -	Title search against the Sudbury Property as of November 4, 2019
K.	Exhibit "K" -	Title Search against the Markstay North Road Property as of November 5, 2019
L.	Exhibit "L" -	Requirement to pay from the Canada Revenue Agency dated January 25, 2019
M.	Exhibit "M" -	June 14 Demand Letter and the 244 Notice
N.	Exhibit "N" -	Requirement to pay from the Canada Revenue Agency dated October 21, 2019
O.	Exhibit "O" -	CIBC letter to CRA informing of account closure dated October 18, 2019
P.	Exhibit "P" -	CRA cancellation of October 2019 requirement to pay dated October 25, 2019
Q.	Exhibit "Q" -	Tax certificates from the relevant city treasurers in respect of the Espanola Property, Sudbury Property, and Millichamp Property
R.	Exhibit "R" -	Consent of MNP to act as Receiver
3.	Draft Order	
4.	Blackline of Draft Order to Model Order	

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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CANADIAN IMPERIAL BANK OF COMMERCE

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NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The claim made by the Applicant is set out on the following pages.

THIS APPLICATION will come on for a hearing on November 29, 2019 at 9:30 a.m., or as soon thereafter as the application can be heard, at the Courthouse located at 155 Elm Street, Sudbury, Ontario.

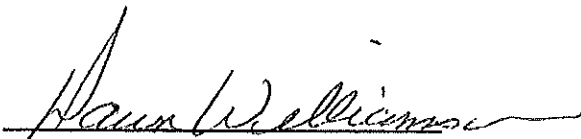
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38C prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: November ^{19th} 18, 2019

Issued by


Local Registrar

Address of Court Office:
330 University Avenue
Toronto, Ontario, Canada

TO: THE SERVICE LIST

1. **THE APPLICANT, MAKES APPLICATION FOR, *inter alia*:**
 - (a) An Order substantially in the form of Order attached at Tab 3 of the Application Record appointing MNP Ltd. as the receiver and manager (the "**Receiver**"), without security, of the assets, undertakings and property (collectively, the "**Property**") of Nauss Plumbing & Heating Inc. ("**Nauss**") pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, RSC 1986, c B-3, as amended (the "**BIA**") and Section 101 of the *Courts of Justice Act*, RSO 1990, c C43, as amended (the "**CJA**"); and
 - (b) Such further and other relief as may be just and equitable.

2. **THE GROUNDS FOR THE APPLICATION ARE:**
 - (a) Nauss holds title to the following properties in northern Ontario (listed below by their respective municipal addresses):
 - (i) 25690 Lasalle Boulevard, Sudbury, Ontario (the "**Sudbury Property**");
 - (ii) 551 Centre Street in Espanola, Ontario (the "**Espanola Property**");
 - (iii) 7 Millichamp Street, in Markstay, Ontario (the "**Markstay Millichamp Property**"); and
 - (iv) 1330 North Road, in Markstay Ontario (the "**Markstay North Road Property**" together with the Sudbury Property, the Espanola Property and the Markstay Millichamp Property, the "**Real Property**");
 - (b) All of the Real Property is used by Nauss in carrying out its business operations;

- 4 -

- (c) Nauss' employees non-unionized and it has no pension plans or other employee benefit plan;
- (d) On August 9, 2017, Canadian Imperial Bank of Commerce (the "**Bank**"), as lender, and Nauss, as borrower, entered into a credit agreement (the "**Credit Agreement**"), pursuant to which the Bank extended to Nauss: (i) a line of credit in the principal amount of \$50,000 (the "**LOC Facility**"); and (ii) a term loan in the principal amount of \$920,000,000 (the "**SBL Facility**" together with the LOC Facility, the "**Credit Facilities**"). Pursuant to the terms and conditions of the Credit Agreement, the Credit Facilities are repayable on demand;
- (e) As of November 17, 2019 Nauss is indebted to the Bank in the approximate amount of \$929,019.31 plus accruing interest and all other charges and expenses of enforcement (the "**Indebtedness**");
- (f) As security for the Indebtedness, Nauss provided the Bank with:
 - (i) A general security agreement in respect of all of the personal property of Nauss the terms of which are incorporated within the Credit Agreement (the "**GSA**");
 - (ii) A charge/mortgage in the principal amount of \$583,000.00 against the Markstay Millichamp Property (the "**Markstay Millichamp Charge**");
 - (iii) A charge/mortgage in the principal amount of \$206,000.00 against the Espanola Property (the "**Espanola Charge**"); and

- 5 -

- (iv) A charge/mortgage in the principal amount of \$210,000.00 against the Sudbury Property (the "Sudbury Charge", together with the Markstay Millichamp Charge and the Espanola Charge, the "Mortgages");
- (g) Under the terms and conditions of the GSA and each of the Mortgages, Nauss agreed that the Bank would have the right to seek the appointment of a Receiver upon the occurrence of a default thereunder;
- (h) Nauss is in default of both the GSA and each of the Mortgages and owes CRA approximately \$350,000 in respect of unremitted source deductions;
- (i) On June 14, the Bank is delivered to Nauss a demand letter, demanding payment of the Indebtedness in full, and notice of intention to enforce its security pursuant to section 244 of the BIA. The applicable statutory notice period has expired and Nauss has not paid the Indebtedness;
- (j) Nauss is insolvent and facing a cash flow crises, with no readily identifiable source of financing to manage its prospects going forward;
- (k) It is just and convenient, at this time, for the Court to appoint a receiver and manager over the Property. The immediate appointment of a receiver and manager will provide necessary stability, transparency and oversight in the wind-down of Nauss' operations, and allow for an orderly sale of the Property that will benefit all of Nauss' stakeholders;
- (l) MNP is a licensed trustee in bankruptcy, and has consented to act as Receiver should the Court appoint it;

- 6 -

- (m) Those other grounds set out in the Affidavit of Sieg Flatt, to be sworn (the "**Flatt Affidavit**");
- (n) The provisions of the BIA, including Section 243;
- (a) Section 101 of the CJA;
- (b) Rules 1.04, 3.02, 16.08, and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, c. C.43; and
- (c) Such further and other grounds as counsel may advise and this Honourable Court permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Application:

- (a) The Flatt Affidavit to be sworn, and the exhibits thereto; and
- (b) Such further material as counsel may advise and this Honourable Court may permit.

Date: November 18, 2019

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Proposed Receiver

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AND TO: FORD CREDIT CANADA COMPANY
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AND TO: KORA MANAGEMENT LTD.
1374 Arlington Boulevard
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Court File No.

CANADIAN IMPERIAL BANK OF COMMERCE

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ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT SUDBURY

NOTICE OF APPLICATION

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TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

**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**

**AFFIDAVIT OF SIEG FLATT
(Sworn November 19, 2019)**

I, Sieg Flatt, of the City of Burlington, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a senior manager, in the special loans department of the Applicant, Canadian Imperial Bank of Commerce (the “**Bank**”), and as such, I have personal knowledge of the matters to which I hereinafter depose save and except where I refer to matters based on information and belief, in which case I verily believe that information to be true.
2. This affidavit is sworn in support of an application by the Bank for an order appointing MNP Ltd. (“**MNP**”) as receiver and manager (“**Receiver**”) over the assets, undertakings and properties (collectively, the “**Property**”) of Nauss Plumbing & Heating Inc. (“**Nauss**”).
3. As at November 17, 2019, Nauss is indebted to the Bank in the approximate amount of \$929,019.31 plus accruing interest and all other charges and expenses of enforcement (the “**Indebtedness**”) under a

credit agreement entered into by Nauss and the Bank. The Indebtedness is secured by, among other things, a general security interest in all the personal property of Nauss and mortgages against multiple parcels of real property owned by Nauss.

4. As is set out in further detail below, the Bank, as senior secured creditor, is seeking the immediate appointment of the Receiver over the Property in order to protect and preserve the value of the Property and in light of serious breaches and defaults which have occurred under the credit documents entered into between the parties.

I. DESCRIPTION OF NAUSS

5. Nauss is a privately owned corporation incorporated pursuant to the *Business Corporations Act* R.S.O. 1990, c. B.16 (the "OBCA"). It operates primarily as a contractor, specializing in plumbing, heating and electrical services as well as pool maintenance in Sudbury and the surrounding areas. Nauss is additionally involved in the direct sale to its customers of various heating, cooling, ventilation and water systems. Nauss also operates a business engaged in the bottling of local spring water for distribution to nearby businesses and residences.

6. Denis Groves ("Mr. Groves") is the president and sole shareholder of Nauss. Mr. Groves is additionally a guarantor under the Credit Agreement (as defined below).

7. Nauss is the registered owner of the following properties in northern Ontario (listed below by their respective municipal addresses):

- (a) 25690 Lasalle Boulevard, Sudbury, Ontario (the "Sudbury Property");
- (b) 551 Centre Street, Espanola, Ontario (the "Espanola Property");
- (c) 7 Millichamp Street, Markstay, Ontario (the "Markstay Millichamp Property"); and

(d) 1330 North Road, Markstay, Ontario (the “**Markstay North Road Property**” together with the Sudbury Property, the Espanola Property and the Markstay Millichamp Property, the “**Real Property**”).

8. I understand that Nauss predominately operates out of the Sudbury Property which according to a corporate profile report obtained from the Ontario Ministry of Government Services on November 4, 2019 (the “**Corporate Profile Report**”), serves as both its registered and head office. Attached hereto as **Exhibit “A”** is a true copy of the Corporate Profile Report.

9. The Espanola Property, the Markstay Millichamp Property and the Markstay North Road Property are used for specific business lines operated by Nauss and acquired from third parties within the last ten (10) years.

10. I am uncertain of the exact number of employees of Nauss as of the date of this Affidavit, but believe that Nauss employs approximately 12 employees, all of whom are non-unionized. Nauss has no pension plans or other employee benefit plan

II. INDEBTEDNESS OWING TO THE BANK

11. On August 9, 2017, the Bank, as lender, and Nauss, as borrower, entered into a credit agreement (the “**Credit Agreement**”), pursuant to which the Bank extended to Nauss: (i) a line of credit in the principal amount of \$50,000 (the “**LOC Facility**”); and (ii) a term loan in the principal amount of \$920,000.00 (the “**SBL Facility**” together with the LOC Facility, the “**Credit Facilities**”). Pursuant to the terms and conditions of the Credit Agreement, the Credit Facilities are repayable on demand. Attached hereto as **Exhibit “B”** is a true copy of the Credit Agreement and the Small Business Credit Terms & Conditions.

12. The total indebtedness as at November 17, 2019 is \$929,019.31 based on the following outstanding amounts:

	Loan Account Information	Amount Owing
<i>LOC Facility</i>	Principal owing	\$51,885.18
	Interest owing	\$1,020.29
	Legal fees	\$9,226.87
Subtotal		\$62,132.34
<i>SBL Facility</i>	Principal owing	\$833,111.13
	Interest owing	\$33,775.84
Subtotal		\$866,886.97
Total Indebtedness		\$929,019.31

Attached hereto as **Exhibit "C"** is a true copy of the Statement of Accounts of Nauss.

III. SECURITY GRANTED TO THE BANK

13. At the time the Credit Agreement was entered into, the following security documents, among other things, were delivered by Nauss to the Bank as security for the Indebtedness:

- (a) a general security agreement in respect of all of the present and after-acquired personal property of Nauss the terms of which are incorporated within the Credit Agreement (the "GSA");
- (b) a charge / mortgage in the principal amount of \$583,000.00 against the Markstay Millichamp Property (the "Markstay Millichamp Charge");
- (c) a charge / mortgage in the principal amount of \$206,000.00 against the Espanola Property (the "Espanola Charge"); and
- (d) a charge / mortgage in the principal amount of \$210,000.00 against the Sudbury Property (the "Sudbury Charge", together with the Markstay Millichamp Charge and the Espanola Charge, the "Mortgages") .

Attached hereto as **Exhibits "D"**, **"E"** and **"F"** are true copies of the Markstay Millichamp Charge, the Espanola Charge and the Sudbury Charge, respectively.

14. The Bank has registered its security interest in Nauss's personal property with the provincial registry maintained under the *Personal Property Security Act* (Ontario) R.S.O. 1990, c. P.10 (the "PPSA"). Attached hereto as **Exhibit "G"** is a true copy of an Ontario PPSA search against Nauss with a file currency date of November 3, 2019 (the "PPSA Search").

15. The Bank has also registered each of the Mortgages with the Land Registry Office for the Land Titles Division of Sudbury in Ontario. Attached hereto as **Exhibits "H", "I" and "J"** are true copies of title searches obtained against the Markstay Millichamp Property, the Espanola Property, and the Sudbury Property, each with a file currency date of November 4, 2019 (the "Title Searches").

16. I have been advised by Gowling WLG (Canada) LLP ("**Gowling WLG**"), counsel to the Bank, that the PPSA Search confirms that the Bank has a first ranking security interest over all of the personal property of Nauss subject to potential purchase money security interests over certain motor vehicles owned by Nauss.

17. I have been further advised by Gowling WLG, that the Title Searches confirm that the Bank holds a first ranking mortgage / charge against each of the Markstay Property, the Espanola Property, and the Sudbury Property.

18. I note that the Bank does not hold a mortgage against the Markstay North Road Property. As the business operated from the Markstay North Road Property is subject to the Bank's security and will be part of the scope of the proposed receivership, I believe it is appropriate that the Receiver also take control over the Markstay North Road Property. I am advised by Eric Rockefeller at Gowling WLG, and verily believe that all persons with registrations against the Markstay North Road Property (as well the other Real Property and the personal property of Nauss) will be given notice of the Bank's application to appoint the Receiver. Attached hereto as **Exhibit "K"** is a true copy of a title search against the Markstay North Road Property.

IV. DEFAULT UNDER THE CREDIT AGREEMENT AND THE MORTGAGES

19. In early 2019, Nauss began to experience significant financial difficulties. Symptomatic of these financial difficulties, on or around on January 21, 2019, the Bank received a requirement to pay from the Canada Revenue Agency (the "CRA"), indicating that Nauss had past due tax debt for corporate taxes in the amount of \$29,978.41 (the "January 2019 RTP"). Attached hereto as **Exhibit "L"** is a true copy of the January 2019 RTP.

20. Starting in February of 2019, Nauss ceased making scheduled monthly payments in respect of the SBL Facility in the amount of \$5,111.11 plus interest per month as required under the Credit Agreement.

21. As a result of these incidents, it became apparent to the Bank that Nauss was facing mounting liquidity issues.

22. On June 14, 2019, the Bank formally delivered a demand letter demanding the repayment of all amounts owing by Nauss to the Bank (the "**June 14 Demand Letter**"). That same day, the Bank also delivered to Nauss a notice of intention to enforce security pursuant to section 244 of the BIA (the "**244 Notice**"). The statutory notice period under the June 14 Demand Letter and the 244 Notice expired on June 29, 2019. Attached hereto as **Exhibit "M"** is a true copy of the June 14 Demand Letter and the 244 Notice.

23. Subsequent to the issuance of the June 14 Demand Letter and the 244 Notice, the Bank through Gowling WLG entered into discussions with Nauss regarding the terms upon which the Bank might be willing to forbear on its rights to immediately enforce on its security.

24. Mr. Groves advised the Bank through Gowling WLG, that he was exploring several potential transactions (the "**Proposed Transactions**") in order to repay the Indebtedness, including offers from several interested purchasers for all or part of Nauss's business and / or all or part of the Real Property. Mr. Groves further advised that his preference was to structure forbearance terms around consummating one or more of the Proposed Transactions.

25. Ultimately, although forbearance terms were discussed between Gowling WLG and Nauss during this period, the parties could not reach an agreement on the terms upon which the Bank would agree to forbear. The Bank ultimately decided that a forbearance agreement would not be viable when, through its own due diligence, it discovered that Nauss's financial difficulties were more significant than initially thought. In this respect, in October of 2019, it came to the Bank's attention that the indebtedness of Nauss to the CRA was substantially higher than the \$29,978.41 that had been disclosed to it in January and that the CRA was owed a total of \$439,700.06 by Nauss in respect of unremitted source deductions dating as far back as 2017. Attached hereto as **Exhibit "N"** is a true copy of the October 21, 2019 CRA requirement to pay (the "**October 2019 RTP**"). After receiving the October 2019 RTP, CIBC informed CRA that it would not be remitting payment to CRA as there were no funds on deposit in Nauss's accounts. Attached hereto as **Exhibit "O"** is a true copy of CIBC's letter to CRA dated October 18, 2019. On October 25, 2019, CRA sent a letter to CIBC informing CIBC that it was cancelling the October 2019 RFP and stating:

The cancellation of the above-referenced "Requirement to Pay" does not in any way affect the rights of the Canada Revenue Agency under subsections 227(4) and (4.1) "Income Tax Act" for amounts deducted at source. Thank you very much for your cooperation.

Attached hereto as **Exhibit "P"** is a true copy of the October 25, 2019 letter from CRA cancelling the October 2019 RTP.

26. Furthermore, CIBC has become aware of the following outstanding municipal property taxes in the aggregate amount of \$91,331.57, comprising:

- (a) \$4,082.70 in respect of the Sudbury Property;
- (b) \$13,062.58 in respect of the Espanola Property; and
- (c) \$74,186.29 in respect of the Markstay Millichamp Property.

Attached hereto as **Exhibit "Q"** are tax certificates from the relevant city treasurers in respect of the above municipal tax arrears.

27. By failing to properly remit all taxes when due, Nauss has impaired its ability to operate as a going concern and eroded the value of the Bank's collateral.

28. As the Bank is no longer willing to support Nauss, I also believe that Nauss is facing a cash flow crisis, with no readily identifiable source of financing to manage its prospects going forward.

V. **APPOINTMENT OF MNP IS JUST AND CONVENIENT**

29. As of the date hereof, and as noted above, Nauss is indebted to Bank in the approximate aggregate amount of \$929,019.31, excluding interest and all other charges and expenses of enforcement.

30. The statutory notice period provided for under the BIA and outlined in the June 14 Demand Letter and 244 Notice has expired.

31. Under the terms and conditions of the GSA and each of the Mortgages, Nauss agreed that the Bank would have the right to seek the appointment of a Receiver upon the occurrence of a default thereunder. Nauss is in default of both the GSA and each of the Mortgages.

32. Despite over five (5) months having passed from the date that the June 14 Demand Letter and 244 Notice were issued, Mr. Groves has not proceeded with any of the Proposed Transactions, and I am not aware of any commitment letters or term sheets having been entered into in respect of such transactions.

33. Additionally, no material payments in respect of the Indebtedness have been made to the Bank since the June 14 Demand Letter and 244 Notice were issued.

34. The Bank has lost faith in the ability of Nauss to not only develop and implement a plan to repay all obligations owing to the Bank but also, given the significant accumulation of tax debt that has occurred, to preserve and maintain the value of its assets.

35. It is my view that the immediate appointment of a receiver and manager will provide necessary stability, transparency, and oversight in the wind-down of Nauss's operations, and allow for an orderly sale of the Property that will benefit all of Nauss's stakeholders.

36. MNP is a licensed trustee in bankruptcy, and has consented to act as Receiver should the Court so appoint it. Attached hereto as **Exhibit "R"** is a copy of the consent of MNP.

37. In early November of 2019, MNP was engaged by the Bank to consider strategic options with respect to Nauss and, in particular, provide its recommendation with respect to any insolvency proceedings. Accordingly, MNP is familiar with the operational and financial circumstances of Nauss, all of which will result in efficiencies if it is appointed as Receiver in these proceedings.

38. CIBC has been in discussions with MNP regarding the estimated cost of the receivership and is willing to finance the costs associated with the receivership mandate up to a maximum of \$70,000 accruing interest at a rate of 3.95% per annum (Prime) by way of receivership certificates secured by a court-ordered first ranking charge over the Property. Accordingly, CIBC seeks an order that this funding be secured through a receiver's borrowing charge pursuant to section 31 of the BIA.


VI. APPLICATION SHOULD BE HEARD IMMEDIATELY

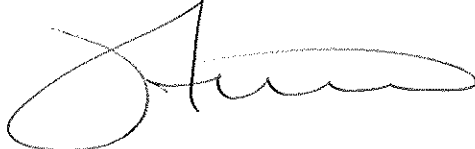
39. It is necessary to appoint a receiver in November 2019. As outlined above, Nauss has failed to pay property taxes due and owing in respect of the Real Property and has failed to remit to source deductions payable to CRA. The value of the Bank's collateral continues to be eroded as a result.

40. I am advised by Eric Rockefeller and believe it to be true that Bankruptcy court next sits in Sudbury on January 6, 2020. The Bank has serious concerns that the business will be beyond a state of recovery by January 2020, increasing Mr. Groves' personal liability to the Bank as a guarantor and to CRA for accruing deemed trust amounts. It is in all parties' interests that this application be heard now. Appointing MNP as receiver will provide visibility to the Bank and the court with respect to the financial position of Nauss, help to stabilize the business and increase the likelihood of recovering outstanding accounts receivable.

41. This Affidavit is sworn in support of the Bank's application for the relief set out in paragraph 2 above and for no other or improper purpose.

SWORN before me at the City of Hamilton,
in the Province of Ontario this 19th day
of November, 2019


ERIC J. ROCKEFELLER (LSO# 61997T)
Commissioner for taking affidavits, etc.

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)
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SIEG FLATT

Eric Rockefeller
Gowling WLG (Canada) LLP
One Main Street W.
Hamilton, ON L8P 4Z5

CV-19-88 66-0000

APPLICATION UNDER SUBSECTION 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

Court File No.

CANADIAN IMPERIAL BANK OF COMMERCE

-and-

NAUSS PLUMBING & HEATING INC.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT SUDBURY

**AFFIDAVIT OF SIEG FLATT
(SWORN NOVEMBER 19, 2019)**

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

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

Lawyers for the Applicant, Canadian Imperial Bank of Commerce

This is Exhibit "A" referred to in the Affidavit of Sieg Flatt sworn November 19, 2019.

A handwritten signature in black ink, appearing to read "EROCK", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ERIC J. ROCKEFELLER

Request ID: 023790758
 Transaction ID: 73568860
 Category ID: UN/E

Province of Ontario
 Ministry of Government Services

Date Report Produced: 2019/11/04
 Time Report Produced: 10:42:43
 Page: 1

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date
655146	NAUSS PLUMBING & HEATING INC.	1986/06/13
		Jurisdiction
		ONTARIO
Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
Registered Office Address	Date Amalgamated	Amalgamation Ind.
DENIS GROVES 2590 LASALLE BLVD	NOT APPLICABLE	NOT APPLICABLE
SUDBURY ONTARIO CANADA P3A 4R7	New Amal. Number	Notice Date
	NOT APPLICABLE	NOT APPLICABLE
Mailing Address		Letter Date
DENIS GROVES 2590 LASALLE BLVD		NOT APPLICABLE
SUDBURY ONTARIO CANADA P3A 4R7	Revival Date	Continuation Date
	NOT APPLICABLE	NOT APPLICABLE
	Transferred Out Date	Cancel/Inactive Date
	NOT APPLICABLE	NOT APPLICABLE
	EP Licence Eff.Date	EP Licence Term.Date
	NOT APPLICABLE	NOT APPLICABLE
	Number of Directors Minimum Maximum	Date Ceased in Ontario
	UNKNOWN UNKNOWN	
Activity Classification	Date Commenced in Ontario	Date Ceased in Ontario
NOT AVAILABLE	NOT APPLICABLE	NOT APPLICABLE

Request ID: 023790768
 Transaction ID: 73668860
 Category ID: UN/E

Province of Ontario
 Ministry of Government Services

Date Report Produced: 2019/11/04
 Time Report Produced: 10:42:43
 Page: 2

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	
655146	NAUSS PLUMBING & HEATING INC.	
Corporate Name History	Effective Date	
NAUSS PLUMBING & HEATING INC.	1986/06/13	
Current Business Name(s) Exist:	YES	
Expired Business Name(s) Exist:	YES - SEARCH REQUIRED FOR DETAILS	
Administrator: Name (Individual / Corporation)	Address	
DENIS GROVES	2690 LASALLE BOULEVARD SUDBURY ONTARIO CANADA P3A 4R7	
Date Began	First Director	
2006/02/01	NOT APPLICABLE	
Designation	Officer Type	Resident Canadian
DIRECTOR		Y

Request ID: 023790768
 Transaction ID: 73668860
 Category ID: UN/E

Province of Ontario
 Ministry of Government Services

Date Report Produced: 2019/11/04
 Time Report Produced: 10:42:43
 Page: 3

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
065146	NAUSS PLUMBING & HEATING INC.

Administrator: Name (Individual / Corporation)	Address
DENIS GROVES	2590 LASALLE BOULEVARD SUDBURY ONTARIO CANADA P3A 4R7

Date Began	First Director	
2006/02/01	NOT APPLICABLE	
Designation	Officer Type	Resident Canadian
OFFICER	PRESIDENT	Y

Administrator: Name (Individual / Corporation)	Address
DENIS GROVES	2590 LASALLE BOULEVARD SUDBURY ONTARIO CANADA P3A 4R7

Date Began	First Director	
2006/02/01	NOT APPLICABLE	
Designation	Officer Type	Resident Canadian
OFFICER	SECRETARY	Y

Request ID: 023790758
 Transaction ID: 73568850
 Category ID: UN/E

Province of Ontario
 Ministry of Government Services

Date Report Produced: 2019/11/04
 Time Report Produced: 10:42:43
 Page: 4

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
655146	NAUSS PLUMBING & HEATING INC.

Administrator: Name (Individual / Corporation)	Address
DENIS GROVES	2590 LASALLE BOULEVARD SUDBURY ONTARIO CANADA P3A 4R7

Date Began	First Director	Resident Canadian
2006/02/01	NOT APPLICABLE	
Designation	Officer Type	
OFFICER	TREASURER	Y

Administrator: Name (Individual / Corporation)	Address
VANNA ARLENE NAUSS	2590 LASALLE BOULEVARD R R #1 SUDBURY ONTARIO CANADA P3A 4R7

Date Began	First Director	Resident Canadian
1994/02/21	NOT APPLICABLE	
Designation	Officer Type	
OFFICER	SECRETARY	

Request ID: 023790768
Transaction ID: 73668860
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2019/11/04
Time Report Produced: 10:42:43
Page: 6

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

655146

NAUSS PLUMBING & HEATING INC.

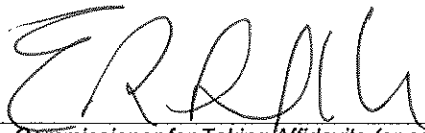
Last Document Recorded

Act/Code	Description	Form	Date
CIA	CHANGE NOTICE	1	2017/10/24

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.
ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

This is Exhibit "B" referred to in the Affidavit of Sieg Flatt sworn
November 19, 2019.



Commissioner for Taking Affidavits (or as may be)

ERIC J. ROCKEFELLER



CIBC Small Business Credit Agreement and Guarantee

Transit	Branch	Date	CIBC Reference No
03892	NEW SUDBURY BANKING CENTRE SUDBURY ON P3A 1Z2	August 9 2017	7854425428

Business Legal Name (and Trade Name if applicable) (also referred to as the Business)

NAUSS PLUMBING & HEATING INC

We Canadian Imperial Bank of Commerce (CIBC) offer the Business subject to the terms of this CIBC Small Business Credit Agreement and Guarantee the following credit facilities (each a Credit*) each payable on demand

Small Business Overdraft/Line of Credit	Credit 1	Credit 2
Type	Line of Credit	
Credit Limit	* \$50 000 00 CAD	
Account No	03892/24-53711	
Interest Rate	Prime Rate plus 1 000% per year	
Loan Administration Fee	* \$25 00 per month	

Additional Credits

See attached page(s)

Security Required

The Key Principal and any Principals indicated in the CIBC Small Business Credit Application as Proposed Guarantors must sign the Personal Guarantee section of this Agreement ¹ Before making any Credits available CIBC will also require in addition to any security presently held the following security

See attached page(s)
General Security Agreement (in F8994)

Other Information

Offer Effective Date	Offer Expiry Date	Setup Fee	Annual Review Fee	Amendment Fee
August 8 2017	September 7 2017	\$500 00	\$150 00	\$150 00

CIBC's Offer

We are pleased to offer the Business these Credits Please indicate acceptance of these Credits by returning a signed copy of this offer to CIBC at the address shown above on or before the Offer Expiry Date Any Credit in respect of which we have not (a) received a signed copy of this offer on or before the Offer Expiry Date and (b) made available to the Business within 30 days of the Offer Expiry Date will be cancelled unless otherwise agreed by CIBC in its sole discretion Any Credit for which we have received a signed copy of this offer by the Offer Expiry Date and which we have made available to the Business within 30 days of the Offer Expiry Date will not be cancelled If the financial circumstances of the Business the Key Principal a Principal or any Guarantor upon which approval of these Credits was based changes prior to the date we make any Credit available to the Business we may without notice to the Business or any Guarantor cancel any Credit or change the terms of such Credit in accordance with our internal credit approval processes as of that date and based on such information

This offer is only available if the Key Principal and any Principals indicated in the CIBC Small Business Credit Application as Proposed Guarantors sign the Personal Guarantee section of this CIBC Small Business Credit Agreement and Guarantee¹

2006/11
¹ Version Provided

2017/08/09
Date (mm/dd/yyyy)

Stephanie Filiaux
Name of Bank Officer

[Signature]
Signature of Bank Officer

CIBC Reference No 7854425428

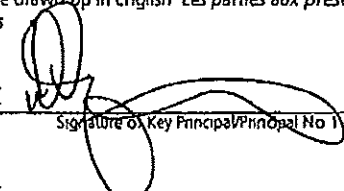
CIBC Small Business Credit Agreement and Guarantee

Business Acceptance

Additional terms on the following page and the terms and conditions in the CIBC Small Business Credit Terms and Conditions booklet** form part of this offer and this CIBC Small Business Credit Agreement and Guarantee

The Business accepts the offer above and agrees with CIBC as of the Offer Effective Date to the terms of this CIBC Small Business Credit Agreement and Guarantee Each person who signs on the Business' behalf below acknowledges on behalf of the Business having received and read the CIBC " Small Business Credit Terms and Conditions" booklet *

Quebec residents only It is the express wish of the parties that this document and any related documents be drawn up in English Les parties aux présentes ont expressément demandé que ce document et tous les documents s'y rattachant soient rédigés en anglais

Aug 18/2017 Denis Groves President X 
Date (mm/dd/yyyy) Name and Title Signature of Key Principal/Principal No 1

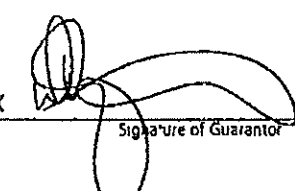
Date (mm/dd/yyyy) Name and Title Signature of Principal No.2

Date (mm/dd/yyyy) Name and Title Signature of Principal No.3

Personal Guarantee(s)

Additional terms on the following page and the terms and conditions in the CIBC Small Business Credit Terms and Conditions booklet** form part of this offer and this CIBC Small Business Credit Agreement and Guarantee

Each Key Principal and Principal signing below as Guarantor acknowledges having received and read the CIBC Small Business Credit Terms and Conditions* booklet** and agrees to guarantee in accordance with the terms of this CIBC Small Business Credit Agreement and Guarantee the obligations of the Business to CIBC The liabilities of the Guarantor(s) to CIBC shall be joint and several (in Quebec solidary)²

Aug 18/2017 DENIS GROVES X 
Date (mm/dd/yyyy) Name of Guarantor Signature of Guarantor

Date (mm/dd/yyyy) Name of Guarantor Signature of Guarantor

Date (mm/dd/yyyy) Name of Guarantor Signature of Guarantor

Personal Guarantees are not required from sole proprietors or individuals applying for credit for their Business
Alberta only Obtain Certification of Notary Public (Form 6898 Alberta) from each Guarantor in Alberta

CIBC Reference No 7854425428

CIBC Small Business Credit Agreement and Guarantee

Additional Terms

Each of the Key Principal, Principal, Business and the Guarantor(s) agree to the following (where "I", "me" and "my" refer to the Key Principal, Principal, Business or the Guarantor, as the case may be)

CIBC may collect information during the course of my relationship with CIBC from credit bureaux, government registries, reporting agencies, other financial institutions and references I provide CIBC. CIBC may also disclose information to credit bureaux, reporting agencies and financial institutions (The word "Information" means financial and financially-related information about me including without limitation (i) information to identify me or locate me (or any collateral I have pledged) (ii) information to qualify me for products and services (iii) any motor vehicle information, where applicable, or (iv) information that CIBC needs for regulatory requirements.) CIBC may use information to identify me or locate me, protect me and CIBC both from fraud and error, understand my needs and eligibility for services, recommend particular products and services to meet my needs, provide ongoing service and comply with legal and regulatory requirements. This is explained in the CIBC privacy brochure *Your Privacy Is Protected* available at any branch or www.cibc.com which describes how the CIBC group collects, uses, discloses and retains information about me and the products and services I use.

Specific Consents

- a) Direct Marketing: CIBC may tell me about products and services through direct mail, telephone and other direct means.
- b) Disclosure within the CIBC group: CIBC may share information within the CIBC group so that the CIBC group may tell me about products and services.

If I don't wish to consent to (a) or (b), I can contact CIBC at 1-800-465-CIBC (2422) at any time. I understand that the Business (or in the event that I am a Guarantor and such consents relate to personal products or services) will not be refused credit or other services just because I withdraw my consent to (a) or (b). The CIBC group includes CIBC and its subsidiaries that currently offer deposits, loans, mutual funds, securities trading, mortgages, trust and insurance services.

Each of the Guarantors agree to the following

My obligation to CIBC to pay the liabilities of the Business owing to CIBC is unlimited, absolute and unconditional and will not be reduced for any reason, including (without limitation)

- i) Credit Limit changes,
- ii) interest rate changes,
- iii) Spread changes,
- iv) Credit changes or changes to any of the terms of this CIBC Small Business Credit Agreement and Guarantee,
- v) changes to the amortization period of a Credit,
- vi) any renewal, extension or amendment of this CIBC Small Business Credit Agreement and Guarantee (whether or not I approve or consent to such renewal, extension or amendment),
- vii) problems with any security granted to CIBC,
- viii) failure of CIBC to exhaust its recourse against the Business, or
- ix) any other event that would be a common law, civil law or equitable defence to my obligations, and I hereby waive, to the extent permitted by law, my right to receive notice of any renewal, extension, amendment or any other notice in relation to any Credit(s) or this CIBC Small Business Credit Agreement and Guarantee.

CIBC may debit any account I have with CIBC for any amount I owe to CIBC under this personal guarantee. My liability under this personal guarantee shall continue in effect until such time as all of the liabilities of the Business to CIBC under this CIBC Small Business Credit Agreement and Guarantee or any renewal, extension or amendment thereof, are repaid in full.

All capitalized terms used but not defined are as defined in the CIBC Small Business Credit Terms and Conditions booklet. **

CIBC Reference No 7854425428

CIBC Small Business Credit Agreement and Guarantee

Additional Credit – Small Business Loans

Original Amount	\$920 000 00 CAD
Current Balance	\$0 00 CAD
Interest Rate	Prime Rate plus 1 000 per year
Scheduled Payments*	
Amount of each payment	\$5 111 11 plus interest as agreed
Payment Frequency	Monthly
First/Next Payment Date	September 21 2017
Final Payment Date	August 21 2027

*Until demand the Business agrees to pay to CIBC the Scheduled Payments for each Small Business Loan and on the Final Payment Date for each Small Business Loan to pay any outstanding principal and interest and any amount remaining due. If Scheduled Payments consist of principal only interest is payable monthly or as otherwise agreed.

Security required

Security by the Business as follows

Collateral mortgage/hypothec for \$206 000 00 giving CIBC a 1st charge over the property at
551 CENTRE STREET
ESPANOLA ON P5E 1J9
PCL10208 SEC SWS PTLT8CON5 LT64894P153R13128 PT
53R17437S/TPT273 WITH ASSIGNMENT OF RENTS
plus assignment of insurance/security on fire and other perils insurance

Security by the Business as follows

Collateral mortgage/hypothec for \$210 000 00 giving CIBC a 1st charge over the property at
2590 LASALLE BLVD
SUDBURY ON P3A 2B2
PCL18965SESL9TWP NEELONPL M861 PIN 735640117

Security by the Business as follows

Collateral mortgage/hypothec for \$583 000 00 giving CIBC a 1st charge over the property at
7 MILLICHAMP STREET
MARKSTAY ON POM 2G0
PCL53626SSESL22PLM1034HAGARLOT 13 CONC 3 PT 53R161
02MARKSTAY WARREN

Small Business

Credit Terms and Conditions

Small Business

Credit Terms and Conditions

Contents	Page
Part I – General	2
Part II – About the Business' Loan	12
Part III – About the Business' Line of Credit and/or Small Business Overdraft	16
Part IV – Security	18
Part V – General Security Agreement	21
Part VI – Hypothec granted by the Business	28
Part VII – Personal Guarantees	28
Part VIII – Letters of Credit	32

Version 2006/11



**Part I
General**

1. Definitions.

Unless otherwise indicated:

- "CIBC", "we", "us" and "our" mean Canadian Imperial Bank of Commerce.
- "Business" means the business to whom Credit is granted under the Credit Agreement and on whose behalf a Principal and/or Key Principal has signed the Credit Agreement.
- "Business Day" means any day (other than a Saturday, Sunday or a legal holiday) that the CIBC Branch/Location which administers the Credit(s) is open for business.
- "Credit" means a credit facility contained in the Credit Agreement.
- "Credit Agreement" means the CIBC Small Business Credit Agreement and Guarantee the Business signed (or in respect of which the terms have been accepted through Online Banking or Telephone Banking) that governs the Credit(s), including these Small Business Credit Terms and Conditions (referred to as "this booklet") and any ancillary document referred to in the Credit Agreement or relating to the Credit(s), each, as may be amended from time to time.

• "Credit Limit" means the limit we set for any Line of Credit or Small Business Overdraft as indicated in the Credit Agreement or as otherwise set or amended by us.

• "Excess Interest Rate" means the variable reference interest rate per year (based on a 365 day year unless otherwise indicated) declared by CIBC from time to time to be its interest rate charged to customers that exceed their authorized Credit Limit or fail to comply with a payment obligation, which rate is currently an annual rate of 21%.

• "Guarantor" means any Principal, Key Principal or other Person that personally guarantees the Liabilities and to whom Part VII of this booklet applies.

• "Letters of Credit" or "L/Cs" means each documentary or standby letter of credit, a letter of guarantee, or a similar instrument in form and substance satisfactory to us.

• "Liabilities" means all the Business' present and future obligations, indebtedness and liabilities of every kind, nature and description (whether direct or indirect, joint or several, absolute or contingent, matured or unmatured) to CIBC, wherever and however incurred and any unpaid balance thereof.

• "Line of Credit" means any line of credit that we make available to the Business under the Credit Agreement.

• "Loan" means any loan (including a Small Business Loan) that we make available to the Business under the Credit Agreement, including a Line of Credit that may have been converted to a term loan.

- "Person" means any natural person or artificial entity (including among others any firm, partnership, corporation, government or trust).
- "Principal" and "Key Principal" mean the individuals identified as such on the Credit Agreement or the related CIBC Small Business Credit Application, and may collectively be referred to as the "Principals" and individually as a "Principal".
- "Scheduled Payment" in respect of a Loan is as indicated in the Credit Agreement or as otherwise notified by us.
- Other capitalized terms have the meaning assigned in the Credit Agreement or are defined in context in this booklet.

2. How we make Credit(s) available to the Business. We may from time to time make available to the Business any of the Credits indicated in the Credit Agreement. The Credit(s) offered, the Credit Limit, the interest rate, Spread, minimum payments required and other terms of the Credit(s) and the Credit Agreement may be changed at our sole discretion and without prior notice (unless otherwise required). Such changes will take effect immediately or, in the event that we are required to provide the Business with prior notice under an applicable statute, regulation or otherwise, will take effect on the date indicated in such notice. These changes may apply to all amounts owing on or arising after the date the Business receives notice of the change. If agreement to such change is required by applicable law, regulation or otherwise, if the Business continues to use the Credit(s) after the date on which such changes will take effect (as may be indicated in any notice we send the Business), the Business will be deemed to have agreed to any such change.

Each of the Business and the Guarantor(s) should note that any changes to the Credit(s) may affect any creditor insurance (including CIBC Business Loan/Farm Credit Life Insurance). The Business and/or the Guarantor(s), as the case may be, should refer to the applicable insurance certificate, and should refer any questions to the relevant insurer.

3. Interest rate. The interest rates for Lines of Credit, the Small Business Overdraft and variable interest rate Loans, change automatically, without notice, with the CIBC Prime Rate or the CIBC U.S. Base Rate, as applicable.

The interest rate for fixed rate Loans is fixed for the term of the Loan and is based on a Spread over the CIBC Base Rate (or the CIBC U.S. Base Rate, as applicable) for the same term. Although the annual interest rate is based on a full year, if a Loan is prepaid in full or in part (in accordance with the Credit Agreement) in the month of February of a leap year, per diem interest will be calculated on the basis of a 29-day month.

The Business can find out what the CIBC Prime Rate, CIBC Base Rate or CIBC U.S. Base Rate is at any time by calling 1-800-465-CIBC (1-800-465-2422).

We will calculate interest payable on the money the Business owes us at the agreed upon interest rate(s). For amounts in excess of any applicable Credit Limit identified in a Line of Credit, a Loan, or a Small Business Overdraft, we will charge the

Business the Excess Interest Rate. Interest is calculated on the daily balance of each Credit at the end of each day and charged monthly or as otherwise agreed. Interest that is charged and is unpaid compounds monthly and continues to compound whether or not CIBC demands payment or starts a legal action, or gets judgment against the Business or any Guarantor. Even in a leap year, interest is calculated by multiplying the then outstanding principal amount by the current interest rate in effect at the applicable time (or in the event the Excess Interest Rate is in effect for a portion of the principal outstanding, that portion of the principal is multiplied by the Excess Interest Rate), dividing the product by 365 (for a Line of Credit or Small Business Overdraft) or 366 (for a Loan) and multiplying the result by the number of days in the payment period during which such current (or Excess Interest Rate, as the case may be) was chargeable.

We may, from time to time, reduce the Spread on variable rate Line of Credit(s) for a defined period of time (a "promotional period") by sending the Business notice indicating the new Spread for the promotional period (the "promotional interest rate spread"), the date on which the promotional interest rate spread will begin and the date on which the promotional interest rate spread will end. The promotional interest rate spread will only apply to new amounts borrowed on the Business' Line of Credit during the promotional period and will not apply to any amounts owing prior to the promotional period. All amounts owing on or arising after the date when the promotional period ends will be subject to the original Spread that applied prior to the promotional period or such other variable rate of interest as we may advise.

- "Base Rate" or "CIBC Base Rate" means the current reference interest rate per year which varies by term as declared by CIBC from time to time to be its base rate for Canadian dollar loans made by CIBC in Canada.
- "Prime" or "Prime Rate" or "CIBC Prime Rate" means the variable reference interest rate per year declared by CIBC from time to time to be its prime rate for Canadian dollar loans made by CIBC in Canada.
- "U.S. Base Rate" or "CIBC U.S. Base Rate" means the variable reference interest rate per year declared by CIBC from time to time to be its base rate for U.S. dollar loans made by CIBC in Canada.
- "Spread" means the amount expressed as a percentage that is added to the CIBC Prime Rate, the CIBC Base Rate or the CIBC U.S. Base Rate, as the case may be, for purposes of calculating the interest rate for variable or fixed rate Loans, Lines of Credit and Small Business Overdrafts.

4. How the Business pays interest, service charges, fees and payments. Unless the Business has made other arrangements with us, we will automatically debit the Business' CIBC business operating account for interest, service charges, fees and payments (including Scheduled Payments) owing on the Business' Line of Credit, Small Business Overdraft and/or Loan. Such amounts are payable at the frequency specified in the Credit Agreement or as otherwise advised by us.

We may at any time set-off and apply any deposits held by us and any other amounts owed by us to or for the Business' Credit(s) against any and all of the Liabilities, even though we have not made any demand and even though any such

* Notwithstanding the above, in the event that the Business is prepaying a Loan that has a variable interest rate, interest is calculated by multiplying the then outstanding principal amount by the current interest rate in effect, dividing the product by 365 (even in a leap year) and multiplying the result by the number of days left in the payment period up to (but not including) the prepayment date.

Liabilities may not yet be due and payable. We may apply such set-off to any account the Business has with CIBC notwithstanding that such account is not used for the Business' Loan, Line of Credit, Small Business Overdraft or the Business' CIBC business operating account. The Business expressly waives any right it may have to notice required for such set-off.

We may change the fees in relation to the Credit(s) and may charge additional fees and/or charges for overdraft, or any default, each as notified by us to the Business either verbally or in writing, as set out on the next CIBC business operating account statement, or as specified in the Credit Agreement from time to time. If required by applicable law, regulation or otherwise, we will give the Business the required amount of notice of any such change; otherwise, such change will be effective immediately.

The Business will reimburse us for all reasonable fees (including legal fees) and out-of-pocket expenses incurred in (i) performing any searches or preparing or filing any registrations in relation to the approval, maintenance, review, renewal or amendment of the Credit(s); (ii) preparing, registering, maintaining, renewing, reviewing, substituting or amending any security; (iii) responding to requests for waivers, amendments, renewals and other matters relating to the Credits; (iv) enforcing our rights under the Credit Agreement or any security; and (v) discharging, substituting or replacing any security, and such amounts will form part of the Liabilities. Unless the Business has made other arrangements with us, we will automatically debit the Business' CIBC business operating account for any of these amounts owing to us on the date when they are payable as advised by us.

Subject to Part III, Section 4 of this booklet, the Business may not make payments on any Credit using funds borrowed from CIBC or drawn on any other CIBC credit facility or credit account in the name of the Business, a Key Principal, Principal or Guarantor.

5. Payments. If there is a disruption in postal service, it is the Business' responsibility to contact us to find out what payments and interest are owing on the Credit(s) and when they are due. We will calculate payments of principal and interest or principal plus interest, according to the terms of the Credit Agreement; however, we may change the amount of any payments required, the type of payment to be made (including without limitation, changing a Loan requiring principal and interest payments to be made to a Loan requiring blended principal plus interest to be paid) and the amortization period, at any time. We will notify the Business of any such changes and they will become effective immediately unless we are required to give advance notice or require consent by applicable law, regulation or otherwise to make such changes, in which case such changes will become effective on the date indicated in the applicable notice or consent. If any payment is due on a day other than a Business Day, it may be paid the next Business Day.

6. How we may demand payment. It is important to us that the Business succeeds. We may, however, at our discretion, without notice, demand immediate repayment of any outstanding amount under any Credit. We may also, at any time, and for any reason, cancel the unused portion of any Credit. Each Credit is payable on

demand unless otherwise advised by us, notwithstanding that it may be payable by regularly Scheduled Payments. If we demand payment, the Business will immediately repay us the Liabilities in full.

7. **Applying money received.** All payments and money we receive for any Credit (including any money we recover from any security or any Guarantor) may be applied on such parts of the Liabilities as we may determine in our sole discretion.
8. **Fees.** The Business agrees to pay the Loan Administration Fee, the Setup Fee, Annual Review Fee, Amendment Fee and any other fee stated in the Credit Agreement or otherwise advised by us. The Loan Administration Fee is payable monthly on the last Business Day of each month, beginning on the last Business Day of the month in which the Business' Line of Credit or Small Business Overdraft is made available. The Setup Fee is payable when the Business signs the Credit Agreement. The Amendment Fee is payable whenever the Business signs an amendment to the Credit Agreement. We will charge the Annual Review Fee not more than once every 12 months from the Offer Effective Date.
9. **Foreign Currency Conversion.** If the Business has an obligation to us in a foreign currency under any Credit, then currency changes may affect whether the Credit Limit has been exceeded. To determine the amount available under any Credit at any time, we will convert all foreign currency amounts to Canadian dollars (or in the case of a Credit in U.S. dollars, to U.S. dollars) using our current rates. Funds that are withdrawn or deposited to the Business' CIBC business operating account in a currency other than that of the CIBC business operating account will be converted to the currency of the account at the exchange rate set by CIBC according to our usual practice.

10. **Judgment Currency.** If, for the purpose of obtaining judgment in any court, it is necessary to convert into Canadian dollars a sum due in U.S. dollars, the rate of exchange used shall be that at which, in accordance with normal banking procedures, CIBC could purchase U.S. dollars with Canadian dollars on the Business Day preceding that on which a final judgment is given. The Business' obligation in respect of any such sum due to CIBC shall, notwithstanding any judgment in Canadian dollars, be discharged only to the extent that on the Business Day following receipt by CIBC of any sum adjudged to be so due in Canadian dollars, CIBC may, in accordance with normal banking procedures, purchase U.S. dollars with Canadian dollars. If the U.S. dollars so purchased are less than the sum originally due to CIBC in U.S. dollars, each of the Business and the Guarantor(s) agrees as a separate obligation and notwithstanding any such judgment, to indemnify CIBC against such loss and if the U.S. dollars so purchased exceed the sum originally due to CIBC in U.S. dollars, CIBC agrees to remit such excess to the Business or its assigns.

11. **Information requirements and confidentiality.** (This Section 11 applies to the Business and each Key Principal and Principal of the Business (both in their capacity as Guarantor and as Key Principal and/or Principal of the Business): Each Key Principal and Principal certifies that all the information that has been provided with respect to the Credit Agreement (including the information provided in the CIBC Small Business Credit Application) or any related document is correct. We may from time to time reasonably require a Key Principal or Principal to provide further information, either in respect of the Business or in their personal capacity as Guarantor. The terms of the Credit Agreement are confidential between CIBC, the Business and the Guarantors. Each of the Business, Key Principal(s), Principal(s) and Guarantor(s) agrees(s) not to disclose the contents of the Credit Agreement to anyone except their professional advisors or as otherwise permitted by us. The Business allows us to give a copy of the Credit Agreement and any security to the persons and for the reasons indicated in Section 18(e) of this booklet. Each of the Business and the Guarantors acknowledges that we may offer the Business Credit(s), and that we may assign such Credit(s), or the Business' liabilities thereunder, to another entity, CIBC subsidiary or CIBC business unit (the "beneficial owner"), whether or not such beneficial owner is named in the Credit Agreement or any other document referencing such Credit(s). Each of the Business and the Guarantors agrees that we may disclose any information relating to such Credit(s) (including any personal guarantee) to such beneficial owner (including, without limitation, any personal information), or its agents, any assignee of such beneficial owner, and any service provider (as defined below). Personal information includes all information provided by a Key Principal, Principal or Guarantor or obtained by us in connection with the CIBC Small Business Credit Application and/or the Credit Agreement, and any ongoing information and documentation about the Business, any Guarantor, or the Business' Credit(s), to the extent required by the beneficial owner, its agent or assignee, or any service provider, to enable such person to administer the Credit(s) and exercise its rights thereunder. "Service Provider" means a person or entity that has been engaged in connection with the servicing, maintenance, collection or operation of the Business' Credit(s) or the provision of services or benefits to the Business and/or any Guarantor (including loyalty programs).
12. **Changes to the Credit Agreement.** We may change the terms of the Credit Agreement at any time in our sole discretion and without prior notice (unless otherwise required). If we make such changes, they will take immediate effect or, in the event that we are required to provide the Business with prior notice under an applicable law, regulation or otherwise, they will take effect on the date indicated in such notice. Such changes will apply to all amounts owing on or arising after the date of the amendment.
13. **Ending the Credit Agreement.** The Credit Agreement will remain in effect until we have been repaid all amounts owing under all Credit(s) (including amounts that have accrued but are not yet due), there are no further Liabilities owing, and we have received notice from the Business that the Business wishes to end the Credit

Agreement, or we have given notice to the Business that we are ending the Credit Agreement, if there is any outstanding liability or contingent liability to any beneficiary under any Letter of Credit, or under any foreign exchange contract, the Business must also provide cash or equivalent security or prepayment satisfactory to us before the Credit Agreement may be terminated.

14. Foreign withholding tax. If the Business is required by any foreign government to withhold any portion of an amount payable to us, then the amount payable by the Business shall be increased so as to yield to us on a net basis, the amount specified in the Credit Agreement.

15. Insurance. In addition to any specific insurance requirements set out in the Credit Agreement or any security document granted in relation to any Credit, all the Business' property (including without limitation, the Collateral (as defined in Section 1 of Part V of this booklet)) will be kept insured (to the full insurable value) against loss or damage by fire and all other risks usual for similar property (plus for any other risks CIBC may reasonably require). If CIBC requests, these policies will include a loss payee clause, and if CIBC is taking security over land, the appropriate mortgage clause (in Quebec, hypothecary clause), each to name CIBC as the loss payee or mortgagee, as applicable, and in any event, the Business hereby assigns and hypothecates all insurance proceeds in relation to the above mentioned assets and property to CIBC. If CIBC asks, the Business agrees to give us either the policies themselves or adequate evidence of their existence (satisfactory to CIBC) and agrees to sign any other documentation or take such steps as CIBC may reasonably require to give effect to this provision. CIBC may collect insurance proceeds referred to above without any further authorization from the Business. If the Business' insurance coverage for any reason stops, we may (but do not have to) insure the Business' property. The Business agrees to immediately reimburse us for those costs and such amounts will form part of the Liabilities. Finally, the Business agrees to notify us immediately of any loss or damage to the Business' property.

16. Environmental. The Business will carry on business and maintain its property in accordance with all applicable environmental laws, regulations and guidelines. If

a) there is any release, deposit, discharge or disposal of pollutants of any sort (collectively, a "Discharge") in connection with either the Business or the Business' property, and CIBC pays any fines or incurs any costs or expenses for any cleanup,

or

b) CIBC incurs any costs or expenses or suffers any loss or damage as a result of any Discharge,

the Business agrees to reimburse CIBC, our directors, officers, employees and agents for any and all losses, damages, fines, costs, expenses and other amounts (including amounts spent preparing any necessary environmental assessment or other reports, or defending any lawsuits) that result. If CIBC asks, the Business will

defend any lawsuits, investigations or prosecutions brought against CIBC or any of our directors, officers, employees and agents in connection with any Discharge. The Business' obligations hereunder to CIBC will form part of the Liabilities however, such obligations will continue even after all Credits have been repaid and the Credit Agreement has terminated. CIBC may automatically debit the Business' CIBC business operating account for these amounts.

17. Proof of debt. The Credit Agreement provides the proof between CIBC and the Business of the Credit(s) that have been made available to the Business. There may be times when the type of Credit the Business has requires additional documents to be signed. Throughout the time that we provide the Business credit under the Credit Agreement, our accounting records will provide complete proof of all terms and conditions of the Credits (such as principal loan balances, interest calculations, and payment dates).

18. General.

a) **No representations.** CIBC has not made any representation or undertaken any obligation in connection with the subject matter of the Credit Agreement other than as specifically set out in the Credit Agreement, and in particular nothing contained in the Credit Agreement will require CIBC to make, renew or extend the time for payment of any loan or other credit accommodation. The Credit Agreement constitutes the entire agreement between the Business, the Guarantor(s) and CIBC. The terms of the Credit Agreement supercede any prior arrangement or agreements between the Business, (and/or any Principal and/or any Guarantor) and CIBC, in relation to any Credit governed by the Credit Agreement.

b) **Joint and Several Liability.** Unless applicable law in respect of the organization of the Business says otherwise, if more than one Person signs the Credit Agreement on behalf of the Business, the obligations of such Persons will be joint and several (in Quebec, solidary). If more than one Person signs the Credit Agreement as Guarantor, the obligations of such Guarantors will be joint and several (in Quebec, solidary).

c) **Severability.** Any provision of the Credit Agreement that is void or unenforceable in any jurisdiction is, as to that jurisdiction, ineffective to that extent without invalidating the remaining provisions of the Credit Agreement.

d) **Interpretation.** When the context so requires, the singular will be read as the plural, and vice versa. The headings in this booklet are for convenience only and do not limit or extend the provisions of this booklet.

e) **Copy of Agreement.** The Business allows us to (i) provide particulars of any of the Credits where we determine it is necessary for purposes of approving, setting up, maintaining, renewing, reviewing, amending, restating, replacing or discharging any Credit or any security, and (ii) give a copy of the Credit Agreement and any security granted by the Business or any other person to CIBC, to each Guarantor (as well as to any future Guarantors) and any signing

officer of the Business that we have on file as an authorized signing officer of the Business, each as we may determine necessary, together with copies of all renewals, replacements, restatements, supplements or amendments to the Credit Agreement or any security. Each party signing the Credit Agreement on behalf of the Business or as Guarantor acknowledges receipt of a copy of the Credit Agreement and this booklet.

f) **Waivers.** If the Credit Agreement is governed by the laws of Saskatchewan and the Business is a corporation, the Business agrees that *The Limitation of Civil Rights Act, The Land Contracts (Actions) Act* and Part IV (excepting only section 46) of *The Saskatchewan Farm Security Act* do not apply insofar as they relate to actions as defined in those Acts, or insofar as they relate to or affect the Credit Agreement, the rights of CIBC under the Credit Agreement or any instrument, charge, security agreement or other document of any nature that renews, replaces, restates, supplements, amends, extends or is collateral to the Credit Agreement.

g) **Benefit and Assignment.** The Credit Agreement will be for the benefit of and be binding upon

- i) CIBC, its successors and assigns, and
- ii) the Business, and as applicable, its heirs, executors, administrators, successors and permitted assigns, and
- iii) each Key Principal and Principal (both in his or her capacity as Principal of the Business and as Guarantor) and his or her heirs, executors, administrators, successors and permitted assigns.

Where permitted by law, the personal guarantee provided by each Guarantor in the Credit Agreement binds the estate of each such Guarantor upon death.

Neither the Business nor any Guarantor will assign the Liabilities or the obligations under their Personal Guarantee, respectively, under the Credit Agreement without CIBC's prior written consent.

h) **Information.** CIBC may from time to time give any credit or other Information about the Business or any Principal or Guarantor to, or request or receive such Information from, any credit bureaux, government registries, reporting agencies or other Persons, including, without limitation, any financial institution, CIBC subsidiary or CIBC business unit. The word "information" means financial and financially-related information, including, without limitation, (i) information to identify or locate the Business or such Principal or Guarantor (or any collateral that has been charged or pledged), (ii) information to qualify the Business or such Principal or Guarantor for products and services, (iii) any motor vehicle information, where applicable, or (iv) such other information that CIBC requires or must report for regulatory purposes or otherwise.

i) **Notices.** CIBC may give the Business or any Guarantor notice in relation to any Credit or the Credit Agreement in person or by telephone, or by letter that is sent either by fax or by mail (by ordinary first class mail) sent to the most recent address as shown in our records and will be considered to have been received by

the fifth day after mailing. It is the responsibility of each Principal (both in his or her capacity as Principal of the Business and as Guarantor) to notify CIBC of any change to the address of the Business or such Guarantor. If CIBC is not advised of such change of address, the last known address we have will be deemed to be the current address for purposes of notice and service to the Business and/or Guarantor(s). We will regularly mail the Business statements or provide the Business with access to electronic statements monthly (unless there have been no advances or payments during the statement period and we are not required to send the Business a statement).

j) **Governing Law.** The Credit Agreement shall be governed by and construed in accordance with the laws of the province or territory where the Business has its principal place of business at the time of signing the Credit Agreement, and if the Business has more than one principal place of business, where the Business has its chief executive office. The courts of that province or territory shall have jurisdiction over any dispute arising out of or in relation to the Credit Agreement or any Credit. Each of the Business, the Principal(s), and Guarantor(s) submit to the exclusive jurisdiction of that province or territory.

k) **Indemnity.** The Business hereby indemnifies and agrees to hold CIBC harmless from all losses, damages, costs, demands, claims, expenses (including out-of-pocket expenses) and other consequences which CIBC may incur, sustain or suffer, other than pursuant to its own negligence or willful misconduct, in relation to any of the Credits or any security given in relation to the Credits, or enforcing or protecting the provisions thereof, including without limitation, legal and other professional expenses reasonably incurred by CIBC and whether incurred in defending any action brought against CIBC, or in any proceedings brought by CIBC against the Business, any Guarantor or with respect to the Business' or any Guarantor's property charged or pledged to CIBC for the purpose of protecting, taking possession of, holding or realizing such property, or otherwise in connection with such actions. Any amounts due under this indemnity shall form part of the Liabilities.

l) **Limitation Period.** To the extent permitted by law, a party to the Credit Agreement (the "Claiming Party") may bring an action against another party to the Credit Agreement in respect of any loss or damage that occurs as a result of an act or omission on the part of another party (the "Defaulting Party") within six (6) years from the date (i) the Claiming Party first knew the loss or damage occurred and was contributed to by an act or omission of the Defaulting Party, or (ii) on which a reasonable person with the abilities and circumstances of the Claiming Party ought to have known of the matters referred to in (i) above. This provision does not apply to Credit Agreements that are governed by the laws of the Province of Quebec.

Part II

About the Business' Loan

This Part II applies to any Loan Credit.

1. **Non-revolving Loans.** Unless otherwise stated in the Credit Agreement, any Loan is non-revolving. This means that any principal payment made permanently reduces the available Loan amount and may not be re-borrowed.

2. **Repayment of Loans.** Loans may have either blended payments or payments of fixed principal amounts plus interest, as described below:

a) **Blended payments.** If a Loan has blended payments, the amount of each Scheduled Payment (principal and interest combined) is fixed for the term of the Loan unless we change it, in which case the change will take effect immediately (unless we are required to give prior notice by applicable law, regulation or otherwise, in which case the change will take effect on the date indicated in such notice) and we will provide the Business with notice of the new Scheduled Payment amounts and/or new terms of such Loan. The principal portion and interest portion of each Scheduled Payment varies depending on the balance of the Loan outstanding, and, if the Loan has a variable interest rate, any changes in the rate. Decreases in the interest rate will increase the principal portion of each Scheduled Payment. Increases in the interest rate will decrease the principal portion of each Scheduled Payment.

b) **Payments of principal plus interest.** If a Loan has regular Scheduled Payments of principal plus interest, the principal amount of each Scheduled Payment is fixed, unless we change it, in which case the change will take effect immediately (unless we are required to give prior notice by applicable law, regulation or otherwise, in which case the change will take effect on the date indicated in the notice) and we will provide the Business with notice of the new Scheduled Payment amounts and/or new terms of such Loan. The interest amount of each Scheduled Payment varies depending on the balance of the Loan outstanding, and, if the Loan has a variable interest rate, any changes in the rate.

The amount of each Scheduled Payment and the due date for such payments will be as advised by CIBC.

In the event that a balance remains outstanding on a Loan at the end of the term indicated in the Credit Agreement, the entire outstanding amount of such Loan (including any principal, accrued but unpaid interest and any fees or expenses owing to us) shall become immediately due and payable unless renewed for a further term as determined by CIBC in its sole discretion.

CIBC may at any time change the interest rate, term, Spread, other terms of a Loan, and the type of repayment we require, including, without limitation, changing a blended payment Loan to payments of principal plus interest, or to any other type of Loan. We may also change the amortization period on a Loan, the amount of the Scheduled Payments to be made and/or the frequency of the Scheduled Payments, each without advance notice (unless required by an applicable law, regulation or otherwise) and such changes will become effective immediately

(unless we are required to give prior notice by applicable law, regulation or otherwise, in which case the change will take effect on the date indicated in the notice). If we make any such changes, we will notify the Business. Each of the Business and the Guarantors should note that any changes to the Credit(s) may affect any creditor insurance (including CIBC Business Loan/Farm Credit Life Insurance). The Business and/or the Guarantor(s), as the case may be, should refer to the applicable insurance certificate, and should refer any questions to the relevant insurer.

3. **Making Loan payments.** The Business agrees to make Scheduled Payments on a Loan as outlined in the Credit Agreement, or as otherwise notified by us in accordance with this booklet, at the times and in the amounts indicated by CIBC in writing or otherwise.

4. **Prepayment of fixed rate Loans.** Subject to the paragraph below regarding prepayment of fixed rate fixed term Loans with a term greater than five years, if:

- the Business is a sole proprietorship or an individual and (i) the fixed interest rate Loan is secured by a mortgage on real property (in Quebec, an immovable hypothec) or (ii) the original principal of the Loan is \$100,000 or more, or
- the Business is a corporation, association or partnership,

then notwithstanding any other reference to prepayment fees in the Credit Agreement and subject to the conditions below, full or partial prepayment of a fixed rate fixed term Loan is permitted provided that the Business pays us a prepayment fee equal to the greater of:

- three months' interest calculated at the interest rate payable on the Loan on the amount prepaid on the date on which the prepayment is made (plus any discount the Business received on its existing annual interest rate on the Loan, if applicable); and
- the interest rate Differential for the remainder of the term of the Loan, determined in accordance with the standard formula used by CIBC (determined in accordance with CIBC's usual banking practice) in these situations.

"Interest Rate Differential for the remainder of the term" means the difference between the net present value of the fixed rate fixed term Loan and the amount being prepaid. For purposes of calculating the Interest Rate Differential for the remainder of the term for fixed rate fixed term Loans, the calculation of "net present value of the fixed rate fixed term Loan" is based on a formula (determined in accordance with CIBC's usual banking practice) that takes into account (i) CIBC's Cost of Funds for the fixed rate fixed term Loan at the time the Loan was made, (ii) the number of interest periods (i.e. weekly, monthly, quarterly, etc.) remaining in the term of the fixed rate fixed term Loan (calculated from the beginning of the last interest period that falls on or before the date of prepayment), (iii) the amount of principal and interest that would have been payable for each regularly scheduled payment period (i.e. weekly, monthly, quarterly etc.) and/or interest period, as the case may be, had the fixed rate fixed term Loan not been prepaid, (iv) the remaining amortization period of the fixed rate fixed term Loan, and (v) CIBC's Cost

of Funds to provide a new fixed rate fixed term Loan on the date of prepayment for a term closest to the remaining period of the fixed rate fixed term Loan for which CIBC has posted interest rates (as indicated in the Fixed Rate Fixed Term Loan Reinvestment Table below).

The following table indicates the term that CIBC will use to calculate the Interest Rate Differential for the remainder of the term by setting out the period that CIBC will use as the term to reinvest in a fixed rate Loan for a fixed term. Column A lists the remaining period in the term of the existing fixed rate fixed term Loan, and Column B lists the term used to determine the Cost of Funds to reinvest in the same type of Loan on the prepayment date:

Fixed Rate Fixed Term Loan Reinvestment Table	
Column A	Column B
Less than or equal to 3 months	Monthly basis
Greater than 3 months and less than or equal to 17 months	1 year
Greater than 17 months and less than or equal to 29 months	2 years
Greater than 29 months and less than or equal to 41 months	3 years
Greater than 41 months and less than or equal to 53 months	4 years
Greater than 53 months and less than or equal to 77 months	5 years
Greater than 77 months and less than or equal to 101 months	7 years

For example, if the fixed rate fixed term Loan being prepaid has a remaining term of less than or equal to 14 months, the "Interest Rate Differential for the remainder of the term" is based on CIBC reinvesting the amount of the Loan being prepaid in a new fixed rate fixed term Loan based on the Cost of Funds for a 1 year term. If the Loan being prepaid has a remaining term of 27 months, the "Interest Rate Differential for the remainder of the term" is based on CIBC reinvesting the amount of the Loan being prepaid in a new fixed rate fixed term Loan based on the Cost of Funds for a 2-year term.

Sample Prepayment Fee Calculation for a Fixed Rate Fixed Term Loan

For example, the Interest Rate Differential for the remainder of the term of a Fixed Rate Loan that has a fixed term is as follows:

1. If the original fixed rate fixed term Loan advanced on February 1, 2002 was for \$100,000 at 6.5% per year for a 5-year term, and the Business elected to prepay \$75,000 on October 27, 2003:
 - i) The net present value of \$75,000 calculated for the remaining 39 months is \$77,222.75;
 - ii) The Interest Rate Differential for the remainder of the term is the difference between the net present value and the total prepayment amount, or in this case \$2,222.75. (\$77,222.75 - \$75,000);
 - iii) 3 months' interest on \$75,000 (based on separate principal and interest payments) calculated at 6.5% per year is \$1,218.75.

2. The prepayment fee payable on this fixed rate fixed term Loan would be \$2,222.75, being the greater of (i) and (ii) above.

This is a sample calculation only. To find out the amount of the Interest Rate Differential for the remainder of the term on a fixed rate fixed term Loan the Business wishes to prepay, please contact CIBC.

"Cost of Funds" for purposes of calculating the Interest Rate Differential for the remainder of the term is the "Transfer Price Rate" as determined by CIBC's Treasury Balance Sheet and Risk Management area based on Canadian cash and swap markets for the date on which cost of funds is being determined.

If prepayment of the fixed rate fixed term Loan is permitted according to the above paragraph and it is a Business Improvement Loan ("BIL") granted under the *Canada Small Business Financing Act* (or the *Small Business Loans Act*), the Business may prepay the BIL in accordance with the Additional BIL Credit Terms the Business will receive.

if:

- a) the Business is not a corporation,
- b) the fixed rate fixed term Loan being prepaid is secured by a mortgage or immovable hypothec, and
- c) the initial term or any renewal term of the Loan is more than five years, the Business may prepay all or part of the Loan at any time after the date that is five years from the date the Loan was advanced or the most recent date as of which the Loan has been renewed for a new term, as the case may be, provided that the Business pays:

 - d) all principal and interest on the amount being prepaid to the date of such prepayment, plus
 - (e) three months' further interest calculated at the existing annual interest rate on the date of prepayment (plus any discount received on the existing annual interest rate) on the principal amount prepaid.

We will apply any prepayment and the corresponding prepayment fee (if any) against installments in reverse order of due date. The prepayment fees required above are not applicable to any fixed rate fixed term Loans in an original principal amount of less than \$100,000 granted to a sole proprietor or individual unless it is secured by a collateral mortgage or immovable hypothec.

If the Loan being prepaid is secured by a mortgage or immovable hypothec, the mortgage or immovable hypothec, as the case may be, is amended by deletion of all terms (if any) that relate to prepayment of the fixed rate fixed term Loan, so that the only prepayment terms that apply to the Loan are as set out in this booklet.

Part III

About the Business' Line of Credit and/or Small Business Overdraft

This Part III applies to any Line of Credit and any Small Business Overdraft.

1. **Access.** The Business can access its Line of Credit and/or Small Business Overdraft in any manner we may make available from time to time, such as, by:
 - cheque
 - telephone
 - automated banking machine
 - debit card
 - PC banking

A Line of Credit or Small Business Overdraft is revolving. That means that principal amounts that are repaid are, subject to the terms of the Credit Agreement and our approval, available to be re-borrowed.

2. **Purpose.** The Business will use its Line of Credit and/or Small Business Overdraft only for its business operating needs.

3. **Credit Limit for the Business' Line of Credit and/or Small Business Overdraft.** We set a Credit Limit for the Business' Line of Credit and/or Small Business Overdraft. We may without prior notice increase or decrease the amount of the Credit Limit at any time in CIBC's sole discretion. If we do so, we will notify the Business and such notice may be sent with the Business' monthly statement or in such method as we may determine. Any such change in Credit Limit will become effective immediately unless we are required to give prior notice by an applicable law, regulation or otherwise, in which case such change will become effective on the date indicated in such notice.

The Business must ensure that it does not exceed its Credit Limit. We may, without prior notice, refuse (on a temporary or permanent basis) any withdrawal on a Line of Credit or Small Business Overdraft that would result in the Business' Credit Limit being exceeded (unless the Business has made prior arrangements with us), even if we have agreed to such withdrawals in the past. In cases where we do advance money when the Business has exceeded its Credit Limit, the Business agrees to repay the excess amount immediately. The Business agrees that if it exceeds its Credit Limit, it will pay a fee to CIBC for each such occurrence at the applicable rate, and it will pay interest at the Excess Interest Rate on the excess amount (including any due but unpaid interest and fees), until such time as the Business (and/or any Guarantor) repays the excess amount (including any due but unpaid interest and fees) in full.

Interest on the excess amount is calculated based on the final daily balance in the Business' CIBC business operating account and charged monthly or as otherwise agreed. Interest that is charged on the excess amount (including any due but unpaid interest and fees) that remains unpaid compounds monthly and continues

to compound whether or not we have demanded payment or commenced legal action or obtained judgment against the Business or any Guarantor. Even in a leap year, interest on the excess amount is calculated by multiplying the then outstanding principal amount by the Excess Interest Rate, dividing the product by 365 and multiplying the result by the number of days in the payment period during which the Excess Interest Rate was chargeable.

In the event that the Business has not made the required minimum payments as set out in this booklet or in the Credit Agreement, the Business agrees that we may in our sole discretion decide to convert the current outstanding balance on its Line of Credit or Small Business Overdraft, together with any accrued but unpaid interest, fees and service charges (and including any unpaid insurance premiums), to a Loan whereby blended payments of principal and interest will be payable by the Business in accordance with the Scheduled Payments we will provide the Business. Unless the Business makes other arrangements with us that we agree to, CIBC will determine in its sole discretion the conditions of the Loan (such as the term, the interest rate, the amortization period, Scheduled Payments, payment frequency, maturity date, and any other terms or conditions of the Loan). Such changes will take effect immediately, unless we are required to give prior notice or obtain consent by applicable law, regulation or otherwise, in which case such changes will become effective on the date indicated in such notice or when such consent is obtained or deemed to have been obtained, as applicable, and the Line of Credit or Small Business Overdraft, as the case may be, will be cancelled. The first Scheduled Payment on such converted Loan will be payable on the next payment date as set out in the notice we will send the Business. To the extent permitted by law, each of the Business and Guarantor(s) waives any right to receive prior notice of such change to the Credit(s). **Each of the Business and the Guarantors should note that any changes to the Credit(s) may affect any creditor insurance (including CIBC Business Loan/Farm Credit Life Insurance). The Business and/or the Guarantor(s), as the case may be, should refer to the applicable insurance certificate, and should refer any questions to the relevant insurer.**

4. **Circular payments.** Each of the Principals, Guarantor(s), and the Business agrees not to use any Credit to move debts between accounts in a circular manner. For greater certainty, the Business may not make payments on its Line of Credit or Small Business Overdraft using funds borrowed from CIBC or drawn on any other CIBC credit facility or credit accounts in the name of the Business, a Key Principal, Principal or Guarantor. CIBC agrees, however, that the Business may use its Line of Credit or Small Business Overdraft to make a payment on a Loan, provided that the required minimum deposits to pay the Line of Credit or Small Business Overdraft, as the case may be, are made to the Business' CIBC business operating account within the payment due period on the Business' Line of Credit or Small Business Overdraft, in accordance with the Business' CIBC business operating account statement or as otherwise advised or instructed by CIBC.

5. Making payments.

a) Line of Credit. If the monthly statement we send the Business shows a negative balance at calendar month end, the Business agrees to make a deposit to its Line of Credit within 30 days of the calendar month end. The minimum deposit(s) required is/are:

- i) the total for the calendar month of all
 - interest, fees, and service charges, and
 - required payments (including Scheduled Payments) on any other Credit charged to the Business' Line of Credit

or

- ii) any negative balance at calendar month end whichever is less (or such other amount advised by CIBC in its sole discretion)
- b) **Small Business Overdraft.** The Business must make sufficient deposits to bring each CIBC business operating account to which its Small Business Overdraft is attached into a positive balance at least for one full Business Day each calendar month or a minimum of \$250 (or such other amount as advised by CIBC in its sole discretion) in deposits to such account each calendar month, whichever is less.

6. Denying Access. We have the right to deny the Business the privilege of drawing against its Line of Credit and/or Small Business Overdraft on a temporary or permanent basis (even if the Business is not in default of its obligations) without telling the Business in advance unless we are required to provide prior notice by applicable law, regulation or otherwise. We may refuse to advance money even if the Business has already initiated the transaction and even if we have agreed to advance money in the past under similar circumstances. If we deny the Business access permanently, we will cancel the relevant Credit(s) and demand repayment in accordance with the Credit Agreement.

7. Standard Rate Overdraft. If we have agreed in the Credit Agreement to grant a Standard Rate Overdraft, the term "Line of Credit" in this booklet includes a Standard Rate Overdraft.

Part IV Security

1. Security for Credits. The following terms apply if security is required for any Credit:
- a) **Pledge of cash or cash equivalent security.** Any pledge of cash or cash equivalent security, must be on our standard Securities Pledge Agreement or any other agreement in form and substance satisfactory to CIBC.
 - b) **Mortgage security/Immovable hypothec.** If mortgage security (in Quebec, an immovable hypothec) is required:

i) **Registration expenses.** The Business agrees to pay all expenses for registering the mortgage (and in Quebec, for preparing and registering the immovable hypothec) and for reviewing, renewing, amending, maintaining and updating our registration to ensure such security and our position as a secured creditor is protected. The Business also agrees to reimburse us for expenses incurred for discharging, substituting or replacing any such security. The mortgage / immovable hypothec will be prepared on our usual form or such other form as is satisfactory to CIBC.

ii) **First or second mortgage etc. / immovable hypothec:** The mortgage / immovable hypothec must be a first charge (or a second (or third) charge if the Credit Agreement permits) on the property. Either (A) the property must be a commercial property owned by the Business, or (B) in the event that the Business is a sole proprietorship, the Key Principal (or, if the mortgage / immovable hypothec is given by a Guarantor, that Guarantor) must occupy the property as a principal residence.

iii) **Value of the property.** We may confirm the value of the property and the amount of any existing liens against it by having the property appraised and doing any necessary searches. The Business agrees to reimburse us for any costs of doing this.

iv) **Approval of Credit(s).** We approved the Credit(s) based on our satisfaction with the mortgage / immovable hypothec and that there are no liens or encumbrances which would impact our security other than those listed in the Credit Agreement and/or those that the Business (or the appropriate Guarantor, as applicable) has previously advised us of. If any of the information the Business (or the appropriate Guarantor, as applicable) has given to us in relation to such mortgage / immovable hypothec or otherwise is incorrect, incomplete, inaccurate or misleading, we may not make any Credit(s) available to the Business.

v) **Periodic appraisals.** We may have the property appraised periodically to determine its value, but not more often than once a year. The Business agrees to reimburse us for the appraisal costs incurred by us.

vi) **Discharges.** If the Business (or any Guarantor or other Person) repays the Liabilities in full, we will discharge any mortgage (or immovable hypothec) provided we are satisfied in our sole discretion that we no longer need to retain such security, and provided further that we receive a request in writing to do so. The Business agrees to reimburse us for any costs of doing this.

vii) **Repayment.** If the property is sold, or if another charge is registered against it, we may require the Business to repay the full amount secured by the mortgage / immovable hypothec. If the owner of the property is a natural person and such person dies, the Business agrees to notify us immediately and agrees to provide us with equivalent security satisfactory to CIBC forthwith.

viii) **For Saskatchewan only.** If the property mortgaged, or any part thereof, is farm land that is a homestead within the meaning of *The Saskatchewan*

Farm Security Act, a Principal of the Business (or the applicable Guarantor, as the case may be) agrees to (A) make a co-application with CIBC, to the Saskatchewan Farm Security Board to waive home quarter protection pursuant to subsection 44(12) of *The Saskatchewan Farm Security Act*, and (B) execute Form 7903, Co-Application to Waive Home Quarter Protection or any other such form or agreement as we may require in relation to such waiver. If the property mortgaged, or any part thereof, is farm land that is not a homestead within the meaning of *The Saskatchewan Farm Security Act*, a Principal of the Business (or the applicable Guarantor, as the case may be) agrees to execute Form 7902, Schedule "B" Saskatchewan Certificate or any other such form or agreement as we may require in relation to such certificate. A Principal of the Business (or the applicable Guarantor, as the case may be) will have such documentation commissioned by a Commissioner of Oaths or notarized by a Notary Public, and will obtain a certificate of independent legal advice (in a form satisfactory to CIBC), each as we may request or require.

ix) *Saskatchewan Waivers*. To the extent permitted by law or statute, the Business (or the applicable Guarantor, as the case may be) hereby waives the benefit of, and waives and releases all rights and protections given by any and all provisions of all applicable conditional sales, credit regulation, seizure exemption or debt protection statutes or regulations which would in any manner affect, restrict or limit the rights of CIBC including, without limitation, *The Limitation of Civil Rights Act* and Part IV (excepting only section 46) of *The Saskatchewan Farm Security Act*, Form 9737 (Waiver of Exemption Protection for Specified Chattels) or any other such form or agreement as we may require in relation to such waiver or certificate as required by *The Saskatchewan Farm Security Act* must be executed and, if required or requested by CIBC, Form 7904, Schedule "C", Certificate of Independent Legal Advice or any other form of independent legal advice in substance satisfactory to CIBC must be delivered to us prior to any advance under any Credit.

c) **General Security Agreement / Movable Hypothec**. The General Security Agreement (or in Quebec, the Movable Hypothec) provided by the Business shall be according to the terms of Part V (or Part VI as the case may be) of this booklet.

d) **Payment of Fees and Expenses**. Any amounts payable under this Part IV will form part of the Liabilities and CIBC may debit the Business' CIBC business operating account for any such amounts.

Part V

General Security Agreement

This Part V applies if the Business has agreed to provide a General Security Agreement.

- Grant of Security**. As a general and continuing collateral security for the due payment and performance of all the Liabilities, the Business agrees to mortgage, charge and assign to CIBC, and grant to CIBC, and CIBC takes, a Security Interest in all present and after-acquired undertaking and Personal Property (but excluding Consumer Goods) of the Business and all property described in any attachments or schedules to the Credit Agreement that the Business may from time to time sign and provide to CIBC, and in all present and future Accessions to, and all Proceeds of, any such property (collectively, the "Collateral").
- Places of Business**. The Business represents and warrants that it has disclosed in writing to CIBC the location of all existing Places of Business and agrees to promptly notify CIBC in writing of any additional Places of Business as soon as they are established. The Business agrees that, subject to Section 4 of this Part V, the Collateral will at all times be kept at the Places of Business, and will not be removed without CIBC's prior written consent.
- Collateral Free of Charges**. The Business represents and warrants that the Collateral is, and agrees that the Collateral will at all times be, free of any Charge or trust except in favour of CIBC or incurred with CIBC's prior written consent. CIBC may, but will not have to, pay any amount or take any action required to remove or redeem any unauthorized Charge. The Business will immediately reimburse CIBC for any amount so paid and will indemnify CIBC in respect of any action so taken. Such amounts will form part of the Liabilities.
- Use of Collateral**. The Business will not, without CIBC's prior written consent, sell, lease, charge, assign, transfer or otherwise dispose of any of the Collateral (other than Inventory, which may be sold, leased or otherwise disposed of in the ordinary course of business) nor will it permit any other Person to do any of the same. All Proceeds of the Collateral (including among other things all amounts received in respect of Receivables), whether or not arising in the ordinary course of business, will be received by the Business as trustee for CIBC and will be immediately paid to CIBC.
- Insurance**. The Business will keep the Collateral insured according to the terms of Section 15 of Part I of this booklet.
- Information and Inspection**. The Business will from time to time immediately give CIBC in writing all information requested by CIBC relating to the Collateral, the Places of Business, and its financial or business affairs. The Business will promptly advise CIBC of the Serial Number, model year, make and model of each Serial Number Good at any time included in the Collateral that is held as Equipment, including in circumstances where the Business ceases holding such Serial Number

Good as inventory and begins holding it as Equipment. CIBC may from time to time inspect any Books and Records and any Collateral, wherever located. For that purpose CIBC may, without charge, have access to each Place of Business and to all mechanical or electronic equipment, devices and processes where any of them may be stored or from which any of them may be retrieved. The Business authorizes any Person holding any Books and Records to make them available to CIBC, in a readable form, upon request by CIBC. In addition, the Business authorizes CIBC or any of its agents to obtain information about any Collateral or security the Business has charged or pledged to CIBC, including, without limitation, information regarding title to the Collateral.

7. Receivables. If the Collateral includes Receivables, CIBC may advise any Person who is liable to make any payment to the Business of the existence of the Credit Agreement, the Security Interest we have in such Receivables, the terms set out in the Credit Agreement and any other information in relation to the Credit(s) reasonably necessary to protect our Security Interest in such Receivables. CIBC may from time to time confirm with such Persons the existence and the amount of the Receivables. Upon Default, CIBC may collect and otherwise deal with the Receivables in such manner and upon such terms as CIBC considers appropriate.

8. Receipts Prior to Default. Until Default, all amounts received by CIBC as Proceeds of the Collateral will be applied on account of the Liabilities in such manner and at such times as CIBC may consider appropriate or, at CIBC's option, may be held unappropriated in a collateral account or released to the Business.

9. Default.

a) Events of Default. The occurrence of any of the following events or conditions will be a Default:

- i) the Business does not pay any of the Liabilities when due;
- ii) the Business (or any Guarantor) does not observe or perform any of its obligations under the Credit Agreement or any other agreement or document existing at any time between the Business (or any Guarantor) and CIBC;
- iii) any representation, warranty or statement made (or deemed to have been made) by the Business (or any Guarantor) or on the Business' (or any Guarantor's) behalf to CIBC is incorrect or untrue in any material respect at the time when or as of which it was made (or deemed to have been made);
- iv) any part of the security held by us as security for the Credit(s) (including any personal guarantee given by a Guarantor) terminates or is no longer effective (without our prior consent);
- v) the Business ceases, or threatens to cease, to carry on in the normal course its business or any material part thereof (or it appears to CIBC (acting reasonably) that that may happen);
- vi) if the Business is a corporation, there is, in CIBC's reasonable opinion, a

change in effective control of the Business, or if the Business is a partnership, there is a dissolution or change in the membership of the partnership;

vii) the Business becomes insolvent or bankrupt or makes a proposal or files an assignment for the benefit of creditors under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in Canada or any other jurisdiction; a petition in bankruptcy is filed against the Business; or, if the Business is a corporation, steps are taken under any legislation by or against the Business seeking its liquidation, winding-up, dissolution or reorganization or any arrangement or composition of its debts;

viii) a Receiver, trustee, custodian or other similar official is appointed in respect of the Business or any of its (or, in the case where a mortgage / immovable hypothec has been given by a Guarantor as security for the Credit(s), that Guarantor's) property;

ix) the holder of a Charge takes possession of all or any part of the Business' property, or a distress, execution or other similar process is levied against all or any part of such property;

x) CIBC, in good faith and upon commercially reasonable grounds, believes that the prospect of payment or performance is or is about to be impaired or that the Collateral is or is about to be placed in jeopardy;

xi) CIBC in its sole discretion makes demand for payment of all Liabilities and such Liabilities are not repaid by the date due.

Notwithstanding any of the above events or conditions being considered a Default, each of the Business and the Guarantor(s) understands and agrees that the Credit(s) are demand credit(s) and that CIBC may in its sole discretion make demand for repayment of all outstanding Liabilities and may, in its sole discretion, cancel any unused portion of any Credit, in accordance with the terms of the Credit Agreement.

b) Rights upon Default. Upon Default, CIBC and/or a Receiver, as applicable, will to the extent permitted by law have the following rights:

i) **Appointment of Receiver.** CIBC may by instrument in writing appoint any Person as a Receiver of all or any part of the Collateral. CIBC may from time to time remove or replace a Receiver, or make application to any court of competent jurisdiction for the appointment of a Receiver. Any Receiver appointed by CIBC will (for purposes relating to responsibility for the Receiver's acts or omissions) be considered to be the Business' agent. CIBC may from time to time fix the Receiver's remuneration and the Business will pay CIBC the amount of such remuneration. CIBC will not be liable to the Business or any other Person in connection with appointing or not appointing a Receiver or in connection with the Receiver's actions or omissions.

ii) **Dealings with the Collateral.** CIBC and/or a Receiver may take possession of all or any part of the Collateral and retain it for as long as CIBC and/or the Receiver considers appropriate, receive any rents and profits from the Collateral, carry on (or concur in carrying on) all or any part of the Business'

operations or refrain from doing so, borrow on the security of the Collateral, repair the Collateral, process the Collateral, prepare the Collateral for sale, lease or other disposition, and sell or lease (or concur in selling or leasing) or otherwise dispose of the Collateral on such terms and conditions (including among other things by arrangement providing for deferred payment) as CIBC and/or the Receiver considers appropriate. CIBC and/or the Receiver may (without charge and to the exclusion of all other Persons including the Business) enter upon any Place of Business.

- iii) **Realization.** CIBC and/or a Receiver may use, collect, sell, lease or otherwise dispose of, realize upon, release to the Business or other Persons and otherwise deal with, the Collateral in such manner, upon such terms (including among other things by arrangement providing for deferred payment) and at such times as CIBC and/or the Receiver considers appropriate. CIBC and/or the Receiver may make any sale, lease or other disposition of the Collateral in the name of and on the Business' behalf or otherwise.
- iv) **Application of Proceeds After Default.** All Proceeds of Collateral received by CIBC and/or a Receiver may be applied to discharge or satisfy any expenses (including among other things the Receiver's remuneration and other expenses of enforcing CIBC's rights under the Credit Agreement), Charges, borrowings, taxes and other outgoings affecting the Collateral or which are considered advisable by CIBC and/or the Receiver to preserve, repair, process, maintain or enhance the Collateral or prepare it for sale, lease or other disposition, or to keep in good standing any Charges on the Collateral ranking in priority to any Charge created by the Credit Agreement, or to sell, lease or otherwise dispose of the Collateral. The balance of such Proceeds will be applied to the Liabilities in such manner and at such times as CIBC considers appropriate and thereafter will be accounted for as required by law.

c) **Other Legal Rights.** Before and after Default, CIBC will have, in addition to the rights specifically provided in the Credit Agreement, the rights of a secured party under the PPSA, as well as the rights recognized at law and in equity. No right will be exclusive of or dependent upon or merge in any other right, and one or more of such rights may be exercised independently or in combination from time to time.

d) **Deficiency.** The Business will remain liable to CIBC for payment of any Liabilities that are outstanding following realization of all or any part of the Collateral.

10. CIBC not Liable. CIBC will not be liable to the Business, a Principal, a Guarantor, or any other Person for any failure or delay in exercising any of its rights under the Credit Agreement (including among other things any failure to take possession of, collect, or sell, lease or otherwise dispose of, any Collateral). None of CIBC, a Receiver or any agent of CIBC (including, in Alberta, any sheriff) is required to take, or will have any liability for any failure to take or delay in taking, any steps necessary or advisable to preserve rights against other Persons under any Chattel

Paper, Securities or Instrument in possession of CIBC, a Receiver or CIBC's agent. CIBC will not be liable to the Business, any Principal, any Guarantor or any other Person for any negligence or any breaches or omissions on the part of CIBC, or any of its employees, officers, directors or agents, or any Receivers appointed by CIBC, in the course of any of its or their actions.

11. Charges and Expenses. The Business agrees to pay on demand all costs and expenses incurred (including among other things legal fees) and fees charged by CIBC in connection with preparing, obtaining, reviewing, renewing, amending, maintaining or discharging security granted under the Credit Agreement or establishing, reviewing, renewing, maintaining, amending or confirming the priority of the Charges created by the Credit Agreement (including, without limitation, this Part V), or by law, compliance with any demand by any Person under the PPSA (or the UCC if the Business has assets in the United States, or under any other similar registry system in any jurisdiction in which the Business has assets) to provide particulars, to prepare, renew, review, maintain, amend or to discharge any registration relating to the Credit Agreement, and by CIBC and/or any Receiver in exercising any remedy under the Credit Agreement (including among other things preserving, repairing, processing, preparing for disposition and disposing of the Collateral by sale, lease or otherwise) and in carrying on business on behalf of the Business. All such amounts will bear interest from time to time at the highest interest rate then applicable to any of the Liabilities and will form part of the Liabilities, and the Business agrees to reimburse CIBC upon demand for any amount so paid. If the Business does not reimburse CIBC upon demand for such amounts, the Business agrees to pay the Excess Interest Rate until the date on which the Business reimburses CIBC in full for such amounts.

12. Further Assurances. The Business will from time to time immediately upon request by CIBC take such action (including among other things the signing and delivery of financing statements and financing change statements (or the equivalent in other jurisdictions, including any filings required to be made under the UCC if the Business has assets in the United States), other schedules, documents or listings describing property included in the Collateral, further assignments and other documents, and the registration of the Credit Agreement or any other Charge against any of the Business' real property) as CIBC may require in connection with the Collateral or as CIBC may consider necessary to give effect to the Credit Agreement. The Business irrevocably appoints the manager or the acting manager from time to time of CIBC's branch or location that administers the Credit Agreement as its attorney (with full powers of substitution and delegation) to sign, upon Default or as otherwise determined by CIBC in its sole discretion, all documents required to give effect to this Section. Nothing in this Section affects the right of CIBC as secured party, or any other Person on CIBC's behalf, to sign and file or deliver (as applicable) all such financing statements, financing change statements (or the equivalent in any other jurisdiction), notices, verification agreements and other documents relating to the Collateral and the Credit Agreement as CIBC or such other Person considers appropriate.

13. Security.

a) **Reservation of the Last Day of any Lease.** The Charges created by the Credit Agreement do not extend to the last day of the term of any lease or agreement for lease; however, the Business will hold such last day in trust for CIBC and, upon the exercise by CIBC of any of its rights under the Credit Agreement following Default, will assign such last day as directed by CIBC.

b) **Attachment and Perfection of Security Interest.** The Security interests created by the Credit Agreement are intended to attach (i) to existing Collateral when the Credit Agreement is signed, and (ii) to Collateral subsequently acquired by the Business, immediately upon the Business acquiring any rights in such Collateral. The parties do not intend to postpone the attachment of any Security Interest created by the Credit Agreement unless otherwise agreed in writing. CIBC may take all steps necessary to perfect or preserve its security interest.

c) **Purchase-Money Security Interest.** If CIBC gives value for the purpose of enabling the Business to acquire rights in or to any of the Collateral, the Business will in fact apply such value to acquire those rights (and will provide CIBC with such evidence in this regard as CIBC may require), and the Business grants to CIBC, and CIBC takes, a Purchase-Money Security Interest in such Collateral to the extent that the value is applied to acquire such rights. A certificate or affidavit of any of CIBC's authorized representatives is admissible in evidence to establish the amount of any such value.

d) **Description of Collateral.** The fact that there may not be a description of any property in a schedule or attachment to the Credit Agreement or any security document signed in relation to the Credit Agreement does not affect the nature or validity of CIBC's security in the Collateral.

e) **Additional Security.** The Charges created by the Credit Agreement are in addition and without prejudice to any other Charge now or later held by CIBC. No Charge held by CIBC will be exclusive of or dependent upon or merge in any other Charge, and CIBC may exercise its rights under such Charges independently or in combination.

14. **Notice.** CIBC may send the Business, by prepaid regular mail addressed to the Business at its address last known to CIBC, copies of any documents required by the PPSA (or any other legislation governing the Collateral, including, without limitation, the UCC) to be delivered by CIBC to the Business. Any document mailed in this manner will be deemed to have been received by the Business upon the earlier of actual receipt by the Business and the expiry of 5 days after the mailing date. A certificate or affidavit of any of CIBC's authorized representatives is admissible in evidence to establish the mailing date. If permitted by law, the Business waives the right to sign or receive a copy of any financing statement or financing change statement (or the equivalent in any other jurisdiction), or any statement issued by any registry that confirms any registration of a financing statement or financing change statement (or the equivalent in any other jurisdiction), relating to the Credit Agreement.

15. Definitions. In this Part V:

- "Accessions", "Account", "Chattel Paper", "Document of Title", "Equipment", "Goods", "Instrument", "Intangible", "Inventory", "Proceeds", "Purchase-Money Security Interest" and "Security Interest" have the respective meanings given to them in the PPSA (or, if such words relate to assets located in the United States, they have the meanings given to them in the UCC).
- "Books and Records" means all books, records, files, papers, disks, documents and other repositories of data recording, evidencing or relating to the Collateral to which the Business (or any Person on its behalf) has access.
- "Charge" means any mortgage, charge, pledge, hypothecation, lien (statutory or otherwise), assignment, financial lease, title retention agreement or arrangement, security interest or other encumbrance of any nature however arising, or any other security agreement or arrangement creating in favour of any creditor a right in respect of a particular property that is prior to the right of any other creditor in respect of such property.
- "Collateral" has the meaning set out in Section 1 of this Part V.
- "Consumer Goods" has the meaning given to it in the PPSA.
- "Default" has the meaning set out in subsection 9(a) of this Part V.
- "Liabilities" has the meaning set out in Section 1 of Part I.
- "Money" has the meaning given to it in the PPSA or, if there is no such definition, means a medium of exchange authorized or adopted by the Parliament of Canada as part of the currency of Canada, or by a foreign government as part of its currency.
- "Personal Property" means personal property and includes among other things Inventory, Equipment, Receivables, Books and Records, Chattel Paper, Goods, Documents of Title, Instruments, Intangibles (including intellectual property), Money, and Securities, and includes all Accessions to such property.
- "Place of Business" means a location where the Business carries on its business and/or operations or where any of the Collateral is located (including any location described in the Credit Agreement).
- "PPSA" means the *Personal Property Security Act* in the province or territory where the Business' principal place of business is located, or if there is more than one place of business, where the Business' chief executive office is located, as such legislation may be amended, renamed or replaced from time to time (and includes all regulations made from time to time under such legislation).
- "Receivables" means all debts, claims and choses in action (including among other things Accounts and Chattel Paper) now or in the future due or owing to or owned by the Business.
- "Receiver" means a receiver or a receiver and manager.
- "Securities" has the meaning given to it in the PPSA or, if there is no such definition and the PPSA defines "security" instead, it means the plural of that term.
- "Serial Number" means the number that the Person who manufactured or

constructed a Serial Number Good permanently marked or attached to it for identification purposes or, if applicable, such other number as the PPSA stipulates as the serial number or vehicle information or identification number to be used for registration purposes of such Serial Number Good.

- "Serial Number Good" means a motor vehicle, trailer, mobile home, aircraft airframe, aircraft engine or aircraft propeller, boat or an outboard motor for a boat.
- "UCC" means the Uniform Commercial Code in force in the United States, including any regulations, supplements or amendments thereto from time to time.

Part VI

Hypothec granted by the Business

This Part VI applies if the Business has agreed to provide a hypothec to CIBC.

1. **Hypothec in Quebec.** The Business agrees to sign CIBC's form of hypothec (or such other form that is satisfactory to CIBC) with respect to its property as continuing security for its obligations under the Credit Agreement as well as all other debts owing by the Business to CIBC from time to time. We may refuse to advance funds until the Business has done so, and the hypothec has been registered (published) to our satisfaction and we are satisfied that there are no encumbrances, other than those we approve of, against the property.

2. **Other security.** Security granted to us under this Part VI (or under Part V, as the case may be) does not replace any other security held by us.

Part VII

Personal Guarantees

This Part VII applies to each Key Principal and Principal who has signed the Personal Guarantee section in the Credit Agreement as a Guarantor.

For valuable consideration, each of the Key Principal and the Principal(s) that have signed the Credit Agreement in the capacity as personal guarantor (referred to collectively as the "Guarantors") and the Business agree as follows:

1. **Joint and Several debt.** Each of the Guarantors acknowledges and agrees that the obligations of the Guarantors are joint and several (in Quebec, solidary) as between the Guarantors.
2. **Demand and Repayment.** CIBC may demand payment of the Liabilities (as defined in Section 1 of Part I) from any Guarantor before taking legal steps to receive payment from the Business. Upon CIBC's demand, each Guarantor agrees to immediately pay CIBC the amount of the Liabilities, plus any reasonable expenses (including legal fees and disbursements) of enforcement of the demand made on the Business and/or Guarantors and outstanding interest (including interest on overdue interest compounded monthly) and interest on unpaid amounts due under any Personal Guarantee provided by the Guarantors calculated from the date on which those amounts were originally demanded until payment in full, both

before and after judgment, at the rate and in the currency applicable to the Liabilities. Demand is considered to have been made upon personal delivery in writing to the address of the Guarantor shown on the Credit Agreement, (or varied by written notice received by CIBC), or following 5 business days of mailing by CIBC. Unless otherwise agreed, each Guarantor's obligation to pay the Liabilities is unlimited, absolute and unconditional and will not be reduced for any reason, including (without limitation):

- a) Credit Limit changes,
 - b) interest rate changes,
 - c) Spread changes,
 - d) Credit changes or changes to any of the terms of the Credit Agreement,
 - e) changes to the amortization period of a Credit,
 - f) any renewal, extension or amendment of the Credit Agreement (whether or not such Guarantor has approved or consented to such renewal, extension or amendment),
 - g) problems with any security granted to CIBC,
 - h) failure of CIBC to exhaust its recourse against the Business, or
 - i) any other event that would be a common law, civil law or equitable defence to the obligations of a Guarantor under the Credit Agreement,
- and each Guarantor hereby waives to the extent permitted by law, the right to receive notice of any renewal, extension, amendment or any other notice in relation to any Credit(s) or the Credit Agreement.

3. Additional Terms. Each Guarantor further agrees with CIBC that:

- a) All payments required to be made by the Guarantor will not be subject to any right of set-off, compensation or counterclaim that such Guarantor has or may have against the Business or CIBC.
- b) CIBC may at any time after a demand has been made in accordance with Section 2 of this Part VII (*Personal Guarantees*) above, set-off and apply any deposits held by us and any other amounts owed by us to or for the Guarantor on whom demand was made, against any and all of the amounts owing by such Guarantor to CIBC. Each Guarantor expressly waives any right it may have to receive notice of such set-off.
- c) CIBC may apply all moneys received from a Guarantor, the Business or any other Person (including under any security that CIBC may from time to time hold) upon such part of the Liabilities as CIBC considers appropriate.
- d) Such Guarantor will pay CIBC any amount that CIBC demands and cannot recover from the Business or other Guarantors, as the case may be, immediately following demand as provided in the Credit Agreement, to the extent of the outstanding Liabilities.
- e) This is a continuing guarantee of the Liabilities, until such time as the Liabilities are paid in full.
- f) Payments made by Guarantors or the Business will be governed by the terms of the Business' CIBC business operating account agreement and the Credit Agreement.

- g) if the Business is bankrupt, insolvent, is reorganized or faces similar financial hardship, CIBC will be entitled to all dividends and other payments that a Guarantor may be entitled to until CIBC is paid in full, and each Guarantor will remain liable under the Credit Agreement.
- h) if CIBC gives to any trustee in bankruptcy or receives a valuation of, or retains, any security that CIBC holds for payment of the Liabilities, that will not be considered, as between CIBC and the Business or a Guarantor, to be a purchase of such security or payment, satisfaction or reduction of the Liabilities.
- i) Each Guarantor postpones in favour of CIBC all debts and liabilities that the Business now owes or later may from time to time owe to such Guarantor in any manner until CIBC is paid in full, and each Guarantor further assigns and hypothecates to CIBC all such debts and liabilities, to the extent of the Liabilities, until CIBC is paid in full. CIBC may collect the debts and liabilities that the Business owes to a Guarantor without any further authorization from the Guarantor. If any such Guarantor receives any moneys in payment of any such debts and liabilities, such Guarantor will hold them in trust for or as agent for and will immediately pay them to CIBC without reducing such Guarantor's liability to CIBC. The Business acquiesces unconditionally to the hypothecation by the Guarantor to CIBC of the debts and liabilities owed by the Business to the Guarantor.
- j) Each Guarantor agrees with CIBC that his/her liability will not be limited or reduced, nor will CIBC be responsible or owe any duty (as a fiduciary or otherwise) to such Guarantor, nor will CIBC's rights under this guarantee be prejudiced, by the existence or occurrence (with or without knowledge or consent) of any one or more of the following events:
- i) any unenforceability or loss of or in respect of any security held from time to time by CIBC from the Guarantor, the Business or any other Person, whether the loss is due to the means or timing of any registration, disposition or realization of any Collateral or otherwise due to CIBC's fault or any other reason;
 - ii) the death of a Principal or Key Principal of the Business; any change in the Business' name; or any reorganization (whether by way of amalgamation, merger, transfer, sale, lease or otherwise) of the Business' operations;
 - iii) any change in such Guarantor's financial condition or that of the Business or any other Guarantor (including insolvency and bankruptcy);
 - iv) if the Business is a corporation, any change of effective control, or if the Business is a partnership, a dissolution or any change in the membership;
 - v) any event, whether or not attributable to CIBC, that may be considered to have caused or accelerated the bankruptcy or insolvency of the Business, or to have resulted in the initiation of any such proceedings;
 - vi) CIBC's filing of any claim for payment with any administrator, provisional liquidator, conservator, trustee, receiver, custodian or other similar officer appointed for the Business or for all or substantially all of the Business' assets;

- vi) any failure by CIBC to abide by any of the terms and conditions of CIBC's agreements with, or to meet any of its obligations or duties owed to any Guarantor, the Business or any Person;
 - vii) any incapacity, disability, or lack of limitation of status or of the power of the Business or of the Business' directors, managers, officers, partners or agents; the discovery that the Business is not or may not be a legal entity; or any irregularity, defect or informality in the incurring of any of the Business' Liabilities; or
 - ix) any event whatsoever that might be a defense available to, or result in a reduction or discharge of, any Guarantor, the Business or any other Person in respect of either the Liabilities or such Guarantor's liability to CIBC.
- k) If any payment made to CIBC by the Business or any other Person is subsequently rendered void or must otherwise be returned for any reason, each Guarantor agrees to be liable for that payment. Until all of CIBC's claims against the Business in respect of the Liabilities have been paid in full, such Guarantor will not require that CIBC assign to such Guarantor any security held, or any other rights that CIBC may have, in connection with the Liabilities, and such Guarantor will not assert any right of contribution against any other Guarantor, or claim repayment from the Business, for any payment that such Guarantor makes.
- l) If the Business is bankrupt, or (if the Business is a corporation) liquidated or wound-up, or if the Business makes a bulk sale of any assets under applicable law, or if the Business proposes any composition with creditors or any scheme of arrangement, CIBC will be entitled to all dividends and other payments until CIBC is paid in full, and such Guarantor will remain liable to CIBC.
- m) Unless a law requires otherwise, each Guarantor will make all payments to CIBC without deduction or withholding for any present or future taxes of any kind. If a law does so require, such Guarantor will pay to CIBC an additional amount as is necessary to ensure CIBC receives the full amount CIBC would have received if no deduction or withholding had been made.
- n) Each Guarantor agrees that CIBC may from time to time give any credit or other information about such Guarantor to, or request or receive such information from, any credit bureau, government registries, reporting agencies or other Person (including without limitation, any financial institution, CIBC subsidiary or CIBC business unit). The word "information" means financial or financially related information about the applicable Guarantor, including, without limitation, (i) information to identify or locate such Guarantor (or any collateral that has been pledged), (ii) information to qualify such Guarantor or the Business for products and services, (iii) any motor vehicle information, where applicable, or (iv) such other information that CIBC requires or must report for regulatory purposes or otherwise.
- o) **For Alberta.** Form 6898 Alberta, Schedule, Guarantees Acknowledgement Act (Alberta), Certificate of Notary Public or any other form in substance satisfactory to CIBC must be completed and signed.

p) **For Quebec.** Each Guarantor acknowledges that the terms and conditions of the Liabilities have been expressly brought to his/her attention and agrees that if his/her guarantee is attached to the performance of special duties, the guarantee shall not terminate upon cessation of such duties. The Business and the Guarantor(s) renounce the benefits of division and discussion.

q) **For Saskatchewan.** When a Guarantor is guaranteeing the indebtedness of a Business in relation to farm land or other assets used in farming:

i) the Guarantor must provide CIBC with a Certificate of Independent Legal Advice in form and substance satisfactory to CIBC, and Form 7905, *Schedule "A", Acknowledgement of Guarantee, Certificate of Lawyer or Notary Public* or any other such form or agreement in substance satisfactory to CIBC in relation to such farm land or other assets used in farming;

ii) for each guarantee, the maximum obligation to which the Guarantor is liable shall not be unlimited, but shall be, if no other limit for such guarantee is indicated in the Credit Agreement, notwithstanding any other term of the Credit Agreement, the sum of (A) the aggregate Original Amount of any Small Business Loan plus any Credit Limit(s) as set out in the Credit Agreement or any amendment to the Credit Agreement for all Credits, (B) any accrued but unpaid interest prior to the date of demand on such Original Amounts/Credit Limit(s), plus interest from the date of demand, and (C) any unpaid fees, costs and expenses, owing to CIBC by the Business or the Guarantors up to the date on which the Liabilities are paid in full.

"Farm land" has the meaning given to it in s.2(1)(f) of *The Saskatchewan Farm Security Act*.

r) Where permitted by law, this personal guarantee binds the estate of a Guarantor upon death of the Guarantor. If permitted by law, the estate of a deceased Guarantor can avoid liability for amounts advanced by CIBC to the Business after the death of the Guarantor by providing notice to CIBC wherein, upon receipt of such notice by CIBC, the estate will no longer be liable for any further advances.

Part VIII Letters of Credit (L/Cs)

Unless otherwise agreed, the following terms apply to each Letter of Credit issued by CIBC for the Business under any Credit or otherwise.

1. **Reimbursement, Payment or Prepayment:** The Business agrees, forthwith upon demand, to provide CIBC with cash in the proper currency to meet each drawing that CIBC is required to pay under an L/C or to reimburse CIBC for each drawing that CIBC has paid under an L/C. If we demand payment of any Credit under which a Letter of Credit has been issued, or if the Business elects to permanently repay or terminate any Credit under which a Letter of Credit has been issued, and we have any obligation to a beneficiary or holder of any L/C which remains outstanding under that Credit, the Business must provide CIBC with cash, in the

same currency as the L/C, or marketable securities satisfactory to us (collectively the "Cash Collateral") in an amount equal to CIBC's maximum potential liability under the L/C. We shall release any Cash Collateral that is no longer required for such purposes.

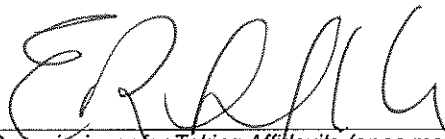
2. **CIBC Not Liable:** Neither CIBC nor any of its correspondents will be liable for the use which may be made with respect to any L/C; any acts or omissions of the beneficiary of any L/C, including the application of any payment made to such beneficiary; the form, validity, sufficiency, correctness, genuineness or legal effect of any document relating to any L/C, even if such document should prove to be in any respect invalid, insufficient, inaccurate, fraudulent or forged; any failure of the beneficiary of any L/C to meet the obligations of such beneficiary to the Business or to any other person; or any failure by CIBC to make payment under any L/C as a result of any law, control or restriction rightfully or wrongfully exercised or imposed by any domestic or foreign court or government or governmental authority or as a result of any other cause beyond the control of CIBC. The obligations of the Business under this Part VIII, section 2 are absolute and unconditional under all circumstances including without limitation any matter referred to above.

3. **Indemnity:** The Business hereby indemnifies and agrees to hold CIBC harmless from all losses, damages, costs, demands, claims, expenses (including out-of-pocket expenses) and other consequences which CIBC may incur, sustain or suffer, other than as a result of its own negligence or willful misconduct, as a result of issuing or amending an L/C, including without limitation, legal and other expenses incurred by CIBC in any action to compel payment by CIBC under an L/C or to restrain CIBC from making payment under any L/C.

4. **L/C Fees:** Unless the Business has made other arrangements with us, we will automatically debit the Business' CIBC operating account for all fees payable with respect to L/Cs. If the Business' CIBC operating account is in overdraft (for greater certainty, if the Business has exceeded any Credit Limit attached to the Business' CIBC operating account) and the Business does not deposit to the account the amount of such fees, the Business' CIBC operating account will bear interest at the Excess Interest Rate.

5. **Standard Agreements:** The terms and conditions of our standard Application for Irrevocable Documentary Credit or Application for Standby Letter of Credit, as applicable, and any of our other standard documentation relating to L/C's, in effect from time to time will be applicable to each L/C, as applicable, whether or not any such Application or other documentation has been executed by or on behalf of the Business. A copy of any such Application or other documentation is available from CIBC.

This is Exhibit "C" referred to in the Affidavit of Sieg Flatt sworn November 19, 2019.

A handwritten signature in black ink, appearing to read "ERJ ROCK", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ERIC J. ROCKEFELLER

CIBC 3892
 NPNA SNPNA
 Customers Name: Nauss Plumbing & Heating Inc.
 Customer
 Loan Number: 2548054
 Statement of Account NPNA

7/7

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DATE	RATE %	DAYS IN	LEGAL FEES PAYMENT	LEGAL FEES TOTAL	MISC. Debit/Credit	PAYMENT	INTEREST CALCULATED	INTEREST PAID	INTEREST BOWING	APPLIED ON PRINC.	CALONY w/ legal	BALANCE w/legal
25-Jun-2019	Classified Account											\$833,111.13
25-Jun-2019	0.00%	0	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$17,393.22	0.00	\$833,111.13	\$833,111.13
26-Jun-2019	0.00%	0	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$17,393.22	0.00	\$833,111.13	\$833,111.13
30-Jun-2019	4.95%	5	\$0.00	\$0.00		\$0.00	\$564.92	0.00	\$17,958.14	0.00	\$833,111.13	\$833,111.13
31-Jul-2019	4.95%	31	\$0.00	\$0.00		\$0.00	\$2,502.49	0.00	\$21,460.63	0.00	\$833,111.13	\$833,111.13
31-Aug-2019	4.95%	31	\$0.00	\$0.00		\$0.00	\$2,502.49	0.00	\$24,963.12	0.00	\$833,111.13	\$833,111.13
30-Sep-2019	4.95%	30	\$0.00	\$0.00		\$0.00	\$3,389.51	0.00	\$28,352.63	0.00	\$833,111.13	\$833,111.13
31-Oct-2019	4.95%	31	\$0.00	\$0.00		\$0.00	\$3,502.49	0.00	\$31,855.12	0.00	\$833,111.13	\$833,111.13
17-Nov-2019	4.95%	17	\$0.00	\$0.00		\$0.00	\$1,920.72	0.00	\$33,775.84	0.00	\$833,111.13	\$833,111.13
	0.00%	-43786	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$33,775.84	0.00	\$833,111.13	\$833,111.13
	0.00%	0	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$33,775.84	0.00	\$833,111.13	\$833,111.13
	0.00%	0	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$33,775.84	0.00	\$833,111.13	\$833,111.13
	0.00%	0	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$33,775.84	0.00	\$833,111.13	\$833,111.13
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	0.00%	0	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$33,775.84	0.00	\$833,111.13	\$833,111.13
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	0.00%	0	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$33,775.84	0.00	\$833,111.13	\$833,111.13
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	0.00%	0	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$33,775.84	0.00	\$833,111.13	\$833,111.13
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	0.00%	0	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$33,775.84	0.00	\$833,111.13	\$833,111.13
	0.00%	0	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$33,775.84	0.00	\$833,111.13	\$833,111.13
	0.00%	0	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$33,775.84	0.00	\$833,111.13	\$833,111.13
	0.00%	0	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$33,775.84	0.00	\$833,111.13	\$833,111.13
	0.00%	0	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$33,775.84	0.00	\$833,111.13	\$833,111.13
	0.00%	0	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$33,775.84	0.00	\$833,111.13	\$833,111.13
	0.00%	0	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$33,775.84	0.00	\$833,111.13	\$833,111.13

This is Exhibit "D" referred to in the Affidavit of Sieg Flatt sworn November 19, 2019.

A handwritten signature in black ink, appearing to read "ERJ ROCK", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ERIC J. ROCKEFELLER

LRO # 53 Charge/Mortgage

Received as SD341649 on 2017 08 21 at 13 05

The applicant(s) hereby applies to the Land Registrar

yyyy mm dd Page 1 of 3

Properties

PIN 73484 - 0035 LT *Interest/Estate* Fee Simple
Description PCL 63828 SEC SES FIRSTLY LT 22 PL M1034 HAGAR SECONDLY PT LT 12 CON
 3 HAGAR PT 1 53R18102 MARKSTAY-WARREN
Address 7 MILLICHAMP STREET
 MARKSTAY

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms if any.

Name NAUSS PLUMBING & HEATING INC
Address for Service 2590 Lasalle Boulevard Sudbury Ontario P3A 4R7

(Denis Groves (President) have the authority to bind the corporation

This document is not authorized under Power of Attorney by this party

Chargee(s)*Capacity**Share*

Name CANADIAN IMPERIAL BANK OF COMMERCE
Address for Service New Sudbury Centre 1349 Lasalle Boulevard Sudbury, Ontario P3A 1Z2

Statements

Schedule See Schedules

Provisions

Principal \$ 683 000 00 *Currency* CDN
Calculation Period
Balance Due Date
Interest Rate Prime Rate plus 5%
Payments
Interest Adjustment Date
Payment Date
First Payment Date
Last Payment Date
Standard Charge Terms 201203
Insurance Amount Full Insurable value
Guarantor

Signed By

Andrea Geraldine Dolg 254 Larch Street acting for Signed 2017 08 18
 Sudbury
 P3B 1M1
 Chargor(s)

Tel 705 586-3555
Fax 705-586 3559

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

LRO # 53 Charge/Mortgage

Received as SD341549 on 2017 08 21 at 13 05

The applicant(s) hereby applies to the Land Registrar

yyyy mm dd Page 2 of 3

Submitted By

AMANDA BERLONI PROFESSIONAL CORPORATION

254 Larch Street
Sudbury
P3B 1M1

2017 08 21

Tel 705 688 3565
Fax 705 688-3659

Fees/Taxes/Payment

Statutory Registration Fee \$83 35

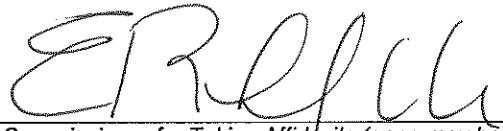
Total Paid \$83 35

File Number

Chargee Client File Number

M218408 Ref# 7854425428

This is Exhibit "E" referred to in the Affidavit of Sieg Flatt sworn
November 19, 2019.

A handwritten signature in black ink, appearing to read "ERockefeller", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ERIC J. ROCKEFELLER

LRO # 53 Charge/Mortgage

Received as SD341681 on 2017 08 22 at 16:30

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 2

Properties

PIN 73407 - 0024 LT **Interest/Estate** Fee Simple

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

Address 551 CENTRE STREET
ESPANOLA

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name NAUSS PLUMBING & HEATING INC.

Address for Service 2590 Lasalle Boulevard, Sudbury, Ontario, P3A 4R7

I, Denis Groves (President), have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Chargee(s)

Capacity

Share

Name CANADIAN IMPERIAL BANK OF COMMERCE

Address for Service New Sudbury Centre, 1349 Lasalle Boulevard, Sudbury, Ontario, P3A 1Z2

Statements

Schedule: See Schedules

Provisions

Principal \$ 208,000.00 **Currency** CDN

Calculation Period

Balance Due Date

Interest Rate Prime Rate plus 5%

Payments

Interest Adjustment Date

Payment Date

First Payment Date

Last Payment Date

Standard Charge Terms 201203

Insurance Amount Full insurable value

Guarantor

Signed By

Andrea Geraldina Dolg 254 Larch Street acting for Signed 2017 08 18
Sudbury Chargor(s)
P3B 1M1

Tel 705-586-3555

Fax 705-586-3559

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

LRO # 53 Charge/Mortgage

Received as SD341881 on 2017 08 22 at 16:30

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 2

Submitted By

AMANDA BERLONI PROFESSIONAL CORPORATION

254 Larch Street
Sudbury
P3B 1M1

2017 08 22

Tel 705-586-3555

Fax 705-586-3559

Fees/Taxes/Payment

Statutory Registration Fee \$63.35

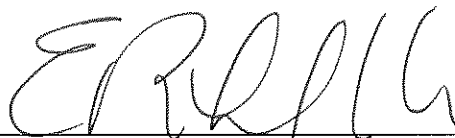
Total Paid \$63.35

File Number

Charger Client File Number : 218352

Chargee Client File Number : 7854425428

This is Exhibit "F" referred to in the Affidavit of Sieg Flatt sworn November 19, 2019.

A handwritten signature in black ink, appearing to read "ERJ ROCK", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ERIC J. ROCKEFELLER

LRO # 63 Charge/Mortgage

Received as SD341554 on 2017 08 21 at 13:47

The applicant(s) hereby applies to the Land Registrar

yyyy mm dd Page 1 of 2

Properties

PIN 73564 - 0117 LT *Interest/Estate* Fee Simple

Description PCL 18965 SEC SES PT LT 9 CON 8 NEELON AS IN LT109921 EXCEPT LT 1 PL M861 S/T LT80621, GREATER SUDBURY

Address 2590 LASALLE BLVD SUDBURY

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s) The chargor(s) acknowledges the receipt of the charge and the standard charge terms if any

Name NAUSS PLUMBING & HEATING INC

Address for Service 2590 Lasalle Boulevard Sudbury, Ontario P3A 2B2

I Denis Groves (President), have the authority to bind the corporation

This document is not authorized under Power of Attorney by this party

Chargee(s)

Capacity

Share

Name CANADIAN IMPERIAL BANK OF COMMERCE

Address for Service New Sudbury Centre 1349 Lasalle Boulevard Sudbury Ontario P3A 1Z2

Statements

Schedule See Schedules

Provisions

Principal \$ 210 000 00 *Currency* CDN

Calculation Period

Balance Due Date

Interest Rate Prime Rate plus 5%

Payments

Interest Adjustment Date

Payment Date

First Payment Date

Last Payment Date

Standard Charge Terms 201203

Insurance Amount Full insurable value

Guarantor

Signed By

Andrea Geraldine Doig 254 Lerch Street acting for Signed 2017 08 21
Sudbury Chargor(s)
P3B 1M1

Tel 705 586-3555

Fax 705 586 3559

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

LRO # 53 Charge/Mortgage

Received as SD341554 on 2017 08 21 at 13 47

The applicant(s) hereby applies to the Land Registrar

yyyy mm dd Page 2 of 2

Submitted By

AMANDA BERLONI PROFESSIONAL CORPORATION

254 Larch Street
Sudbury
P3B 1M1

2017 08 21

Tel 705-888-3555
Fax 705-888-3559

Fees/Taxes/Payment

Statutory Registration Fee \$63 35

Total Paid \$63 35

File Number

Chargee Client File Number M218407 Ref# 7054425428

This is Exhibit "G" referred to in the Affidavit of Sieg Flatt sworn November 19, 2019.

A handwritten signature in black ink, appearing to read "ERJ Rock", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ERIC J. ROCKEFELLER

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE
CENTRAL OFFICE OF THE PERSONAL PROPERTY SECURITY SYSTEM IN RESPECT
OF THE FOLLOWING:

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Nauss Plumbing & Heating Inc.

FILE CURRENCY: November 3, 2019

RESPONSE CONTAINS: APPROXIMATELY 7 FAMILIES and 9 PAGES.

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS
WHICH SET OUT A BUSINESS DEBTOR NAME WHICH IS SIMILAR TO THE NAME
IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE
OTHER SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT
ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

THE ABOVE REPORT HAS BEEN CREATED BASED ON THE DATA PROVIDED BY
THE PERSONAL PROPERTY REGISTRATION BRANCH, MINISTRY OF CONSUMER
AND BUSINESS SERVICES, GOVERNMENT OF ONTARIO. NO LIABILITY IS
UNDERTAKEN REGARDING ITS CORRECTNESS, COMPLETENESS, OR THE
INTERPRETATION AND USE THAT ARE MADE OF IT.

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Nauss Plumbing & Heating Inc.

FILE CURRENCY: November 3, 2019

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 7 ENQUIRY PAGE : 1 OF 9

SEARCH : BD : NAUSS PLUMBING & HEATING INC.

00 FILE NUMBER : 700302528 EXPIRY DATE : 01OCT 2019 STATUS : D DISCHARGED
01 CAUTION FILING : PAGE : 01 OF 001 MV SCHEDULE ATTACHED :
REG NUM : 20141001 1041 1529 3980 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: NAUSS PLUMBING & HEATING INC
OCN :
04 ADDRESS : 2590 LASALLE BLVD
CITY : SUDBURY PROV: ON POSTAL CODE: P3A 4R7
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
FORD CREDIT CANADA LIMITED

09 ADDRESS : PO BOX 2400
CITY : EDMONTON PROV: AB POSTAL CODE: T5J 5C7
CONS. MV. DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X X X
YEAR MAKE MODEL V.I.N.
11 2013 FORD E250 1FTNE2EW8DDA29065

12 GENERAL COLLATERAL DESCRIPTION

13
14
15

16 AGENT: CANADIAN SECURITIES REGISTRATION SYSTEMS

17 ADDRESS : 4126 NORLAND AVENUE

CITY : BURNABY PROV: BC POSTAL CODE: V5G 3S8

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Nauss Plumbing & Heating Inc.

FILE CURRENCY: November 3, 2019

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 7 ENQUIRY PAGE : 2 OF 9

SEARCH : BD : NAUSS PLUMBING & HEATING INC.

FILE NUMBER 700302528

PAGE TOT

REGISTRATION NUM

REG TYPE

01 CAUTION : 001 OF 1 MV SCHED: 20191001 1248 1532 4795

21 REFERENCE FILE NUMBER : 700302528

22 AMEND PAGE: NO PAGE: CHANGE: C DISCHRG REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME: NAUSS PLUMBING & HEATING INC

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY :

PROV :

POSTAL CODE :

CONS.

MV

DATE OF

NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER

INCL

AMOUNT

MATURITY OR

MAT DATE

10

11

12

13

14

15

16 NAME : D + H LIMITED PARTNERSHIP

17 ADDRESS : 2 ROBERT SPECK PARKWAY, 15TH FLOOR

CITY : MISSISSAUGA

PROV : ON

POSTAL CODE : L4Z 1H8

END OF FAMILY

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Naus Plumbing & Heating Inc.

FILE CURRENCY: November 3, 2019

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 7 ENQUIRY PAGE : 3 OF 9

SEARCH : BD : NAUSS PLUMBING & HEATING INC.

00 FILE NUMBER : 700302564 EXPIRY DATE : 01OCT 2019 STATUS : D DISCHARGED
01 CAUTION FILING : PAGE : 01 OF 001 NV SCHEDULE ATTACHED :
REG NUM : 20141001 1041 1529 3984 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: NAUSS PLUMBING & HEATING INC
OCN :
04 ADDRESS : 2590 LASALLE BLVD
CITY : SUDBURY PROV: ON POSTAL CODE: P3A 4R7
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
FORD CREDIT CANADA LIMITED

09 ADDRESS : PO BOX 2400
CITY : EDMONTON PROV: AB POSTAL CODE: T5J 5C7
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X X X
YEAR MAKE MODEL V.I.N.
11 2013 FORD E250 1FTNE2EW9DDA53245

12 GENERAL COLLATERAL DESCRIPTION

13
14
15

16 AGENT: CANADIAN SECURITIES REGISTRATION SYSTEMS

17 ADDRESS : 4126 NORLAND AVENUE
CITY : BURNABY PROV: BC POSTAL CODE: V5G 3S8

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Nauss Plumbing & Heating Inc.

FILE CURRENCY: November 3, 2019

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 2 OF 7 ENQUIRY PAGE : 4 OF 9

SEARCH : BD : NAUSS PLUMBING & HEATING INC.

FILE NUMBER 700302564

PAGE TOT

REGISTRATION NUM REG TYPE

01 CAUTION : 001 OF 1 MV SCHED: 20191001 1244 1532 4757

21 REFERENCE FILE NUMBER : 700302564

22 AMEND PAGE: NO PAGE: CHANGE: C DISCHRG REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME: NAUSS PLUMBING & HEATING INC

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY :

PROV : POSTAL CODE :

CONS.

MV

DATE OF

NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

11

12

13

14

15

16 NAME : D + H LIMITED PARTNERSHIP

17 ADDRESS : 2 ROBERT SPECK PARKWAY, 15TH FLOOR

CITY : MISSISSAUGA PROV : ON POSTAL CODE : L4Z 1H8

END OF FAMILY

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Nauss Plumbing & Heating Inc.

FILE CURRENCY: November 3, 2019

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 3 OF 7 ENQUIRY PAGE : 5 OF 9

SEARCH : BD : NAUSS PLUMBING & HEATING INC.

00 FILE NUMBER : 722963619 EXPIRY DATE : 30NOV 2022 STATUS :
 01 CAUTION FILING : PAGE : 01 OF 001 MV SCHEDULE ATTACHED :
 REG NUM : 20161130 1440 1530 4725 REG TYP: P PPSA REG PERIOD: 6
 02 IND DOB : IND NAME:
 03 BUS NAME: NAUSS PLUMBING & HEATING INC.
 OCN :
 04 ADDRESS : 2590 LASALLE BLVD
 CITY : SUDBURY PROV: ON POSTAL CODE: P3A 4R7
 05 IND DOB : IND NAME:
 06 BUS NAME:
 OCN :
 07 ADDRESS :
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

FORD CREDIT CANADA LIMITED

09 ADDRESS : PO BOX 2400

CITY : EDMONTON

PROV: AB

POSTAL CODE: T5J 5C7

CONS.

MV

DATE OF OR NO FIXED

GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE

10 X X X

YEAR MAKE

MODEL

V.I.N.

11 2016 FORD

FOCUS

1FADP3KE2GL327084

12

GENERAL COLLATERAL DESCRIPTION

13

14

15

16 AGENT: CANADIAN SECURITIES REGISTRATION SYSTEMS

17 ADDRESS : 4126 NORLAND AVENUE

CITY : BURNABY

PROV: BC

POSTAL CODE: V5G 3S8

END OF FAMILY

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Nauss Plumbing & Heating Inc.

FILE CURRENCY: November 3, 2019

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 4 OF 7 ENQUIRY PAGE : 6 OF 9

SEARCH : BD : NAUSS PLUMBING & HEATING INC.

00 FILE NUMBER : 726591474 EXPIRY DATE : 13APR 2023 STATUS :
 01 CAUTION FILING : PAGE : 01 OF 001 MV SCHEDULE ATTACHED :
 REG NUM : 20170413 1035 1529 5324 REG TYP: P PPSA REG PERIOD: 6
 02 IND DOB : IND NAME:
 03 BUS NAME: NAUSS PLUMBING & HEATING INC.
 OCN :
 04 ADDRESS : 2590 LASALLE BLVD
 CITY : SUDBURY PROV: ON POSTAL CODE: P3A 4R7
 05 IND DOB : IND NAME:
 06 BUS NAME:
 OCN :
 07 ADDRESS :
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

FORD CREDIT CANADA COMPANY

09 ADDRESS : PO BOX 2400

CITY : EDMONTON

PROV: AB

POSTAL CODE: T5J 5C7

CONS.

MV

DATE OF OR NO FIXED

GOODS INVTRY.	EQUIP	ACCTS	OTHER	INCL	AMOUNT	MATURITY	MAT DATE
10	X		X	X			X

YEAR MAKE

MODEL

V.I.N.

11 2017 FORD

F150

1FTFW1EG1HFB58344

12

GENERAL COLLATERAL DESCRIPTION

13

14

15

16 AGENT: CANADIAN SECURITIES REGISTRATION SYSTEMS

17 ADDRESS : 4126 NORLAND AVENUE

CITY : BURNABY

PROV: BC

POSTAL CODE: V5G 3S8

END OF FAMILY

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Nauss Plumbing & Heating Inc.

FILE CURRENCY: November 3, 2019

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 5 OF 7 ENQUIRY PAGE : 7 OF 9

SEARCH : BD : NAUSS PLUMBING & HEATING INC.

00 FILE NUMBER : 726625107 EXPIRY DATE : 13APR 2022 STATUS :
 01 CAUTION FILING : PAGE : 01 OF 001 MV SCHEDULE ATTACHED :
 REG NUM : 20170413 1933 1531 1751 REG TYP: P PPSA REG PERIOD: 5
 02 IND DOB : IND NAME:
 03 BUS NAME: NAUSS PLUMBING & HEATING INC.
 OCN :
 04 ADDRESS : 2590 LASALLE BLVD
 CITY : SUDBURY PROV: ON POSTAL CODE: P3A 4R7
 05 IND DOB : IND NAME:
 06 BUS NAME:
 OCN :
 07 ADDRESS :
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
 FORD CREDIT CANADA COMPANY

09 ADDRESS : PO BOX 2400

CITY : EDMONTON PROV: AB POSTAL CODE: T5J 5C7
 CONS. MV DATE OF OR NO FIXED
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
 10 X X X X X
 YEAR MAKE MODEL V.I.N.
 11 2015 FORD F150 1FTEW1EG5FFB64709

12 GENERAL COLLATERAL DESCRIPTION

13

14

15

16 AGENT: CANADIAN SECURITIES REGISTRATION SYSTEMS

17 ADDRESS : 4126 NORLAND AVENUE

CITY : BURNABY PROV: BC POSTAL CODE: V5G 3S8

END OF FAMILY

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Nauss Plumbing & Heating Inc.

FILE CURRENCY: November 3, 2019

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 6 OF 7 ENQUIRY PAGE : 8 OF 9

SEARCH : BD : NAUSS PLUMBING & HEATING INC.

00 FILE NUMBER : 730719891 EXPIRY DATE : 09AUG 2022 STATUS :
 01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :
 REG NUM ; 20170809 1528 1219 1693 REG TYP: P PPSA REG PERIOD: 05
 02 IND DOB : IND NAME:
 03 BUS NAME: NAUSS PLUMBING & HEATING INC.
 OCN :
 04 ADDRESS : 2590 LASALLE BLVD
 CITY : SUDBURY PROV: ON POSTAL CODE: P3A 4R7
 05 IND DOB : IND NAME: ,
 06 BUS NAME:
 OCN :
 07 ADDRESS :
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
 CANADIAN IMPERIAL BANK OF COMMERCE
 09 ADDRESS : 305 MILNER 6TH FLOOR
 CITY : SCARBOROUGH PROV: ON POSTAL CODE: M1B 3V4
 CONS. MV DATE OF OR NO FIXED
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
 10 X X X X
 YEAR MAKE MODEL V.I.N.

11
 12
 GENERAL COLLATERAL DESCRIPTION
 13 ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY
 14
 15
 16 AGENT: D+H LIMITED PARTNERSHIP
 17 ADDRESS : 2 ROBERT SPECK PARKWAY, 15TH FL
 CITY : MISSISSAUGA PROV: ON POSTAL CODE: L4Z 1H8

END OF FAMILY

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Nauss Plumbing & Heating Inc.

FILE CURRENCY: November 3, 2019

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 7 OF 7 ENQUIRY PAGE : 9 OF 9

SEARCH : BD : NAUSS PLUMBING & HEATING INC.

00 FILE NUMBER : 734939532 EXPIRY DATE : 14DEC 2022 STATUS :
 01 CAUTION FILING : PAGE : 01 OF 001 MV SCHEDULE ATTACHED :
 REG NUM : 20171214 1037 1529 6612 REG TYP: P PPSA REG PERIOD: 5
 02 IND DOB : IND NAME:
 03 BUS NAME: NAUSS PLUMBING & HEATING INC.
 OCN :
 04 ADDRESS : 2590 LASALLE BLVD
 CITY : SUDBURY PROV: ON POSTAL CODE: P3A 4R7
 05 IND DOB : IND NAME:
 06 BUS NAME:
 OCN :
 07 ADDRESS :
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

FORD CREDIT CANADA COMPANY

09 ADDRESS : PO BOX 2400

CITY : EDMONTON PROV: AB POSTAL CODE: T5J 5C7
 CONS. MV DATE OF OR NO FIXED
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
 10 X X X X X
 YEAR MAKE MODEL V.I.N.
 11 2017 FORD EDGE 2FMPK4K80HBC56857
 12

GENERAL COLLATERAL DESCRIPTION

13

14

15

16 AGENT: CANADIAN SECURITIES REGISTRATION SYSTEMS

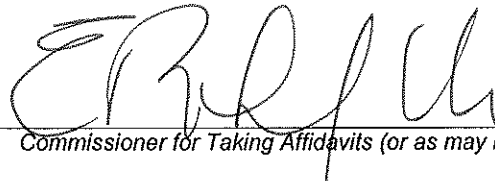
17 ADDRESS : 4126 NORLAND AVENUE

CITY : BURNABY PROV: BC POSTAL CODE: V5G 3S8

LAST SCREEN

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

This is Exhibit "H" referred to in the Affidavit of Sieg Flatt sworn November 19, 2019.



Commissioner for Taking Affidavits (or as may be)

ERIC J. ROCKEFELLER



LAND REGISTRY OFFICE #59
 PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER
 PIN 7 Millichamp Street
 PAGE 1 OF 3
 PREPARED FOR CherieAMI
 ON 2019/11/04 AT 10:51:25

73484-0035 (LT)

PROPERTY DESCRIPTION: PCL 53626 SEC SES: FIRSTIX: LT 22 PL M1034 RAGAR: SECONDLY: PT LT 12 CON 3 RAGAR PT 1, 53R16102; MARKSTAY-WARREN

PROPERTY REMARKS:
 ESTATE/QUALIFIER: FIRST CONVERSION FROM BOOK
 ABSOLUTE
 OWNERS' NAMES: CAROLINE SEARE
 NAUSS PLEMLING & HEATING INC.
 RECENTLY:
 PIN_CREATION_DATE: 2003/11/24

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

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.



Ontario ServiceOntario

LAND
REGISTRY
OFFICE #53

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 3
PREPARED FOR CHERICANT
ON 2019/11/04 AT 10:51:25

73484-0035 (LT)

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CERO
SD170125	2010/04/19	APL (GENERAL)		*** COMPLETELY DELETED *** 1468605 ONTARIO LIMITED	NAUSS PLUMBING & HEATING INC.	
SD170244	2010/04/20	TRANSFER	\$285,000	1468605 ONTARIO LIMITED	CAISSE POPULAIRE D'ALBAN LIMITEE	C
SD170245	2010/04/20	CHARGE		*** COMPLETELY DELETED *** NAUSS PLUMBING & HEATING INC.	1468605 ONTARIO LIMITED	
SD170246	2010/04/20	CHARGE		*** COMPLETELY DELETED *** NAUSS PLUMBING & HEATING INC.		
SD170377	2010/04/22	DISCH OF CHARGE		*** COMPLETELY DELETED *** CAISSE POPULAIRE DE VERNER LIMITEE		
SD186283	2010/11/04	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** 1468605 ONTARIO LIMITED	METZGER, DORIS	
SD224135	2012/04/26	LIEN		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		
SD224136	2012/04/26	LIEN		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		
SD231146	2012/07/19	LIEN		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE		
SD253813	2013/06/28	DISCHARGE INTEREST		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE		

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
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OFFICE #53

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 3 OF 3

PREPARED FOR Chericami
ON 2019/11/04 AT 10:51:25

73484-0035 (LT)

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CEND
SD286948	2014/12/22	DISCHARGE INTEREST		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		
		REMARKS: SD224155.				
SD286949	2014/12/22	DISCHARGE INTEREST		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		
		REMARKS: SD224156.				
SD290822	2015/03/19	CHARGE		*** COMPLETELY DELETED *** NAUSS PLUMBING & HEATING INC.	LEMARKE HOLDINGS INC. 2441436 ONTARIO LTD.	
SD290865	2015/03/19	DISCH OF CHARGE		*** COMPLETELY DELETED *** CAISSE POPULAIRE D'ALBAN LIMITEE		
		REMARKS: SD170245.				
SD290869	2015/03/19	DISCH OF CHARGE		*** COMPLETELY DELETED *** METZGER, DORIS		
		REMARKS: SD170246.				
SD341549	2017/08/21	CHARGE	\$583,000	NAUSS PLUMBING & HEATING INC.	CANADIAN IMPERIAL BANK OF COMMERCE	C
SD341553	2017/08/21	NO ASSGN RENT GEN		NAUSS PLUMBING & HEATING INC.	CANADIAN IMPERIAL BANK OF COMMERCE	C
		REMARKS: SD341549				
SD341775	2017/08/24	DISCH OF CHARGE		*** COMPLETELY DELETED *** LEMARKE HOLDINGS INC. 2441436 ONTARIO LTD.		
		REMARKS: SD290822.				
SD342507	2017/09/05	CHARGE	\$70,000	NAUSS PLUMBING & HEATING INC.	739572 ONTARIO LIMITED	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
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This is Exhibit "I" referred to in the Affidavit of Sieg Flatt sworn November 19, 2019.

A handwritten signature in cursive script, appearing to read "Eric J. Rockefeller", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ERIC J. ROCKEFELLER



LAND
REGISTRY
OFFICE #53

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PIN 551 Centre Street, Espanola

PAGE 1 OF 1
PREPARED FOR CHORICAMI
ON 2019/11/04 AT 10:46:01

73407-0024 (LT)

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

PROPERTY DESCRIPTION

PCL LT 8 CON 5 MERRITT AS IN LT64894 EXCEPT PT 1 53R13128 & PT 1 53R17437; S/7 PT 2 & 3 53R13128 AS IN LT696426; ESPANOLA

PROPERTY REMARKS:

ESTATE/ADMINISTRATOR:
FEE SIMPLE
ABSOLUTE

RECENTLY:
FIRST CONVERSION FROM BOOK

PIN CREATION DATE:
2004/03/29

OWNERS' NAMES

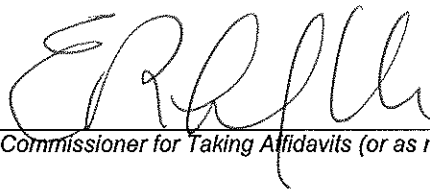
CAPACITY: SHARE

NAUSS PLUMBING & HEATING INC.

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

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
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This is Exhibit "J" referred to in the Affidavit of Sieg Flatt sworn
November 19, 2019.

A handwritten signature in cursive script, appearing to read "ERJ Rock", is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ERIC J. ROCKEFELLER



Ontario ServiceOntario

LAND REGISTRY OFFICE #53

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PIN 2590 Lasalle Blvd., Sudbury

PAGE 1 OF 2

PREPARED FOR CHEZISANI

ON 2019/11/04 AT 10:50:03

73564-0117 (LT)

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

PROPERTY DESCRIPTION: PCL LT 9 CON 6 NEELON AS IN LT109921 EXCEPT LT 1 PL M861; S/T LT80621; GREATER SUDBURY

PROPERTY REMARKS:

RECENTLY:
ESTATE/QUALIFIER:
FEE SIMPLE
ABSOLUTE

RECENTLY:
FIRST CONVERSION FROM BOOK

OWNERS' NAMES
NAUSS PLUMBING & HEATING INC.

GARAGITY SHARE
FORM

PIN CREATION DATE:
2003/10/27

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CERO
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2003/10/24 **						
LT80621	1950/08/04	TRANSFER EASEMENT			THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO	C
LT386617	1975/10/16	NOTICE				C
REMARKS: AIRPORT ZONING REGULATION						
LT774901	1993/12/14	CHANGE		*** COMPLETELY DELETED ***		
LT887167	1999/09/23	TRANSFER		*** COMPLETELY DELETED ***	ROYAL BANK OF CANADA	
SD40601	2006/02/02	TRANSFER	575,000	NAUSS, EARL LESLIE NAUSS, VANNA ARLENE	NAUSS, EARL LESLIE NAUSS, VANNA ARLENE	
SD40603	2006/02/02	CHANGE		*** COMPLETELY DELETED *** NAUSS PLUMBING & HEATING INC.	NAUSS PLUMBING & HEATING INC.	C
SD40724	2006/02/03	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA	NAUSS, EARL NAUSS, VANNA	
REMARKS: RE: LT774901						
SD50841	2006/06/16	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** NAUSS, EARL NAUSS, VANNA	NAUSS, EARL NAUSS, VANNA	
SD193338	2011/02/24	CHANGE		*** COMPLETELY DELETED *** NAUSS PLUMBING & HEATING INC.	SCHAAB, RICHARD BLAIS, ROBERT LONGLADE, DANIEL	

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
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OFFICES #53

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 2
PREPARED FOR CHERICAMI
ON 2019/11/04 AT 10:50:03

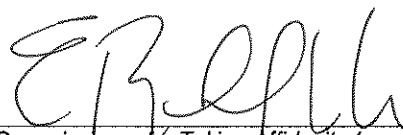
73564-0117 (LT)

CERTIFIED IN ACCORDANCE WITH THE LAND TILES ACT - SUBJECT TO RESERVATIONS IN CROWN GRANT -

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
SD212820	2011/11/03	CHARGE		*** COMPLETELY DELETED *** NAUSS PLUMBING & HEATING INC.	CAISSE POPULAIRE D'ALBAN LIMITEE	
SD212922	2011/11/04	DISCH OF CHARGE		*** COMPLETELY DELETED *** NAUSS, EMIL NAUSS, VANNA		
REMARKS: SD40603.						
SD215810	2011/12/12	DISCH OF CHARGE		*** COMPLETELY DELETED *** SCHAK, RICHARD BLAIS, ROBERT LONGLADE, DANIEL		
REMARKS: SD193338.						
SD231146	2012/07/19	LIEN		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE		
REMARKS: EMPLOYER HEALTH TAX ACT						
SD259813	2013/06/28	DISCHARGE INTEREST		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE		
REMARKS: SD231146.						
SD290822	2015/03/19	CHARGE		*** COMPLETELY DELETED *** NAUSS PLUMBING & HEATING INC.	LEMARKE HOLDINGS INC. 2441436 ONTARIO LTD.	C
SD341554	2017/08/21	CHARGE	\$210,000	NAUSS PLUMBING & HEATING INC.	CANADIAN IMPERIAL BANK OF COMMERCE	C
SD341555	2017/08/21	NO ASSGN RENT GEN		NAUSS PLUMBING & HEATING INC.	CANADIAN IMPERIAL BANK OF COMMERCE	C
REMARKS: SD341554						
SD341775	2017/08/24	DISCH OF CHARGE		*** COMPLETELY DELETED *** LEMARKE HOLDINGS INC. 2441436 ONTARIO LTD.		
REMARKS: SD290822.						
SD342507	2017/09/05	CHARGE	\$70,000	NAUSS PLUMBING & HEATING INC.	735642 ONTARIO LIMITED	C
SD342874	2017/09/11	DISCH OF CHARGE		*** COMPLETELY DELETED *** CAISSE POPULAIRE D'ALBAN LIMITEE		
REMARKS: SD212820.						

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This is Exhibit "K" referred to in the Affidavit of Sieg Flatt sworn
November 19, 2019.

A handwritten signature in cursive script, appearing to read "ERJ ROCK", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ERIC J. ROCKEFELLER



ServiceOntario

LAND
REGISTRY
OFFICE #53

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PIN 1330 North Road, Markstay

PAGE 1 OF 2

PREPARED FOR CREILCAM1
ON 2019/07/05 AT 15:34:36

73488-0010 (LT)

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

PROPERTY DESCRIPTION: PCL 51424 SEC SES; PT LT 12 CON 1 LOUGHRIN PT 1 & 2 53R15954; MARKSTAY-WARREN

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

ESTATE/QUALIFIER: RECENTLY:
FEE SIMPLE FIRST CONVERSION FROM BOOK
ABSOLUTE

PIN CREATION DATE:
2003/11/24

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2003/11/21 **						
LT812363	1995/09/22	NTCE AGRMT AM CH		*** COMPLETELY DELETED ***		
REMARKS: LT701397						
53R15954	1997/04/08	PLAN REFERENCE		*** COMPLETELY DELETED ***	JENNICA SPRINGS LTD.	C
LT845284	1997/05/08	TRANSFER		*** COMPLETELY DELETED ***	JENNICA SPRINGS LTD.	
REMARKS: PLANNING ACT CONSENT						
LT845285	1997/05/08	TRANSFER		*** COMPLETELY DELETED ***	CAISSE POPULAIRE STE. ANNE DE SUDBURY LIMITEE	
REMARKS: PLANNING ACT CONSENT						
LT845286	1997/05/08	CHARGE		*** COMPLETELY DELETED ***	ECONOMIC PARTNERS-SUDBURY EAST/WEST NIPISSING INC.	
LT905251	2000/11/23	CHARGE		*** COMPLETELY DELETED ***	LAND REGISTRAR	
SD103624	2008/01/21	LR'S ORDER		*** COMPLETELY DELETED ***		
REMARKS: DELETING NOTICE LT812363 SINCE THE CHARGE THAT IT RELATES TO HAS BEEN DISCHARGED FROM THE PIN.						
SD172494	2010/05/19	DISCH OF CHARGE		*** COMPLETELY DELETED ***	CAISSE POPULAIRE STE. ANNE DE SUDBURY LIMITEE	
REMARKS: LT845286.						
SD172497	2010/05/19	TRANSFER	\$115,338	JENNICA SPRINGS LTD.	NAUSS PLUMBING & HEATING INC.	C
REMARKS: PLANNING ACT STATEMENTS						
SD172500	2010/05/19	CHARGE		*** COMPLETELY DELETED ***		

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 2
PREPARED FOR CherieGAMI
ON 2019/07/05 AT 15:34:36

73488-0010 (LT)

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
SD231146	2012/07/19	LIEN		NAUSS PLUMBING & HEATING INC.	JENNICA SPRINGS LTD.	
		REMARKS: EMPLOYER HEALTH TAX ACT		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE		
SD253813	2013/06/28	DISCHARGE INTEREST		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE		
		REMARKS: SD231146.		*** COMPLETELY DELETED *** ECONOMIC PARTNERS-SUDBURY EAST/WEST MIPISSING INC.		
SD259304	2013/09/19	DISCH OF CHARGE		*** COMPLETELY DELETED *** NAUSS PLUMBING & HEATING INC.	739572 ONTARIO LIMITED	
		REMARKS: IT905251.		*** COMPLETELY DELETED *** JENNICA SPRINGS LTD.		
SD294630	2015/05/29	CHARGE		*** COMPLETELY DELETED *** NAUSS PLUMBING & HEATING INC.		
SD294752	2015/05/29	DISCH OF CHARGE		*** COMPLETELY DELETED *** JENNICA SPRINGS LTD.		
		REMARKS: SD172500.		*** COMPLETELY DELETED *** 739572 ONTARIO LIMITED		
SD341777	2017/08/24	DISCH OF CHARGE		NAUSS PLUMBING & HEATING INC.	739572 ONTARIO LIMITED	C
		REMARKS: SD294630.	\$70,000	NAUSS PLUMBING & HEATING INC.		
SD342507	2017/09/05	CHARGE		NAUSS PLUMBING & HEATING INC.		
SD342517	2017/09/05	CHARGE	\$24,000	NAUSS PLUMBING & HEATING INC.	KORA MANAGEMENT LTD.	C

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This is Exhibit "L" referred to in the Affidavit of Sieg Flatt sworn
November 19, 2019.

A handwritten signature in black ink, appearing to read "ERJ Rockefeller", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ERIC J. ROCKEFELLER

Requirement to Pay / Demande formelle de paiement / Important - See Reverse / Important - voir au verso

Canadian Imperial Bank of Commerce (RTP) CCO CCM B2 Securities Level 199 Bay Street Toronto ON M5L 1A2

33342 - CCBO - COMMERCE COURT OPS TORONTO, ON, M5L 1A2

JAN 25 2019

EXTERNAL MAIL

Date JAN 21 2019 Ontario Regional Collections/Compliance Centre Contact - Parsonne-ressource Ms. A. Saba (1218) Tel. - Tél (519) 973-5216 Ext. - Poste Reference number - Numéro de référence Toll Free - Sans frais 1 866-822-9996

NAUSS PLUMBING & HEATING INC. (sometime carrying on business as GARNET'S PLUMBING AND HEATING) 2590 LASALLE BLVE SUDBURY ON P3A 4R7

Account number / Numéro de compte 103839965RC0001

You are hereby required to pay to the Receiver General on account of the above-named tax debtor's liability under one or more of the following Acts (see reverse):

- (1) forthwith, the moneys otherwise, and immediately payable to the tax debtor which you are required to pay; (2) all other moneys otherwise payable to the tax debtor which you will be, within one year, liable to pay, as and when the moneys become payable; (3) where the moneys referred to in (1) and (2) include interest, rent, remuneration, a dividend, an annuity or other periodic payment, all such payments to be made by you to the tax debtor at any time during or after the one year period until the liability is satisfied;

La présente exige que vous versiez au receveur général au titre de l'obligation du débiteur fiscal mentionné ci-dessus, en vertu d'une ou de plusieurs des lois énoncées au verso :

- (1) immédiatement, les sommes autrement et alors payables au débiteur fiscal que vous devez payer; (2) toutes les autres sommes autrement payables au débiteur fiscal que vous devrez payer dans un délai d'un an, au fur et à mesure que ces sommes deviendront payables; (3) lorsque les sommes dont il est question aux points (1) et (2) comprennent des intérêts, un loyer, une rémunération, un dividende, une rente ou un autre paiement périodique, tous ces paiements que vous devez faire au débiteur fiscal à toute échéance pendant ou après le délai d'un an jusqu'à ce que l'obligation soit respectée;

but do not pay hereunder more than \$29,978.41 (the maximum payable).

mais vous n'avez pas à verser plus que 29,978.41\$ (le maximum payable).

Please make cheques or money orders payable to the Receiver General and remit them with one of the enclosed Remittance Vouchers or with the tax debtor's name, address, account and reference number as well as the remitter's name in the enclosed addressed envelopes.

Failure to pay the Receiver General the amounts required above renders you personally liable to pay those amounts to Her Majesty.

Veillez libeller les chèques ou mandats à l'ordre du receveur général et les faire parvenir dans les enveloppes-réponses ci-jointes avec une des pièces de versement fournies, ou avec les nom, adresse et numéro de compte et de référence du débiteur fiscal y compris le nom du payeur.

À défaut de verser au receveur général les sommes exigées ci-dessus, vous serez personnellement redevable du paiement de ces sommes à Sa Majesté.

DOUG FLEMING 20

Director, Tax Services Office

Directeur, Bureau des services fiscaux

(THIRD PARTY/ TIERS)

This is Exhibit "M" referred to in the Affidavit of Sieg Flatt sworn November 19, 2019.

A handwritten signature in black ink, appearing to read "ERJ Rock", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ERIC J. ROCKEFELLER



June 14, 2019

By Registered and Ordinary Mail

Nauss Plumbing & Heating Inc.
2590 Lasalle Blvd
Sudbury, ON P3A 4R7

Emma Dalziel
T 905-540-2477
F 905-523-2941
emma.dalziel@gowlingwlg.com

Assistant: Cherie Mitchell
T 905 540-7113
File No. H218127

Re: Canadian Imperial Bank of Commerce (the "Bank") and Nauss Plumbing & Heating Inc. (the "Borrower")

We are the lawyers for the Bank in connection with certain credit facilities established by the Bank in favour of the Borrower (the "**Credit Facilities**") pursuant to a credit agreement dated August 9, 2017 (as amended, restated, renewed, replaced, extended, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). The Credit Facilities are either repayable on demand or an event of default has occurred in respect of the Credit Facilities which entitles the Bank to demand repayment of the Credit Facilities.

On behalf of our client, we hereby demand payment in full of the Borrower's indebtedness to the Bank (the "**Indebtedness**") owing under the Credit Facilities, particulars of which are as follows:

Line of Credit (#03892/24-53711)	
Principal outstanding	\$51,646.21
Accrued interest	\$92.74
Interest accrues at the Bank's prime rate of interest plus 1.000% per year	
Service Charges	\$78.50
Business Term Loan (#3892/2548054)	
Principal outstanding	\$833,111.13
Accrued interest	\$16,039.50
Interest accrues at the Bank's prime rate of interest plus 1.000% per year	
Total Indebtedness as at June 13, 2019	\$900,968.08

Interest on the Indebtedness has accrued and will continue to accrue to the date of payment at the relevant rates set out above. The exact amount of the Indebtedness and interest which will have accrued to any proposed date of payment may be obtained by contacting the undersigned. You will also be required to pay the Bank's legal and other expenses in connection with the Indebtedness.

Unless arrangements for payment of the Indebtedness, together with accrued interest and costs, are received by our office on behalf of the Bank by the close of business on **June 29, 2019**, we have instructions to commence litigation and take such other steps as are necessary to recover payment in full. The Bank reserves its rights to close all bank accounts and credit cards that you have with the Bank at the close of business on **June 29, 2019**. Please note if you have Creditor Insurance on the above-mentioned account, it will be terminated in accordance with the terms of your Certificate of Insurance.

Gowling WLG (Canada) LLP
One Main Street West
Hamilton, Ontario L8P 4Z5 Canada gowlingwlg.com

Gowling WLG (Canada) LLP is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at gowlingwlg.com/foia

We enclose a Notice of Intention to Enforce Security in accordance with the provisions of the *Bankruptcy and Insolvency Act* (Canada).

Please direct any communications with respect to this matter to the undersigned.

Yours truly,

Gowling WLG (Canada) LLP



• Emma Dalziel
EDZ: CM
Encl.

BANKRUPTCY AND INSOLVENCY ACT**FORM 86****Notice of Intention to Enforce Security
(Rule 124)**

TO: Nauss Plumbing & Heating Inc., an insolvent person

Take notice that:

1. Canadian Imperial Bank of Commerce, a secured creditor, intends to enforce its security on the property of the insolvent person described below:
 - All property of the insolvent person charged by the security described below.
2. The security that is to be enforced is in the form of:
 - Mortgage in the principal amount of \$206,000.00 in favour of Canadian Imperial Bank of Commerce and registered on August 22, 2017 as registration no. SD341681 and General Assignment of Rents in favour of Canadian Imperial Bank of Commerce and registered on August 22, 2017 as registration no. SD341684 against certain real property municipally known as 551 Centre Street, Espanola, ON.
 - Mortgage in the principal amount of \$583,000.00 in favour of Canadian Imperial Bank of Commerce registered on August 21, 2017 as registration no. SD341549, and General Assignment of Rents in favour of Canadian Imperial Bank of Commerce and registered on August 21, 2017 as registration no. SD341553 against certain real property municipally known as 7 Millichamp Street, Markstay, ON.
 - Mortgage in the principal amount of \$210,000.00 in favour of Canadian Imperial Bank of Commerce and registered on August 21, 2017 as registration no. SD341554 and General Assignment of Rents in favour of Canadian Imperial Bank of Commerce and registered on August 21, 2017 as registration no. SD341555 against certain real property municipally known as 2590 Lasalle Boulevard, Sudbury, ON.
 - General Security Agreement dated August 18, 2017 in favour of Canadian Imperial Bank of Commerce registered under the *Personal Property Security Act* (Ontario) on August 9, 2017 as reference file no. 730719891 (original registration no. 20170809 1528 1219 1693).
3. The total amount of indebtedness secured by the security as at June 13, 2019 is \$900,968.08.
4. The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

5. The indebtedness as at any proposed date of payment will also include any fees, commissions, costs, expenses, currency fluctuations and other amounts that have been incurred by Canadian Imperial Bank of Commerce for the account of Nauss Plumbing & Heating Inc. and accrued and unpaid interest from now to the date of payment at the rates set out in the credit agreement dated as of August 9, 2017 between Canadian Imperial Bank of Commerce, as lender, and Nauss Plumbing & Heating Inc., as borrower, as amended, restated, renewed, replaced, extended, supplemented or otherwise modified from time to time.

Dated June 14, 2019


Canadian Imperial Bank of Commerce, secured creditor
by its lawyers
Gowling WLG (Canada) LLP
per:



Emma Dalziel

POST OFFICE REGISTRATION RECEIPT

Mailed by Cherie Mitchell of
Gowling WLG (Canada) LLP

 RN 260 408 013 CA

Nauss Plumbing & Heating Inc.
2590 Lasalle Blvd
Sudbury, ON P3A 4R7

File Number: H218127-Nauss Plumbing



June 14, 2019

By Registered and Ordinary Mail

Denis Groves
2816 Greenvalley Dr.
Sudbury, ON P3E 5B9

Emma Dalziel
T 905-540-2477
F 905-523-2941
emma.dalziel@gowlingwlg.com

Assistant: Cherie Mitchell
T 905-540-7113
File No. H218127

**Re: Canadian Imperial Bank of Commerce (the "Bank") and Nauss Plumbing & Heating Inc.
(the "Borrower")**

We represent the Bank with respect to the following indebtedness of the Borrower:

Line of Credit (#03892/24-53711) (the "LOC")	
Principal outstanding	\$51,646.21
Accrued interest	\$92.74
Interest accrues at the Bank's prime rate of interest plus 1.000% per year.	
Service Charges	\$78.50
Business Term Loan (#3892/2548054) (the "Term Loan")	
Principal outstanding	\$833,111.13
Accrued interest	\$16,039.50
Interest accrues at the Bank's prime rate of interest plus 1.000% per year.	
Total indebtedness as at June 13, 2019	\$900,968.08

Pursuant to a guarantee dated August 18, 2017 (the "Guarantee") you agreed to guarantee the indebtedness under the LOC and the Term Loan, plus accrued interest and expenses set out therein.

We therefore demand payment of the indebtedness of \$900,968.08, plus accruing interest and all fees and expenses incurred by the Bank, in connection with the enforcement of the Guarantee and expenses thereon in accordance with the terms of the Guarantee.

We have instructions to commence litigation against you if you do not make satisfactory arrangements with our office immediately to have the indebtedness paid, plus accrued interest and costs. If we do not hear from you by close of business on **June 29, 2019**, we will proceed as instructed. Please note, if you have Creditor Insurance on the above-mentioned account, it will be terminated in accordance with the terms of your Certificate of Insurance.

Please direct any communications with respect to this matter to the undersigned.

Yours truly,

Gowling WLG (Canada) LLP

Emma Dalziel
EDZ: CM

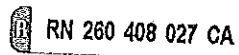
Gowling WLG (Canada) LLP
One Main Street West
Hamilton, Ontario L8P 4Z5 Canada

gowlingwlg.com

Gowling WLG (Canada) LLP is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at gowlingwlg.com/legal

POST OFFICE REGISTRATION RECEIPT

Mailed by Cherie Mitchell of
Gowling WLG (Canada) LLP



Denis Groves
2816 Greenvalley Dr.
Sudbury, ON P3E 5B9

File Number: H218127-Nauss Plumbing

This is Exhibit "N" referred to in the Affidavit of Sieg Flatt sworn November 19, 2019.



Commissioner for Taking Affidavits (or as may be)

ERIC J. ROCKEFELLER

Canadian Imperial Bank of Commerce -RTP
CCO CCW B2 Securities Level
199 Bay Street
Toronto ON M5L 1A2

3342 - CCBO - COMMERCE COURT OPS
TORONTO, ON, M5L 1A2

OCT 17 2019

EXTERNAL MAIL

Notice details

Date issued	OCT 09 2019
Contact name	Melissa Prestyko (1218)
Telephone number	(519) 728-3965 Ext
Account number	103839965RP0001

Requirement to pay

The following taxpayer(s) owe(s) \$439,700.06 for the account 103839965RP0001.

NAUSS PLUMBING & HEATING INC. (sometime carrying on business as GARNET'S PLUMBING AND HEATING; NAUSS PLUMBING & HEATING)
2590 LASALLE BLVD
RR 1
SUDBURY ON P3A 4R7

This requirement to pay from the Minister of National Revenue requires you to send us any money you would otherwise pay to the taxpayer; but do not send more than \$439,700.06, at the rate of 100% of all payments. For requirements to pay, money includes amounts from any assets of the taxpayer that can be converted into cash.

You are required to pay under subsections 224(1), (1.1), and/or (3) of the Income Tax Act or under these same subsections and one or more of the provisions in the Other provisions section of this document.

Money you owe or are paying to the taxpayer

You may owe money to the taxpayer now or you may have to pay the taxpayer later. Either way, you must send this money instead of paying the taxpayer.

1. If you owe money to the taxpayer now, you must send us this amount right away.
2. If you owe money to the taxpayer within the next year, you must send this amount to us as soon as this money becomes due.
3. If you owe money to the taxpayer within or after one year, such as interest, rent, salary or wages, dividends, annuities, or any other periodic payments, you must send this money to us as soon as it becomes due.

Please make your payment payable to the Receiver General.

Your legal obligation

You are required to send this money to us even if you were planning to or have been directed to send money that would otherwise be payable to the taxpayer, to a creditor of the taxpayer, the taxpayer's representative, or to any other person.

Your liability

If you do not pay the money that is required according to the terms of this requirement, you will become liable for the payment of this money.

Notice details

Canadian Imperial Bank of Commerce - RTP
CCO CCW B2, Securities Level
199 Bay Street
Toronto ON M5L 1A2

Date Issued

OCT 09 2019**Keep records**

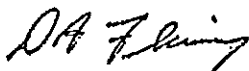
Keep a copy of this requirement to pay for at least **one year**. Also keep a detailed record of all payments you send us for at least six years from the date you receive this requirement.

Other provisions

One or more of these provisions may apply to this requirement to pay.

- Subsection 23(2) Canada Pension Plan
- Section 99 Employment Insurance Act
- Section 67 Income Tax Act, 2000 - Newfoundland and Labrador
- Section 61 Income Tax Act - Prince Edward Island
- Section 79 Income Tax Act - Nova Scotia
- Section 33 Income Tax Act - New Brunswick
- Section 27 Income Tax Act - Ontario
- Subsection 36(1) Income Tax Act - Manitoba
- Section 108 Income Tax Act, 2000 - Saskatchewan
- Section 69 Alberta Personal Income Tax Act
- Section 47 Income Tax Act - British Columbia
- Section 32 Income Tax Act - Northwest Territories
- Section 32 Income Tax Act - Nunavut
- Section 40 Income Tax Act - Yukon
- Section 33 of the Petroleum and Gas Revenue Tax Act

For more information regarding requirements to pay, go to canada.ca/cra-requirement-to-pay.



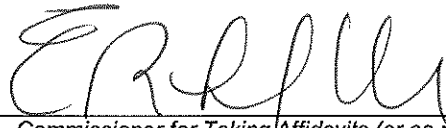
DOUG FLEMING

5

Director, Tax Services Office

(THIRD PARTY)

This is Exhibit "O" referred to in the Affidavit of Sieg Flatt sworn November 19, 2019.

A handwritten signature in cursive script, appearing to read "ERJ Rock", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ERIC J. ROCKEFELLER



Response - requirement to pay

If no money is due or payable to the taxpayer

Please provide us with the details by returning this form to the address shown below or by calling the contact on the requirement to pay.

Account number 103839965RP0001	Return address Windsor Tax Services 101-441 University Ave. W. Windsor ON N9A 5S8 ATTN: Melissa Prestyko (1218)
Third party Canadian Imperial Bank of Commerce -RTP	

Reason no money is due or payable:

NO PAYMENT ENCLOSED BECAUSE THERE ARE NO FUNDS TO REMIT AT THIS TIME.

Name (print) SYED FAROOQ SHAHZAD	Telephone number 1-866-951-3299	
	Date October 18, 2019	Position OFFICER

Note

Returning this form does not relieve you of your obligation to comply with the requirement to pay.

This is Exhibit "P" referred to in the Affidavit of Sieg Flatt sworn
November 19, 2019.

A handwritten signature in cursive script, appearing to read "ERJ R", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ERIC J. ROCKEFELLER

OCT. 25. 2019 2:09PM REV. COLLECTIONS

NO. 3470 P. 1



Canada Revenue Agency Agence du revenu du Canada

Tax Centre Windsor ON N9A 6S8

October 25, 2019

CANADIAN IMPERIAL BANK OF COMMERCE -RTP
C/O CCO CCW B2 SECURITIES LEVEL,
199 BAY STREET
TORONTO ON M5L 1A2

Account Number
10383 9965 RFO001

Dear Sir or Madam:

Re: Requirement to Pay
Date: October 9, 2019
Name: NAUSS PLUMBING & HEATING INC. (sometime carrying on
business as GARNET'S PLUMBING AND HEATING; NAUSS

Effective October 25, 2019, we have cancelled the "Requirement to Pay" dated October 9, 2019, which we sent to you under the "Income Tax Act."

If funds were available as of the date of the receipt of the above-referenced "Requirement to Pay," up to and including October 25, 2019, the date of the cancellation, but you have not yet sent them to the Canada Revenue Agency, please send them to us immediately.

The cancellation of the above-referenced "Requirement to Pay" does not in any way affect the rights of the Canada Revenue Agency under subsections 227(4) and (4.1) "Income Tax Act" for amounts deducted at source. Thank you very much for your co-operation.

Yours truly,

Melissa Prestyko (1218)
Collections Officer



Ontario Regional
Collections/Compliance Centre
101-441 University Ave. W.
Windsor ON N9A 6S8

Local: 519-728-3965
Fax: 519-252-1836
Web site: canada.ca/taxes

This is Exhibit "Q" referred to in the Affidavit of Sieg Flatt sworn November 19, 2019.



A handwritten signature in cursive script, appearing to read 'ERJ ROCK', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ERIC J. ROCKEFELLER

CERTIFICATE OF TREASURER
TOWN OF ESPANOLA



Certificate No.: 140182
Date : August 07, 2019
File Reference No : H218127

Lawyer: GOWLING LAFLEUR HENDERSON LLP
ONE MAIN STREET WEST
HAMILTON ON L8P 4Z5

Roll: 5226 000 00918100.0000
Property: MERRITT CON 5 PT LOT 8 PCL 10208

Location: 551 HIGHWAY 8/ GEN ST
Owner: NAUSS PLUMBING & HEATING

STATEMENT OF ARREARS OF TAXES (MUNICIPAL ACT S.O. 2001, c.25 s.352)

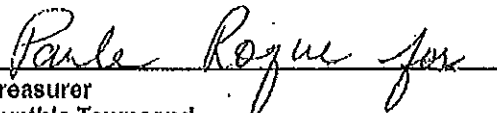
YEAR	TAXES LEVIED	TAXES OUTSTANDING	INTEREST OUTSTANDING	TOTAL
2016 & Prior.:		0.00	0.00	0.00
2017:	6638.35	0.00	0.00	0.00
2018:	6519.02	6519.02	1257.89	7776.91
Total		6519.02	1257.89	7776.91

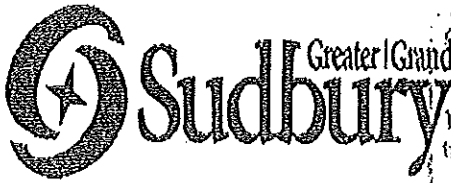
CURRENT TAX CERTIFICATE (MUNICIPAL ACT S.O. 2001, c.25 s.352)

INSTALLMENT	EFFECTIVE	TAXES LEVIED	TAXES OUTSTANDING	TAXES PAST DUE
Feb 20, 2019 I	2019	1630.51	1630.51	1630.51
Apr 30, 2019 I	2019	1629.00	1629.00	1629.00
Jul 31, 2019 F	2019	1799.94	1799.94	1799.94
Sep 30, 2019 F	2019	1799.00	1799.00	
Penalty			226.22	226.22
Credit				0.00
Misc. Charges			0.00	0.00
Total		6858.45	7084.67	5285.67
TOTAL PAST DUE				13082.58

NO AREA CHARGES AND OTHER ADJUSTMENT CHARGES
NO LOCAL IMPROVEMENTS

I hereby certify that the above statements respectively show all arrears of taxes returned to this office and due and owing against the above lands.


Treasurer
Cynthia Townsend



CITY OF GREATER SUDBURY

This is your receipt for this tax certificate.

Amount: 108⁰⁰ ml

tax certificate

Fee: 108.00

Roll Number: 5307.020.015.05700.0000

Date: Jul. 15, 2019

Applicant:
GOWLING WLG
ONE MAIN ST WEST
HAMILTON ON
L8P 4Z6

Assessed Owner(s)
NAUSS PLUMBING AND HEAT

Mailing Address:
2590 LASALLE BLVD
SUDBURY ON
P3A 4R7

Certificate #: 11755

Reference: H218127

Assessment: 280,000

Property Description:
NEELON CON 6 LOT 9 PCL 186
IRREG

Property Address:
2590 LASALLE BLVD

Taxes Levied
Previous Year: 10,114.34

12841.96SF 101.75FR D

Year	Type	Outstanding	Billed
2019	Total	4,082.70	9,957.70
	Penalty	0.00	
2018	Arrears	0.00	
	Interest	0.00	
2017	Arrears	0.00	
	Interest	0.00	
2016+	And prior arrears	0.00	
	And prior interest	0.00	
Total Owning:		4,082.70	

PAP ACCOUNT

Local Improvements			
Bylaw	Year	Bylaw Id	Amount

Note: Above Local Improvements, if any, are included in Final billed amounts

City Treasurer per. *Kyle Bee*

Note: Errors and omissions excepted. Above does not necessarily include utility bills, Section 33 or 34 supplementary tax billings, Administration Fees charged in accordance with, or adjustments made under the Municipal Act. The information on this certificate is based on cheques tendered being honoured by the bank upon which they are drawn. Any credit balance is not verified. No adjustment should be made unless credit balance is known and acknowledged as an overpayment.

Penalty Charges:


Late payments are subject to a penalty charge of 1.25% the day after due date and the first day of each month until paid.

This Certificate may be subject to further adjustments of taxes on assessment in the commercial, industrial, multi-residential, and related optional classes as a result of revisions that may be required to phase-in adjustment calculations pursuant to the Fairness for Property Taxpayers Act 1998 and the Continued Protection for Property Taxpayers Act, 2000.

PO Box 5555 STN A 200 Brady Street Sudbury ON P3A 4S2
CP 5555 SUCC A 200 rue Brady Sudbury ON P3A 4S2
Phone: (706) 671-2489 Fax: (706) 671-9327

Aug. 9. 2019 10:12AM
CERTIFICATE OF TREASURER
 THE MUNICIPALITY OF MARKSTAY-WARREN
 21 MAIN STREET SOUTH PO BOX 79
 MARKSTAY, ON P0M 2G0

Gowling WLG * Pg 2/2
 Municipality of Markstay-Warren



Certificate No.: 44, No. 0511 P. 2
 Date : August 09, 2019
 File Reference No : H218127

Lawyer: GOWLING WLG (CANADA) LLP
 ONE MAIN ST W

 HAMILTON ON
 L8P4Z6

Roll: 5208 000 00422600.0000
 Property: HAGAR CON 3 LOT 12 PCL
 40419 PCL 53628 RP
 53R16102 PART 1 PLAN
 M1034 LOT 22

Location: 7 MILLICHAMP ST
 Owner: NAUSS PLUMBING & HEATING INC

Requested by: Cherie Mitchell


STATEMENT OF ARREARS OF TAXES (MUNICIPAL ACT S.O. 2001, c.25 s.352)

YEAR	TAXES LEVIED	TAXES OUTSTANDING	INTEREST OUTSTANDING	TOTAL
2016 & Prior:		14550.42	1465.04	16005.46
2017:	14724.28	18002.01	1900.24	20902.25
2018:	14412.45	18832.49	1883.28	20715.77
Total		52384.92	5298.56	57683.48

CURRENT TAX CERTIFICATE (MUNICIPAL ACT S.O. 2001, c.25 s.352)

INSTALLMENT	EFFECTIVE	TAXES LEVIED	TAXES OUTSTANDING	TAXES PAST DUE
Feb 28, 2019	I	3603.23	3603.23	3603.23
Mar 28, 2019	I	3603.00	3603.00	3603.00
Jul 30, 2019	F	3402.06	3402.06	3402.06
Aug 30, 2019	F	3401.00	3401.00	
Penalty			1125.82	1125.82
Credit				0.00
Misc. Charges			4827.80	4827.80
Total		14010.19	16963.81	16562.81
TOTAL PAST DUE				74186.29

I hereby certify that the above statements respectively sh...
 taxes returned to this office and due and owing against l... lands.


 Treasurer/Deputy Clerk
 Gellina Anderson

Notes : No Municipal Drain

This is Exhibit "R" referred to in the Affidavit of Sieg Flatt
sworn November 19, 2019.

A handwritten signature in cursive script, appearing to read "ERockefeller", is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ERIC J. ROCKEFELLER

ONTARIO
SUPERIOR COURT OF JUSTICE

APPLICATION UNDER SUBSECTION 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

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

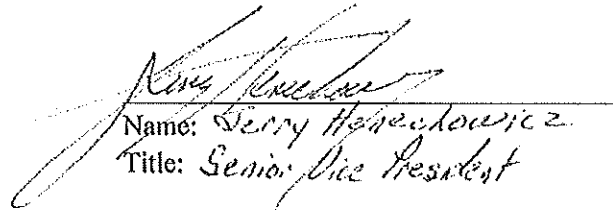
Respondent

CONSENT TO ACT

MNP Ltd. hereby consents to act as receiver and manager over all of the assets, undertakings and properties of every nature and kind whatsoever and wherever situate, including all proceeds thereof, of Nauss Plumbing & Heating Inc., in accordance with an order substantially in form of the receivership order sought and included in the Application Record of Canadian Imperial Bank of Commerce.

DATED the 18th day of November, 2019

MNP Ltd.


Name: Terry Horechowicz
Title: Senior Vice President

TAB 3

Court File No. CV- ●

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)	FRIDAY, THE 29 th
)	
JUSTICE)	DAY OF NOVEMBER, 2019

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

ORDER
(appointing Receiver)

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

ON READING the affidavit of Sieg Flatt sworn November 19, 2019, and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, counsel for the Debtor, those other parties listed on the counsel slip, no one else appearing for any other party although

duly served as appears from the affidavit of service of ● sworn November 19, 2019 and on reading the consent of MNP to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, MNP is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor and all proceeds thereof (collectively, the "**Property**"), including but not limited to the lands and premises listed in Schedule "**B**" hereto (the "**Real Property**").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, 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 any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (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 Debtor, 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 Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- 4 -

- (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 \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$50,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.
- (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 register a copy of this Order and any other Orders in respect of the Property against title to any of the Property including as against the Real Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and

on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in

that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including

without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may

consider necessary or desirable, provided that the outstanding principal amount does not exceed \$70,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further

orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.MNPdebt.ca/Nauss.

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

GENERAL

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

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

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

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

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that MNP Ltd., the receiver (the "**Receiver**") of the assets, undertakings and properties Nauss Plumbing & Heating Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (the "**Court**") dated the ___ day of _____, 2019 (the "**Order**") made in an action having Court file number _____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the _____ day of _____, 20__.

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

Per: _____

Name:

Title:

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

1. The lands and premises municipally known as 551 Centre Street, Espanola, Ontario and legally described as:
 - **PIN 73407-0024 (LT):** PCL 10208 SEC SWS; PT LT 8 CON 5 MERRITT AS IN LT64894 EXCEPT PT 1 53R13128 & PT 153R17437; S/T PT 2 & 3 53R13128 AS IN LT696426; ESPANOLA
2. The lands and premises municipally known as 2590 Lasalle Blvd., Sudbury, Ontario and legally described as:
 - **PIN 73564-0117 (LT):** PCL 18965 SEC SES; PT LT 9 CON 6 NEELON AS IN LT 109921 EXCEPT LT 1 PL M861; S/T LT80621; GREATER SUDBURY
3. The lands and premises municipally known as 7 Millichamp Street, Markstay, Ontario, and legally described as:
 - **PIN 73484-0035 (LT):** PCL 53626 SEC SES; FIRSTLY: LT 22 PL M1034 HAGAR; SECONDLY: PT LT 12 CON 3 HAGAR PT 1, 53R16102; MARKSTAY-WARREN
4. The lands and premises municipally known as 1330 North Road, Markstay, Ontario, and legally described as:
 - **PIN 73488-0010 (LT):** PCL 51424 SEC SES; PT LT 12 CON 1 LOUGHRIN PT 1 & 2 53R15954; MARKSTAY-WARREN

CANADIAN IMPERIAL BANK OF COMMERCE

- and -

NAUSS PLUMBING & HEATING INC.

Applicant

Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT SUDBURY

RECEIVERSHIP ORDER

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Solicitors for the Applicant

TAB 4

Revised: January 21, 2014
s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver

Court File No. ——— CV-●

ONTARIO
SUPERIOR COURT OF JUSTICE
~~COMMERCIAL LIST~~

THE HONOURABLE) ~~WEEKDAY~~FRIDAY, THE #29th
JUSTICE) DAY OF MONTHNOVEMBER, 20YR2019

~~PLAINTIFF~~[†]

Plaintiff

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

~~DEFENDANT~~

Defendant

NAUSS PLUMBING & HEATING INC.

Respondent

ORDER
(appointing Receiver)

[†] ~~The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

- 2 -

THIS ~~MOTION~~APPLICATION made by the Plaintiff² Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing ~~[RECEIVER'S NAME]~~MNP Ltd. ("MNP") as receiver ~~[and manager]~~ (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~Nauss Plumbing & Heating Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at ~~330 University Avenue, Toronto~~155 Elm Street, Sudbury, Ontario.

ON READING the affidavit of ~~[NAME]~~Sieg Flatt sworn ~~[DATE]~~November 19, 2019, and the Exhibits thereto and on hearing the submissions of counsel for ~~[NAMES], no one~~the Applicant, counsel for the Debtor, those other parties listed on the counsel slip, no one else appearing for ~~[NAME]~~any other party although duly served as appears from the affidavit of service of ~~[NAME]~~[NAME] sworn ~~[DATE]~~November 19, 2019 and on reading the consent of ~~[RECEIVER'S NAME]~~MNP to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of ~~Motion~~Application and the ~~Motion~~Application Record is hereby abridged and validated³ so that this ~~motion~~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, ~~[RECEIVER'S NAME]~~MNP is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, ~~including and~~ all proceeds thereof (collectively, the "Property"),

²Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

³If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.

including but not limited to the lands and premises listed in Schedule "B" hereto (the "Real Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, 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 any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;

- 4 -

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (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 Debtor, 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 Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.⁴ 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 \$,50,000, provided that the aggregate consideration for all such transactions does not exceed \$ 50,000; and

⁴~~This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A~~

- (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*, [for section 31 of the Ontario *Mortgages Act*, as the case may be,]⁵ shall not be required, ~~and in each case the Ontario *Bulk Sales Act* shall not apply.~~

- (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 register a copy of this Order and any other Orders in respect of the Property against title to any of the Property including as against the Real Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

~~bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

~~⁵ If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this

paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to

their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

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

shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that 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.⁶

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

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed

⁶ ~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

\$~~—————~~70,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.


22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a

Case Website shall be established in accordance with the Protocol with the following URL:
 www.MNPdebt.ca/Nauss.

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

GENERAL

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

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

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

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

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~ MNP Ltd., the receiver (the "Receiver") of the assets, undertakings and properties ~~[DEBTOR'S NAME]~~ Nauss Plumbing & Heating Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice ~~(Commercial List)~~ (the "Court") dated the ___ day of _____, 2019 (the "Order") made in an action having Court file number ~~CL~~ _____, 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

- 2 -

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__.

~~[RECEIVER'S NAME]~~ MNP Ltd., solely in its
capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

SCHEDULE "B"DESCRIPTION OF REAL PROPERTY

1. The lands and premises municipally known as 551 Centre Street, Espanola, Ontario and legally described as:

- PIN 73407-0024 (LT): PCL 10208 SEC SWS; PT LT 8 CON 5 MERRITT AS IN LT64894 EXCEPT PT 1 53R13128 & PT 153R17437; S/T PT 2 & 3 53R13128 AS IN LT696426; ESPANOLA

2. The lands and premises municipally known as 2590 Lasalle Blvd., Sudbury, Ontario and legally described as:

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

3. The lands and premises municipally known as 7 Millichamp Street, Markstay, Ontario, and legally described as:

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

4. The lands and premises municipally known as 1330 North Road, Markstay, Ontario, and legally described as:

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

Court File No. CV-

CANADIAN IMPERIAL BANK OF COMMERCE

-and-

NAUSS PLUMBING & HEATING INC.

Applicant

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

Respondent

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT SUDBURY

RECEIVERSHIP ORDER

GOWLING WLG (CANADA) LLP

Barristers & Solicitors

1 First Canadian Place

100 King Street West, Suite 1600

Toronto ON M5X 1G5

Haddon Murray (#61640P)

Tel: 416-862-3604

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haddon.murray@gowlingwlg.com

Solicitors for the Applicant

Document comparison by Workshare Compare on November-18-19 8:49:36 PM

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Format changed	0
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CANADIAN IMPERIAL BANK OF COMMERCE

- and -

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT SUDBURY

APPLICATION RECORD

GOWLING WLG (CANADA) LLP

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Haddon Murray (LSO# 61640P)

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haddon.murray@gowlingwlg.com

Lawyers for the Applicant, Canadian Imperial Bank of
Commerce

This is Exhibit B referred to in the
Affidavit of Heather Fisher
sworn before me this
30th day of October, 2020

A handwritten signature in blue ink, appearing to read "H. Vetter", is written over a horizontal line.

A Commissioner for Taking Affidavits (or as may be)

Court File No. CV-19-8866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:**CANADIAN IMPERIAL BANK OF COMMERCE****Applicant****- and -****NAUSS PLUMBING & HEATING INC.****Respondent**

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

SUPPLEMENTAL APPLICATION RECORD

November 25, 2019

GOWLING WLG (CANADA) LLP
Barrister and Solicitors
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100 King Street West, Toronto, ON M5X 1G5

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

Lawyers for the Applicant**TO: THE SERVICE LIST**

SERVICE LIST

TO: NAUSS PLUMBING & HEATING INC.
2590 Lasalle Blvd.
Sudbury, ON, P3A 4R7

Denis Groves
Tel: (705) 566-2359
Fax: (705) 566-9570
Email: manager@naussplumbing.ca

AND TO: MNP LTD.
111 Richmond Street West
Suite 300
Toronto, ON M5H 2G4

Jerry Henechowicz
Tel: (416) 515-3924
Fax: (416) 323-5240
Email: jerry.henechowicz@mnp.ca

Proposed Receiver

AND TO: CANADA REVENUE AGENCY C/O DEPARTMENT OF JUSTICE
Ontario Regional Office
The Exchange Tower, Box 36
130 King Street West, Suite 3400
Toronto, ON M5X 1K6

Diane Winters
Tel: (416) 973-3172
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E-Mail: diane.winters@justice.gc.ca

Counsel to the Minister of National Revenue

AND TO: MINISTRY OF FINANCE
Office of Legal Services
33 King Street West, 6th Floor
Oshawa, ON L1H 8H5

Kevin J. O'Hara
Tel: (905) 433-6934
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Email: kevin.ohara@fin.gov.on.ca

AND TO: FORD CREDIT CANADA LIMITED

P.O. Box 2400
Edmonton, AB T5J-5C7
Tel: 780-443-5363
Fax: 866-341-0119

AND TO: FORD CREDIT CANADA COMPANY

P.O. Box 2400
Edmonton, AB T5J-5C7
Tel: 780-443-5363
Fax: 866-341-0119

AND TO: 739572 ONTARIO LIMITED

Att: Angelo & Mary Capozzi
17 King's Inn Trail
Thornhill, ON L3T 1T6

Tel: (905) 881-1431
Fax: (905) 882-4738

AND TO: KORA MANAGEMENT LTD.

1374 Arlington Boulevard
Sudbury, ON P3E 6H8

Tel: (705) 675-2251
Fax: (705) 675-6302

Court File No. CV- CV-19-8866-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

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

INDEX

Tab	Document
1.	Affidavit of Sieg Flatt sworn November 25, 2019
A.	Exhibit "A" - Standard Charge Terms No. 201203
B.	Exhibit "B" - Marstay Millichamp acknowledgement
C.	Exhibit "C" - Espanola acknowledgement
D.	Exhibit "D" - Sudbury acknowledgement

Court File No. CV-19-00008866-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:**CANADIAN IMPERIAL BANK OF COMMERCE****Applicant****- and -****NAUSS PLUMBING & HEATING INC.****Respondent**

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

SUPPLEMENTAL AFFIDAVIT OF SIEG FLATT
(Sworn November 25, 2019)

I, Sieg Flatt, of the City of Burlington, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a senior manager in the special loans department of the Applicant, Canadian Imperial Bank of Commerce (the "**Bank**"), and as such, I have personal knowledge of the matters to which I hereinafter depose save and except where I refer to matters based on information and belief, in which case I verily believe that information to be true.
2. This affidavit is supplementary to my affidavit dated November 19, 2019 in support of an application by the Bank for an order appointing MNP Ltd. ("**MNP**") as receiver and manager ("**Receiver**") over the assets, undertakings and properties (collectively, the "**Property**") of Nauss Plumbing & Heating Inc. ("**Nauss**").

3. As described in my affidavit dated November 19, 2019, Nauss is the registered owner of the following properties in northern Ontario (listed below by their respective municipal addresses):

- (a) 25690 Lasalle Boulevard, Sudbury, Ontario (the "**Sudbury Property**");
- (b) 551 Centre Street, Espanola, Ontario (the "**Espanola Property**");
- (c) 7 Millichamp Street, Markstay, Ontario (the "**Markstay Millichamp Property**"); and
- (d) 1330 North Road, Markstay, Ontario (the "**Markstay North Road Property**" together with the Sudbury Property, the Espanola Property and the Markstay Millichamp Property, the "**Real Property**").

4. On August 9, 2017, the Bank, as lender, and Nauss, as borrower, entered into a credit agreement (the "**Credit Agreement**"). Attached to my affidavit dated November 19, 2019 as Exhibit B is a true copy of the Credit Agreement and the Small Business Credit Terms & Conditions. As security for the indebtedness, among other things Nauss delivered to the Bank:

- (a) a charge / mortgage in the principal amount of \$583,000.00 against the Markstay Millichamp Property (the "**Markstay Millichamp Charge**");
- (b) a charge / mortgage in the principal amount of \$206,000.00 against the Espanola Property (the "**Espanola Charge**"); and
- (c) a charge / mortgage in the principal amount of \$210,000.00 against the Sudbury Property (the "**Sudbury Charge**", together with the Markstay Millichamp Charge and the Espanola Charge, the "**Mortgages**").

Attached to my affidavit dated November 19, 2019 as Exhibits "D", "E" and "F" are true copies of the Mortgages.

5. Each of the Mortgages indicate the Standard Charge Terms No. 201203 apply (the "**Standard Charge Terms**"). Attached hereto as Exhibit "A" is a true copy of the Standard Charge Terms.


6. Nauss executed an acknowledgment for each of the Mortgages dated August 21, 2017, stating:

The undersigned, being the mortgagor in the above transaction, hereby acknowledges receiving a copy of Standard Charge Terms No. 201203 before signing the above charge or mortgage, and the undersigned understands that the said Standard Charge Terms are incorporated by reference into such charge or mortgage.

Attached hereto as Exhibits "B", "C" and "D" are true copies of the Markstay Millichamp acknowledgment, the Espanola acknowledgement and the Sudbury acknowledgement, respectively.

7. This Affidavit is sworn in support of the Bank's application for the relief set out in paragraph 2 above and for no other or improper purpose.

SWORN before me at the City of Hamilton,)
in the Province of Ontario this 25th day)
of November, 2019)



EMMA DALZIEL (LSO #70263E)
Commissioner for taking affidavits, etc.



SIEG FLATT

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, Court File No. CV-19-00008866-0000
c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS
AMENDED

CANADIAN IMPERIAL BANK OF COMMERCE
Applicant

-and-

NAUSS PLUMBING & HEATING INC.
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT SUDBURY

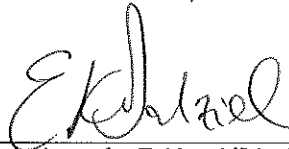
**AFFIDAVIT OF SIEG FLATT
(SWORN NOVEMBER 25, 2019)**

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Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Haddon Murray (#61640P)
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Lawyers for the Applicant, Canadian Imperial Bank of Commerce

This is Exhibit "A" referred to in the Supplemental Affidavit of
Sieg Flatt sworn November 25, 2019.



Commissioner for Taking Affidavits (or as may be)

Emma Dalziel



**Commercial Collateral Mortgage
Standard Charge Terms
Land Registration Reform Act**

Filed By:	Canadian Imperial Bank of Commerce
Filing Number:	201203
Filing Date:	January 30, 2012

The following set of standard charge terms shall be deemed to be included in every charge in which the set is referred to by its filing number, as provided in section 9 of the Act.

1. DEFINITIONS

In this set of standard charge terms:

- (a) "Act" means the *Land Registration Reform Act*, (Ontario), as amended or replaced from time to time;
- (b) "Amount Secured" means the aggregate of (i) the Principal Amount, (ii) all interest and compound interest at the Interest Rate, (iii) Costs, and (iv) interest at the Interest Rate on any interest or Costs not paid when due;
- (c) "Bank" means Canadian Imperial Bank of Commerce, its successors and assigns;
- (d) "Charge" means the Charge/Mortgage of Land, any Schedules attached thereto and this set of Standard Charge Terms, as any of the foregoing may be amended or replaced from time to time, and the expressions "hereof", "herein", "hereto", "hereunder" and similar expressions refer to the Charge and not to any particular paragraph or other portion thereof;
- (e) "Chargor" means each party who signs the Charge as chargor, and the Chargor's heirs, executors, administrators, successors and assigns;
- (f) "Costs" means all fees, costs, charges and expenses which, pursuant to the provisions of this set of Standard Charge Terms (other than paragraph 4), the Chargor is required to pay to the Bank and which, without limiting the generality of the foregoing include all of the Bank's fees, costs, charges and expenses, including legal fees on a full indemnity basis, that will reimburse the Bank for amounts incurred to:
 - a) approve, prepare, execute and register the Charge;
 - b) advance and secure the Indebtedness;
 - c) investigate title to the Property;
 - d) collect the Indebtedness;
 - e) enforce the terms of the Charge or the obligations and liabilities of the Chargor hereunder or exercise any of the Bank's rights or remedies hereunder;
 - f) pay a title insurance premium or any mortgage insurance premium;
 - g) take and keep possession of the Property;
 - h) inspect, appraise, insure, secure, protect, repair or improve the Property;
 - i) compensate for any amount the Bank is entitled to charge to the Chargor or pay on behalf of the Chargor hereunder;
 - j) inspect the Property and obtain, including without limitation, any environmental testing, audits, inspections, site assessments, investigations or studies;
 - k) renew and cure any defaults under any leasehold interest;
 - l) appoint a receiver, a manager, a receiver and manager, administrator or other person with similar powers;
 - m) remove any Lien or construction lien from title to the Property, obtain a discharge of a construction lien or defend a construction lien action relating to the Property;
 - n) protect the Bank's interests under the Charge in any way;
 - o) provide any services of an administrative or clerical nature requested by the Chargor;
 - p) comply with any notices, orders, judgments, directives, permits, licenses, authorizations or approvals with respect to the Property; and
 - q) all legal fees and disbursements in connection with the Indebtedness.

"Costs" include interest at the Interest Rate on all such fees, costs, charges and expenses from the date incurred until paid to the Bank.

- (g) "Fixtures" means (i) all fixtures and growing things in, on, under or in relation to the Property and (ii) all real or personal property whatsoever (whether affixed, mobile or stationary) which is now or later attached to or placed, installed or erected in, on or under the Property, including without limitation: all structures, additions, improvements, fences, plant, machinery, motors, furnaces, boilers, pressure vessels, oil and gas burners, stokers, blowers, water heaters, tanks, electric light fixtures, sprinklers, gas pipes, wiring, radiators, shutters, awnings, fixed mirrors, window blinds, wall-to-wall floor coverings, screen and storm doors and windows, aerials, television antennae, satellite dishes, refrigerators, stoves, air conditioning, ventilating, plumbing, electrical, lighting, cooling, heating, cooking and refrigeration equipment, computers, telecommunications systems, security systems, elevators, central vacuum systems, waste disposal, fire and theft protection equipment and all apparatus and equipment appurtenant to the Property;
- (h) "Hazardous Substances" means any substance, mixture of substances or materials that are prohibited, controlled or regulated by any law, regulation or by-law enacted by any legislative, governmental or regulatory

body that has jurisdiction over the Property including, without limitation, any contaminants, pollutants, emissions, asbestos, lead, polychlorinated by-phenyl or hydrocarbon products, any materials containing same or derivatives thereof, underground storage tanks, dangerous or toxic substances or materials, controlled products and hazardous wastes;

- (i) "Indebtedness" has the meaning specified in the Schedule under the heading "Indebtedness";
- (j) "Interest Rate" means the interest rate specified in the Schedule under the heading "Interest Rate";
- (k) "Lease" means, in respect of any part of the Property in which the Chargor has a leasehold interest, the lease under which such leasehold interest is created and any lease with respect to all or any part of the Property which may be entered into in replacement or renewal of such lease, as any of the foregoing may be amended from time to time;
- (l) "Lien" means any mortgage, charge, pledge, assignment, lien, lease, sublease, easement, preference, priority, trust or other security interest or encumbrance of any kind or nature whatsoever with respect to any property or asset, including any title reservations, limitations, provisos or conditions;
- (m) "Prime Rate" means the variable reference interest rate per year declared by the Bank from time to time to be its prime rate for Canadian dollar loans made by the Bank in Canada;
- (n) "Principal Amount" means the Principal Amount specified in the Charge, which shall be in lawful money of Canada unless otherwise specified in the Charge;
- (o) "Property" means all right, title, estate and interest in and to the lands and premises described in the Charge together with, all buildings and structures now or later placed, installed or erected on any such land and all Fixtures;
- (p) "Schedule" means, collectively, all the schedules attached to the Charge; and
- (q) "Taxes" means, in respect of the Property, all taxes, duties, rates, imposts, levies, assessments and other similar charges, whether general or special, ordinary or extraordinary, or foreseen or unforeseen, including municipal taxes, school taxes and local improvement charges, and all related interest, penalties and fines which at any time may be levied, imposed or be a Lien on the Property or any part thereof.

2. EXCLUSION OF STATUTORY COVENANTS

The covenants deemed to be included in a charge by Section 7(1) of the Act are excluded from the Charge.

3. BANK SECURITY

The Chargor:

- (a) if the Chargor has a freehold interest in the Property, mortgages, charges, assigns and grants a security interest in the Property to the Bank, and the Chargor's present and future interest in the Property to the Bank; or
- (b) if the Chargor has a leasehold interest in the Property, mortgages, charges, assigns and sub-leases a security interest in the Property to the Bank and the Chargor's present and future interest in the Property to the Bank for and during the unexpired residue of the term of each Lease, except the last day thereof, and all other estate, term, right of renewal and other interest of the Chargor in each Lease;

as collateral security for the payment and performance to the Bank of the Indebtedness in an amount not exceeding the Amount Secured and for the observance and performance of the Chargor of all other covenants and obligations under the Charge.

4. CONTINUING SECURITY

The Charge shall, whether or not it secures a current or running or revolving account, be a general and continuing collateral security to the Bank for payment and performance to the Bank of the Indebtedness in an amount not exceeding the Amount Secured and for the observance and performance of the Chargor's other obligations under the Charge notwithstanding any fluctuation or change in the amount, nature or form of the Indebtedness or in the accounts relating thereto or in the bills of exchange, promissory notes and/or other obligations now or later held by the Bank representing all or any part of the Indebtedness or in the names of the parties to such bills, promissory notes and/or other obligations or that there is no Indebtedness outstanding at any particular time; and the Charge will not be deemed to have been redeemed or become void as a result of any such event or circumstance.

5. PAYMENT

- (a) The Chargor shall pay the Indebtedness to the Bank on demand.
- (b) Except as otherwise agreed in writing, payments or other moneys received by the Bank may be applied by it on any part of the Indebtedness and in any order as determined by it from time to time, notwithstanding any contrary stipulation by the Chargor. The Bank may from time to time revoke or alter any such application and reapply the amount in question on any other part of the Indebtedness determined by it. If the Bank is notified, or in its sole discretion believes, that the Chargor has disposed of, encumbered or otherwise created a Lien or other interest on or in all or any part of the Property or any Lease, the Bank may close any of the Chargor's accounts at the amount then owing to the Bank and open a new account or accounts for Indebtedness thereafter arising and for payments thereafter received by the Bank. No amount paid in or credited to any new account shall be applied to or have the effect of reducing or repaying any part of the Indebtedness owing at the time the Bank was so notified or opened any such new account.
- (c) The provisions of the Charge in no way prejudice or otherwise affect any right the Bank may have independently of the Charge (whether pursuant to any agreement, promissory note, other instrument, any rule of law, statute, or otherwise whatsoever) to recover all or any part of the Indebtedness from the Chargor and, if the Indebtedness exceeds the Amount Secured, the Bank may conclusively determine what part of the Indebtedness (not exceeding the Amount Secured) shall be secured by the Charge and what part shall not be so secured.

- (d) The records maintained by the Bank as to the date and amount of any indebtedness advanced to or otherwise incurred by the Chargor from time to time (including any interest accrued thereon), and as to the amount of any payment thereof, shall constitute *prima facie* evidence of such dates and amounts.
- (e) Any demand for payment made by the Bank pursuant to the Charge may be delivered personally to the Chargor or any employee or officer thereof or may be mailed, postage prepaid, to the address of the Property or to the Chargor's most recent address appearing in the Bank's records relating to the Charge. ANY SUCH DEMAND SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN GIVEN AND RECEIVED ON THE DATE OF SUCH DELIVERY OR THE FIFTH DAY AFTER SUCH MAILING.
- (f) The Chargor shall not, without the Bank's express written consent, be entitled to pay all or any part of the Indebtedness prior to the date the same is payable pursuant to the provision of the Charge.

6. ADVANCES BY THE BANK

If the Bank decides, for any reason, not to advance any moneys or other accommodation, it shall not be required to do so whether or not the Charge has been signed and registered and whether or not any moneys or other accommodation have been previously advanced. Whether or not any advances are made, the Chargor shall immediately pay the Bank's costs, including, without limitation, lawyers' fees (on a full indemnity basis), and expenses for investigating title to the Property and for preparing, signing and registering the Charge and any other related instruments or documentation.

7. ADDITIONAL SECURITY; JUDGMENTS

- (a) The Charge is in addition to and not in substitution for any other security now or later held by the Bank for all or any part of the Indebtedness. The Chargor agrees that the Charge shall not create any merger or discharge of any part of the indebtedness or any other debt owing to the Bank or of any Lien, bond, promissory note, bill of exchange or other security now or later held by the Bank (whether from the Chargor or any other person). The Chargor further agrees that the Charge shall not in any way affect any other security now or later held by the Bank for all or any part of the Indebtedness or the liability of any endorser or any other person, or any of the Bank's remedies, in respect of any such Lien, bond, bill of exchange, promissory note or other security, or any renewal thereof, held by the Bank for or on account of all or any part of the Indebtedness.
- (b) The taking of a judgment or judgments against the Chargor in respect of any of the agreements or obligations contained in the Charge, or in respect of all or any part of the Indebtedness, or otherwise, shall not operate as a merger of such agreements or obligations or all or any part of the Indebtedness, or operate as a merger of or in any other way affect the security created by the Charge or any other security or Lien or the Bank's right to pursue the Bank's other remedies or to enforce the Chargor's other obligations (whether hereunder or otherwise) or the Bank's right to interest on the Indebtedness at the Interest Rate. Any such judgment may provide that interest thereon shall be computed at the Interest Rate until such judgment is fully paid and satisfied.
- (c) The obligations of the Chargor under the Charge shall in no way be affected by the bankruptcy, insolvency, incapacitation, dissolution, continuance, merger or amalgamation or change of name of the Chargor.

8. DELAY, RELEASES, PARTIAL DISCHARGES, WAIVERS AND AMENDMENTS

The Bank may increase, reduce, discontinue or otherwise vary the Chargor's credit arrangements, grant extensions of time or other indulgences, take and give up securities, abstain from taking, perfecting or registering securities, accept compositions and proposals, grant releases and discharges and otherwise deal with the Chargor and other persons (including without limitation any person to whom all or any part of the Property is transferred) and with any securities as the Bank may see fit without affecting any of the Bank's rights or remedies (hereunder or otherwise), the Chargor's liability under the Charge or the Chargor's liability to pay the Indebtedness. The Bank may delay enforcing any of its rights under the Charge or any other document relating to the Indebtedness without losing or impairing those rights and may waive any breach of the Chargor's obligations under the Charge or any such document without affecting the Bank's rights in respect of any other existing breach or any subsequent breach of the same or a different nature. No such waiver shall be effective unless made in writing and signed by an officer of the Bank. The Bank may release others from any liability to pay all or any part of the Indebtedness without releasing the Chargor. The Bank may release its interest under the Charge in all or any part of the Property or any Lease (or any other collateral) whether or not the Bank receives any value and shall be accountable to the Chargor only for moneys which the Bank actually receives. If the Bank releases its interest in part of the Property, the remainder of the Property shall continue to secure the Indebtedness in an amount not exceeding the Amount Secured and the Chargor's obligations under the Charge will continue unchanged. No sale or other dealing with all or any part of the Property or any Lease, and no amendment of the Charge or any other security, agreement or instrument, and no amendment relating to the Indebtedness, will in any way affect the obligation of the Chargor or any other person to pay the Indebtedness.

9. REPRESENTATIONS, WARRANTIES AND AGREEMENTS RESPECTING THE PROPERTY

- (a) The Chargor represents and warrants with the Bank that:
 - (i) unless the Chargor is the lawful tenant or lessee of the Property, the Chargor is the lawful owner and sole registered owner of the Property and has a good and marketable title to the Property, free and clear of any Liens or claims except any the Chargor has reported to the Bank in writing;
 - (ii) each Chargor: (a) which is a corporation is a duly organized and validly existing corporation under the laws of its governing jurisdiction; (b) which is a partnership is a valid and subsisting general or limited partnership, as the case may be, under the laws of its governing jurisdiction; (c) which owns an interest in the Property has full power, authority and legal right to own the Property and to carry on its business thereon in compliance with all applicable laws and is duly licensed, registered or qualified in all jurisdictions where the character of its undertaking, property and assets or the nature of its activities makes such licensing, registration or qualification necessary or desirable; (d) has full power, authority and legal right to enter into this Charge and any other security or loan documents to which it is a party and to do all acts and execute and deliver all other documents as are required to be done, observed or performed by it in accordance with their respective terms; (e) has taken all necessary action and proceedings to authorize the execution, delivery and performance of this Charge and any other security or loan documents to which it is a party and to observe and perform the provisions of each in accordance

with its terms; and (f) shall maintain in good standing its existence, capacity, power and authority as a corporation or partnership, as the case may be, and shall not liquidate, dissolve, wind-up, terminate, merge, amalgamate, consolidate, reorganize or restructure or enter into any transaction or take any steps in connection therewith;

- (iii) the Chargor has the right to execute and deliver the Charge and charge the Property and the Chargor's interest in it to the Bank in accordance with the terms hereof. Furthermore, this Charge and any other security or loan documents constitute valid and legally binding obligations of the Chargor enforceable against the Chargor in accordance with their terms and are not subject to any right of rescission, and at the date of entering into this Charge and any other security or loan documents, the Chargor has no right of set-off, counterclaim or defence in respect of the Bank, the Indebtedness, this Charge, or any other security or loan documents. Neither execution and delivery of the this Charge and any other security or loan documents, nor compliance with the terms and conditions of any of them (a) has resulted or will result in a violation of the constating documents governing the Chargor, including any unanimous shareholders' agreement, or any resolution passed by the board of directors, shareholders or partners, as the case may be, of any Chargor, (b) has resulted or will result in a breach of or constitute a default under applicable laws or any agreement or instrument to which any Chargor is a party or by which it or the Property or any part thereof is bound, or (c) requires any approval or consent of any person except such as has already been obtained;
- (iv) the Chargor has not done, omitted nor permitted anything whereby the Property or any Lease or the Chargor's interest in it or any part of it is or may be subject to any Lien or claim except any the Chargor has reported to the Bank in writing;
- (v) there are no limitations affecting title to the Chargor's interest in the Property, except any the Chargor has reported to the Bank in writing and except for building and zoning by-laws which have been and will continue to be complied with or with respect to which the Property is a legal non-conforming use;
- (vi) the Chargor shall, from time to time, both before and after this Charge has become enforceable, sign any document and take any further action at the Chargor's expense as the Bank may think necessary in order to carry out the intention of the Charge;
- (vii) no part of the Property is, has ever been or will in the future be insulated with urea formaldehyde foam insulation;
- (viii) upon the Chargor being in default of its obligations under this Charge, the Bank shall have quiet possession of the Property free from all Liens and claims, except any referred to in paragraphs 9(a)(i), 9(a)(iv) and 9(b)(i);
- (ix) no conveyance, assignment, transfer, sale or other disposition of the Charge or any interest in the Property or any part thereof shall be made or permitted to be made by the Chargor without the prior written consent of the Bank. The Bank shall have the right to convey, assign, transfer, sell, or otherwise dispose of the Charge or any part thereof to a third party without the prior written consent of or notice to the Chargor;
- (x) the Property is in good condition and repair, complies with all applicable laws, permits, licenses and approvals and the present location, occupancy, operation and use of the buildings, structures and other improvements on the Property either comply with all applicable laws or to the extent of any non-compliance, such non-compliance is legally permitted under the applicable laws;
- (xi) the Bank, its servicer and their respective agents and employees shall have the right to enter and inspect the Property at all reasonable times upon reasonable notice (which notice shall not be required to be in writing) to the Chargor. The Bank shall not be considered to have taken possession of the Property or to otherwise become a mortgagee or chargee in possession of the Property by reason of its exercise of any such right;
- (xii) the Chargor shall defend title to the Property for the benefit of the Bank from and against any actions, proceedings and claims;
- (xiii) no Liens shall be created, issued, incurred or permitted to exist on any part of the Property or any interest therein (except in favour of the security of the Indebtedness), without the prior written consent of the Bank in its sole discretion;
- (xiv) the Chargor will not change the use or operation of or abandon the Property, commit or permit any waste of the Property or remove or permit the removal of any building, structure or other improvement from the Property;
- (xv) the manager of the Property and each management agreement shall each be subject to the approval of the Bank in its sole discretion from time to time. The manager shall not be removed or replaced and the management agreement shall not be terminated or amended without the prior consent of the Bank in its sole discretion. Upon the Charge becoming enforceable, the Bank may terminate or require the Chargor to terminate such management agreement and may retain, or require the Chargor to retain, a new manager approved by the Bank (in each case at the Chargor's sole expense). Each management agreement shall contain termination provisions consistent with this paragraph;
- (xvi) the Chargor (i) has obtained all permits, agreements, rights, licences, authorizations, approvals, franchises, trademarks, trade names and similar property and rights (collectively "Permits") necessary to permit the lawful construction, occupancy, operation and use of the Property; (ii) is not in default under such Permits and shall maintain all such Permits in good standing and in full force and effect; (iii) shall not terminate, amend or waive any of its rights and privileges under any Permits without the Bank's prior written consent in its sole discretion; and (iv) is not aware of any proposed changes or any notices or proceedings relating to any Permits (including pending cancellation, termination or expiry thereof). The Chargor shall promptly notify and deliver to the Bank particulars of any such changes, notices or proceedings that may arise from time to time;
- (xvii) the Chargor is not now a non-resident of Canada within the meaning of the *Income Tax Act* (Canada). The Chargor also covenants that it will not be any time prior to the discharge of this Charge, a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (xviii) all services and utilities (including storm and sanitary sewers, water, hydro, telephone and gas services) necessary for the use and operation of the Property are located in the public highway(s) abutting the

Property (or within easements disclosed to and approved by the Bank in writing prior to the date of this Charge) and are connected and available to the Property. The Property has unrestricted and unconditional rights of public access to and from public highways (completed, dedicated and fully accepted for public use by all applicable governmental authorities) abutting the Property at all existing access points. The Chargor is not aware of any proposed changes affecting such access or public highways. The Chargor is not aware of any existing or threatened expropriation or other similar proceeding in respect of the Property or any part thereof; and

- (xvii) there are no existing or threatened actions, proceedings or claims against or relating to the Property or the Chargor except as disclosed to and accepted by the Bank in writing prior to the date of registration of the Charge. Upon becoming aware of any threatened or actual action, proceeding or claim against or relating to the Property or the Chargor, the Chargor shall promptly notify the Bank of same and shall provide the Bank with reasonable information concerning such action, proceeding or claim as the Bank may require from time to time.
- (b) If the Chargor is a tenant or lessee of the Property, the Chargor also represents, warrants and agrees with the Bank that:
- (i) the Chargor is the lawful tenant or lessee of the Property and has a good and marketable leasehold title to the Property, free of any Liens or claims, except any the Chargor has reported to the Bank in writing;
 - (ii) the Property is leased to the Chargor under a good, valid and subsisting lease which is in full force and effect on the date of this Charge (a complete copy of which the Chargor has given to the Bank);
 - (iii) all rents and other moneys payable under each Lease have been paid and the Chargor has not defaulted in respect of any of the Chargor's other obligations set out in such Lease, in both cases up to the date the Chargor signed the Charge;
 - (iv) the Chargor has obtained the consent of the Chargor's landlord or lessor, or the Chargor has the right without such consent, to charge and sublet the Chargor's leasehold interest in the Property to the Bank in the manner provided in the Charge;
 - (v) the Chargor shall pay rent and all other amounts, and perform and observe all other obligations of the lessee or tenant, all as required by each Lease, in default of which the Bank may (but shall not be obligated to) make any such payments or perform or observe any such obligations, and the Chargor shall immediately pay the Bank the amount of any payments made or costs and expenses incurred by the Bank in so doing;
 - (vi) the Chargor shall not surrender the Lease or cause or allow it to be terminated or forfeited;
 - (vii) the Chargor shall not agree to any amendment of any Lease without first obtaining the Bank's written consent;
 - (viii) the Chargor shall promptly give the Bank a copy of any notice, demand or request which the Chargor may receive relating to any Lease or the Property;
 - (ix) the Chargor shall stand possessed of the Property for the last day of the term or of any renewal term granted by each Lease in trust for the Bank, and will assign and sell it as the Bank may direct, but subject to the Chargor's rights herein;
 - (x) there are no limitations on the Chargor's interest in the Lease except as set out in the Lease;
 - (xi) if the Property is located in a national or provincial park, the Lease contains all terms necessary in order for the appropriate governmental authority to consent, if necessary to this Charge;
 - (xii) the Chargor shall not permit any rights of renewal or options to lapse and will exercise all such rights of renewal or options so that the Lease continues as long as the Charge is outstanding;
 - (xiii) if the Chargor subsequently buys the Property from the owner, the Charge will automatically become a Charge on the entire interest in the Property, as if the Chargor had owned the Property when the Charge was originally granted. If requested, the Chargor shall re-mortgage and charge its interest in the Property to the Bank and execute and authorize a registered Charge/Mortgage of Land and any other documentation requested by the Bank;
 - (xiv) the Chargor irrevocably appoints the Bank as its attorney so that it can, on behalf of the Chargor, enforce its rights and remedies under the Lease and exercise any options or renewal rights, options to purchase or assign the Lease on the last day of the term and transfer the Chargor's interest in the Property; and
 - (xv) the Chargor authorizes the Bank to obtain and request information directly from the landlord under the Lease.

10. ENVIRONMENTAL

The Chargor represents and warrants with the Chargee that:

- (a) The Property and all activities conducted thereon comply with all applicable federal, provincial, state and municipal laws, statutes, regulations, rules, by-laws, orders, permits, licences, authorizations, approvals, certificates, standards and requirements relating to environmental or occupational health and safety matters, including the presence, release, reporting, investigation, disposal, remediation and clean-up of Hazardous Substances (collectively, "Environmental Laws"). The Property is not and will not be used at any time for the principal purpose of manufacturing, storing or using Hazardous Substances. The Property contains no Hazardous Substances (except those used incidentally in the ordinary course of business of the Chargor and in compliance with all Environmental Laws), has not been previously, and is not currently, subject to any remediation or clean-up of Hazardous Substances and there has not been and is no prior, existing or threatened investigation, action, proceeding, notice, order, conviction, fine, judgment, claim, directive or Lien of any nature or kind against or affecting the Property or the Chargor arising under or relating to Environmental Laws (each, an "Environmental Proceeding"). All existing environmental assessments, audits, tests and reports relating to the Property have been delivered to the Bank. To the best of the Chargor's knowledge and belief, there are no pending or proposed changes to Environmental Laws or any Environmental Proceedings which would render illegal or affect the present use and operation of the Property. Neither the Chargor nor any other Person has

used or permitted the use of the Property to generate, manufacture, refine, treat, transport, store, handle, dispose, transfer, produce or process Hazardous Substances or as a waste disposal site.

- (b) The Chargor shall: (i) ensure that the Property and the Chargor comply with all Environmental Laws at all times; (ii) not permit any Hazardous Substance to be located, manufactured, stored, spilled, discharged or disposed of at, on or under the Property (except those used incidentally in the ordinary course of business of the Chargor and in compliance with all Environmental Laws); (iii) ensure that any Hazardous Substance brought onto the Property or used by any person on the Property shall be transported, used and stored only in accordance with Environmental Laws; (iv) notify the Bank promptly of any actual, threatened or potential escape, seepage, leakage, spillage, release or discharge of any Hazardous Substance on, from, or under the Property; (v) notify the Bank promptly of any threatened or actual Environmental Proceedings that may arise from time to time and provide particulars thereof; (vi) remediate and cure in a timely manner any non-compliance by the Property or the Chargor with Environmental Laws, including removal of any Hazardous Substances; and (vii) provide the Bank promptly upon request with such information and documents and take such other steps (all at the Chargor's expense) as may be required by the Bank to confirm and/or ensure compliance by the Property and the Chargor with Environmental Laws.
- (c) The Chargor shall indemnify and pay, protect, defend and save the Bank and its directors, officers, employees and agents harmless from and against all actions, suits, fines, sanctions, proceedings, losses, damages, liabilities, claims, demands, judgments, costs and expenses (including legal fees and disbursements on a full indemnity or equivalent basis) (collectively "Environmental Claims") occurring, imposed on, made against or incurred by the Bank arising from or relating to, directly or indirectly, whether or not disclosed by any environmental assessment obtained by the Bank prior to the initial advance and whether or not caused by the Chargor or within its control: (i) any actual or alleged breach of Environmental Laws relating to or affecting the Property, (ii) the actual or alleged presence, release, discharge or disposition of any Hazardous Substance in, on, over, under, from or affecting all or part of the Property or surrounding lands, including any personal injury or property damage arising therefrom, (iii) any actual or threatened Environmental Proceeding affecting the Property including any settlement thereof, or (iv) any assessment, investigation, containment, monitoring, remediation and/or removal of all Hazardous Substances from all or part of the Property or surrounding areas or otherwise complying with Environmental Laws.
- (d) The Bank or agent of the Bank may, at any time, before and after the Charge becomes enforceable and for any purpose deemed necessary by the Bank, enter upon the Property to inspect the Property. Without limiting the generality of the foregoing, the Bank or agent of the Bank may enter upon the Property to conduct any environmental testing, audits, inspections, site assessments, investigations or studies deemed necessary by the Bank. The exercise of any powers enumerated in this paragraph shall not deem the Bank or agent of the Bank to be in possession, management or control of the Property.

11. INSURANCE

- (a) The Chargor will, at its sole expense, in accordance with the provisions of this paragraph 11, insure and keep insured for their full insurable value all buildings and Fixtures now or later forming part of the Property, and all present and future crops and other produce of the land forming part of the Property for the benefit of the Bank until the Indebtedness has been paid in full and the Charge has been discharged. The risks so insured against shall include loss or damage by or from fire (with extended perils coverage), explosion, tempest, lightning and other perils usually covered in fire insurance policies and such additional risks as the Bank may from time to time require, including without limitation, loss of rental and other income and public liability insurance, in each case in amounts satisfactory to the Bank.
- (b) If a steam boiler, pressure vessel, oil or gas burner, coal blower, stoker or air conditioning or sprinkler system is at any time operated on the Property, the Chargor will also insure and keep insured against loss or damage by explosion of or otherwise caused by any such apparatus or system.
- (c) Each insurance policy will be carried with a company or companies, and contain a mortgage clause and a loss payee clause in favour of the Bank as its interest may appear, approved by the Bank. The Chargor shall immediately give the Bank a certified copy of each insurance policy and, not less than ten days before any policy expires or is terminated, evidence of its renewal or replacement. The Bank may require cancellation of any insurance required by the Charge and new insurance effected by an insurer to be approved by the Bank.
- (d) The Bank has the right, but shall not be obligated, to obtain and maintain any insurance if the Chargor fails to do so or fails to comply with any of the obligations set forth in paragraph 11(c). The Chargor shall immediately pay the Bank all premiums paid and all costs and expenses incurred by the Bank to effect such insurance.
- (e) If any loss or damage occurs to any part of the Property, the Chargor shall immediately notify the Bank and, at the Chargor's expense, do everything necessary to enable the Bank to obtain the insurance proceeds. The Bank may require that all or any part of such proceeds, or the proceeds of any other insurance required hereby or otherwise effected with respect to all or any part of the Property, be applied towards all or any part of the Indebtedness, whether or not due, or be used to repair such loss or damage.
- (f) As additional security for payment of the Indebtedness and performance of the Chargor's other obligations under the Charge, the Chargor assigns to the Bank all of the Chargor's interest in or under (i) any policy of insurance effected with respect to all or any part of the Property, whether or not effected in accordance with the provisions of this paragraph 11 and (ii) any insurance trust agreement referred to in paragraph 15(f). The Chargor hereby irrevocably appoints each officer of the Bank (with power of substitution) as attorney of the Chargor to endorse on behalf of the Chargor any cheques issued by any insurer with respect to any policy of insurance effected pursuant to this paragraph 11 or otherwise with respect to all or any part of the Property.
- (g) The Bank may also require that other risks be covered by insurance, depending on the nature or location of the Property.

12. TAXES AND UTILITY CHARGES

The Chargor shall pay or cause to be paid, when due, all Taxes and utility charges relating to all or any part of the Property. Upon request, the Chargor shall give the Bank receipted invoices or other evidence of payment including copies of all utility bills, tax bills, notices of assessment and other notices relating to property taxes and utility charges. If the Chargor fails to make any such payment, or to pay any related penalties, fines or interest, the Bank may, but shall not be obligated to, do so and the Chargor shall immediately pay the amount of such payment to the Bank.

13. REPAIRS, MAINTENANCE AND INSPECTION

- (a) The Chargor shall maintain, use, manage, operate and repair the Property in good condition and in a safe, insurable and state of good repair and shall not do, fail to do or permit anything to be done which, in the opinion of the Bank, will lower its value. The Chargor shall not commit or permit any act of waste on the Property nor allow any part of the Property to become or remain vacant without the Bank's written consent.
- (b) The Chargor shall perform and observe the requirements of every present and future statute, law, by-law, ordinance, regulation and order affecting the operation, condition, maintenance, repair, construction, use or occupation and environmental protection or regulation of all or any part of the Property.
- (c) If any part of the Property is farmland, the Chargor shall in each year either put into crop or summer fallow in a proper manner every part thereof which has been or may in the future be brought under cultivation. The Chargor shall also keep such Property clean and free from all noxious weeds and generally see that it does not depreciate in any way as farmland.
- (d) The Chargor authorizes the Bank to enter on and inspect the Property at all reasonable times whenever the Bank deems it necessary or advisable to do so. The Bank shall not be considered to have taken possession of the Property or to otherwise become a mortgagee in possession of the Property by reason of its exercise of any such right.
- (e) If, in the sole opinion of the Bank, the Chargor does not observe or perform any of the foregoing provisions of this paragraph 13, the Bank may from time to time (but shall not be obligated to) enter on and inspect the Property at any time and make such repairs and do such other acts or things it believes are necessary to protect or preserve the Property and to carry out the Chargor's obligations under this paragraph 13 including, without limitation, if the Property is farmland, the farming, improvement and general management thereof. The Chargor shall immediately pay the Bank all amounts, costs and expenses paid or incurred by it in connection with any of the foregoing.
- (f) If the Chargor fails at any time for a period of ten consecutive days to diligently carry on any Improvement (as defined in paragraph 14) to or on any part of the Property or without the written consent of the Bank departs from the plans and specifications approved by the Bank with respect thereto or from the generally accepted standards of construction in the locality of the Property, or if the Chargor is in default of its obligations under this Charge, the Bank from time to time may enter on the Property and have exclusive possession of all materials, plant and equipment thereon, free of interference from or by the Chargor, and complete the Improvement either according to such plans and specifications or according to such other plans, specifications or design as the Bank in its absolute discretion shall determine. The Chargor shall immediately pay the Bank all costs and expenses incurred by it in connection with any of the foregoing. In exercising any of the foregoing rights, the Bank shall be deemed not to be a mortgagee or chargee in possession.
- (g) Any entry which may be made by the Bank pursuant to any provision of the Charge may be made by any agents, representatives, employees and/or contractors thereof.

14. IMPROVEMENTS; DEMOLITION

- (a) In this paragraph 14, the term "Improvement" has the meaning given to it in the Construction Lien Act (Ontario), as amended or replaced from time to time, and includes any alteration, addition or repair to, and any construction, erection, remodelling, rebuilding or installation on or of, any part of the Property and the demolition or removal of any building or part of any building on the Property.
- (b) The Chargor agrees that no Improvement to or on the Property will be made or commenced (by the Chargor or any other person) unless the Chargor first provides a copy of all proposed plans, blueprints and specifications to the Bank and obtains the Bank's prior written consent thereto. The Improvement shall form part of the Property but, nevertheless, it is expressly agreed that the Charge is not and shall not be a building mortgage under section 21 of the Mortgages Act (Ontario), as amended or replaced from time to time. Subject to paragraph 6, the Bank may, subject to its satisfaction as to compliance with any applicable builder's lien or analogous legislation, make advances to the Chargor under the Charge based on progress in completing the Improvement or upon its completion or, in the case of a building, its occupation or sale or otherwise. The Chargor shall construct and complete the Improvement in accordance with the plans and specifications approved by the Bank and all applicable governmental building standards, codes and requirements as quickly as possible and make all payments for the Improvement that it is required to make, and shall provide the Bank with proof of such payments on request.
- (c) The Bank may retain funds from any advance or advances under the Charge until the Bank is completely satisfied that all statutory holdback provisions have been fully complied with, and may give information in accordance with the Bank's statutory obligations as mortgagee.

15. CONDOMINIUM PROVISIONS

- (a) This paragraph 15 shall apply, in addition to the other provisions of the Charge, if all or any part of the Property is a condominium unit. The Chargor agrees that the common elements pertaining to the Property and any other interest that the Chargor may have in the assets of the Condominium Corporation form part of the Property and are subject to the Charge.
- (b) The Charge is made pursuant to the Condominium Act (Ontario), the Declaration and the by-laws, rules and regulations of the Condominium Corporation as they exist from time to time.
- (c) The Chargor shall pay, when due, all amounts (including without limitation Common Expenses) which, by the terms of the Condominium Act, the Declaration or the by-laws of the Condominium Corporation, are payable by the Chargor or with respect to the Property and provide the Bank on request with proof of such payment. If the Chargor does not make any such payment, the Bank may (but shall not be obligated to) do so, and the Chargor shall immediately pay the Bank any amount so paid.
- (d) The Chargor shall mail to the Bank, by prepaid registered mail, or deliver to the Bank, copies of every notice, assessment, claim or demand for payment, rule, regulation, request or demand of the Bank to consent to any matter, and every other communication relating to all or any part of the Property or the common elements of the

Condominium Corporation so that the Bank receives them at least five days before any such claim or demand is payable or, in the case of other communications, within five days after receipt by the Chargor.

- (e) The Chargor irrevocably appoints, authorizes and empowers the Bank to vote, consent or not consent respecting all matters relating to the affairs of the Condominium Corporation provided that:
- (i) the Chargor shall be entitled to exercise such right to vote or consent or not consent unless the Bank gives notice of its intention to exercise such right, which notice may be for an indeterminate period of time, a limited period of time or a specific meeting or matter;
 - (ii) the Bank's right to vote, consent or not consent does not impose any obligation on the Bank to do so or to protect the Chargor's interests; and
 - (iii) the Bank's exercise of its right to vote, consent or not consent shall not constitute the Bank a mortgagee or chargee in possession and shall not give rise to any liability on the part of the Bank.
- (f) The Chargor shall insure all improvements which at any time the Chargor or any previous owner makes or made to the Property and the Chargor's common or other interest in buildings which are part of the condominium property or common elements pertaining to the Property, against such risks as the Bank may require. If the Condominium Corporation fails to obtain or maintain the insurance it is required to by the Condominium Act, the Declaration, the by-laws or rules of the Condominium Corporation or otherwise to obtain and maintain with respect to all or any part of the Property, the condominium property or common elements pertaining to the Property, or the assets of the Condominium Corporation, the Chargor shall do so. If the Chargor fails to so insure, the Bank may (but shall not be obligated to) do so and the Chargor shall immediately pay the Bank all premiums paid by it. All policies of insurance required to be effected pursuant to this paragraph 15(f) upon or in respect of the buildings on the Property shall provide for any loss to be payable to the Bank and a trustee approved by the Bank pursuant to an insurance trust agreement approved by the Bank, the terms of which shall not be altered without the Bank's prior written consent. Without limiting the generality of paragraph 15(a), it is expressly agreed that the provisions of this paragraph 15(f) are in addition to the Chargor's obligations and the Bank's rights set out in paragraph 11.
- (g) The Chargor will observe all provisions of, and perform all obligations imposed upon the Chargor by, the Condominium Act, the Declaration, the by-laws of the Condominium Corporation and any rule made pursuant to the Condominium Act. The Bank may (but shall not be obligated to) observe and perform such provisions or obligations if the Chargor fails to do so and the Chargor shall immediately pay the Bank all costs and expenses incurred by the Bank in so doing.
- (h) The Bank shall have the right, but not the obligation, at its option to collect the Chargor's contribution to the Common Expenses or any special assessment and the Chargor shall make such payment to the Bank upon request. The Bank shall then forward such payments on to the Condominium Corporation as required.
- (i) The Chargor shall not sell, transfer, convey or otherwise dispose of any parking or storage unit that forms part of the Property while still retaining ownership of the unit.
- (k) The Chargor shall, and does hereby, direct and authorize the Condominium Corporation to permit the Bank to inspect the Condominium Corporation's records at any reasonable time.

16. EFFECT OF SUBDIVISION

If the Property is subdivided, each part of the Property shall continue to secure payment of the total amount of the Indebtedness in an amount not exceeding the Amount Secured and no person shall have any right to require the Indebtedness to be apportioned upon or in respect of any part of the Property.

17. LEASES AND RENTS

- (a) The Chargor assigns to the Bank, as additional security for payment of the Indebtedness (i) all leases heretofore or hereafter granted by the Chargor (or any predecessor in title) of all or any part of the Property and (ii) any rents payable from time to time under such leases and the benefit of the terms and conditions contained therein and of the reversion thereunder. The Chargor shall, on request from time to time, execute a formal assignment of any of the foregoing in a form acceptable to the Bank and, if requested by the Bank, suitable for registration. The Chargor agrees to give the Bank executed copies of all such leases promptly after their execution and to perform all of the Chargor's obligations thereunder. No such assignment or any act of the Bank pursuant thereto shall operate to delay, hinder or prejudice any of the Bank's rights or remedies under the Charge. The Chargor shall also, from time to time, execute and deliver to the Bank such notices to lessees or others and such other documents as the Bank may request for the purpose of protecting or enforcing its rights in respect of such assignments.
- (b) The Bank shall not be responsible for the collection of any rents assigned to it or the performance of the terms and conditions of any lease referred to in this paragraph 17. The Bank shall be responsible to account only for rents actually received, less reasonable collection charges, and may apply such rents to the repayment of the Indebtedness, whether or not due. The Bank shall not by reason of any such collection or any assignment referred to in this paragraph 17 be deemed a mortgagee or chargee in possession.
- (c) Notwithstanding this paragraph 17, no lease of all or any part of the Property shall be made by the Chargor without the prior written consent of the Bank. Notwithstanding any such consent, no such lease shall have priority over this Charge unless the Bank expressly agrees to such priority in writing. For the purposes of the Charge, every action or omission by the lessee under any lease of all or any part of the Property shall be conclusively deemed to be the action or omission of the Chargor.

18. OTHER LIENS; RENEWAL OF LEASES

- (a) Unless the Bank otherwise consents, the Chargor will not create or permit to exist any Lien on or against all or any part of the Property, any Lease or any leases or rents referred to in paragraph 17, other than Liens (i) for taxes which are not due or (ii) incidental to construction, repairs or current operations which have not been registered against the Property, which relate to obligations which are not due and written notice of which has not been given to the Bank. The Chargor shall pay, when due, all amounts payable under, in respect of or secured

by any Lien or other claim on, against or relating to all or any part of the Property or any Lease or any lease or rents referred to in paragraph 17 and shall comply with all obligations contained in the document or statute under which any such Lien or other claim arose. The Bank may, but shall not be obligated to, pay any such amount and/or cure any default under any such document or statute and the Chargor will immediately pay the Bank all amounts, costs and expenses paid or incurred in so doing. To the extent the Bank pays any such amount, it shall be entitled to all equities and securities of the person or persons so paid and it may retain any discharge or cessation of charge unregistered until paid. The Chargor shall immediately notify the Bank in writing of the creation or coming into existence of any Lien on or against all or any part of the Property or any Lease or any lease or rents referred to in paragraph 17 and of the terms and conditions thereof.

- (b) The Bank may from time to time obtain a court order vacating any construction lien registered against all or any part of the Property and, if the Bank considers it necessary, provide financial guarantees or other security to facilitate the obtaining of any such order. The Chargor shall immediately pay the Bank all costs and expenses paid or incurred by the Bank to obtain such order or to provide such guarantees or security.
- (c) If the Chargor has a leasehold interest in the Property and the Chargor refuses or neglects to renew any Lease, the Bank may (but shall not be obligated to) from time to time effect any such renewal in its own name or otherwise. The Chargor shall immediately pay the Bank all costs and expenses incurred by the Bank in connection with any such renewal. In so doing, the Bank shall not be considered a mortgagee or chargee in possession.

19. POSSESSION

Until the Charge becomes enforceable, the Chargor shall be entitled to possession of the Property, subject to the terms of the Charge.

20. DEFAULT

Where the Indebtedness of the Chargor to the Bank is: (a) of a demand nature, then the Chargor shall be in default under this Charge if it fails to pay on demand by the Bank all or any part of the Indebtedness; (b) not of a demand nature, then the Chargor shall be in default under this Charge if any of the following events or circumstances (collectively, "Events of Default") shall occur and be continuing:

- (a) the Chargor fails to pay when due all or any part of the Indebtedness or any amount payable pursuant to any loan agreement, bill of exchange, promissory note, guarantee or other instrument, agreement or document (negotiable or otherwise) now or later entered into, with or in favour of or held by the Bank in respect of or representing all or any part of the Indebtedness;
- (b) the Chargor fails to observe or perform any provisions or obligations hereunder or under any loan agreement, bill of exchange, promissory note, guarantee or other instrument, agreement or document (negotiable or otherwise) now or later entered into with or in favour of or held by the Bank except as contemplated in paragraph 20(a);
- (c) the Chargor fails to pay when due any indebtedness for borrowed money except as contemplated in paragraphs 20(a) and (b);
- (d) any statement, representation or warranty the Chargor has given or made or hereafter gives or makes to the Bank (whether in the Charge or otherwise) in respect of the Property, the Charge, any Lease, the Indebtedness or the affairs of the Chargor including any financial statement or other document at any time delivered by or on behalf of the Chargor to the Bank in connection with the Indebtedness that is untrue, incorrect or misleading in any material way on the date made or given;
- (e) any Lien is created or otherwise exists in respect of the Property or any Lien or notice of a Lien is registered against the Property without the Bank's prior written consent;
- (f) the Property is abandoned or any act of waste is committed as to all or any part of the Property; or any building or other structure now or later being erected on the Property remains unfinished and without any work being done on it for a period of ten consecutive days;
- (g) the Chargor sells, transfers, leases or otherwise disposes of or conveys all or any part of the Property or any Lease or any interest in any of the foregoing, or agrees to do so, without the Bank's prior written consent;
- (h) the Chargor changes the use of the Property or ceases to carry on the business ordinarily carried on from the Property without the Bank's prior written consent;
- (i) any order is made or resolution passed for the winding-up, liquidation or other dissolution of the Chargor (if the Chargor is a corporation), or there is a change in the membership or a dissolution of the Chargor (if the Chargor is a partnership);
- (j) in the opinion of the Bank, there is a change in effective control of the Chargor (if the Chargor is a corporation);
- (k) the Chargor makes an assignment for the benefit of creditors, or any proceedings shall be instituted by or against the Chargor seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding-up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or other similar law or seeking the appointment of a receiver, receiver and manager, trustee, custodian or other similar official for it or for any of its property (excluding proceedings which are being contested by the Chargor in good faith, which have been outstanding for fewer than 30 days and in respect of which any enforcement proceedings are stayed), or the Chargor is declared bankrupt, or a receiver, receiver and manager, trustee, custodian or other similar official is appointed of it or in respect of all or any part of the Property, or power of sale or foreclosure proceedings are commenced against all or any part of the Property;
- (l) all or any part of the Property is expropriated;
- (m) in the opinion of the Bank, an adverse change shall occur in the financial condition of the Chargor or in respect of the Property;
- (n) the Chargor or its representative or any other person or municipality or other governmental authority should attempt to rezone the Property or otherwise attempt or cause to be made any changes to the Official Plan or other secondary plans or site plan or development agreements relating to the Property without the Bank's prior written consent;

- (o) the Property is subject to a restraint order under the *Controlled Drugs and Substances Act* or a similar order under any law or the Chargor or any other person uses or has used the Property for any purpose in violation of the *Controlled Drugs and Substances Act* or any similar law;
- (p) the Chargor fails to pay utility charges and Taxes when due;
- (q) the Chargor fails to comply with its obligations under paragraph 11 with respect to insurance;
- (r) the Chargor increases the principal amount owing under any prior mortgage or re-borrows any amount repaid under a prior mortgage without the prior written consent of the Bank;
- (s) any default by the Chargor under any mortgage, charge, hypothec, security interest or other financial encumbrance of all or any part of the Property ranking in priority, to or subsequent to the Charge which is not cured within any cure periods applicable thereto;
- (t) any attornment of rents or withdrawal of consent to collect rents, power of sale or other sale by creditor, judicial sale, foreclosure, taking payment, taking possession or other enforcement or realization (whether or not permitted hereunder) proceedings are commenced against or in respect of the Chargor, the Property or any part thereof under or in respect of such mortgage, charge, hypothec, security interest or other financial encumbrance or any holder thereof takes possession or control of any part of the Property; and
- (u) any writ of execution, distress, attachment or other similar process is issued or levied against the Chargor or all or any part of its assets, or any judgement or order is made against the Chargor by a court of competent jurisdiction and such writ, distress, attachment process, judgement or order relates to or otherwise includes the Property or any part thereof;

provided that where loan documentation provides for one or more events of default that are inconsistent or conflict with the terms of one or more Events of Default, then the Events of Default in this Charge shall prevail, unless the loan documentation explicitly states that such loan documentation prevails over this Charge in the event of inconsistency. If the loan documentation states that it prevails over this Charge in the event of inconsistency, it shall only prevail to the extent specifically stated in such loan documentation. Notwithstanding the foregoing, if the loan documentation contains events of default that are in addition to any Events of Default set forth in this Charge, the existence of such additional events of default shall not in itself constitute a conflict or inconsistency.

21. REMEDIES ON DEFAULT

- (a) If the Chargor is in default of its obligations under this Charge, the Bank may (but shall not be obligated to), from time to time and in any order, separately or in combination, and after giving the minimum notice, if any, required by applicable law and obtaining court approval where necessary, enforce any one or more of the following remedies:
 - (i) sue the Chargor for all or any part of the Indebtedness;
 - (ii) distrain for arrears of all or any part of the Indebtedness;
 - (iii) take judicial proceedings to foreclose the Chargor's and/or any other person's interest in all or any part of the Property or any Lease, to take possession of it and/or to sell, lease or otherwise deal with it;
 - (iv) enter on and take possession of all or any part of the Property;
 - (v) sell and/or lease all or any part of the Property or sell the unexpired term of any Lease;
 - (vi) assign any Lease and sell the last day of the term granted by the Lease and/or remove the Chargor or any other persons from being a trustee of the last day of the term of any Lease and appoint a new trustee or trustees in its place;
 - (vii) appoint in writing a receiver (which term as used herein includes a receiver and manager) of all or any part of the Property and the rents and other income thereof and from time to time remove any receiver and appoint another in its place;
 - (viii) exercise in respect of the insurance policies, insurance trust agreements, leases, rents and benefits assigned pursuant to paragraphs 11(f) and 17(a) the remedies exercisable by the Bank in respect of all or any part of the Property; and
 - (ix) exercise any other rights or remedies which the Bank may have, whether pursuant to the Charge, at law, in equity, by contract or otherwise.
- (b) Nothing contained herein and nothing done by the Bank or any receiver, other than taking possession of the Property in fact, shall render the Bank or such receiver a mortgagee or chargee in possession.
- (c) The Chargor hereby waives the right to claim any exemption with respect to the Bank's right of distress and agrees that the Bank shall not be limited as to the amount for which it may distrain.
- (d) Any sale contemplated or permitted herein may be for cash or for credit, or partly for cash and partly for credit, by tender, private sale or public auction, as a whole or in separate parcels, with or without a reserve bid, with or without advertisement and at any time or times and on such terms as the Bank thinks reasonable. The Bank will be accountable for sale proceeds or rent only when received in cash. The Bank may use the services of any real estate agent in connection with any sale or lease (including any agent affiliated with the Bank). The Bank may apply the net proceeds of any lease or sale to any part of the Indebtedness determined by the Bank and the Chargor will pay the Bank any part of the Indebtedness remaining unpaid.
- (e) The Bank may cancel or amend any contract of sale or lease and sell or lease again, or adjourn any such sale from time to time, all as the Bank thinks reasonable, without being responsible for any resulting loss.
- (f) Any purchaser or lessee from the Bank or a receiver pursuant hereto shall not be required to see to the validity, legality, regularity or propriety of such sale or lease, or that the default has happened on account of which the sale or lease is being made. The Chargor agrees that each such purchaser and lessee will receive good title to or a valid lease of that part of the Property sold or leased, and that the Chargor will not make any claims concerning the validity, legality, regularity or propriety of the sale or lease against the purchaser or lessee or their successors in title. The Chargor's only claim respecting such validity, legality, regularity or propriety will be made against the Bank and will be in damages only.

- (g) The Bank may lease or sell without entering into actual possession of the Property and, while in possession, shall only be accountable for moneys actually received by it.
- (h) Without limiting the generality of paragraph 21(a), sales may be made from time to time of parts of the Property to satisfy any part of the Indebtedness, leaving the balance thereof secured under the Charge on the remainder of the Property.
- (i) If the Chargor has a leasehold interest in the Property, the Chargor irrevocably appoints each officer of the Bank (with power of substitution) to be the Chargor's attorney during the continuance of the Charge so as to permit the Bank to execute any document or do any act or thing which the Bank is permitted or the Chargor is required to execute or do pursuant to the provisions hereof.
- (j) If the Chargor has a leasehold interest in the Property, the Chargor shall (i) at the request of the Bank and at the cost and expense of the Chargor, sell and assign to the Bank or any person appointed by the Bank, the last day of the term of the Lease or any renewal term, and (ii) in the event of any sale by the Bank as contemplated herein, hold such last day in trust for the purchaser, and the purchaser's heirs, executors, administrators, successors and assigns.
- (k) Neither the Chargor nor any person claiming an interest in the Property through the Chargor shall interfere in any way with the Bank's possession of the Property obtained pursuant to the provisions hereof nor with the possession of anyone to whom all or any part of the Property is sold or leased by the Bank or any receiver appointed pursuant to the provisions hereof.
- (l) In appointing a receiver pursuant to the provisions hereof, the Bank shall be deemed to be acting as the Chargor's agent and attorney so that the receiver shall, with respect to responsibility for the receiver's acts or omissions, be considered the Chargor's agent. The Bank may from time to time fix the remuneration of the receiver and direct its payment out of the income of the Property, but in no event shall the Bank incur any liability for such remuneration. The receiver shall, in the Bank's discretion, be vested with and may enforce all or any of the Bank's rights and discretions under the Charge with the same effect as if exercised by the Bank (including without limitation the rights and discretions set out in paragraph 8) and such other rights as the Bank may confer in writing. The receiver shall have the power to borrow on the security of the Property in priority to the Charge or otherwise, to collect rent and other income of the Property and to carry on or concur in carrying on any business carried on by the Chargor on the Property. From the rent and other income collected, and from the proceeds of all other realization hereunder, the receiver shall, in such order as the Bank sees fit: pay all the rents, taxes, rates, insurance premiums and other outgoings affecting the Property and any other amount the Bank is permitted to pay hereunder; pay the receiver's own remuneration and the cost of repairs; pay all amounts required to keep in good standing any Liens ranking in priority to the Charge; and pay the Bank all or any part of the Indebtedness.

22. EXPENSES

The Chargor shall immediately pay to the Bank all amounts the Bank is permitted to pay under the Charge and all costs and expenses of or relating to inspecting, protecting, repairing, completing, insuring, taking and keeping possession of and managing all or any part of the Property, preparing it for sale or lease, selling or leasing it, renewing any leasehold interest, collecting any part of the Indebtedness, the exercise of any of the rights of a receiver appointed pursuant to the provisions hereof, such receiver's fees and expenses, agents' costs and expenses, legal fees and expenses on a full indemnity basis, and any other costs and expenses of exercising or protecting the Bank's rights (hereunder or otherwise) or all or any part of the Property. The Chargor shall pay the Bank on demand interest at the Interest Rate on such amounts, costs and expenses (and on all other Costs) from the date they are paid by the Bank until they are repaid by the Chargor, which interest shall be calculated as provided in the schedule.

23. RENEWING OR AMENDING CHARGE

The Charge (or any agreement referred to in this paragraph 23) may from time to time be renewed or amended by one or more written agreements with the Chargor, or with any successor or successors in title to the Chargor, with or without any increase or decrease in the Interest Rate or extension of time for payment. Whether or not there are any other instruments registered on title to the Property after the Charge at the time any such written agreement is entered into, it will not be necessary for the Bank to register the written agreement on title to the Property in order to retain priority for the Charge, as renewed or amended, over any other instrument registered after the Charge. The Chargor acknowledges that the provisions of this paragraph 23 shall not confer any right of renewal upon the Chargor.

24. DISCHARGE

The Charge shall only terminate upon payment in full of the Indebtedness and complete performance of the Chargor's other obligations hereunder, provided that such termination shall be effective only if the Bank shall have received a written notice from the Chargor requesting a discharge or assignment hereof and if no further Indebtedness becomes outstanding prior to the delivery of such discharge or assignment. Upon termination of the Charge, the Chargor may request in writing that the Bank provide the Chargor with a discharge of the Charge or an assignment of the Charge to a third party and the Bank shall sign such document and send it to the Chargor within a reasonable time. The Chargor shall pay immediately the Bank's usual administration fee for preparing, reviewing, signing and/or delivering any such discharge or assignment and the Bank's legal and other expenses, whether such documentation is prepared by the Chargor's lawyer or by the Bank's lawyer. It is the Chargor's responsibility to register the discharge or assignment on title and to pay the registration fee.

25. SUCCESSORS AND ASSIGNS; JOINT AND SEVERAL LIABILITY

- (a) The Charge is binding on and enures to the benefit of the Chargor and the Bank and their respective heirs, executors, administrators, legal representatives, successors and assigns, and any person(s) to whom the Chargor's interest in all or any part of the Property, or the Bank's interest in the Charge, may be transferred.
- (b) If more than one person signs the Charge as chargor, such persons are jointly and severally liable to observe and perform all of the Chargor's obligations herein.

26. INTERPRETATION AND HEADINGS

Paragraph headings do not form a part hereof but are used only for ease of reference. Any reference herein to the singular or the neuter shall also mean the plural or the masculine or the feminine where the context or the parties to the Charge so require. If any provision hereof is illegal or unenforceable it shall be considered separate and severable from the remaining provisions hereof which shall remain in force and be binding as though such first mentioned provision was not included.

27. SET-OFF

All payments made by the Chargor to the Bank under the Charge will be made in respect of the Indebtedness without any legal or equitable set-off or counterclaim and without any deduction or withholdings of any kind.

28. STATUTES AND REGULATIONS

Any reference to a statute herein is a reference to both the statute and any regulations made under the statute. Any reference to a statute also includes any amendments to or re-enactments of the statute or regulations. If a specific section, subsection, paragraph or clause of a statute or regulation is referred to, that reference includes the corresponding provision in any amended or re-enacted statute or regulation.

29. CONSENTS AND DISCLOSURE

The Chargor hereby consents to the Bank transferring, selling, assigning or syndication of the Indebtedness, the Charge and all of its rights under the Charge. If the Bank does so, it may disclose information about the Chargor, the Charge and the Indebtedness to anyone to whom the Bank transfers, sells, assigns or syndicates or proposes to transfer, sell, assign or syndicate its rights. The Bank may also disclose information about the Chargor, the Charge and the Indebtedness to an insurer or other third party from whom the Bank may obtain benefits to protect its security. The Chargor hereby consents to insurers and other third parties that provide benefits or services to the Bank for the Charge obtaining information about the Chargor from credit bureaus and other lenders to evaluate the Chargor and the Charge.

30. SECURITY INTEREST IN PERSONAL PROPERTY

The Chargor covenants and agrees to execute and deliver to the Bank, on demand, a security interest in all chattels, furnishings, equipment, appliances and all other personal property owned now or in the future by the Chargor and situate in or about the Property. The form and content of such security interest shall be acceptable to the Bank. The Chargor agrees to pay all legal and other expenses incurred by the Bank in connection with the preparation and registration of the security interest and any renewals thereof forthwith upon demand and such fees and expenses, together with interest thereon at the Interest Rate, shall be added to the Indebtedness and secured by this Charge.

31. FARM DEBT MEDIATION ACT

- (a) The Chargor represents and warrants that except as previously disclosed to the Bank it is not a "farmer" as defined in the *Farm Debt Mediation Act*, S.C. 1997, c.21, as amended and/or restated from time to time.
- (b) In the event that the Chargor is not a "farmer" as defined by the said act, the Chargor covenants that it will promptly notify the Bank in writing if the Chargor becomes a "farmer" as defined by the said act.

32. ONTARIO NEW HOME WARRANTIES PLAN ACT

If the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31, applies to the Property, the Chargor covenants and agrees to meet all of its requirements under said act. The Chargor also covenants and agrees to immediately reimburse the Bank for any costs that the Bank incurs in meeting the Chargor's obligations or enforcing the Chargor's rights on the Chargor's behalf under said act, if the Bank chooses to do so.

33. FAMILY LAW

The Chargor represents and warrants that all information given to the Bank in connection with this Charge concerning marital and spousal status was, when given and when the Charge was delivered to the Bank, completely truthful and accurate. If any change in such status occurs, the Chargor covenants to inform the Bank immediately in writing.

34. COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION

The Chargor acknowledges and agrees that during the course of the relationship between the Chargor and the Bank, the Bank may collect financial and related information about the Chargor and/or its employees, officers, and directors (if applicable) (the "Personal Information"). Personal Information includes the following:

- information about this Charge, the Amount Secured, and any related documents;
- information about the Chargor's transactions using the Bank's products and services;
- information to identify the Chargor and/or its employees, officers or directors (if applicable) or to qualify the Chargor for products and services; and
- information required by the Bank for regulatory purposes.

The Bank may collect Personal Information from a number of different sources, including the Chargor's application for this Charge and for the Indebtedness, references provided by the Chargor, credit reporting agencies, other financial institutions, service providers, the Bank's internal records, and from individuals authorized to act on the Chargor's behalf.

The Bank may use the Personal Information to open, process, service, maintain and collect upon this Charge and any related agreements. The Bank will use and disclose the Personal Information according to the Bank's privacy policies, as such policies may be amended, replaced or supplemented from time to time.

The Chargor acknowledges and agrees that the Bank may enter into the Charge and any related agreements on behalf of another entity, as an agent or nominee, and also that the Bank may assign this Charge and any related agreements to another entity. In these cases, the entity is known as the "beneficial owner". The Bank may disclose the Personal Information to the beneficial owner, its agents, and any person or entity to which the beneficial owner assigns this Charge or any related agreements. The Bank may also disclose the Personal Information to any service provider. Service providers are any person or entity that:

- is involved in the servicing, maintenance, collection or operation of this Charge or any of the related agreements; or
- provides services or benefits to the Chargor under this Charge or any of the related agreements, including loyalty programs.

35. CONSOLIDATION

The Chargor acknowledges and agrees that the Bank has a right of consolidation that applies to the Charge and to any other mortgages and/or charges given by the Chargor to the Bank. As a result of such right of consolidation, if the Chargor has mortgaged other property to the Bank and the Chargor is in default of its obligations under this Charge, the Chargor shall not have the right to pay off the Charge or any mortgage or charge of other property unless the Chargor pays to the Bank the Amount Secured.

This is Exhibit "B" referred to in the Supplemental Affidavit of
Sieg Flatt sworn November 25, 2019.



Commissioner for Taking Affidavits (or as may be)

Emma Dalziel

ACKNOWLEDGMENT

TO: Canadian Imperial Bank of Commerce

RE: Nauss Plumbing & Heating Inc. first mortgage to Canadian Imperial Bank of
Commerce
7 Millichamp Street, Markstay (The Corporation of the Municipality of Markstay-
Warren)
Loan Number: 7854425428

The undersigned, being the mortgagor in the above transaction, hereby acknowledges receiving a copy of Standard Charge Terms No. 201203 before signing the above charge or mortgage, and the undersigned understands that the said Standard Charge Terms are incorporated by reference into such charge or mortgage.

DATED at Greater Sudbury, this 21, day of August, 2017.

NAUSS PLUMBING & HEATING INC.

Per: 

Name: Denis Groves

Title: President

I have authority to bind the Corporation

ACKNOWLEDGEMENT AND DIRECTION

TO: Amanda Berloni
RE: Nauss Plumbing & Heating Inc. mortgage to Canadian Imperial Bank of Commerce (File No. 218408)

This will confirm that:

- I have reviewed the information set out below, and that this information is accurate;
- You are authorized and directed to register electronically on my behalf the document(s) described in this Acknowledgement and Direction as well as any other document(s) required to complete the transaction described above;
- You are authorized and directed to enter into an escrow closing arrangement substantially in the form attached hereto as Schedule "A" and I acknowledge that I shall be bound by the terms of that Agreement;
- The effect of the electronic documents described in this Acknowledgement and Direction has been fully explained to me and I understand that I am party to and bound by the terms and provisions of these electronic document(s) to the same extent as if I had signed these documents; and
- I am in fact the party named in the electronic documents described in this Acknowledgement and Direction and I have not misrepresented my identity to you.

DESCRIPTION OF CHARGE/MORTGAGE (for the Chargor):

Property				
<i>PIN</i>	73484-0035	LT	<i>Estate/Qualifier</i>	Fee Simple
<i>Description</i>	Being Part 1, On Plan 53R-16102, Firstly: Lot 22, Plan M-1034, Secondly Part Lot 12, Concession 3, The Corporation of the Municipality of Markstay-Warren			
<i>Address</i>	7 Millichamp Street Markstay, Ontario P0M 2G0			

Chargor	
<i>Name</i>	NAUSS PLUMBING & HEATING INC.
I, Denis Groves (President), have authority to bind the corporation. This document is not authorized under Power of Attorney by this party.	

Chargee	<i>Capacity</i>	<i>Share</i>
<i>Name</i>	CANADIAN IMPERIAL BANK OF COMMERCE	

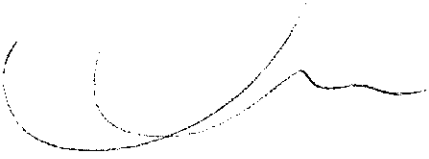
Provisions		
<i>Principal</i>	\$583,000.00	<i>Currency</i> CDN
<i>Calculation period</i>		
<i>Balance Due Date</i>		
<i>Interest Rate</i>	Prime Rate plus 5%	
<i>Payments</i>	\$0.00	
<i>Interest Adjustment Date</i>		

ACKNOWLEDGEMENT AND DIRECTION

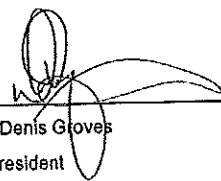
Payment Date
First Payment Date
Standard Charge Terms 201203
Insurance Amount Full insurable value
Guarantor

Dated at Greater Sudbury, this 21 day of August, 2017.

Witness:



Nauss Plumbing & Heating Inc.

Per: 

Name: Denis Groves
Title: President

Properties

PIN 73484 - 0035 LT *Interest/Estate* Fee Simple
Description PCL 53628 SEC SES; FIRSTLY: LT 22 PL M1034 HAGAR; SECONDLY: PT LT 12 CON
 3 HAGAR PT 1, 53R16102; MARKSTAY-WARREN
Address 7 MILLICHAMP STREET
 MARKSTAY

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name NAUSS PLUMBING & HEATING INC.
 Acting as a company
Address for Service 2590 Lasalle Boulevard, Sudbury, Ontario, P3A 4R7

I, Denis Groves (President), have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Chargee(s)

Capacity

Share

Name CANADIAN IMPERIAL BANK OF COMMERCE
 Acting as a company
Address for Service New Sudbury Centre, 1349 Lasalle Boulevard, Sudbury, Ontario, P3A 1Z2

Statements

Schedule: See Schedules

Provisions

Principal \$ 683,000.00 *Currency* CDN
Calculation Period
Balance Due Date
Interest Rate Prime Rate plus 5%
Payments
Interest Adjustment Date
Payment Date
First Payment Date
Last Payment Date
Standard Charge Terms 201203
Insurance Amount Full insurable value
Guarantor

File Number

Chargee Client File Number : M218408; Ref# 7854425428

11426 Schedule-201205
Ontario

Schedule 1 (APFI)

All words that are defined in the set of standard charge terms referred to in the attached Charge/Mortgage of Land shall have the same meaning when used in this Schedule.

Indebtedness

1. For the purposes of the Charge, the term "Indebtedness" means the aggregate of all present and future Indebtedness and liabilities of the Chargor to the Bank (direct or indirect, absolute or contingent, matured or not, wheresoever and howsoever incurred, whether incurred as principal or surety, whether incurred alone or with another or others, and whether arising from dealings between the Bank and the Chargor or from other dealings or proceedings by which the Bank may become a creditor of the Chargor) including without limitation the outstanding balance of the Principal Amount advanced to the Chargor from time to time, interest thereon at the Interest Rate and all other present and future indebtedness and liabilities of the Chargor to the Bank payable under or by virtue of the Charge.

Interest Rate

1. The Interest Rate is a variable rate per year equal to the Prime Rate plus 5 % per year, calculated and compounded monthly, with interest on overdue interest at the same rate. The Interest Rate will change automatically, without notice, whenever the Prime Rate changes.

Despite the Interest Rate noted above, the Interest Rate payable by the Chargor on any part of the Indebtedness will be the interest rate specified in the relevant instrument, agreement, or other document between the Chargor and the Bank that relates to that part of the Indebtedness. Interest will be calculated as set out in the relevant instrument, agreement or document, or if not set out, will be calculated and compounded monthly, with interest on overdue interest at the same rate. If no interest rate is specified in the relevant instrument, agreement or document, you will pay interest on such part of the Indebtedness at the Interest Rate.

Interest is payable on the Indebtedness until it has been paid, both before and after default, demand, maturity and judgment.

2. Notwithstanding any provision of the Charge or any other loan documents to the contrary, in no event will the aggregate "interest" (as defined in Section 347 of the *Criminal Code* (Canada)) payable on the Indebtedness exceed the effective annual rate of interest on the Principal Amount lawfully permitted under that Section and, if any payment, collection or demand pursuant to the Indebtedness in respect of "interest" (as defined in that Section) is determined to be contrary to the provisions of that Section, such payment, collection or demand will be deemed to have been made by mutual mistake of the Chargor and Bank and the amount of such payment or collection shall either be applied to the Principal Amount (whether or not due and payable), and not to the payment of interest (as defined in Section 347 of the said *Criminal Code*), or be refunded to the Chargor at the option of the Bank. For purposes of each loan document, the effective annual rate of interest will be determined in accordance with generally accepted actuarial practices and principles over the term of the Indebtedness on the basis of annual compounding of the lawfully permitted rate of interest. In the event of dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Bank will be conclusive for the purposes of such determination.

This is Exhibit "C" referred to in the Supplemental Affidavit of
Sieg Flatt sworn November 25, 2019.



Commissioner for Taking Affidavits (or as may be)

Emma Dalziel

ACKNOWLEDGMENT

TO: Canadian Imperial Bank of Commerce
RE: Nauss Plumbing & Heating Inc. first mortgage to Canadian Imperial Bank of
Commerce
551 Centre Street, Espanola
Loan Number: 7854425428

The undersigned, being the mortgagor in the above transaction, hereby acknowledges receiving a copy of Standard Charge Terms No. 201203 before signing the above charge or mortgage, and the undersigned understands that the said Standard Charge Terms are incorporated by reference into such charge or mortgage.

DATED at Greater Sudbury, this 21st day of August, 2017.

NAUSS PLUMBING & HEATING INC.

Per: 

Name: Denis Groves

Title: President

I have authority to bind the Corporation

ACKNOWLEDGEMENT AND DIRECTION

TO: Amanda Bertoni
RE: Nauss Plumbing & Heating Inc. purchase from Taricani Limited (File No. 218352)
and Nauss Plumbing & Heating Inc. mortgage to Canadian Imperial Bank of Commerce (Ref. No. 7854425428)

This will confirm that:

- I have reviewed the information set out below, and that this information is accurate;
- You are authorized and directed to register electronically on my behalf the document(s) described in this Acknowledgement and Direction as well as any other document(s) required to complete the transaction described above;
- You are authorized and directed to enter into an escrow closing arrangement substantially in the form attached hereto as Schedule "A" and I acknowledge that I shall be bound by the terms of that Agreement;
- The effect of the electronic documents described in this Acknowledgement and Direction has been fully explained to me and I understand that I am party to and bound by the terms and provisions of these electronic document(s) to the same extent as if I had signed these documents; and
- I am in fact the party named in the electronic documents described in this Acknowledgement and Direction and I have not misrepresented my identity to you.

DESCRIPTION OF CHARGE/MORTGAGE (for the Chargor):

Property				
<i>PIN</i>	73407-0024	LT	<i>Estate/Qualifier</i>	Fee Simple
<i>Description</i>	Part Lot 8, Concession 5 as in LT64894, Except Part 1, Plan 53R13128 & Part 1, Plan 53R17437, Township of Merritt			
<i>Address</i>	551 Centre Street Espanola, Ontario P5E 1J9			

Chargor	
Name	NAUSS PLUMBING & HEATING INC.
I, Denis Groves (President), have authority to bind the corporation. This document is not authorized under Power of Attorney by this party.	

Chargee	Capacity	Share
Name	CANADIAN IMPERIAL BANK OF COMMERCE	

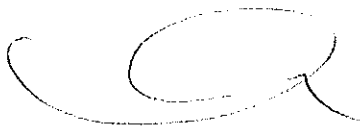
Provisions		
<i>Principal</i>	\$206,000.00	<i>Currency</i> CDN
<i>Calculation period</i>		
<i>Balance Due Date</i>		
<i>Interest Rate</i>	Prime Rate plus 5%	
<i>Payments</i>	\$0.00	

ACKNOWLEDGEMENT AND DIRECTION

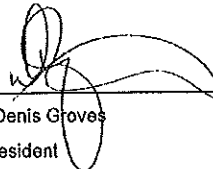
Interest Adjustment Date
Payment Date
First Payment Date
Standard Charge Terms 201203
Insurance Amount Full insurable value
Guarantor

Dated at Greater Sudbury, this 21 day of August, 2017.

Witness:



Nauss Plumbing & Heating Inc.

Per:  _____

Name: Denis Groves
Title: President

LRO # 53 Charge/Mortgage

In preparation on 2017 08 18 at 11:40

This document has not been submitted and may be incomplete.

yyyy mm dd Page 1 of 1

Properties

PIN 73407 - 0024 LT *Interest/Estate* Fee Simple
Description PCL 10208 SEC SWS; PT LT 8 CON 5 MERRITT AS IN LT64894 EXCEPT PT 1
 63R13128 & PT 1 63R17437; S/T PT 2 & 3 63R13128 AS IN LT696428; ESPANOLA
Address 651 CENTRE STREET
 ESPANOLA

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name NAUSS PLUMBING & HEATING INC.
 Acting as a company
Address for Service 2590 Lasalle Boulevard, Sudbury, Ontario, P3A 4R7

I, Denis Groves (President), have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Chargee(s)*Capacity**Share*

Name CANADIAN IMPERIAL BANK OF COMMERCE
 Acting as a company
Address for Service New Sudbury Centre, 1349 Lasalle Boulevard, Sudbury, Ontario, P3A 1Z2

Statements

Schedule: See Schedules

Provisions

Principal \$ 206,000.00 *Currency* CDN
Calculation Period
Balance Due Date
Interest Rate Prime Rate plus 5%
Payments
Interest Adjustment Date
Payment Date
First Payment Date
Last Payment Date
Standard Charge Terms 201203
Insurance Amount Full insurable value
Guarantor

File Number

Chargor Client File Number : 218352

Chargee Client File Number : 7854426428

11425 Schedule-2012/05
Ontario

Schedule 1 (APFI)

All words that are defined in the set of standard charge terms referred to in the attached Charge/Mortgage of Land shall have the same meaning when used in this Schedule.

Indebtedness

1. For the purposes of the Charge, the term "Indebtedness" means the aggregate of all present and future indebtedness and liabilities of the Chargor to the Bank (direct or indirect, absolute or contingent, matured or not, wheresoever and howsoever incurred, whether incurred as principal or surety, whether incurred alone or with another or others, and whether arising from dealings between the Bank and the Chargor or from other dealings or proceedings by which the Bank may become a creditor of the Chargor) including without limitation the outstanding balance of the Principal Amount advanced to the Chargor from time to time, interest thereon at the Interest Rate and all other present and future indebtedness and liabilities of the Chargor to the Bank payable under or by virtue of the Charge.

Interest Rate

1. The Interest Rate is a variable rate per year equal to the Prime Rate plus 5 % per year, calculated and compounded monthly, with interest on overdue interest at the same rate. The Interest Rate will change automatically, without notice, whenever the Prime Rate changes.

Despite the Interest Rate noted above, the Interest Rate payable by the Chargor on any part of the Indebtedness will be the interest rate specified in the relevant instrument, agreement, or other document between the Chargor and the Bank that relates to that part of the Indebtedness. Interest will be calculated as set out in the relevant instrument, agreement or document, or if not set out, will be calculated and compounded monthly, with interest on overdue interest at the same rate. If no interest rate is specified in the relevant instrument, agreement or document, you will pay interest on such part of the Indebtedness at the Interest Rate.

Interest is payable on the Indebtedness until it has been paid, both before and after default, demand, maturity and judgment.

2. Notwithstanding any provision of the Charge or any other loan documents to the contrary, in no event will the aggregate "interest" (as defined in Section 347 of the *Criminal Code* (Canada)) payable on the Indebtedness exceed the effective annual rate of interest on the Principal Amount lawfully permitted under that Section and, if any payment, collection or demand pursuant to the Indebtedness in respect of "interest" (as defined in that Section) is determined to be contrary to the provisions of that Section, such payment, collection or demand will be deemed to have been made by mutual mistake of the Chargor and Bank and the amount of such payment or collection shall either be applied to the Principal Amount (whether or not due and payable), and not to the payment of interest (as defined in Section 347 of the said *Criminal Code*), or be refunded to the Chargor at the option of the Bank. For purposes of each loan document, the effective annual rate of interest will be determined in accordance with generally accepted actuarial practices and principles over the term of the Indebtedness on the basis of annual compounding of the lawfully permitted rate of interest. In the event of dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Bank will be conclusive for the purposes of such determination.

This is Exhibit "D" referred to in the Supplemental Affidavit of
Sieg Flatt sworn November 25, 2019.



Commissioner for Taking Affidavits (or as may be)

Emma Dalziel

ACKNOWLEDGMENT

TO: Canadian Imperial Bank of Commerce

RE: Nauss Plumbing & Heating Inc. first mortgage to Canadian Imperial Bank of
Commerce
2590 Lasalle Boulevard, Sudbury
Loan Number: 7854425428

The undersigned, being the mortgagor in the above transaction, hereby acknowledges receiving a copy of Standard Charge Terms No. 201203 before signing the above charge or mortgage, and the undersigned understands that the said Standard Charge Terms are incorporated by reference into such charge or mortgage.

DATED at Greater Sudbury, this 21 day of August, 2017.

NAUSS PLUMBING & HEATING INC.

Per: 

Name: Denis Groves

Title: President

I have authority to bind the Corporation

ACKNOWLEDGEMENT AND DIRECTION

TO: Amanda Berloni
RE: Nauss Plumbing & Heating Inc. mortgage to Canadian Imperial Bank of Commerce (File No. 218407)

This will confirm that:

- I have reviewed the information set out below, and that this information is accurate;
- You are authorized and directed to register electronically on my behalf the document(s) described in this Acknowledgement and Direction as well as any other document(s) required to complete the transaction described above;
- You are authorized and directed to enter into an escrow closing arrangement substantially in the form attached hereto as Schedule "A" and I acknowledge that I shall be bound by the terms of that Agreement;
- The effect of the electronic documents described in this Acknowledgement and Direction has been fully explained to me and I understand that I am party to and bound by the terms and provisions of these electronic document(s) to the same extent as if I had signed these documents; and
- I am in fact the party named in the electronic documents described in this Acknowledgement and Direction and I have not misrepresented my identity to you.

DESCRIPTION OF CHARGE/MORTGAGE (for the Chargor):

Property				
<i>PIN</i>	73584-0117	LT	<i>Estate/Qualifier</i>	Fee Simple
<i>Description</i>	Part Lot 9, Concession 8 as in LT109921, Except Lt 1, on Plan M861, City of Greater Sudbury			
<i>Address</i>	2590 Lasalle Boulevard Sudbury, Ontario P3A 2B2			

Chargor	
<i>Name</i>	NAUSS PLUMBING & HEATING INC.
I, Denis Groves (President), have authority to bind the corporation. This document is not authorized under Power of Attorney by this party.	

Chargee	<i>Capacity</i>	<i>Share</i>
<i>Name</i>	CANADIAN IMPERIAL BANK OF COMMERCE	

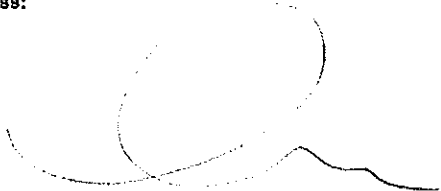
Provisions		
<i>Principal</i>	\$210,000.00	<i>Currency</i> CDN
<i>Calculation period</i>		
<i>Balance Due Date</i>		
<i>Interest Rate</i>	Prime Rate plus 5%	
<i>Payments</i>	\$0.00	
<i>Interest Adjustment Date</i>		

ACKNOWLEDGEMENT AND DIRECTION

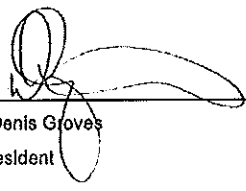
Payment Date
First Payment Date
Standard Charge Terms 201203
Insurance Amount Full insurable value
Guarentor

Dated at Greater Sudbury, this 21 day of August, 2017.

Witness:



Nauss Plumbing & Heating Inc.

Per: 

Name: Denis Groves
Title: President

Properties

PIN 73564 - 0117 LT *Interest/Estate* Fee Simple
Description PCL 18965 SEC SES; PT LT 9 CON 6 NEELON AS IN LT109921 EXCEPT LT 1 PL M861; S/T LT80821; GREATER SUDBURY
Address 2590 LASALLE BLVD
 SUDBURY

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name NAUSS PLUMBING & HEATING INC.
 Acting as a company
Address for Service 2590 Lasalle Boulevard, Sudbury, Ontario, P3A 2B2

I, Denis Groves (President), have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Chargee(s)	Capacity	Share
-------------------	-----------------	--------------

<i>Name</i> CANADIAN IMPERIAL BANK OF COMMERCE Acting as a company		
<i>Address for Service</i> New Sudbury Centre, 1349 Lasalle Boulevard, Sudbury, Ontario, P3A 1Z2		

Statements

Schedule: See Schedules

Provisions

Principal \$ 210,000.00 *Currency* CDN
Calculation Period
Balance Due Date
Interest Rate Prime Rate plus 5%
Payments
Interest Adjustment Date
Payment Date
First Payment Date
Last Payment Date
Standard Charge Terms 201203
Insurance Amount Full Insurable value
Guarantor

File Number

Chargee Client File Number : M218407; Ref# 7854425428

11426 Schedule 201205
Ontario

Schedule 1 (APFI)

All words that are defined in the set of standard charge terms referred to in the attached Charge/Mortgage of Land shall have the same meaning when used in this Schedule.

Indebtedness

1. For the purposes of the Charge, the term "Indebtedness" means the aggregate of all present and future indebtedness and liabilities of the Chargor to the Bank (direct or indirect, absolute or contingent, matured or not, wheresoever and howsoever incurred, whether incurred as principal or surety, whether incurred alone or with another or others, and whether arising from dealings between the Bank and the Chargor or from other dealings or proceedings by which the Bank may become a creditor of the Chargor) including without limitation the outstanding balance of the Principal Amount advanced to the Chargor from time to time, interest thereon at the Interest Rate and all other present and future indebtedness and liabilities of the Chargor to the Bank payable under or by virtue of the Charge.

Interest Rate

1. The Interest Rate is a variable rate per year equal to the Prime Rate plus _____ 5 % per year, calculated and compounded monthly, with interest on overdue interest at the same rate. The Interest Rate will change automatically, without notice, whenever the Prime Rate changes.

Despite the Interest Rate noted above, the Interest Rate payable by the Chargor on any part of the Indebtedness will be the interest rate specified in the relevant instrument, agreement, or other document between the Chargor and the Bank that relates to that part of the Indebtedness. Interest will be calculated as set out in the relevant instrument, agreement or document, or if not set out, will be calculated and compounded monthly, with interest on overdue interest at the same rate. If no interest rate is specified in the relevant instrument, agreement or document, you will pay interest on such part of the Indebtedness at the Interest Rate.

Interest is payable on the Indebtedness until it has been paid, both before and after default, demand, maturity and judgment.

2. Notwithstanding any provision of the Charge or any other loan documents to the contrary, in no event will the aggregate "interest" (as defined in Section 347 of the *Criminal Code* (Canada)) payable on the Indebtedness exceed the effective annual rate of interest on the Principal Amount lawfully permitted under that Section and, if any payment, collection or demand pursuant to the Indebtedness in respect of "interest" (as defined in that Section) is determined to be contrary to the provisions of that Section, such payment, collection or demand will be deemed to have been made by mutual mistake of the Chargor and Bank and the amount of such payment or collection shall either be applied to the Principal Amount (whether or not due and payable), and not to the payment of interest (as defined in Section 347 of the said *Criminal Code*), or be refunded to the Chargor at the option of the Bank. For purposes of each loan document, the effective annual rate of interest will be determined in accordance with generally accepted actuarial practices and principles over the term of the Indebtedness on the basis of annual compounding of the lawfully permitted rate of interest. In the event of dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Bank will be conclusive for the purposes of such determination.

CANADIAN IMPERIAL BANK OF COMMERCE

- and -

NAUSS PLUMBING & HEATING INC.

Applicant

Respondent

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

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT SUDBURY

SUPPLEMENTAL APPLICATION RECORD

GOWLING WLG (CANADA) LLP

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Lawyers for the Applicant, Canadian Imperial Bank of
Commerce

This is Exhibit C referred to in the
Affidavit of Heather Fisher
sworn before me this
30th day of October, 2020

A handwritten signature in blue ink, appearing to read "H. Fisher", is written over a horizontal line.

A Commissioner for Taking Affidavits (or as may be)

Court File No. CV-19-8866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**APPLICATION UNDER SUBSECTION 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**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

**Factum of the Applicant
(Returnable November 29, 2019)**

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TO: THE SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**APPLICATION UNDER SUBSECTION 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.
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- and -

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Respondent

**Factum of the Applicant
(Returnable November 29, 2019)**

I. INTRODUCTION

1. This factum is filed in support of the Canadian Imperial Bank of Commerce's ("CIBC") application for an order (a) appointing MNP Ltd. ("MNP") as receiver and manager over the assets, undertakings and property of the respondent, Nauss Plumbing & Heating Inc. ("Nauss") on substantially the terms and conditions contained in the draft order attached at tab 3 to the Applicant's Application Record (the "Receivership Order").
2. All capitalized terms that are not defined herein are to be given the meaning ascribed to them in the Affidavit of Sieg Flatt sworn November 19, 2019 (the "Flatt Affidavit").

II. BACKGROUND & FACTS

a) Appointment of MNP as Receiver

3. Nauss is a privately owned company incorporated under the laws of Ontario operating primarily as a contractor, specializing in plumbing, heating and electrical services as well as pool maintenance in Sudbury and the surrounding areas.

Affidavit of Sieg Flatt sworn November 19, 2019 at para 5 [Flatt Affidavit].

4. CIBC has commenced these proceedings as a result of Nauss's insolvency and its inability to repay amounts owing to CIBC under a Credit Agreement dated August 9, 2017 (the "Credit

Agreement”). Nauss is indebted to CIBC in the amount of \$929,019.31 plus any applicable interest, fees or expenses accrued (the **“Indebtedness”**).

Flatt Affidavit at paras 3, 12.

5. Nauss’s obligations to CIBC under the Credit Agreement are secured by:
- (a) a general security agreement in respect of all of the present and after-acquired personal property of Nauss the terms of which are incorporated within the Credit Agreement (the **“GSA”**);
 - (b) a charge / mortgage in the principal amount of \$583,000.00 against the Markstay Millichamp Property (the **“Markstay Millichamp Charge”**);
 - (c) a charge / mortgage in the principal amount of \$206,000.00 against the Espanola Property (the **“Espanola Charge”**); and
 - (d) a charge / mortgage in the principal amount of \$210,000.00 against the Sudbury Property (the **“Sudbury Charge”**, together with the Markstay Millichamp Charge and the Espanola Charge, the **“Mortgages”**).

Flatt Affidavit at para 13, Exhibit B: Credit Agreement and Small Business Credit Terms and Conditions; Exhibit “D”: Charge/mortgage against the Millichamp Property; Exhibit “E”: Charge/mortgage against the Espanola Property; and Exhibit “F”: Charge/mortgage against the Sudbury Property.

6. Pursuant to the Credit Agreement, Nauss must pay the outstanding amount owing under the Credit Agreement upon demand. Pursuant to the GSA and Mortgages, upon the occurrence of a default, CIBC is entitled to exercise certain enforcement remedies including, among others, appointing a receiver.

Flatt Affidavit at para 11, Exhibit B: Credit Agreement and Small Business Credit Terms and Conditions, Part 1, s. 6 and Part V, s. 9(b); Exhibit “D”: Charge/mortgage against the Millichamp Property; Exhibit “E”: Charge/mortgage against the Espanola Property; and Exhibit “F”: Charge/mortgage against the Sudbury Property.

7. On June 14, 2019, CIBC demanded repayment of the Credit Agreement and delivered a notice of intention to enforce pursuant to section 244 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (**“BIA”**).

Flatt Affidavit at para 22, Exhibit “M”: Demand Letter and Notice of Intention to Enforce Security.

8. Nauss is insolvent and has not repaid the amounts owing under the Credit Agreement.

Flatt Affidavit at para 33.

9. MNP consents to its appointment as Receiver.

Flatt Affidavit at para 36, Exhibit "R": Consent of MNP to act as Receiver.

III. LAW AND ARGUMENT

10. The sole issue on this application is: Should this Court appoint MNP as receiver of the property of Nauss?

Court should appoint MNP as receiver

11. CIBC submits that this Court should appoint MNP as receiver because: (a) the technical requirements under the BIA for the appointment of MNP as receiver are met and (b) in the circumstances of this case, the appointment of MNP as receiver is just and convenient.

(a) The technical requirements for the appointment of MNP as receiver are met

12. CIBC brings this application pursuant to section 243(1) of the BIA, and 101 of the CJA. Section 243 of the BIA grants the Court the jurisdiction and authority, on application by a secured creditor, to appoint a receiver of the property of an insolvent person if it is "just or convenient to do so". The section reads as follows:

243(1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; and
- (c) take any other action that the court considers advisable.

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditors sends the notice unless

(a) the insolvent person consents to an earlier enforcement under section 244(2); or

(b) the court considers it appropriate to appoint a receiver before then.

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 [“BIA”], ss. 243(1),(1.1).

13. CIBC is a secured creditor of Nauss and is thus entitled to bring an application under section 243 of the BIA.

Flatt Affidavit, Exhibit “B”: Credit Agreement and Small Business Credit Terms and Conditions, Part V.

14. Nauss defaulted under the Credit Agreement. In accordance with the GSA, the occurrence of an default under the Credit Agreement grants CIBC the right to seek the appointment of a receiver.

Flatt Affidavit, Exhibit “B”: Credit Agreement and Small Business Credit Terms and Conditions, Part V, s. 9(b).

15. As required by subsection 243(1.1) of the BIA, a 244 Notice was sent to Nauss on June 14, 2019. Accordingly, pursuant to s. 243(1.1) the court may appoint MNP as receiver at this time.

Flatt Affidavit paras 40-43; BIA ss. 243(1.1).

16. In accordance with subsection 243(4) of the BIA, MNP is qualified to act as Receiver of Nauss.

BIA s. 243(4).

(b) Appointing MNP as receiver is just and convenient

17. Section 101 of the Court of Justice Act (the “CJA”) permits the appointment of a receiver where it is “just or convenient”. Likewise, subsection 243(1) of the BIA provides that on application by a secured creditor, a court may appoint a receiver where it is “just or convenient”.

Court of Justice Act, R.S.O. 1990, c. C-43 [CJA] s. 101; BIA s. 243(1).

18. In determining whether it is “just or convenient” to appoint a receiver under either the BIA section 101 of the Ontario Courts of Justice Act, this Court applies the decision of Justice Blair in *Bank of Nova Scotia v. Freure Village on Clair Creek* (“**Freure Village**”). In *Freure Village*, Blair J. set out that, in deciding whether the appointment of a receiver was just or convenient, the court “must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto,” which includes the rights of the secured creditor under its security.

Bank of Nova Scotia v. Freure Village on Clair Creek (1996), 40 C.B.R. (3d) 274 (Ont. S.C.J.) [“**Freure Village**”], para 10.

19. Where the enumerated rights of the secured creditor under the loan agreement include the right to seek the appointment of a receiver, the burden on the applicant seeking the relief is relaxed. As stated by Justice Morawetz (as he then was) in *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.* (“**Elleway**”),

...while the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties.

Elleway Acquisitions Ltd. v. Cruise Professionals Ltd. 2013 ONSC 6866, para. 27.

20. Where a creditor is entitled under its agreement with the debtor to seek the appointment of a receiver, a court will consider in its discretion whether, on an examination of the surrounding circumstances, it is in the interests of all concerned to have the receiver appointed by the court.

Freure Village, para 12.

21. In the case at bar, the following facts support CIBC’s submission that the appointment of MNP as Receiver over Nauss is just and convenient:

- (a) Nauss has defaulted under the Credit Agreement for the failure to pay monetary amounts when they became due. As a result of this default CIBC has a contractual right to appoint a receiver under the GSA and Mortgages;
- (b) Nauss is insolvent;
- (c) Nauss has failed to find alternative sources of financing to remedy the default under the Credit Agreement;
- (d) the director of Nauss has consented to the relief sought in this application;
- (e) a court-appointed receiver is necessary to enable the Proposed Receiver to administer the estate more effectively and is required to take control of Nauss, and ensure an effective and transparent sale of the Nauss assets for the benefit of all of Nauss’s stakeholders;
- (f) irreparable harm might be caused if no receivership order is made as Nauss will run out of liquidity thereby reducing value for stakeholders; and

- 7 -

- (g) if necessary, CIBC is prepared to advance funds to the Receiver (if appointed) for purposes of funding the receivership.

Flatt Affidavit, paras 26, 41, 48, 50, 53, and 55

22. In these circumstances, a Receiver will facilitate the realization on Nauss's assets in a fair and reasonable manner that balances the interests of all of Nauss's stakeholders in a transparent and court-supervised process.

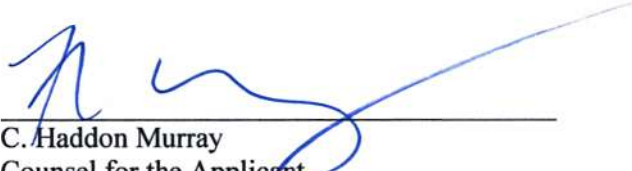
IV. RELIEF REQUESTED

23. For the foregoing reasons, CIBC respectfully requests an Order substantially in the form of the draft Receivership Order attached as Tab 3 to the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at the City of Toronto, Province of Ontario, this 25th day of November, 2019.

GOWLING WLG (CANADA) LLP

Per:


C. Haddon Murray
Counsel for the Applicant

SCHEDULE "A"

LIST OF AUTHORITIES

TAB	CONTENTS
1.	<i>Bank of Nova Scotia v. Freure Village on Clair Creek</i> (1996), 40 C.B.R. (3d) 274 (Ont. S.C.J.).
2.	<i>Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.</i> , 2013 ONSC 6866.

SCHEDULE "B"**RELEVANT STATUTES*****Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, ss. 243(1),(1.1),(4), 244(1)(2)*****Court may appoint receiver**

243(1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; and
- (c) take any other action that the court considers advisable.

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditors sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under section 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

Court of Justice Act, R.S.O. 1990, c. C-43, s. 101**Injunctions and receivers**

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

APPLICATION UNDER SUBSECTION 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 Court File No. CV-19-8866-0000

CANADIAN IMPERIAL BANK OF COMMERCE

-and- NAUSS PLUMBING & HEATING INC.

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT SUDBURY

FACTUM OF THE APPLICANT
(RETURNABLE NOVEMBER 29, 2019)

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haddon.murray@gowlingwlg.com

Lawyers for the Applicant, Canadian Imperial
Bank of Commerce

This is Exhibit D referred to in the
Affidavit of Heather Fisher
sworn before me this
30th day of October, 2020

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A Commissioner for Taking Affidavits (or as may be)

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- and -

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**Book of Authorities of the Applicant
(Returnable November 29, 2019)**

GOWLING WLG (CANADA) LLP

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Lawyers for the Applicants**TO: THE SERVICE LIST**

Court File No. CV-19-8866-0000

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SUPERIOR COURT OF JUSTICE**

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INDEX

TAB	CONTENTS
1.	<i>Bank of Nova Scotia v. Freure Village on Clair Creek</i> (1996), 40 C.B.R. (3d) 274 (Ont. S.C.J.).
2.	<i>Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.</i> , 2013 ONSC 6866.

TAB 1

Ontario Supreme Court
Bank of Nova Scotia v. Freure Village of Clair Creek
Date: 1996-05-31

Bank of Nova Scotia

and

Freure Village on Clair Creek et al

Ontario Court of Justice (General Division – Commercial List) Blair J.

Judgment – May 31, 1996.

John J. Chapman and John R. Varley, for Bank of Nova Scotia.

J. Gregory Murdoch, for Freure Group (all defendants).

John Lancaster, for Boehmers, a Division of St. Lawrence Cement.

Robb English, for Toronto-Dominion Bank.

William T. Houston, for Canada Trust.

May 31, 1996. Endorsement.

[1] BLAIR J.: – There are two companion motions here, namely:

(i) the within motion by the Bank for summary judgment on the covenants on mortgages granted by “Freure Management” and “Freure Village” to the Bank, which mortgages have been guaranteed by Freure Investments; and

(ii) the motion for appointment by the Court of a receiver-manager over five different properties which are the subject matter of the mortgages (four of which properties are apartment/townhouse complexes totalling 286 units and one of which is an as yet undeveloped property).

This endorsement pertains to both motions.

The Motion for Summary Judgment

[2] Three of the mortgages have matured and have not been repaid. The fourth has not yet matured but, along with the first three, is in default as a result of the failure to pay tax arrears.

The total tax arrears outstanding are in excess of \$850,000. The Bank is owed in excess of \$13,200,000. There is no question that the mortgages are in default. Nor is it contested that the monies are presently due and owing. The Defendants argue, however, that the Bank had agreed to forebear or to stand-still for six months to a year in May, 1995 and therefore submit the monies were not due and owing at the time demand was made and proceedings commenced.

[3] There is simply no merit to this defence on the evidence and there is no issue with respect to it which survives the “good hard look at the evidence” which the authorities require the Court to take and which requires a trial for its disposition: see Rule 20.01 and Rule 20.04, *Pizza Pizza Ltd v. Gillespie* (1990), 75 O.R. (2d) 225 (Gen. Div.); *Irving Ungerman Ltd. v. Galanis* (1993) 4 O.R. (3d) 545 (C.A.).

[4] On his cross-examination, Mr. Freure admitted:

(i) that he knew the Bank had not entered into any agreement whereby it had waived its rights under its security or to enforce its security; and

(ii) that he realized the Bank was entitled to make demand, that the individual debtors in the Freure Group owed the money, that

they did not have the money to pay and the \$13,200,000 indebtedness was “due and owing” (see cross-examination questions 46-54, 88-96, 233-243).

[5] As to the guarantees of Freure Investments, an argument was put forward that the Bank changed its position with regard to the accumulation of tax arrears without notice to the guarantor, and accordingly that a triable issue exists in that regard.

[6] No such triable issue exists. The guarantee provisions of the mortgage itself permit the Bank to negotiate changes in the security with the principal debtor. Moreover, the principal of the principal debtor and the principal of the guarantor – Mr. Freure – are the same. Finally, the evidence which is relied upon for the change in the Bank’s position – an internal Bank memo from the local branch to the credit committee of the Bank in Toronto – is not proof of any such agreement with the debtor or change; it is merely a recitation of various position proposals and a recommendation to the credit committee, which was not followed.

[7] Accordingly, summary judgment is granted as sought in accordance with the draft judgment filed today and on which I have placed my fiat. The cost portion of the judgment will bear interest at the *Courts of Justice Act* rate.

Receiver/Manager

[8] The more difficult issue for determination is whether or not the Court should appoint a receiver/manager.

[9] It is conceded, in effect, that if the loans are in default and not saved from immediate payment by the alleged forbearance agreement – which they are, and are not, respectively – the Bank is entitled to move under its security and appoint a receiver-manager privately. Indeed this is the route which the Defendants – supported by the subsequent creditor on one of the properties (Boehmers, on the Glencairn property) – urge must be taken. The other major creditors, TD Bank and Canada Trust, who are owed approximately \$20,000,000 between them, take no position on the motion.

[10] The Court has the power to appoint a receiver or receiver and manager where it is “just or convenient” to do so: the *Courts of Justice Act*, R.S.O. 1990, c. 43, s. 101. In deciding whether or not to do so, it must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto. The fact that the moving party has a right under its security to appoint a receiver is an important factor to be considered but so, in such circumstances, is the question of whether or not an appointment by the Court is necessary to enable the receiver-manager to carry out its work and duties more efficiently; see generally *Third Generation Realty Ltd. v. Twigg* (1991) 6 C.P.C. (3d) 366 (Ont. Gen. Div.) at pages 372-374; *Confederation Trust Co. v. Dentbram Developments Ltd.* (1992), 9 C.P.C. (3d) 399 (Ont. Gen. Div.); *Royal Trust Corp. of Canada v. D.Q. Plaza Holdings Ltd.* (1984), 54 C.B.R. (N.S.) 18 (Sask. Q.B.) at page 21. It is not essential that the moving party, a secured creditor, establish that it will suffer irreparable harm if a receiver-manager is not appointed: *Swiss Bank Corp. (Canada) v. Odyssey Industries Inc.* (1995), 30 C.B.R. (3d) 49 (Ont. Gen. Div. [Commercial List]).

[11] The Defendants and the opposing creditor argue that the Bank can perfectly effectively exercise its private remedies and that the Court should not intervene by giving the extraordinary remedy of appointing a receiver when it has not yet done so and there is no

evidence its interest will not be well protected if it did. They also argue that a Court appointed receiver will be more costly than a privately appointed one, eroding their interests in the property.

[12] While I accept the general notion that the appointment of a receiver is an extraordinary remedy, it seems to me that where the security instrument permits the appointment of a private receiver – and even contemplates, as this one does, the secured creditor seeking a court appointed receiver – and where the circumstances of default justify the appointment of a private receiver, the “extraordinary” nature of the remedy sought is less essential to the inquiry. Rather, the “just or convenient” question becomes one of the Court determining, in the exercise of its discretion, whether it is more in the interests of all concerned to have the receiver appointed by the Court or not. This, of course, involves an examination of all the circumstances which I have outlined earlier in this endorsement, including the potential costs, the relationship between the debtor and the creditors, the likelihood of maximizing the return on and preserving the subject property and the best way of facilitating the work and duties of the receiver-manager.

[13] Here I am satisfied on balance it is just and convenient for the order sought to be made. The Defendants have been attempting to refinance the properties for 11/2 years without success, although a letter from Mutual Trust dated yesterday suggests (again) the possibility of a refinancing in the near future. The Bank and the debtors are deadlocked and I infer from the history and evidence that the Bank’s attempts to enforce its security privately will only lead to more litigation. Indeed, the debtor’s solicitors themselves refer to the prospect of “costly, protracted and unproductive” litigation in a letter dated March 21st of this year, should the Bank seek to pursue its remedies. More significantly, the parties cannot agree on the proper approach to be taken to marketing the properties which everyone agrees must be sold. Should it be on a unit by unit conversion condominium basis (as the debtor proposes) or on an en bloc basis as the Bank would prefer? A Court appointed receiver with a mandate to develop a marketing plan can resolve that impasse, subject to the Court’s approval, whereas a privately appointed receiver in all likelihood could not, at least without further litigious skirmishing. In the end, I am satisfied the interests of the debtors themselves, along with those of the creditors (and the tenants, who will be caught in the middle) and the orderly disposition of the property are all better served by the appointment of the receiver-manager as requested.

[14] I am prepared, in the circumstances, however, to render the debtors one last chance to rescue the situation, if they can bring the potential Mutual Trust refinancing to fruition. I postpone the effectiveness of the order appointing Doane Raymond as receiver-manager for a period of three weeks from this date. If a refinancing arrangement which is satisfactory to the Bank and which is firm and concrete can be arranged by that time, I may be spoken to at a 9:30 appointment on Monday, June 24, 1996 with regard to a further postponement. The order will relate back to today's date, if taken out.

[15] Should the Bank be advised to appoint Doane Raymond as a private receiver/manager under its mortgages in the interim, it may do so.

[16] Counsel may attend at an earlier 9:30 appointment if necessary to speak to the form of the order.

Motions granted.

TAB 2

CITATION: Elleway Acquisitions Limited v. The Cruise Professionals Limited, 2013 ONSC
6866

COURT FILE NO.: CV-13-10320-00CL

DATE: 20131127

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

**APPLICATION UNDER SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY*
ACT, R.S.C. 1985, c.B-3, AS AMENDED**

RE: ELLEWAY ACQUISITIONS LIMITED, Applicant

AND:

**THE CRUISE PROFESSIONALS LIMITED, 4358376 CANADA INC.
(OPERATING AS ITRAVEL2000.COM) AND 7500106 CANADA INC.,
Respondents**

BEFORE: MORAWETZ J.

COUNSEL: Jay Swartz and Natalie Renner, for the Applicant

John N. Birch, for the Respondents

David Bish and Lee Cassey, for Grant Thornton, Proposed Receiver

**HEARD &
ENDORSED: NOVEMBER 4, 2013**

REASONS: NOVEMBER 27, 2013

ENDORSEMENT

[1] At the conclusion of argument, the requested relief was granted with reasons to follow. These are the reasons.

[2] Elleway Acquisitions Limited (“Elleway” or the “Applicant”) seeks an order (the “Receivership Order”) appointing Grant Thornton Limited (“GTL”) as receiver (the “Receiver”),

without security, of all of the property, assets and undertaking of each of 4358376 Canada Inc., (operating as itravel2000.com (“itravel”), 7500106 Canada Inc., (“Travelcash”), and The Cruise Professionals (“Cruise”) and together with itravel and Travelcash, “itravel Canada”), pursuant to section 243 of the *Bankruptcy and Insolvency Act (Canada)* (the “BIA”) and section 101 of the *Courts of Justice Act (Ontario)* (the “CJA”).

[3] The application was not opposed.

[4] The itravel Group (as defined below) is indebted to Elleway in the aggregate principal amount of £17,171,690 pursuant to a secured credit facility that was purchased by Elleway and a working capital facility that was established by Elleway. The indebtedness is guaranteed by each of itravel, Cruise and Travelcash, among others. The itravel Group is in default of the credit facility and the working capital facility, and Elleway has demanded repayment of the amounts owing thereunder. Elleway has also served each of itravel, Cruise and Travelcash with a notice of intention to enforce its security under section 244(1) of the BIA. Each of itravel, Cruise and Travelcash has acknowledged its inability to pay the indebtedness and consented to early enforcement pursuant to section 244(2) of the BIA.

[5] Counsel to the Applicant submits that the itravel Group is insolvent and suffering from a liquidity crisis that is jeopardizing the itravel Group’s continued operations. Counsel to the Applicant submits that the appointment of a receiver is necessary to protect itravel Canada’s business and the interests of itravel Canada’s employees, customers and suppliers.

[6] Counsel further submits that itravel Canada’s core business is the sale of travel services, including vacation, flight, hotel, car rentals, and insurance packages offered by third parties, to its customers. itravel Canada’s business is largely seasonal and the majority of its revenues are generated in the months of October to March. itravel Canada would have to borrow approximately £3.1 million to fund its operations during this period and it is highly unlikely that another lender would be prepared to advance any funds to itravel Canada at this time given its financial circumstances.

[7] Further, counsel contends that the Canadian travel agent business is an intensely competitive industry with a high profile among consumers, making it very easy for consumers to comparison shop to determine which travel agent can provide services at the lowest possible cost. Given its visibility in the consumer market and the travel industry, counsel submits that it is imperative that itravel Canada maintain existing goodwill and the confidence of its customers. If itravel Canada’s business is to survive, potential customers must be assured that the business will continue uninterrupted and their advance payments for vacations will be protected notwithstanding itravel Canada’s financial circumstances.

[8] Therefore, counsel submits that, if a receiver is not appointed at this critical juncture, there is a substantial risk that itravel Canada will not be able to book trips and cruises during its most profitable period. This will result in a disruption to or, even worse, a complete cessation of itravel Canada’s business. Employees will resign, consumer confidence will be lost and existing goodwill will be irreparably harmed.

[9] It is contemplated that if GTL is appointed as the Receiver, GTL intends to seek the Court's approval of the sale of substantially all of itravel Canada's assets to certain affiliates of Elleway, who will operate the business of itravel Canada as a going concern following the consummation of the purchase transactions. Counsel submits that, it is in the best interests of all stakeholders that the Receivership Order be made because it will facilitate a going concern sale of itravel Canada's business, preserving consumer confidence, existing goodwill and the jobs of over 250 employees.

[10] Elleway is a corporation incorporated under the laws of the British Virgin Islands. Elleway is an indirect wholly owned subsidiary of The Aldenham Grange Trust, a discretionary trust governed under Jersey law.

[11] itravel, Cruise and Travelcash are indirect wholly owned subsidiaries of Travelzest plc ("Travelzest"), a publicly traded United Kingdom ("UK") company that operates a group of companies that includes itravel Canada (the "itravel Group"). The itravel Group's UK operations were closed in March 2013. Since the cessation of the itravel Group's UK operations, all of the itravel Group's remaining operations are based in Canada. itravel Canada currently employs approximately 255 employees. itravel Canada's employees are not represented by a union and it does not sponsor a pension plan for any of its employees.

[12] The itravel Group's primary credit facilities (the "Credit Facilities") were extended by Barclays Bank PLC ("Barclays") pursuant to a credit agreement (the "Credit Agreement") and corresponding fee letter (the "Fee Letter" and together with the Credit Agreement, the "Credit Facility Documents") under which Travelzest is the borrower.

[13] Pursuant to a series of guarantees and security documents (the "Security Documents"), each of Travelzest, Travelzest Canco, Travelzest Holdings, Itravel, Cruise and Travelcash guaranteed the obligations under the Credit Facility Documents and granted a security interest over all of its property to secure such obligations (the "Credit Facility Security"). Travelzest Canco and Travelzest Holdings are direct wholly owned UK subsidiaries of Travelzest. In addition, itravel and Cruise granted a confirmation of security interest in certain intellectual property (the "IP Security Confirmation and together with the Credit Facility Security, the "Security").

[14] The Security Documents provide the following remedies, among others, to the secured party, upon the occurrence of an event of default under the Credit Facility Documents: (a) the appointment by instrument in writing of a receiver; and (b) the institution of proceedings in any court of competent jurisdiction for the appointment of a receiver. The Security Documents do not require Barclays to look to the property of Travelzest before enforcing its security against the property of itravel Canada upon the occurrence of an event of default.

[15] Commencing on or about April 2012, the itravel Group began to default on its obligations under the Credit Agreement.

[16] Pursuant to a series of letter agreements, Barclays agreed to, among other things, defer the applicable payment instalments due under the Credit Agreement until July 12, 2013 (the

“Repayment Date”). Travelzest failed to pay any amounts to Barclays on the Repayment Date. Travelzest’s failure to comply with financial covenants and its default on scheduled payments under the Repayment Plans constitute events of default under the Credit Facility Documents.

[17] Since 2010, Itravel Canada has attempted to refinance its debt through various methods, including the implementation of a global restructuring plan and the search for a potential purchaser through formal and informal sales processes. Two formal sales processes yielded some interest from prospective purchasers. Ultimately, however, neither sales process generated a viable offer for Itravel Canada's assets or the shares of Travelzest.

[18] Counsel submits that GTL has been working to familiarize itself with the business operations of Itravel Canada since August 2013 and that GTL is prepared to act as the Receiver of all of the property, assets and undertaking of ittravel Canada.

[19] Counsel further submits that, if appointed as the Receiver, GTL intends to bring a motion (the “Sales Approval Motion”) seeking Court approval of certain purchase transactions wherein Elleway, through certain of its affiliates, 8635919 Canada Inc. (the “ittravel Purchaser”), 8635854 Canada Inc. (the “Cruise Purchaser”) and 1775305 Alberta Ltd. (the “Travelcash Purchaser” and together with the ittravel Purchaser and the Cruise Purchaser, the “Purchasers”), will acquire substantially all of the assets of ittravel Canada (the “Purchase Transactions”).

[20] If the Purchase Transactions are approved, Elleway has agreed to fund the ongoing operations of ittravel Canada during the receivership. It is the intention of the parties that the Purchase Transactions will close shortly after approval by the Court and it is not expected that the Receiver will require significant funding.

[21] The purchase price for the Purchase Transactions will be comprised of cash, assumed liabilities and a cancellation of a portion of the Indebtedness. Elleway will supply the cash portion of the purchase price under each Purchase Transaction, which will be sufficient to pay any prior ranking secured claim or priority claim that is not being assumed.

[22] The Purchasers intend to offer substantially all of the employees of ittravel and Cruise the opportunity to continue their employment with the Purchasers.

[23] This motion raises the issue as to whether the Court should make an order pursuant to section 243 of the BIA and section 101 of the CJA appointing GTL as the Receiver.

1. The Court Should Make the Receivership Order

a. The Test for Appointing a Receiver under the BIA and the CJA

[24] Section 243(1) of the BIA authorizes a court to appoint a receiver where such appointment is “just or convenient”.

[25] Similarly, section 101(1) of the CJA provides for the appointment of a receiver by interlocutory order where the appointment is “just or convenient”.

[26] In determining whether it is just and convenient to appoint a receiver under both statutes, a court must have regard to all of the circumstances of the case, particularly the nature of the property and the rights and interests of all parties in relation to the property. See *Bank of Nova Scotia v. Freure Village on Clair Creek*, [1996] O.J. 5088 at para. 10 (Gen. Div.)

[27] Counsel to the Applicant submits that where the security instrument governing the relationship between the debtor and the secured creditor provides for a right to appoint a receiver upon default, this has the effect of relaxing the burden on the applicant seeking to have the receiver appointed. Further, while the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties. See *Textron Financial Canada Ltd. v. Chetwynd Motels Ltd.*, 2010 BCSC 477, [2010] B.C.J. No. 635 at paras. 50 and 75 (B.C. S.C. [In Chambers]); *Freure Village, supra*, at para. 12; *Canadian Tire Corp. v. Healy*, 2011 ONSC 4616, [2011] O.J. No. 3498 at para. 18 (S.C.J. [Commercial List]); *Bank of Montreal v. Carnival National Leasing Limited and Carnival Automobiles Limited*, 2011 ONSC 1007, [2011] O.J. No. 671 at para. 27 (S.C.J. [Commercial List]). I accept this submission.

[28] Counsel further submits that in such circumstances, the “just or convenient” inquiry requires the court to determine whether it is in the interests of all concerned to have the receiver appointed by the court. The court should consider the following factors, among others, in making such a determination:

- (a) the potential costs of the receiver;
- (a) the relationship between the debtor and the creditors;
- (b) the likelihood of preserving and maximizing the return on the subject property; and
- (c) the best way of facilitating the work and duties of the receiver.

See *Freure Village, supra*, at paras. 10-12; *Canada Tire, supra*, at para. 18; *Carnival National Leasing, supra*, at paras 26-29; *Anderson v. Hunking*, 2010 ONSC 4008, [2010] O.J. No. 3042 at para. 15 (S.C.J.).

[29] Counsel to the Applicant submits that it is just and convenient to appoint GTL as the Receiver in the circumstances of this case. As described above, the itravel Group has defaulted on its obligations under the Credit Agreement and the Fee Letter. Such defaults are continuing and have not been remedied as of the date of this Application. This has given rise to Elleway’s rights under the Security Documents to appoint a receiver by instrument in writing and to institute court proceedings for the appointment of a receiver.

[30] It is submitted that it is just and convenient, or in the interests of all concerned, for the Court to appoint GTL as the Receiver for five main reasons:

APPLICATION UNDER SUBSECTION 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 Court File No. CV-19-8866-0000

CANADIAN IMPERIAL BANK OF COMMERCE

-and- NAUSS PLUMBING & HEATING INC.

Applicant

Respondent

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

**BOOK OF AUTHORITIES OF THE APPLICANT
(RETURNABLE NOVEMBER 29, 2019)**

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
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Toronto, ON M5X 1G5

Haddon Murray (#61640P)

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haddon.murray@gowlingwlg.com

Lawyers for the Applicant,
Canadian Imperial Bank of Commerce

This is Exhibit E referred to in the
Affidavit of Heather Fisher
sworn before me this
30th day of October, 2020

A handwritten signature in blue ink, appearing to read "H. Fisher", is written over a horizontal line.

A Commissioner for Taking Affidavits (or as may be)

Court File No. CV-19-00008866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

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

MOTION RECORD

January 29, 2020

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
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Haddon Murray (LSO# 61640P)
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Lawyers for the Applicant,
Canadian Imperial Bank of Commerce

TO: **THE SERVICE LIST**

Court File No. CV-19-00008866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

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

INDEX

Tab	Description	Page No.
1.	Notice of Motion dated January 20, 2020	1-5
2.	Affidavit of Heather Fisher sworn January 29, 2020	6-10
A	Exhibit "A" - Notice of Application dated November 19, 2019	11-20
B	Exhibit "B" - Email correspondence between Mr. Leblanc and Mr. Murray ending November 28, 2019	21-27
C	Exhibit "C" - Email correspondence between Mr. Leblanc and Mr. Murray dated January 6, 2020 with attachments	28-36
D	Exhibit "D" - Draft Order	37-55
E	Exhibit "E" - Email from Mr. Leblanc to Ms. Fisher dated January 9, 2020	56-58

F	Exhibit "F" - Email from Ms. Lauzon to Mr. Murray dated January 10, 2020 with attachments	59-69
G	Exhibit "G" - Endorsement of Justice Cornell dated January 10, 2020	70-71

Court File No. CV-19-00008866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

**NOTICE OF MOTION
TO ENFORCE SETTLEMENT**

The Applicant, Canadian Imperial Bank of Commerce, will make a Motion to a Judge on the 21st day of February 2020 at 10:00 a.m., or as soon after that time as the Motion can be heard at the court house, 155 Elm Street, Sudbury, Ontario, P3C 1T9.

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

- in writing under subrule 37.12.1(1);
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

THE MOTION IS FOR:

- (a) An Order pursuant to a settlement agreement and consent dated November 28, 2019, appointing MNP Ltd. (“**MNP**”) as receiver and manager (“**Receiver**”) over the assets, undertakings and properties (“**Property**”) of the Respondent, Nauss Plumbing & Heating Inc.;
- (b) In the alternative, that the application to appoint the Receiver be heard on its merits together with this motion;
- (c) The costs of this Motion on a substantial indemnity basis; and,
- (d) Such further and other Relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (e) The notice of application was filed on November 19, 2019;
- (f) The hearing for the application was scheduled for November 29, 2019;
- (g) On November 28, 2019, the parties entered into a settlement agreement (the “**Settlement Agreement**”) whereby:
 - (i) the Applicant consented to the adjournment of the hearing until January 10, 2020; and
 - (ii) the Respondent consented to the appointment of MNP as Receiver at the hearing rescheduled on January 10, 2020 unless it fully repaid its indebtedness to the Applicant or provided a commitment letter to for financing of the indebtedness by the same date.

- (h) On January 9, 2020, counsel for the Respondent consented to the form and content of a draft order appointing MNP as Receiver over the Property in accordance with the terms of the Settlement Agreement;
- (i) By January 10, 2020, the Respondent did not provide the Applicant with full repayment of the indebtedness to the Applicant or a commitment letter for financing of the indebtedness as per the terms of the Settlement Agreement;
- (j) At 9:27 a.m. on January 10, 2020, the Respondent advised counsel to the Applicant he would seek further adjournment of the matter, notwithstanding the consent;
- (k) At the hearing on January 10, 2020, Justice Cornell ordered that the application was adjourned *sine die* to permit a motion to be brought to enforce the alleged Settlement Agreement; and
- (l) The Applicants seek to enforce of the Settlement Agreement for the appointment of the Receiver on consent. In the alternative, the Applicants seek the return of the Application, and rely on the grounds set out in the Notice of Application found at tab 1 to the Application Record of the Applicant dated November 19, 2019.

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

- (m) The Affidavit of Heather Fisher, to be sworn;

- (n) The Affidavit of Sieg Flatt sworn November 19, 2019, found a tab 2 of the Application Record of the Applicant dated November 19, 2019;
- (o) The Supplemental Affidavit of Sieg Flatt sworn November 25, 2019, found at tab 1 to the Supplemental Application Record of the Applicant dated November 25, 2019; and
- (p) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

January 20, 2020

GOWLING WLG (CANADA) LLP

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

Haddon Murray (LSO# 61640P)

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Lawyers for the Applicant

TO: **THE SERVICE LIST**

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

Court File No. CV-19-00008866-0000
NAUSS PLUMBING & HEATING INC.

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
SUDBURY

**NOTICE OF MOTION TO ENFORCE SETTLEMENT
AGREEMENT**

GOWLING WLG (CANADA) LLP

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Lawyers for the Applicant

Court File No. CV-19-00008866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

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

**AFFIDAVIT OF HEATHER FISHER
(Sworn January 29, 2020)**

I, Heather Fisher, of the City of Toronto, in the Province of Ontario, **MAKE OATH**

AND SAY:

1. I am an Associate at Gowling WLG (Canada) LLP, counsel for the Applicant, Canadian Imperial Bank of Commerce ("**CIBC**"). As such, I have personal knowledge of the matters contained in this Affidavit. Where I do not have personal knowledge, I have stated the source of my information and believe the information to be true.

2. On November 19, 2019, CIBC commenced an application to appoint MNP Ltd. ("**MNP**") as receiver and manager ("**Receiver**") over the assets, undertakings and

-2-

properties (collectively, the “**Property**”) of Nauss Plumbing & Heating Inc. (the “**Receivership Application**”). A copy of the notice of application dated November 19, 2019 is attached as **Exhibit “A”**.

3. The Receivership Application was scheduled to be heard on November 29, 2019.

4. On November 28, 2019, counsel for the parties negotiated a settlement regarding the Receivership Application. The terms of the settlement were memorialized in an email dated November 28, 2019 (9:53AM) from Haddon Murray, counsel for the Applicant, to Robert LeBlanc, counsel for the Respondent (the “**Settlement Agreement**”). Counsel for the Respondent confirmed the terms of the Settlement Agreement the same day at 10:17AM. A copy of the email correspondence containing the Settlement Agreement is attached as **Exhibit “B”**.

5. The terms of the Settlement Agreement included:

(a) the Applicant consented to the adjournment of the hearing until January 10, 2020; and

(b) the Respondent consented to the appointment of MNP as Receiver at the Receivership Application hearing rescheduled for January 10, 2020 unless the Respondent fully repaid its indebtedness to the Applicant or provided a commitment letter to refinance the indebtedness prior to January 10, 2020. Any commitment letter was required to: (i) be legally binding, (ii)

-3-

have no conditions precedent, and (iii) be from a lender that is acceptable to the Applicant at its sole discretion.

6. Pursuant to the terms of the Settlement Agreement, the parties agreed to adjourn the Receivership Application, then scheduled to be heard on November 29, 2019, on consent. Counsel for the Respondent was to adjourn the matter to January 10, 2020.

7. On January 6, 2020, I called the court to confirm the Receivership Application was scheduled to be heard January 10, 2020 and discovered counsel for the Respondent had not properly adjourned the matter. However, all counsel agreed that it was the parties' intention to proceed with the consent Receivership Application on January 10, 2020 and that I would attend on January 10, 2020 to walk up the consent order.

8. On January 6, 2020, Mr. Murray emailed Mr. Leblanc, copying me, to provide him with draft correspondence that was to be sent to the Sudbury court staff confirming the parties' intention to proceed with the consent order on January 10, 2020. Counsel for the Respondent confirmed the contents of the email were accurate. A copy of the email correspondence and attachments sent to the court are attached as **Exhibit "C"**.

9. On January 9, 2020, counsel for the Respondent consented to the form and content of a draft order appointing MNP as Receiver over the Property in accordance with the terms of the Settlement Agreement. A copy of the draft order and the January

-4-

9, 2020 email correspondence consenting to the draft order are attached as **Exhibits “D”** and **“E”**, respectively.

10. On January 10, 2020 at 9:27AM, Collette Lauzon, legal assistant to counsel for the Respondent, sent an email on behalf of counsel for the Respondent to Mr. Murray and copying me. The email advised counsel for the Applicant that, notwithstanding that the Respondent had previously consented to the Receivership Application, counsel for the Respondent had received instructions to ask for a further adjournment of the matter to try to finalize the sale of a subset of the Respondent’s properties. The email attached a series of email correspondence and documents related to the Respondent’s attempts to sell the subset of properties. The January 10, 2020 (9:27AM) email and attachment (collectively, the **“January 10 Email”**) are attached as **Exhibit “F”**. The January 10 Email has been redacted as a result of an inadvertent waiver of privilege.

11. At no time did the Respondent provide the Applicant with full repayment of the indebtedness or a commitment letter to refinance the indebtedness that satisfied the terms of the Settlement Agreement – nor has any payment of the indebtedness or refinancing occurred since the January 10 hearing date.

12. I attended at the Sudbury Superior Court on January 10, 2020 to speak to the Receivership Application. Counsel for the Respondent also attended and sought an adjournment of the matter on the basis that the Respondent required an adjournment to put recent developments before the court. The Applicant’s position was that the parties had a binding settlement agreement. Justice Cornell adjourned the Receivership Application *sine die* to permit the Applicant to bring a motion to enforce the alleged

Settlement Agreement. A copy of the endorsement of Justice Cornell dated January 10, 2020 is attached as **Exhibit "G"**.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on January 29, 2020.



Commissioner for Taking Affidavits
(or as may be)



HEATHER FISHER

**Maha Mansoor, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires May 18, 2021.**

This is Exhibit "A" referred to in the Affidavit of Heather Fisher sworn January 29, 2020.



Commissioner for Taking Affidavits (or as may be)

MAHA MANSOOR

**Maha Mansoor, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires May 18, 2021.**

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent



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

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The claim made by the Applicant is set out on the following pages.

THIS APPLICATION will come on for a hearing on November 29, 2019 at 9:30 a.m., or as soon thereafter as the application can be heard, at the Courthouse located at 155 Elm Street, Sudbury, Ontario.

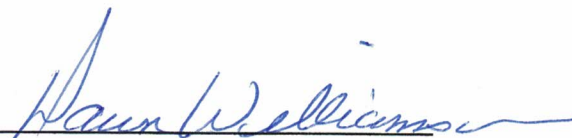
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38C prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: November ^{19th} 18, 2019

Issued by


Local Registrar

Address of Court Office:
330 University Avenue
Toronto, Ontario, Canada

TO: THE SERVICE LIST

1. **THE APPLICANT, MAKES APPLICATION FOR, *inter alia*:**
 - (a) An Order substantially in the form of Order attached at Tab 3 of the Application Record appointing MNP Ltd. as the receiver and manager (the “**Receiver**”), without security, of the assets, undertakings and property (collectively, the “**Property**”) of Nauss Plumbing & Heating Inc. (“**Nauss**”) pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, RSC 1986, c B-3, as amended (the “**BIA**”) and Section 101 of the *Courts of Justice Act*, RSO 1990, c C43, as amended (the “**CJA**”); and
 - (b) Such further and other relief as may be just and equitable.

2. **THE GROUNDS FOR THE APPLICATION ARE:**
 - (a) Nauss holds title to the following properties in northern Ontario (listed below by their respective municipal addresses):
 - (i) 25690 Lasalle Boulevard, Sudbury, Ontario (the “**Sudbury Property**”);
 - (ii) 551 Centre Street in Espanola, Ontario (the “**Espanola Property**”);
 - (iii) 7 Millichamp Street, in Markstay, Ontario (the “**Markstay Millichamp Property**”); and
 - (iv) 1330 North Road, in Markstay Ontario (the “**Markstay North Road Property**” together with the Sudbury Property, the Espanola Property and the Markstay Millichamp Property, the “**Real Property**”);
 - (b) All of the Real Property is used by Nauss in carrying out its business operations;

- (c) Nauss' employees non-unionized and it has no pension plans or other employee benefit plan;
- (d) On August 9, 2017, Canadian Imperial Bank of Commerce (the "**Bank**"), as lender, and Nauss, as borrower, entered into a credit agreement (the "**Credit Agreement**"), pursuant to which the Bank extended to Nauss: (i) a line of credit in the principal amount of \$50,000 (the "**LOC Facility**"); and (ii) a term loan in the principal amount of \$920,000,000 (the "**SBL Facility**" together with the LOC Facility, the "**Credit Facilities**"). Pursuant to the terms and conditions of the Credit Agreement, the Credit Facilities are repayable on demand;
- (e) As of November 17, 2019 Nauss is indebted to the Bank in the approximate amount of \$929,019.31 plus accruing interest and all other charges and expenses of enforcement (the "**Indebtedness**");
- (f) As security for the Indebtedness, Nauss provided the Bank with:
 - (i) A general security agreement in respect of all of the personal property of Nauss the terms of which are incorporated within the Credit Agreement (the "**GSA**");
 - (ii) A charge/mortgage in the principal amount of \$583,000.00 against the Markstay Millichamp Property (the "**Markstay Millichamp Charge**");
 - (iii) A charge/mortgage in the principal amount of \$206,000.00 against the Espanola Property (the "**Espanola Charge**"); and

- (iv) A charge/mortgage in the principal amount of \$210,000.00 against the Sudbury Property (the “**Sudbury Charge**”, together with the Markstay Millichamp Charge and the Espanola Charge, the “**Mortgages**”);
- (g) Under the terms and conditions of the GSA and each of the Mortgages, Nauss agreed that the Bank would have the right to seek the appointment of a Receiver upon the occurrence of a default thereunder;
- (h) Nauss is in default of both the GSA and each of the Mortgages and owes CRA approximately \$350,000 in respect of unremitted source deductions;
- (i) On June 14, the Bank is delivered to Nauss a demand letter, demanding payment of the Indebtedness in full, and notice of intention to enforce its security pursuant to section 244 of the BIA. The applicable statutory notice period has expired and Nauss has not paid the Indebtedness;
- (j) Nauss is insolvent and facing a cash flow crises, with no readily identifiable source of financing to manage its prospects going forward;
- (k) It is just and convenient, at this time, for the Court to appoint a receiver and manager over the Property. The immediate appointment of a receiver and manager will provide necessary stability, transparency and oversight in the wind-down of Nauss’ operations, and allow for an orderly sale of the Property that will benefit all of Nauss’ stakeholders;
- (l) MNP is a licensed trustee in bankruptcy, and has consented to act as Receiver should the Court appoint it;

- (m) Those other grounds set out in the Affidavit of Sieg Flatt, to be sworn (the “**Flatt Affidavit**”);
- (n) The provisions of the BIA, including Section 243;
 - (a) Section 101 of the CJA;
 - (b) Rules 1.04, 3.02, 16.08, and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, c. C.43; and
 - (c) Such further and other grounds as counsel may advise and this Honourable Court permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Application:

- (a) The Flatt Affidavit to be sworn, and the exhibits thereto; and
- (b) Such further material as counsel may advise and this Honourable Court may permit.

Date: November 18, 2019

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

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

Lawyers for the Applicant

SERVICE LIST

TO: NAUSS PLUMBING & HEATING INC.
2590 Lasalle Blvd.
Sudbury, ON, P3A 4R7

Dennis Groves
Tel: (705) 566-2359
Email: melnorth@bellnet.ca

AND TO: MNP LTD.
111 Richmond Street West
Suite 300
Toronto, ON M5H 2G4

Jerry Henechowicz
Tel: (416) 515-3924
Fax: (416) 323-5240
Email: jerry.henechowicz@mnp.ca

Proposed Receiver

AND TO: CANADA REVENUE AGENCY C/O DEPARTMENT OF JUSTICE
Ontario Regional Office
The Exchange Tower, Box 36
130 King Street West, Suite 3400
Toronto, ON M5X 1K6

Diane Winters
Tel: (416) 973-3172
Fax: (416) 973-0810
E-Mail: diane.winters@justice.gc.ca

Counsel to the Minister of National Revenue

MINISTRY OF FINANCE
Office of Legal Services
33 King Street West, 6th Floor
Oshawa, ON L1H 8H5

Kevin J. O'Hara
Tel: (905) 433-6934
Fax: (905) 436-4510
Email: kevin.ohara@fin.gov.on.ca

AND TO: FORD CREDIT CANADA LIMITED
P.O. Box 2400
Edmonton, AB T5J-5C7

AND TO: FORD CREDIT CANADA COMPANY
P.O. Box 2400
Edmonton, AB T5J-5C7

AND TO: 739572 ONTARIO LIMITED
17 King's Inn Trail
Thornhill, ON L3T 1T6

AND TO: KORA MANAGEMENT LTD.
1374 Arlington Boulevard
Sudbury, ON P3E 6H8

CANADIAN IMPERIAL BANK OF COMMERCE

- and -

NAUSS PLUMBING & HEATING INC.

Applicant

Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT SUDBURY

NOTICE OF APPLICATION

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5
Tel: 416-862-7525
Fax: 416-862-7661

Haddon Murray (LSO# 61640P)

Tel: 416-862-3604
haddon.murray@gowlingwlg.com

Lawyers for the Applicant

This is Exhibit "B" referred to in the Affidavit of Heather Fisher sworn January 29, 2020.



Commissioner for Taking Affidavits (or as may be)

MAHA MANSOOR

**Maha Mansoor, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires May 18, 2021.**

From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: November 28, 2019 11:25 AM
To: Murray, Haddon
Subject: RE: CIBC v. Nauss - Call today

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

The confirmation now served says Jan 10,2020

J. Robert LeBlanc
Desmarais, Keenan LLP
phone (705) 675-7521 x251
direct line (705)669-4763
fax (705)675-7390
email: leblanc@dklawyers.ca

15 MacKenzie Street
Sudbury, ON P3C 4Y

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From: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Sent: Thursday, November 28, 2019 10:22 AM
To: J. Robert Leblanc <leblanc@dkLawyers.ca>
Subject: RE: CIBC v. Nauss - Call today

To confirm, is the adjournment to January 10, 2020 (which I note is a typo in my email below, where I wrote 2019) – or will further steps have to be taken to bring the application on for that date?

Haddon Murray
Associate
T +1 416 862 3604
haddon.murray@gowlingwlg.com



From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: November-28-19 10:17 AM
To: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Subject: RE: CIBC v. Nauss - Call today

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Haddon---Agreed—I just spoke with the Court office. They have removed it from the list. I will shortly send you and file this am a confirmation notice adjourning the matter on consent. If there are any questions please advise. Thank you

J. Robert LeBlanc
Desmarais, Keenan LLP
phone (705) 675-7521 x251
direct line (705)669-4763
fax (705)675-7390
email: leblanc@dklawyers.ca

15 MacKenzie Street
Sudbury, ON P3C 4Y

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From: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Sent: Thursday, November 28, 2019 9:53 AM
To: J. Robert Leblanc <leblanc@dkLawyers.ca>
Cc: Fisher, Heather <Heather.Fisher@gowlingwlg.com>; Rockefeller, Eric <Eric.Rockefeller@gowlingwlg.com>
Subject: RE: CIBC v. Nauss - Call today

Bob, I've spoken to my client.

CIBC will consent to the adjournment of the application until January 10, 2019 on the basis that your client consents to the appointment of the receiver unless prior to January 10, 2019 it has:

- 1) Fully paid its indebtedness to CIBC; or
- 2) Provided CIBC with a commitment letter for financing within a time period that is acceptable to CIBC at its sole discretion;
 - a. that is legally binding;
 - b. has no conditions precedent; and
 - c. is from a lender that is acceptable to CIBC at its sole discretion.

Please reply confirming that:

- 1) you have received instructions from your client, who agrees to the terms set out above; and
- 2) you will attend at the Sudbury court tomorrow and inform the court that the matter is adjourned on consent on terms agreed upon by the parties in an exchange of emails between counsel on November 28, 2019.

Regards,

Haddon Murray

Haddon Murray
Associate
T +1 416 862 3604
haddon.murray@gowlingwlg.com



From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: November-28-19 9:40 AM
To: Murray, Haddon <Haddon.Murray@gowlingwlq.com>
Subject: RE: CIBC v. Nauss - Call today

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My client has agreed to the proposed resolution.
Do you have instructions ?
Thank you

J. Robert LeBlanc
Desmarais, Keenan LLP
phone (705) 675-7521 x251
direct line (705)669-4763
fax (705)675-7390
email: leblanc@dklawyers.ca

15 MacKenzie Street
Sudbury, ON P3C 4Y

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From: Murray, Haddon <Haddon.Murray@gowlingwlq.com>
Sent: Wednesday, November 27, 2019 2:36 PM
To: J. Robert Leblanc <leblanc@dkLawyers.ca>
Subject: RE: CIBC v. Nauss - Call today

Call is at 3

Dial in: 866-201-0079
Passcode: 294218#

Haddon Murray
Associate
T +1 416 862 3604
haddon.murray@gowlingwlq.com



From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: November-27-19 2:24 PM
To: Murray, Haddon <Haddon.Murray@gowlingwlq.com>
Subject: RE: CIBC v. Nauss - Call today

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We are getting power surges.
Your email as to time has disappeared—please resend

J. Robert LeBlanc
Desmarais, Keenan LLP
phone (705) 675-7521 x251
direct line (705)669-4763
fax (705)675-7390
email: leblanc@dklawyers.ca

15 MacKenzie Street
Sudbury, ON P3C 4Y

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From: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Sent: Wednesday, November 27, 2019 1:28 PM
To: J. Robert Leblanc <leblanc@dkLawyers.ca>
Subject: RE: CIBC v. Nauss - Call today

Is your client available for a call?

Haddon Murray
Associate
T +1 416 862 3604
haddon.murray@gowlingwlg.com



From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: November-27-19 12:48 PM
To: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Subject: RE: CIBC v. Nauss - Call today

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Is this call to be on a w/out prejudice basis.

J. Robert LeBlanc
Desmarais, Keenan LLP
phone (705) 675-7521 x251
direct line (705)669-4763
fax (705)675-7390
email: leblanc@dklawyers.ca

15 MacKenzie Street

Sudbury, ON P3C 4Y

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From: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Sent: Wednesday, November 27, 2019 11:39 AM
To: J. Robert Leblanc <leblanc@dkLawyers.ca>
Cc: Jerry Henechowicz <Jerry.Henechowicz@mnp.ca>; Flatt, Sieg <Sieg.Flatt@CIBC.ca>; Rockefeller, Eric <Eric.Rockefeller@gowlingwlg.com>; Fisher, Heather <Heather.Fisher@gowlingwlg.com>
Subject: CIBC v. Nauss - Call today

Robert, I've spoken with my client and MNP – we are hoping we can have a call today with everyone on the phone to see if we can come to an agreement about this matter.

Can you please speak with your client and find out what his availability is? As I'm sure you appreciate, its important we address this as soon as possible.

Regards,

Haddon

Haddon Murray
 Associate
 T +1 416 862 3604
haddon.murray@gowlingwlg.com



Gowling WLG (Canada) LLP
 Suite 1600, 1 First Canadian Place
 100 King Street West
 Toronto ON M5X 1G5
 Canada



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This is Exhibit "C" referred to in the Affidavit of Heather Fisher sworn January 29, 2020.

A handwritten signature in blue ink, appearing to read "M. Mansoor", is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

MAHA MANSOOR

Maha Mansoor, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires May 18, 2021.

From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: January 6, 2020 5:09 PM
To: Murray, Haddon; Fisher, Heather
Cc: Channing, Sherry
Subject: RE: CIBC v Nauss - follow-up re: Confirmation of Application for Jan 6, 2020

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Yes all this is accurate. Anything else ?

From: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Sent: January 6, 2020 4:58 PM
To: Fisher, Heather <Heather.Fisher@gowlingwlg.com>; J. Robert Leblanc <leblanc@dkLawyers.ca>
Cc: Channing, Sherry <Sherry.Channing@gowlingwlg.com>
Subject: RE: CIBC v Nauss - follow-up re: Confirmation of Application for Jan 6, 2020

Robert,

I understand you have spoken to Heather about this today. I have also had a call with the court who informed me that, because nobody attended the November hearing date, the court office won't let us schedule the application to be brought back on the 10th at this point – however, the court clerk said it may be possible to walk up with the motion. With that in mind, I have asked that she set aside the materials for the sitting judge and said we would provide her with a note explaining what happened and asking that they permit us to proceed with the application. The note I intend to add is set out below. Please confirm that you have reviewed the note and are ok with its content as soon as possible.

I have attached relevant correspondence for your convenience.

Regards,

This correspondence relates to CV-19-00008866-0000, which was originally scheduled to be heard in the Sudbury Superior Court of Justice on November 29, 2019. We are counsel to the applicant in this matter in respect of an application to appoint a Receiver over the respondent's property.

I have spoken to the respondent's counsel Mr. Robert LeBlanc (cc'd), who has reviewed this email and confirms that the contents are accurate.

On November 28, 2019, counsel for the respondent and the applicant agreed the application would be adjourned to January 10, 2020, at which point the Receiver would be appointed on consent. The adjournment was to be addressed by the respondent's counsel, who is located in Sudbury.

In accordance with the parties' agreement, counsel for the respondent filed the Confirmation of Application indicating that the matter was to be adjourned on consent to January 10, 2020 (attached). Counsel for the respondent also informed the applicant's counsel on November 28, 2019, that he had spoken to the Court office who had removed the matter from the list for November 29, 2019. Counsel for the debtor did not believe it was necessary to attend as it was for a consent adjournment and did not attend on November 29, 2019.

It appears that there was some miscommunication and the matter was not removed from the list, but proceeded on November 29, 2019. No counsel attended in person and consequently the matter was struck. We received the court's endorsement to this affect on January 6, 2020.

The parties intend to appear before the Court on Friday, January 10, 2020 (as originally contemplated) to walk this matter up so that it can be heard. As noted above, the appointment of the Receiver is on consent and we do not anticipate this matter will take more than 5 minutes of the courts time.

We appreciate the Court's patience as we try to remedy this error.

Haddon Murray

Partner

T +1 416 862 3604

haddon.murray@gowlingwlg.com



From: Fisher, Heather <Heather.Fisher@gowlingwlg.com>

Sent: January 6, 2020 2:29 PM

To: leblanc@dkLawyers.ca

Cc: Murray, Haddon <Haddon.Murray@gowlingwlg.com>; Channing, Sherry <Sherry.Channing@gowlingwlg.com>

Subject: CIBC v Nauss - follow-up re: Confirmation of Application for Jan 6, 2020

Afternoon Robert,

As a follow-up to our call, this email is to provide you with my contact information. After you have had a chance to reach out to your client and speak to the Sudbury court, I look forward to receiving an update on how we are best to proceed on Friday.

I also did some quick digging through my email and the last word we had from you about the Confirmation of Application was on November 28, where you advised us that "I will shortly send you and file this am a confirmation notice adjourning the matter on consent." Can you confirm whether your office filed the Confirmation of Application on November 28, 2019?

Thanks,

Heather Fisher

Associate

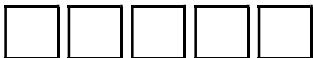
T +1 416 369 7202

heather.fisher@gowlingwlg.com



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100 King Street West

Toronto ON M5X 1G5
Canada



gowlingwlg.com

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DESMARAIS, KEENAN LLP
LAWYERS | AVOCATS

J. Robert LeBlanc
Direct Line: 705-675-7521 ext. 251
Direct Fax: 705-675-7390
Email: leblanc@dklawyers.ca
Assistant: Colette Lauzon
Direct Line: 705-675-7521 ext. 224
Direct Fax: 705-675-7390
Email: lauzon@dklawyers.ca

November 28th, 2019

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

Attention: Haddon Murray

Dear Sir:

**Re: Canadian Imperial Bank of Commerce vs. Nauss Plumbing & Heating Inc.
Our file #100,235**

Please find enclosed our Confirmation of Application now served upon you pursuant to the Rules.

Yours truly,
DESMARAIS, KEENAN LLP

J. ROBERT LEBLANC

JRL:cl
Enclosures

Court file no. CV-19-00008866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

and

NAUSS PLUMBING & HEATING INC.

Respondent

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

CONFIRMATION OF APPLICATION

I, J. ROBERT LEBLANC, lawyer for the Respondent, Nauss Plumbing & Heating Inc. confirm that the Application to be heard on Friday, November 29th, 2019 at 9:30 a.m. will proceed on the following basis:

- for an adjournment on consent to Friday, January 10th, 2020 to be spoken to.
- for a contested adjournment to (date) , for the following reason: *(specify who is requesting the adjournment and why, and who is opposing and why)*
- for a consent order
- for hearing of all the issues
- for hearing of the following issues only *(specify)*

Counsel will refer the presiding judge to the following materials: *(please be specific)*

- Application Record

I estimate that the time required for the motion will be: 20 minutes.

November 28th, 2019

DESMARAIS, KEENAN LLP
Barristers & Solicitors
15 Mackenzie Street
Sudbury, Ontario
P3C 4Y1

J. Robert Leblanc (LSUC#14854R)

Tel: (705) 675-7521
Fax: (705) 675-7390
leblanc@dklawyers.ca

Solicitor for the Respondent

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

Haddon Murray (LSUC#61640P)

Tel: (416) 862-3604
Fax: (416) 862-7661
Haddon.murray@gowlingwlg.com

Lawyers for the Applicant

Applicant

Respondent

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

Court file #CV-19-00008866-0000

**Ontario
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Sudbury**

**CONFIRMATION OF
APPLICATION**

Name, address and telephone number of new solicitor

Desmarais, Keenan LLP
Barrister & Solicitor
15 Mackenzie Street
Sudbury ON P3C 4Y1

J. ROBERT LEBLANC (LSUC#14854R)
(705) 675-7521
Fax: (705) 675-7390
leblanc@dklawyers.ca

Lawyer for the Respondent

CANADIAN IMPERIAL BANK OF COMMERCE

- and -

NAUSS PLUMBING & HEATING INC.

Applicant

Respondent

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

Nov 29/19 10:10 - No one present. The matter is struck for the 1st.

R. Haddon

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT SUDBURY

APPLICATION RECORD

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5
Tel: 416-862-7525
Fax: 416-862-7661

Haddon Murray (LSO# 61640P)

Tel: 416-862-3604
haddon.murray@gowlingwlg.com

Lawyers for the Applicant, Canadian Imperial Bank of Commerce

SUPERIOR COURT OF JUSTICE
COUR. SUPÉRIEURE DE JUSTICE
FILED/DÉPOSÉE

20 NOV. 2019

AT/À SUDBURY

This is Exhibit "D" referred to in the Affidavit of Heather Fisher sworn January 29, 2020.



Commissioner for Taking Affidavits (or as may be)

MAHA MANSOOR

**Maha Mansoor, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires May 18, 2021.**

Court File No. CV-19-8866-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)	FRIDAY, THE 10 th
)	
JUSTICE)	DAY OF JANUARY, 2020

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

ORDER
(appointing Receiver)

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

ON READING the affidavit of Sieg Flatt sworn November 19, 2019, and the Exhibits thereto, and on reading the supplemental affidavit of Sieg Flatt sworn November 25, 2019, and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant and those other parties listed on the counsel slip, and on being advised that the Debtor and 739572 Ontario Limited ("**739**") do not oppose the within Order, no one else appearing for any other party

although duly served as appears from the affidavits of service of Cherie Mitchell sworn November 19, 2019 and November 25, 2019 and on reading the consent of MNP to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, MNP is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor and all proceeds thereof (collectively, the "**Property**"), including but not limited to the lands and premises listed in Schedule "**B**" hereto (the "**Schedule "B" Real Property**") and the lands and premises listed in Schedule "**C**" hereto (the "**Schedule "C" Real Property**").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (f) to settle, extend or compromise any indebtedness owing to the Debtor;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (h) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (i) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (j) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

- (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$50,000; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.

- (k) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (l) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property including as against the Real Property;
- (n) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (o) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

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

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that, except as otherwise provided in this paragraph 10, all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. Notwithstanding anything otherwise contained in this paragraph 10, in relation to its Charge/Mortgage registered in favour of 739, as Instrument No. SD342507, on September 5, 2017 (the "**739 Charge**"), 739 shall be at liberty to (i) issue a notice of intention to enforce security pursuant to section 244 of the BIA, (ii) issue a notice of sale under mortgage in respect to the Schedule "C" Property, and (iii) to list the Schedule "C" Real Property for sale under power of sale, upon giving the Receiver 30 days prior written notice if 739 is not satisfied with the Receiver's marketing and sale efforts in relation to thereto.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

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

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that, except as otherwise provided for in this paragraph 13, all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court. Any rents, funds, monies or other forms of payments received or collected by the Receiver from and after the making of this Order in relation to the Schedule "C" Real Property, shall be deposited into an account to be opened by the Receiver (the "**Schedule "C" Real Property Account**") and the monies standing to the credit of the Schedule "C" Real Property Account shall be paid by the Receiver to 739 and shall be applied by 739 on account of the indebtedness owing under the 739 Charge.

EMPLOYEES

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

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that, save except with respect to the Schedule "C" Real Property and the proceeds thereof, the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA. With respect to the Schedule "C" Real Property and the proceeds thereof, the Receiver's Charge shall form a second charge on the Schedule "C" Real Property, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but otherwise subject to the 739 Charge and sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$70,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the 739 Charge over the Schedule "C" Real Property, the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates

evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.MNPdebt.ca/Nauss.

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

GENERAL

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

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

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

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

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

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

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that MNP Ltd., the receiver (the "**Receiver**") of the assets, undertakings and properties Nauss Plumbing & Heating Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (the "**Court**") dated the ___ day of _____, 2019 (the "**Order**") made in an action having Court file number _____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the ____ day of _____, 20__.

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

Per: _____

Name:

Title:

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

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

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

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

CANADIAN IMPERIAL BANK OF COMMERCE

- and -

NAUSS PLUMBING & HEATING INC.

Applicant

Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT SUDBURY

RECEIVERSHIP ORDER

GOWLING WLG (CANADA) LLP

Barristers & Solicitors

1 First Canadian Place

100 King Street West, Suite 1600

Toronto ON M5X 1G5

Haddon Murray (#61640P)

Tel: 416-862-3604

Fax: 416-862-7661

haddon.murray@gowlingwlg.com

Solicitors for the Applicant

This is Exhibit "E" referred to in the Affidavit of Heather Fisher sworn January 29, 2020.



Commissioner for Taking Affidavits (or as may be)

MAHA MANSOOR

Maha Mansoor, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires May 18, 2021.

From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: January 9, 2020 12:23 PM
To: Fisher, Heather
Subject: RE: CIBC v Nauss Plumbing and Heating - draft Receivership Order (response required)

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Agreed.
Thanks

From: Fisher, Heather <Heather.Fisher@gowlingwlg.com>
Sent: January 9, 2020 12:19 PM
To: J. Robert Leblanc <leblanc@dkLawyers.ca>
Subject: RE: CIBC v Nauss Plumbing and Heating - draft Receivership Order (response required)

You can reply to this email indicating you consent to the form and content of the order. I will take a copy of this email to the court tomorrow.

Heather Fisher
Associate
T +1 416 369 7202
heather.fisher@gowlingwlg.com



From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: January-09-20 12:11 PM
To: Fisher, Heather <Heather.Fisher@gowlingwlg.com>
Subject: RE: CIBC v Nauss Plumbing and Heating - draft Receivership Order (response required)

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Please prepare and send what you wish me to sign.

From: Fisher, Heather <Heather.Fisher@gowlingwlg.com>
Sent: January 9, 2020 10:44 AM
To: DPreger@dickinson-wright.com; J. Robert Leblanc <leblanc@dkLawyers.ca>
Cc: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Subject: RE: CIBC v Nauss Plumbing and Heating - draft Receivership Order (response required)

*Please provide consent via email.

Heather Fisher
Associate
T +1 416 369 7202
heather.fisher@gowlingwlg.com



From: Fisher, Heather

Sent: January-09-20 10:38 AM

To: 'DPreger@dickinson-wright.com' <DPreger@dickinson-wright.com>; 'J. Robert Leblanc' <leblanc@dkLawyers.ca>

Cc: Murray, Haddon <Haddon.Murray@gowlingwlg.com>

Subject: CIBC v Nauss Plumbing and Heating - draft Receivership Order (response required)

Good morning gentlemen,

Attached is the revised draft order for the Nauss matter, which reflects all parties requested changes and indicates this receivership is on the consent of the Debtor and 739572.

Please review and provide your consent via as to the form and content of the order.

Thanks,

Heather Fisher

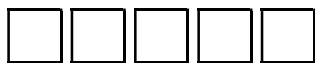
Associate

T +1 416 369 7202

heather.fisher@gowlingwlg.com



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Canada



gowlingwlg.com

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This is Exhibit "F" referred to in the Affidavit of Heather Fisher sworn January 29, 2020.



Commissioner for Taking Affidavits (or as may be)

MAHA MANSOOR

Maha Mansoor, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires May 18, 2021.

From: Colette Lauzon <lauzon@dkLawyers.ca>
Sent: January 10, 2020 9:27 AM
To: Murray, Haddon
Cc: Fisher, Heather
Subject: Re: Nauss Plumbing
Attachments: 202001100916.pdf

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Please find enclosed documentation received late yesterday.
Notwithstanding the consent, I am instructed to attend an ask for a further adjournment to try to finalize these sales.

I have copied Ms. Fisher and will attend Court early to discuss with her.
Sorry for the short notice.

Yours truly,

J. ROBERT LEBLANC

Colette Lauzon

Legal Assistant to J. Robert Leblanc
Desmarais, Keenan LLP
15 MacKenzie Street
Sudbury, Ontario P3E 4Y1
(705) 675-7521
Fax: (705) 675-7390

J. Robert Leblanc

From: Denis Groves <manager@naussplumbing.ca>
Sent: January 9, 2020 10:28 AM
To: J. Robert Leblanc
Subject: FW: Letter of Intent (with a signature)
Attachments: letterof intent.pdf

Good morning Robert,

Please find attached a letter of intent from the purchaser for the Jennica Springs portion of my business including the building on 1330 North Rd Markstay for \$ 425,000.00

I also spoke with Mitch Spiegel this morning and he will have a letter of commitment for a combined mortgage on the 2590 Lasalle Sudbury building and the 7 Millichamp building in Markstay for a total of \$ 400,000.00

I am still working on the Espanola building

Do you think this will be enough to hold them at bay until I can get the Espanola building sold?

Please let me know

Thank You

Denis

From: Elena Zolotko [mailto:ezolotko123@gmail.com]
Sent: January 9, 2020 6:19 AM
To: Denis Groves <manager@naussplumbing.ca>
Subject: Letter of Intent (with a signature)

Hi Denis,

I'm also sending you a scanned Letter of Intent with my signature if needed.

Best Regards,

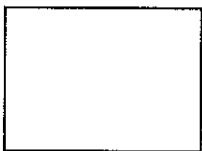
Elena Zolotko, Ph.D.

Founder & CEO

EZ Intermedia Inc.

Cross-Cultural Marketing & PR

ezintermedia.ca





EZ InterMedia Inc.

ezintermedia.ca
ezecodesign.com
ipaclabs.com

2312-16 Harrison Garden Blvd.
Toronto, ON, M2N 7J6
Canada

Issue Date: January 8, 2020

HST # 82689 7662

Tel: 416-688-0278
Email: ezolotko@rogers.com

LETTER OF INTENT

TO: Whom it May Concern
RE: Purchase Jennica Springs (property and business)

This is to inform you that we have concluded to purchase Jennica Springs Water source (property and a building/water filling plant) located at: 1330 North Rd. Pc151 424 SEC SES; Pt Lot 12, Con1, Loughrin, Parts 1&2 of plan 53R1 15954; Markstay Warren,

And a business associated with water bottling

For the sum of \$425,000.00

We intend to finalize the purchase by the end of January 2020. By this time we will have all the necessary paperwork ready. The documents will be completed and signed by the relevant parties. After that, we shall agree on a date when we will officially start operations of the business.

Sincerely,

Elena Zolotko
CEO

A handwritten signature in black ink, appearing to be 'E. Zolotko', written over a horizontal line.

J. Robert Leblanc

From: Denis Groves <manager@naussplumbing.ca>
Sent: January 9, 2020 2:37 PM
To: J. Robert Leblanc
Subject: RE: Letter of Intent (with a signature)

Hi Bob,

One of my employees who wanted to buy the Jennica water company says he can get me an offer this afternoon for \$300k

Will that help?

From: J. Robert Leblanc [mailto:leblanc@dkLawyers.ca]
Sent: January 9, 2020 12:57 PM
To: Denis Groves <manager@naussplumbing.ca>
Subject: RE: Letter of Intent (with a signature)

From: Denis Groves <manager@naussplumbing.ca>
Sent: January 9, 2020 10:28 AM
To: J. Robert Leblanc <leblanc@dkLawyers.ca>
Subject: FW: Letter of Intent (with a signature)

Good morning Robert,

Please find attached a letter of intent from the purchaser for the Jennica Springs portion of my business including the building on 1330 North Rd Markstay for \$ 425,000.00

I also spoke with Mitch Spiegel this morning and he will have a letter of commitment for a combined mortgage on the 2590 Lasalle Sudbury building and the 7 Millichamp building in Markstay for a total of \$ 400,000.00

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Thank You

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Sent: January 9, 2020 6:19 AM
To: Denis Groves <manager@naussplumbing.ca>
Subject: Letter of Intent (with a signature)

Hi Denis,

I'm also sending you a scanned Letter of Intent with my signature if needed.

Best Regards,

Elena Zolotko, Ph.D.
 Founder & CEO



**MD
FINANCIAL
CORPORATION**
Lic. # 10714

3089 Bathurst St., Suite 312
Toronto, Ontario M6A 2A4
Tel: 416-782-5777
Fax: 416-782-1048

January 9, 2020

Mr. Denis Anthony Groves
2816 Greenvally Drive
Sudbury, ON P3E 5G3

Attention: Mitch Speigel

**RE: BLANKET FIRST MORTGAGE FINANCING
7 MILLICHAMP STREET, MARKSTAY, ONTARIO P0M 2G0 AND
2590 LASALLE BOULEVARD, SUDBURY, ONTARIO P3A 4R7**

We are pleased to offer you the following commitment for your consideration:

VALUED AT: \$300,000.00 – 7 Millichamp
\$400,000.00 – 2590 Lasalle

LOAN AMOUNT: \$400,000.00

INTEREST RATE: 9% (compounded monthly)

TERM: 1 year

PAYMENT: \$3,000.00 Interest only monthly

CLOSING DATE: ASAP

CONDITIONS:

- a) Open anytime for repayment with 3 months penalty.
- b) Non-transferable.
- c) Borrower to provide 12 post dated cheques to the lender(s).
- d) \$250.00 NSF or late payment fee.
- e) Title insurance required.
- f) Payment must be received in lender's office before 1:00pm
- g) Borrower acknowledges that this mortgage financing is from a Private Lender.
- h) Lender has the right to assign this commitment to a third party of their choice without the consent of the borrower.
- i) Borrower to provide photo I.D.
- j) Lender has the right to split this commitment into 2 separate mortgages

BORROWER: Nauss Plumbing & Heating Inc.

GUARANTOR: Denis Anthony Groves

FEES:

Inspection Fee:	\$	1,000.00	MD Financial Corporation
Lender Fee:	\$	8,000.00	
Brokerage Fee:	\$	4,000.00	MD Financial Corporation
Brokerage Fee:	\$	4,000.00	The Mortgage Group
Legal Fee:	\$	2,500.00	estimate + HST & disbursements
TOTAL:	\$	19,500.00	

MORTGAGES BOUGHT, SOLD AND ARRANGED



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Toronto, Ontario M6A 2A4
Tel: 416-782-5777
Fax: 416-782-1048

SECURITY: Major Security for this loan includes:

- a) Registered Blanket First mortgage for \$400,000.00 over subject properties. Realty taxes to be paid in full.
- b) Satisfactory insurance coverage as verified by lender's independent insurance advisor and naming lender as loss payee.
- c) Personal guarantees of Denis Anthony Groves and all shareholders of the borrower for the full amount of the loan on a joint and several basis.
- d) Assignment of all rents (If applicable).
- e) Chattel charge over both properties with PPSA

LEGAL FEE: A standby fee of \$2,500.00 is payable to Lloyd Rubinoff in Trust and must be accompanied with the signed acceptance of this commitment. In the event the applicant is unable to or unwilling to fulfill the conditions within this letter this fee will be forfeited and deemed to pay for work done on behalf of the lender. (**Certified funds only**)

INSPECTION FEE: An inspection fee of \$1,000.00 payable to MD Financial Corporation will be deducted on closing.

CONDITIONS PRECEDENT

TO FUNDING: Prior to the advance, the lender shall be satisfied that each of the following conditions have been met by the borrower.

- a) All security is in place to the satisfaction of the lender and its solicitor.
- b) Evidence of satisfactory title and zoning has been provided.
- c) Subject to satisfactory appraisal of subject properties showing a minimum value of \$300,000.00 for 7 Millichamp and \$400,000.00 for 2590 Lasalle addressed to the lender. (at borrowers' expense)
- d) Subject to satisfactory inspection of the subject property by the lender or his agent.
- e) This Commitment shall be null and void after January 16, 2020 if not accepted by then.
- f) Subject to satisfactory Phase 1 environmental report on both properties.

**OTHER
CONDITIONS:**

Borrower agrees to:

- a) Provide such other information and documentation as reasonable requested by the lender
- b) All legal fees incurred by the lender to be paid by the borrower as stated in this commitment.
- c) Pay to the lender his fee of \$8,000.00 and to the brokers their fee of \$9,000.00 should the borrower fail to close through no fault of the lender, as a pre-estimated of their liquidated damages.

X



**MD
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CORPORATION**
Lic. # 10714

3089 Bathurst St., Suite 312
Toronto, Ontario M6A 2A4
Tel: 416-782-5777
Fax: 416-782-1048

Yours very truly,
MD FINANCIAL CORPORATION


LARRY S. GWYNNE

ACCEPTANCE OF BORROWER

I the undersigned, hereby accept the terms and conditions as set out above.

X Dated at _____ this _____ day of _____ 2020.

f
BORROWER – _____
NAUSS PLUMBING & HEATING INC.

X
GUARANTOR – _____
DENIS ANTHONY GROVES

L

AMORTIZATION SUMMARYTransaction No:
MDFC-3689-1

Prepared For: Nauss Plumbing & Heating Inc.

MORTGAGE INFORMATION

Mortgage Amount:	\$ 400,000.00	Closing Date:	
Interest Rate:	9.000%	Interest Adjustment Date:	
Amortization:	0 Years 0 Months	First Payment Date:	
Term:	12 Months	Maturity Date:	
Disclosure Rate:	13.875%	Interest Adjustment Amount:	\$ 0.00
Payment Frequency:	Monthly	Interest Only:	Yes
Compounded:	Monthly		

MORTGAGE SUMMARY

Monthly Payment: \$ 3,000.00

Total Payments:	\$ 36,000.00
Total Interest:	\$ 36,000.00
Total Principal:	\$ 0.00
Balance Remaining at Maturity:	\$ 400,000.00

Prepared by : Agent
Larry Gwynne - M08006342
MD Financial Corporation CIMBC

312 - 3089 Bathurst Street
Toronto, Ontario
M6A 2A4
10714

Tel : (416) 782-5777
Fax : (416) 782-1048
E-mail : lsgwynne44@gmail.com

X
E. + O. E.

AMORTIZATION SCHEDULE

Payment Date	Interest	Principal	Balance
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
At End of Term:	\$ 36,000.00	\$ 0.00	\$ 400,000.00

X

J. Robert Leblanc

From: Denis Groves <manager@naussplumbing.ca>
Sent: January 9, 2020 10:01 PM
To: J. Robert Leblanc
Subject: Nauss

Good evening Robert

I appreciate that you will try to get us an extension tomorrow and I just wanted to point out a few facts that may help that argument.

The purchasers that want to buy the Jennica Springs business and property have been in negotiations with me for over a year and are committed to completing the sale. We would have had a formal agreement if not for the fact that they are Russian and one of the two partners was back in Russia for Christmas which is different to our calendar. This partner will be back next week and they are prepared to move forward immediately upon her return.

Is there something else we can supply to prove this.

Because of the unforeseen delay in getting the formal offer due to them being out of country we have decided to put a mortgage on the building in Espanola. Once I was informed the letter of intent was not satisfactory I immediately Spoke with Mitch Speigel and he is confident that we can get a mortgage on the Espanola Building possibly tomorrow (Friday)but more likely a couple more days . That will give us enough funds to satisfy the bank. If they were in agreement We would still proceed in selling the buildings.

It seems ludicrous that for a matter of a few days they would push this into receivership. I appreciate that they did give us an extension but I did not foresee the problems with people not being available during the Christmas season.

On another note I understand that you said the court would have little sympathy or even care about how this came about of missing these mortgage payments. As you know This came about due to an employee error. As the owner I should have been aware of this error by my employee.. but I wasn't until I received the foreclosure notice. Things would have been different if the bank had taken the effort to inquire as to what was wrong. My previous long time employee would have caught this error if she had not contracted cancer . She has recently succumbed to that disease. The impact on my family is very significant for the matter of a few days extension.

(My three children all work in the business.) The value of the buildings, businesses and assets greatly exceed what is owed to CIBC but the harm caused by the actions of receivership will cause irreparable damage to what is remaining after CIBC has secured their debt Once creditors are aware this action has been taken, continuing in business will be much more difficult.

I have never reneged on a debt in my life and I take full responsibility for the debt to CIBC.

This is a hell of a penalty for an error by a former employee.

I am counting on you to do everything in your power to have them grant us this short extension.

I am confident I will have the offers/ mortgage secured by wednesday.

Please do what you can for me

Thank you

Denis

Sent from my iPhone

This is Exhibit "G" referred to in the Affidavit of Heather Fisher sworn January 29, 2020.



Commissioner for Taking Affidavits (or as may be)

MAHA MANSOOR

Maha Mansoor, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires May 18, 2021.

Applicant

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

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT SUDBURY

APPLICATION RECORD

Nov 29/19 10:10 - No one present. The
matter is stayed for the time being.

Jan. 10th, 2020 Mr. LeBlanc. R. Haddon
Counsel for Gowling H. Fisher.
alleges that there is a binding settlement.
Mr. LeBlanc alleges that there are
recent developments that require
an adjournment so such developments can
be put before the court.
Adjourned sine die to be returned
on five days notice to permit a motion
to be brought to enforce the ^{alleged} settlement.
Costs of the day are reserved.

[Signature]

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5
Tel: 416-862-7525
Fax: 416-862-7661

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

Lawyers for the Applicant, Canadian Imperial Bank of
Commerce

SUPERIOR COURT OF JUSTICE
SUPERIEURE DE JUSTICE
COUR SUPERIEURE DE JUSTICE
FILED/DEPOSEE

20 NOV. 2019

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

Court File No. CV-19-00008866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**PROCEEDING COMMENCED AT
SUDBURY**AFFIDAVIT OF HEATHER FISHER
(SWORN JANUARY 29, 2020)****GOWLING WLG (CANADA) LLP**

Barristers & Solicitors

1 First Canadian Place

100 King Street West, Suite 1600

Toronto ON M5X 1G5

Haddon Murray (LSO# 61640P)

Tel: (416) 862-3604

Fax: (416) 862-7661

Email: haddon.murray@gowlingwlg.com

Lawyers for the Applicant,
Canadian Imperial Bank of Commerce

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

Court File No. CV-19-00008866-0000
NAUSS PLUMBING & HEATING INC.

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**PROCEEDING COMMENCED AT
SUDBURY**MOTION RECORD****GOWLING WLG (CANADA) LLP**

Barristers & Solicitors

1 First Canadian Place

100 King Street West, Suite 1600

Toronto ON M5X 1G5

Haddon Murray (LSO# 61640P)

Tel: (416) 862-3604

Fax: (416) 862-7661

Email: haddon.murray@gowlingwlg.com

Lawyers for the Applicant,
Canadian Imperia Bank of Commerce

This is Exhibit F referred to in the
Affidavit of Heather Fisher
sworn before me this
30th day of October, 2020

A handwritten signature in blue ink, appearing to read "H. Fisher", is written over a horizontal line.

A Commissioner for Taking Affidavits (or as may be)

Court File No. CV-19-00008866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

**FACTUM OF APPLICANT
MOTION TO ENFORCE SETTLEMENT**

PART I - OVERVIEW

1. This factum is written in support of a motion brought by the Canadian Imperial Bank of Commerce (the “**Bank**”) to enforce a Settlement Agreement dated November 28, 2019 consenting to the appointment of MNP Ltd. (“**MNP**”) as receiver and manager (“**Receiver**”) over the assets, undertakings and properties (“**Property**”) of the Respondent.
2. The terms of the Settlement Agreement were simple and unambiguous. The Bank agreed to the adjourn this application (the “**Application**”) from its initial hearing

date of November 29, 2019 to January 10, 2020 in exchange for the Respondent, Nauss Plumbing & Heating Inc.'s ("**Nauss**"), consent to the appointment of the Receiver. If the Respondent, was able to fully repay its indebtedness to the Bank, or provide suitable evidence of refinancing, prior to January 10, 2020, the Receiver would not be appointed.

3. On January 10, 2020, despite failing to repay its indebtedness or provide any evidence of a refinancing that would be sufficient to repay its indebtedness, the Respondent surprised the Bank by sending emailing at 9:27 a.m. in the morning to indicate that it intended to seek an adjournment of the Application, in violation of the Settlement Agreement.

4. At the hearing, Justice Cornell ordered that the Application be adjourned so that the Bank could bring the within motion to enforce the Settlement Agreement.

5. The Bank seeks an order enforcing the Settlement Agreement and appointing the Receiver. Should this Court decline to enforce the Settlement Agreement, the Bank requests that the Receivership Application be heard on its merits. The Bank relies on its Application Record dated November 19, 2019, and the Supplemental Application Record and factum dated November 25, 2019, each filed with the Court, with respect to the merits of the appointment of the Receiver.

PART II - FACTS

The Bank and Nauss Entered into a Credit Agreement

6. On August 9, 2017, the Bank, as lender, entered into a credit agreement (the “**Credit Agreement**”) with Nauss, as borrower.¹ Pursuant to the Credit Agreement, the Bank extended Nauss: (i) a line of credit in the principal amount of \$50,000 (the “**LOC Facility**”); and (ii) a term loan in the principal amount of \$920,000.00 (the “**SBL Facility**” together with the LOC Facility, the “**Credit Facilities**”).²

7. At the time the Credit Agreement was entered into, the following security documents, among other things, were delivered by Nauss to the Bank as security for the Indebtedness:³

- (a) a general security agreement in respect of all of the present and after-acquired personal property of Nauss the terms of which are incorporated within the Credit Agreement;
- (b) a charge / mortgage in the principal amount of \$583,000.00 against the Markstay Millichamp Property located at 7 Millichamp Street, Markstay, Ontario (the “**Markstay Millichamp Property**”);
- (c) a charge / mortgage in the principal amount of \$206,000.00 against the Espanola Property located at 551 Centre Street, Espanola, Ontario (the “**Espanola Property**”); and

¹ Affidavit of Sieg Flatt sworn November 19, 2019 at para 11 (Application Record, Tab 2) [**Flatt Affidavit**].

² Flatt Affidavit at para 11.

³ Flatt Affidavit at paras 7 and 13.

- (d) a charge / mortgage in the principal amount of \$210,000.00 against the Sudbury Property located at 1330 North Road, Markstay, Ontario (the “**Sudbury Property**”).

Nauss Faced Financial Difficulties beginning in early 2019

8. In early 2019, Nauss began to experience significant financial difficulties. On or around January 21, 2019, the Bank received a requirement to pay from the Canada Revenue Agency (the “**CRA**”), indicating that Nauss had to pay for past due corporate taxes in the amount of \$29,978.41.⁴ Starting in February of 2019, Nauss ceased making scheduled monthly payments to the Bank, as required under the Credit Agreement.⁵

9. In October of 2019, the CRA advised the Bank through a requirement to pay notice that Nauss owed the CRA a total of \$439,700.06 in respect of unremitted source deductions dating as far back as 2017.⁶

10. The Bank also became aware that Nauss had outstanding municipal property taxes in the aggregate amount of \$91,331.57 on the Sudbury Property, Espandola Property, and Markstay Millichamp Property.⁷

11. Nauss’ total indebtedness to the Bank as at November 17, 2019 was \$929,019.31.⁸ This debt continues to accrue as a result of interest and enforcement costs.

⁴ Flatt Affidavit at para 19.

⁵ Flatt Affidavit at para 20.

⁶ Flatt Affidavit at para 25.

⁷ Flatt Affidavit at para 26.

⁸ Flatt Affidavit at para 12.

The Bank Commences its Application to Appoint MNP as Receiver

12. On June 14, 2019, the Bank formally delivered a demand letter demanding the repayment of all amounts owing by Nauss to the Bank (the “**June 14 Demand Letter**”) and a notice of intention to enforce security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (the “**244 Notice**”).⁹

13. After providing Nauss with a significant period of time to enter into a sale transaction, or refinance its debt to the Bank, on November 19, 2019, the Bank commenced an application to appoint MNP as Receiver over the Property (the “**Receivership Application**”). The Receivership Application was scheduled to be heard on November 29, 2019.¹⁰

The Parties Reach a Settlement Agreement

14. On November 28, 2019, counsel for the parties negotiated a settlement regarding the Receivership Application. The terms of the settlement were memorialized in an email dated November 28, 2019 (9:53 a.m.) from Haddon Murray, counsel for the Bank, to Robert LeBlanc, counsel for Nauss.¹¹ Mr. LeBlanc confirmed the terms of the Settlement Agreement the same day at 10:17 a.m.¹²

15. The terms of the Settlement Agreement were:

⁹ *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, s 244 [BIA].

¹⁰ Affidavit of Heather Fisher sworn January 29, 2020 (Applicant’s Motion Record, Tab 2) [Fisher Affidavit] at para 2.

¹¹ Fisher Affidavit at para 4.

¹² Fisher Affidavit, Exhibit B (Tab B).

- (a) the Bank consented to the adjournment of the hearing until January 10, 2020; and
- (b) Nauss consented to the appointment of MNP as Receiver at the Receivership Application hearing rescheduled for January 10, 2020 unless Nauss fully repaid its indebtedness to the Bank or provided a commitment letter to refinance the indebtedness prior to January 10, 2020. Any commitment letter was required to: (i) be legally binding, (ii) have no conditions precedent, and (iii) be from a lender that is acceptable.¹³

16. Pursuant to the terms of the Settlement Agreement, the parties agreed to adjourn the Receivership Application on consent until January 10, 2020.¹⁴

17. On January 9, 2020, counsel for Nauss consented to the form and content of a draft order appointing MNP as Receiver over the Property in accordance with the terms of the Settlement Agreement for the hearing to be heard on January 10, 2020.¹⁵

18. It is undisputed that Nauss did not provide the Bank with full repayment of the indebtedness or a commitment letter to refinance the indebtedness that satisfied the terms of the Settlement Agreement by January 10, 2020.¹⁶

¹³ Fisher Affidavit at para 5.

¹⁴ Fisher Affidavit at para 6.

¹⁵ Fisher Affidavit at para 9.

¹⁶ Fisher Affidavit at para 11.

19. At 9:27 a.m. on January 10, 2020, Nauss advised counsel to the Bank that he would seek a further adjournment of the matter, notwithstanding the previous consent consent:¹⁷

Notwithstanding the consent, I am instructed to attend an (sic) ask for a further adjournment to try to finalize these sales.

20. **The email attached correspondence setting out two prospective transactions:**

- (a) A sale of the North Markstay Property and the business carried on there (the “**Prospective Sale**”). The letter describing the Prospective Sale does create a binding contract. There is no indication of any deposit paid or any consideration given by either party; and
- (b) A refinancing of the loan for the Markstay Millichamp Property and the Sudbury Property for a maximum of \$400,000.00 from MD Financial Corporation. The offer is for a Blanket First mortgage over the properties (the “**Prospective Refinancing**”).

21. There is no evidence that either of the Prospective Sale or Prospective Refinancing took place. As of the date of this factum, no payment whatsoever has been made by Nauss to the Bank since before February 2019. Furthermore, even if both transactions were successful, the aggregate value would not have been sufficient to pay off the Bank’s indebtedness.

¹⁷ Fisher Affidavit at para 10.

22. At the hearing on January 10, 2020, counsel for Nauss stated that an adjournment was required to allow it to put evidence before the court of further developments in the matter. Justice Cornell adjourned the Receivership Application *sine die* to permit the Applicant to bring the within motion to enforce the alleged Settlement Agreement.¹⁸

23. The Respondent has not filed any further evidence in this matter. As of January 12, 2020, the total indebtedness had increased to approximately \$1,016,319.42, plus all interest/bank charges and additional legal and professional fees, costs and taxes.

PART III - STATEMENT OF ISSUES

24. This motion raises the following issues:

- (a) Did the parties enter into an enforceable settlement on November 28, 2019?
- (b) If yes, should the court grant judgment accordingly?

PART IV - LAW

25. Pursuant to Rule 49.09 of the *Rules of Civil Procedure*, where a party to an accepted offer to settle fails to comply with the terms of the offer, the other party may make a motion to a judge for judgment in the terms of the accepted offer, and the judge may grant judgment accordingly.¹⁹

26. Rule 49.09 requires a two-step analysis:

¹⁸ Fisher Affidavit at para 12.

¹⁹ *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, r. 49.09 [*Rules*].

- (a) First, determine whether a settlement agreement was reached.
- (b) Second, if a settlement agreement exists, consider whether the agreement should be enforced.²⁰

The Parties reached a Settlement Agreement

27. The Court of Appeal has affirmed that a settlement agreement is a contract, subject to the general law of contract; “for a contract to exist, the court must find that the parties to the agreement (a) had a mutual intention to create a legally binding relationship, and (b) reached agreement on all of the essential terms of the settlement.”²¹

28. Where, as here, “the agreement is in writing, it is to be measured by an objective reading of the language chosen by the parties to reflect their agreement.”²²

29. An objective reading of the Settlement Agreement demonstrates consensus and the parties’ intention to create a final binding contract. The Settlement Agreement was offered by the Bank on November 28, 2019 at 9:53 a.m.²³ The language of the terms of the Settlement Agreement were clear, unambiguous, and unequivocal.

30. Nauss’s acceptance of the Bank’s November 28, 2019 offer created a binding settlement agreement between the parties. Upon receiving the settlement offer and a request to confirm the terms of the Settlement Agreement with the client, counsel for

²⁰ *Capital Gains Income Streams Corp. v. Merrill Lynch Canada Inc.* [2007] OJ No 3618 at paras 9 and 10 (Div Ct).

²¹ *Olivieri v. Sherman*, 2007 ONCA 491 at paras 41, 44.

²² *Lewicki Estate v. Nytschyk Estate*, 2016 ONSC 7459 at paras 16, 18.

²³ Fisher Affidavit at para 4 (Exhibit B).

Nauss replied with “Agreed”.²⁴ The parties had a mutual intention to create a legally binding contract and an agreement was reached on all essential terms of the settlement.

31. Nauss confirmed its intention to be bound by the Settlement Agreement on multiple occasions. First, by providing additional consent to the draft Receivership Order, which identified the order was being sought on consent.²⁵ And second, in counsel for Nauss’ January 10, 2020 email at 9:27 a.m. indicating that, “[n]otwithstanding the consent”, counsel would be attending to seek an adjournment.”²⁶

The Court Should Enforce the Settlement Agreement

32. In determining whether to enforce a settlement pursuant to Rule 49.09, all of the relevant factors disclosed by the evidence must be taken into account.²⁷ While a court has discretion under Rule 49.09 to refuse to enforce a settlement, “the discretion to refuse to enforce a settlement should be exercised rarely.”²⁸ Relevant factors raised in the evidence in this case include:

- (a) the evidence of the parties intentions to be bound by the Settlement Agreement;
- (b) the reasonableness of the Settlement Agreement;

²⁴ Fisher Affidavit at para 4 (Exhibit B).

²⁵ Fisher Affidavit at para 9.

²⁶ Fisher Affidavit at para 10.

²⁷ *Milios v. Zagas*, 38 O.R. (3d) 218 at para 29 (CA).

²⁸ *Catanzaro v. Kellogg's Canada Inc.*, 2015 ONCA 779 at para 9.

- (c) the prejudice to the party who seeks to uphold the Settlement Agreement, if the settlement is not enforced;
- (d) the prejudice to the party who seeks to set aside the settlement if the judgment is granted in relation to the prejudice to the party who seeks to uphold the settlement if the settlement is not enforced; and
- (e) the effect on third parties if the settlement is not enforced.

33. As discussed above, there is clear evidence that the parties intended to be bound by the Settlement Agreement. At all times between the Settlement Agreement on November 28, 2019 and the hearing date scheduled on January 10, 2020, counsel for Nauss understood that the Bank was seeking the appointment of MNP as Receiver as per the terms of the Settlement Agreement. During this time, Nauss repeatedly confirmed its intention to be bound by the Settlement Agreement.²⁹

34. The Settlement Agreement was reasonable. The Bank has worked with Nauss since June 2019 to address the indebtedness, despite being entitled to enforce its security at that time. The Bank provided Nauss an additional six weeks to refinance after the bank had brought its application to appoint a receiver.

35. The Bank will be prejudiced if the Settlement Agreement is not enforced as the value of the Bank's collateral may be further eroded. Nauss has demonstrated that it is unable to repay all obligations owing to the Bank. Additionally, given the significant accumulation of tax debt that has occurred, Nauss has also demonstrated that it is

²⁹ Fisher Affidavit at para 9-10.

unable to preserve and maintain the value of its assets. By refusing to appoint MNP as Receiver, the value of the Bank's collateral will continue to be eroded and the Bank will suffer severe prejudice as a result.

36. Conversely, Nauss will not suffer prejudice from the appointment of MNP as Receiver of the Property. As part of the Credit Agreement, Nauss willingly agreed to the appointment of a receiver should it default on the terms of the Credit Agreement. Moreover, Nauss also willingly consented to the appointment of a receiver should it fail to refinance under the Settlement Agreement. Nauss cannot now argue that the Bank's enforcement of this contractual right constitutes prejudice; this is precisely the outcome Nauss agreed to.

37. Nauss has been aware of its indebtedness since at least June 2019 and has been unable to obtain alternative financing. On the contrary, Nauss may benefit from the appointment of a Receiver. Nauss has demonstrated it is unable to meet its tax obligations and its obligations under the Credit Agreement. A Receiver can assist Nauss in meeting its statutory obligations and addressing potentially significant director and officer liability.

38. It is therefore respectfully submitted that the terms of the Settlement Agreement be enforced by this honourable Court.

PART V - ORDER REQUESTED

39. The Bank therefore respectfully requests:

- (a) an Order appointing MNP as Receiver over the Property of Nauss on substantially the same terms set out in the draft form of order attached at Exhibit D to the Fisher Affidavit;
- (b) in the alternative, that the application to appoint the Receiver be heard on its merits together with this motion; and
- (c) such further and other relief as counsel may request and this Court may permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of February, 2010.

per: 

Haddon Murray

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
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Lawyers for the Applicant, Canadian
Imperial Bank of Commerce

SCHEDULE "A"**LIST OF AUTHORITIES**

1. *Capital Gains Income Streams Corp. v. Merrill Lynch Canada Inc.* [2007] OJ No 3618 (Div Ct)
2. *Catanzaro v. Kellogg's Canada Inc.*, 2015 ONCA 779
3. *Lewicki Estate v. Nytschyk Estate*, 2016 ONSC 7459
4. *Milios v. Zagas*, 38 O.R. (3d) 218 at para 29 (CA)
5. *Olivieri v. Sherman* 2007 CarswellOnt 4207 (CA)

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s 244

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

- **(a)** the inventory,
- **(b)** the accounts receivable, or
- **(c)** the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

- **(a)** whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or
- **(b)** in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

(4) This section does not apply where there is a receiver in respect of the insolvent person. 1992, c. 27, s. 89, 1994, c. 26, s. 9(E)

***Courts of Justice Act*, R.S.O. 1990, c. C.43, s 131**

Rules of Civil Procedure, R.R.O. 1990, Reg. 194, r. 49.09

FAILURE TO COMPLY WITH ACCEPTED OFFER

49.09 Where a party to an accepted offer to settle fails to comply with the terms of the offer, the other party may,

- (a) make a motion to a judge for judgment in the terms of the accepted offer, and the judge may grant judgment accordingly; or
- (b) continue the proceeding as if there had been no accepted offer to settle.
R.R.O. 1990, Reg. 194, r. 49.09.

CANADIAN IMPERIAL BANK OF COMMERCE

- and -

NAUSS PLUMBING & HEATING INC.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT SUDBURY

**FACTUM OF THE APPLICANT
MOTION TO ENFORCE SETTLEMENT****GOWLING WLG (CANADA) LLP**

Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
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Tel: 416-862-3604
Fax: 416-862-7661
Email: haddon.murray@gowlingwlg.com

Lawyers for the Applicant, Canadian Imperial
Bank of Commerce

This is Exhibit G referred to in the
Affidavit of Heather Fisher
sworn before me this
30th day of October, 2020

A handwritten signature in blue ink, appearing to read "Heather", is written over a horizontal line.

A Commissioner for Taking Affidavits (or as may be)

Court File No. CV-19-00008866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

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

**BOOK OF AUTHORITIES
MOTION TO ENFORCE SETTLEMENT**

February 11, 2020

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Canadian Imperial Bank of Commerce

TO: **THE SERVICE LIST**

Court File No. CV-19-00008866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

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- and -

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INDEX

Tab	Description
1.	<i>Capital Gains Income Streams Corp. v. Merrill Lynch Canada Inc.</i> (2007), 87 O.R. (3d) 464 (Div Ct)
2.	<i>Catanzaro v. Kellogg's Canada Inc.</i> , 2015 ONCA 779
3.	<i>Lewicki Estate v. Nytschuk Estate</i> , 2016 ONSC 7459
4.	<i>Milios v. Zagas</i> , 38 O.R. (3d) 218 (CA)
5.	<i>Olivieri v. Sherman</i> , 2007 ONCA 491

TAB 1

2007 CarswellOnt 6003
Ontario Superior Court of Justice (Divisional Court)

Capital Gains Income Streams Corp. v. Merrill Lynch Canada Inc.

2007 CarswellOnt 6003, [2007] O.J. No. 3618, 160 A.C.W.S. (3d) 586, 230 O.A.C. 5, 87 O.R. (3d) 464

CAPITAL GAINS INCOME STREAMS CORPORATION and INCOME STREAMS III CORPORATION (Plaintiffs) and MERRILL LYNCH CANADA INC. (Defendant)

Carnwath J.

Heard: September 14, 2007
Judgment: September 25, 2007
Docket: DC330/07

Counsel: R.G. Slaght, Q.C., Paola Calce for Plaintiffs
James G.D. Douglas, Angela Vivolo for Defendant

Carnwath J.:

1 The parties negotiated to try and settle litigation between them. Following negotiations, the Moving Parties ("plaintiffs") moved before Cumming J., pursuant to rule 49.09, for an order that a settlement had been reached.

2 Rule 49:09 provides:

49.09 Where a party to an accepted offer to settle fails to comply with the terms of the offer, the other party may,

(a) make a motion to a judge for judgment in the terms of the accepted offer, and the judge may grant judgment accordingly; or

(b) continue the proceeding as if there had been no accepted offer to settle.

3 Cumming J. dismissed the motion, finding he could not say one way or another if a settlement had been reached.

4 The Moving Parties appealed to the Court of Appeal, both sides submitting Cumming J.'s order was final.

5 The majority in the Court of Appeal, Doherty and Juriansz JJ.A., found Cumming J.'s order to be interlocutory. Therefore, the Court of Appeal had no jurisdiction to hear the matter. The majority found the existence of a settlement remained an open question in the litigation, subject to any motion brought in the Divisional Court to seek leave to appeal Cumming J.'s decision.

6 The Moving Parties now seek leave to appeal Cumming J.'s decision. The motion is denied.

7 Pursuant to r. 62.02(4)(a), the Moving Parties submit there are conflicting decisions on the application of rule 49.09. With respect, I disagree.

8 The submissions fail to recognize the two-step analysis required when construing rule 49.09 and its application in the reported cases.

9 The first step is to consider whether an agreement to settle was reached. In doing so, the proper approach is to treat the motion like a rule 20 motion for summary judgment. If there are material issues of fact or genuine issues of credibility in dispute regarding whether (i) the parties intended to create a legally-binding relation or (ii) there was an agreement on all essential

terms, a court must refuse to grant judgment. (*Bayerische Landesbank Girozentrale v. R.S.W.H. Vegetable Farmers Inc.* (2001), 53 O.R. (3d) 374 (Ont. S.C.J.))

10 The second step, once an agreement has been found to exist, is to consider whether, on all the evidence, the agreement should be enforced. In this second step, a rule 20 approach is not applied, but rather a broader approach, taking into account evidence not relevant to a rule 20 inquiry.

11 Thus, Osborne J.A. is reported in 1998:

In determining whether to enforce a settlement under rule 49.09 all of the relevant factors disclosed by the evidence must be taken into account. When that is done, an appellate court will not generally interfere with the motions judge's decision to grant, or not grant, judgment in accordance with an accepted offer. ...

[Emphasis added]

(*Milios v. Zagaz* (1998), 38 O.R. (3d) 218 (Ont. C.A.))

12 The Moving Parties cite several cases as authority for the proposition that a rule 20 approach does not apply to the first step analysis of rule 49.09. None of the cases cited are authority for this submission. Each of the cases cited recognize the broader approach to the evidence required in the second step, nothing more. Already noted is *Milios v. Zagaz*, above.

13 The cases cited by the Moving Parties include: *Brzowski v. O'Leary*, 2004 CarswellOnt 3178 (Ont. S.C.J.); *Homewood v. Ahmed* (2003), 42 C.P.C. (5th) 291 (Ont. S.C.J.); *Weinberg v. Datacom Marketing Inc.*, 2006 CarswellOnt 377 (Ont. S.C.J. [Commercial List]); *Legault v. Johnston*, [2004] O.J. No. 107 (Ont. S.C.J.); *Vanderkop v. Manufacturers Life Insurance Co.* (2005), 78 O.R. (3d) 276 (Ont. S.C.J.); *Royal Bank v. Central Canadian Industrial Inc.*, 2003 CarswellOnt 5214 (Ont. C.A.); and *Chan v. Lam*, [2002] O.J. No. 1096 (Ont. C.A.); leave to appeal dismissed, [2002] S.C.C.A. No. 245 (S.C.C.).

14 In *Brzowski v. O'Leary*, above, Misener J. cites *Milios v. Zagaz*, above:

43. As for the case law bearing on the manner in which the judge should exercise his discretion, it is sufficient for me to cite *Milios v. Zagaz* [1998] O.J. No. 812 (Ont. C.A.) and *Fox Estate v. Stelmaszyk*, [2003] O.J. No. 2619 (Ont. C.A.).

44. Those judgments emphasize the judicial obligation to consider all of the circumstances of the case at hand, and to then decide whether it is fair to enforce the settlement. Although I risk unduly limiting my discretion by saying so, I think the right approach is to consider that a settlement effected pursuant to Rule 49 ought to be enforced, and so judgment ought to be granted, unless the offeror satisfies the judge that, in all the circumstances, enforcement would create a real risk of a clear injustice. It seems to me that the approach is required because it is good public policy to encourage settlement, and it would be quite inconsistent with that policy to decline enforcement unless a good reason for doing so is shown.

15 At para. 45, in *Homewood v. Ahmed*, above, Belleghem J. cited *Milios v. Zagaz*, above:

This is not a summary motion for judgment. However, in these circumstances I see no reason why the plaintiff should not be required to 'put his best foot forward'. The consequences of failure to do so are the same. Assuming, therefore, that he has done so, there is simply no 'triable issue', at least vis-à-vis the defendants.

It is clear to me that Belleghem J. applied a rule 20 approach to the first step analysis.

16 In *Weinberg v. Datacom Marketing Inc.*, above, Lederman J. is reported at para. 12:

In determining whether to enforce a settlement under Rule 49.09, all of the relevant factors disclosed by the evidence must be taken into account.

17 In *Legault v. Johnston*, above, the only issue was a consideration of the second step, that is, the exercise of the discretion vis-à-vis enforcement.

18 In *Vanderkop v. Manufacturers Life Insurance Co.*, above, Sproat J. accurately described the two step process in paras. [16] and [17]:

[16] My observation, which Mr. Petker agreed with, was that signed Minutes of Settlement were not within Rule 49 as there had been no exchange of a written offer and acceptance and, as such, this was really a motion for judgment. Mr. Petker agreed with this approach and agreed I should decide the case, on the current materials, as if it was a motion for judgment.

[17] The Rule 49 discretion as to whether to grant judgment remains relevant, however, as the cases indicate it is comparable to the pre-Rule 49 discretion applicable to motions for judgment based upon Minutes of Settlement.

19 In *Royal Bank v. Central Canadian Industrial Inc.*, above, the majority was dealing only with the second step analysis and cited *Milios v. Zagas*, above:

14. Under rule 49.09, the court has a discretion to grant judgment in the terms of the accepted offer or direct that the proceedings continue as if there had been no accepted offer to settle: see *Milios v. Zagas* (1998), 38 O.R. (3d) 218 (Ont. C.A.). The appellant did not request the motions judge to direct that the proceedings continue. However, the rule does not seem to require that a party request the court to send the matter to trial. It was an alternative that was open and not considered by the motions judge. It should also be noted that the appellant was self-represented.

15. There are troubling aspects to the evidence in this case and, in the words of this court in *Fox Estate v. Stelmaszyk* (2003), 173 O.A.C. 378 (Ont. C.A.), it does not satisfy our sense of justice to enforce the settlement in those circumstances. We conclude that we should exercise the discretion under rule 49.09 and direct that the proceeding continue as if there had been no accepted offer to settle.

20 In *Chan v. Lam*, above, a rule 49.09 motion, the appellant submitted that if rule 20 were applied, there would have been a genuine issue for trial. Weiler J.A. found that had it been a rule 20 motion, the motions judge would have been entitled to grant summary judgment. I conclude her finding confirms the application of rule 20 considerations to the first step analysis of rule 49.09.

21 For the foregoing reasons, I find no conflicting decisions.

22 Pursuant to r. 62.02(4)(b), the Moving Parties submit there is good reason to doubt the correctness of Cumming J.'s decision. I am invited to take into account the reasons of Laskin J.A. which found Cumming J.'s decision "unreasonable". On any analysis of *stare decisis*, I am not bound by this conclusion.

23 In para. [23], Doherty J.A., writing for the majority, is reported:

[23] I think the motion judge dismissed the motion for judgment in the terms of the settlement agreement because he was unable to determine whether there was in fact a settlement agreement. As he could not conclude there was 'an accepted offer to settle', he had no authority to make an order under either rule 49.09(a) or 49.09(b) and should have simply dismissed the motion. In essence, and despite the reference at one point in his reasons to the language of rule 49.09(b), I think that is what the motion judge did.

Further, at para. [32]:

[32] ...The question of whether or not there was a settlement agreement remains a live issue in this proceeding. That, of course, does not foreclose the appellants from pursuing their appellate remedies in the Divisional Court should they choose to do so.

24 I conclude I am not bound by these pronouncements, particularly where they are found in a decision which concludes the Court of Appeal has no jurisdiction to hear the matter.

25 I take the view that if leave were granted, a panel of the Divisional Court would be free to find a settlement was reached or that a settlement was not reached. In either case, that would be a final order on the question of the existence of a settlement. It would also be open to the panel to conclude, as did Cumming J., that it was unable to find whether there was a settlement agreement. I base these conclusions on the sentence found in para. [32]: "[T]hat, of course, does not foreclose the appellants from pursuing their appellate remedies in the Divisional Court should they choose to do so." The direction that a settlement agreement remains a live issue is subject to a decision of the Divisional Court panel to the contrary, were leave to be granted.

26 Therefore, with respect, it is not necessary to consider the findings of the majority as they might bear on the correctness of Cumming J.'s decision, even though those findings were necessary to support the conclusion that the Court of Appeal had no jurisdiction.

27 Shortly put, Cumming J. applied a rule 20 test to the evidence before him and concluded he could not say there was a settlement, nor could he say there was not. An experienced judge considered the evidence, heard the submissions of counsel and was unable to resolve the matter, one way or another. He was entitled to come to such a decision. I find no reason to doubt its correctness. The question of whether a settlement agreement was reached remains a live issue in the proceeding.

28 The motion for leave to appeal is dismissed.

29 If the parties cannot agree on costs, they may within fifteen days make brief written submissions limited to three pages.

Motion dismissed.

TAB 5

TAB 2

2015 ONCA 779
Ontario Court of Appeal

Catanzaro v. Kellogg's Canada Inc.

2015 CarswellOnt 17316, 2015 ONCA 779, 260 A.C.W.S. (3d) 480

**Claudia Catanzaro, Nick Catanzaro and Alessia Catanzaro as
represented by her Litigation Guardian, Claudia Catanzaro, Plaintiffs
(Appellants) and Kellogg's Canada Inc., Defendant (Respondent)**

E.A. Cronk J.A., Gloria Epstein J.A., Grant Huscroft J.A.

Heard: November 12, 2015
Judgment: November 16, 2015
Docket: CA C59545

Proceedings: affirming *Catanzaro v. Kellogg's Canada Inc.* (2014), 2014 CarswellOnt 14062, 2014 ONSC 5691, Fragomeni J. (Ont. S.C.J.); additional reasons to *Catanzaro v. Kellogg's Canada Inc.* (2014), 2014 CarswellOnt 13691, 2014 ONSC 5691, Fragomeni J. (Ont. S.C.J.)

Counsel: Mark Wiffen, for Appellants
Michael White, for Respondent

E.A. Cronk J.A., Gloria Epstein J.A., Grant Huscroft J.A.:

- 1 Claudia Catanzaro and Nick Catanzaro appeal from the order of the motion judge enforcing a settlement of their claims in this action.
- 2 By statement of claim issued April 28, 2008, the Catanzaros and their daughter, Alessia Catanzaro, through her litigation guardian, Claudia Catanzaro, sued the respondent, Kellogg's Canada Inc. for damages suffered after a mouldy piece of chicken was allegedly found in a box of cereal the Catanzaros had purchased.
- 3 On September 29, 2011, Mr. White, counsel for Kellogg's, served an offer to settle on the plaintiffs' counsel, Ms. Hamilton. In the offer, Kellogg's agreed to consent to an order dismissing the action without costs. On September 30, 2011, Ms. Hamilton informed Mr. White that her clients had accepted the offer. On November 24, 2011, Ms. Hamilton provided Mr. White with draft motion materials to have the court approve the infant settlement relating to Alessia Catanzaro and dismiss the action. On January 9, 2012, Ms. Hamilton's office notified the court that the matter had been settled.
- 4 On November 8, 2012, new counsel for the plaintiffs notified Mr. White that his clients were resiling from the settlement agreement and intended to proceed with the action.
- 5 Kellogg's moved to enforce the settlement pursuant to rule 49.09 of the *Rules of Civil Procedure*, to approve the settlement as against the infant plaintiff, Alessia Catanzaro, and to dismiss the action.
- 6 The Catanzaros resisted the motion on the basis that the infant settlement was not in the best interests of their daughter and that the court should exercise its discretion to refuse to enforce the settlement on the basis it would be unjust to do so given Ms. Catanzaro had accepted the offer on behalf of the plaintiffs in haste and at a time when she was depressed.
- 7 The motion judge ordered the settlement be enforced as it affected the Catanzaros. She found that Ms. Hamilton had the authority to settle the case, that the Catanzaros had agreed to settle on the terms set out in the offer and that the Catanzaros had

not met their onus of establishing that the settlement (as it related to them) ought to be set aside. The motion judge dismissed the motion in relation to the infant on the basis that it was not supported by the material required under rule 7.08(4).

8 On appeal, the Catanzaros, relying on this court's decision in *Milios v. Zagas* (1998), 38 O.R. (3d) 218 (Ont. C.A.), submit that the motion judge erred by failing to consider the circumstances surrounding the acceptance of the settlement — circumstances they say support their position that the settlement should be set aside.

9 We do not agree. The policy of the courts is to promote settlement. The discretion to refuse to enforce a settlement should be exercised rarely. In our view the evidence before the motion judge did not support refusing to enforce the settlement.

10 The factors in the *Milios* case this court relied upon in allowing the plaintiffs to resile from their settlement agreement — mistake, significant compromise and prompt notification of the mistake — are not present in this case. While the various factors identified in *Milios* were relevant to the motion judge's analysis, the critical factors the Catanzaros relied on to support their argument that the settlement should not be enforced were that Ms. Catanzaro accepted the offer in haste and was under stress at the time. These factors were considered and expressly rejected by the motion judge: the evidence simply did not support either assertion. We see no error in this finding.

11 In our view, the record supports the motion judge's conclusion that, on the basis of the evidence the Catanzaros adduced, they were unable to satisfy their onus of demonstrating that the circumstances surrounding their acceptance of the offer to settle were such that they should be allowed to resile from their settlement agreement.

12 The exercise of the motion judge's discretion to enforce the settlement is entitled to deference. There is no reason to interfere.

13 The appeal is dismissed. The respondent is entitled to costs in the agreed-upon amount of \$2,500, including disbursements and applicable taxes.

Appeal dismissed.

TAB 3

2016 ONSC 7459
Ontario Superior Court of Justice

Lewicki Estate v. Nytschyk Estate

2016 CarswellOnt 18786, 2016 ONSC 7459, 274 A.C.W.S. (3d) 446, 27 E.T.R. (4th) 301

IN THE MATTER OF THE ESTATE OF JOSEPH PETER NYTSCHYK, deceased

BLAKE LOUIS PRINCE, in his capacity as Estate Trustee for the Estate of CHERIE LEWICKI (Applicant) and ESTATE OF JOSEPH PETER NYTSCHYK, Deceased, JOHN NYTSCHYK, MICHAEL NYTSCHYK, and ROSEMARY NYTSCHYK (Respondent)

Robert B. Reid J.

Heard: November 24, 2016
Judgment: November 29, 2016
Docket: 15-51282

Counsel: R.D. Elliott, for Applicant
R.A. Fisher, for Respondents

Robert B. Reid J.:

1 The applicant and the personal respondents have competing claims to an asset of the estate of Joseph Peter Nytschyk, the net value of which is about \$400,000.

2 The applicant is the son and sole beneficiary of Cherie Lewicki. The respondents are the siblings and heirs at law of Joseph Nytschyk.

3 The applicant bases his entitlement on a purported settlement of a claim made by Cherie Lewicki against the estate of Joseph Nytschyk, which he asks the court to enforce. The respondents deny that a settlement was made.

Background:

4 The background facts are not contentious.

5 Cherie Lewicki and Joseph Nytschyk lived together in a common-law relationship for about 15 years. During most of that time, they lived in the premises at 16 Campview Road, Stoney Creek, Ontario. Title to that property was held in the name of Joseph Nytschyk.

6 Joseph Nytschyk died intestate on November 14, 2013.

7 Cherie Lewicki continued to live in the Campview Road home until her death on October 14, 2015.

8 An agreement was reached between Cherie Lewicki and the estate of Joseph Nytschyk in July, 2014, pursuant to which she renounced any claim to be appointed estate trustee without a will. Michael Nytschyk and John Nytschyk were to take on that role. The proposed trustees undertook not to distribute the estate assets without court order or consent, including that of Cherie Lewicki. They undertook to pay Cherie Lewicki \$30,000 as an interim payment to be applied to any "final settlement", presumably related to any claim she might have against estate assets.

9 On January 16, 2015, Cherie Lewicki began an application for dependent's relief under the *Succession Law Reform Act*¹. As part of the relief claimed in that application, she sought a declaration that the Campview premises was held in trust for her based on a resulting or constructive trust. The estate of Joseph Nytschyk defended the claim. When the application was begun, the \$30,000 interim payment had not been made.

10 Upon payment of all taxes owing to the Canada Revenue Agency, the respondent estate tendered to the applicant a cheque for \$30,000 in April, 2016. That cheque has not been cashed.

11 The Campview premises has been sold and the net proceeds, in the approximate amount of \$400,000, are being held in trust pending the outcome of this litigation.

The issue for this motion:

12 Through legal counsel, settlement discussions took place between Cherie Lewicki and the estate of Joseph Nytschyk.

13 Several versions of draft minutes of settlement were exchanged. None were signed by the parties. Following the death of Cherie Lewicki, no steps were taken as to the completion of minutes of settlement.

14 The sole question for this motion is whether a binding settlement was made between Cherie Lewicki and the estate of Joseph Nytschyk, despite the lack of signed minutes of settlement.

Legal framework:

15 The parties agree about the applicable requirements for determining whether a settlement was reached. They also agree that the court has discretion to refrain from granting an order enforcing a settlement.

16 The Ontario Court of Appeal confirmed in *Olivieri v. Sherman*² that a settlement agreement is a contract, and that for a contract to exist, the court must find that the parties to the agreement (a) had a mutual intention to create a legally binding relationship, and (b) reached agreement on all of the essential terms of the settlement.³

17 There is no requirement to consider the parties' state of mind to determine whether an agreement existed.⁴

18 The fact that a settlement may be subject to the execution of a mutually agreeable written document does not make it less of a binding contract. The manner in which the settlement is to be formalized is not critical if the essential terms are clear.⁵

19 As to the process for considering whether a settlement was reached, it is reasonable to treat the matter as equivalent to a Rule 20 summary judgment motion.⁶ The requirement is that each party would put its best foot forward. Following the recent decision of the Supreme Court of Canada in *Hryniak v. Mauldin*⁷, the court could be expected to use its expanded powers for considering the matter. As such, where matters of fact or credibility might previously have prevented the court from concluding that a binding settlement was made, a more robust inquiry may now be made.

20 As a matter of public policy, settlement of litigation is to be encouraged and therefore settlement agreements are normally to be enforced where a contract is found to exist.

21 The court has discretion not to enforce an otherwise binding settlement. This discretion could be invoked, for example, when the circumstances that existed at the time the settlement was made have changed such that the anticipated end to litigation would not occur.⁸

Facts surrounding the settlement discussions:

22 Since no minutes of settlement were signed, the parties rely on correspondence between counsel.

23 By letter from the respondents' counsel dated June 5, 2015, the respondents proposed a settlement (by way of counter-offer) as to three matters: (a) "My clients will, upon the approval of Canada Revenue Agency, transfer title to the Campview property to your client"; (b) Cherie Lewicki was to retrieve her personal items from the cottage and the corporate office of Joseph Nytschyk; and (c) no cash was to be paid by the estate. By way of response to the previous offer by Ms. Lewicki, counsel for the estate, did not see the counter-offer as "retrenchment" since, as she said, "the Estate continues to offer Campview to [Cherie Lewicki]".

24 Counsel for Ms. Lewicki responded by letter dated June 15, 2015, advising that she accepted the terms of the offer in principle. Counsel sought confirmation that taxes owing to C.R.A. would be paid from the proceeds of sale of the cottage or other estate assets. Counsel also responded that Ms. Lewicki's acceptance of the offer was on the understanding that she would continue to receive health insurance coverage from the company benefit plan for two years following Mr. Nytschyk's death. There was no issue about the personal effects.

25 The following day, on June 16, 2015, counsel for the estate of Mr. Nytschyk advised in writing that she understood the insurance coverage would continue but would confirm that fact. There was a mention of the date by which personal effects would be picked up from the company office by Ms. Lewicki. Counsel also confirmed that taxes owing to the C.R.A. would be paid from the proceeds of sale of the cottage or other sources such that the estate would not be looking to the Campview property to satisfy those obligations. Counsel concluded by anticipating receipt of draft minutes of settlement from Ms. Lewicki's counsel.

26 On June 23, 2015, the insurance coverage issue was confirmed by counsel.

27 Since no draft minutes were received from Ms. Lewicki, counsel for the estate prepared an initial draft forwarded on July 22, 2015. When no response was received, counsel also sent a letter dated July 31, 2015, and an email dated August 13, 2015, to counsel for Ms. Lewicki, threatening to bring a motion to enforce the settlement. Dates for the motion were discussed. Further drafts of minutes of settlement were subsequently exchanged.

28 Each party found areas of disagreement with the other in their respective draft minutes of settlement. For example, the respondents' July 22, 2015, draft provided that the transfer to Ms. Lewicki would be subject to prior receipt by the estate trustees of a clearance certificate from the C.R.A. The response by Ms. Lewicki's counsel provided that all transfer costs for the Campview property would be borne by the estate. It also contained an acknowledgment that the property was subject to a constructive trust in favour of Ms. Lewicki, that the transfer was for natural love and affection and that if land transfer tax was deemed owing, it would be based on a value of \$300,000. A later draft from the estate included an agreement to pay for the transfer fees, but no agreement as to the constructive trust or value for land transfer tax purposes.

29 While the draft minutes were being exchanged, neither party suggested that there was not a deal.

30 All communication as to settlement documents stopped once it became known to the estate that Cherie Lewicki had died. A letter from the estate counsel to Michael Nytschyk dated October 19, 2015, indicated that discussions with Ms. Lewicki's representative were "at an end".

31 By letter dated October 23, 2015, counsel for the estate took the position that there had never been an agreed resolution, and that the revised terms from counsel for Ms. Lewicki contained in the draft minutes constituted a counter-offer.

Analysis:

32 The applicant submits that exchanges of correspondence on June 5, 15, 16 and 23 constituted evidence of a binding agreement where all essential terms were agreed.

33 The respondents submit that subsequent exchanges of minutes of settlement, and disagreement as to their terms, indicate that no agreement was reached and that each of the further exchanges constituted a counter-offer.

34 I am satisfied that the essential terms of the settlement were in fact established by the estate and accepted by Ms. Lewicki in June, 2015. Thereafter, each counsel attempted to add terms providing protection for their respective clients in the execution of the agreement. I do not consider those additional terms to be essential. In my view, either party could have insisted on completion of the deal as originally contemplated.

35 Correspondence from counsel for the estate to which I referred makes it clear that there was, in counsel's opinion, a binding agreement after June 23 as demonstrated by her plan to bring a motion for enforcement.

36 It is clear what happened: the estate was prepared to resolve the litigation on the basis that Ms. Lewicki would release all claims in exchange for transfer to her of the Campview premises. Based on the fact that she was 52 years of age at the date of Joseph Nytschuk's death, she had a potentially large claim for dependent's relief and possibly a constructive trust claim against the premises. As a result of her death, the claim may well have been drastically reduced. It was no longer a good deal, and the respondents preferred not to proceed with the settlement that they had been insisting was enforceable until a month or two before.

37 I find that the additional proposals made by both sides in the respective draft minutes were not essential terms of the agreement, and that, in fact, a binding contract had been established based on the June correspondence to which I have referred.

38 The final question is whether I should exercise my discretion not to enforce the agreement because of the changed circumstances. Clearly Ms. Lewicki no longer needs the financial benefit to be derived from the value of the Campview property, and the addition of the funds to her estate is a windfall to her heir, Mr. Prince. Whether a constructive trust could be established if the litigation proceeds is a matter for another court to determine. From another perspective, should the Nytschuk estate and the three heirs-at-law receive a gratuitous benefit from the death of Ms. Lewicki?

39 I have already identified the policy pursuant to which courts support settlements. It discourages litigation, reduces costs and adds certainty to relationships.

40 This is a case where, as I have found it, the parties made a binding deal. Both of them tried to add terms to improve the deal from their respective positions. However, those efforts do not diminish the fact that the essential terms of the deal were clear. It is true that Ms. Lewicki's death meant that she would not live to enjoy the benefits of the settlement. However, the deal is not costing the estate any more than was originally anticipated. I am unconvinced that I should exercise my discretion against enforcing the settlement in the particular circumstances of this case in order to provide an unexpected benefit to the Nytschuk heirs. Although it might be said that Mr. Prince is receiving an inheritance that may be larger and is certainly coming to him sooner than he might have otherwise anticipated, it is not unfair that he receive whatever inheritance is available in accordance with Ms. Lewicki's will.

Conclusion:

41 For the foregoing reasons, the applicant's motion is granted to the effect that the net proceeds of the sale of the property at 16 Campview Road, Stoney Creek, Ontario be transferred to the applicant. I find that implied in the settlement was a conclusion to the application, and therefore as claimed in the motion, the applicant is to abandon any other claims against the respondents.

Costs:

42 I have encouraged the parties to resolve the issue of costs consensually. In the event that they are not able to do so, I am prepared to receive written submissions according to the following timetable:

- a) The applicant is to serve the respondents with written costs submissions and a bill of costs on or before December 12, 2016.
- b) The respondents are to serve the applicant with written costs submissions and a bill of costs on or before December 30, 2017.

c) The applicant is to serve the respondents with any responding submissions on or before January 9, 2017.

d) All submissions are to be filed with the court by no later than January 13 2017. If submissions are not received by that date or any agreed extension, the matter of costs will be deemed settled.

Motion granted.

Footnotes

1 RSO 1990, c S.26

2 2007 ONCA 491 (Ont. C.A.)

3 *Ibid.* at para. 41

4 *Ibid.* at para. 44

5 *Orchestral Corp. v. IVP Technology Corp.*, [2005] O.J. No. 581, 137 A.C.W.S. (3d) 276 (Ont. S.C.J.) at para. 24

6 *Dick v. Marek* (2009), 72 C.P.C. (6th) 374 (Ont. S.C.J.)

7 2014 SCC 7 (S.C.C.)

8 *M. (S.E.) v. M. (D.L.)*, [1997] O.J. No. 1989, 28 R.F.L. (4th) 352 (Ont. Gen. Div.)

TAB 4

1998 CarswellOnt 810
Ontario Court of Appeal

Milios v. Zagas

1998 CarswellOnt 810, [1998] O.J. No. 812, 108 O.A.C. 224, 18
C.P.C. (4th) 13, 38 O.R. (3d) 218, 56 O.T.C. 45, 77 A.C.W.S. (3d) 964

**Evangelos Milios, Plaintiff/Appellant and Jim Zagas also known as
Dimitri Zagas also known as Dimitrios Zagas, Defendant/Respondent**

Osborne, Laskin, Goudge JJ.A.

Heard: September 23, 1997
Judgment: February 26, 1998
Docket: CA C25571

Proceedings: reversing in part (1996), 3 C.P.C. (4th) 149 (Ont. Gen. Div.)

Counsel: *Ms. Kelley McKinnon*, for the appellant.
Marco Drudi, for the respondent.

The judgment of the court was delivered by *Osborne J.A.*:

1 The issue on this appeal is whether the motions judge was correct in granting judgment in accordance with an accepted settlement offer, effected by an exchange of correspondence between counsel, in circumstances where there is uncontradicted evidence that one party, the plaintiff, was mistaken about the terms of the settlement to which he had agreed.

The Facts

2 The plaintiff, appellant, leased property in Toronto to the defendant, respondent. In March 1995 the plaintiff sued the defendant for rental arrears and damages for breach of contract. In April 1995 the plaintiff obtained a default judgment against the defendant for \$90,016.09 and \$279.60 for costs.

3 In August 1995 the defendant moved to set aside the default judgment. In February 1996 his motion was dismissed with costs fixed at \$7,000. Thus, as of February 1996 the plaintiff had judgments against the defendant totalling \$97,295.69, including costs.

4 In March 1996 the defendant appealed to this court from the motions judge's order dismissing his motion to set aside the default judgment. In April 1996, before the defendant's appeal was perfected, counsel for the plaintiff wrote to counsel for the defendant in these terms:

Our client [the plaintiff] has instructed me to offer to settle this proceeding on the following basis. If your client will pay our client's solicitor and client costs to date (which total approximately \$21,000.00), our client will agree to have the action dismissed and the judgments here and in Greece vacated.

5 On May 27, 1996, counsel for the defendant rejected the plaintiff's settlement offer. He stated that the defendant was not prepared to pay the plaintiff's legal costs and went on to say:

Mr. Zagas would be prepared to settle this matter on the basis that the caution be lifted, a satisfaction piece be delivered, Full and Final Releases are exchanged and each side bear its one [sic] costs.

6 Counsel for the plaintiff faxed the defendant's May 27th settlement offer to the plaintiff, without comment, on May 28, 1996. Later that day, the plaintiff's wife telephoned counsel for the plaintiff. She informed him that the plaintiff was in Greece on vacation and that he had told her to "go ahead with the settlement."¹ The plaintiff's counsel stated in his affidavit that he asked the plaintiff's wife if she was sure about the plaintiff's settlement instructions. He said that he asked this question because he did not think that the defendant's settlement offer was reasonable. The plaintiff's wife again said that the plaintiff's instructions were to proceed with the settlement. She added that she did not know when the plaintiff would return from Greece and that it was not necessary for counsel to speak to him directly. Thus, as plaintiff's counsel put it in his affidavit:

[I] therefore reluctantly sent a letter to counsel for the defendant accepting his offer, assuming that Mr. Milios meant that I should go ahead with the settlement in the May 27th letter.

7 The letter dated May 28, 1996, accepting the defendant's May 27th settlement offer was clear. It stated, "Our client accepts the offer of settlement contained in your letter dated May 27, 1996."

8 About three weeks later the plaintiff, who had by then returned from Greece, telephoned his lawyer. He was upset about the terms of the settlement and wanted to know if steps had been taken to complete it. He said that he had in fact told his wife to go ahead with his own previous settlement offer and that he had no intention of abandoning his judgment against the defendant without some compensation. That is to say, he took the position that he did not tell his wife to advise his counsel to accept the defendant's May 27th settlement offer. He said that Mrs. Milios misunderstood what his settlement instructions were.

9 The plaintiff's counsel met with the plaintiff and his wife on June 19, 1996. According to the plaintiff's counsel's affidavit, they both confirmed that Mrs. Milios had misunderstood the plaintiff's instructions, given to her by telephone when the plaintiff was in Greece. Having confirmed that a mistake going to the root of the settlement had been made, counsel for the plaintiff promptly telephoned counsel for the defendant to advise him of the misunderstanding. This telephone conversation was confirmed by letter dated June 25, 1996.

10 In July 1996 the defendant moved for judgment in accordance with the terms of his offer allegedly accepted on May 27, 1996. The motion, made under R. 49.09, was argued on August 6, 1996 and on August 14, 1996 the motions judge granted judgment implementing the provisions of the defendant's May 27th settlement offer.

The Motions Judge's Reasons

11 After reviewing the facts and referring to this court's judgment in *Scherer v. Paletta*, [1966] 2 O.R. 524 (Ont. C.A.), the motions judge concluded:

It appears on the evidence that there may have been a miscommunication between Mr. Milios and Mrs. Milios in relation to what instructions were to be given to the solicitor. On the evidence before me, I can only conclude, however, that Mrs. Milios clearly instructed her solicitor to proceed with the settlement as set out in the defendant's letter dated May 27, 1996.

I cannot agree that the settlement proposal was an unreasonable one in the circumstances.

12 The motions judge found that Mrs. Milios clearly instructed the plaintiff's solicitor to proceed to settle in accordance with the defendant's solicitor's May 27, 1996 letter, that the settlement was not unreasonable, but that the defendant's settlement offer may have been accepted by mistake. It was on the basis of these central findings that she granted judgment, under R. 49.09, in accordance with the defendant's May 27, 1996 settlement offer.

Analysis

13 Rule 49.09 provides:

Where a party to an accepted offer to settle fails to comply with the terms of the offer, the other party may,

(a) make a motion to a judge for judgment in the terms of the accepted offer, and the judge may grant judgment accordingly; or

(b) continue the proceeding as if there had been no accepted offer to settle.

14 The evidence before the motions judge consisted of the affidavits of counsel for the parties. The correspondence relevant to the settlement of the action was made part of the affidavit material. The motions judge did not hear oral evidence. Nonetheless, the motions judge's findings of fact are entitled to deference on appeal. Appellate intervention is, however, justified if the motions judge disregarded or failed to appreciate relevant evidence, or if she erred in her application of relevant legal factors. See *Carter v. Brooks* (1990), 2 O.R. (3d) 321 (Ont. C.A.) and *Equity Waste Management of Canada Corp. v. Halton Hills (Town)* (1997), 35 O.R. (3d) 321 (Ont. C.A.).

15 Rule 49.09(a) does not require the motions judge to enforce the terms of a settlement. The existence of a discretion under the rule flows from the wording of the rule and is consistent with Evans J.A.'s pre-rule 49.09 comments in *Scherer v. Paletta*, supra. He said at p. 527:

A solicitor whose retainer is established in the particular proceedings may bind his client by a compromise of these proceedings unless his client has limited his authority and the opposing side has knowledge of the limitation, subject always to the discretionary power of the Court, if its intervention by the making of an order is required, to inquire into the circumstances and grant or withhold its intervention if it sees fit;... [Emphasis added.]

16 This court made it clear in *Scherer v. Paletta* that once the existence of an agent's retainer is established, any limitations on it will not affect a settlement if those limitations have not been communicated to the other side. In my opinion, however, this is not a case where the plaintiff contends that the scope of his counsel's settlement authority was limited. Instead, he contends that his counsel, who had a general authority to settle the action, was given the wrong settlement message by the plaintiff's wife with the result that the settlement agreed to was concluded by mistake. Thus, I do not think that the statements in *Scherer v. Paletta* about the effect of limitations on an agent's authority, not communicated to the other side, has application in this case. This is a case of mistake, not limitation of authority. See *Smith v. Robinson* (1992), 7 O.R. (3d) 550 (Ont. Gen. Div.).

17 The defendant relies on the judgment of the Divisional Court in *Cambrian Ford Sales (1975) Ltd. v. Horner* (1989), 69 O.R. (2d) 431 (Ont. Div. Ct.). In my opinion, the facts in that case, as related to the impugned settlement, are quite different from the facts of this case. In *Cambrian Ford Sales*, a settlement was enforced where counsel acted on a misapprehension of the facts (the extent of his client's injuries); there was no mistake about the client's settlement instructions, as occurred here. I do not think that *Cambrian Ford Sales* helps to resolve the issues presented in this case.

18 As I have said, in deciding to enforce the settlement the motions judge referred to the prospect of the defendant's offer having been accepted by mistake; however, in her analysis, she emphasized two factors -- the clear settlement instructions that Mrs. Milios gave to the plaintiff's counsel and the reasonableness of the "settlement proposal." I assume that her latter reference was to the reasonableness of the plaintiff's acceptance of the defendant's settlement proposal. I will not comment further on the reasonableness of the settlement beyond noting that it represented a substantial compromise from the plaintiff's standpoint when measured against the judgments he held against the defendant or against the plaintiff's offer to settle for about \$21,000. I think that the motions judge's conclusion that the settlement was reasonable is problematic; however, for purpose of my analysis I am prepared to accept it.

19 In determining whether to enforce a settlement under R. 49.09 all of the relevant factors disclosed by the evidence must be taken into account. When that is done, an appellate court will not generally interfere with the motions judge's decision to grant, or not grant, judgment in accordance with an accepted offer. In this case, I think that the motions judge erred in over-emphasizing some factors and in failing to consider others, including prejudice. The motions judge made no reference to the issue of prejudice in her reasons.

20 I regard the clarity of Mrs. Milios' settlement instructions as a neutral factor in that the plaintiff never suggested that his counsel's settlement authority was limited, or that his counsel's acceptance of the defendant's May 27th settlement offer was ambiguous. The issue is not the authority to settle or the clarity of the plaintiff's acceptance (through his counsel) of the defendant's offer to settle. The issue here centres on the effect to be given to the uncontradicted evidence that the plaintiff's acceptance of the defendant's settlement offer was the product of a mistake caused by Mrs. Milios' misunderstanding of her husband's instructions. The motions judge referred to the evidence of a "miscommunication", but did not resolve the issue of mistake as it related to the plaintiff's acceptance of the defendant's offer. She did not reject the evidence that the plaintiff never intended to accept the defendant's settlement offer and that the communication to the contrary was a mistake. Indeed, in her review of the evidence she specifically referred to the evidence that "Mrs. Milios had misunderstood her husband's [settlement] instructions."

21 In addition to over-emphasizing the fact that the plaintiff's acceptance was clear and under-emphasizing the evidence of mistake, I think that the motions judge erred by not taking into account manifestly important factors, including:

- since no order giving effect to the settlement had been taken out, the parties' pre-settlement positions remained intact;
- apart from losing the benefit of the impugned settlement, the defendant will not be prejudiced if the settlement is not enforced;
- the degree to which the plaintiff would be prejudiced if judgment is granted in relation to the prejudice that the defendant would suffer if the settlement is not enforced;
- the fact that no third parties were, or would be, affected if the settlement is not enforced.

22 When all of these relevant factors are taken into account and weighed, I do not think that the acceptance of the defendant's settlement offer should be enforced. I would, therefore, allow the appeal with costs, set aside the order below and dismiss the defendant's motion, in the circumstances, without costs.

Appeal allowed.

Footnotes

- 1 It is apparent that the plaintiff's wife told the plaintiff about the defendant's May 27th settlement offer and the plaintiff gave his wife settlement instructions to relay to his counsel.

TAB 5

2007 ONCA 491
Ontario Court of Appeal

Olivieri v. Sherman

2007 CarswellOnt 4207, 2007 ONCA 491, [2007] O.J. No. 2598, 159
A.C.W.S. (3d) 364, 225 O.A.C. 227, 284 D.L.R. (4th) 516, 86 O.R. (3d) 778

**Nancy Olivieri (Plaintiff / Appellant) and Barry Sherman,
Jack M. Kay and Apotex Inc. (Defendants / Respondents)**

E.E. Gillese J.A., M. Rosenberg J.A., and S.E. Lang J.A.

Heard: May 24, 2007
Judgment: July 3, 2007
Docket: CA C45922

Proceedings: reversing *Olivieri v. Sherman* (2006), 2006 CarswellOnt 4856 (Ont. S.C.J.)

Counsel: Sheila Block, Paul Michell for Appellant
Katherine L. Kay, Adrian C. Lang for Respondents

E.E. Gillese J.A.:

1 Dr. Nancy Olivieri was a physician and medical researcher at the Hospital for Sick Children ("HSC") and the University of Toronto.

2 In the 1980s, Dr. Olivieri pursued clinical research in thalassemia, a genetic blood disorder. Thalassemia patients require regular blood transfusions. A side effect is the build-up of excess iron. Patients take drugs called iron chelators to remove excess iron.

3 Dr. Olivieri and her colleagues conducted clinical trials to assess the efficacy and safety of an oral iron chelator called deferiprone. Apotex Inc., a major Canadian pharmaceutical manufacturer, sponsored the research. Dr. Barry M. Sherman is Apotex's chairman. Jack M. Kay is the president of Apotex. I will refer to Apotex, Dr. Sherman and Mr. Kay, collectively, as the "respondents".

4 Dr. Olivieri developed concerns about deferiprone. She told Apotex of her concerns.

5 Dr. Olivieri and Apotex disagreed on the underlying science and proper course of action in light of her concerns.

6 On May 24, 1996, Apotex terminated the clinical trials.

7 The dispute that underlies the present appeal relates to statements made by Dr. Olivieri about deferiprone and the events that followed the termination of the trials, and the response by the respondents to those statements.

8 Dr. Olivieri commenced various defamation actions including:

- The "60 Minutes action" against Apotex and Dr. Sherman;
- The "National Post action" against Mr. Kay and Apotex;¹
- The "CBC action" against Dr. Sherman.²

9 In the 60 Minutes and National Post actions, Apotex counterclaimed against Dr. Olivieri for defamation and injurious falsehood.

10 On consent, the 60 Minutes and National Post actions were consolidated into a single action, in which Dr. Olivieri sought \$20 million in general damages and \$10 million in aggravated and punitive damages, and Apotex sought \$20 million in general and special damages.

11 Discoveries took place in 2002, 2003 and 2004. In the 60 Minutes action, the respondents' counsel examined Dr. Olivieri for some 29 days. Dr. Olivieri's counsel examined the respondents for approximately 20 days. The parties produced more than 10,000 documents.

12 Each party moved to compel answers to questions refused in discovery. On June 14, 2004, Master Albert ordered the parties to answer certain questions but declined to order them to answer other questions.

13 The parties appealed and cross-appealed the order of Master Albert. On September 17, 2004, Sanderson J. dismissed the respondents' appeal and allowed Dr. Olivieri's cross-appeal.

14 Master Albert also directed a joint mediation in the 60 Minutes and CBC actions. The parties agreed to George Adams, Q.C. as mediator.

15 The mediation took place on November 2 and 3, 2004. Dr. Olivieri attended with her counsel Paul Michell (60 Minutes action) and Christopher Ashby (CBC action). Dr. Spino and Dr. Sherman attended for the respondents, along with their counsel, David Brown, Adrian Lang, and Jessica Bookman. A CBC representative attended with counsel.

16 The mediation began on November 2, 2004, with a plenary session of all parties and counsel. The parties and counsel then separated into three rooms (Dr. Olivieri; respondents; CBC defendants), where they remained for the rest of the day. Mr. Adams conducted "shuttle diplomacy" among the parties. No other plenary session ever took place.

17 At the end of the first day, Dr. Olivieri made three alternative offers to the respondents, each of which contained a term that the parties would enter into a non-disparagement agreement.

18 On the second day of the mediation, the parties reconvened in their separate rooms. Towards the end of that day, the respondents made a handwritten counter-offer to Dr. Olivieri on three sheets of "flip chart" paper (the "counter-offer"); most of the counter-offer was in the handwriting of the respondents' counsel. Dr. Spino initialled the counter-offer on behalf of the respondents. Dr. Olivieri also initialled the counter-offer.

19 The counter-offer contained a public part (Part A) and a confidential part (Part B). A redacted copy of the counter-offer reads as follows:

Privileged and Confidential

Outline of Proposed Settlement Between Nancy Olivieri; and Apotex Inc., Jack M. Kay, and Barry Sherman

Part A — To be made public

1. Joint settlement statement — all litigation dismissed — claims and counterclaims.
2. Filing of consent dismissals.
3. Statement by Dr. Olivieri:

Dr. Olivieri acknowledges that research over the last five years has revealed that Deferiprone will assist some patients in the treatment of thalassemia and wishes Apotex well in this important work.

4. Statements by both parties: Olivieri and Apotex/Sherman/Kay:

- a. Mutual expressions of regret for language that they used in past years about each other.
- b. Agreement by same parties not to disparage each other in the future:
 - i. Apotex/Sherman/Kay will not disparage Olivieri and her supporters;
 - ii. Olivieri will not disparage Apotex, clinicians, researchers who use deferiprone, or deferiprone; and
 - iii. Parties will only express future views about deferiprone in scientific forum.

5. All of the above to be contained in a press release.

Part B — To be confidential

1. [Deleted for confidentiality reasons]

2. Olivieri to provide Apotex with data listed in paragraph 160 of the statement of defence and counterclaim. Apotex can use this for regulatory purposes but no consequences to Olivieri.

3. Full and final mutual releases of all claims/potential claims existing as at settlement date, including all actions commenced by Olivieri [or] by Apotex.

20 By the conclusion of the mediation on November 3, 2004, Dr. Olivieri had not accepted the counter-offer because she wanted time to consult with HSC about her legal fees. She was given 48 hours within which to accept the counter-offer.

21 The following day (November 4, 2004), Mr. Michell e-mailed a transcription of the counter-offer to Mr. Brown and sought permission to send a copy to HSC's counsel on a confidential basis.

22 Mr. Brown replied by e-mail that afternoon, advising that the respondents did not consent. He did not suggest there was any need for agreement on subsequent documents.

23 Other written communication was exchanged between counsel by letter and e-mail on November 4, 2005; in one e-mail from Mr. Brown to Mr. Michell it was noted that Dr. Olivieri would not be able to complete the settlement until she had resolved outstanding issues with HSC.

24 Dr. Olivieri decided to accept the counter-offer and so instructed her counsel. On November 5, 2004 — that is, within the 48-hour window — Mr. Michell so advised Mr. Brown by telephone. He also confirmed Dr. Olivieri's acceptance by letter (sent by FAX) that day, again attaching a transcription of the counter-offer.

25 As well, Mr. Michell wrote to Ms. Lang on November 5, 2004, enclosing full-sized copies of the three "flip chart" pages. Again, there was nothing in her response to suggest that the agreement was conditional or subject to further documentation.

26 On December 10, 2004, Sanderson J. ordered the respondents to pay costs of \$7,050 plus GST and disbursements to Dr. Olivieri, forthwith. The respondents did not pay this order until July 2006, more than a year and a half later.

27 There was no further communication between counsel for almost a year.

28 On October 31, 2005, after Dr. Olivieri reached a settlement with HSC, her counsel advised counsel for the respondents that Dr. Olivieri was able to complete the terms of the settlement. The respondents, for the first time, claimed that there was no settlement agreement. They maintained that the counter-offer represented a consensus on certain principles but that a final settlement was subject to further documentation agreed on by all parties, particularly the non-disparagement agreement. They also alleged that Dr. Olivieri had continued to disparage Apotex publicly after the "settlement" had been concluded.

29 Dr. Olivieri brought a motion to enforce the alleged settlement agreement. The respondents opposed the motion on the basis that either the parties had no meeting of the minds about the meaning of disparagement or that Dr. Olivieri had repeatedly breached the agreement by continuing to disparage Apotex.

30 By order dated August 4, 2006, Campbell J. dismissed the motion (the "Order").

31 Dr. Olivieri appeals.

32 I would allow the appeal. As I explain below, the parties had a mutual intention to create a legally binding agreement and agreed on all the essential terms of the settlement; the fact that there may now be disagreement about whether the settlement has been breached does not mean that no concluded agreement ever existed.

33 As will be seen, there is some confusion about what was decided below in respect of the respondents' alternative position that if there were a concluded agreement, Dr. Olivieri had either breached or repudiated it. Consequently, the Order and the reasons of the motion judge will be set out in some detail before the issues are analysed.

The Order under Appeal

34 The Order is very short. There are two paragraphs by way of preamble. The first recites that Dr. Olivieri made a motion for an order enforcing a settlement agreement and requiring the parties to comply with the terms of that agreement. The second lists the evidence considered. The full text of the balance of the Order reads as follows:

1. **THIS COURT ORDERS** that the motion be and hereby is dismissed.
2. **THIS COURT FURTHER ORDERS** that the parties may make submissions on costs.

The Decision Below

35 At paras. 13 and 21 of the reasons, the motion judge states his conclusion that there had been no meeting of the minds between the parties sufficient to give rise to an enforceable agreement. In his view, the agreement was conditional on further elaboration and negotiation of the word "disparage" in para. 4(b) of Part A of the counter-offer and of the word "scientific" in para. 4(b)(iii) of the same.

36 In relation to "disparage", the motion judge held that elaboration was essential to Apotex. In paras. 17 and 21, he stated:

[17] I conclude that at least Apotex anticipated that what would be said or not said by Dr. Olivieri within the general and broad use of the word 'disparage' would be further detailed in additional documentation that would be an essential part of the settlement agreement. Dictionary definitions of the word "disparage" contain other words of general meaning such as to "discredit" or to "denigrate" that lack precision, particularly for ongoing public appearances.

.

[21] ... A more detailed delineation of what would be regarded as 'disparaging conduct' I conclude was regarded by the parties, particularly Apotex, as an essential term of the agreement, one which was not finalized. ...

37 In para. 16 of the reasons, the motion judge said this, in respect of para. 4(b)(iii) of Part A:

[16] The pleadings in the action are replete with concerns by both parties but Apotex in particular, regarding public statements made. In the context of the history between the parties and particularly the wording of Item 4(b)(iii), that "parties will only express future views about deferiprone in scientific forum" (emphasis added), anticipates further elaboration as to what is meant by the word "scientific."

38 Further, the motion judge reasoned that additional documentation was required in relation to para. 2 of Part B of the counter-offer. At para. 18 of the reasons, he wrote:

[18] In addition, in the context of the pleadings and allegations, I conclude that Apotex would require the documentation provided for in [para. 2 of Part B] to be specifically part of the settlement package. It has never been provided. This history of the dealings between Dr. Olivieri and the Defendants from at least 1995 shows that the public utterances each about the other were central to their dispute and to the resolution of it.

39 At para. 22 of the reasons, the motion judge stated that in view of his disposition, "a trial will be required" should the parties not reach a new settlement agreement. He went on in para. 23 to say, "The central issue in the trial will be the meaning attributable to the statements that were and continue to be made by the parties about each other in public forums".

Analysis

40 This appeal raises two issues:

- (1) was there a concluded settlement agreement? and
- (2) if there was, did Dr. Olivieri breach or repudiate it?

Was There a Concluded Settlement Agreement?

41 A settlement agreement is a contract. Thus, it is subject to the general law of contract regarding offer and acceptance. For a concluded contract to exist, the court must find that the parties: (1) had a mutual intention to create a legally binding contract; and (2) reached agreement on all of the essential terms of the settlement: *Bawitko Investments Ltd. v. Kernels Popcorn Ltd.* (1991), 79 D.L.R. (4th) 97 (Ont. C.A.), at 103 -4.

42 There is no question but that the first requirement was met: the counter-offer was drafted during the course of a court-directed mediation involving multi-million dollar law suits and in which all parties were represented by experienced legal counsel. It is apparent that the parties intended to enter into a binding legal agreement to resolve all of the outstanding legal proceedings.

43 In respect of the second requirement, the motion judge found that there was no meeting of the minds in respect of all of the essential terms of the contract. It will be recalled that he held that the counter-offer was conditional on elaboration of the words "disparage" and "scientific" in para. 4(b) of Part A of the counter-offer. In coming to this view, the motion judge relied on the evidence of the respondents. But, the respondents' evidence was based on discussions they and their counsel had with Mr. Adams during the mediation. Dr. Spino admitted that the respondents and their counsel never discussed the counter-offer with Dr. Olivieri or her counsel during the mediation, or told them that the counter-offer was conditional upon finalizing documentation. There was no evidence that all parties shared the view that further negotiation, elaboration or agreement was necessary.

44 A determination as to whether a concluded agreement exists does not depend on an inquiry into the actual state of mind of one of the parties or on the parole evidence of one party's subjective intention. See *Lindsey v. Heron Co.* (1921), 64 D.L.R. 92 (Ont. C.A.). Where, as here, the agreement is in writing, it is to be measured by an objective reading of the language chosen by the parties to reflect their agreement. As was stated by Middleton J.A. in *Lindsey* at 98-9, quoting *Corpus Juris*, vol. 13 at 265:³

The apparent mutual assent of the parties essential to the formation of a contract, must be gathered from the language employed by them, and the law imputes to a person an intention corresponding to the reasonable meaning of his words and acts. It judges his intention by his outward expressions and excludes all questions in regard to his unexpressed intention. If his words or acts, judged by a reasonable standard, manifest an intention to agree in regard to the matter in question, that agreement is established, and it is immaterial what may be the real but unexpressed state of his mind on the subject.

45 Accordingly, in my view, it was an error in principle for the motion judge to decide this issue based on the subjective intent of one side to the bargain rather than on an objective reading of the counter-offer.

46 Viewed objectively, there is nothing in the counter-offer to suggest that it was "an agreement to agree" or conditional in any respect. Nothing in the counter-offer, either directly or indirectly, suggests that its terms are subject to further elaboration, documentation or agreement. Had it been intended that the terms were to be conditional, one would have expected to see language that expressly made one or more terms "subject to" further agreement.

47 Instead, the terms of the counter-offer are straightforward and unconditional: Part A of the counter-offer contains the public part of the settlement agreement. It provides that: (1) the parties will issue a joint settlement statement that all litigation is dismissed and (2) file consent dismissals; (3) Dr. Olivieri will issue a statement in the terms set out; (4) both parties will provide statements in which they express mutual regret for language used in the past about the other, agree not to disparage each other in the future, and to express views about deferiprone only in scientific forums; and that a press release will contain the foregoing. Part B, the confidential part of the settlement agreement, requires Dr. Olivieri to provide Apotex with the data listed in para. 160 of the statement of defence and counterclaim and that both parties will execute full and final mutual releases.⁴

48 The counter-offer was not made "subject to" agreement on any of the specified documents or terms: the press release, provision of data and mutual releases were the mechanics required to complete the settlement agreement. As was stated in *Fieguth v. Acklands Ltd.* (1989), 59 D.L.R. (4th) 114 (B.C. C.A.), at 121,⁵ the first question to be asked when deciding whether a settlement was concluded is whether the parties reached an agreement on all essential terms. It is only thereafter that the question of completion of the agreement is considered.

49 I acknowledge that there can be sufficient uncertainty about the meaning of words or terms in an agreement that it will be held to be unenforceable: see *Bawitko Investments Ltd.* at 104. However, in my view, the language used in the counter-offer does not suffer from that problem. As the motion judge observed, the dictionary meaning of "disparage" is to "discredit" or "denigrate". While there may be disagreement about whether the conduct of one of the parties amounts to disparagement, that does not mean that the agreement is conditional nor does it require elaboration of the meaning of the word. For similar reasons, the word "scientific" needs no elaboration.

50 The policy of the courts is to encourage the settlement of litigation: *Stonehocker v. King*, [1993] O.J. No. 2653 (Ont. Gen. Div.). The courts "should not be too astute to hold" that there is not the requisite degree of certainty in any of an agreement's essential terms: *Canada Square Corp. v. Versafood Services Ltd.* (1981), 34 O.R. (2d) 250 (Ont. C.A.).

51 In conclusion, as the motion judge applied the incorrect test when determining whether an enforceable settlement agreement had been entered into, his conclusion must be set aside. Applying the objective principle of contract formation, I conclude that the parties reached agreement on all of the essential terms of the settlement agreement, as reflected in the counter-offer. Consequently, the appellant is entitled to a declaration that the parties entered into an enforceable settlement agreement on November 5, 2004.

Was the Settlement Agreement Breached?

52 On the motion below, the respondents' alternative position was that if there were a concluded settlement agreement between the parties, Dr. Olivieri has repudiated or breached it. There is some confusion about whether the motion judge decided this issue.

53 For the following reasons, it appears to me that he did not:

- the order appealed from makes no mention of this issue. It says only that the motion for enforcement of the settlement agreement was dismissed;
- the motion judge makes only one reference to the matter. In para. 16 of the reasons, he recites the respondents' position on the issue;
- the respondents did not argue, on the motion, for the trial of this issue; and,

- there was very little evidence on this issue. The appellant says that the only evidence was that on one occasion the appellant was misquoted in a newspaper article and that she had written to correct the misquotation.

54 Accordingly, I do not understand the issue of alleged repudiation or breach of the agreement to have been decided. The record does not permit this court to make such a determination.

55 These comments are made without prejudice to the respondents' right to take such steps as they deem appropriate to pursue their allegations that Dr. Olivieri has breached or repudiated the settlement agreement.

Disposition

56 For these reasons, I would allow the appeal, set aside the Order and grant the motion, with costs to the appellant fixed at \$37,000, all inclusive. In setting costs at \$37,000, I have accepted the figure agreed on by the parties and understand that it is the costs of the appeal alone. The appellant is entitled to her costs of the motion below, as well. If the parties are unable to resolve that matter, they may make brief written submissions to the court within fourteen days of the date of the release of these reasons.

M. Rosenberg J.A.:

I agree.

S.E. Lang J.A.:

I agree.

Appeal allowed.

Footnotes

- 1 The National Post and certain of its employees were also defendants but Dr. Olivieri settled with them.
- 2 The CBC and certain of its employees were also defendants but Dr. Olivieri settled with them.
- 3 See also *Eli Lilly & Co. v. Novopharm Ltd.*, [1998] 2 S.C.R. 129 (S.C.C.) at paras. 54-5.
- 4 For confidentiality reasons, no mention is made of para. 1 of Part B of the counter-offer.
- 5 Followed in *Cellular Rental Systems Inc. v. Bell Mobility Cellular Inc.*, [1995] O.J. No. 721 (Ont. Gen. Div.), aff'd [1995] O.J. No. 3773 (Ont. C.A.).

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

Court File No. CV-19-00008866-0000
NAUSS PLUMBING & HEATING INC.

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**PROCEEDING COMMENCED AT
SUDBURY**BOOK OF AUTHORITIES
MOTION TO ENFORCE SETTLEMENT****GOWLING WLG (CANADA) LLP**Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5**Haddon Murray (LSO# 61640P)**Tel: (416) 862-3604
Fax: (416) 862-7661
Email: haddon.murray@gowlingwlg.comLawyers for the Applicant,
Canadian Imperia Bank of Commerce

This is Exhibit H referred to in the
Affidavit of Heather Fisher
sworn before me this
30th day of October, 2020

A handwritten signature in blue ink, appearing to be "H. Fisher", is written over a horizontal line.

A Commissioner for Taking Affidavits (or as may be)

Court File No. CV-19-00008866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

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

SUPPLEMENTARY MOTION RECORD

February 25, 2020

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

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

Lawyers for the Applicant,
Canadian Imperial Bank of Commerce

TO: THE SERVICE LIST

INDEX

Court File No. CV-19-00008866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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INDEX

Tab	Description
1.	Supplementary Affidavit of Heather Fisher sworn February 20, 2020
A	Exhibit "A" - Email from Robert Leblanc to Haddon Murray dated February 20, 2020
B	Exhibit "B" - Proposed Transactions
C	Exhibit "C" - Email from Haddon Murray to Robert Leblanc dated January 13, 2020
D	Exhibit "D" - Copy of the first two pages of Google search results for "MJM Bloemberg Investments Inc" on February 20, 2020

TAB 1

Court File No. CV-19-00008866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

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

**SUPPLEMENTARY AFFIDAVIT OF HEATHER FISHER
(Sworn February 20, 2020)**

I, Heather Fisher, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am an Associate at Gowling WLG (Canada) LLP, counsel for the Applicant, Canadian Imperial Bank of Commerce (the "**Bank**"). As such, I have personal knowledge of the matters contained in this Affidavit. Where I do not have personal knowledge, I have stated the source of my information and believe the information to be true.

-2-

2. On February 20, 2020 at 10:04AM counsel for Nauss Plumbing & Heating Inc. (the "**Debtor**") sent an email to Haddon Murray, copying me (the "**February 20 Email**"). A copy of the February 20 Email is attached as **Exhibit "A"**.

3. The February 20 Email requested a further adjournment of this matter to allow for the potential completion of three proposed transactions (the "**Proposed Transactions**"). A copy of the attachment to the February 20 Email, containing the Proposed Transactions is attached as **Exhibit "B"**.

4. The Bank had no communication with the Debtor with respect to the Proposed Transactions since the January 10, 2020 application.

5. The Settlement Agreement terms required that the Debtor fully paid out the indebtedness to the Bank or provide a commitment letter to refinance the indebtedness, as long as the commitment letter was: (i) legally binding, (ii) had no conditions precedent, and (iii) from a lender that is acceptable to the Applicant at its sole discretion.

6. The Proposed Transactions do not repay the indebtedness to the Bank. The February 20 Email contemplates the Proposed Transactions will have a net value of approximately \$950,000.00.

7. As noted in the affidavit of Sieg Flatt dated November 19, 2019 (the "**Flatt Affidavit**"), the Debtor's other outstanding liabilities include:

- (a) Canada Revenue CRA was owed a total of \$439,700.06 by Nauss in respect of unremitted source deductions dating as far back as 2017

-3-

- (b) A first mortgage on the Markstay North Road Property that I understand from discussions with David Preger to be in the amount of approximately \$70,000 as at January 3, 2020 (the "**Markstay North Road Debt**"); and
- (c) Municipal property taxes in the amount of \$91,331.57 (the "**Property Tax Debt**").

8. As at January 12, 2020, the total indebtedness to the Bank was approximately \$1,016,319.42 plus all interest and bank charges plus additional legal and professional fees, costs and taxes incurred. An email from Haddon Murray to Robert LeBlanc, dated January 13, 2020 setting out the approximate total indebtedness as at January 12 is attached as **Exhibit "C"**.

9. Accordingly, if each of the transactions closes, after the payment of the the CRA Debt, the Markstay North Road Debt and the Property Tax Debt (totalling \$601,031.63), the total payment to the Bank would be approximately \$348,968.37.

10. The Proposed Transactions are not contemplated with a financier that is acceptable to the Bank. I conducted a Google search for "MJM Bloemberg Investments Inc" on February 20, 2020. A copy of the first two pages of Google search results is attached as **Exhibit "D"**.

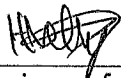
Prejudice to the Bank

11. In addition to the accrual of interest and potential CRA liability and erosion of the Bank's collateral discussed at paragraph 39 of the Affidavit of Sieg Flatt sworn

November 19, 2019, both Counsel for the Bank and the proposed Receiver have attended in Sudbury on two occasions and have incurred fees as a result.

12. This Affidavit is sworn in support of the Bank's application to enforce the Settlement Agreement and for no other or improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on February 20, 2020.



Commissioner for Taking Affidavits
(or as may be)

Heidi Kettner C757420



HEATHER FISHER

TAB A

THIS IS EXHIBIT A TO THE
AFFIDAVIT OF HEATHER FISHER
SWORN BEFORE ME ON
FEBRUARY 20, 2020



Commissioner for Taking Affidavits
Heyla Vettyvel (75742C)

Fisher, Heather

From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: February-20-20 10:04 AM
To: Murray, Haddon
Cc: Fisher, Heather
Subject: NAUSS
Attachments: 202002200943.pdf

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Enclosed are the documents for the sale of Jennica Springs, and 2 mortgage commitments all totalling \$ 1,056,000. The net would be paid to the CIBC. I am told the net will be around \$950,000.00. My client has not sat back and is trying to get your client paid. Will you consent to permit these transactions to be completed ? This would pay a significant portion of the debt. The Motion would have to be adjourned . It will also require further discussion on the remaining balance. This would permit the business to continue.

Thanks


Sent: February 20, 2020 9:44 AM
To: J. Robert Leblanc <leblanc@dkLawyers.ca>
Subject: Message from "RNP002673ABDDBB"

This E-mail was sent from "RNP002673ABDDBB" (Aficio MP 6002).

Scan Date: 02.20.2020 09:43:32 (-0500)
Queries to: ricoh@nbs.ca

TAB B

THIS IS EXHIBIT B TO THE
AFFIDAVIT OF HEATHER FISHER
SWORN BEFORE ME ON
FEBRUARY 20, 2020



Commissioner for Taking Affidavits
Heyla Vettyvel (75742C)

COMMITMENT LETTER

February 19, 2020

Mortgagee: MJM Bloemberg Investments Inc.

Mortgagors: Nauss Plumbing & Heating Inc.

Denis Groves

Elaina Groves

Guarantors: Nauss Plumbing & Heating Inc.

Denis Groves

Elaina Groves

Re: First Mortgage financing on Real Property owned by Nauss Plumbing & Heating Inc. known as 551 Centre Street, Espanola, ON comprising land with a frontage of more or less 65.86 feet, lot size of approximately 34,848 sq ft containing two buildings. One building is approximately 3754 sq ft and a Quonset Hut of approximately 3000 sq ft.; and a Collateral First Mortgage on Lot 13, Rock Lake 2 Road, Unorganized North Part, ON POM, Lot 11 Con 2 Servos Township Lot 13 Plan M695 PCL 20588 PIN 7345601 10 SES

The following outlines the basic terms and conditions under which MJM Bloemberg Investments Inc. is in a position to arrange first mortgage financing on the basis of information provided to date:

Loan Amount: \$231,000.00

Borrowers: Nauss Plumbing & Heating Inc.

Denis Groves

Elaina Groves

Guarantors: Nauss Plumbing & Heating Inc.

Denis Groves

Elaina Groves

Scheduled Closing Date: March 1, or before 2020

Initials

Type of Mortgage(s): First Realty Mortgage on 551 Centre Street, Espanola, ON and a Collateral First Realty Mortgage on vacant land as described above

Term: Twelve (12) Months. Open for prepayment with three months interest penalty

Amortization: 20 years

Interest Rate: 12.0%

Lender Fee: 2.0% on funds advanced at the time of advance

Payment: \$2,497.05/month

Interest Adjustment Date: March 1, 2020

Security: First Mortgage security on 551 Centre Street (Highway 6), Espanola, ON comprising a 34,848 sq ft lot with approximately 6,754 sq ft of buildings.

First Mortgage security Lot 13, Rock Lake 2 Road, Unorganized North Part, ON POM, Lot 11 Con 2 Servos Township Lot 13 Plan M695 PCL 20588 PIN 7345601 10 SES comprising a 75 x 177 lot of approximately .35 acres

Assignment of Fire, Peril, and Public Liability Insurance on all properties in a form acceptable to the Lender.

Such other documents, security instruments, agreements or other things that the Lender's solicitors deem necessary to secure the Lender's interest on all properties

Use of Funds: Payoff the existing 1st mortgage held by CIBC

Conditions Precedent: An updated appraisal of 551 Centre Street showing a minimum value of \$420,000.00. Appraiser to be the Lender's choice and be acceptable in their sole opinion

An updated appraisal of the vacant lake lot showing a minimum value of \$170,000.00. Appraiser to be the Lender's choice and be acceptable in their sole opinion

Receipt of the Articles of Incorporation for Nauss Plumbing & Heating Inc.

Receipt of the most recent accountant prepared Financial Statements for Nauss & Plumbing & Heating Inc.

An organization chart for Nauss Plumbing & Heating Inc. showing all owned entities and their beneficial owners

Independent legal advice to be obtained for Elaina Groves

1. Mortgagor responsible for all legal fees (plus disbursements & HST). All legal work to be done by Bill Marks of Marks and Ciraco (905-712-8300; fax 905-712-8559) who will represent the mortgagee.
2. Broker fee of \$ payable to The Mortgage Group Ontario Inc., Licence #M080003984
3. Broker fee of \$6,000.00 payable to Force 10 Capital Management Inc. Licence #12799
4. **No additional mortgages may be placed subsequent to the mortgage(s) herein contemplated.**
5. Confirmation that all realty taxes and insurance are current on all properties. **Any arrears may be a cause for cancellation of this Term Sheet.**
6. Client must sign Information Release form authorizing Lender or its representatives to inquire on the First mortgage balance and payment histories.
7. The lender has executed the Investor/Lender Disclosure Statement for Brokered Transactions, approved by the Superintendent under subsection 54 (1) of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, and has given the licensee written instructions, relating to the particular transaction, to accept the executed disclosure statement as proof of the loan agreement.
8. See Schedule A for further conditions.
9. **This Commitment, if not accepted by the borrower(s), will expire on February 21, 2020.**

Date: February 19, 2020

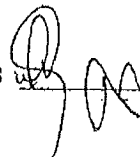
MJM Bloemberg Investments Inc.

I Have the Authority to Bind the Corporation

I/We the undersigned applicants, accept the terms of this mortgage as stated above and agree to fulfill the conditions as outlined in the attached Schedule A to the lender's satisfaction. I/We further certify that the information given on the mortgage application is true and correct. By copy of my signature below I accept the above terms and conditions for the mortgage financing.

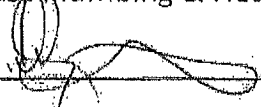
Page 3 of 9

Initials



Nauss Plumbing & Heating Inc.

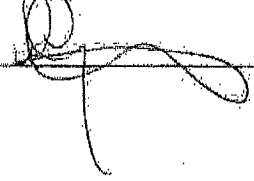
Date: FEB 20/20



Borrower

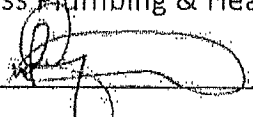
I Have the Authority to Bind the Corporation

Name: DENIS GROVES

Signature: 

Nauss Plumbing & Heating Inc.

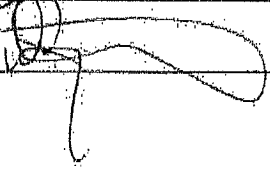
Date: FEB 20/20



Guarantor


I Have the Authority to Bind the Corporation

Name: DENIS GROVES

Signature: 

Denis Groves

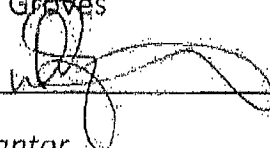
Date:



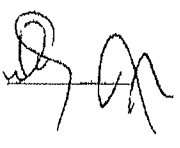
Borrower

Denis Groves

Date:



Guarantor

Initials 

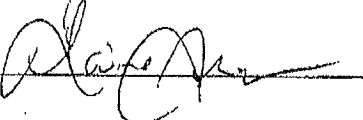
Elaina Groves



Borrower

Date: February 20, 2020

Elaina Groves



Guarantor

Date: February 20, 2020

Instrument Statement 61

Additional Provisions

The mortgagor further covenants and agrees that all payments to the terms of this mortgage shall be delivered to the Mortgagee on any bank day, between the hours of 9:30 a.m. and 2:00 p.m., then interest at the rate set out herein shall continue to accrue and be payable to the next following day.

PRE-PAYMENT PRIVILEGE

Provided that the mortgagors when not in default, shall have the privilege of prepaying the whole or any part of the principal sum or sums, on payment date, upon paying three (3) months interest penalty.

NSF FEE

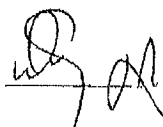
In the event that if the mortgagor shall fail to provide and make any payment due under the mortgage by virtue of such payment being returned to the Mortgagee unpaid for any reason whatsoever, or payment shall be late the mortgagor shall pay a fee in the amount of \$500.00 in respect of each cheque, which fee shall immediately come due and payable and shall be a charge upon the lands.

ADMINISTRATION FEE

Provided that in the event of non-payment any administration fees herein the amount due shall be added to the principal balance outstanding and shall earn interest pursuant to the provisions herein set out and shall be considered a default under the mortgage until paid.

PRE-PAYMENT PENALTY ON DEFAULT

The Mortgagor(s) agrees that should the Mortgagee commence action due to default under the Mortgage, that the Mortgagee at its option shall be entitled to charge an additional fee equivalent to three months interest and transfer the property in the Mortgagee's name or whoever the Mortgagee chooses to, without any further notice to the Mortgagor(s).

Initials 

INSURANCE

In the event that the Lender deems it necessary to arrange for insurance to be placed for the further subject property, any amount paid by the Lender therefore shall be part of the indebtedness secured by the Mortgage bearing interest at the rate set out in the Mortgage. The Borrower(s) shall also pay to the Lender an administration fee in the amount of \$750.00 on each occasion on which the Lender arranges the placement of insurance or pays any insurance arrears. The Borrower(s) shall provide proof of insurance to the Lender at the Lenders request.

FURTHER ENCUMBRANCES

The Mortgagor(s) shall not grant or permit any further mortgages, charges, or encumbrances of any nature to be registered against the property without prior consent in writing of the Mortgagee and in the event of breach of this covenant the Mortgagee shall be entitled to commence default proceedings.

INSPECTION

The lender may, in the default by the Borrower(s) of any obligation under the Mortgage, or whenever the Lender deems it necessary acting reasonably itself, or by its agent view the subject property. An inspection fee of \$300.00 on each occasion shall be forthwith payable by the Borrower(s) to the Lender as an administration fee.

TAX RECEIPTS

Provided paid tax receipts are to be provided to the Mortgagee on a half yearly basis. The Mortgagee shall have the option, to be exercised in its sole discretion, to pay the property taxes directly and have the Mortgagor reimburse the amount of such payment forthwith after payment by Mortgagee.

NON-TENANCY

The Mortgagor covenants not to enter into a tenancy agreement prior to or after the registration hereof and agree with respect to any tenancy agreement prior to or after the registration hereof and agree with respect to any tenancy agreement entered into prior to discharge of this mortgage to incorporate an acknowledgement of priority by the discharge of this mortgage to incorporate an acknowledgement of priority by the lessee of the terms and provisions of this mortgage, including without limitation to generality an acknowledgement by the lessee hereunder that the Mortgagees right to possession will not be bound by, or subject to, the residential tenancy provisions of the Landlord and Tenant Act.

ADMINISTRATION FEE ON DEFAULT

If the Lender takes action pursuant to the Mortgage by reason of the Borrower(s) default, the Lender shall be entitled to add the mortgage debt a service and administration fee of \$1000.00 in addition to all other fees, claims or demand to which the Lender is also entitled.

ADMINISTRATION FEE ON DEFAULT OF ANY PRIOR MORTGAGE

If the Lender receives any notice or notification or information about any default of any encumbrance or mortgage which is in priority to the mortgage herein or which may affect the property herein then the Lender shall be entitled to add to the mortgage debt a service and administration fee of \$1000.00 in addition to all other fees, claims or demand to which the Lender is also entitled, for each notice so received.

RENOVATIONS

The Mortgagor(s) agree not to renovate or alter any part of the subject premises without written approval of the Mortgagee.

ASSIGNMENT OF RENTS

As additional security, in consideration of the sum of One Dollar and other good and valuable consideration now paid by the Lender to the Mortgagor (the receipt whereof is hereby acknowledged) the Mortgagor hereby gives, grants, assigns, transfers and sets over unto the Lender all rents, both present and in the future, payable under any lessee and agreements now or hereafter affecting the Lands and premises together with all rights, benefits and advantages to be derived there from to have and to hold the same unto the Mortgagee, its successors and assigns, absolutely.

ASSIGNMENTS, TRANSFER, SALE

The Lender has the right to assign, transfer, or sell this mortgage to any Bank, Trust, or Individual without the consent of the Borrower(s).

DUE ON DEFAULT

It is understood and agreed by the Mortgagor(s) that should they be in default under their existing first and/or second mortgages and should the property taxes not be paid to date, then the herein Charge will be deemed as being in default and the Mortgagee shall be entitled to all remedies accorded to it by law. NOTWITHSTANDING the registration of this mortgage and advance of funds hereunder the terms and provisions of the mortgage commitment letter shall remain binding and effective upon the parties hereto.

Any default under the commitment letter shall be deemed a default under the mortgage. In the event of any discrepancy between the provisions of the commitment letter and the terms of this mortgage, the Mortgagee in its sole discretion shall determine which of the provisions shall prevail.

ADMINISTRATION AND SERVICING FEES

The following schedule of administration and servicing fees include the following charges, which the mortgagor agrees to pay on the happening of each event which fees shall be added to the mortgage debt;

1. For administering maintenance and security of the property in our possession per diem: \$75.00
2. Renewal - client to contact lender 60 days prior to maturity to negotiate renewal fee.
3. Mortgage statement for each statement (minimum) \$295.00
4. Correspondence, per letter, e-mail or phone call to the Mortgagors in relation to the mortgage: \$50.00 per correspondence
5. Lender's discharge fee - \$295.00

CALCULATION OF INTEREST

The interest rate, as set out herein, shall be calculated as set out herein, not in advance, as well as before maturity, default and judgement.

APPLICATION OF PAYMENTS

Each payment, as set herein, shall be applied first to pay interest calculated as provided herein, on the principal amount outstanding from time to time, and the balance of each payment, if any, shall then be applied to reduce the principal amount then owing.

ADDITIONAL REMEDIES

For greater certainty, the parties hereto agree that, in addition to, and not in substitution for, all the rights and remedies of the Chargee, the Chargee may, on default by the Chargor of making any payments required by this Charge or in performing or observing any of the covenants, agreements, provisions, or obligations contained herein, commence an action and claim payment of the Charge debt by any party personally liable therefore and commence an action and claim possession of the land and premises described in the Charge. The Chargee, may commence action at its sole discretion.

MONTHLY PAYMENTS

Provided that the Chargor shall supply the Chargee a series of 12 post-dated cheques at the commencement of the within Charge and upon each yearly anniversary date thereafter, each cheque to be in the amount of the monthly payments.

STATEMENT AND DISCHARGE FEES (Paragraph 23 of Standard Charge Terms 200033 is hereby excluded)

Upon request, the Chargee agrees to prepare and provide statements to the Chargor and the Chargor agrees to pay the Chargee, or his agent, the then prevailing fee of the Chargee or his agent (a minimum of \$395.00

In addition, upon payment in full of all monies secured hereunder, the Chargee or his agent, shall prepare a discharge of this Charge and the Chargor agrees to pay to the Chargee or his agent, the then prevailing discharge fee of the Chargee or his agent, for preparation and execution of such discharge.

SALE CLAUSE (Paragraph 14 of Standard Charge Terms 200033 is hereby excluded)

Provided that the Chargor covenants and agrees with the Chargee that in the event of selling, conveying, transferring or entering into an Agreement for sale or of transfer of title of the property hereby mortgaged to a purchaser transferee not approved in writing by the Chargee, all monies hereby secured with accrued interest thereon and any prepayment bonus contained herein shall forthwith become due and payable at the sole option of the Chargee.

REALTY TAX ARREARS

Provided further that the Chargors shall pay the Chargee the sum of SEVEN HUNDRED AND FIFTY (\$750.00) DOLLARS for dealing with each notice of realty tax arrears, realty tax payment or other non-compliance with realty tax.

PROPERTY INSURANCE ARREARS

Provided further that the Chargors shall pay the Chargee the sum of SEVEN HUNDRED AND FIFTY (\$750.00) DOLLARS for dealing with each notice of property insurance arrears, property insurance payment or other non-compliance with property insurance coverage, for which the Chargee receives notice by the Insurance Provider.

RENEWAL OF CHARGE

The charge may be renewed with mutual agreement between the Chargee and the Chargor, upon payment of a renewal fee, to be set out by the Chargee, providing all mortgages, realty taxes and property insurance have been in good standing.

HOLD OVER RATE

This mortgage has a 12 month term. If the borrower has not agreed to renew the loan or made arrangements to pay the mortgage in full by the due date, then the interest rate will be adjusted to 24% per annum until such time that the Mortgagor renews or pays out the mortgage.

The adjusted interest rate shall come into effect at the end of the Eleventh (11th) month and Second (2nd) week of the term of the mortgage and remain in effect until renewal is agreed upon or the mortgage is paid out in full.



ASSET PURCHASE AGREEMENT

BETWEEN:

EZ Intermedia., a corporation incorporated under the laws of the Province of Ontario

(hereinafter called "Purchaser")

OF THE FIRST PART

-and-

Nauss Plumbing & Heating Inc., a corporation incorporated pursuant to the laws of Canada

(hereinafter called "Vendor")

OF THE SECOND PART

The Purchaser agrees to purchase from the Vendor the assets as hereinafter described on the terms and conditions that follow:

1. Purchased Assets

The assets to be sold or assigned to the Purchaser include:

- (a) all assets used by the Vendor in the operation of Jennica Springs Ltd.;
- (b) all equipment owned or leased by the Vendor for Jennica Springs including vehicle, office equipment, bottling equipment, inventory of bottles and finished product; ~~_____~~ *to discuss LT*
- (c) the Vendor's rights and all contracts dealing with Jennica Springs, ~~including contracts not yet in existence.~~
The Vendor undertakes to provide the Purchaser a list of all such contracts, together with a customer list including all current customers and all entities that have been customers in the last 24 months; *to discuss LT*
- (d) all Intellectual property owned or used by the Vendor in connection with Jennica Springs, including the trade name and goodwill associated with the name Jennica Springs; *LT*
- (e) Inventory including bottles, caps and filled product;
- (f) the land and building located at 1300 North Road, Markstay, Ontario, PM 1G0; legally described as PIN 73488-0010, Parcel 51424, Sudbury East Section, Part of Lot 12, Concession 1, Parts 1 & 2 on Plan 53R-15954, Township of Loughrin, which premises include the spring water source.

2. Excluded Assets

Excluded from this sale are the following assets of the Vendor:

- (a) all cash, bank balances, money in possession of banks and other depositories, term or time deposits and similar cash items owned by the Vendor;
- (b) accounts receivables, including all accounts receivable, bills receivable, book debts and other debts due to or accruing to the Vendor.

*to discuss
LT*

3. Purchase Price

The purchase price shall be the aggregate of the following amounts to be paid by the Purchaser to the Vendor in cash on closing or assumed by the Purchaser:

- (a) The Purchaser agrees to pay \$ 425,000.00 to the seller upon closing

4. Conditional

The obligations of the Vendor and Purchaser herein are conditional upon the completion of the following within 30 days from acceptance of this offer, failing which this offer shall become null and void:

Page 3

5. Accounts Receivable

The Vendor shall be responsible for collections of its accounts received provided that the Purchaser shall assist the Vendor in the collection of the accounts received and comply with such reasonable directions at the cost of the Vendor for the purpose of such collection. In the event that the Purchaser should collect any account receivable on behalf of the Vendor, then it shall remit such in accordance with the Vendors reasonable instructions. The Purchaser shall hold all such receipts in trust for the Vendor.

6. Liabilities

The Vendor shall be responsible for all expenses and liabilities associated with the running of Jennica Springs up to the closing date and without limiting the generality of the foregoing, the Vendor shall remain liable for all wages of employees, including statutory vacation pay and all monies due on liabilities not being assumed by the Purchaser. As to any liabilities being assumed by the Purchaser, the Vendor agrees to pay such interest as is due and payable to the date of closing.

*to discuss
LT*

7. Employees

On or before closing, the Purchaser will:

- (a) offer to employ the employees of the Vendor engaged in services for Jennica Springs, on substantially the same terms and conditions as they presently enjoy; and *to discuss LT*
- (b) indemnify the Vendor with respect to any liability associated with the employment of such persons as a result of this transaction.

8. Bulk Sales Act

The Vendor shall comply with the provisions of the Bulk Sales Act.

9. Quality Assurance

The Purchaser agrees that it will maintain the highest quality standards with respect to the product sold and distributed under the name Jennica Springs and that it will indemnify and save harmless the Vendor from any claim, whatsoever, arising from the Purchaser's operation of the business after the date of closing. Provided further that the Purchaser shall carry in the name of itself and the Vendor, as an additional named insured, product liability insurance in an amount of not less than \$2,000,000 for a period of 6 months.

Page 4

10. Guarantee

~~The Purchaser will grant the Vendor a general security agreement against the business and a collateral mortgage on the property until payment in full is completed.~~

*to discuss
LT*

11. Closing

On closing, the Vendor will provide all bills of sale and other documents to transfer to the Purchaser free and clear title to the assets owned by the Vendor. On closing the Purchaser shall provide to the Vendor a fully executed proof of Insurance.

IN WITNESS WHEREOF the parties hereto have signed this agreement this 21 day of January 2020

Sworn, (Affirmed or Declared) Before me at
.....City of Vaughan.....
.....in the PROVINCE OF ONTARIO, on
this 21 day of January 2020
.....
A Commissioner for taking Affidavits for Ontario

EZ Intermedia,

Per: [Signature]
Name: Lyudmyla Tereshchenko
Title: Director
I have the authority to bind the Corporation

Nauss Plumbing & Heating Inc.,

Per: [Signature]
Name: Denis Groves
Title: President
I have the authority to bind the Corporation

Denis Groves

From: Mila Tereshchenko <milaartist2016@gmail.com>
Sent: February 20, 2020 3:30 AM
To: Denis Groves
Cc: Elena Zolotko
Subject: Re: 20200219094710.pdf

Hi Denis,

Good to know that you have received the signed Offer.
As for the mortgage, it's a kind of misunderstanding. We didn't discuss this with you because never implied to take any responsibility for your company's mortgage.

We are presently not able to do any paperwork, just landed in Ukraine.
You can cross off that clause on behalf of Mila (L T).

Please let us know if this works.

Thanks.

Sent from my iPhone

On Feb 19, 2020, at 8:01 PM, Denis Groves <manager@naussplumbing.ca> wrote:

Good afternoon (Canada time),
I have looked over the offer and all is good with the exception of Page 4 Item 10. This clause implies that Nauss will hold a collateral mortgage on the sale.
We did not discuss this and I am not in a position to hold a mortgage.
Please cross off this clause and initial the change.
The conditions should state that the balance be paid on closing.
Please return this back to me right away as I have to get it the lawyer.

Thank You
Denis

From: Mila Tereshchenko [<mailto:milaartist2016@gmail.com>]
Sent: February 19, 2020 9:27 AM
To: Denis Groves <manager@naussplumbing.ca>
Cc: ezolotko@rogers.com
Subject: 20200219094710.pdf

Sent from my iPhone



**MD
FINANCIAL
CORPORATION**
Lic. # 10714

3089 Bathurst St., Suite 312
Toronto, Ontario M6A 2A4
Tel: 416-782-5777
Fax: 416-782-1048

January 9, 2020

Mr. Denis Anthony Groves
2816 Greenvally Drive
Sudbury, ON P3E 5G3

Attention: Mitch Speigel

**RE: BLANKET FIRST MORTGAGE FINANCING
7 MILLICHAMP STREET, MARKSTAY, ONTARIO P0M 2G0 AND
2590 LASALLE BOULEVARD, SUDBURY, ONTARIO P3A 4R7**

We are pleased to offer you the following commitment for your consideration:

VALUED AT: \$300,000.00 – 7 Millichamp
\$400,000.00 – 2590 Lasalle

LOAN AMOUNT: \$400,000.00

INTEREST RATE: 9% (compounded monthly)

TERM: 1 year

PAYMENT: \$3,000.00 Interest only monthly

CLOSING DATE: ASAP

CONDITIONS:

- a) Open anytime for repayment with 3 months penalty.
- b) Non-transferable.
- c) Borrower to provide 12 post dated cheques to the lender(s).
- d) \$250.00 NSF or late payment fee.
- e) Title insurance required.
- f) Payment must be received in lender's office before 1:00pm
- g) Borrower acknowledges that this mortgage financing is from a Private Lender.
- h) Lender has the right to assign this commitment to a third party of their choice without the consent of the borrower.
- i) Borrower to provide photo I.D.
- j) Lender has the right to split this commitment into 2 separate mortgages

BORROWER: Nauss Plumbing & Heating Inc.

GUARANTOR: Denis Anthony Groves

FEES:

Inspection Fee:	\$	1,000.00	MD Financial Corporation
Lender Fee:	\$	8,000.00	
Brokerage Fee:	\$	4,000.00	MD Financial Corporation
Brokerage Fee:	\$	4,000.00	The Mortgage Group
Legal Fee:	\$	2,500.00	estimate + HST & disbursements
TOTAL:	\$	19,500.00	

MORTGAGES BOUGHT, SOLD AND ARRANGED



**MD
FINANCIAL
CORPORATION**
Lic. # 10714

3089 Bathurst St., Suite 312
Toronto, Ontario M6A 2A4
Tel: 416-782-5777
Fax: 416-782-1048

- SECURITY:** Major Security for this loan includes:
- a) Registered Blanket First mortgage for \$400,000.00 over subject properties. Realty taxes to be paid in full.
 - b) Satisfactory insurance coverage as verified by lender's independent insurance advisor and naming lender as loss payee.
 - c) Personal guarantees of Denis Anthony Groves and all shareholders of the borrower for the full amount of the loan on a joint and several basis.
 - d) Assignment of all rents (If applicable).
 - e) Chattel charge over both properties with PPSA
- LEGAL FEE:** A standby fee of \$2,500.00 is payable to Lloyd Rubinoff in Trust and must be accompanied with the signed acceptance of this commitment. In the event the applicant is unable to or unwilling to fulfill the conditions within this letter this fee will be forfeited and deemed to pay for work done on behalf of the lender. (**Certified funds only**)
- INSPECTION FEE:** An inspection fee of \$1,000.00 payable to MD Financial Corporation will be deducted on closing.
- CONDITIONS PRECEDENT TO FUNDING:** Prior to the advance, the lender shall be satisfied that each of the following conditions have been met by the borrower.
- a) All security is in place to the satisfaction of the lender and its solicitor.
 - b) Evidence of satisfactory title and zoning has been provided.
 - c) Subject to satisfactory appraisal of subject properties showing a minimum value of \$300,000.00 for 7 Milliechamp and \$400,000.00 for 2590 Lasalle addressed to the lender. (at borrowers' expense)
 - d) Subject to satisfactory inspection of the subject property by the lender or his agent.
 - e) This Commitment shall be null and void after January 16, 2020 if not accepted by then.
 - f) Subject to satisfactory Phase 1 environmental report on both properties.
- OTHER CONDITIONS:** Borrower agrees to:
- a) Provide such other information and documentation as reasonable requested by the lender
 - b) All legal fees incurred by the lender to be paid by the borrower as stated in this commitment.
 - c) Pay to the lender his fee of \$8,000.00 and to the brokers their fee of \$9,000.00 should the borrower fail to close through no fault of the lender, as a pre-estimated of their liquidated damages.

X



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FINANCIAL
CORPORATION
Lic. # 10714

3089 Bathurst St., Suite 312
Toronto, Ontario M6A 2A4
Tel: 416-782-5777
Fax: 416-782-1048

Yours very truly,
MD FINANCIAL CORPORATION

LARRY S. GWYNNE

ACCEPTANCE OF BORROWER

I the undersigned, hereby accept the terms and conditions as set out above.


x Dated at Edmonton this 9TH day of JANUARY 2020.

f. [Signature]
BORROWER - NAUSS PLUMBING & HEATING INC.

x. [Signature]
GUARANTOR - DENIS ANTHONY GROVES

TAB C

THIS IS EXHIBIT C TO THE
AFFIDAVIT OF HEATHER FISHER
SWORN BEFORE ME ON
FEBRUARY 20, 2020



Commissioner for Taking Affidavits
Heyla Vettyvel (75742C)

Fisher, Heather

From: Murray, Haddon
Sent: January-13-20 11:51 PM
To: J. Robert Leblanc
Cc: Fisher, Heather
Subject: RE: Nauss/CIBC

Robert, we estimate our fees as follows:

- Gowling WLG: \$48,602.52 up to January 12, 2020 - note that the Borrower is responsible for all legal fees, costs and taxes incurred from and after that date.
- MNP: \$32,336.53 up to January 10, 2020 - note that the Borrower is responsible for all professional fees, costs and taxes incurred from and after that date.
- CIBC: \$935,380.37 up to January 9, 2020 plus accruing interest.

Accordingly, the aggregate total indebtedness is approximately **\$1,016,319.42** at January 12, 2020 plus all interest and bank charges plus all additional legal and professional fees, costs and taxes incurred from and after that date.

Please note that this is not an official payout statement and is being provided as a courtesy – it cannot be relied upon as a bar to any right to payment the CIBC may be entitled to and CIBC, Gowling WLG and MNP reserve their rights to amend the fees.

Haddon Murray
Partner
T +1 416 862 3604
haddon.murray@gowlingwlg.com



From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: January 10, 2020 2:03 PM
To: Fisher, Heather <Heather.Fisher@gowlingwlg.com>; Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Subject: Nauss/CIBC

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

It was nice to meet you today. Can you please get me the total amount owed for the Bank ,Receiver and legals.
Thank you

J. Robert LeBlanc



15 Mackenzie St. | Sudbury, ON | P3C 4Y1
T: 705-675-7521 x 230 | F: 705-675-7390

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TAB D

THIS IS EXHIBIT D TO THE
AFFIDAVIT OF HEATHER FISHER
SWORN BEFORE ME ON
FEBRUARY 20, 2020



Commissioner for Taking Affidavits
Heyla Vettyvel (75742C)



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2.3.7 Adv. **M.J.M.** Bridgman N.O., K.J. Bomvana and F. Danster vs. ... 5.2.3 B. **Bloemberg** vs. ... The client, a pensioner, had **invested** R13000-00 with the Owen Wiggins ... V Morali and

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CANADIAN IMPERIAL BANK OF COMMERCE

- and -
Applicant

Court File No. CV-19-000088866-0000
NAUSS PLUMBING & HEATING INC.

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
SUDBURY

SUPPLEMENTARY AFFIDAVIT OF HEATHER FISHER
(SWORN FEBRUARY 20, 2020)

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

Haddon Murray (LSO# 61640P)

Tel: (416) 862-3604

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Email: haddon.murray@gowlingwlg.com

Lawyers for the Applicant,
Canadian Imperial Bank of Commerce

- and -

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

SUPPLEMENTARY MOTION RECORD

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

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

Lawyers for the Applicant,
Canadian Imperia Bank of Commerce

This is Exhibit I referred to in the
Affidavit of Heather Fisher
sworn before me this
30th day of October, 2020

A handwritten signature in blue ink, appearing to be "HW Fisher", is written over a horizontal line.

A Commissioner for Taking Affidavits (or as may be)

Court File No. CV-8860-19

ONTARIO

SUPERIOR COURT OF JUSTICE

ENDORSEMENT

TITLE OF PROCEEDING

RE: Canadian Imperial Bank of Commerce v. Nouss Plumbing and Heating IncDATE: February 26, 2020Mr. Murray for applicant
Mr. Leblanc for resp.

The ~~application~~ application could not proceed today because I am conflicted by reason of knowledge of a principal/associate of a party. The applicant strongly urges this matter to proceed given what it submits of significant prejudice being suffered by it.

The next clear date that Mr. Leblanc is available and I am out scheduled is March 20, 2020, which is a significant delay. March 6, 2020 would be preferable but Mr. Leblanc is in a 2-day Small Claims Ct. trial that day (day 2). Mr. Leblanc submits there is some poss. of ^{rescheduling of that matter}

Accordingly, I adjourn this application to ^{rescheduling of that matter} March 6, 2020, at 10:00. If Mr. Leblanc is available from his Small Claims matter, he will attend. ~~If he is still involved on that~~ and the application will be argued. If Mr. Leblanc is not available, he will attend to adjourn the application to March 20, 2020, when it will be proceeding on the Respondent, given the delay in the matter to this point.

Alfred Paul Kule

This is Exhibit J referred to in the
Affidavit of Heather Fisher
sworn before me this
30th day of October, 2020

A handwritten signature in blue ink, appearing to read "H. Fisher", is written above a horizontal line.

A Commissioner for Taking Affidavits (or as may be)



March 6, 2020

Via Fax 1.705.564.7890

Haddon Murray
Direct +1 416 862 3604
haddon.murray@gowlingwlg.com
File no. H218127

Court Clerk
Sudbury Courthouse
155 Elm Street
Sudbury, ON P3C 1T9

Dear Sir/Madame:

Re: Canadian Imperial Bank of Commerce v. Nauss Plumbing and Heating Inc. - Court file No. CV-8866-19 - Motion to enforce settlement agreement and appoint Receiver returnable March 6, 2020 (the "Motion")

We would be grateful if you could bring this letter to the attention of the judge presiding over the civil motions court today.

Pursuant to the Endorsement of Justice Kurke dated February 21, 2020, attached, (the "Endorsment") the Motion was returnable today, March 6, 2020. Unfortunately due to inclement weather the flight to Sudbury could not land and returned to Toronto last night. We were unable to book a ticket this morning. Accordingly, we have asked Mr. LeBlanc, counsel to the respondent, to attend at the Court this morning to adjourn the matter to May 20, 2020 as that date has already been set aside for this matter pursuant to the Endorsement.

For your convenience, an unofficial transcription of the Endorsement is appended to this letter. We apologize for any inconvenience.

Sincerely,

Gowling WLG (Canada) LLP

A handwritten signature in blue ink, appearing to read "Haddon Murray", written over a light blue horizontal line.

Haddon Murray

HM:sc
Enclosures

Gowling WLG (Canada) LLP
Suite 1600, 1 First Canadian Place
100 King Street West
Toronto ON M5X 1G5 Canada

T +1 416 862 7525
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gowlingwlg.com

Gowling WLG (Canada) LLP is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at gowlingwlg.com/legal.

This is Exhibit K referred to in the
Affidavit of Heather Fisher
sworn before me this
30th day of October, 2020

A handwritten signature in blue ink, appearing to read "H. Fisher", is written over a horizontal line.

A Commissioner for Taking Affidavits (or as may be)

Court File No. CV-19-00008866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

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

**SECOND SUPPLEMENTARY AFFIDAVIT OF HEATHER
FISHER
(Sworn March 5, 2020)**

I, Heather Fisher, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am an Associate at Gowling WLG (Canada) LLP, counsel for the Applicant, Canadian Imperial Bank of Commerce (the "**Bank**"). As such, I have personal knowledge of the matters contained in this Affidavit. Where I do not have personal knowledge, I have stated the source of my information and believe the information to be true.

-2-

2. As noted in the affidavit of Sieg Flatt dated November 19, 2019 (the "**Flatt Affidavit**"), Nauss Plumbing & Heating Inc.'s (the "**Debtor**") other outstanding liabilities include:

- (a) Canada Revenue CRA was owed a total of \$439,700.06 by Nauss in respect of unremitted source deductions dating as far back as 2017 (the "**CRA Debt**");
- (b) A first mortgage on the Markstay North Road Property that I understand from discussions with David Preger to be in the amount of approximately \$70,000 as at January 3, 2020 (the "**Markstay North Road Debt**"); and
- (c) Municipal property taxes in the amount of \$91,331.57 (the "**Property Tax Debt**"),

for an aggregate outstanding priority liability of \$601,031.63.

3. As at January 12, 2020, the total indebtedness to the Bank was approximately \$1,016,319.42 plus all interest and bank charges plus additional legal and professional fees, costs and taxes incurred. An email from Haddon Murray to Robert LeBlanc, dated January 13, 2020 setting out the approximate total indebtedness as at January 12, 2020 is attached as **Exhibit "A"**.

4. The Settlement Agreement terms required that the Debtor fully paid out the indebtedness to the Bank or provide a commitment letter to refinance the indebtedness, as long as the commitment letter was: (i) legally binding, (ii) had no conditions precedent, and (iii) from a lender that is acceptable to the Applicant at its sole discretion.

March Proposed Transaction

5. On March 3, 2020 at 3:01PM counsel for the Debtor sent an email to Haddon Murray (the "**March 3 Email**"), which attached an Agreement of Purchase and Sale for 7 Millichamp Street, Markstay, Ontario (the "**March Proposed Transaction**"). A copy of the March 3 Email and the March Proposed Transaction are attached as **Exhibits "B" and "C"**, respectively.

6. The Bank had no communication with the Debtor with respect to the March Proposed Transaction since the February 21, 2020 adjournment of this motion.

7. The March Proposed Transaction does not repay the indebtedness to the Bank. The March 3 Email contemplates the sale of 7 Millichamp Street will have a net value of \$840,000.00.

8. Accordingly, if this transaction closes, after the payment of the CRA Debt, the Markstay North Road Debt and the Property Tax Debt (totalling \$601,031.63), the total payment to the Bank would be approximately \$238,968.37.

Prejudice to the Bank

9. In addition to the accrual of interest and potential CRA liability and erosion of the Bank's collateral discussed at paragraph 39 of the Affidavit of Sieg Flatt sworn November 19, 2019, both Counsel for the Bank and the proposed Receiver have attended in Sudbury on three occasions and have incurred fees as a result.

-4-

10. This Affidavit is sworn in support of the Bank's application to enforce the Settlement Agreement and further to my affidavits of January 29 and February 20, 2020 and for no other or improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on March 5, 2020.



Commissioner for Taking Affidavits
(or as may be)



HEATHER FISHER

This is Exhibit "A" referred to in the Affidavit of Heather Fisher sworn March 5, 2020.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Commissioner for Taking Affidavits (or as may be)

Fisher, Heather

From: Murray, Haddon
Sent: January-13-20 11:51 PM
To: J. Robert Leblanc
Cc: Fisher, Heather
Subject: RE: Nauss/CIBC

Robert, we estimate our fees as follows:

- Gowling WLG: \$48,602.52 up to January 12, 2020 - note that the Borrower is responsible for all legal fees, costs and taxes incurred from and after that date.
- MNP: \$32,336.53 up to January 10, 2020 - note that the Borrower is responsible for all professional fees, costs and taxes incurred from and after that date.
- CIBC: \$935,380.37 up to January 9, 2020 plus accruing interest.

Accordingly, the aggregate total indebtedness is approximately **\$1,016,319.42** at January 12, 2020 plus all interest and bank charges plus all additional legal and professional fees, costs and taxes incurred from and after that date.

Please note that this is not an official payout statement and is being provided as a courtesy – it cannot be relied upon as a bar to any right to payment the CIBC may be entitled to and CIBC, Gowling WLG and MNP reserve their rights to amend the fees.

Haddon Murray
Partner
 T +1 416 862 3604
 haddon.murray@gowlingwlg.com



From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: January 10, 2020 2:03 PM
To: Fisher, Heather <Heather.Fisher@gowlingwlg.com>; Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Subject: Nauss/CIBC

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

It was nice to meet you today. Can you please get me the total amount owed for the Bank ,Receiver and legals.
 Thank you

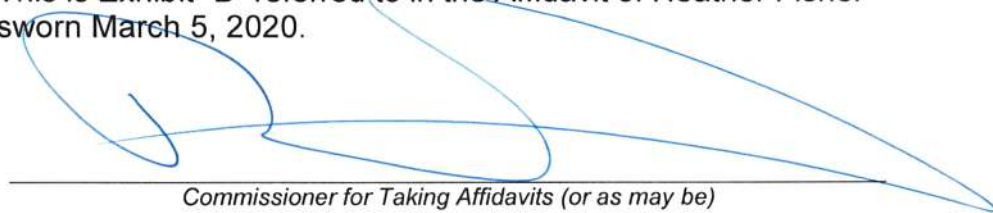
J. Robert LeBlanc



15 Mackenzie St. | Sudbury, ON | P3C 4Y1
 T: 705-675-7521 x 230 | F: 705-675-7390

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This is Exhibit "B" referred to in the Affidavit of Heather Fisher sworn March 5, 2020.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Commissioner for Taking Affidavits (or as may be)

Fisher, Heather

From: Murray, Haddon
Sent: March-04-20 3:03 PM
To: Rockefeller, Eric; Glavota, Dom
Cc: Fisher, Heather
Subject: FW: Denis Groves Sale of Property
Attachments: Arena Offer to Sell_1.pdf

See below and attached from Nauss

Haddon Murray
 Partner
 T +1 416 862 3604
 haddon.murray@gowlingwlg.com



From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: March 4, 2020 3:01 PM
To: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Subject: Fwd: Denis Groves Sale of Property

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Hurry - I just caught this offer in. While there are conditions there is no condition based upon financing. The major condition is that of an environmental assessment. That is not an issue as this is a local arena and has never had a gas station excetera. Paragraph in conjunction with some financing will it make any difference?. Please advise thank you

Get [Outlook for Android](#)

From: Denis Groves <manager@naussplumbing.ca>
Sent: Wednesday, March 4, 2020 2:51:11 PM
To: J. Robert Leblanc <leblanc@dkLawyers.ca>
Subject: FW: Denis Groves Sale of Property

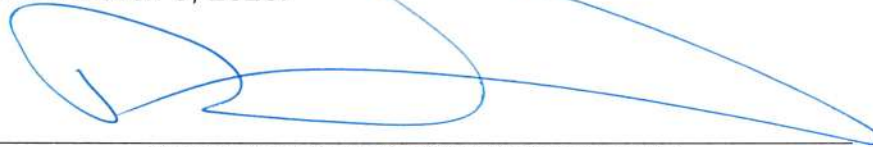
Good afternoon Robert
 Please find assigned offer on the arena sale
 Denis Groves

From: Gillian Groves
Sent: March 4, 2020 2:41 PM
To: alexduas@royallepage.ca; Denis Groves <manager@naussplumbing.ca>
Subject: Denis Groves Sale of Property

Gillian Groves

Customer Service & Support
Nauss Plumbing & Heating
Garnet's Plumbing & Heating
Jennica Springs
(ph) 705-566-2359
(f) 705-566-9570

This is Exhibit "C" referred to in the Affidavit of Heather Fisher sworn March 5, 2020.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Commissioner for Taking Affidavits (or as may be)



Agreement of Purchase and Sale Commercial

Form 500
for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 3 day of March, 2020

BUYER: Edgar Marquez Lea-Ann Marquez, agrees to purchase from
(Full legal names of all Buyers)

SELLER: NAUSS PLUMBING & HEATING INC., the following
(Full legal names of all Sellers)

REAL PROPERTY:

Address 7 Millichamp St, Markstay POM 2G0

fronting on the West side of Millichamp

in the Town of Markstay

and having a frontage of 388.87 feet more or less by a depth of 395.38 feet

and legally described as PCL 53626 REC SES; FIRSTLY: LT 22 PL M1034 HAGAR; SECONDLY: PT LT 12 CON 1 HAGAR PT 1 63R16102; MARKSTAY-WARRER

(Legal description of land including easements not described elsewhere)

PURCHASE PRICE:

Eight Hundred thousand Dollars (CDN\$)
400,000 Dollars (CDN\$)
40,000.00 Dollars (CDN\$)

DEPOSIT: Buyer submits Forty thousand Dollars (CDN\$) upon acceptance
(Herewith/Upon Acceptance/as otherwise described in this Agreement)

by negotiable cheque payable to ROYAL LEPAGE NORTH HERITAGE REALTY, BROKERAGE (SOUTH END) IN TRUST "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached

SCHEDULE(S) A attached hereto form(s) part of this Agreement.

1. IRREVOCABILITY: This offer shall be irrevocable by Buyer on 11.59 on the 4 day of March, 2020 after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the 4th day of May, 2020. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S):

EM

INITIALS OF SELLER(S):

[Signature]

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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.: **416-628-8145**
(For delivery of Documents to Buyer)

Email Address: **Alexdumas@royallepage.ca**
(For delivery of Documents to Seller)

Email Address: **cmarguez@gmail.com**
(For delivery of Documents to Buyer)

4. **CHATELS INCLUDED:**
All existing office furniture, all existing pallet tracking and scissor lift, automatic electronic garage door opener, high efficiency gas forced air at front and gas infrared radiant heating in the back, *suspended halide lighting (scissor lift in as is condition)*

Q

DS
UM EM

DS
E

~~includes the red big forklift~~

DS
UM EM

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:**
N/A

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:
N/A

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): *DS DS*
UM EM

INITIALS OF SELLER(S): *Q*

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8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 13th day of May, 2020, (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 (.....industrial.....) 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):



INITIALS OF SELLER(S):



DocuSign Envelope ID: FCE71D2B-539B-49E5-A0E2-9FBFA4A86F08

DocuSign Envelope ID: C1E7481F-3FB7-4363-834D-8288F8A8F873

- 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 Large Value Transfer System.
- 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 ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. 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. 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):

INITIALS OF SELLER(S):



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28. 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:

DocuSigned by: [Signature] 03-03-2020
(Witness) (Buyer/Authorized Signing Officer) (Seal) (Date) 03-03-2020
(Witness) (Buyer/Authorized Signing Officer) (Seal) (Date)

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) [Signature] (Seller/Authorized Signing Officer) (Seal) (Date) March 3/20
(Witness) (Seller/Authorized Signing Officer) (Seal) (Date)

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) (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 2:38 PM this 4 day of MARCH, 2020 (a.m./p.m.)
(Signature of Seller or Buyer)

INFORMATION ON BROKERAGE(S)
Listing Brokerage: ROYAL LEPAGE NORTE HERITAGE REALTY, BROKERAGE (SOUTH END) (Tel.No.)
Alex Dumas (Salesperson/Broker/Broker of Record Name)
Co-op/Buyer Brokerage: Core Assets Real Estate Inc. (Tel.No.)
Chris Marquez (Salesperson/Broker/Broker of Record Name)

ACKNOWLEDGEMENT
I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and authorize the Brokerage to forward a copy to my lawyer. (Date) March 3/20
(Seller) NAUSS PLUMBING & HEATING INC. (Date)
(Seller) (Date)
Address for Service (Tel. No.)
Seller's Lawyer (Tel. No.)
Address
Email (Tel. No.) (Fax No.)
I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and authorize the Brokerage to forward a copy to my lawyer. 03-03-2020
(Buyer) [Signature] (Date) 03-03-2020
(Buyer) Leo Ann Marquez (Date)
Address for Service (Tel. No.)
Buyer's Lawyer (Tel. No.)
Address
Email (Tel. No.) (Fax No.)

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/DocuSigned by: Chris Marquez
(Authorized to bind the Listing Brokerage) (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: Edgar Marquez Lee-Ann Marquez, and

SELLER: NAUSS PLUMBING & HEATING INC.

for the purchase and sale of 7 Millichamp St, Markstay POM 2G0

dated the 3 day of March, 2020

Buyer agrees to pay the balance as follows:

Buyer agrees to pay the balance of the purchase price by certified cheque or wire, subject to any applicable adjustments to the Seller, or its solicitors in trust on the closing date.

At any time prior to the closing of the transaction contemplated by this Agreement, Buyer shall have the right by instrument in writing to assign all of its right, title and interest in and to this Agreement and all of the benefits contained herein to any person, corporation or other entity, whether presently in existence or to be formed, provided that no such assignment shall relieve the Buyer of its liability and obligations pursuant to this Agreement. Any such assignment shall become effective, and shall become legally binding upon the Seller, upon the Buyer delivering written notice of such assignment to the Seller together with a true and complete copy of the instrument of assignment.

The Seller shall provide to the Buyer all documents related to the property in its possession including but not limited to: surveys; current final realty tax bills; utility bills for one year; any leases or third party contracts; offers to lease; property rent roll; drawings; engineering or environmental reports; structural reports no later than five (5) business days following acceptance of this agreement.

The Seller hereby authorizes and agrees to provide promptly on request by Buyer such written authorizations as may be necessary to enable all relevant government bodies, departments or agencies to release to the Buyer all information pertaining to the Property and currently on file with such bodies, departments or agencies but such authorizations shall specifically prohibit any inspections of the property.

The Seller hereby represents and warrants to the Buyer as follows, which warranties shall survive Closing for a period of one (1) year:

- a) The Seller is now and will on closing be the registered and beneficial owner of the Property in fee simple with a good and marketable title thereto free and clear of any liens, charges, claims, encumbrances, agreements, restrictions, rights of way and easements whatsoever, except the Lease;
- b) There is no litigation or claim known to the Seller which could result in any litigation pending or threatened which could in any manner affect the Property and there are no parties that could make a construction lien claim;
- c) The Seller is not a non-resident of Canada within the meaning of the Income Tax Act (Canada);
- d) The Seller is now and will continue to be up to and including the closing, a "registrant" for purposes of the Harmonized Sales Tax;
- e) To the best of the Seller's knowledge, the Property has never been used as a waste disposal or storage site within the meaning of the Environmental Protection Act of Ontario, as amended to the date hereof;
- f) No order or directive has ever been received by the Seller from the Ministry of Environment with respect to the Property;
- g) The Seller has no knowledge of any Contaminants or Pollutants other than as disclosed to the Buyer, as defined in the Environmental Protection Act of Ontario, as amended, that have been stored or spilled on the Property or adjoining lands;
- h) The Seller has no knowledge of existing or threatened environmental litigation, provincial

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

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

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DocuSign Envelope ID: C1E7481F-3FB7-4363-834D-8268F8A6F873



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: Edgar Marquez Lee-Ann Marquez, and

SELLER: NAUSS PLUMBING & HEATING INC.

for the purchase and sale of 7 Millichamp St, Markstay P0M 2G0

dated the 3 day of March, 2020

Buyer agrees to pay the balance as follows.

offences or other governmental action and has no reason to believe that any cause of action for such exists with respect to the Property; and

1) The Seller warrants that there are currently no work orders presently against the Property, and if any work orders should arise prior to Closing, it shall be the Seller's responsibility to rectify, provided that such work orders do not exceed a repair cost of \$50,000.00. In the event that such work orders exceed a repair cost in excess of \$50,000.00, the Buyer shall have the option to either assume the work orders, provided that the Buyer is given a \$50,000.00 credit on the statement of adjustments, or to alternatively terminate the herein Agreement of Purchase and Sale.

The Seller covenants and agrees to be solely responsible for payment of any real estate commissions due and owing to any real estate agent.

The Seller covenants to discharge all encumbrances from title and to provide the Buyer free and clear title to the Property.

The Seller agrees to provide on Closing:

- a) Executed Transfer;
- b) Assignment of any month to month leases and notice to tenant;
- c) Statement of Adjustments;
- d) Resolution authorizing the sale;
- e) Affidavit confirming that the Seller is a resident of Canada for the purposes of Section 116 (i) of the Income Tax Act (Canada);
- f) Such other documents as may be reasonably required by the Buyer.

The Seller represents and warrants that the chattels and fixtures as included in this Agreement of Purchase and Sale will be in ~~good~~ working condition and free from all liens and encumbrances upon completion. The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to the state of the property at completion of this transaction.

DS
M E

The Buyer shall have the right to visit the property four (4) further times prior to completion, at a mutually agreed upon time, provided that written notice is given to the seller. The Seller agrees to provide access to the property for the purpose of this visit. In addition to any other provision contained in this agreement, the Seller agrees to provide access to the property to the Buyer or anyone designated by the Buyer for the purpose of inspection, appraisal, insurance inspection upon a minimum of twenty-four (24) hours written notice and this does not count towards the property visits.

The Buyer hereby authorizes and directs the Seller, and the Seller agrees, when this agreement becomes unconditional, to give the tenant(s) the requisite notices requiring vacant possession of the property for use by the Buyer, and the Seller agrees to deliver copies of the requisite notices to the Buyer immediately after service of the notices upon the tenant.

The seller agrees to fix the brown metal sheeting at the rear of the property that has fallen off before closing this transaction.

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

INITIALS OF BUYER(S):

DS DS
M E M

INITIALS OF SELLER(S):

DS
[Signature]

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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: Edgar Marquez Len-Ann Marquez, and

SELLER: NAUSS PLUMBING & HEATING INC.

for the purchase and sale of 7 Millichamp St, Markstay POM 2G0

dated the 3 day of March, 2020

Buyer agrees to pay the balance as follows:
This Offer is conditional for thirty (30) business days after acceptance of this Agreement of Purchase and Sale and the delivery of the due diligence materials (the Conditional Date) upon the inspection of the subject property by a qualified inspector at the Buyer's own expense, and the obtaining of a report satisfactory to the Buyer in the Buyer's sole and absolute discretion. The above conditions are for the exclusive benefit of the Buyer and may be waived by the Buyer at any time prior to the expiry of the Conditional Period. In the event that the Buyer fails to issue and deliver written notice of its waiver of these conditions, the Buyer shall be deemed not to have waived the Buyer's Conditions and this Agreement shall be null and void and the Deposit shall be returned to the Buyer in full without deductions.

This Offer is conditional for thirty (30) business days after acceptance of this Agreement of Purchase and Sale and the delivery of the due diligence materials (the Conditional Date) upon the seller obtaining at their own cost and delivering to the buyer a phase 1 environmental report completed by an agreed upon environmental company satisfactory to the Buyer in the Buyer's sole and absolute discretion. The above conditions are for the exclusive benefit of the Buyer and may be waived by the Buyer at any time prior to the expiry of the Conditional Period. In the event that the Buyer fails to issue and deliver written notice of its waiver of these conditions, the Buyer shall be deemed not to have waived the Buyer's Conditions and this Agreement shall be null and void and the Deposit shall be returned to the Buyer in full without deductions.

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

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

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Confirmation of Co-operation and Representation

Form 320

for use in the Province of Ontario

BUYER: Edgar Marquez Lee-Ann Marquez

SELLER: NAUSS PLUMBING & HEATING INC.

For the transaction on the property known as: 7 Millichamp St, Markstay P0M 2G0

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, a 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 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

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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
..... 2.5% Plus HST 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 Cooperating Brokerage is receiving payment of commission from the Listing Brokerage, then the agreement between Listing Brokerage and Cooperating 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)

Core Assets Real Estate Inc.
(Name of Co-operating/Buyer Brokerage)

Tel: Fax: 416-628-8145
03-03-2020

Chris Marquez
(Authorized to bind the Co-operating/Buyer Brokerage) (Date)

Chris Marquez
(Print Name of Salesperson/Broker/Broker of Record)



ROYAL LEPAGE NORTH HERITAGE REALTY, BROKERAGE (SOUTH END)
(Name of Listing Brokerage)

Tel: Fax:
[Signature] Mar 3/2020
(Authorized to bind the Listing Brokerage) (Date)

Alex Dumas
(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/Seller consent with their initials to their Brokerage representing more than one client for this transaction.

BUYER'S INITIALS SELLER'S INITIALS

ACKNOWLEDGEMENT

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

[Signature] 03-03-2020
(Signature of Buyer) (Date)

Chris Marquez 03-03-2020
(Signature of Buyer) (Date)

[Signature] Mar 3/20
(Signature of Seller) (Date)

[Signature]
(Signature of Seller) (Date)

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Registrant's Disclosure of Interest Acquisition of Property

Form 160
for use in the Province of Ontario

This statement is made in accordance with the requirements of the Real Estate and Business Brokers Act and Code of Ethics Regulations of the Province of Ontario.

I, Chris Marquez declare that I am a registered
(Name of Registrant)

Real Estate Salesperson representing Core Assets Real Estate Inc.
(Salesperson/Broker/Broker of Record) (Name of Brokerage)

in connection with a proposed Offer to Purchase/Lease/Exchange/Option of the Property known as 7 Milliohamp St, Markstay

POM 2G0

Please be advised that, if the proposed Offer is accepted, I will be either directly or indirectly acquiring an interest in your Property.

NOTE: If the Registrant's interest is indirect, explain the nature of the interest in accordance with the definition of a "Related Person", as defined in the Code of Ethics Regulations of the Real Estate and Business Brokers Act.

EXPLANATION:

I am related to the buyer but have no interest in the property

I hereby declare that the following is a full disclosure of all facts within my knowledge that affect or will affect the value of your Property:

(Attach Appendix "A" if necessary)

AND

I hereby declare that the following is a full disclosure of the particulars of any agreement by, or on behalf of myself for the sale, exchange, option or other disposition of any interest in your Property to any other person:

(Attach Appendix "B" if necessary)

I will be receiving a portion of any commission payable in connection with this transaction.
(will/will not)

For the purposes of this Registrant's Statement as Buyer, "Buyer" includes purchaser, tenant and lessee, and "Seller" includes vendor, landlord and lessor.

(Signature of Registrant who is making the Declaration) Chris Marquez 03-03-2020
(Date)

(Signature of Declaring Registrant's Broker of Record/Manager of Brokerage) _____ (Date)

ACKNOWLEDGEMENT

I/We, the undersigned, as Seller(s) in this transaction have read and clearly understand this statement and acknowledge this date having received a copy of same, **BRIOR TO BEING PRESENTED WITH AN OFFER TO PURCHASE, LEASE, EXCHANGE, OR OPTION.**

(Witness) _____ (Seller) NAUSS FLUMING & HEATING INC. March 3/20
(Date)

(Witness) _____ (Seller) _____ (Date)

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CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

Court File No. CV-19-00008866-0000
NAUSS PLUMBING & HEATING INC.

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
SUDBURY

**SECOND SUPPLEMENTARY AFFIDAVIT OF
HEATHER FISHER
(SWORN MARCH 5, 2020)**

GOWLING WLG (CANADA) LLP

Barristers & Solicitors

1 First Canadian Place

100 King Street West, Suite 1600

Toronto ON M5X 1G5

Haddon Murray (LSO# 61640P)

Tel: (416) 862-3604

Fax: (416) 862-7661

Email: haddon.murray@gowlingwlg.com

Lawyers for the Applicant,
Canadian Imperial Bank of Commerce

This is Exhibit L referred to in the
Affidavit of Heather Fisher
sworn before me this
30th day of October, 2020

A handwritten signature in blue ink, appearing to be "H. Fisher", is written over a horizontal line.

A Commissioner for Taking Affidavits (or as may be)

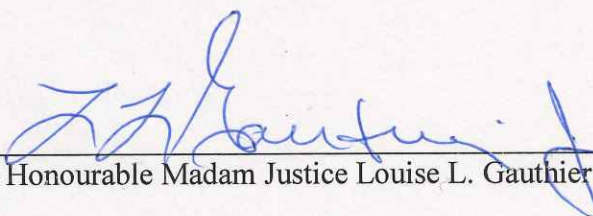
COURT FILE NO.: CV-8866-19**ENDORSEMENT SHEET****DATE:** October 5, 2020**TITLE:** Canadian Imperial of Commerce v. Nauss Plumbing & Heating Inc.

Pre-motion conference held by Zoom call.

Mr. Murray and Ms. Fisher participating for the Plaintiff, and Mr. Leblanc participating for the Defendant.

Matter adjourned on consent to the Trial Co-Ordinator to set a new date for the hearing of the long motion, which was originally to be argued on March 20, 2020.

In addition to setting a new date for the hearing of the motion, the Trial Co-Ordinator will also set a date, 7 days prior to the date for hearing of the long motion, before which responding materials, if any, are to be delivered. No responding materials will be accepted by the Court on or after that earlier date.



The Honourable Madam Justice Louise L. Gauthier

This is Exhibit M referred to in the
Affidavit of Heather Fisher
sworn before me this
30th day of October, 2020

A handwritten signature in blue ink, appearing to be "H. Fisher", is written above a horizontal line.

A Commissioner for Taking Affidavits (or as may be)

-----Original Message-----

From: J. Robert Leblanc <leblanc@dkLawyers.ca>

Sent: April 24, 2020 3:07 PM

To: Dunford, Robert <Robert.Dunford@gowlingwlg.com>; Murray, Haddon
<Haddon.Murray@gowlingwlg.com>

Subject: CIBC/Nauss

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Gentlemen--here is an accepted offer negotiated and agreed to by my client. It represents the FMV of the property.

I propose that this sale be completed by this firm .This will require a partial discharge of the CIBC mortgage.

The net proceeds will be paid to your client. I would send you the statement of adjustments, the trust statement etc. This would be completed on a without prejudice basis to both of our positions in the litigation.

There is no downside to you client.

I look forward to hearing from you.

Thanks

-----Original Message-----

From: ricoh@nbs.ca <ricoh@nbs.ca>

Sent: April 24, 2020 2:52 PM

To: J. Robert Leblanc <leblanc@dkLawyers.ca>

Subject: Message from "RNP002673ABDDBB"

This E-mail was sent from "RNP002673ABDDBB" (Aficio MP 6002).

Scan Date: 04.24.2020 14:52:13 (-0400)

Queries to: ricoh@nbs.ca

This is Exhibit N referred to in the
Affidavit of Heather Fisher
sworn before me this
30th day of October, 2020

A handwritten signature in blue ink, appearing to read "ALBERT", is written over a horizontal line.

A Commissioner for Taking Affidavits (or as may be)



Agreement of Purchase and Sale Commercial

Form 500
for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 22 day of March, 2020

BUYER: EZ INTERMEDIA INC
(Full legal names of all Buyers), agrees to purchase from

SELLER: NAUSS PLUMBING AND HEATING INC.
(Full legal names of all Sellers), the following

REAL PROPERTY:

Address 7 Millichamp Street, Markstay, on POW 260

fronting on the _____ side of _____

in the Town of Markstay Warren

and having a frontage of 388' more or less by a depth of irregular more or less

and legally described as Pin 734840035 Pcl 53626 SEC, SES, Firstly Lot 22 Plan M 1034 Hagar Twp,

Secondly Part of Lot 12, Con 3, Part 1 on 53R- 16102 (the "property")
(Legal description of land including easements not described elsewhere)

PURCHASE PRICE: Dollars (CDN\$) 850,000.00

Eight Hundred Fifty Thousand Dollars

DEPOSIT: Buyer submits upon acceptance
(Herewith/Upon Acceptance/as otherwise described in this Agreement)

Ten Thousand Dollars (CDN\$) 10,000.00

by negotiable cheque payable to ROYAL LEPAGE NORTH HERITAGE REALTY "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A attached hereto form(s) part of this Agreement.

1. IRREVOCABILITY: This offer shall be irrevocable by Buyer until 11.59 on the 25 day of March, 2020, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the _____ day of _____ MAY 29TH, 2020, 20_____. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S): EZ LS

INITIALS OF SELLER(S): DG

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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.:
(For delivery of Documents to Buyer)

Email Address: alexdumas@royallepage.ca
(For delivery of Documents to Seller)

Email Address:
(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 24th day of April, 2020, (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 (.....) 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 selling 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): 

INITIALS OF SELLER(S): 

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- 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 Large Value Transfer System.
- 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 ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. 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. 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):



INITIALS OF SELLER(S):



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28. 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) Authentisign (Buyer/Authorized Signing Officer) Elena Zolotko (Seal) 03/23/2020 (Date) 03/24/2020 (Date) 3/24/2020 9:00:25 PM EDT (Seal) (Date) 3/24/2020 8:14:51 AM EDT (Seal) (Date)

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) Authentisign ALEX DUMAS (Seal) 03/24/2020 (Date) 3/24/2020 11:18 AM EDT (Seal) (Date) 3/24/2020 11:31:18 AM EDT (Seal) (Date)

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) (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 03/24/2020 this day of (a.m./p.m.) Denis Groves (Signature of Seller or Buyer) 3/24/2020 11:31:19 AM EDT

Table with 2 columns: Brokerage Type and Details. Includes Listing Brokerage (ROYAL LEPAGE NORTH HERITAGE REALTY, BROKERAGE (SOUTH END) (705) 688-0007) and Co-op/Buyer Brokerage (ROYAL LEPAGE NORTH HERITAGE REALTY, BROKERAGE (SOUTH END)).

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. (Seller) Denis Groves 03/24/2020 (Date) 3/24/2020 11:31:21 AM EDT (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 Agreement of Purchase and Sale, and I authorize the Brokerage to forward a copy to my lawyer. (Buyer) Elena Zolotko 03/23/2020 (Date) 03/24/2020 (Date) Ludmyla Terezhchenko 3/24/2020 8:14:51 AM EDT (Date) Address for Service (Tel. No.) Buyer's Lawyer Address Email (Tel. No.) (Fax. No.)

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. Alex Dumas (Authorized to bind the Listing Brokerage) 3/22/2020 8:39:30 PM EDT Alex Dumas (Authorized to bind the Co-operating Brokerage)

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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: **EZ INTERMEDIA INC**, and

SELLER: **NAUSS PLUMBING AND HEATING INC.**

for the purchase and sale of **7** **Milliohamp Street , Markstay , On R0M 2G0** **Markstay**

On dated the **22** day of **March**, **2020**

Buyer agrees to pay the balance as follows:

The Buyer agrees to pay the balance of the purchase price, subject to adjustments, to the Seller on completion of this transaction, with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.

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

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

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This is Exhibit O referred to in the
Affidavit of Heather Fisher
sworn before me this
30th day of October, 2020

A handwritten signature in blue ink, appearing to be 'H. Fisher', is written over a horizontal line.

A Commissioner for Taking Affidavits (or as may be)

Fisher, Heather

From: Murray, Haddon
Sent: April-27-20 10:51 AM
To: 'J. Robert Leblanc'; Dunford, Robert
Subject: RE: Nauss - Sale of property

Off the top of my head, there could be a number of issues:

- 1) Given you client's long history of being unable to complete a sale of this property – despite repeatedly claiming to both the Bank and the court that there was a buyer – the Bank is not simply prepared to accept the premise that you are working from that the sale closes;
- 2) Advancing all of the proceeds to my client and ignoring CRA is an issue unless Nauss is bankrupt, which I gather you are not contemplating. It appears that your client not aware of how much Nauss owes CRA at this time; and
- 3) My client may not agree that the sale price represents the best possible price. Of course, if your client has organized a package of sales or sales and refinancings, that go together and pay the Bank and CRA out in full, then that does not matter as much, but it appears that your client would like discharges that are piecemeal while it partially satisfies its debt obligations. This could leave my client with a shortfall on the last property.

To be clear, the above is not intended as an exhaustive list – but they are obvious concerns.

In addition, I am currently concerned that your client may be trying to sell the water business without speaking to the Bank. Your client should understand that, just like with the various pieces of real property, Nauss cannot sell those assets (even though they are personal property) outside of the ordinary course of business without my client's consent.

Can you please confirm that

- 1) You have spoken to your client and the information you are providing is not just what you happen to know, but comes from him;
- 2) You advised him of the Bank's concerns set out above;
- 3) The only sales in progress that your client is currently progressing with are for 7 Millichamp and the Jennica Springs properties – please also specify whether any sales of personal property are contemplated or just real property;
- 4) There is no signed APA for the Jennica Springs property.

Finally, if you could please provide the status of the Jennica Springs sale (is your client negotiating terms? Finalizing an APA? Has Nauss received a deposit? etc) and any sale or refinancing attempts in relation to the other properties held by Nauss.

Regards,

Haddon

Haddon Murray
Partner
T +1 416 862 3604
haddon.murray@gowlingwlg.com



From: J. Robert Leblanc <leblanc@dkLawyers.ca>

Sent: April 27, 2020 9:20 AM

To: Murray, Haddon <Haddon.Murray@gowlingwlg.com>; Dunford, Robert <Robert.Dunford@gowlingwlg.com>

Subject: RE: Nauss - Sale of property

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

I did not see your email until this morning. I know he is trying to firm up the Jennica Springs sale but nothing has been finalized.

You have that offer.

What exactly are you asking ?

You have not answered my question—what is wrong if sales are completed and CIBC receives the full net proceeds ?

From: Murray, Haddon <Haddon.Murray@gowlingwlg.com>

Sent: April 24, 2020 3:49 PM

To: J. Robert Leblanc <leblanc@dkLawyers.ca>

Cc: Dunford, Robert <Robert.Dunford@gowlingwlg.com>

Subject: RE: Nauss - Sale of property

That somewhat misses the point. I am asking if, instead of just telling me what you know, you could ask your client what he knows, and then tell me that. If you could confirm that you'll look into it and get back to me, we can both go enjoy our weekends.

Haddon Murray

Partner

T +1 416 862 3604

haddon.murray@gowlingwlg.com



From: J. Robert Leblanc <leblanc@dkLawyers.ca>

Sent: April 24, 2020 3:45 PM

To: Murray, Haddon <Haddon.Murray@gowlingwlg.com>

Cc: Dunford, Robert <Robert.Dunford@gowlingwlg.com>

Subject: RE: Nauss - Sale of property

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Murray I repeat—as of now you know what I know.

From: Murray, Haddon <Haddon.Murray@gowlingwlg.com>

Sent: April 24, 2020 3:42 PM

To: J. Robert Leblanc <leblanc@dkLawyers.ca>

Cc: Dunford, Robert <Robert.Dunford@gowlingwlg.com>

Subject: RE: Nauss - Sale of property

Well your client apparently wrote to MNP and told them that he had sold his water business and arena. Looking at 7 Millichamp on Google Maps, it does not appear to be an Arena, but perhaps I am mistaken. So maybe you can confirm that there is nothing else.

Haddon Murray
Partner
T +1 416 862 3604
haddon.murray@gowlingwlg.com

From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: April 24, 2020 3:30 PM
To: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Cc: Dunford, Robert <Robert.Dunford@gowlingwlg.com>
Subject: RE: Nauss - Sale of property

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If there is any other FIRM purchase that can be closed then you both will be the first to know

From: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Sent: April 24, 2020 3:26 PM
To: J. Robert Leblanc <leblanc@dkLawyers.ca>
Cc: Dunford, Robert <Robert.Dunford@gowlingwlg.com>
Subject: RE: Nauss - Sale of property

I do not know my client's position on the proposed sale that you sent over. I had understood that your client was pursuing sales on multiple properties, so my question is whether there is any news with respect to any other sales.

Perhaps you could speak to him and get back to me.

Haddon Murray
Partner
T +1 416 862 3604
haddon.murray@gowlingwlg.com

From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: April 24, 2020 3:22 PM
To: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Cc: Dunford, Robert <Robert.Dunford@gowlingwlg.com>
Subject: Re: Nauss - Sale of property

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No - my client is trying to sell assets at fair market value. This will result in the highest possible sale price with far less expenses

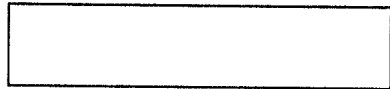
Your client gets to approve the sales, provide a partial discharge of security and receive the maximum net proceeds possible all on a without prejudice basis. Is there something wrong with this?

Sent from [Outlook Mobile](#)

From: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Sent: Friday, April 24, 2020 3:12:55 PM
To: J. Robert Leblanc <leblanc@dkLawyers.ca>
Cc: Dunford, Robert <Robert.Dunford@gowlingwlg.com>
Subject: RE: Nauss - Sale of property

Is this the only sale that your client has pursued?

Haddon Murray
Partner
 T +1 416 862 3604
haddon.murray@gowlingwlg.com



From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: April 24, 2020 2:54 PM
To: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Cc: Dunford, Robert <Robert.Dunford@gowlingwlg.com>
Subject: RE: Nauss - Sale of property

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Good afternoon Gentlemen. When last spoke with Robert he thought that he was now the lawyer I should deal with. Is it him , you or both. ?

There is no sale closed and I do not know how that could happen without a partial discharge of the CIBC mortgage .

Thanks

From: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Sent: April 24, 2020 2:12 PM
To: J. Robert Leblanc <leblanc@dkLawyers.ca>
Cc: Fisher, Heather <Heather.Fisher@gowlingwlg.com>
Subject: Nauss - Sale of property

Hi Robert, I hope you are keeping well.

We received some information that Mr. Groves has sold some of the Nauss property, however, Mr. Groves has not contacted my client about its security over the property. We wanted to get some information about the status of any sales or refinancing that Mr. Groves is pursuing (or has completed) including:

- 1) Whether any sale(s) has closed;
- 2) If not, the status of the sale;

- 3) Which property was sold;
- 4) The name of the purchaser(s); and
- 5) The purchase price(s) for any sale(s).

Similarly, we would appreciate any analogous information with respect to any refinancing.

Regards,

Haddon

Haddon Murray

Partner

T +1 416 862 3604

haddon.murray@gowlingwlg.com



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This is Exhibit P referred to in the
Affidavit of Heather Fisher
sworn before me this
30th day of October, 2020

A handwritten signature in blue ink, appearing to be "H. Fisher", is written over a horizontal line.

A Commissioner for Taking Affidavits (or as may be)

Morning Heather. Here are numbers as at Oct. 27/2020:

Term Loan LAS# 3892/2548054

Principal \$833,111.13 + Accrued Interest \$65,063.14 = **Subtotal \$898,174.27**

(Accr'd Int calc'n: \$17,393.22 o/s @ June 25/2019 date of classification as NPNA + \$47,669.92 to Oct 27/2020 = \$65,063.14...per diem @ 3.45% @ \$78.75)

Term Loan LAS# 3892/5645050

Principal \$51,885.19 + Accrued Interest \$2,968.81 = \$54,854.00

(Accr'd Int calc'n: from June 25/2019 date of classification as NPNA to Oct 27/2020 ... per diem @ 3.45% @ \$4.90)

+ Legal fees/accounting fees paid to Oct 27/2020 = \$117,044.97

Subtotal \$171,898.97

TOTAL \$1,070,073.20

Should you require further clarification etc., please advise.

Sieg Flatt, Senior Manager
CIBC Special Loans Dept.
Credit Risk Management
Email: sieg.flatt@cibc.ca

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From: Fisher, Heather <Heather.Fisher@gowlingwlg.com>

Sent: Tuesday, October 27, 2020 2:30 PM

To: Flatt, Sieg <Sieg.Flatt@CIBC.ca>

Cc: Murray, Haddon <Haddon.Murray@gowlingwlg.com>; Channing, Sherry <Sherry.Channing@gowlingwlg.com>; Fisher, Heather <Heather.Fisher@gowlingwlg.com>

Subject: Nauss Plumbing & Heating - Request for updated payout statement

[EXTERNAL]

Good afternoon Sieg,

We would like to provide an updated total of Nauss' indebtedness to CIBC at the upcoming motion. Can you please provide us with an updated payout statement?

Thanks,

Heather Fisher
Associate

T +1 416 369 7202

M +1 416 931 0549

heather.fisher@gowlingwlg.com



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CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

Court File No. CV-19-00008866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
SUDBURY

**FURTHER SUPPLEMENTARY AFFIDAVIT OF
HEATHER FISHER
(SWORN OCTOBER 30, 2020)**

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

Haddon Murray (LSO# 61640P)

Tel: (416) 862-3604

Fax: (416) 862-7661

Email: haddon.murray@gowlingwlg.com

Lawyers for the Applicant,
Canadian Imperial Bank of Commerce

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

Court File No. CV-19-00008866-0000
NAUSS PLUMBING & HEATING INC.

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
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SUDBURY

FURTHER SUPPLEMENTARY MOTION RECORD

GOWLING WLG (CANADA) LLP

Barristers & Solicitors

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Toronto ON M5X 1G5

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Lawyers for the Applicant,
Canadian Imperia Bank of Commerce