

**THE KING'S BENCH**  
**Winnipeg Centre**

IN THE MATTER OF:           THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, C. B-3, AS AMENDED AND  
SECTION 55 OF THE KING'S BENCH ACT,  
C.C.S.M. c. C280

BETWEEN:

**BANK OF MONTREAL,**

Applicant,

- and -

**3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP**

Respondent.

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**AFFIDAVIT OF MATHAN KUMAR**  
**Sworn the 18<sup>th</sup> day of May, 2023**

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**MLT AIKINS LLP**  
Barristers and Solicitors  
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File No. 0076354.01105

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Respondent.

**AFFIDAVIT OF MATHAN KUMAR**

I, Mathan Kumar of the City of Winnipeg, in the Province of Manitoba,  
Account Manager, Special Accounts Management Unit,

**MAKE OATH AND SAY THAT:**

1. I am employed as an Account Manager in the Special Accounts Management Unit ("**SAMU**") of the Applicant, Bank of Montreal (the "**Bank**"), a secured creditor of the Respondent, 3816410 Manitoba Ltd. (the "**Debtor**") and in that role, I have responsibility for the Bank's dealings with the Debtor. As such, I have personal knowledge of the

matters herein deposed to by me, except where such matters are stated to be based upon information and belief, and where so stated, I do verily believe the same to be true.

2. I am authorized by the Bank to swear this Affidavit.
3. I have reviewed the business records maintained by the Bank herein in respect of the matters at issue, which I verily believe were made in the ordinary and usual course of business. Where I do not have direct personal knowledge of matters deposed to herein, and my knowledge is derived from my review of the business records, I have attached relevant copies of those business records as exhibits to my Affidavit.
4. I swear this Affidavit in support of the Applicant's Application for an Order, *inter alia*, appointing Deloitte Restructuring Inc. ("**Deloitte**") as receiver (in such capacities the "**Receiver**") without security, over all of the properties, assets and undertakings of the Debtor (the "**Property**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (the "**BIA**") and section 55 of *The Court of King's Bench Act*.

### The Parties

5. The Bank is a Schedule I Chartered Bank pursuant to the *Bank Act*, S.C.

- 1991, c.46, as amended and carries on business throughout Canada, including the Province of Manitoba as a banking and credit facility.
6. The Debtor is a corporation incorporated pursuant to the laws of the Province of Manitoba. Attached hereto and marked as **Exhibit "1"** is a true copy of a Manitoba Companies' Office search in respect of the Debtor. Peter Bergen ("**Peter**") is the sole Director and Officer of the Debtor, and holds 10% or more of the shares of the Debtor.
  7. The Debtor carries on business in town of Winkler, Manitoba from premises located at 1-550 George Avenue designing, manufacturing and selling trailers.
  8. Peter and Elizabeth Bergen ("**Elizabeth**" and together with Peter, the "**Guarantors**" and together with the Debtor, the "**Credit Parties**") are individuals who reside in the City of Winkler in the Province of Manitoba.

### **The Credit Facilities**

9. The records of the Bank provide that in 2019, Peter was introduced to the Bank by another Bank customer, Murray Doerksen and Peter, on behalf of the Debtor, requested the Bank to consider refinancing the Debtor and "taking out" National Bank, the Business Development Bank

of Canada, Roynat Inc., and Finishmaster Inc. and assisting with paying arrears under *The Retail Sales Tax Act* (Manitoba).

10. The records further indicate that in or around this time Mr. Doerksen, through his company Murlin Holdings Ltd. (“**Murlin**”) provided Peter with a personal loan which Peter in turn provided to the Debtor in the form of a shareholder’s loan.
11. The Bank made available loans and credit facilities (the “**Credit Facilities**”) to the Debtor pursuant to the terms, conditions, obligations, representations and warranties (the “**Loan Terms**”) of:
  - a) A letter of agreement dated November 14, 2019 and accepted by the Credit Parties on December 2, 2019, as amended by a letter of agreement – amendment dated December 16, 2019 and the Expired Forbearance Agreement (as hereinafter defined and together, the “**Letter of Agreement**”), a true copy of which is attached hereto and marked as **Exhibit “2”**.
  - b) A Commercial Card Agreement (Canadian Currency) dated January 28, 2020 (the “**CAD MasterCard Agreement**”), a true copy of which is attached hereto and marked as **Exhibit “3”**.

- c) A Commercial Card Agreement (US Currency) dated January 28, 2020 (the “**USD MasterCard Agreement**”, and together with the CAD MasterCard Agreement, the “**MasterCard Agreements**”), a true copy of which is attached hereto and marked as **Exhibit “4”**.

12. The Credit Facilities included, *inter alia*:

- a) A Real Estate Financing Loan (the “**Real Estate Loan**”) in the amount of \$1,280,000.00 CAD. The Real Estate Loan was advanced by way of a fixed rate term loan with an annual interest rate of 3.8100% per annum, payable in full on maturity on January 31, 2025.
- b) A Debt Consolidation Loan (the “**Non-Revolving Demand Loan**”), with a credit limit of up to \$180,000.00 CAD. The Non-Revolving Demand Loan was advanced by way of a non-revolving demand loan with an annual interest rate of the Lender's Prime Rate (“**Prime**”) plus 1.750% per annum, which was increased to the Prime plus 3.000% in accordance with the pricing letter change dated in or around March 2020, and further increased to Prime plus 5.000% pursuant to the Expired Forbearance Agreement (as hereinafter defined).

- c) An Operating Demand Loan (the “**Operating Loan**”) with an authorized limit of \$800,000.00 CAD with interest at the rate of Prime plus 1.7500% per annum which was increased to Prime plus 5.000% as a result a default under the terms of the Operating Loan, specifically exceeding the authorized limit and non-sufficient funds activity. Pursuant to the Expired Forbearance Agreement (as hereinafter defined) the Operating Loan was amended such that \$600,000.00 of the balance owing was converted to a new closed term loan which would mature upon the expiry of the forbearance period and the Operating Loan was permanently reduced to \$200,000.00, both facilities have an annual interest rate of Prime plus 5.000%.
- d) A CAD Mastercard Facility (the “**CAD MasterCard**”) with a limit of \$50,000.00 CAD, interest at the rate of 18.4000% per annum and payable on demand.
- e) A USD Mastercard Facility (the “**USD MasterCard**”) and together with the CAD MasterCard, the “**MasterCards**”) with a limit of \$50,000.00 USD, interest at the rate of 18.4000% per annum and payable on demand.

## The Security

13. The Letter of Agreement provided that security for all present and future indebtedness and liability (the “**Indebtedness**”) of the Debtor to the Bank would include, *inter alia*, the following:
- a) A registered first-ranking All Indebtedness Mortgage in favour of the Bank in the amount of \$1,600,000.00 registered over Lot 1 & 2 Block 2 Plan 37465 MLTO in S 1/2 3-3-4 WPM Excepting - Drain Plan 40578 MLTO with the municipal address of 1-550 George Avenue, Winkler, MB, R6W 0J4 (the “**Mortgaged Property**”) together with the Bank’s Standard Mortgage Terms 4697386/1 (together, the “**Mortgage**”). A true copy of the Mortgage executed by the Credit Parties January 10, 2020 is attached hereto and marked as **Exhibit “5”**.
  - b) A General Security Agreement/Moveable Hypothec providing the Bank with a security interest/hypothec over all present and after-acquired personal/movable property of the Debtor. A true copy of the Security Agreement (the “**GSA**”) executed by the Debtor on January 10, 2020 is attached hereto and marked as **Exhibit “6”**.
  - c) A General Assignment of Book Debts (the “**Assignment**”),



registered in Manitoba in first position. A true copy of the Assignment executed by the Debtor January 18, 2020 is attached hereto and marked as **Exhibit “7”**.

- d) Registered Section 427 security providing the Bank with a security interest over all present and after-acquired personal/movable property of the Debtor. A true copy of the: (i) Application for Credit and Promise to Give Bills of Lading, Warehouse Receipts, or Security under Section 427 of the Bank Act dated December 30, 2019 executed by the Debtor in favour of the Bank; (ii) Agreement as to Loans and Advances and Security therefore executed by the Debtor in favour of the Bank on December 30, 2019; and (iii) Security under sec. 427(1) of the Bank Act dated December 30, 2019 executed by the Debtor in favour of the Bank (together, the **“Bank Act Security”**) are attached hereto and marked as **Exhibit “8”**.
  
- e) A \$2,374,000.00 Joint & Several Personal Guarantee from the Guarantors. A true copy of the Guarantee for Indebtedness of an Incorporated Company (the **“Guarantee”**) executed on January 13, 2020 by each of the Guarantors is attached hereto and marked

as **Exhibit “9”**.

- f) Assignment, Postponement and Subordination of \$325,000 of shareholder loans from Peter funded by Murlin. A true copy of the Assignment, Postponement and Subordination Agreement executed by the Debtor on January 10, 2020 and by Murlin on January 15, 2020 is attached hereto and marked as **Exhibit “10”**.
  
- g) Postponement & Subordination of Preferred Shares Rights Agreement from Peter. A true copy of the Postponement Subordination of Preferred Shares Rights Agreement executed by the Debtor on January 10, 2020 is attached hereto and marked as **Exhibit “11”**.

(together the “**Security**”)

### **Registrations**

- 14. The Mortgage has been duly registered against the titles to the Mortgaged Property in the Manitoba Land Titles Registry. A true copy of the Status of Title Number 1872413/4 and 1872414/4 dated May 15, 2023 is attached hereto and marked as **Exhibit “12”**, confirm that the following financial encumbrances exist on the title for the Mortgaged

Property, in order of appearance.

Registration Date	Charging Party	Encumbrance	Amount
January 21, 2020	Bank of Montreal	Mortgage	\$1,600,000
January 21, 2020	Bank of Montreal	Personal Property Security Notice (Fixtures)	N/A
May 5, 2023	Innovative Doors (2006) Ltd. and Estate of John Fehr	Certificate of Judgment	\$42,316.71

15. The Bank's personal property security has been registered in the Manitoba Personal Property Security Registry (the "PPR") as against the Debtor. A true copy of the PPR search dated May 15, 2023 is attached hereto and marked as **Exhibit "13"**, confirm that the following registrations exist against the Debtor, in order of appearance.

Registration Date & #	Secured Party	General Collateral Description
May 29, 2017 #201709314101	Integra Castings Inc.	The secured party claims an interest in the following serial numbered goods owned by the debtor(s): - Forklift Serial No. LF501, 3,740lb LP (Komatsu) - Rough Terrain Forklift, Caterpillar Model #RC60, Serial No. 31A01896 in accordance with the General Security Agreement dated May 26, 2017, given by the debtor(s) in favour of the secured party.
January 16, 2019 #201900802400	Finishmaster Canada Inc.	ALL PERSONAL PROPERTY OF EVERY NATURE AND KIND WHATSOEVER AND WHERESOEVER SITUATE OF THE DEBTOR, NOW OR AT ANY TIME AND FROM TIME TO TIME OWNED BY THE DEBTOR.
December 5, 2019 #201921094308	Bank of Montreal	LF32 All debts and other intangibles, chattel paper, documents of title, instruments, securities and security interest (all such terms having the meaning of such terms in the personal property security act and herein collectively called the "said debts and securities") now due or hereafter to become due to the debtor or which now are or may hereafter become vested in the debtor and all proceeds and other rights and benefits in respect thereof. All books and accounts, letters, invoices, papers and documents in any way evidencing or relating to all or any of the debts and securities and rights hereby transferred or agreed to be transferred. Any and all claims and other rights for insurance against loss by fire, water, misappropriation or otherwise to the real or personal property of the debtor.

Registration Date & #	Secured Party	General Collateral Description
December 18, 2019 #201921760804	Bank of Montreal	<p>*The security interest is taken in all of the debtor's present and after-acquired personal property.</p> <p>In addition to, and without limiting the foregoing, all of the Business Debtor's present and future equipment, including, without limiting the generality of the foregoing, specifically:</p> <ol style="list-style-type: none"> <li>(1) Grain Trailer Side Wall Jig</li> <li>(2) Main Body Tacking Jig</li> <li>(3) Hopper and Chassies Jig</li> <li>(4) Bomar 410-260 DG</li> <li>(5) 52ft x 14ft Booth, Serial Number F1308190500</li> <li>(6) Graco ProMix 2KE, Serial Number A0109</li> <li>(7) Polar Chip Guard Machine ULAD 6000, Serial Number BFE-616-022F</li> <li>(8) Blasting Bin</li> <li>(9) Sullair Model 16B-75H AcAc, Serial Number 20060280070</li> <li>(10) 375 CFM Compressor</li> <li>(11) Sullair Model V160-75Hgza, Serial Number 003-6313</li> <li>(12) 375 CFM Compressor</li> <li>(13) 2000 Toyota - 6000lb, Serial Number 34924</li> <li>(14) 2002 Toyota - 8000lb, , Serial Number 70272</li> <li>(15) 1998 Toyota - 5000lb, Serial Number 60999</li> <li>(16) 1998 Cat Forklift, Rough Terrain, Serial Number 31A01896</li> <li>(17) 2003 JCB 830, Serial Number 23005</li> <li>(18) Paint Line (with Booth)</li> </ol>
June 2, 2022 #202209113602	Bank of Montreal	<p>A security interest pursuant to a Guarantee (the "Guarantee") granted jointly and severally by the Individual Debtors in favour of the Secured Party dated January 13, 2020, the Individual Debtors did assign and postpone all debts and liabilities present and future of to the Individual Debtors to the Secured Party.</p> <p>Unless otherwise defined herein, all capitalized terms and expressions used herein shall have the same meaning as set out in the Guarantee.</p>
June 2, 2022 #20229113807	Bank of Montreal	<p>Pursuant to a Postponement Subordination of Preferred Shares Rights Agreement ("Postponement") granted by the Individual Debtor in favour of the Secured Party, any and all present and future indebtedness and liability of 3816410 Manitoba Ltd. O/A Berg's Trailers &amp; Prep and Paint to the Individual Debtor pursuant to the Investor Held Indebtedness is postponed and subordinated to all present and future indebtedness and liability whether actual or contingent of 3816410 Manitoba Ltd. O/A Berg's Trailers &amp; Prep and Paint to the Secured Party and assigned by the Individual Debtor in favour of the Secured Party.</p> <p>Unless otherwise defined herein, all capitalized terms and expressions used herein shall have the same meaning as set out in the Postponement.</p>
March 1, 2023 #202303223004	Royal Bank of Canada	<p>3GCUYEED2MG227498 Motor Vehicle 2021 Chevrolet Silverado 1500</p>

16. Pursuant to Priority Subordination Agreements respectively dated January 22, 2020 and January 23, 2020 (the “**Subordination Agreements**”) between the Bank and Finishmaster and Integra, respectively, Finishmaster and Integra both postponed and subordinated their respective mortgages, charges and/or security interests over the personal property of the Debtor to all of the Bank’s existing and future mortgages, charges and/or security interests in all the Debtor’s property. Attached hereto and marked as **Exhibit “14”** are true copies of the Subordination Agreements.
17. The Bank’s Bank Act Security has been registered as against the Debtor. A true copy of the Bank Act search dated May 15, 2023, the Bank Act Security is registered under Registration No. 01325813. Attached hereto and marked as **Exhibit “15”** is a true copy of the Bank Act search. The search discloses no other registrants.

### **Initial Defaults**

#### *Letter of Agreement*

18. The Loan Terms included, *inter alia*:

- a) The aggregate of all outstanding Advances under the Real Estate Loan and the Non-Revolver Debt Loan would not exceed the respective Facility Authorization (as defined in the Letter of Agreement).
  
- b) The Bank would not be required to make any advance unless and until certain conditions were met, including:
  - i. Compliance with all covenants, representations and warranties in all loan documents and Security, including:
    - (i) payment of all indebtedness due to the Bank in connection with the Letter of Agreement or any facility;
    - (ii) payment of all taxes when due (including, without limitation, corporate, GST, HST, sales tax and withholdings);
    - (iii) No liens or encumbrances on any assets except with the prior written consent of the Bank;
    - (iv) No event, development or circumstance has occurred that has had or could reasonably be expected to have a material adverse effect on the business, assets,

operations or condition, financial or otherwise, of the Debtor or any Guarantor; and

- (v) It has timely filed or caused to be filed all required tax returns and reports and has paid or caused to be paid all required taxes; and
- ii. Confirmation of no material adverse change to the Debtor and the Guarantors and their respective property and assets since the latest financial statements provided to the Bank.
- c) The Debtor would comply with the debt service coverage ratio financial covenant as set out in the Letter of Agreement.
- d) The Debtor would comply with the reporting requirements, including Minimum Notice to Reader Accountant Prepared Financial Statements, Corporate Notice of Assessment, and T-2 for the Borrower within 120 days of their year-end (May 31) and such other information as the Bank may reasonably request from time to time.
- e) Satisfactory evidence that all taxes (including, without limitation, GST, HST, sales tax, withholdings, etc.) have been paid to date.

*MasterCard Agreement*

- f) *Capitalized terms used in this paragraph have the meanings ascribed to them in the MasterCard Agreements.*
- i. Regardless of whether the Debtor receives a Statement, the Debtor will be liable for the payment of the aggregate outstanding balance of the Customer Account every month;
  - ii. Each month, the Debtor must pay in full the aggregate outstanding balance shown on each Customer Account Statement on or before the Payment Due Date and the failure to do so will be a default by the Debtor;
  - iii. The Debtor will be liable to pay the Bank for all Charges to Debtor Account even if the aggregate of all outstanding Charges exceeds any Card Limit or the overall Customer Credit Limit and even if as between the Debtor and a Cardholder any Charge resulted from improper use of a Card by the Cardholder;
  - iv. The Bank may terminate the CAD MasterCard Agreement and/or USD MasterCard Agreement immediately and



without prior notice in the event of a Material Adverse Change, bankruptcy or insolvency of the Debtor or if a party is in default in the performance of any of its other obligations and such default continues for thirty (30) days following receipt of a written notice regarding such default from the Debtor; and

- v. Upon termination of the CAD MasterCard Agreement and/or USD MasterCard Agreement, the Debtor will, inter alia, continue to be liable for, and pay, the aggregate of all Charges on the respective Customer Account(s) thereunder whether or not then posted to the Customer Account (including Charges not yet incurred and accrued fees) and all such Charges will immediately be due and payable.

19. Based on my review of the Bank's documents, on February 25, 2022:

- a) The Debtor's Operating Loan was in an unauthorized excess of \$49,895.12 USD due to a USD MasterCard payment; and
- b) The Debtor advised that a payroll in the amount of \$35,000.00 was to be funded that same day.

20. In addition, on February 28, 2022 \$6,622.75 would be due for the Real Estate Loan and \$4,046.05 was due for the Non-Revolver Demand Loan.
21. This pattern of unauthorized excesses had continued for some time. For example, the unauthorized excesses in the month preceding the excess on February 25, 2022 were as follows:

<b>Date</b>	<b>Amount of Unauthorized Operating Loan Excess</b>
January 27, 2022	\$ 9,846.69
January 27, 2022	\$ 6,506.16
February 2, 2022	\$ 7,313.27
February 2, 2022	\$12,552.79
February 4, 2022	\$ 65.03
February 15, 2022	\$22,878.34

22. Accordingly, on February 28, 2022, the Debtor's file was identified for transfer to SAMU due to the aforementioned breaches by the Debtor. Peter was advised of this transfer and confirmed that it was a priority for the Debtor to hire a certified accountant instead of the current bookkeeper.
23. The Debtor's file formally transferred to SAMU on April 4, 2022.
24. Shortly after the transfer to SAMU I was provided with a copy of a letter dated April 6, 2022 from Canada Revenue Agency ("CRA") to Debtor indicating that the Debtor owed arrears for GST/HST in the amount of

\$207,221.27 in breach of the Letter of Agreement. The letter also confirmed that the Debtor had proposed an arrangement to pay the amounts owing. Prior to this date the Bank was unaware of the arrears owing to CRA. Attached hereto and marked as **Exhibit "16"** is a true copy of a letter from CRA to the Bank regarding the arrears.

25. During the week of May 9, 2022 I reached out to Peter to discuss the frequent unauthorized excesses and the outstanding GST arrears some of which dated back to 2019 and on May 30, 2022 I had a virtual meeting with Peter wherein I emphasized that moving forward unauthorized excesses should cease and the importance of timely reporting. Peter advised that he was working on changing his bookkeeper and that an agreement had been reached with CRA as to monthly payments in the amount of \$34,000 for the payment of GST arrears.
26. In the month following, excesses of the authorized loan limits continued and Peter did not advise the Bank of when excesses occurred. Accordingly, by telephone and by email dated July 7, 2022 the Bank requested that the Debtor find another financial institution with which to conduct its banking. During our telephone conversation the Debtor requested that the Bank postpone issuing demands for the

Indebtedness to allow the Debtor to seek other financing options. The Bank agreed, but advised that it may issue demands pending review of the Debtor's ongoing account activity and the financial reporting to be provided by the Debtor prior to July 31, 2022. A true copy of said email is attached hereto and marked as **Exhibit "17"**.

27. Unauthorized excesses continued in the amount of approximately \$68,000 USD from June 2022 to September 2002 in respect of the auto-payment to the USD MasterCard and the USD MasterCard was frozen.
28. Further, the June 2022 payment to CRA was only \$15,000, the July and August 2022 on-line payments were not made and the September 2022 payment was only \$12,500. During this time, the Debtor continued to make payments to Murlin.
29. Accordingly, by email dated September 1, 2022, the Bank advised the Debtor that it required the following information (the "**Required Information**") by September 9, 2022:
  - a) Minimum Notice to Reader Accountant Prepared Financial Statements, Corporate Notice of Assessment, and T-2 for the Debtor within 120 days of year-end;

- b) Aged Accounts Receivable Listing;
- c) Aged Accounts Payable Listing;
- d) Inventory Listing;
- e) Equipment Listing;
- f) Updated Personal Financial Statement to be provided by Guarantor; and
- g) T1 Personal Tax returns with NOA to be provided by the guarantor.

A true copy of the said email is attached hereto and marked as **Exhibit "18"**.

30. The Debtor failed to respond to the Bank's September 1, 2022 email until September 10, 2022, at which time it advised the Bank by email, that its accountant would be coming in to help prepare the Requested Information. A true copy of the said email is attached hereto and marked as **Exhibit "19"**.
31. In breach of the Letter of Agreement, the Debtor failed to provide the Requested Information to the Bank, excesses of authorized limits

continued and the Debtor continued to be unresponsive. Accordingly, by letter dated September 29, 2022 (the “**Debtor Demand**”), the Bank demanded payment of the Indebtedness owing as at September 20, 2022, together with applicable interest, fees and costs, along with notice under section 244(1) of the BIA. Attached hereto and marked as **Exhibit “20”** is a true copy of the Debtor Demand.

32. By letter dated September 29, 2022 (the “**Guarantor Demand**”, and together with the Debtor Demand, the “**Demands**”), the Bank demanded all amounts owing by the Guarantors pursuant to the Guarantee together with applicable interest, fees and costs, along with notice under section 244(1) of the BIA. Attached hereto and marked as **Exhibit “21”** is a true copy of the Guarantor Demand.

33. Despite the Demands, the Credit Parties failed to pay the Indebtedness.

34. Following the issuance of the Demands, on September 29, 2022 USD MasterCard was cancelled and converted to a non-accrual loan at an interest rate of 18.4% and on October 24, 2022 the CAD MasterCard was cancelled and converted to a non-accrual loan also at an interest rate of 18.4%

### **Expired Forbearance Agreement**

35. In or about October 2022, the Peter advised the Bank that the Debtor required time to reorganize its financial affairs and that it was in discussions with a potential purchaser and/or investor of the Mortgaged Property and/or the assets of the Debtor, with an anticipated closing date at the end of December 2022.
36. Following ongoing discussions with Peter regarding the sale/investment of the Mortgaged Property and/or Debtor, the Bank, in good faith, agreed to accommodate the Debtor's request and by email dated November 24, 2022 provided the Debtor's counsel, Mr. Art Stacey with a draft form of forbearance agreement for the Debtor's review and comment. A true copy of the said draft forbearance agreement is attached hereto and marked as **Exhibit "22"**.
37. No signed forbearance agreement was received at that time.
38. In late December 2022 Peter advised that he had received an offer to purchase the Mortgaged Property, but that purchase price included in the offer was not sufficient.
39. It was unknown to the Bank at the time, but based on the King's Bench Registry on January 11, 2023 Peter was personally served with a Statement of Claim against the Debtor and himself in the matter of

*Innovative Doors (2006) Ltd. et al v. 3816410 Manitoba Ltd. et al*, Suit No. CI23-01-38976 (the “**Innovative Suit**”). A true copy of the Registry search File Details is attached hereto and marked as **Exhibit “23”**.

40. The Debtor continued to be unresponsive and by email dated January 23, 2023 on my instruction counsel for the Bank, Ms. J.J. Burnell advised Mr. Stacey as follows:

*“By letter dated September 29, 2022 Bank of Montreal (the “Bank”) the Bank made demand upon your clients. In good faith it attempted to negotiate a forbearance agreement to allow your client the time it said it needed to deal with its financial issues. The Bank has been more than reasonable and patient. Unfortunately, your client has refused and neglected to provide the requested forbearance. Accordingly, I am instructed to advise that the Bank is not prepared to extend further credit to your client and effective immediately the limit will be capped at \$793,032.08. To be clear, absent additional deposits, all cheques will be returned and all debits declined. Further, to ensure that there are no unauthorized transfers your client’s online banking access will be limited to “view only”. Lastly, if we are not able to reach agreement on the terms of a forbearance agreement in the next ten (10) days, upon the expiry of those ten (10) days the operating account will be converted to a term loan. All enforcement remedies following that date will continue to remain available to the Bank.*

*While the Bank remains willing to try and work with your client it cannot extend further credit outside of a forbearance agreement on terms only acceptable to your client.”*

A true copy of the said email is attached hereto and marked as **Exhibit “24”**.

41. That same day, by return email, Mr. Stacey provided Ms. Burnell with



an executed copy of the draft forbearance agreement (the “**Expired Forbearance Agreement**”) without the executed consent to Receivership Order. A true copy of the Expired Forbearance Agreement effective January 24, 2023 is attached hereto and marked as **Exhibit “25”**.

42. I understand from conversations with Peter that some time in or about January 2023 the Debtor retained a realtor to conduct the sale and lease back of the Mortgaged Property.
43. The Expired Forbearance Agreement provided, *inter alia*, that as requested by the Debtor and the Guarantors, the Bank would forbear from immediate enforcement of its rights in respect of the Loan Debt (as defined in the Expired Forbearance Agreement) and from the enforcement of remedies (the “**Remedies**”) available to it under the Security and at law, to provide the Credit Parties with additional time to reorganize and sell all or part of the Debtor’s business (the “**Sale Process**”), reorganize its financial affairs and to comply with the Loan Terms.
44. As referenced above, the Loan Terms were amended by the Expired Forbearance Agreement, *inter alia*, as follows:

- a) The interest rate on the Non-Revolving Demand Loan was permanently increased to Prime plus 5.0000%;
  - b) \$600,000.00 CAD of the debt incurred under the Operating Loan was converted into a new closed term loan (the “**New Term Loan**”) and the Operating Loan maximum was permanently reduced from \$800,000.00 CAD to \$200,000.00 CAD;
  - c) The New Term Loan has a maximum limit of \$600,000.00 CAD with an interest rate of Prime plus 5.000% per annum and the amounts owing thereunder became due upon the termination of the Expired Forbearance Agreement; and
  - d) Additional reporting requirements were added, including that the Debtor was to provide the Bank its Minimum Notice to Reader Accountant Prepared Financial Statements, Corporate Notice of Assessment and T-2 to the Bank by February 3, 2023.
45. Pursuant to the Expired Forbearance Agreement the Credit Parties agreed, *inter alia*:
- a) By January 31, 2023, copies of the Guarantors’ T1 personal tax returns and notices of assessments would be provided to the

Bank;

- b) By February 5, 2023, the Debtor would provide, *inter alia*:
  - i. Satisfactory evidence to the Bank that all property taxes in respect of the Mortgage Property were current;
  - ii. Insurance certificates for all policies held by the Debtor and have the Bank listed as first loss payee on each;
  - iii. An updated personal financial statement as at February 5, 2023;
  - iv. A complete list of its inventory as of such date (including finished trailers and their locations);
- c) By February 7, 2023, the Debtor would provide Minimum Notice to Reader Accountant Prepared Financial Statements, Corporate Notice of Assessment and T-2 to the Bank;
- d) By February 28, 2023, the Debtor would provide updated copies of the equipment list, inventory list, aged accounts payable list and aged accounts receivable list; and
- e) Before the first day of each month during the Expired Forbearance

Period and on the date of expiry of the Expired Forbearance Agreement, the Debtor would provide a statutory declaration in a form acceptable to the Bank that all Prior Claims (as hereinafter defined) have been paid for the entire preceding period.

(together, the “**Milestone Obligations**”)

46. Further, pursuant to the Expired Forbearance Agreement, the Credit Parties agreed to, *inter alia*:

- a) Provide prompt notice of any material occurrences in respect of the Sale Process;
- b) Cooperate and comply with the Bank’s requests for information;
- c) Operate the Credit Facilities in the ordinary course;
- d) Provide the Bank with prompt written notice of the happening of any event which could adversely affect or impair the ability of: (i) the Debtor to comply with the terms and conditions of the Expired Forbearance Agreement and Loan Terms; (ii) the Debtor to pay or the Bank to collect the Loan Debt or the Bank to enforce the Remedies and realize on the Security; or (iii) which may result in a material adverse change to the Debtor’s operations or financial

position; and

- e) To pay when due all claims which rank prior to the Loan Debt and the Security (the “**Prior Claims**”).

(the “**Additional Obligations**”)

- 47. Further, on or about February 8, 2023, the Bank received a Requirement to Pay letter dated February 1, 2023 from CRA advising that, the Debtor owed \$193,527.66 to CRA for unpaid GST remittances and that the Bank was required to send any money it owed to the Debtor to CRA. Attached hereto and marked as **Exhibit “26”** is a true copy of said letter. The Operating Loan was frozen at the time and I advised Peter that all transaction would be frozen until either an arrangement was made with CRA or the GST arrears were paid in full.
- 48. Unbeknownst to the Bank, the Innovative Suit was not defended by the Debtor and on February 2, 2023 default was noted and on February 27, 2023 default judgment was obtained by the plaintiffs.
- 49. The Debtor made arrangements with CRA to pay \$24,000 per month in respect of the GST arrears and by letter dated February 14, 2023, CRA cancelled the Requirement to Pay. Attached hereto and marked as

**Exhibit “27”** is a true copy of said letter.

50. Following numerous requests, a scanned copy of the executed Consent to Receivership Order was provided on February 3, 2023 and the original was finally provided in early March 2023. A true copy of said Consent is attached hereto and marked as **Exhibit “28”**.
51. In the first week of March 2023 Peter advised me of an impending sale, but no further details were provided.
52. On March 14, 2023 the Operating Loan was in excess of its authorized limit by \$5,384.11 and again on March 27, 2023 by \$10,188.11.
53. The Debtor failed to fulfill any of the Milestone Obligations. However, as required by the Expired Forbearance Agreement, it did provide the Bank with: (i) a list of its aged accounts payable as of February 3, 2023; (ii) a list of its aged accounts receivable as of February 3, 2023; (iii) an equipment list as of February 3, 2023; and (iv) an Insurance Policy Billing Statement dated August 2, 2022. True copies of said documents are attached hereto and marked as **Exhibits “29”** to **“32”**, respectively.
54. The Expired Forbearance Agreement expired March 31, 2023. Notwithstanding the aforementioned breaches, I advised Peter that the

Bank was prepared to accommodate the sale by the Credit Parties by extending the Expired Forbearance Period to June 30, 2023 pursuant to a Forbearance Agreement Amendment. A draft Forbearance agreement amendment was provided to Debtor's counsel on April 13, 2023. However the Credit Parties failed to execute it and return it to prior to the revised Milestone Obligations dates.

### **Current Status**

#### *Additional Defaults*

55. Following the expiry of the forbearance period under the Expired Forbearance Agreement, the Debtor continued to operate the Credit Facilities be in excess of the authorized limits as follows:

<b>Date</b>	<b>Amount of Unauthorized Excess of Operating Loan</b>
Wednesday, April 5, 2023	\$ 6,963.66
Tuesday, April 18, 2023	\$22,776.06
Thursday, April 20, 2023	\$10,622.61
Monday, May 1, 2023	\$17,811.32
Tuesday, May 2, 2023	\$ 1,906.78
Monday, May 8, 2023	\$15,269.56
Thursday, May 11, 2023	\$56,410.07

56. Further, since the expiry of the Expired Forbearance Agreement no payments have been made in respect of the New Term Loan and the MasterCards.

57. Attached hereto and marked as **Exhibit “33”** is a true copy of an email dated April 21, 2023, in which the Bank notified the Debtor that it was in excess of its authorized credit limits.
58. On April 19, 2023, the Bank accommodated the Debtor by delaying returning items at the Debtor’s request, notwithstanding that the Credit Facility was approximately \$7,000.00 over its credit limit. Attached hereto and marked as **Exhibit “34”** is a true copy of an email chain between the Debtor and the Bank in which the Debtor makes said request and the Bank made said accommodation.

*The Debtor’s Current Restructuring Plan*

59. On May 10, 2023, at the Bank’s request, Peter and Mr. Stacey attended a call with myself and Ms. Burnell to discuss the status of the sale of building and leaseback. Mr. Stacey confirmed that the Debtor was working with Joel Lazer of Lazer Grant, that there were no offers capable of being accepted, but that there was an “offering” and that four parties had expressed an interest in investing in the Debtor, subject to financing. However, the Debtor had not received any commitments.

*Lack of Transparency*



60. In breach of the Loan Terms the Debtor has failed to provide the required financial statements to the Bank. The last financial statement received being the May 2021 statements. Further, despite being aware that the Bank was seeking responses to the Milestone Obligations since November 2022 they have still not been provided.
61. Accordingly, on May 11, 2023, on my instructions Ms. Burnell sent an email to Mr. Stacey stating that it required the following information by noon on May 12, 2023:
- a) A copy of the Debtor's last notice of assessment;
  - b) The amount of any GST arrears owing by the Debtor;
  - c) The amount of any source deduction arrears owing by Debtor;
  - d) A copy of any environmental assessment/review in the Debtor's possession;
  - e) Authorization to communicate with the realtor of the Land regarding the Land and the realtor's contact information; and
  - f) The expected total amount of investment from the four investors.

(the "2023 Required Information")

62. The Debtor failed to provide any of the 2023 Required Information to the Bank by noon on May 12, 2023.
63. On May 12, 2023 the Bank was served with a garnishment in respect of the Innovative Suit. This was the first that the Bank learned of the Judgment. Upon receipt the Operating Loan was frozen. In preparing this Affidavit it also came to the Bank's attention that the said Judgment was registered against the Mortgaged Property.
64. Due to the Debtor's failure and/or refusal to comply with its reporting requirements under the Letter of Agreement and its failure to provide the 2023 Required Information, the Bank has minimal and insufficient information regarding the Debtor's financial status and affairs.
65. The Debtor has further failed to present a concrete plan to the Bank as to how it intends to repay the Indebtedness.
66. To date, the Debtor continues to be in default of the Loan Terms by, *inter alia*:
  - a) Failing to make payments of amounts owing under the Credit Facilities when due;
  - b) Failing to comply with reporting requirements;

- c) Exceeding the limits on certain Credit Facilities;
- d) Failing to pay taxes when due;
- e) Failing to file the 2022 tax return; and
- f) Allowing a charge in respect of the Innovative Suit to be registered upon the Mortgage Property.

### Indebtedness

67. The Bank's records disclose that as of May 16, 2023, the Indebtedness totals \$2,044,646.42 CAD and \$79,570.66 USD plus legal fees, costs and expenses (the "**Total Indebtedness**"), upon which interest and costs continue to accrue:

Real Estate Loan:	\$1,183,300.14
Demand Non-Revolver Loan:	\$ 44,169.55
Operating Loan:	\$ 158,911.05
New Term Loan:	\$ 602,888.64
CAD MasterCard:	<u>\$ 55,377.04</u>
	<b>\$2,044,646.42 CAD</b>
USD MasterCard:	<b>\$ 79,570.66 USD</b>

68. The Debtor also owes \$60,000.00 to the Bank pursuant to an unsecured

Canadian Emergency Business Account Loan made available to the Debtor by the Bank.

### **Appointment of a Receiver**

69. The Bank has determined that it must make an Application to this Court for the appointment of a receiver of the Property of the Debtor due to the following, *inter alia*:

- a) The amount of the Total Indebtedness is significant;
- b) The Debtor is insolvent;
- c) The Debtor has failed to make super-priority payments owing to CRA;
- d) The Bank does not have faith in the Debtor's management to repay the Indebtedness;
- e) The Debtor is in default of its obligations to the Bank under, *inter alia*, the Letter of Agreement, MasterCard Agreements, the Mortgage and the Security;
- f) The lack of the Debtor's financial reporting and transparency;
- g) In order to protect the Debtor's estate and maximize recoveries

therefrom and to protect the interests of the Bank and other stakeholders, the Bank believes it must appoint a receiver over the Property of the Debtor, which it is entitled to do pursuant to the GSA;

- h) The Debtor provided its consent to this Honourable Court granting an Order appointing a receiver over the Property (see Exhibit "28");
- i) Court appointment is necessary to enable the receiver to carry out its duties more efficiently;
- j) The appointment of a receiver is necessary in order to provide a complete understanding of the financial affairs of the Debtor; and
- k) The appointment of a receiver may help facilitate the Sale Process in an organized and timely manner.

70. The Bank is acting in good faith and is of the view that having a receiver appointed by this Court is in the best interest of all stakeholders.

71. Deloitte is qualified to act as receiver of the Debtor and Deloitte has consented to act as such receiver if so appointed by the Court.

72. I make this Affidavit in good faith and in support of the Application by

Bank for the appointment of Deloitte as the receiver of the Property of  
the Debtor.

SWORN before me at the City )  
of Winnipeg in the Province of )  
Manitoba, this 18<sup>th</sup> day of May, )  
2023 )



\_\_\_\_\_  
A Notary Public in and for the  
Province of Manitoba



\_\_\_\_\_  
**MATHAN KUMAR**

This is Exhibit "1" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023



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A Notary Public in and for the Province of Manitoba

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**File Summary**

**Registry No :** 3816410  
**Entity Name :** 3816410 MANITOBA LTD.

**As of :** 15-May-2023

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Entity Name : 3816410 MANITOBA LTD.  
Registry No : 3816410  
Business No : 897060828MC0002  
Current Status : Active

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Entity Type : BUSINESS CORPORATION  
Entity Sub Type : MB SHARE CORPORATION

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Incorp/Amalg Date : 25-Mar-1998  
Home Jurisdiction : MANITOBA  
Annual Return/Renewal Date : 30-Apr-2023  
Year of Last A/R - Renewal : 2022  
Nature of Business : MISC SERVICES  
NAICS Code : 81

---

**Registered Office Address :**  
Effective date, if changing address : 28-Sep-2021  
Address : 1 880J 15TH STREET, BOX 99  
City/Province : WINKLER, MB  
Country/Postal Code : CANADA, R6W 4A4

---

**Mailing Address :**  
Name : FRANZ HOEPPNER WIENS LAW OFFICE  
Address : 1 880J 15TH STREET, BOX 99  
City/Province : WINKLER, MB  
Country/Postal Code : CANADA, R6W 4A4  
Attention : -

---

**Director Information :**  
Name : BERGEN, PETER  
Address : 1-550 GEORGE AVE  
City/Province : WINKLER, MB  
Country/Postal Code : CANADA, R6W 0J4

---

**Officer Information :**  
Name : BERGEN, PETER  
Address : 1-550 GEORGE AVE  
City/Province : WINKLER, MB  
Country/Postal Code : CANADA, R6W 0J4  
Position Held as Officer : PRESIDENT, SECRETARY

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**Shareholders Information (holders of 10% or more of Issued Voting Shares) :**  
Name : BERGEN, PETER



Class Name : COMMON  
Shares Held : 100.00

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**Share Structure :**

<b>Class</b>	<b>Authorized Number</b>
COMMON	UNLIMITED
PREFER	UNLIMITED

Shares are distributed to the public : No

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**Event History :**

<b><u>Event</u></b>	<b><u>Date :</u></b>	<b><u>Filing Year :</u></b>
FILINGS RECORDED IN THE PREVIOUS SYSTEM ARE NOT INCLUDED		
CHANGE OF REGISTERED OFFICE (Filed on the Web)	09-Jan-2018	
CHANGE OF REGISTERED OFFICE (Filed on the Web)	23-Feb-2018	
CHANGE OF MAILING ADDRESS (Filed on the Web)	23-Apr-2018	
ANNUAL RETURN (Filed on the Web)	12-Jun-2018	2018
ANNUAL RETURN (Filed on the Web)	04-Apr-2019	2019
COMPLIANCE STATUS - DEFAULT	19-May-2020	
ANNUAL RETURN (Filed on the Web)	09-Jul-2020	2020
CHANGE OF REGISTERED OFFICE (Filed on the Web)	14-Jan-2021	
COMPLIANCE STATUS - DEFAULT	25-May-2021	
ANNUAL RETURN (Filed on the Web)	28-Sep-2021	2021
COMPLIANCE STATUS - DEFAULT	24-May-2022	
ANNUAL RETURN (Filed on the Web)	23-Nov-2022	2022

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**The accuracy of this information is not guaranteed. In particular, it is possible that certain filings have been received which have not yet been updated onto the system. You should consult original documents or obtain appropriate certificates when you need to be certain of information.**

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This is Exhibit "2" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023



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A Notary Public in and for the Province of Manitoba

# Letter of Agreement

BMO  Bank of Montreal

335 MAIN ST,  
WINNIPEG, MB R3C 1C2

**COPY**

November 14, 2019

3816410 MANITOBA LTD.  
1-550 GEORGE AVE,  
WINKLER, MANITOBA R6W 0J4

Attention: Peter & Elizabeth Bergen

## LETTER OF AGREEMENT

Bank of Montreal (“**BMO**”) is pleased to advise that it has authorized the following New credit Facilities for **3816410 MANITOBA LTD.** (each, a “**Facility**” and collectively, the “**Facilities**”) on the terms and conditions outlined in this Letter of Agreement. The Schedules listed below and attached form part of this Letter of Agreement.

Notwithstanding any other provision of this Letter of Agreement or in any applicable agreements, any Advance under any Facility hereunder will be made at BMO's sole discretion. Any unutilized portion of any Facility hereunder may be cancelled by BMO at any time without prior notice.

<b>Borrower:</b>	3816410 MANITOBA LTD. (the “ <b>Borrower</b> ”)
<b>Guarantors:</b>	PETER BERGEN, ELIZABETH BERGEN (the “ <b>Guarantors</b> ”)
<b>Total Facility Limit:</b>	The total approved amount of all facilities shall not exceed \$2,360,000.00 at any time.

**Facility # 1**

**Facility Authorization:** \$1,280,000.00 CAD  
**Type of Loan:** Real Estate Financing  
**Purpose:** Equity takeout of 1-550 George Avenue, Winkler, MB.  
**Maximum Amortization:** 300 months

<b>Advance Options</b> (each a "Loan" and collectively the "Loans")	<b>Cap Amount</b>	<b>Additional Details</b>
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**Fixed Rate Term Loan**

**Type of Loan:** Closed Term Loan

**Interest Rate:** To be determined at time of Advance.

Notwithstanding the foregoing and unless otherwise prohibited by law, if the Loan is not paid in full with interest at the Maturity Date, the Loan shall bear interest at a rate per annum equal to the sum of 3% plus the Prime Rate, determined and accrued daily and compounded monthly, not in advance, on the outstanding balance, from the Maturity Date and both before and after demand and both before and after judgment until actual payment in full.

**Repayment Terms:** Equal monthly principal payments and monthly interest, to be collected separately on the last day of each month. The amount of the payments will be determined based on the Loan amount, payment frequency, amortization, and term.

OR

Blended monthly payments comprising principal and interest to be paid monthly in arrears, on the last day of each month. The amount of the payment will be determined based on the Loan amount, term, amortization and the interest rate in effect at the time of the Advance.

The balance of the Loan then outstanding, together with all accrued and unpaid interest, shall be due and payable at the end of the term of the Loan.

**Prepayment Terms:** *Closed Term Loan Only*

May not be prepaid, in whole or in part, prior to the maturity date.

**Maximum Term:** 5 years

**Maturity Date:** The last day of the month determined based on the term selected and the date of advance.

**Demand Loan  
Non  
Revolving**

**Interest Rate:** Prime Rate plus 1.75%. Interest is calculated monthly in arrears, and payable monthly. The Prime Rate in effect as of November 14, 2019 is 3.95%.

**Repayment Terms:** Repayable on demand, provided that until demand is made by BMO:

Blended monthly payments comprising principal and interest to be paid in arrears, on the last day of each month. The amount of the payment will be initially determined based on the Loan amount, amortization and the interest rate in effect at the time of the Advance. Subject to review at BMO's sole discretion.

OR

Equal monthly principal payments and monthly interest, to be collected separately on the last day of each month. The amount of the payments will be determined based on the Loan amount, amortization and the interest rate in effect at the time of the Advance, as applicable.

Prepayments of principal in whole or in part are permitted, without penalty

The aggregate of all outstanding Advances under this Facility shall at no time exceed the Facility Authorization for this Facility.

Each Loan under this Facility shall be a separate Loan, shall be non-revolving and shall be permanently reduced by any repayments or payments by the Borrower.

At the request of the Borrower, the rate may be fixed up to 45 days before the Advance is made. If requested, the Borrower shall pay a refundable rate reservation fee of 1% of the principal amount of the Advance, which fee will be refunded to the Borrower on the day the Advance is made. In the event that the Advance is cancelled by the Borrower, such fee will not be refunded to the Borrower.

The Borrower shall give to BMO 5 Business Day's notice with respect to any request for a Loan under this Facility.

**Facility # 2**

**Facility Authorization:** \$180,000.00 CAD  
**Type of Loan:** Debt Consolidation  
**Purpose:** To assist with the payout of BDC and provide a capital injection.  
**Maximum Amortization:** 48 months

<b>Advance Options</b> (each a "Loan" and collectively the "Loans")	<b>Cap Amount</b>	<b>Additional Details</b>
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<b>Demand Loan Non Revolving</b>		<b>Interest Rate:</b> Prime Rate plus 1.75%. Interest is calculated monthly in arrears, and payable monthly. The Prime Rate in effect as of November 14, 2019 is 3.95%.
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**Repayment Terms:** Repayable on demand, provided that until demand is made by BMO:

Blended monthly payments comprising principal and interest to be paid in arrears, on the last day of each month. The amount of the payment will be initially determined based on the Loan amount, amortization and the interest rate in effect at the time of the Advance. Subject to review at BMO's sole discretion.

OR

Equal monthly principal payments and monthly interest, to be collected separately on the last day of each month. The amount of the payments will be determined based on the Loan amount, amortization and the interest rate in effect at the time of the Advance, as applicable.

Prepayments of principal in whole or in part are permitted, without penalty

**Fixed Rate  
Term Loan**

**Type of Loan:** Closed Term Loan

**Interest Rate:** To be determined at time of Advance.

Notwithstanding the foregoing and unless otherwise prohibited by law, if the Loan is not paid in full with interest at the Maturity Date, the Loan shall bear interest at a rate per annum equal to the sum of 3% plus the Prime Rate, determined and accrued daily and compounded monthly, not

in advance, on the outstanding balance, from the Maturity Date and both before and after demand and both before and after judgment until actual payment in full.

**Repayment Terms:** Equal monthly principal payments and monthly interest, to be collected separately on the last day of each month. The amount of the payments will be determined based on the Loan amount, payment frequency, amortization, and term.

OR

Blended monthly payments comprising principal and interest to be paid monthly in arrears, on the last day of each month. The amount of the payment will be determined based on the Loan amount, term, amortization and the interest rate in effect at the time of the Advance.

The balance of the Loan then outstanding, together with all accrued and unpaid interest, shall be due and payable at the end of the term of the Loan.

**Prepayment Terms:** *Closed Term Loan Only*

May not be prepaid, in whole or in part, prior to the maturity date.

**Maximum Term:** 5 years

**Maturity Date:** The last day of the month determined based on the term selected and the date of advance.

The aggregate of all outstanding Advances under this Facility shall at no time exceed the Facility Authorization for this Facility.

Each Loan under this Facility shall be a separate Loan, shall be non-revolving and shall be permanently reduced by any repayments or payments by the Borrower.

At the request of the Borrower, the rate may be fixed up to 45 days before the Advance is made. If requested, the Borrower shall pay a refundable rate reservation fee of 1% of the principal amount of the Advance, which fee will be refunded to the Borrower on the day the Advance is made. In the event that the Advance is cancelled by the Borrower, such fee will not be refunded to the Borrower.

The Borrower shall give to BMO 5 Business Day's notice with respect to any request for a Loan under this Facility.

**Facility # 3**

**Facility Authorization:** \$800,000.00 CAD

**Type of Loan:** Operating Demand Loan

**Purpose:** Operating Financing

**Interest Rate:** Prime Rate plus 1.75%. Interest is calculated monthly in arrears, and payable monthly on the last day of each month. The Prime Rate in effect as of November 14, 2019 is 3.95%.

**Repayments:** Repayable on demand

**Facility Fee:** \$150.00 per month. This is the fee for the loan and does not include other account fees. Refer to our Better Banking Guide for other applicable fees.

**Other Costs:** BMO is not obliged to permit the Advances under this Facility to exceed the Facility Authorization.

In the event the Advances under this Facility exceeds the Facility Authorization, the excess will bear interest at the Overdraft Rate, which is currently 21% per annum. BMO shall also be entitled to charge the Borrower a fee of 1% calculated on the amount of excess over the Facility Authorization or \$100, whichever is greater and a \$5 overdraft handling charge per item that creates or increases the excess.

**Facility # 4**

**Facility Authorization:** \$50,000.00 CAD

**Type of Loan:** Corporate MasterCard<sup>Â®</sup>

**Purpose:** Operating Financing

**Interest Rate:** As determined by Corporate MasterCard Agreement.

**Repayments:** As determined by Corporate MasterCard Agreement.

**Facility Fee:** As determined by Corporate MasterCard Agreement.

Â® MasterCard is a registered trademark of MasterCard International Incorporated. Used under license.



## **Facility # 5**

<b>Facility Authorization:</b>	\$50,000.00 USD
<b>Type of Loan:</b>	Corporate MasterCard <sup>Â®</sup>
<b>Purpose:</b>	Operating Financing
<b>Interest Rate:</b>	As determined by Corporate MasterCard Agreement.
<b>Repayments:</b>	As determined by Corporate MasterCard Agreement.
<b>Facility Fee:</b>	As determined by Corporate MasterCard Agreement.

Â® MasterCard is a registered trademark of MasterCard International Incorporated. Used under license.

### **Conditions Precedent to Advances:**

BMO will not be required to make any advance to the Borrower unless and until each of the conditions set out below and in Schedule C has been completed to BMO's satisfaction

1. Completion of all loan and account documents and all Security as outlined below.
2. Compliance with all covenants, representations and warranties in all loan documents and Security.
3. Receipt of all information necessary for BMO to comply with all legal and internal requirements in respect of money laundering and proceeds of crime legislation, and "know your customer" requirements.
4. Satisfactory review by BMO of insurance policies issued to the Borrower and each Guarantor, if any, and compliance with any changes required to satisfy BMO's insurance requirements.
5. Confirmation of no material adverse change to the Borrower and the Guarantor and their respective property and assets since the latest financial statements provided to BMO.
6. Confirmation that no default or breach under this Letter of Agreement, any of the loan documents or the Security has occurred.
7. Taxes owing to Government of Manitoba Finance to be paid with new overdraft and controlled via BMO and verified with payout statement.
8. PPSA charges from Roynat and Finishmaster to be discharged, in addition to those from National Bank and BDC after they are paid out.
9. Specific charge is to be registered on Equipment with estimated value of \$10M or more.
10. Receipt of satisfactory evidence of compliance with all applicable building and zoning by-laws and building with regard to the use, development and occupancy of the Lands.
11. Confirmation that all real property taxes have been paid to date.
12. Satisfactory review (site visit) of the Lands, and the condition of the improvements thereon.
13. Receipt of satisfactory appraisal of the Lands from an appraiser or agrologist satisfactory to BMO confirming a minimum market value of \$1,600,000, together with a letter by the appraiser addressed to BMO confirming that BMO may rely on the appraisal for financing purposes.
14. Receipt of satisfactory legal opinions relating to all matters considered relevant by BMO including, without limitation, the due authorization, execution, delivery and enforceability of the Loan and Security documentation by and against the Borrower and each Guarantor, if any.
15. Receipt of all documents and legal opinions required by BMO with respect to the beneficial (true) owner of the Mortgaged Property and the charge of such interest delivered by such owner to BMO.
16. Compliance of all necessary environmental due diligence and receipt of Environmental Checklist for Compliance Certificate to be completed/signed by the Borrower in favor of BMO Bank of Montreal for 1-550 Geroche Ave., Winkler, MB satisfactory to BMO.

**Security:**

Each of the following documents, instruments, agreements and other assurances (collectively, the "**Security**") shall be delivered to BMO prior to any advance of funds, in form and substance acceptable to BMO and its solicitors, acting reasonably:

1. Insurance on a "Fire and Extended Coverage" or "All Risks" basis must be arranged (with satisfactory evidence thereof delivered to BMO) satisfactory to BMO for the full insurable or replacement value with loss payable to BMO. The policy is to contain the Standard Mortgage Clause. A copy of the policy is to be provided
2. Delivery of an existing survey/certificate of location of Mortgaged Property(ies) and all buildings located on the Mortgaged Property(ies), prepared by a surveyor licensed in the jurisdiction in which the property(ies) is/are located, which:
  - bears the name, address and signature of the surveyor, his official seal and licence number (any, or both), the date of a survey and
  - includes a Surveyor's Certificate in the form and content required by the jurisdiction(s) in which the property is located.

OR

-Title insurance from Approved Title Insurance Provider in respect of Lot 1 & 2 Block 2 Plan 37465 MLTO in S 1/2 3-3-4 WPM Excepting - Drain Plan 40578 MLTO, naming BMO as beneficiary.

3. General Assignment of Book Debts registered in the first position in the Province of Manitoba
4. Registered first-ranking All Indebtedness Mortgage in the amount of \$1,600,000.00 registered over Lot 1 & 2 Block 2 Plan 37465 MLTO in S 1/2 3-3-4 WPM Excepting - Drain Plan 40578 MLTO with the municipal address of 1-550 George Avenue, Winkler, MB, R6W 0J4 (the "Mortgaged Property") with appropriate enabling resolutions and documentation
5. \$2,374,000.00 Joint & Several Personal Guarantee from Peter Bergen & Elizabeth Bergen.
6. Signed Certificate of Independent Legal Advice for Elizabeth Bergen
7. Registered Section 427 providing BMO with a security Interest over all present and after-acquired personal/movable property of the Borrower with a First ranking over Inventory.
8. Registered General Security Agreement ("GSA")/Moveable Hypothec ("Hypothec") providing BMO with a security interest/hypothec over all present and after-acquired personal/movable property of the Borrower with a First ranking for all assets.

Any other documents, instruments or agreements as may be required by BMO, acting reasonably

**Covenants:**

As long as any Advance remains outstanding under or in connection with this Letter of Agreement, or so long as this Letter of Agreement remains in effect, the Borrower and any Guarantor will perform and comply with the covenants set out in Schedule A.

**Financial Covenants:**

In addition, the Borrower and each Guarantor, as applicable, will perform and comply with the following financial covenants, based on financial statements of the Borrower or applicable Guarantor:

Financial Covenant	Description	Requirement	Frequency
Debt service coverage ratio	(Net Income after Taxes + Interest + Depreciation + Amortization with adjustment of Extraordinary items as determined by the Bank) - Dividends/Shareholder loan repayments) / (CPLTD + Interest + Non-discretionary Dividends and Repayment of Shareholder Loan)  To be tested based on of May 31 year end accountant prepared financial statements.	Greater Than or Equal To 1.25	Annually

**Additional Covenants:**

In addition, the Borrower and each Guarantor, as applicable, will perform and comply with the following covenants:

1. The Borrower will not, without BMO's prior written consent, participate in any retrofit project or energy or water efficiency project affecting the Mortgaged Property which would have the effect of creating a lien, hypothec or other interest (including, but without limitation, a local improvement charge or similar interest) in the Mortgaged Property ranking, or potentially ranking, in priority to or *pari passu* with the interest of BMO in the Mortgaged Property, whether or not such project is sponsored or endorsed by a municipal or other government, governmental organization or utility.

**Reporting Requirements:**

<p><b>Annual</b></p>	<p>Minimum Notice to Reader Accountant Prepared Financial Statements, Corporate Notice of Assessment, and T-2 for the Borrower within 120 days of their year-end.</p> <p>Aged Accounts Receivable Listing at the time of Renewal</p> <p>Aged Accounts Payable Listing at the time of Renewal.</p> <p>Inventory Listing at the time of Renewal.</p> <p>Equipment Listing at the time of Renewal.</p> <p>Updated Personal Financial Statement to be provided by Guarantor annually, or as required by the Bank</p> <p>T1 Personal Tax returns with NOA to be provided by the guarantor within 120 days of fiscal year-end.</p> <p>Such other information as Lender may reasonably request from time to time.</p>
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A \$100 per month fee will be applied for non-compliance with reporting requirements. The application of this fee does not waive the default condition.

Prompt notification of management letters, default notices, litigation, and any other material events

Satisfactory evidence that all taxes (including, without limitation, GST, HST, sales tax, withholdings, etc.) have been paid to date

**Representations and Warranties:**

The Borrower and each Guarantor, as applicable, makes the representations and warranties set out in Schedule B. All representations and warranties of the Borrower and any Guarantor, in addition to any representation or warranty provided in any document executed in connection with a Facility or any Security, shall be true and correct on the date of this Letter of Agreement and on the date of any Advance under a Facility.

**Noteless Advances:**

The Borrower acknowledges that the actual recording of the amount of any advance or repayment thereof under the Facilities, and interest, fees and other amounts due in connection with the Facilities, in an account of the Borrower maintained by BMO, shall constitute *prima facie* evidence of the Borrower's indebtedness and liability from time to time under the Facilities; provided that the obligation of the Borrower to pay or repay any indebtedness and liability in accordance with the terms and conditions of the Facilities set out in this Letter of Agreement shall not be affected by the failure of BMO to make such recording. The Borrower also hereby acknowledges being indebted to BMO for principal amounts shown as outstanding from time to time in BMO's account records, and all accrued and unpaid interest in respect thereto, which principal and interest the Borrower hereby undertakes to pay to BMO in accordance with the terms and conditions applicable to the Facilities as set out in this Letter of Agreement.

**Fees:**

All costs and expense incurred by BMO in connection with this Letter of Agreement and the Facilities (including without limitation all legal, appraisal and consulting fees), and the enforcement of the Security are for the account of the Borrower.

A one-time fee ("Fee") of \$11,000 is payable by the Borrower to BMO upon acceptance of this Letter of Agreement. This fee is deemed to be earned by BMO upon acceptance of this Letter of Agreement, to compensate for time, effort and expense incurred by BMO in authorizing these Facilities.

Credit renewal fees will be payable as advised by BMO annually; at the date of this letter such fees are estimated to be \$ 2,375.

All fees payable under this Letter of Agreement shall be paid to BMO on the dates due, in immediately available funds. Fees paid shall not be refundable except in the case of manifest error in the calculation of any fee payment.

**Banking Services:**

The Borrower shall maintain its bank accounts, solely with BMO. Borrower acknowledges that the pricing (including interest, fees and charges) contained in this Letter of Agreement is contingent on the Borrower maintaining all of its operating accounts with BMO. In the event the Borrower does not do so, BMO may, at any time, in its sole discretion and without any requirement to obtain the agreement of, or provide prior notice to the Borrower, increase such pricing.

**Treasury & Payment Solutions:**

BMO will provide Non-Credit and treasury & payment solutions to the Borrower. A Treasury & Payment Specialist will contact the Borrower to implement BMO's On-Line Banking for Business platform (OLBB) and discuss additional treasury & payment features such as Electronic Funds Transfer (EFT), Wire Payments, BMO DepositEdge® and Moneris® Payment Processing Solutions. BMO's objective is to provide a package of services that are tailored to meet both the current and future needs of the Borrower in a cost efficient operating environment.

**Commercial Loan Insurance Plan:**

**You understand that unless you submit an Application for Commercial Loan Insurance Plan ("Application"), and it has been approved by Canada Life as the insurer, you will not be covered under the Commercial Loan Insurance Plan for any facilities under this Letter of Agreement and would be ineligible to submit a claim should you undergo an insurable event.**

**Counterparts; Electronic Transmissions:**

This agreement may be executed in any number of counterparts with the same effect as if all parties hereto had all signed the same document. Any counterpart of this Agreement may be executed and circulated by facsimile, PDF or other electronic means and any counterpart executed and circulated in such a manner shall be deemed to be an original counterpart of this Agreement. All counterparts shall be construed together and shall constitute one and the same original agreement.

**Governing Law:**

Manitoba and the federal laws of Canada applicable therein.

**Schedules:**

The following Schedules are attached to and form part of this letter of agreement:

- Schedule A – Covenants
- Schedule B – Representations and Warranties
- Schedule C – Conditions Precedent to Advances

BMO's Legal Counsel: MLT AIKINS

Robert W. Fleischaker, M.B.A.\*  
Partner

\* services provided by R W Fleischaker Law Corporation  
P: +1 (204) 957-4862 | E: [RFleischaker@mltaikins.com](mailto:RFleischaker@mltaikins.com)  
F: +1 (204) 957-4401]

In accepting this Letter of Agreement you acknowledge that if, in the opinion of BMO, a material adverse change in risk occurs including, without limitation, any material adverse change in the financial condition, business, property or prospects of the Borrower or any Guarantor, the rights and remedies of BMO, or the ability of the Borrower or any Guarantor to perform its obligations to BMO, any obligation to advance some or all of the above Facilities may be withdrawn or cancelled.

Please indicate your acceptance of the terms and conditions hereof by signing and returning one copy of this Letter of Agreement (and making payment of the above noted fee, if applicable) to BMO no later than December 13, 2019. If your acceptance of this Letter of Agreement is not received by BMO by that date, BMO shall not be required to proceed with any of the Facilities.

Yours truly,  
BANK OF MONTREAL




By:  
Name: TODD LAWRENCE  
Title: Relationship Manager

Accepted and agreed to this 2 day of December, 2019



**BORROWER**

3816410 MANITOBA LTD.

Signature:   
Name: Peter Bergen  
Title: AUTHORIZED SIGNATORY

**GUARANTORS**

**PETER BERGEN**

Witness:  Signature:   
Name: Peter Bergen Name: PETER BERGEN

ELIZABETH BERGEN

Witness: [Signature] Signature: [Signature]  
Name: Lisa Berger Name: ELIZABETH BERGEN

SCHEDULE A

COVENANTS

1. Payment of all indebtedness due to BMO in connection with this Letter of Agreement or any Facility
2. Maintenance of corporate existence and status, if applicable
3. Payment of all taxes when due (including, without limitation, corporate, GST, HST, sales tax and withholdings)
4. Compliance with all material laws, regulations and applicable permits or approvals (including health, safety and employment standards, labour codes and environmental laws)
5. Compliance with all material agreements
6. Use of proceeds to be consistent with the approved purpose
7. Notices of death of Borrower or Guarantor, default, material litigation, and regulatory proceedings to be provided to BMO on a timely basis
8. Access by BMO to books and records; BMO to have right to inspect property to which its security applies
9. No assumption of additional indebtedness or guarantee obligations by Borrower without prior written consent of BMO
10. No liens or encumbrances on any assets except with the prior written consent of BMO
11. No change of control or ownership of the Borrower without the prior written consent of BMO
12. No disposition of property or assets (except in the ordinary course of business) without the prior written consent of BMO
13. No material acquisitions, hostile takeovers, mergers or amalgamations without BMO's prior written approval
14. [For multiple currencies]:

If, for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Letter of Agreement, it becomes necessary to convert into a particular currency (the "Judgment Currency") any amount due under this Letter of Agreement in any currency other than the Judgment Currency (the "Currency Due"), then conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which judgment is given. For this purpose "rate of exchange" means the rate at which BMO is able, on the relevant date, to purchase the Currency Due with the Judgment Currency in accordance with its normal practice at its principal office in Toronto, Ontario. In the event that there is a change in the rate of exchange prevailing between the Business Day before the day on which the judgment is given and the date of receipt by BMO of the amount due, the Borrower will, on the date of receipt by BMO, pay such additional amounts, if any, or be entitled to receive reimbursement of such amount, if any, as may be necessary to ensure that the amount received by BMO on such date is the amount in the Judgment Currency which when converted at the rate of exchange prevailing on the date of receipt by BMO is the amount then due under this Letter of Agreement in the Currency Due. If the amount of the Currency Due which BMO is so able to purchase is less than the amount of the Currency Due originally due to it, the Borrower and each Guarantor jointly and severally (solidarily) agree to indemnify BMO from and against any and all loss or damage arising as a result of such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Letter of Agreement, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by BMO from time to time and shall continue in full force and effect notwithstanding any judgment or order in respect of an amount due under this Letter of Agreement or under any judgment or order.



## SCHEDULE B

### REPRESENTATIONS AND WARRANTIES


1. It has the corporate status, power and authority to enter into this Letter of Agreement and any agreement executed in connection with a Facility or any Security to which it is a party, and to performs its obligations hereunder and thereunder
2. It is in compliance with all applicable laws (including environmental laws) and its existing agreements
3. Except as otherwise disclosed to BMO in writing, no consent or approval of, registration or filing with, or any other action by, any governmental authority is required in connection with the execution, delivery and performance by it of this Letter of Agreement and any agreement executed in connection with a Facility or any Security to which it is a party
4. All factual information that has been provided to BMO for purposes of or in connection with this Letter of Agreement or any transaction contemplated herein is true and complete in all material respects on the date as of which such information is dated or certified
5. No event, development or circumstance has occurred that has had or could reasonably be expected to have a material adverse effect on the business, assets, operations or condition, financial or otherwise, of the Borrower or any Guarantor
6. There is no material litigation pending against it or, to its knowledge, threatened against or affecting it
7. It has timely filed or caused to be filed all required tax returns and reports and has paid or caused to be paid all required taxes
8. It has good and marketable title to its properties and assets including ownership of and/or sufficient rights in any material intellectual property.
9. It has complied with all obligations in connection with any pension plan which it has sponsored, administered or contributed to, or is required to contribute to including, without limitation, registration in accordance with applicable laws, timely payment of all required contributions or premiums, and performance of all fiduciary and administration obligations
10. It maintains insurance policies and coverage that provides sufficient insurance coverage in at least such amounts and against at least such risks as are usually insured against in the same general area by persons in the same or a similar business
11. It is not in default nor has any event or circumstance occurred which, but for the passage of time or the giving of notice, or both, would constitute a default under any loan, credit or security agreement, or under any material instrument or agreement, to which it is a party.

## SCHEDULE C

### CONDITIONS PRECEDENT TO ADVANCES

1. Evidence of corporate (or other) status and authority
2. Completion and registration (as applicable) of all Security (defined herein) and other supporting documents
3. Completion of all facility documentation and account agreements and authorities, as applicable
4. Compliance with all representations and warranties contained herein
5. Compliance with all covenants (financial and non-financial) contained herein
6. No Event of Default (defined herein) shall have occurred and be continuing
7. Compliance with all laws (including environmental)
8. Payment of all fees and expenses
9. Receipt of all necessary material governmental, regulatory and other third party approvals including environmental approvals and certificates
10. Satisfactory due diligence (including, without limitation, anti-money laundering, proceeds of crime and "know your customer" requirements and procedures, environmental and insurance due diligence)
11. Repayment of all existing indebtedness (excluding permitted indebtedness), as applicable.
12. Satisfactory review of material contracts, as applicable
13. Satisfactory review by BMO (or, at BMO's option and the Borrower's expense, an insurance consultant) of insurance policies issued to the Borrower(s) and/or the Guarantor(s) and compliance with any changes required to satisfy BMO's insurance requirements
14. Disclosure of all material contingent obligations
15. Confirmation that no shares of the Borrower held by the principal shareholders have been pledged as security for any financial or other indebtedness
16. Corporate taxes of the Borrower and corporate/personal taxes of the Guarantor(s) are to be confirmed current and up-to-date
17. Satisfactory evidence that all other taxes payable by the Borrower and Guarantor(s) (including, without limitation, GST, HST, sales tax, and withholdings) have been paid to date
18. No material judgments or material legal action initiated against the Borrower and/or any Guarantor(s)
19. Any other document or action which BMO may reasonably require

# Letter of Agreement - Amendment

BMO  Bank of Montreal

335 MAIN ST,  
WINNIPEG, MB R3C 1C2

## LETTER OF AGREEMENT - AMENDMENT

3816410 MANITOBA LTD.  
1-550 GEORGE AVE,  
WINKLER, MANITOBA R6W 0J4

Attention: Peter & Elizabeth Bergen

December 16, 2019

This letter (the "**Amending Letter**") is intended to set out certain amendments to the Letter of Agreement dated November 14, 2019 (including all Schedules thereto (the "**Letter of Agreement**") between Bank of Montreal ("**BMO**") and the Borrower named below.

3816410 MANITOBA LTD.

Unless defined in this Amending Letter, capitalized terms used in this Amending Letter are intended to have the meanings provided to those terms in the Letter of Agreement.

The Letter of Agreement is amended as follows:

**Additons to Security:**

9. Assignment Postponement and Subordination of \$325,000 shareholder loans from Peter Bergen with supporting Enabling Resolution.

10. Postponement & Subordination of Preferred Shares Rights Agreement to be signed by shareholder Peter Bergen.

Except to the extent amended by this Amending Letter, the Letter of Agreement remains in full force and effect, without novation. This Amending Letter supersedes and replaces all prior discussions and correspondence (if any) between the parties relating to the subject-matter hereof. Nothing in this Amending Letter is intended to waive or limit any of BMO's rights in respect of any Event of Default existing at the date of this Amending Letter, whether or not known to BMO.

Yours truly,  
BANK OF MONTREAL

  
By:  
Name: TODD LAWRENCE  
Title: Relationship Manager

By their signature below, each Borrower and Guarantor acknowledge and agree to the amendments to the Letter of Agreement contained in this Amending Letter. Further, each Borrower and Guarantor reaffirm, acknowledge, covenant and confirm, to and in favour of BMO, the continued applicability, validity, enforceability and binding nature of the Letter of Agreement (as amended by this Amending Letter) and any documents delivered in connection with the Letter of Agreement (as amended by this Amending Letter), including, without limitation, any security and guarantees granted pursuant thereto, each of which shall continue to be valid, binding and enforceable and in no way altered, lessened, released or otherwise affected by this Amending Letter except as expressly stated in this Amending Letter.

This Amending Letter shall be read and construed with the Letter of Agreement and be treated as a part of the Letter of Agreement, and for such purpose and so far as may be necessary to effectuate the true intent of this Amending Letter, the Letter of Agreement is hereby amended.

Each Borrower and Guarantor represents and warrants to BMO that ((a) does not apply to individuals): (a) it is authorized to enter into this Amending Letter and that it has the full power and authority to do so, (b) each of the representations and warranties contained in the Letter of Agreement is true and correct with the same force and effect as if made on the effective date of the amendments contained in this Amending Letter and (c) it/he/she is in compliance with each of the covenants and other terms and conditions set forth in the Letter of Agreement. Further, in the case of an individual Borrower and/or Guarantor, he/she represents and warrants to BMO that (i) he/she fully understands the provisions of this Amending Letter and his/her obligations, (ii) he/she has been afforded the opportunity to engage independent legal counsel to explain the purposes of this Amending Letter and his/her obligations and (iii) he/she has either engaged legal counsel or has decided, in his/her sole discretion, not to do so.

This agreement may be executed in any number of counterparts with the same effect as if all parties hereto had all signed the same document. Any counterpart of this Agreement may be executed and circulated by facsimile, PDF or other electronic means and any counterpart executed and circulated in such a manner shall be deemed to be an original counterpart of this Agreement. All counterparts shall be construed together and shall constitute one and the same original agreement.

**BORROWER**

**3816410 MANITOBA LTD.**

Signature: 

Name: PETER BERGEN

Title: AUTHORIZED SIGNATORY

**GUARANTORS**

**PETER BERGEN**

Witness: Wibageem

Signature: 

Name: Luisa Schurz

Name: **PETER BERGEN**

**ELIZABETH BERGEN**

Witness: Wibageem

Signature: 

Name: Luisa Schurz

Name: **ELIZABETH BERGEN**

**THIS FORBEARANCE AGREEMENT** made effective **January 24, 2023** (the "**Effective Date**")

**AMONG:**

**3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT**

(the "**Borrower**")

-and-

**PETER BERGEN**

("Peter")

-and-

**ELIZABETH BERGEN**

("Elizabeth" and together with Peter, the "**Guarantors**" and together with the Borrower, the "**Debtors**")

-and-

**BANK OF MONTREAL**

("BMO" or the "**Lender**")

**WHEREAS:**

- A. In this forbearance agreement and any schedules thereto (the "**Agreement**"), unless the context otherwise requires, all capitalized terms used, but not otherwise defined shall have the meaning ascribed thereto in the applicable Loan Documents (as hereinafter defined).

**Credit Facilities**

- B. The Lender has made available loans and credit facilities (the "**Credit Facilities**" and each is a "**Credit Facility**") to the Borrower, in its capacity as borrower, pursuant to the terms, conditions, obligations, representations and warranties (the "**Loan Terms**") of:
- a Letter of Agreement by the Lender dated November 14, 2019 and accepted by the Borrower and Guarantors on December 2, 2019, as amended by an amendment dated December 16, 2019 (collectively, the "**Credit Agreements**"); and
  - a Commercial Card Agreement (Canadian Currency) dated January 28, 2020 executed by the Lender and Peter, in his capacity as President of the Borrower (the "**CAD Card Agreement**"); and

- a Commercial Card Agreement (US Currency) dated January 28, 2020 executed by the Lender and Peter, in his capacity as President of the Borrower (the "**USD Card Agreement**" and together with the CAD Card Agreement, the "**MC Credit Agreement**"); and
- a Mortgage in favour of the Lender in the amount of \$1,600,000.00 together with the Lender's Standard Charge Mortgage Terms 4697386/1 (together, the "**Mortgage**"); and

C. The Credit Facilities include *inter alia*:

- **a Real Estate Financing Loan** (the "**Real Estate Loan**"), Account No. 0003-6989-797, in the amount of One Million Two Hundred and Eighty Thousand Dollars (\$1,280,000.00) CAD related to the equity takeout of 1-550 George Avenue, Winkler, MB (the "**Winkler Property**"). The Real Estate Loan is a closed term loan with an annual interest rate of 3.8100% per annum. The Real Estate Loan is payable on demand; provided that, until a demand for repayment is made by the Lender, it may be repaid by Borrower in either blended monthly payments of principal and interest or equal monthly payments of principal plus interest. The maximum amortization of the Real Estate Loan is 300 months beginning February 7, 2020; and
- **a Non-Revolving Demand Loan** (the "**Demand Loan**"), Account No. 0003-1949-789, with a credit limit of up to and One Hundred and Eighty Thousand Dollars (\$180,000.00) CAD to allow the Borrower to payout BDC and provide a capital injection to the Borrower. The Demand Loan is a closed term loan with an annual interest rate of the Lender's Prime Rate plus 1.7500% per annum, which has increased to the Prime Rate plus 3.000% as it was not repaid by the Maturity Date. The Demand Loan is repayable on demand; provided that, until a demand for repayment is made by the Lender, it may be repaid by Borrower in either blended monthly payments of principal and interest or equal monthly payments of principal plus interest; and
- **an Operating Demand Loan** (the "**Operating Loan**"), Account No. 0003-1949-040, presently having a limit of Eight Hundred Thousand Dollars (\$800,000.00) CAD. The Operating Loan is operating financing that has an annual interest rate of the Lender's Prime Rate plus 1.7500% per annum, which was increased to the Prime Rate plus 5.000% as a result of a default under the terms of the Operating Loan (advances exceed the facility authorization and NSF activity). The Operating Loan is payable on demand by the Lender;
- **a CAD Mastercard Facility** (the "**CAD MC Operating Credit**"), Account No. 5264 5500 0020 9837, an operating credit presently having a limit of Fifty Thousand Dollars (\$50,000) CAD and bearing interest at 18.4000% per annum. The CAD MC Operating Credit is payable on demand by Lender; and

- **a USD Mastercard Facility** (the "**USD MC Operating Credit**" and together with the CAD MC Operating Credit, the "**MC Operating Credit**"), Account No. 0003-4998-293, an operating credit presently having a limit of Fifty Thousand Dollars (\$50,000) USD and bearing interest at 18.4000% per annum. The USD MC Operating Credit is payable on demand by Lender; and
- The foregoing, the documents described in **Schedule "A"** hereto and all other documents now or hereafter held by the Lender in connection with or to secure the Credit Facilities, are collectively hereinafter referred to as the "**Loan Documents**".

D. Borrower is indebted to the Lender in respect of the Credit Facilities as of January 25, 2023 (except for Legal Fees, Costs and Expenses as of December 31, 2022) without set-off, defence, counterclaim, reduction or other claim against the Lender or in respect of the Credit Facilities, as follows, inclusive of principal, interest and other obligations for which payment is due:

<b>Real Estate Financing Loan</b> Account No. 0003-6989-797 Interest at 3.8100% per annum	\$1,196,038.05 CAD
<b>Demand Loan</b> Account No. 0003-1949-789 Interest at Lender's Prime Rate plus 3.0000% per annum	\$ 58,085.14 <sup>1</sup> CAD
<b>Operating Loan</b> Account No. 0003-1949-040 Interest at Lender's Prime Rate plus 5.0000% per annum	\$ 768,193.25 CAD
<b>CAD MC Operating Credit</b> Account No. 0003-6984-777 Interest at 18.4000% per annum	\$ 52,382.68 CAD
<b>USD MC Operating Credit</b> Account No. 0003-4998-293 Interest at 18.4000% per annum	\$ 75,268.18 USD
<b>Canada Emergency Business Account Loan No.</b> 5112420000722763	\$ 60,000.00 CAD
<b>Legal Fees, Costs and Other Expenses</b>	\$ 0.00 CAD

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<sup>1</sup> Please note that this includes \$3,265.31 for legal fees which has been debited out of this Demand Loan.

- E. The indebtedness of Borrower to the Lender in respect of the Credit Facilities changes from time to time, including, without limitation, in accordance with the revolving nature of the Operating Loan and MC Operating Credit, payments made by Borrower, changes in interest rates, the obligations thereunder and the operation otherwise of the Credit Facilities. The indebtedness of Borrower to the Lender from time to time in respect of Credit Facilities is hereinafter referred to as the "**Loan Debt**".
- F. Payment of the Loan Debt and performance of the obligations of Borrower, as borrower, and the Peter and Elizabeth, as Guarantors, to the Lender in relation to the Loan Documents and Credit Facilities are secured by the security and additional documents, as more particularly described and listed in **Schedule "A"** hereto (the "**Security**"), which includes, without limitation, the GSA, GAD, Insurance Assignment, BA Application, BA Agreement, BA Security Agreement, (together the "**Personal Property Security**") the Guarantee and the Mortgage. Certain of the Personal Property Security is registered in the Manitoba Personal Property Registry and the Bank Act Registry as further described in **Schedule "B"**, and the GSA and Mortgage against Winkler Property as further described in **Schedule "C"** (collectively, the "**Registrations**").
- G. The Borrower is in default of its obligations under the Credit Facilities due to, among other things: (i) its failure to pay all Loan Debt due to Lender in connection with the Loan Documents; (ii) its failure to pay the outstanding balance under the USD MC Operating Credit by the due date; (iii) its failure to pay the outstanding balance under the CAD MC Operating Credit by the due date; (iv) its failure to comply with reporting requirements under the Loan Documents (including, but not limited to providing T1 personal tax returns with a notice of notice of assessment to be provided by the Guarantors within 120 days of the Borrower's fiscal year end and a minimum notice to reader accountant prepared financial statements, corporate notice of assessment and a T-2 for the Borrower within 120 days of the Borrower's year-end); and (v) it permitting the aggregate outstanding advances under the Operating Loan to exceed the Facility Authorization for that Credit Facility (together the "**Borrower Existing Defaults**").
- H. The Lender terminated the Borrower's access to the USD MC Operating Credit on September 29, 2022 and the CAD MC Operating Credit on October 21, 2022 in accordance with the terms of such agreements.
- I. Each of the Guarantors have defaulted under the Guarantee, to which they are a party, by failing to make payments when due under the Credit Facilities and Guarantee as evidenced by the Loan Debt ("**Guarantor Existing Defaults**" and together with the Borrower Existing Defaults, the "**Existing Defaults**").
- J. The Lender has issued and served formal demands for payment and a Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act (Canada)* (the "**BIA**") on the Debtors by letters dated September 29, 2022. The demands and notices described in this Recital paragraph are hereinafter collectively referred to as the "**Demands**".



- K. The periods of notice prescribed by Sections 243(1.1) and 244(2) of the BIA have expired and the Debtors acknowledge that the Lender is entitled to enforce all Security held by the Lender in relation to the Debtors, and to seek an Order by the Court of King's Bench (Manitoba) (the "**Court**") appointing a receiver (as defined by Section 243(2) of the BIA) in relation to the Debtors.
- L. The Debtors have requested that nevertheless the Lender to forbear from immediate enforcement of its rights in respect of the Loan Debt and from the enforcement of remedies (the "**Remedies**", and each is a "**Remedy**") lawfully available to it under the Security and at law, and to provide certain other accommodations, in order to provide the Debtors with additional time within which to reorganize and sell all or part of the Borrower's business (the "**Sale Process**"), and reorganize its financial affairs, and to comply with the Loan Terms (as same may be amended by this Agreement).
- M. The Lender has not waived the Existing Defaults (or any other defaults of the Debtors), but will agree to forbear from enforcing the Remedies upon the terms and conditions set out in this Agreement.
- N. In order to induce the Lender to forbear from immediate enforcement of the Security, the Debtors have voluntarily executed and delivered to and in favour of the Lender a Consent Order in the form attached as **Schedule "D"** hereto pursuant to Section 243 of the BIA, whereby the Debtors voluntarily consent to an Order of the Court appointing a receiver of all assets, properties, and undertakings of the Debtors (the "**Consent Receivership Order**") with the Consent Receivership Order to be held in trust by the Lender in accordance with the terms of this Agreement.
- O. The parties consider it to be in their mutual interest to enter into this Agreement in order to confirm the terms and conditions upon which the Lender will so forbear.
- P. This paragraph and the preceding recital paragraphs are hereinafter collectively referred to as the "**Preamble**".

**NOW THEREFORE** in consideration of the mutual covenants and agreements herein contained, including, without limitation, the agreement of the Lender to forbear on the terms and conditions hereof from exercising its lawful Remedies on the terms set out herein, and the payment of Ten (\$10.00) Dollars by each to the other, and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

**Confirmation and Acknowledgements**

- 1. The Debtors each confirm, acknowledge, affirm, agree with and represent to the Lender that:
  - (a) the facts set out in the Preamble are true and correct, and are incorporated into and form an integral part of this Agreement as if recited herein;
  - (b) the Schedules attached hereto form part of this Agreement and are integral hereto;

- (c) each of the Loan Documents to which they are a party (i) is binding on whichever of the Debtors is a party thereto, (ii) is legal, valid, effective and enforceable in accordance with its terms as of the date of execution thereof, (iii) is undiminished and in full force and effect, and (iv) except as may be expressly amended or restated by this Agreement, does and shall continue to apply in respect of all obligations of the Debtors to the Lender, including without limitation the obligations of the Debtors under this Agreement;
- (d) the Lender served the Demands upon each of the Debtors, was entitled to serve the Demands, has validly demanded the Loan Debt less the amount of the CEBA Loan, and the Demands remain in full force and effect;
- (e) in addition to the Existing Defaults, the Debtors are each presently in default of their respective obligations to the Lender in regard to the payment of the Loan Debt pursuant to the Loan Terms;
- (f) the Lender was entitled to terminate the Borrower's access to the MC Operating Credit in accordance with the terms thereof; provided that the Debtors remain liable to repay the outstanding Loan Debt incurred thereunder;
- (g) the Registrations have been duly registered in the requisite registry offices, are in full force and effect and are sufficient to perfect, otherwise give effect to and give notice of the security interests, and charges to which they relate in accordance with applicable law;
- (h) none of the Debtors have any defence, counterclaim or rights of set-off or reduction to any claims that may be brought by the Lender under the Security to which they are a party or any other Loan Document, and has no other claim of any kind whatsoever against the Lender;
- (i) except as expressly set out in this Agreement (i) the Lender has not made or held out any promises (expressly or by conduct or omission) or condoned or consented to or taken or omitted to take any action that would constitute a waiver or estoppel of any rights in respect of any or all of the Credit Facilities, the Loan Terms or the Loan Documents including, without limitation, rights to take lawful steps to recover the Loan Debt and/or enforce the Security, and (ii) the Lender is not committed to and has not agreed to forbear from exercising any of the Remedies or the Lender's other powers, rights, privileges and authorities, nor have the parties hereto established any course of conduct to the contrary by past action or inaction or by the execution of this Agreement or otherwise;
- (j) subject to the terms of this Agreement, the Loan Documents and all applicable laws (including laws which may require demand for payment and the giving of prior notice), the Lender shall be entitled in its sole discretion to exercise its rights, powers, privileges and authorities and enforce and realize upon the Remedies and Security as it sees fit;

- (k) the Debtors each hereby acknowledge that they have requested of the Lender, and the Lender has agreed (upon the terms and conditions more particularly described in this Agreement), to forbear from the immediate enforcement of the rights of the Lender pursuant to the Credit Agreements;
  - (l) the Lender's Prime Rate as of the Effective Date is 5.95 %;
  - (m) the Lender's Professional Fees (as hereinafter defined) added to the Loan Debt to date are fair and reasonable; and
  - (n) the Debtors shall pay all of the reasonable legal costs of the Lender (on a solicitor and own client basis) that accrue from time to time relating to the preparation and oversight of this Agreement and all other matters relating to the Loan Terms and Credit Facilities, and shall pay all costs, expenses, disbursements and fees (including without limitation, professional fees of financial and real estate advisors to the Lender, legal fees on a solicitor and own client basis) reasonably incurred at any time in the collection of the Loan Debt, the taking of Remedies and the enforcement of the Security. The amounts of all such costs, expenses, disbursements and fees shall be added to the Loan Debt and the Lender shall be entitled, but not required, to debit such amounts from the Revised Operating Loan (as hereinafter defined) of the Borrower from time to time (together, the "**Lender's Professional Fees**").
2. The parties hereto hereby agree to toll and suspend the running of applicable statutes of limitations, laches or other doctrines related to the passage of time in relation to the Loan Debt and the Loan Documents and any entitlements arising therefrom or in relation thereto, and each of the parties agree that this Agreement is intended to be an agreement to, without limitation, extend or suspend all applicable limitation periods provided by legislation or otherwise at law forming a part of the governing law of this Agreement, and any contractual limitations on the commencement of proceedings, any claims or defences based on the application of any statute of limitation, contractual limitation or any time-related doctrine including waiver, estoppel and laches are hereby suspended. These tolling provisions will terminate upon the Termination of the Forbearance Period (as defined herein), at which time any time period tolled thereunder shall recommence running.
3. Each of the Guarantors, in their capacity as guarantors, consent to this Agreement, the terms of the Lender's forbearance and other accommodations set out herein, and to such modification of the Loan Terms as may result from the terms of this Agreement.

#### **Reservation of Rights**

4. Except to the extent expressly provided in this Agreement and in any documents delivered by the Lender pursuant to this Agreement:
- (a) nothing contained in this Agreement shall operate or be deemed or interpreted to operate, as a consent to or a waiver, condonation, diminution

or amendment in respect of any Loan Term, right, power, authority, Remedy or privilege pursuant to any of the Loan Documents;

- (b) nothing herein shall or shall be deemed or interpreted to vary, alter, release, waive, amend or discharge any Loan Terms, covenants, obligations, representations or warranties contained in any of the Loan Documents, all of which remain in full force and effect, unamended;
- (c) no delay on the part of the Lender in the exercise of any Remedy, power, right, authority or privilege under any of the Loan Documents shall impair such remedy, power, right, authority or privilege or be construed to be a waiver of or to condone, in whole or in part, any default;
- (d) the execution of this Agreement shall not be construed to be a waiver of or to condone, in whole or in part, any default; and
- (e) the Lender expressly reserves all of its Remedies, powers, rights, authorities and privileges under each of the Loan Documents and under any document delivered pursuant to this Agreement, or in relation to the Credit Facilities and Loan Debt at law, in equity or otherwise, and all such Remedies are cumulative and are in addition to, without prejudice to and shall not be deemed to exclude, any other Remedy, power, right, authority and privilege allowed to the Lender hereunder or under any agreement delivered pursuant hereto or under the Loan Documents, and all Remedies and powers, rights, authorities and privileges of the Lender may be exercised concurrently as the Lender sees fit.

#### **Forbearance Period**

- 5. The obligation of the Lender to forbear pursuant to this Agreement shall be effective and continue for the period (the "**Forbearance Period**") commencing on the date hereof and continuing until the earlier of: (i) 12:01 PM (CST) on **March 31, 2023**; (ii) the date of full payment of the Loan Debt; and (iii) the date of an occurrence of a Forbearance Terminating Event (as hereinafter defined). The date upon which the Forbearance Period ends shall be referred to as the "**Termination of the Forbearance Period**".

#### **Further Forbearance Period**

- 6. The Lender shall not be obligated, required or expected to grant any extensions to the Forbearance Period under any circumstances, and nothing in this Agreement shall constitute any representation, warranty or acknowledgment by the Lender that it intends to, or will, grant any such extension.

#### **Forbearance and Other Agreements by the Lender**

- 7. Subject to the terms and conditions of this Agreement and any document(s) executed in connection herewith, the Lender agrees that during the Forbearance Period the Lender agrees that it shall:

- (a) continue to provide the Credit Facilities in accordance with the Loan Terms and the terms and conditions of the Loan Documents as may be amended by this Agreement and those documents provided pursuant to or in connection with this Agreement; and
- (b) forbear from exercising the Remedies.

### **Loan Document Amendments**

8. The terms and conditions of the Borrower's Credit Agreement are hereby amended effective the Effective Date as follows:

#### *Demand Loan*

- (a) the interest rate applied to the Demand Loan shall be permanently increased from the Lender's Prime Rate plus 3.0000% per annum to the Lender's Prime Rate plus 5.0000% per annum.

#### *Operating Loan*

- (b) \$600,000.00 CAD of Loan Debt incurred under the Operating Loan will be converted to a new closed term loan (the "**New Term Loan**") and the Operating Loan maximum shall be permanently reduced from \$800,000.00 CAD to \$200,000.00 CAD (the "**Revised Operating Loan**").
- (c) The Revised Operating Loan shall continue to have an annual interest rate of the Lender's Prime Rate plus 5.000%
- (d) The New Term Loan shall:
  - (i) have a maximum limit of \$600,000.00 CAD;
  - (ii) have an annual interest rate of the Lender's Prime Rate plus 5.000%; and
  - (iii) be due and owing in full at the expiry of the Termination of the Forbearance Period, provided that, until the earlier of the expiry of the Termination of the Forbearance Period, the Borrower shall be permitted to make interest only payments on the New Term Loan.

#### *Additional Reporting Requirements*

The following additional reporting requirements shall be imposed on the Debtors:

- (d) Borrower shall provide its **Minimum Notice to Reader** Accountant Prepared Financial Statements, Corporate Notice of Assessment, and T-2 to the Lender no later than ten (10) business days from the Effective Date;
- (e) Each of the Guarantors shall provide copies of their T1 personal tax returns and notices of assessments to the Lender no later than five (5) business days from the Effective Date; and

- (f) On a quarterly basis (Nov. 30, Feb. 28, August 30, May 31), the Borrower shall provide updated copies of the Equipment List, Inventory List, AP List and AR List (as each is hereinafter defined) to the Lender.
9. Except as specifically amended herein, all terms and conditions of the Loan Documents shall remain in full force and effect, unamended.

**Conditions to Forbearance and Other Agreements**

10. The agreements and obligations of the Lender under this Agreement are conditional upon and subject to full and timely compliance by the Debtors with all of the following conditions on or before **February 5, 2023** (the "**Forbearance Conditions**"):
- (a) the Borrower shall provide satisfactory evidence to the Lender, as determined by the Lender in its sole discretion, that all property taxes in respect of the Winkler Property are current;
  - (b) the Borrower shall provide certificates of insurance for all policies (the "**Insurance Policies**") held by the Borrower (as required by the Loan Documents) and shall have the Lender listed as first loss payee on each of such policies;
  - (c) each Debtor shall provide an updated personal financial statement ("**PFS**") as of such date, in a form acceptable to Lender;
  - (d) the Borrower shall provide a complete list of the Borrower's equipment (the "**Equipment List**") as of such date (including all locations of such equipment and where available serial numbers), in form and substance acceptable to Lender; and
  - (e) the Borrower shall provide a complete list of the Borrower's inventory (the "**Inventory List**") as of such date (including all finished trailers and their respective locations), in form and substance acceptable to Lender;
  - (f) the Borrower shall provide a complete list of the Borrower's aged accounts payable (the "**AP List**") as of such date, in form and substance acceptable to Lender; and
  - (g) the Borrower shall provide a complete of the Borrower's aged accounts receivable list (the "**AR List**") as of such date, in form and substance acceptable to Lender.
11. During the Forbearance Period the Debtors shall do all of the following:
- (a) maintain the Insurance Policies in good standing and not modify or remove the policies without the prior written consent of the Lender;
  - (b) on or before the first of each month during the Forbearance Period (and upon the expiry or Termination of the Forbearance Period), provide

updated copies of the PFS, Equipment List, Inventory List, AP List and AR List;

- (c) provide prompt notice of any material occurrences in respect of the Sale Process;
- (d) cooperate and comply with the Lender's requests for information, which requests may be made directly by the Lender, or the Lender's legal or financial advisors, as may reasonably be requested from time to time;
- (e) the Borrower shall operate its Credit Facilities in the ordinary course and will not incur liabilities outside the day-to-day operations;
- (f) the Debtors shall not sell, dispose or otherwise transfer, directly or indirectly, any equipment, inventory or other collateral subject to the Security outside of the ordinary course of business, including as a result of the Sale Process;
- (g) the Debtors shall pay a forbearance fee of \$5,000.00 CAD to the Lender, which shall be paid by the Borrower to the Lender on the Effective Date, or be deducted by the Lender from the Revised Operating Loan upon the execution by the parties of this Agreement;
- (h) the Debtors shall pay all of the Lender's Professional Fees that accrue from time to time relating to the preparation and oversight of this Agreement and all other matters relating to the Loan Terms and Credit Facilities, and shall pay all costs, expenses, disbursements and fees (including without limitation, professional fees of financial and real estate advisors to the Lender, legal fees on a solicitor and own client basis) reasonably incurred at any time in the collection of the Loan Debt, the taking of Remedies and the enforcement of the Security. The amounts of all such costs, expenses, disbursements and fees shall be added to the Loan Debt and the Lender shall be entitled, but not required, to debit such amounts from the Revised Operating Loan from time to time;
- (i) the Debtors shall give the Lender prompt written notice of the happening of any event which could adversely affect or impair the ability of (i) the Debtors to comply with the terms and conditions of this Agreement and the Loan Terms, or (ii) the Debtors to pay the Loan Debt, or (iii) the Lender to collect the Loan Debt, or (iv) the Lender to enforce the Remedies and realize on the Security (and the documents provided pursuant to or in connection with this Agreement), or which may result in a material adverse change to the Debtors' operations or financial position; and
- (j) except as expressly provided in this Agreement, the Debtors shall pay when due all claims ("**Prior Claims**") which rank prior to the Loan Debt and the Security which shall include, without limitation, all amounts owing or required to be paid, where failure to pay any such amount could give rise to a claim pursuant to any law, statute, regulation or otherwise, which ranks or is capable of ranking in priority to the Security or otherwise in priority to any claim by the Lender for the repayment of any amounts owing to it. On

or before the first of each month during the Forbearance Period and on the date of expiry or Termination of the Forbearance Period, each of the Debtors shall provide a statutory declaration, in a form acceptable to the Lender, that all such Prior Claims have been paid for the entire preceding period.

### **Representations and Warranties of the Debtors**

11. Each of the Debtors jointly and severally represent and warrant to the Lender that:
- (a) there exists no default or event of default under any of the Loan Documents or otherwise, or any other condition or occurrence of events that now constitute or would with the passage of time or giving of notice or both, constitute a default or event of default under any of the Loan Documents, other than the Existing Defaults;
  - (b) each of the Debtors have full capacity to enter into and perform their obligations hereunder; and
  - (c) the execution and delivery of this Agreement by each of the Debtors has been authorized by all necessary corporate action.

### **Covenants of the Debtors**

12. Each of the Debtors jointly and severally covenant and agree with the Lender that it shall comply fully with all of the terms and conditions of this Agreement, the Loan Documents and those documents provided pursuant to or in connection with this Agreement, including, but not limited to complying with all reporting requirements as set out in the Credit Agreements.

### **Forbearance Terminating Events**

13. The occurrence of any one or more of the following events (each a "**Forbearance Terminating Event**") shall entitle the Lender, in its sole discretion, to terminate the Forbearance Period (in which case the Lender shall give written notice to the Debtors in accordance with Section 22), namely:
- (a) any default or breach by the Debtors occurs under this Agreement, including, but not limited to the Forbearance Conditions, or under any document provided pursuant to or in connection with this Agreement, or any default or breach by the Debtors of any term, condition, obligation or covenant occurs under any of the Loan Documents;
  - (b) if the Debtors fail to make any payment when due to the Lender;
  - (c) any other creditor of any of the Debtors lawfully exercises or purports to exercise any rights against any of the property, assets or undertaking of any of the Debtors or if any of the Debtors, or any creditor thereof, brings any proceeding or lawfully takes any other action under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), *The Corporations Act* (Manitoba), the *Business Corporations Act*



(Canada), the *Winding-Up Act* (Canada) or any similar legislation in Canada or the United States of America;

- (d) if any steps are taken by any of the Debtors or a third party to wind up or dissolve any of the Debtors without the prior written consent of the Lender;
- (e) if any representation or warranty of any of the Debtors in this Agreement shall be false, misleading or incorrect in any material respect;
- (f) any default or failure by the Debtors to pay any of the Prior Claims when due;
- (g) if any financial reporting information or other reporting information provided to the Lender by any of the Debtors proves to be false, misleading, inaccurate or incorrect in any material respect;
- (h) the sale, lease, transfer, relocation, abandonment or any other disposition of assets of any of the Debtors out of the ordinary course of business which are subject to the Security, without the express prior written consent of the Lender;
- (i) upon request by the Lender the Debtors (or any of them) fail to acknowledge, in writing, the Loan Debt;
- (j) the payment of dividends or the return of capital by the Debtors; or
- (k) if the Lender, acting reasonably and in good faith, considers that a material adverse change has occurred or is reasonably anticipated to occur in (i) the business, affairs, or condition of any of the Debtors, financial or otherwise, including but not limited to a material change to the board of directors, senior management or its current legal and financial advisors of any of the Debtors or in the Optimization Plan, or (ii) in the security position of the Lender, after the date hereof for any reason whatsoever other than the Existing Defaults.

#### **Cross Default**

14. The Termination of the Forbearance Period shall, in the absence of full payment of the Loan Debt, constitute the occurrence of a default under each of the Loan Documents.

#### **Upon Termination of Forbearance**

15. Upon the Termination of the Forbearance Period, in the absence of full payment of the Loan Debt:
- (a) the Lender may immediately terminate the Credit Facilities without further notice or delay;
  - (b) the full amount of the Loan Debt shall be immediately due and payable; and

- (c) the obligation of the Lender to forbear pursuant to this Agreement shall terminate and the Lender may, subject to applicable laws, take such actions in relation to the Debtors to exercise Remedies as it sees fit to protect and preserve its interests and to recover payment of the Loan Debt and enforce obligations of the Debtors under this Agreement, those documents provided pursuant to or in connection with this Agreement and the Loan Documents, including, without limitation the issuance of the Consent Receivership Order in favour of the Lender against the Debtors, which Consent Receivership Order may be used by the Lender in order to recover the full amount of all outstanding Loan Debt owed by the Debtors at the time of the issuance of such Consent Receivership Order all without further notice, demand or request for payment being made upon the Debtors; and
  - (d) In furtherance of the foregoing, the Debtors acknowledge and agree to the execution and delivery to the Lender, at the time of the execution of this Agreement, of the Consent Receivership Order substantially in the form attached hereto as **Schedule "D"**.
16. For greater certainty, the Lender's forbearance and the Lender's other accommodations described herein, shall terminate on the Termination of the Forbearance Period without requiring any further forbearance or delay on the part of the Lender.

### **Release**

17. Each of the Debtors hereby:
- (a) remises, releases, acquits and forever discharges the Lender and its directors, officers, employees, agents, servants, attorneys, affiliates and representatives (and the respective executors, administrators, successors and assigns of each of the preceding) (collectively the "**Releasees**") from and against all claims, actions, causes of action, rights, costs, demands, expenses, suits, debts, duties, accounts and compensation whatsoever, heretofore and hereafter arising from events or occurrences of any kind whatsoever to and including the date of this Agreement, which do or may exist, whether known or unknown, suspected or unsuspected, foreseen or unforeseen (collectively, the "**Released Matters**"), including, without limitation, any of the same arising from or related in any manner whatsoever to anything done, omitted to be done or allowed to be done by any of the Releasees and in any way whatsoever connected to the Credit Facilities, the Security and the Loan Documents;
  - (b) acknowledges, understands and agrees that:
    - (iv) the administration by the Lender of the Loan Debt, and the actions of the Lender in entering into this Agreement, respectively, has been fair and reasonable;
    - (v) this release is an essential and material term of this Agreement;

- (vi) the agreements in this release are intended to be in full answer to and satisfaction of any injuries or damages of the Debtors, or any of them, in connection with the Released Matters;
- (vii) this release shall apply to all unknown or unanticipated results of the Released Matters, as well as those known and anticipated and every right, exemption from liability, defense and immunity of whatever nature and kind which may be applicable to any or all of the Releasees, or to which they or any of them shall be entitled to hereunder, shall also be available to and shall extend to protect every such Releasee;
- (c) represents and warrants that it has not transferred, conveyed or assigned, and has not purported to transfer, convey or assign, any right, title or interest in any Released Matter to any other person or entity and that the foregoing constitutes a full, effective and complete release of the Released Matters; and
- (d) acknowledges and confirms that it has reviewed and understood all of the provisions of this section and of this Agreement, and has received or was advised by the Lender to receive and had the full opportunity to receive independent legal advice with respect to same and willingly and voluntarily enters into this Agreement without any compulsion by or on behalf of any Releasee.

### **General Matters**

- 18. Time of the Essence. Time is of the essence of this Agreement.
- 19. Further Assurances. The parties hereto shall promptly do all such further things as may be reasonably necessary to give effect to the intention of this Agreement.
- 20. Severability. If any provision of this Agreement shall be deemed or determined by any court of competent jurisdiction to be invalid or void, the remaining provisions shall remain in full force and effect.
- 21. Enurement. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.
- 22. Notices. Any notice required to be given to any party hereunder or under the Loan Documents may be given to that party at the addresses or email addresses set out below:

**To the Lender:**  
BMO Financial Group  
S.A.M.U., Western Canada,  
Winnipeg Main Branch,  
201 Portage Ave 16th Floor  
Winnipeg, MB  
Attention: Mathan Kumar  
Email: mathan.kumar@bmo.com

**To Debtors:**  
3816410 Manitoba Ltd. o/a  
Berg's Trailers & Prep and Paint  
1 880J 15th Street, Box 99  
Winkler, Manitoba R6W 4A4  
Attn: Peter Bergen

**With a copy to:**

MLT Aikins LLP  
3000-360 Main Street  
Winnipeg, MB  
Attention: J.J. Burnell  
Email: jburnell@mltaikins.com

**With a copy to:**

Thompson Dorfman Sweatman  
LLP  
1700 – 242 Hargrave Street  
Winnipeg, MB  
Attention: Art Stacey  
Email: ajs@tdslaw.com

23. Entire Agreement. This Agreement constitutes the entire agreement of the parties relating to the subject matter hereof and may not be amended or modified except with the written consent of all parties. No provision in this Agreement shall be or be deemed or determined to be waived unless such waiver is express and in writing.
24. Terms to Apply. In the event of a contradiction between the terms of this Agreement and the Loan Documents, then the terms of this Agreement shall apply.
25. Governing Law. This Agreement shall be governed by the laws of the Province of Manitoba.
26. Records. The records of the Lender shall be *prima facie* proof of the outstanding amount of the Loan Debt owed by the Borrower to the Lender, the amount of any payment made, the amount of any part of the Loan Debt which is in default, and any notice or demand being made.
27. Exercise of Rights. Except as expressly set out in this Agreement (i) nothing herein shall or shall be deemed or interpreted to vary, alter, release, waive, amend or discharge any terms, covenants, obligations, representations or warranties contained in any of the Loan Documents, all of which remain in full force and effect, unamended (ii) all Remedies and powers, rights, authorities and privileges of the Lender hereunder and under any agreement delivered pursuant hereto are cumulative and are in addition to, without prejudice to and shall not be deemed to exclude, any other Remedy, power, right, authority and privilege allowed to the Lender hereunder or under any agreement delivered pursuant hereto or under the Loan Documents, and (iii) all Remedies and powers, rights, authorities and privileges of the Lender may be exercised concurrently as the Lender sees fit.
28. No Contra Proferentem. This Agreement has been negotiated and approved by the parties and, despite any rule or maxim of law or construction to the contrary, any ambiguity or uncertainty will not be construed against either of the parties by reason of authorship of any of the provisions of this Agreement.
29. Counterparts. This Agreement may be executed in paper form, by facsimile signature or by electronic signature and in any number of counterparts, each of which shall be deemed to be an original and all of which, taken together, shall be deemed to constitute one and the same instrument and notwithstanding the date of execution shall be deemed to bear the date as of the date of this Agreement. As such executed counterpart may be delivered by facsimile transmission or by e-mail

in PDF format and will be deemed to be an original document, provided that any party executing this Agreement by facsimile copy or PDF format shall deliver an originally executed copy of this Agreement immediately thereafter to each of the other parties hereto.

***~ Execution Page Follows ~***

**IN WITNESS WHEREOF** the parties have executed this Forbearance Agreement on the Effective Date:

**3816410 MANITOBA LTD. O/A  
BERG'S TRAILERS & PREP AND  
PAINT**

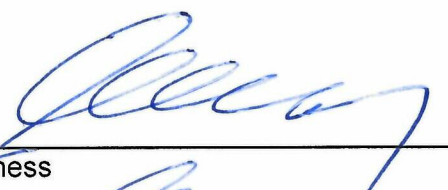
Per: 

Name: Peter Bergen  
Title: President

*I have authority to bind the Corporation.*

  
PETER BERGEN

  
ELIZABETH BERGEN

  
Witness

  
Witness

**BANK OF MONTREAL (as Lender)**

Per: 

Name: Mathan Kumar  
Title: Account Manager

*I have authority to bind the bank.*

**SCHEDULE "A"**  
**LOAN DOCUMENTS**

**Part One - Credit Documents**

1. Letter of Agreement by the Lender dated November 14, 2019 and accepted by the Borrower and Guarantors on December 2, 2019
2. Letter of Agreement – Amendment by the Lender dated December 16, 2019 amending the Loan Agreement and accepted by the Borrower and Guarantors
3. Commercial Card Agreement (Canadian Currency) dated January 28, 2020 executed by the Lender and Peter, in his capacity as President of the Borrower
4. Commercial Card Agreement (US Currency) dated January 28, 2020 executed by the Lender and Peter, in his capacity as President of the Borrower
5. Mortgage No. 1249795/4 in favour of the Lender in the amount of \$1,600,000.00 together with the Lender's Standard Charge Mortgage Terms 4697386/1 charging the titles and lands legally described in **Schedule "B"**

**Part Two – Security Documents**

6. Security Agreement executed by Peter, in his capacity as authorized signatory of the Borrower in favour of the Lender on January 10, 2020 ("**GSA**")
7. General Assignment of Debts, etc. executed January 10, 2020 by the Borrower (the "**GAD**");
8. Assignment of Moneys which May Become Payable Under Fire Insurance Policies executed January 10, 2020 by Borrower (the "**Insurance Assignment**")
9. Application for Credit and Promise to Give Bills of Lading, Warehouse Receipts, or Security under Section 427 of the Bank Act dated December 30, 2019 executed by the Borrower in favour of the Lender ("**BA Application**")
10. Agreement as to Loans and Advances and Security therefor executed by the Borrower in favour of the Lender December 30, 2019 ("**BA Agreement**")
11. Security under sec. 427(1) of the Bank Act dated December 30, 2019 executed by the Borrower in favour of the Lender ("**BA Security Agreement**")
12. Guarantee for Indebtedness of an Incorporated Company in the amount of \$2,374,000.00 executed January 13, 2020 by Peter and Elizabeth

### **Part Three – Additional Documents**

13. Postponement Subordination of Preferred Shares Rights Agreement executed by Peter and acknowledged by Peter, in his capacity as authorized signatory of the Borrower on January 10, 2020
14. Assignment, Postponement and Subordination Agreement executed January 15, 2020 by Murry Doerksen, in his capacity as President of Murlin Holdings Ltd. and acknowledged by the Borrower on January 10, 2020



## **SCHEDULE "B"**

### **PERSONAL PROPERTY SECURITY REGISTRATIONS**

#### **GSA**

BMO has a registration registered in the MB PPR against the Borrower on December 18, 2019 under registration number 201921760804.

#### **GAD**

BMO has a registration registered in the MB PPR against the Borrower on December 5, 2019 under registration number 201921094308.

#### ***Bank Act Security***

Lender has a registration registered in the Bank Act Security Registry System against the Borrower dated December 27, 2019 at 10:19 AM PDT under registration number 01325813.

**SCHEDULE "C"**

**WINKLER PROPERTY**

**OWNER (Legal and Beneficial):** 3816410 MANITOBA LTD.

**CIVIC ADDRESS:** 1-550 George Avenue, Winkler, Manitoba

**Legal Description:**

**TITLE NO. 1872413/4:**

LOT 1 BLOCK 2 PLAN 37465 MLTO  
IN S 1/2 3-3-4 WPM  
EXCEPTING - DRAIN PLAN 40578 MLTO

**Encumbrances:**

- (a) Caveat No. 1016911/4 from/by the Town of Winkler re: Easement Agreement for Drainage
- (b) Caveat No. 1027254/4 from/by Manitoba Hydro-Electric Board & Mts Communications Inc.
- (c) Mortgage No. 1249795/4 in favour of BMO in the amount of \$1,600,000.00
- (d) Personal Property Security Notice No. 1249796/4 in favour of BMO re: fixtures

**TITLE NO. 1872413/4:**

LOT 2 BLOCK 2 PLAN 37465  
IN S 1/2 3-3-4 WPM  
EXCEPTING – DRAIN PLAN 40578 MLTO

**Encumbrances:**

- (a) Caveat No. 1016911/4 from/by the Town of Winkler re: Easement Agreement for Drainage
- (b) Caveat No. 1027254/4 from/by Manitoba Hydro-Electric Board & Mts Communications Inc.
- (c) Mortgage No. 1249795/4 in favour of BMO in the amount of \$1,600,000.00 (Mortgage)
- (d) Personal Property Security Notice No. 1249796/4 in favour of BMO re: fixtures (GSA)

**SCHEDULE "D"**  
**CONSENT RECEIVERSHIP ORDER**

(see attached)

File No. \_\_\_\_\_

**THE KING'S BENCH**  
**Winnipeg Centre**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO  
SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY  
ACT R.S.C. 1985, c. B-3 AS AMENDED

BETWEEN:

BANK OF MONTREAL,

Applicant,

-and-

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT,

Respondent.

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**CONSENT TO RECEIVERSHIP ORDER**

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**MLT AIKINS LLP**  
Barristers & Solicitors  
30<sup>th</sup> Floor – 360 Main Street  
Winnipeg, Manitoba, R3C 4G1

**J.J. BURNELL / ANJALI SANDHU**  
Telephone: (204) 957-4663 / (204) 957-4760  
Facsimile: (204) 957-0840

File No. 0076354.01105

Box No. 3

**THE KING'S BENCH**  
**Winnipeg Centre**

IN THE MATTER OF:       THE APPOINTMENT OF A RECEIVER PURSUANT TO  
SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY  
ACT R.S.C. 1985, c. B-3 AS AMENDED

BETWEEN:

BANK OF MONTREAL,

Applicant,

-and-

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT,

Respondent.

**CONSENT TO RECEIVERSHIP ORDER**

The Respondent, **3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT** (the "**Debtor**"), agrees and consents to all of the following:

1.     The Debtor has been afforded the opportunity to review and has reviewed the terms of this Consent to Receivership Order and the draft Receivership Order which has been prepared by Bank of Montreal (the "**Bank**") and which is attached to this Consent to Receivership Order as **Schedule "A"**.
  
2.     The Debtor hereby consents to the Bank proceeding to file this Consent to Receivership Order with the Manitoba Court of King's Bench and to obtaining a Receivership Order from the Court appointing a receiver or receiver and manager 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 as though evidence had been heard and the Order pronounced by the Court on the merits of the Application, all without the requirement of service of any of the documents filed with the Court (which is hereby waived), or the necessity of further proceedings before the Court.

3. The Debtor has been afforded the opportunity to obtain legal advice prior to and after reviewing the terms of this Consent to Receivership Order and the Schedule thereto and has completed this Consent to Judgment without duress or any influence whatsoever.

In Witness Whereof this consent was executed this \_\_\_\_ day of \_\_\_\_\_, 2023

**3816410 MANITOBA LTD. O/A BERG'S  
TRAILERS & PREP**

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

Title:

*I have authority to bind the corporation*

SCHEDULE "A"

File No. \_\_\_\_\_

**THE KING'S BENCH**  
**Winnipeg Centre**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO  
SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY  
ACT R.S.C. 1985, c. B-3 AS AMENDED

BETWEEN:

BANK OF MONTREAL,

Applicant,

-and-

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT,

Respondent.

---

ORDER  
(Appointing Receiver)

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**MLT AIKINS LLP**  
Barristers & Solicitors  
30<sup>th</sup> Floor – 360 Main Street  
Winnipeg, Manitoba, R3C 4G1

**J.J. BURNELL / ANJALI SANDHU**  
Telephone: (204) 957-4663 / (204) 957-4760  
Facsimile: (204) 957-0840

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**THE KING'S BENCH**

**Winnipeg Centre**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY ACT R.S.C. 1985, c. B-3 AS AMENDED

THE HONOURABLE \_\_\_\_\_ ) \_\_\_\_\_, THE \_\_\_\_  
JUSTICE \_\_\_\_\_ ) DAY OF \_\_\_\_\_, 20\_\_

BETWEEN:

BANK OF MONTREAL,

Applicant,

-and-

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT,

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**") appointing \_\_\_\_\_ as receiver [and manager] (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of 3816410 Manitoba Ltd. o/a Berg's Trailers & Prep and Paint (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.



ON READING the affidavit of \_\_\_\_\_ sworn \_\_\_\_\_ and on hearing the submissions of counsel for the Applicant, no one appearing for any other party although duly served as appears from the affidavit of service of \_\_\_\_\_ sworn \_\_\_\_\_ and on reading the consent of \_\_\_\_\_ to act as the Receiver,

## **SERVICE**

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

## **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA, \_\_\_\_\_ 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 all proceeds thereof (the "**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, 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 undertake environmental or workplace safety and health assessments of the Property and operations of the Debtor;
- (j) 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;
- (k) 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;
- (l) 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 \$\_\_\_\_\_, provided that the aggregate consideration for all such transactions does not exceed \$\_\_\_\_\_; 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 59(10) of *The Personal Property Security Act* (Manitoba), [or section 134(1) of *The Real Property Act* (Manitoba), as the case may be,] shall not be required.

- (m) 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;
- (n) 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;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions 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;
- (q) 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;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the 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 provided; however, that nothing in this Order shall affect a Regulatory Body's investigation in respect of the Debtor or an action, suit or proceeding that is taken in respect of the Debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body of the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating

to the enforcement or administration of an Act of Parliament or of the legislature of a province.

#### **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 Environment Act* (Manitoba), *The Water Resources Conservation Act* (Manitoba), *The Contaminated Sites Remediation Act* (Manitoba), *The Dangerous Goods Handling and Transportation Act* (Manitoba), *The Public Health Act* (Manitoba) or *The Workplace Safety and Health Act* (Manitoba), 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 this Court, but nothing herein shall fetter this Court's discretion to refer such matters to a Master of this Honourable Court.

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 \$\_\_\_\_\_ (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 Applicant and the Receiver be at liberty to serve 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, facsimile or electronic 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 notice by courier, personal delivery or electronic 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.

26. THIS COURT ORDERS that counsel for the Receiver shall prepare and keep current a service list ("**Service List**") containing the name and contact information (which may include the address, telephone number and facsimile number or email address) for service to: the Applicant; the Receiver; and each creditor or other interested Person who has sent a request, in writing, to counsel for the Receiver to be added to the Service List. The Service List shall indicate whether each Person on the Service List has elected to be served by email or facsimile, and failing such election the Service List shall indicate service by email. The Service List shall be posted on the website of the Receiver at the address indicated in paragraph 27 herein. **For greater certainty, creditors and other interested Persons who have received notice of this Order and who do not send a request, in writing, to counsel for the Receiver to be added to the Service List, shall not be required to be further served in these proceedings.**

27. THIS COURT ORDERS that the Applicant, the Receiver, and any party on the Service List may serve any court materials in these proceedings by facsimile or by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Receiver may post a copy of any or all such materials on its website at [www. \\_\\_\\_\\_\\_](http://www._____). Service shall be deemed valid and sufficient if sent in this manner.

## **GENERAL**

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

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

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

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

32. THIS COURT ORDERS that the Applicant shall have its costs of this 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 solicitor-client basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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

\_\_\_\_\_, 20\_\_

I, \_\_\_\_\_ OF THE FIRM OF \_\_\_\_\_ HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES:  
\_\_\_\_\_ AS DIRECTED BY THE HONOURABLE \_\_\_\_\_.

## SCHEDULE "A"

### RECEIVER CERTIFICATE

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

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

1. THIS IS TO CERTIFY that \_\_\_\_\_, the receiver (the "**Receiver**") of the assets, undertakings and properties 3816410 Manitoba Ltd. o/a Berg's Trailers & Prep and Paint (the "**Debtor**") 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 King's Bench, Winnipeg Centre (the "**Court**") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (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 \*\*\*, \*\*\*.

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\_\_.

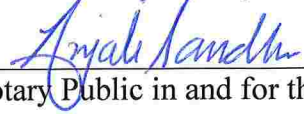
\_\_\_\_\_, solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

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

Name:

Title:

This is Exhibit "3" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023



---

A Notary Public in and for the Province of Manitoba





This Agreement dated January 28, 2020 is made between:

3816410 MANITOBA LTD.  
(the "Customer")

- and -

EACH BANK THAT IS A SIGNATORY TO THIS AGREEMENT

The parties acknowledge each of the following:

- 1. BMO provides commercial card services in Canada and Harris provides commercial card services in the United States.
- 2. The Customer has requested a Canadian Program or a U.S. Program, or both, and each Bank that has executed this Agreement has agreed to provide the Program within their respective jurisdictions in accordance with the terms and conditions stated in this Agreement.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties agree as follows:

- 1. **Terms and Conditions that form part of this Commercial Card Agreement:** The Commercial Card Agreement consists of this document ("Part 1 of the Agreement") and the Commercial Card Agreement (Additional Terms and Conditions) which is posted at [www.bmo.com/commercial-card-agreement](http://www.bmo.com/commercial-card-agreement) ("Part 2 of the Agreement"), together with all Schedules, and in each case as such documents may be amended and restated from time to time. By signing below, the Customer agrees to all of the terms and conditions found in Part 1 of the Agreement and Part 2 of the Agreement.
- 2. **Defined Terms:** Capitalized terms that are not defined in Part 1 of the Agreement are defined in Part 2 of the Agreement.
- 3. **Customer Credit Limit and Term:** This Agreement will end in accordance the terms set out in section 12 of Part 2 of the Agreement. The Customer Credit Limit is as follows:  
  
Canadian Program:  CDN\$ 50,000.00
- 4. **Customer's Head Office and Contact Information:** The Customer's head office and contact information is set out next to the Customer's signature below. This information will be used to determine the governing law (discussed further in section 15 of Part 2 of the Agreement) and for the delivery of notices (discussed further in Schedule 1 of Part 2 of the Agreement).
- 5. **Payment Due Date and Program Features:** The Payment Due Date for all Cards is 21 days, though the Customer can elect to make earlier payments. The features of the Program selected by the Customer are as follows:

CARD PRODUCT	CARD CURRENCY		CASH ADVANCES	PAPER STATEMENTS
	CDN\$	US\$		
<b>CANADIAN PROGRAM</b>				
BMO Rewards Commercial MasterCard – \$50 Annual Fee	✓			


6. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which taken together will constitute one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or other electronic transmission will have the same force and effect as the delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by facsimile or other electronic transmission will also deliver an original executed counterpart, but the failure to do so will not affect the validity, enforceability or binding effect of this Agreement.
7. **Applicable only in the Province of Quebec:** It is the express wish of the parties that this Agreement and any related documents be drawn up in the English language. *Les parties confirment leur volonté expresse que la présente convention ainsi que tous les documents s'y rattachant soient rédigés en anglais.*

The parties have executed and delivered this Agreement as of the date first set out above.

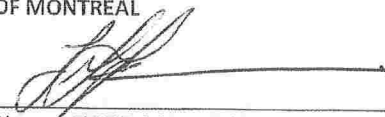
Insert the Customer's Head Office Address and Contact Information:

Name: 3816410 MANITOBA LTD.  
 Address: 550 GEORGE AVE  
UNIT 1  
WINKLER Manitoba R6W0J4  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Fax #: (      )

3816410 MANITOBA LTD.

Per:   
 Name: PETER BERGEN  
 Title: PRESIDENT  
 Per: \_\_\_\_\_  
 Name:  
 Title:

BANK OF MONTREAL

Per:   
 Name: TODD LAWRENCE  
 Title: RELATIONSHIP MANAGER



## BMO and BMO Harris Terms and Conditions Commercial Card

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The Commercial Card Agreement consists of this document (which is Part 2 of the Agreement) and Part 1 of the Agreement (which was signed by the Customer), together with all Schedules, and in each case as such documents may be amended and restated from time to time.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties agree as follows:

### 1. Definitions and Interpretation

(a) Capitalized terms used in this Agreement are defined as follows:

**"Affiliate"** means an entity which is related to the Customer in one of the following ways: the entity is the parent of the Customer, the entity is a subsidiary of the Customer, the entity and the Customer are each subsidiaries of the same parent, or the entity is a joint venture owned in part by the Customer;

**"Affiliate Account"** means a sub-account of the Customer Account established by the Bank for use by a division or Affiliate of the Customer;

**"Agreement"** means this corporate card agreement (including Part 1 of the Agreement, Part 2 of the Agreement, and all attached Schedules); as such agreement may be amended and restated from time to time;

**"ATM"** means automated teller machine;

**"Bank"** refers to the contracting parties to this Agreement other than the Customer and has the following meaning:

- (i) where there is only a Canadian Program as evidenced by the Program features selection of Part 1 of the Agreement, "Bank" means BMO alone, and for the avoidance of doubt, Harris is not a party to this Agreement; or
- (ii) where there is only a U.S. Program as evidenced by the Program features selection in of Part 1 of the Agreement, "Bank" means Harris alone, and for the avoidance of doubt, BMO is not a party to this Agreement; or
- (iii) where there is both a Canadian Program and a U.S. Program as evidenced by the Program features selection in of Part 1 of the Agreement, "Bank" means both BMO and Harris.

**"Billing Period"** means the period beginning the day after the immediately preceding Monthly Billing Date and ending on the current Monthly Billing Date;

**"BMO"** means Bank of Montreal;

**"Business Day"** means, with respect to the Canadian Program, a day on which BMO is generally open for business in Ontario, Canada, and with respect to the U.S. Program, a day on which Harris

is generally open for business in Illinois, USA, and in each case does not include Saturdays, Sundays or statutory holidays;

**"Canadian Program"** means the Program provided to a Customer or an Affiliate with a Canadian address;

**"Card"** means a commercial credit card issued by the Bank in connection with the Customer Account;

**"Card Account"** means a sub-account of the Customer Account which is established for each Card;

**"Card Account Statement"** means the monthly statement setting out the outstanding balance of a Card as of the stated Monthly Billing Date;

**"Card Limit"** means the credit limit established for a Card;

**"Card Notice"** has the meaning given to it in section 7(c);

**"Cardholder"** means an employee of, or a contractor providing services to, the Customer or Affiliate to whom a Card is issued;

**"Cash Advance"** means an advance of cash obtained through the use of a Card from the Bank or another financial institution accepting the Card;

**"Change"** has the meaning given to it in section 15(g)(ii);

**"Change Notice"** has the meaning given to it in section 15(g)(ii)(A);

**"Charges"** means all charges posted to the Customer Account including all Transactions, fees and service charges;

**"Customer Account"** means the commercial card account established by the Bank for the Customer;

**"Customer Account Statement"** means a monthly statement showing the outstanding balance of the Customer Account as of a Monthly Billing Date;

**"Customer Credit Limit"** means the Customer Account credit limit established by the Bank from time to time, and which as of the Effective Date is shown in of Part 1 of the Agreement;

**"Effective Date"** refers to the first day that the Agreement is in effect, as shown in of Part 1 of the Agreement;

**"Electronic Distribution"** means distribution through e-mail or posting on the Program Website;

**"First PDA"** has the meaning given to it in section 6(b).

**"Harris"** means BMO Harris Bank N.A.;

**"Insurance Certificates"** means documents evidencing Program-related insurance coverage including insurance certificates, policies of insurance, and summaries of assistance services (any

two or more of which may be combined into a single document) including any notices of amendment to any of the foregoing documents;

**“Insurance Documents”** means collectively Insurance Certificates and Insurance Notices;

**“Insurance Notices”** means any document relating to the Insurance Certificates that the Bank may send to either or both of the Customer and the Cardholders including changes to insurance coverage, legal and regulatory information, or any insurance related offer;

**“Material Adverse Change”** means any change or event which constitutes a change in the business, operations, condition (financial or otherwise) or properties of a party which when taken as a whole would materially impair a party’s ability to timely and fully perform its obligations under this Agreement or the ability of a party to enforce its rights and remedies under this Agreement;

**“MCI”** means Mastercard International Inc., which is the entity that administers the Mastercard program internationally;

**“Monthly Billing Date”** means the approximate day in each month on which the Bank prepares the Statements;

**“N.A.”** not applicable;

**“Objection Notice”** has the meaning given to it in section 15(g)(ii)(B);

**“Objection Period”** has the meaning given to it in section 15(g)(ii)(B);

**“Onboarding Documentation”** means the documentation package delivered by the Bank to the Customer which includes the following: the documents to be completed by the Customer to set up the Customer Account, the terms and conditions of the applicable liability waiver program referred to in section 7(e), and the terms and conditions of any features of the Card;

**“Part 1 of the Agreement”** means that part of the Agreement signed by the Customer, which sets out in part the Customer’s address and head office information, Customer Credit Limit and Effective Date and the Program features selected by the Customer;

**“Part 2 of the Agreement”** means that part of the Agreement titled Commercial Card Agreement (Additional Terms and Conditions), which is posted at [www.bmo.com/commercial-card-agreement](http://www.bmo.com/commercial-card-agreement);

**“Past Due Amount”** has the meaning given to it in section 6(a);

**“Payment Due Date”** means the day by which full payment of the amount set out in a Statement is due, which will be approximately the number of days after the Monthly Billing Date shown in Part 1 of the Agreement;

**“PIN”** means a personal identification number;

**“Program”** means the commercial card services in Canada and the United States;

**“Program Administrator”** means an individual appointed by the Customer to act on behalf of the Customer in connection with the operation and administration of the Customer Account;

**“Program Submission”** means a submission by a Program Administrator to the Bank in connection with Routine Matters;

**“Program Website”** means the website established by the Bank through which the Customer may access Statements, reports and other Program-related services;

**“Purchase”** means the use of a Card to charge to the Customer Account the price of goods or services obtained from a Vendor;

**“Routine Matters”** refers to all matters relating to the day-to-day operation and administration of the Program, including: (a) issuing and cancelling Cards; (b) adding and removing Cardholders; (c) changing Cardholders’ names, addresses, phone numbers, cost centres, departments and Card Limits; (d) changing the organizational or hierarchy set-up; (e) changing the Customer Credit Limit;

**“Schedule”** means a schedule to this Agreement;

**“Second Statement”** has the meaning given to it in section 6(b).

**“Statements”** means collectively the Card Account Statements and Customer Account Statements and a **“Statement”** refers to a Card Account Statement or Customer Account Statement;

**“Statement Review Period”** means sixty (60) days from the Monthly Billing Date;

**“TBD”** means to be determined;

**“Transaction”** means any use of a Card which results in a charge to the Customer Account including Purchases and Cash Advances, whether or not the Card was presented to a Vendor (such as in the case of an internet, mail or telephone order purchase) or the Cardholder's signature was obtained or by use of a PIN;

**“Travel Rewards”** means any travel services (including air travel, hotels and car rentals) that are available as a reward in the BMO Rewards Program for the BMO Rewards Commercial Mastercard;

**“U.S. Program”** means the Program provided to a Customer or an Affiliate with a U.S. address; and

**“Vendor”** means a merchant or supplier.

**“Vendor Payment Solution”** means a service that that facilitates transactions between Customers to Vendors.

**“Virtual Card”** means a Card number that is generated from a Customer’s Card which in turn has certain Customer designated functionality including limited use to a particular number of times (for example, one time use), a particular period of time (for example, a week), and for a particular amount of money (for example, \$1,000.00)References to “includes” mean “includes, without limitation” and references to “including” mean “including, without limitation”.

- (b) Words in the singular include the plural and words in the plural include the singular.
- (c) The Schedules constitute an integral part of this Agreement.
- (d) The division of this Agreement into sections and subsections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

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**2. Program Features**

- (a) The Bank has sole discretion over the management, operation, content and features of the Program and the Cards. Subject to the terms of this Agreement, the Bank may modify any aspect of the Program. In the event that the Program is modified, the Bank will:
  - (i) notify the Customer of any material pricing or Program feature changes or otherwise as required by law; and
  - (ii) will not notify the Customer of any immaterial operational changes that would not adversely affect the Customer (including for example a change to an interactive voice response menu).
- (b) The features of the Program selected by the Customer, together with the Customer Credit Limit are shown in of Part 1 of the Agreement.
- (c) The notice provisions are shown in Schedule 1.
- (d) Billing information together with customer service and dispute settlement provisions are shown in Schedule 2.
- (e) Pricing and fees are shown in Schedule 3, and are subject to change by the Bank on thirty (30) days advance written notice to the Customer.
- (f) Terms and conditions pertaining to the Electronic Distribution of Insurance Documents are set out in Schedule 4.

**3. Accounts and Cards**

- (a) The Bank will establish a Customer Account and extend credit to the Customer by approving Transactions up to the Customer Credit Limit. The Customer Account must only be used for business purposes and not for personal, family or household purposes; provided however that any violation of this limited use commitment does not relieve the Customer of its obligations to pay the Bank for all Charges.
- (b) Through a Program Submission, the Customer may establish an Affiliate Account and allocate a portion of the Customer Credit Limit to that Affiliate Account.
- (c) The Bank will issue a Card to a Cardholder with a Card Limit pursuant to the terms of a Program Submission. The Card will bear the name of the Cardholder and the Customer's or Affiliate's name or identifier.
- (d) The Customer will use a Program Submission to direct the Bank to cancel a Card. The Customer will continue to be liable for all Charges to the Customer Account that occurs through the use of any such Card before the Bank processes the Program Submission. The Bank will process the Program Submission in accordance with the service levels set out in section 2(a) of Schedule 2.
- (e) Cards are the property of the Bank and cannot be transferred.
- (f) If the credit extended by the Bank for the Program is unsecured, then the Bank may in its sole discretion change the Customer Credit Limit without prior notice from time to time.

- (g) The Bank may in its sole discretion do each of the following without prior notice from time to time in order to manage credit risk or to facilitate the smooth operation of the Program for the Customer:
  - (i) change the portion of the Customer Credit Limit allocated to an Affiliate Account;
  - (ii) change a Card Limit; and
  - (iii) issue renewal, replacement or temporary Cards.
- (h) The Bank may cancel or suspend the right to use a Card in each of the following instances:
  - (i) if the Bank detects unusual or suspicious activity on the Card Account;
  - (ii) if the outstanding balance of the Card Account is not paid in full within two billing cycles;  
or
  - (iii) if required by law.

#### **4. Charges, Cash Advances and Foreign Exchange**

- (a) Subject to the terms of this Agreement, a Cardholder may use a Card for the purpose of completing Transactions. All Charges incurred on a Card will be recorded on the corresponding Card Account.
- (b) The Bank may allow Cardholders to obtain Cash Advances only if the Customer has selected a Cash Advance option in the Program features chart in Part 1 of the Agreement and the Program Administrator has authorized Cash Advances for that Cardholder. For the avoidance of doubt, Cash Advance features are not available for Non-Personalized Cards.
- (c) When a Card is used to make a Transaction in a foreign currency, MCI will convert the amount into the currency of the Card using a conversion rate in effect on the day MCI processes the Transaction. The MCI conversion rate is either a government-mandated rate or a wholesale market rate. The Bank will increase the converted amount by the foreign transaction fee set out in Schedule 3. The foreign currency conversion rate in effect on the processing date for a Transaction may differ from the rate in effect on the Transaction date.

#### **5. Statements**

- (a) The Bank will prepare Statements on each Monthly Billing Date and make them available to the Customer. Regardless of whether the Customer receives a Statement, the Customer will be liable for payment of the aggregate outstanding balance of the Customer Account every month.
- (b) The Customer will ensure that each Statement is examined upon receipt.
  - (i) If the Customer does not notify the Bank of an error or omission with regard to a Statement within the Statement Review Period, the Statement will be deemed conclusively to be correct.
  - (ii) If the Customer does notify the Bank of an error or omission with regard to a Statement within the Statement Review Period, the dispute settlement procedures in section 2(c) of Schedule 2 will be followed.



## 6. Payments and Late Fees

- (a) Each month, the Customer must pay in full the aggregate outstanding balance shown on each Customer Account Statement on or before the Payment Due Date and the failure to do so will be a default by the Customer. Full payment is required even if the Customer or Cardholder expects to receive a credit from a Vendor. In the event of a disputed Charge, the Customer is entitled to reduce the full payment by the amount credited pursuant to section 2(c)(ii) of Schedule 2. Any amount not paid by the Payment Due Date will be considered past due (the “**Past Due Amount**”).
- (b) Each time that the Customer does not pay in full on the Payment Due Date the amount due on a first Statement giving rise to a Past Due Amount (the “**First PDA**”), and any portion of the First PDA remains unpaid on the Monthly Billing Date of the next Statement (the “**Second Statement**”), then the following will occur until the Card Account in question is brought current so that there are no Past Due Amounts:
  - (i) The Customer will be assessed a late fee on the balance of the First PDA that is outstanding as of the Monthly Billing Date of the Second Statement.
  - (ii) Any portion of the amount billed in the Second Statement and any subsequent Statement that remains unpaid as of the corresponding Payment Due Date for that Statement will be assessed a late fee.
  - (iii) Any late fees shown in a Statement that are not paid in full on the corresponding Payment Due Date are added to Past Due Amount and will be subject to the late fee.
  - (iv) The late fees are set out in Schedule 3.
- (c) If the Bank receives a payment in an amount less than the outstanding balance of the Customer Account shown on a Customer Account Statement, the Customer may, at the time the partial payment is made, direct how that partial payment is applied. Absent instructions from the Customer at the time that the payment is made, the Bank may apply the partial payment to the Card Accounts as the Bank chooses.
- (d) The Bank may accept payments that are marked with restrictive endorsements such as “payment in full” without losing any of its rights under this Agreement.

## 7. Customer Liability

- (a) The Customer will be liable to pay the Bank for all Charges to the Customer Account even if the aggregate of all outstanding Charges exceeds any Card Limit or the overall Customer Credit Limit and even if as between the Customer and a Cardholder any Charge resulted from improper use of a Card by the Cardholder.
- (b) The Customer will be liable for any pre-authorized payments charged to a Card Account, even after the Card Account is cancelled, unless the Customer provided a written cancellation request to the Vendor prior to being charged. If requested, the Customer will provide the Bank with a copy of the written cancellation request to the Vendor.
- (c) The Customer will: (i) promptly notify the Bank of any possible loss, theft, or unauthorized use of a Card (a “**Card Notice**”); (ii) where reasonably possible, destroy or return the Card in question;

- and (iii) cooperate with the Bank in its efforts to investigate the alleged unauthorized use.
- (d) The Customer will not be liable for any unauthorized use of a Card, except that the Customer will be liable for each of the following:
- (i) the use of a Card by an individual who has been authorized by the Customer or Cardholder to use the Customer Account, even if that person is not a Cardholder or that person does not act in accordance with the Customer's or Cardholder's instructions or expectations;
  - (ii) any use authorized by the Customer or a Cardholder before the Bank receives a Card Notice; and
  - (iii) any Transaction completed with a PIN.
- (e) The BMO Corporate Card Liability Waiver Program is available with the Canadian Program for claims related to certain wrongful Transactions. The Bank will include copies of the terms and conditions of the BMO Corporate Card Liability Waiver Program with the Onboarding Documentation.
- (f) The Customer will pay all reasonable legal fees and disbursements that the Bank incurs in any legal action to recover money payable by the Customer to the Bank pursuant to this Agreement.

#### **8. Program Administrator**

- (a) The Customer will from time to time provide the Bank with written notice specifying which individuals are to act as its Program Administrators. Those notices will be effective when the Bank receives them.
- (b) The Customer consents to the Electronic Distribution of Insurance Documents on the terms and conditions set out in Schedule 4.
- (c) The Bank may do each of the following:
- (i) Deal with any Program Administrator with regard to Routine Matters.
  - (ii) Permit a Program Administrator to temporarily permit Cash Advances (when Cash Advances are not otherwise permitted) in order to facilitate the smooth operation of the Program and respond to unexpected Cardholder situations including PIN resets (which are completed at ATMs) and providing support to stranded Cardholders that require access to cash; provided however that once the situation is addressed, the Bank will again block Cash Advances.
  - (iii) Rely on any Program Submission received from a Program Administrator through the Program Website, telephone, or e-mail.
- (d) An existing Program Administrator may establish a user identification and password for new Program Administrators. Program Administrators may change their passwords at any time and will do so when required by the Bank.

- (e) The Customer will protect each user identification and password from fraudulent use and will immediately notify the Bank of any unauthorized disclosure of any user identification and password.
- (f) Program Administrators will provide the Bank with information that the Bank requires for the operation and administration of the Program.
- (g) The Bank will send each of the following to the Program Administrator, who will distribute the following to the appropriate individuals and provide responses to the Bank where required:
  - (i) all Cards, unless a Program Administrator directs the Bank to send a Card directly to a Cardholder;
  - (ii) correspondence pertaining to Routine Matters and Program-related information requests; and
  - (iii) notices regarding changes to the Program, including the matters referred to in section 3(f) and changes to Program-related features and correspondence to Cardholders, including Insurance Documents.

## **9. Program Website**

The Bank may post the information referred to in section 8(g)(iii) to the Program Website. The Customer will provide each Cardholder with a copy of any posted information relating to Cardholders or provide each Cardholder with direct access to the Program Website so that the Cardholder can review the information directly.

## **10. Customer Responsibilities**

- (a) The Customer will be solely responsible for establishing and monitoring its own internal Program-related procedures or guidelines for Cardholders to ensure compliance with this Agreement. The Bank will not inquire or verify whether any use of a Card, or any Charge to the Customer Account, is in accordance with the Customer's procedures or guidelines.
- (b) The Customer will, and will require Cardholders to, abide by all written security instructions and directions provided by the Bank from time to time.
- (c) The Customer will provide the Bank with financial statements upon request.

## **11. Representations and Warranties**

- (a) The Customer represents and warrants to the Bank that as of the date of this Agreement:
  - (i) it and each of its Affiliates that participate in the Program are duly organized, validly existing and in good standing under the laws of all necessary jurisdictions;
  - (ii) it has full power and authority to execute, deliver and perform its obligations under this Agreement;
  - (iii) that the execution of this Agreement has been duly authorized by all necessary action, and will create a valid and binding obligation of Customer; and

- (iv) all documents provided by the Customer or its authorized officers or employees in connection with the signing of this Agreement including documents used to ascertain the existence of the Customer and the authority of the signers of this Agreement to bind the Customer are true and accurate as of the date that the Customer signs this Agreement.
- (b) Commencing as of the date of this Agreement and until such time as the Agreement is terminated, the Customer represents and warrants to the Bank that each time it requests a Card to be issued to an individual, the Customer has obtained the consent of that individual to provide his or her personal information to BMO for the purposes contemplated by the Program including processing charges and payments.

## 12. Term and Termination

- (a) The Agreement commences on the Effective Date.
- (b) Either party may terminate this Agreement as follows:
  - (i) without cause, on ninety (90) days prior written notice to the other party;
  - (ii) immediately and without prior notice in the event of a Material Adverse Change, bankruptcy or insolvency of the other party;
  - (iii) on five (5) days prior written notice if the other party fails to make any payment when due under this Agreement; and
  - (iv) immediately and without further notice if a party is in default in the performance of any of its other obligations and such default continues for thirty (30) days following receipt of a written notice regarding such default from the other party.

The right to terminate is in addition to any other right the non-defaulting party may have in respect of the default.

- (c) Upon termination of this Agreement:
  - (i) the Bank will cancel all outstanding Cards and revoke all rights and benefits of the Customer and its Cardholders;
  - (ii) the Customer will have electronic access to the Card data through the Program Website for a period of 6 months following the termination date;
  - (iii) The Bank will cooperate with the Customer's commercially reasonable requests to assist with the orderly transfer of corporate card services to another financial institution. If the Customer requests the Bank's assistance and in order to provide the assistance requested, the Bank would incur costs over and above its day-to-day operating costs (such costs, "Transfer Costs"), the Bank will advise the Customer before the Transfer Costs are incurred. If the Customer still requires the assistance requested, the Customer will pay the Bank the Transfer Costs within 30 days of the date the Bank provides the Customer with an invoice for the Transfer Costs; and
  - (iv) the Customer will continue to be liable for, and pay, the aggregate of all Charges on the Customer Account whether or not then posted to the Customer Account (including

Charges not yet incurred and accrued fees) and all such Charges will immediately be due and payable.

### 13. Disclaimers

- (a) The Bank always attempts to ensure that the Program will be operational, and to respect any available Card Limit or any available transaction limit per Card or per day or any other available limit requested by the Customer. However, due to the interconnectivity of the Mastercard, the Bank and Vendor systems and the inherent limitations and options of each system, the Bank cannot warrant that the Program will be uninterrupted or error-free or that any limits established by the Customer (such as Card Limits) will always be respected. In addition, reports prepared at the Customer's request are provided to the Customer without representation or warranty as to accuracy of the information provided. Therefore, the Customer waives any and all claims that it may have against the Bank arising out of the use and performance of the Program, except for claims for damages referred to in section 13(d).
- (b) The Bank is not responsible for any defects in, or the poor quality of, any merchandise or services obtained by means of any Card. The Customer is responsible for settling any dispute between the Customer and a Vendor, including with respect to a Vendor's right to compensation, and any such dispute will not affect the Customer's obligation to pay all Charges to the Customer Account in full to the Bank in accordance with the terms of this Agreement.
- (c) Third parties may provide some of the Program benefits and enhancements including reward programs as well as services and insurance coverage provided under separate certificates and policies. The Bank is not responsible or liable for anything in connection with those third party benefits and enhancements.
- (d) The Bank is not liable for any claim made, or loss or damages suffered by, the Customer arising directly or indirectly from the Customer's use of the Program, except for damages which the Customer suffers as a result of the Bank's gross negligence or wilful misconduct related to the terms of the Agreement. In no event is the Bank liable for any special, indirect or consequential damages, including but not limited to, lost profits and lost revenues.

### 14. Confidential Information

- (a) The Customer acknowledges that the terms of this Agreement, including information relating to pricing, are confidential, will not be disclosed and will be distributed only to its employees and agents who have a need to know the information.
- (b) The Bank acknowledges that any financial and other non-public information that the Customer provides to the Bank about its business and its Cardholders is confidential to the Customer. The Bank will use prudent measures to maintain that information securely, will distribute the information only to its employees and agents who have a need to know it for the performance of their duties, and will use it only in connection with the services contemplated by this Agreement.

### 15. Miscellaneous

- (a) Governing Law: The governing law of this Agreement will be determined as follows:

- (i) if there is only a Canadian Program, or there is a Canadian Program and U.S. Program and the head office of the Customer identified in Part 1 of the Agreement is located in Canada, then this Agreement will be interpreted in accordance with the laws of the Province or Territory where the Customer's head office is located and the federal laws of Canada applicable therein. The parties must submit to the jurisdiction of the courts of the Province or Territory in which the Customer's head office is located; and
- (ii) if there is only a U.S. Program, or where there is a Canadian Program and U.S. Program and the head office of the Customer identified in Part 1 of the Agreement is located in the United States, then this Agreement will be interpreted in accordance with U.S. federal law and, to the extent state law must be applied, then the law of the State of Illinois. The Customer submits to the jurisdiction of the courts of the State of Illinois and the United States District Court for the Northern District of Illinois and agrees that any legal action or proceeding with respect to this Agreement may be commenced in such courts.

IN EITHER CASE THE PARTIES EACH IRREVOCABLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING RELATED TO THIS AGREEMENT.

- (b) Assignment: The Customer may not transfer or assign this Agreement without the prior written consent of the Bank, which will not be unreasonably withheld. The amalgamation, merger or consolidation of the Customer will be deemed to be an assignment of this Agreement. If transferred or assigned without the Bank's prior written consent, this Agreement will be deemed to be terminated, unless the Bank agrees in writing otherwise.
- (c) Severability: If any provision of this Agreement is illegal, prohibited or unenforceable in any jurisdiction, in whole or in part, the remaining provisions of this Agreement remain valid and enforceable in that jurisdiction, and such determination does not render the Agreement invalid or unenforceable in any other jurisdiction.
- (d) Waiver: The failure or delay by either party in exercising any right or privilege with respect to the non-compliance with any provisions of this Agreement by the other party and any course of action on the part of either party, will not operate as a waiver of any rights of such party unless made in writing by such party. Any such waiver will be effective only in the specific instance and for the purpose for which it is given and will not constitute a waiver of any other rights and remedies of such party with respect to any other or future non-compliance of the other party.
- (e) Time of the Essence: Time will be of the essence of this Agreement.
- (f) Entire Agreement: This Agreement together with any Onboarding Documentation constitutes the entire agreement between the parties with respect to the subject matter and supersedes all previous corporate card agreements (without novation), negotiations, proposals, commitments, writings and understandings of any nature whatsoever, whether oral or written, pertaining to the subject matter herein, unless they have been expressly incorporated by additional reference in this Agreement.
- (g) Amendment:
  - (i) Subject to section 15(g)(ii), this Agreement may be amended only by a written agreement signed by both parties.

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- (ii) If the Bank makes a change to the standard terms of the Program on a Program-wide basis (each such event, a “**Change**”), the following terms apply:
    - A. The Bank may change this Agreement at any time upon written notice to the Customer (a “**Change Notice**”).
    - B. The Customer may, within thirty (30) days of the effective date of the Change (the “**Objection Period**”) notify the Bank that it does not agree to the Changes set out in the Change Notice (the “**Objection Notice**”).
    - C. An Objection Notice constitutes notice of termination of the Agreement on a without cause basis in accordance with section 12(b)(i).
    - D. In the event that the Agreement is terminated as a result of the Bank’s receipt of an Objection Notice, the Customer must still pay all amounts owing to the Bank pursuant to the terms of the Agreement but without reference to the Changes to which the Customer objected.
    - E. If the Bank does not receive an Objection Notice from the Customer within the Objection Period, the Customer will be deemed to have agreed to the Change indicated in the Change Notice.
  
  - (h) Survival: This section and the following sections will survive termination or expiration of this Agreement along with such definitions, interpretive provisions and such other terms and conditions in this Agreement as are necessary to give effect to the following sections: 3(e) (Card ownership), 4(c) (foreign exchange conversion), 6 (payments and late fees), 7 (Customer liability), 12(c) (effect of termination), 13 (disclaimers) and 14 (confidential information).
  
  - (i) Binding Effect: This Agreement will be binding upon and will endure to the benefit of the parties and their respective successors and permitted assigns; “successors” includes any corporation resulting from the amalgamation of any party with any other corporation.
  
  - (j) If you are a California resident, to learn more about the personal information we collect, how it is used and stored, and what rights you may have under the California Consumer Privacy Act, you can review our policy at “<https://www.bmo.com/ccpapolicy>”.

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**SCHEDULE 1****TERMS REGARDING NOTICE**

1. The Bank will send all notices and correspondence pertaining to Routine Matters to a Program Administrator via one of the following: e-mail, letter, fax or courier.
2. For all notices pertaining to matters other than Routine Matters, the following terms apply:
  - (a) The Bank will send Change Notices to a Program Administrator via one of the following: e-mail, letter, fax or courier.
  - (b) Any other notice or other communication by one party to another under this Agreement will be in writing and delivered by hand or sent by courier or fax (but not e-mail) at the addresses set forth below and will be deemed to have been received by the addressee: (i) if delivered by hand or by courier, on the day delivered or, if not a Business Day, on the next Business Day; and (ii) if transmitted by fax and receipt is confirmed prior to 3:00 p.m. ET on a Business Day, on such Business Day or, in any other case, at 10:00 a.m. ET on the Business Day next following the date of transmission.
  - (c) A party may give notice of a change of address for the purposes of this section in the manner provided above, and thereafter any notices or communication will be given to that party at such changed address.

If to BMO:

Bank of Montreal  
Corporate Card Services Department  
P.O. Box 3200 RPO Streetsville  
Mississauga, Ontario  
L5M 0S2  
Fax Number: 1-844-287-3302

If to Harris:

BMO Harris Bank N.A.  
Corporate Card Services  
P.O. Box 6138  
Carol Stream, Illinois  
60197-6138  
Fax Number: 1-844-287-3302

If to the Customer: at the address set out in Part 1 of the Agreement.



**SCHEDULE 2**

**BILLING INFORMATION AND OPTIONS,  
CUSTOMER SERVICE, DISPUTE SETTLEMENT PROVISIONS, AND OTHER PAYMENT SOLUTIONS**

**(1) Billing Information**

- (a) Each of the following applies to a Customer Account Statement:
- (i) The Customer Account Statement shows the aggregate outstanding balance of the Customer Account, which is equal to the sum of all amounts owing in respect of each Card Account Statement.
  - (ii) The Customer may choose to have one or more Customer Account Statements for each of the Canadian Program and the U.S. Program. If the Bank issues more than one Customer Account Statement, the aggregate amount owing by the Customer to the Bank is the sum of all Customer Account Statements issued.
  - (iii) Details of Charges are only set out on the Card Account Statement.
- (b) The Customer will receive a central bill for all Card activity and is responsible to pay the Bank the full balance of the Customer Account Statement through direct debit.
- (c) With respect to the delivery of Statements:
- (i) The Bank will deliver all Statements by posting them on the Program Website. The Customer may also choose to have paper copies of Card Account Statements mailed to Cardholders.
  - (ii) Each Program Administrator will have access to the Program Website, where Card Account Statements and Customer Account Statements can be accessed.
  - (iii) Each Program Administrator may allow a Cardholder access to the Program Website for the purpose of viewing the Card Account Statement for that Cardholder's Card Account.

**(2) Customer Service and Dispute Settlement Procedures**

(a) Service Level Timelines

Absent technical or other issues beyond the Bank's control, the Bank will endeavor on a commercially reasonable basis to process the following types of requests within the time period specified:

Description	Processing Time (Calculated from the time the Bank Receives the Request)
Card Cancellation – assisted by a customer service representative	Immediate

Description	Processing Time (Calculated from the time the Bank Receives the Request)
Card Cancellation – self-serve through the Program Website	1 - 3 Business Days
Card Replacement – standard	5 – 10 Business Days
Card Replacement – emergency	2 Business Days

(b) Lost or Stolen Cards

The Customer and each Cardholder will notify the Bank as soon as it is aware that a Card is lost, stolen or missing and, if required, request a new Card. Upon receipt of the notice, the Bank will cancel the missing Card.

(c) Dispute Settlement Procedures

- (i) Transactions involving disputes between the Customer and a Vendor are to be handled pursuant to section 13(b).
- (ii) Within the Statement Review Period, the Customer or Cardholder will report to the Bank all disputed Charges. The Bank will then credit the appropriate Card Accounts the amount of the disputed Charges and commence an investigation with respect to those Charges.
- (iii) After the Bank investigates the disputed Charges, the Bank will re-post any valid Charges to the appropriate Card Accounts.

**(3) Other Payment Solutions**

Bank may from time to time introduce and provide additional options for Vendor Payment Solutions and other payment solutions (collectively “Payment Solutions”). Customer may be required to agree to additional terms and conditions relating to the selected Payment Solutions, where such terms and conditions may be set by the Bank or a third-party providing a Payment Solution. Such third-party terms and conditions will not modify terms of this Agreement or Customer’s obligations to the Bank under this Agreement.

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**SCHEDULE 3 PRICING AND FEES**

#	CHARGE	DESCRIPTION	Canadian Issued		U.S. Issued
			ANNUAL PROGRAM FEE	ANNUAL CARD FEE	ANNUAL CARD FEE
1.	Annual Fee	BMO Commercial Mastercard	None	\$25 CAD	N.A.
		BMO AIR MILES Commercial Mastercard	\$99 CAD	\$50 CAD	N.A.
		BMO CashBack Commercial Mastercard	\$49 CAD	\$50 CAD	N.A.
		BMO Not-for-Profit Commercial Mastercard	None	None	N.A.
		BMO Rewards Commercial Mastercard	\$49 CAD	\$50 CAD	N.A.
		BMO U.S. Dollar Commercial Mastercard	None	\$50 USD	N.A.
		BMO Harris Bank Commercial Mastercard	N.A.	N.A.	None
2.	Statements (per Card per month)	Paper Statement	\$3 CAD		\$3 USD
		Electronic Statement	None		None
3.	Cash Advances Fees (the fee is a percentage of the total amount of the Cash Advance)	When the Cash Advance is made at a Bank branch or ATM	2%		4%
		When the Cash Advance is not made at a Bank branch or ATM	4%		4%
4.	Late Fee		1.75%		1.75%
5.	Foreign Transaction Fee		2.5%		2.0%
6.	Dishonoured Payment		\$29 CAD		\$29 USD
7.	Replacement <sup>1</sup>	Couriered Card	TBD		TBD
		Sales Draft	\$3 CAD		\$3 USD
		Statement Reprint	\$3 CAD		\$3 USD
8.	Liability Waiver Programs	BMO Corporate Card Liability Waiver Program	None		None
9.	Technology Fees	Standard Reports	None		None
		Third Party Integration (Standard File) Set-Up Fee	\$500 CAD		\$500 USD
		Custom Training Services are billed at cost plus travel expenses	TBD		TBD

<sup>1</sup>Requests to courier rush Cards or issue replacement Statements or reports will be subject to the Bank's standard service charge for such items at the time of the request.

<sup>2</sup>Plus applicable taxes.

<sup>3</sup>Supplier fees for each change or cancellation to a travel arrangement may also apply and will be displayed at the time of booking based on the specific travel reservation.

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**SCHEDULE 4****DELIVERY OF INSURANCE DOCUMENTS****Distribution Protocol**

1. Insurance Documents applicable to the Customer or otherwise for the Customer's information will be posted to the Program Website and an e-mail will be sent to the Program Administrator advising of the posting of the Insurance Documents. The Program Administrator will provide the notice from the Bank to all Cardholders so that each Cardholder may directly access the Insurance Documents from the Program Website.
2. Where the Bank has sufficient Cardholder information, the Bank will endeavor to obtain the Cardholder's consent to the Electronic Distribution of Insurance Documents.
3. If the Bank has not obtained the Cardholder's consent to the Electronic Distribution of Insurance Documents or the Cardholder has withdrawn their consent to the Electronic Distribution of Insurance Documents, then the following terms apply:
  - (a) If the Bank has the Cardholder's mailing information, the Bank will mail Insurance Documents directly to that Cardholder.
  - (b) If the Bank does not have the Cardholder's mailing information, the Customer will act as that Cardholder's agent (through the Program Administrator) for the purposes of receipt and distribution of Insurance Documents to that Cardholder. In such capacity as agent: (i) Where the Cardholder has not expressed a preference to the Bank that they want to receive a hard copy of the Insurance Documents, the Customer agrees to the Electronic Distribution of Insurance Documents; and (ii) Where the Cardholder has expressed a preference to the Bank that they want to receive a paper copy of the Insurance Documents, the Bank will provide the Program Administrator with paper copies of the Insurance Documents for distribution to that Cardholder.
4. In addition to the Electronic Distribution of Insurance Documents, the Bank may provide Insurance Notices on Statements.
5. The Bank will at any time upon request provide the Program Administrator with paper copies of any Insurance Documents.

**Miscellaneous Terms**

6. Any Insurance Documents received through Electronic Distribution will be considered "in writing" and to have been signed and delivered by the Bank as though it were an original document.
7. The Customer and each Cardholder may change their Insurance Document preference from electronic to paper copy at any time by contacting the Bank at the contact particulars set out in Schedule 2.
8. Insurance Documents will remain posted to the Program Website and will be available until the date that the Agreement is terminated. It is the responsibility of the Customer and each Cardholder to retain a copy of each Insurance Document by saving or printing a copy while it is available to view.
9. The Bank may provide paper copies of Insurance Documents if the Bank is unable to provide the Insurance Documents through Electronic Distribution or for any other reason.

This is Exhibit "4" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023



\_\_\_\_\_  
A Notary Public in and for the Province of Manitoba



This Agreement dated January 28, 2020 is made between:

3816410 MANITOBA LTD.  
(the "Customer")

- and -

EACH BANK THAT IS A SIGNATORY TO THIS AGREEMENT

The parties acknowledge each of the following:

- 1. BMO provides commercial card services in Canada and Harris provides commercial card services in the United States.
- 2. The Customer has requested a Canadian Program or a U.S. Program, or both, and each Bank that has executed this Agreement has agreed to provide the Program within their respective jurisdictions in accordance with the terms and conditions stated in this Agreement.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties agree as follows:

1. **Terms and Conditions that form part of this Commercial Card Agreement:** The Commercial Card Agreement consists of this document ("Part 1 of the Agreement") and the Commercial Card Agreement (Additional Terms and Conditions) which is posted at [www.bmo.com/commercial-card-agreement](http://www.bmo.com/commercial-card-agreement) ("Part 2 of the Agreement"), together with all Schedules, and in each case as such documents may be amended and restated from time to time. By signing below, the Customer agrees to all of the terms and conditions found in Part 1 of the Agreement and Part 2 of the Agreement.

2. **Defined Terms:** Capitalized terms that are not defined in Part 1 of the Agreement are defined in Part 2 of the Agreement.

3. **Customer Credit Limit and Term:** This Agreement will end in accordance the terms set out in section 12 of Part 2 of the Agreement. The Customer Credit Limit is as follows:

Canadian Program:  US\$ 50,000.00

4. **Customer's Head Office and Contact Information:** The Customer's head office and contact information is set out next to the Customer's signature below. This information will be used to determine the governing law (discussed further in section 15 of Part 2 of the Agreement) and for the delivery of notices (discussed further in Schedule 1 of Part 2 of the Agreement).

5. **Payment Due Date and Program Features:** The Payment Due Date for all Cards is 21 days, though the Customer can elect to make earlier payments. The features of the Program selected by the Customer are as follows:

CARD PRODUCT	CARD CURRENCY		CASH ADVANCES	PAPER STATEMENTS
	CDN\$	US\$		
<b>CANADIAN PROGRAM</b>				
BMO US Dollar Commercial MasterCard – \$50 Annual Fee		✓		

6. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which taken together will constitute one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or other electronic transmission will have the same force and effect as the delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by facsimile or other electronic transmission will also deliver an original executed counterpart, but the failure to do so will not affect the validity, enforceability or binding effect of this Agreement.
7. **Applicable only in the Province of Quebec:** It is the express wish of the parties that this Agreement and any related documents be drawn up in the English language. *Les parties confirment leur volonté expresse que la présente convention ainsi que tous les documents s'y rattachant soient rédigés en anglais.*

The parties have executed and delivered this Agreement as of the date first set out above.

Insert the Customer's Head Office Address and Contact Information:

Name: 3816410 MANITOBA LTD.  
 Address: 550 GEORGE AVE  
UNIT 1  
WINKLER Manitoba R6W0J4  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Fax #: (     )

3816410 MANITOBA LTD.

Per:   
 Name: PETER BERGEN  
 Title: PRESIDENT

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

**BANK OF MONTREAL**

Per:   
 Name: TODD LAWRENCE  
 Title: RELATIONSHIP MANAGER





## BMO and BMO Harris Terms and Conditions Commercial Card

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The Commercial Card Agreement consists of this document (which is Part 2 of the Agreement) and Part 1 of the Agreement (which was signed by the Customer), together with all Schedules, and in each case as such documents may be amended and restated from time to time.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties agree as follows:

### 1. Definitions and Interpretation

(a) Capitalized terms used in this Agreement are defined as follows:

**"Affiliate"** means an entity which is related to the Customer in one of the following ways: the entity is the parent of the Customer, the entity is a subsidiary of the Customer, the entity and the Customer are each subsidiaries of the same parent, or the entity is a joint venture owned in part by the Customer;

**"Affiliate Account"** means a sub-account of the Customer Account established by the Bank for use by a division or Affiliate of the Customer;

**"Agreement"** means this corporate card agreement (including Part 1 of the Agreement, Part 2 of the Agreement, and all attached Schedules); as such agreement may be amended and restated from time to time;

**"ATM"** means automated teller machine;

**"Bank"** refers to the contracting parties to this Agreement other than the Customer and has the following meaning:

- (i) where there is only a Canadian Program as evidenced by the Program features selection of Part 1 of the Agreement, "Bank" means BMO alone, and for the avoidance of doubt, Harris is not a party to this Agreement; or
- (ii) where there is only a U.S. Program as evidenced by the Program features selection in of Part 1 of the Agreement, "Bank" means Harris alone, and for the avoidance of doubt, BMO is not a party to this Agreement; or
- (iii) where there is both a Canadian Program and a U.S. Program as evidenced by the Program features selection in of Part 1 of the Agreement, "Bank" means both BMO and Harris.

**"Billing Period"** means the period beginning the day after the immediately preceding Monthly Billing Date and ending on the current Monthly Billing Date;

**"BMO"** means Bank of Montreal;

**"Business Day"** means, with respect to the Canadian Program, a day on which BMO is generally open for business in Ontario, Canada, and with respect to the U.S. Program, a day on which Harris

is generally open for business in Illinois, USA, and in each case does not include Saturdays, Sundays or statutory holidays;

**"Canadian Program"** means the Program provided to a Customer or an Affiliate with a Canadian address;

**"Card"** means a commercial credit card issued by the Bank in connection with the Customer Account;

**"Card Account"** means a sub-account of the Customer Account which is established for each Card;

**"Card Account Statement"** means the monthly statement setting out the outstanding balance of a Card as of the stated Monthly Billing Date;

**"Card Limit"** means the credit limit established for a Card;

**"Card Notice"** has the meaning given to it in section 7(c);

**"Cardholder"** means an employee of, or a contractor providing services to, the Customer or Affiliate to whom a Card is issued;

**"Cash Advance"** means an advance of cash obtained through the use of a Card from the Bank or another financial institution accepting the Card;

**"Change"** has the meaning given to it in section 15(g)(ii);

**"Change Notice"** has the meaning given to it in section 15(g)(ii)(A);

**"Charges"** means all charges posted to the Customer Account including all Transactions, fees and service charges;

**"Customer Account"** means the commercial card account established by the Bank for the Customer;

**"Customer Account Statement"** means a monthly statement showing the outstanding balance of the Customer Account as of a Monthly Billing Date;

**"Customer Credit Limit"** means the Customer Account credit limit established by the Bank from time to time, and which as of the Effective Date is shown in of Part 1 of the Agreement;

**"Effective Date"** refers to the first day that the Agreement is in effect, as shown in of Part 1 of the Agreement;

**"Electronic Distribution"** means distribution through e-mail or posting on the Program Website;

**"First PDA"** has the meaning given to it in section 6(b).

**"Harris"** means BMO Harris Bank N.A.;

**"Insurance Certificates"** means documents evidencing Program-related insurance coverage including insurance certificates, policies of insurance, and summaries of assistance services (any

two or more of which may be combined into a single document) including any notices of amendment to any of the foregoing documents;

**“Insurance Documents”** means collectively Insurance Certificates and Insurance Notices;

**“Insurance Notices”** means any document relating to the Insurance Certificates that the Bank may send to either or both of the Customer and the Cardholders including changes to insurance coverage, legal and regulatory information, or any insurance related offer;

**“Material Adverse Change”** means any change or event which constitutes a change in the business, operations, condition (financial or otherwise) or properties of a party which when taken as a whole would materially impair a party’s ability to timely and fully perform its obligations under this Agreement or the ability of a party to enforce its rights and remedies under this Agreement;

**“MCI”** means Mastercard International Inc., which is the entity that administers the Mastercard program internationally;

**“Monthly Billing Date”** means the approximate day in each month on which the Bank prepares the Statements;

**“N.A.”** not applicable;

**“Objection Notice”** has the meaning given to it in section 15(g)(ii)(B);

**“Objection Period”** has the meaning given to it in section 15(g)(ii)(B);

**“Onboarding Documentation”** means the documentation package delivered by the Bank to the Customer which includes the following: the documents to be completed by the Customer to set up the Customer Account, the terms and conditions of the applicable liability waiver program referred to in section 7(e), and the terms and conditions of any features of the Card;

**“Part 1 of the Agreement”** means that part of the Agreement signed by the Customer, which sets out in part the Customer’s address and head office information, Customer Credit Limit and Effective Date and the Program features selected by the Customer;

**“Part 2 of the Agreement”** means that part of the Agreement titled Commercial Card Agreement (Additional Terms and Conditions), which is posted at [www.bmo.com/commercial-card-agreement](http://www.bmo.com/commercial-card-agreement);

**“Past Due Amount”** has the meaning given to it in section 6(a);

**“Payment Due Date”** means the day by which full payment of the amount set out in a Statement is due, which will be approximately the number of days after the Monthly Billing Date shown in Part 1 of the Agreement;

**“PIN”** means a personal identification number;

**“Program”** means the commercial card services in Canada and the United States;

**“Program Administrator”** means an individual appointed by the Customer to act on behalf of the Customer in connection with the operation and administration of the Customer Account;

**“Program Submission”** means a submission by a Program Administrator to the Bank in connection with Routine Matters;

**“Program Website”** means the website established by the Bank through which the Customer may access Statements, reports and other Program-related services;

**“Purchase”** means the use of a Card to charge to the Customer Account the price of goods or services obtained from a Vendor;

**“Routine Matters”** refers to all matters relating to the day-to-day operation and administration of the Program, including: (a) issuing and cancelling Cards; (b) adding and removing Cardholders; (c) changing Cardholders’ names, addresses, phone numbers, cost centres, departments and Card Limits; (d) changing the organizational or hierarchy set-up; (e) changing the Customer Credit Limit;

**“Schedule”** means a schedule to this Agreement;

**“Second Statement”** has the meaning given to it in section 6(b).

**“Statements”** means collectively the Card Account Statements and Customer Account Statements and a **“Statement”** refers to a Card Account Statement or Customer Account Statement;

**“Statement Review Period”** means sixty (60) days from the Monthly Billing Date;

**“TBD”** means to be determined;

**“Transaction”** means any use of a Card which results in a charge to the Customer Account including Purchases and Cash Advances, whether or not the Card was presented to a Vendor (such as in the case of an internet, mail or telephone order purchase) or the Cardholder's signature was obtained or by use of a PIN;

**“Travel Rewards”** means any travel services (including air travel, hotels and car rentals) that are available as a reward in the BMO Rewards Program for the BMO Rewards Commercial Mastercard;

**“U.S. Program”** means the Program provided to a Customer or an Affiliate with a U.S. address; and

**“Vendor”** means a merchant or supplier.

**“Vendor Payment Solution”** means a service that that facilitates transactions between Customers to Vendors.

**“Virtual Card”** means a Card number that is generated from a Customer’s Card which in turn has certain Customer designated functionality including limited use to a particular number of times (for example, one time use), a particular period of time (for example, a week), and for a particular amount of money (for example, \$1,000.00)References to “includes” mean “includes, without limitation” and references to “including” mean “including, without limitation”.

- (b) Words in the singular include the plural and words in the plural include the singular.
- (c) The Schedules constitute an integral part of this Agreement.
- (d) The division of this Agreement into sections and subsections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

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**2. Program Features**

- (a) The Bank has sole discretion over the management, operation, content and features of the Program and the Cards. Subject to the terms of this Agreement, the Bank may modify any aspect of the Program. In the event that the Program is modified, the Bank will:
  - (i) notify the Customer of any material pricing or Program feature changes or otherwise as required by law; and
  - (ii) will not notify the Customer of any immaterial operational changes that would not adversely affect the Customer (including for example a change to an interactive voice response menu).
- (b) The features of the Program selected by the Customer, together with the Customer Credit Limit are shown in of Part 1 of the Agreement.
- (c) The notice provisions are shown in Schedule 1.
- (d) Billing information together with customer service and dispute settlement provisions are shown in Schedule 2.
- (e) Pricing and fees are shown in Schedule 3, and are subject to change by the Bank on thirty (30) days advance written notice to the Customer.
- (f) Terms and conditions pertaining to the Electronic Distribution of Insurance Documents are set out in Schedule 4.

**3. Accounts and Cards**

- (a) The Bank will establish a Customer Account and extend credit to the Customer by approving Transactions up to the Customer Credit Limit. The Customer Account must only be used for business purposes and not for personal, family or household purposes; provided however that any violation of this limited use commitment does not relieve the Customer of its obligations to pay the Bank for all Charges.
- (b) Through a Program Submission, the Customer may establish an Affiliate Account and allocate a portion of the Customer Credit Limit to that Affiliate Account.
- (c) The Bank will issue a Card to a Cardholder with a Card Limit pursuant to the terms of a Program Submission. The Card will bear the name of the Cardholder and the Customer's or Affiliate's name or identifier.
- (d) The Customer will use a Program Submission to direct the Bank to cancel a Card. The Customer will continue to be liable for all Charges to the Customer Account that occurs through the use of any such Card before the Bank processes the Program Submission. The Bank will process the Program Submission in accordance with the service levels set out in section 2(a) of Schedule 2.
- (e) Cards are the property of the Bank and cannot be transferred.
- (f) If the credit extended by the Bank for the Program is unsecured, then the Bank may in its sole discretion change the Customer Credit Limit without prior notice from time to time.

- (g) The Bank may in its sole discretion do each of the following without prior notice from time to time in order to manage credit risk or to facilitate the smooth operation of the Program for the Customer:
  - (i) change the portion of the Customer Credit Limit allocated to an Affiliate Account;
  - (ii) change a Card Limit; and
  - (iii) issue renewal, replacement or temporary Cards.
- (h) The Bank may cancel or suspend the right to use a Card in each of the following instances:
  - (i) if the Bank detects unusual or suspicious activity on the Card Account;
  - (ii) if the outstanding balance of the Card Account is not paid in full within two billing cycles;  
or
  - (iii) if required by law.

#### **4. Charges, Cash Advances and Foreign Exchange**

- (a) Subject to the terms of this Agreement, a Cardholder may use a Card for the purpose of completing Transactions. All Charges incurred on a Card will be recorded on the corresponding Card Account.
- (b) The Bank may allow Cardholders to obtain Cash Advances only if the Customer has selected a Cash Advance option in the Program features chart in Part 1 of the Agreement and the Program Administrator has authorized Cash Advances for that Cardholder. For the avoidance of doubt, Cash Advance features are not available for Non-Personalized Cards.
- (c) When a Card is used to make a Transaction in a foreign currency, MCI will convert the amount into the currency of the Card using a conversion rate in effect on the day MCI processes the Transaction. The MCI conversion rate is either a government-mandated rate or a wholesale market rate. The Bank will increase the converted amount by the foreign transaction fee set out in Schedule 3. The foreign currency conversion rate in effect on the processing date for a Transaction may differ from the rate in effect on the Transaction date.

#### **5. Statements**

- (a) The Bank will prepare Statements on each Monthly Billing Date and make them available to the Customer. Regardless of whether the Customer receives a Statement, the Customer will be liable for payment of the aggregate outstanding balance of the Customer Account every month.
- (b) The Customer will ensure that each Statement is examined upon receipt.
  - (i) If the Customer does not notify the Bank of an error or omission with regard to a Statement within the Statement Review Period, the Statement will be deemed conclusively to be correct.
  - (ii) If the Customer does notify the Bank of an error or omission with regard to a Statement within the Statement Review Period, the dispute settlement procedures in section 2(c) of Schedule 2 will be followed.

## 6. Payments and Late Fees

- (a) Each month, the Customer must pay in full the aggregate outstanding balance shown on each Customer Account Statement on or before the Payment Due Date and the failure to do so will be a default by the Customer. Full payment is required even if the Customer or Cardholder expects to receive a credit from a Vendor. In the event of a disputed Charge, the Customer is entitled to reduce the full payment by the amount credited pursuant to section 2(c)(ii) of Schedule 2. Any amount not paid by the Payment Due Date will be considered past due (the “**Past Due Amount**”).
- (b) Each time that the Customer does not pay in full on the Payment Due Date the amount due on a first Statement giving rise to a Past Due Amount (the “**First PDA**”), and any portion of the First PDA remains unpaid on the Monthly Billing Date of the next Statement (the “**Second Statement**”), then the following will occur until the Card Account in question is brought current so that there are no Past Due Amounts:
  - (i) The Customer will be assessed a late fee on the balance of the First PDA that is outstanding as of the Monthly Billing Date of the Second Statement.
  - (ii) Any portion of the amount billed in the Second Statement and any subsequent Statement that remains unpaid as of the corresponding Payment Due Date for that Statement will be assessed a late fee.
  - (iii) Any late fees shown in a Statement that are not paid in full on the corresponding Payment Due Date are added to Past Due Amount and will be subject to the late fee.
  - (iv) The late fees are set out in Schedule 3.
- (c) If the Bank receives a payment in an amount less than the outstanding balance of the Customer Account shown on a Customer Account Statement, the Customer may, at the time the partial payment is made, direct how that partial payment is applied. Absent instructions from the Customer at the time that the payment is made, the Bank may apply the partial payment to the Card Accounts as the Bank chooses.
- (d) The Bank may accept payments that are marked with restrictive endorsements such as “payment in full” without losing any of its rights under this Agreement.

## 7. Customer Liability

- (a) The Customer will be liable to pay the Bank for all Charges to the Customer Account even if the aggregate of all outstanding Charges exceeds any Card Limit or the overall Customer Credit Limit and even if as between the Customer and a Cardholder any Charge resulted from improper use of a Card by the Cardholder.
- (b) The Customer will be liable for any pre-authorized payments charged to a Card Account, even after the Card Account is cancelled, unless the Customer provided a written cancellation request to the Vendor prior to being charged. If requested, the Customer will provide the Bank with a copy of the written cancellation request to the Vendor.
- (c) The Customer will: (i) promptly notify the Bank of any possible loss, theft, or unauthorized use of a Card (a “**Card Notice**”); (ii) where reasonably possible, destroy or return the Card in question;

- and (iii) cooperate with the Bank in its efforts to investigate the alleged unauthorized use.
- (d) The Customer will not be liable for any unauthorized use of a Card, except that the Customer will be liable for each of the following:
- (i) the use of a Card by an individual who has been authorized by the Customer or Cardholder to use the Customer Account, even if that person is not a Cardholder or that person does not act in accordance with the Customer's or Cardholder's instructions or expectations;
  - (ii) any use authorized by the Customer or a Cardholder before the Bank receives a Card Notice; and
  - (iii) any Transaction completed with a PIN.
- (e) The BMO Corporate Card Liability Waiver Program is available with the Canadian Program for claims related to certain wrongful Transactions. The Bank will include copies of the terms and conditions of the BMO Corporate Card Liability Waiver Program with the Onboarding Documentation.
- (f) The Customer will pay all reasonable legal fees and disbursements that the Bank incurs in any legal action to recover money payable by the Customer to the Bank pursuant to this Agreement.

#### **8. Program Administrator**

- (a) The Customer will from time to time provide the Bank with written notice specifying which individuals are to act as its Program Administrators. Those notices will be effective when the Bank receives them.
- (b) The Customer consents to the Electronic Distribution of Insurance Documents on the terms and conditions set out in Schedule 4.
- (c) The Bank may do each of the following:
- (i) Deal with any Program Administrator with regard to Routine Matters.
  - (ii) Permit a Program Administrator to temporarily permit Cash Advances (when Cash Advances are not otherwise permitted) in order to facilitate the smooth operation of the Program and respond to unexpected Cardholder situations including PIN resets (which are completed at ATMs) and providing support to stranded Cardholders that require access to cash; provided however that once the situation is addressed, the Bank will again block Cash Advances.
  - (iii) Rely on any Program Submission received from a Program Administrator through the Program Website, telephone, or e-mail.
- (d) An existing Program Administrator may establish a user identification and password for new Program Administrators. Program Administrators may change their passwords at any time and will do so when required by the Bank.



- (e) The Customer will protect each user identification and password from fraudulent use and will immediately notify the Bank of any unauthorized disclosure of any user identification and password.
- (f) Program Administrators will provide the Bank with information that the Bank requires for the operation and administration of the Program.
- (g) The Bank will send each of the following to the Program Administrator, who will distribute the following to the appropriate individuals and provide responses to the Bank where required:
  - (i) all Cards, unless a Program Administrator directs the Bank to send a Card directly to a Cardholder;
  - (ii) correspondence pertaining to Routine Matters and Program-related information requests; and
  - (iii) notices regarding changes to the Program, including the matters referred to in section 3(f) and changes to Program-related features and correspondence to Cardholders, including Insurance Documents.

## 9. Program Website

The Bank may post the information referred to in section 8(g)(iii) to the Program Website. The Customer will provide each Cardholder with a copy of any posted information relating to Cardholders or provide each Cardholder with direct access to the Program Website so that the Cardholder can review the information directly.

## 10. Customer Responsibilities

- (a) The Customer will be solely responsible for establishing and monitoring its own internal Program-related procedures or guidelines for Cardholders to ensure compliance with this Agreement. The Bank will not inquire or verify whether any use of a Card, or any Charge to the Customer Account, is in accordance with the Customer's procedures or guidelines.
- (b) The Customer will, and will require Cardholders to, abide by all written security instructions and directions provided by the Bank from time to time.
- (c) The Customer will provide the Bank with financial statements upon request.

## 11. Representations and Warranties

- (a) The Customer represents and warrants to the Bank that as of the date of this Agreement:
  - (i) it and each of its Affiliates that participate in the Program are duly organized, validly existing and in good standing under the laws of all necessary jurisdictions;
  - (ii) it has full power and authority to execute, deliver and perform its obligations under this Agreement;
  - (iii) that the execution of this Agreement has been duly authorized by all necessary action, and will create a valid and binding obligation of Customer; and

- (iv) all documents provided by the Customer or its authorized officers or employees in connection with the signing of this Agreement including documents used to ascertain the existence of the Customer and the authority of the signers of this Agreement to bind the Customer are true and accurate as of the date that the Customer signs this Agreement.
- (b) Commencing as of the date of this Agreement and until such time as the Agreement is terminated, the Customer represents and warrants to the Bank that each time it requests a Card to be issued to an individual, the Customer has obtained the consent of that individual to provide his or her personal information to BMO for the purposes contemplated by the Program including processing charges and payments.

## 12. Term and Termination

- (a) The Agreement commences on the Effective Date.
- (b) Either party may terminate this Agreement as follows:
  - (i) without cause, on ninety (90) days prior written notice to the other party;
  - (ii) immediately and without prior notice in the event of a Material Adverse Change, bankruptcy or insolvency of the other party;
  - (iii) on five (5) days prior written notice if the other party fails to make any payment when due under this Agreement; and
  - (iv) immediately and without further notice if a party is in default in the performance of any of its other obligations and such default continues for thirty (30) days following receipt of a written notice regarding such default from the other party.

The right to terminate is in addition to any other right the non-defaulting party may have in respect of the default.

- (c) Upon termination of this Agreement:
  - (i) the Bank will cancel all outstanding Cards and revoke all rights and benefits of the Customer and its Cardholders;
  - (ii) the Customer will have electronic access to the Card data through the Program Website for a period of 6 months following the termination date;
  - (iii) The Bank will cooperate with the Customer's commercially reasonable requests to assist with the orderly transfer of corporate card services to another financial institution. If the Customer requests the Bank's assistance and in order to provide the assistance requested, the Bank would incur costs over and above its day-to-day operating costs (such costs, "Transfer Costs"), the Bank will advise the Customer before the Transfer Costs are incurred. If the Customer still requires the assistance requested, the Customer will pay the Bank the Transfer Costs within 30 days of the date the Bank provides the Customer with an invoice for the Transfer Costs; and
  - (iv) the Customer will continue to be liable for, and pay, the aggregate of all Charges on the Customer Account whether or not then posted to the Customer Account (including

Charges not yet incurred and accrued fees) and all such Charges will immediately be due and payable.

### 13. Disclaimers

- (a) The Bank always attempts to ensure that the Program will be operational, and to respect any available Card Limit or any available transaction limit per Card or per day or any other available limit requested by the Customer. However, due to the interconnectivity of the Mastercard, the Bank and Vendor systems and the inherent limitations and options of each system, the Bank cannot warrant that the Program will be uninterrupted or error-free or that any limits established by the Customer (such as Card Limits) will always be respected. In addition, reports prepared at the Customer's request are provided to the Customer without representation or warranty as to accuracy of the information provided. Therefore, the Customer waives any and all claims that it may have against the Bank arising out of the use and performance of the Program, except for claims for damages referred to in section 13(d).
- (b) The Bank is not responsible for any defects in, or the poor quality of, any merchandise or services obtained by means of any Card. The Customer is responsible for settling any dispute between the Customer and a Vendor, including with respect to a Vendor's right to compensation, and any such dispute will not affect the Customer's obligation to pay all Charges to the Customer Account in full to the Bank in accordance with the terms of this Agreement.
- (c) Third parties may provide some of the Program benefits and enhancements including reward programs as well as services and insurance coverage provided under separate certificates and policies. The Bank is not responsible or liable for anything in connection with those third party benefits and enhancements.
- (d) The Bank is not liable for any claim made, or loss or damages suffered by, the Customer arising directly or indirectly from the Customer's use of the Program, except for damages which the Customer suffers as a result of the Bank's gross negligence or wilful misconduct related to the terms of the Agreement. In no event is the Bank liable for any special, indirect or consequential damages, including but not limited to, lost profits and lost revenues.

### 14. Confidential Information

- (a) The Customer acknowledges that the terms of this Agreement, including information relating to pricing, are confidential, will not be disclosed and will be distributed only to its employees and agents who have a need to know the information.
- (b) The Bank acknowledges that any financial and other non-public information that the Customer provides to the Bank about its business and its Cardholders is confidential to the Customer. The Bank will use prudent measures to maintain that information securely, will distribute the information only to its employees and agents who have a need to know it for the performance of their duties, and will use it only in connection with the services contemplated by this Agreement.

### 15. Miscellaneous

- (a) Governing Law: The governing law of this Agreement will be determined as follows:

- (i) if there is only a Canadian Program, or there is a Canadian Program and U.S. Program and the head office of the Customer identified in Part 1 of the Agreement is located in Canada, then this Agreement will be interpreted in accordance with the laws of the Province or Territory where the Customer's head office is located and the federal laws of Canada applicable therein. The parties must submit to the jurisdiction of the courts of the Province or Territory in which the Customer's head office is located; and
- (ii) if there is only a U.S. Program, or where there is a Canadian Program and U.S. Program and the head office of the Customer identified in Part 1 of the Agreement is located in the United States, then this Agreement will be interpreted in accordance with U.S. federal law and, to the extent state law must be applied, then the law of the State of Illinois. The Customer submits to the jurisdiction of the courts of the State of Illinois and the United States District Court for the Northern District of Illinois and agrees that any legal action or proceeding with respect to this Agreement may be commenced in such courts.

IN EITHER CASE THE PARTIES EACH IRREVOCABLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING RELATED TO THIS AGREEMENT.

- (b) Assignment: The Customer may not transfer or assign this Agreement without the prior written consent of the Bank, which will not be unreasonably withheld. The amalgamation, merger or consolidation of the Customer will be deemed to be an assignment of this Agreement. If transferred or assigned without the Bank's prior written consent, this Agreement will be deemed to be terminated, unless the Bank agrees in writing otherwise.
- (c) Severability: If any provision of this Agreement is illegal, prohibited or unenforceable in any jurisdiction, in whole or in part, the remaining provisions of this Agreement remain valid and enforceable in that jurisdiction, and such determination does not render the Agreement invalid or unenforceable in any other jurisdiction.
- (d) Waiver: The failure or delay by either party in exercising any right or privilege with respect to the non-compliance with any provisions of this Agreement by the other party and any course of action on the part of either party, will not operate as a waiver of any rights of such party unless made in writing by such party. Any such waiver will be effective only in the specific instance and for the purpose for which it is given and will not constitute a waiver of any other rights and remedies of such party with respect to any other or future non-compliance of the other party.
- (e) Time of the Essence: Time will be of the essence of this Agreement.
- (f) Entire Agreement: This Agreement together with any Onboarding Documentation constitutes the entire agreement between the parties with respect to the subject matter and supersedes all previous corporate card agreements (without novation), negotiations, proposals, commitments, writings and understandings of any nature whatsoever, whether oral or written, pertaining to the subject matter herein, unless they have been expressly incorporated by additional reference in this Agreement.
- (g) Amendment:
  - (i) Subject to section 15(g)(ii), this Agreement may be amended only by a written agreement signed by both parties.

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- (ii) If the Bank makes a change to the standard terms of the Program on a Program-wide basis (each such event, a “**Change**”), the following terms apply:
    - A. The Bank may change this Agreement at any time upon written notice to the Customer (a “**Change Notice**”).
    - B. The Customer may, within thirty (30) days of the effective date of the Change (the “**Objection Period**”) notify the Bank that it does not agree to the Changes set out in the Change Notice (the “**Objection Notice**”).
    - C. An Objection Notice constitutes notice of termination of the Agreement on a without cause basis in accordance with section 12(b)(i).
    - D. In the event that the Agreement is terminated as a result of the Bank’s receipt of an Objection Notice, the Customer must still pay all amounts owing to the Bank pursuant to the terms of the Agreement but without reference to the Changes to which the Customer objected.
    - E. If the Bank does not receive an Objection Notice from the Customer within the Objection Period, the Customer will be deemed to have agreed to the Change indicated in the Change Notice.
  
  - (h) Survival: This section and the following sections will survive termination or expiration of this Agreement along with such definitions, interpretive provisions and such other terms and conditions in this Agreement as are necessary to give effect to the following sections: 3(e) (Card ownership), 4(c) (foreign exchange conversion), 6 (payments and late fees), 7 (Customer liability), 12(c) (effect of termination), 13 (disclaimers) and 14 (confidential information).
  
  - (i) Binding Effect: This Agreement will be binding upon and will endure to the benefit of the parties and their respective successors and permitted assigns; “successors” includes any corporation resulting from the amalgamation of any party with any other corporation.
  
  - (j) If you are a California resident, to learn more about the personal information we collect, how it is used and stored, and what rights you may have under the California Consumer Privacy Act, you can review our policy at “<https://www.bmo.com/ccpapolicy>”.

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**SCHEDULE 1****TERMS REGARDING NOTICE**

1. The Bank will send all notices and correspondence pertaining to Routine Matters to a Program Administrator via one of the following: e-mail, letter, fax or courier.
2. For all notices pertaining to matters other than Routine Matters, the following terms apply:
  - (a) The Bank will send Change Notices to a Program Administrator via one of the following: e-mail, letter, fax or courier.
  - (b) Any other notice or other communication by one party to another under this Agreement will be in writing and delivered by hand or sent by courier or fax (but not e-mail) at the addresses set forth below and will be deemed to have been received by the addressee: (i) if delivered by hand or by courier, on the day delivered or, if not a Business Day, on the next Business Day; and (ii) if transmitted by fax and receipt is confirmed prior to 3:00 p.m. ET on a Business Day, on such Business Day or, in any other case, at 10:00 a.m. ET on the Business Day next following the date of transmission.
  - (c) A party may give notice of a change of address for the purposes of this section in the manner provided above, and thereafter any notices or communication will be given to that party at such changed address.

If to BMO:

Bank of Montreal  
Corporate Card Services Department  
P.O. Box 3200 RPO Streetsville  
Mississauga, Ontario  
L5M 0S2  
Fax Number: 1-844-287-3302

If to Harris:

BMO Harris Bank N.A.  
Corporate Card Services  
P.O. Box 6138  
Carol Stream, Illinois  
60197-6138  
Fax Number: 1-844-287-3302

If to the Customer: at the address set out in Part 1 of the Agreement.

**SCHEDULE 2**

**BILLING INFORMATION AND OPTIONS,  
CUSTOMER SERVICE, DISPUTE SETTLEMENT PROVISIONS, AND OTHER PAYMENT SOLUTIONS**

**(1) Billing Information**

- (a) Each of the following applies to a Customer Account Statement:
- (i) The Customer Account Statement shows the aggregate outstanding balance of the Customer Account, which is equal to the sum of all amounts owing in respect of each Card Account Statement.
  - (ii) The Customer may choose to have one or more Customer Account Statements for each of the Canadian Program and the U.S. Program. If the Bank issues more than one Customer Account Statement, the aggregate amount owing by the Customer to the Bank is the sum of all Customer Account Statements issued.
  - (iii) Details of Charges are only set out on the Card Account Statement.
- (b) The Customer will receive a central bill for all Card activity and is responsible to pay the Bank the full balance of the Customer Account Statement through direct debit.
- (c) With respect to the delivery of Statements:
- (i) The Bank will deliver all Statements by posting them on the Program Website. The Customer may also choose to have paper copies of Card Account Statements mailed to Cardholders.
  - (ii) Each Program Administrator will have access to the Program Website, where Card Account Statements and Customer Account Statements can be accessed.
  - (iii) Each Program Administrator may allow a Cardholder access to the Program Website for the purpose of viewing the Card Account Statement for that Cardholder's Card Account.

**(2) Customer Service and Dispute Settlement Procedures**

(a) Service Level Timelines

Absent technical or other issues beyond the Bank's control, the Bank will endeavor on a commercially reasonable basis to process the following types of requests within the time period specified:

Description	Processing Time (Calculated from the time the Bank Receives the Request)
Card Cancellation – assisted by a customer service representative	Immediate

Description	Processing Time (Calculated from the time the Bank Receives the Request)
Card Cancellation – self-serve through the Program Website	1 - 3 Business Days
Card Replacement – standard	5 – 10 Business Days
Card Replacement – emergency	2 Business Days

(b) Lost or Stolen Cards

The Customer and each Cardholder will notify the Bank as soon as it is aware that a Card is lost, stolen or missing and, if required, request a new Card. Upon receipt of the notice, the Bank will cancel the missing Card.

(c) Dispute Settlement Procedures

- (i) Transactions involving disputes between the Customer and a Vendor are to be handled pursuant to section 13(b).
- (ii) Within the Statement Review Period, the Customer or Cardholder will report to the Bank all disputed Charges. The Bank will then credit the appropriate Card Accounts the amount of the disputed Charges and commence an investigation with respect to those Charges.
- (iii) After the Bank investigates the disputed Charges, the Bank will re-post any valid Charges to the appropriate Card Accounts.

**(3) Other Payment Solutions**

Bank may from time to time introduce and provide additional options for Vendor Payment Solutions and other payment solutions (collectively "Payment Solutions"). Customer may be required to agree to additional terms and conditions relating to the selected Payment Solutions, where such terms and conditions may be set by the Bank or a third-party providing a Payment Solution. Such third-party terms and conditions will not modify terms of this Agreement or Customer's obligations to the Bank under this Agreement.



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**SCHEDULE 3 PRICING AND FEES**

#	CHARGE	DESCRIPTION	Canadian Issued		U.S. Issued
			ANNUAL PROGRAM FEE	ANNUAL CARD FEE	ANNUAL CARD FEE
1.	Annual Fee	BMO Commercial Mastercard	None	\$25 CAD	N.A.
		BMO AIR MILES Commercial Mastercard	\$99 CAD	\$50 CAD	N.A.
		BMO CashBack Commercial Mastercard	\$49 CAD	\$50 CAD	N.A.
		BMO Not-for-Profit Commercial Mastercard	None	None	N.A.
		BMO Rewards Commercial Mastercard	\$49 CAD	\$50 CAD	N.A.
		BMO U.S. Dollar Commercial Mastercard	None	\$50 USD	N.A.
		BMO Harris Bank Commercial Mastercard	N.A.	N.A.	None
2.	Statements (per Card per month)	Paper Statement	\$3 CAD		\$3 USD
		Electronic Statement	None		None
3.	Cash Advances Fees (the fee is a percentage of the total amount of the Cash Advance)	When the Cash Advance is made at a Bank branch or ATM	2%		4%
		When the Cash Advance is not made at a Bank branch or ATM	4%		4%
4.	Late Fee		1.75%		1.75%
5.	Foreign Transaction Fee		2.5%		2.0%
6.	Dishonoured Payment		\$29 CAD		\$29 USD
7.	Replacement <sup>1</sup>	Couriered Card	TBD		TBD
		Sales Draft	\$3 CAD		\$3 USD
		Statement Reprint	\$3 CAD		\$3 USD
8.	Liability Waiver Programs	BMO Corporate Card Liability Waiver Program	None		None
9.	Technology Fees	Standard Reports	None		None
		Third Party Integration (Standard File) Set-Up Fee	\$500 CAD		\$500 USD
		Custom Training Services are billed at cost plus travel expenses	TBD		TBD

<sup>1</sup>Requests to courier rush Cards or issue replacement Statements or reports will be subject to the Bank's standard service charge for such items at the time of the request.

<sup>2</sup>Plus applicable taxes.

<sup>3</sup>Supplier fees for each change or cancellation to a travel arrangement may also apply and will be displayed at the time of booking based on the specific travel reservation.

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**SCHEDULE 4****DELIVERY OF INSURANCE DOCUMENTS****Distribution Protocol**

1. Insurance Documents applicable to the Customer or otherwise for the Customer's information will be posted to the Program Website and an e-mail will be sent to the Program Administrator advising of the posting of the Insurance Documents. The Program Administrator will provide the notice from the Bank to all Cardholders so that each Cardholder may directly access the Insurance Documents from the Program Website.
2. Where the Bank has sufficient Cardholder information, the Bank will endeavor to obtain the Cardholder's consent to the Electronic Distribution of Insurance Documents.
3. If the Bank has not obtained the Cardholder's consent to the Electronic Distribution of Insurance Documents or the Cardholder has withdrawn their consent to the Electronic Distribution of Insurance Documents, then the following terms apply:
  - (a) If the Bank has the Cardholder's mailing information, the Bank will mail Insurance Documents directly to that Cardholder.
  - (b) If the Bank does not have the Cardholder's mailing information, the Customer will act as that Cardholder's agent (through the Program Administrator) for the purposes of receipt and distribution of Insurance Documents to that Cardholder. In such capacity as agent: (i) Where the Cardholder has not expressed a preference to the Bank that they want to receive a hard copy of the Insurance Documents, the Customer agrees to the Electronic Distribution of Insurance Documents; and (ii) Where the Cardholder has expressed a preference to the Bank that they want to receive a paper copy of the Insurance Documents, the Bank will provide the Program Administrator with paper copies of the Insurance Documents for distribution to that Cardholder.
4. In addition to the Electronic Distribution of Insurance Documents, the Bank may provide Insurance Notices on Statements.
5. The Bank will at any time upon request provide the Program Administrator with paper copies of any Insurance Documents.

**Miscellaneous Terms**

6. Any Insurance Documents received through Electronic Distribution will be considered "in writing" and to have been signed and delivered by the Bank as though it were an original document.
7. The Customer and each Cardholder may change their Insurance Document preference from electronic to paper copy at any time by contacting the Bank at the contact particulars set out in Schedule 2.
8. Insurance Documents will remain posted to the Program Website and will be available until the date that the Agreement is terminated. It is the responsibility of the Customer and each Cardholder to retain a copy of each Insurance Document by saving or printing a copy while it is available to view.
9. The Bank may provide paper copies of Insurance Documents if the Bank is unable to provide the Insurance Documents through Electronic Distribution or for any other reason.

This is Exhibit "5" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023



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A Notary Public in and for the Province of Manitoba



1. MORTGAGE TYPE

- Mortgage
- Mortgage of Mortgage
- Encumbrance
- Mortgage of Encumbrance

2. MORTGAGOR

- Individual
- Corporation

Corporation Name

3816410 MANITOBA LTD.

Signed pursuant to a  power of attorney  court order

- Executor, Administrator, Trustee
- Government and Government Agency

3. LAND DESCRIPTION AND PRIOR INSTRUMENTS

Land 1

- All or part of a title
    - Current title number  Issuing from title number
- 1872413/4  All  Part

Land Description

LOT 1 BLOCK 2 PLAN 37465 MLTO IN S 1/2 3-3-4 WPM EXCEPTING - DRAIN PLAN 40578 MLTO

- All units in a condominium plan
- All lots, blocks and parcels in a plan

Subject to the following instruments

- Currently on title

Instrument Number

1016911/4

1027254/4

1172845/4

1178743/4

1219900/4

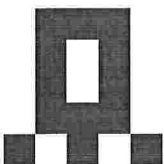
1231063/4

- Registered prior in series

Land 2

For your protection, ensure the following before signing:

1. The exact image and the barcode below, are present on all pages.



2. The 32 character control number below is present and identical on all pages.

**83AC-5317-52CA-4C4A-A375-6FBA-33D3-2B97**

3. All 4 Mortgage content pages are present.



- All or part of a title
    - Current title number     Issuing from title number
- 1872414/4     All     Part

Land Description

LOT 2 BLOCK 2 PLAN 37465 MLTO IN S 1/2 3-3-4 WPM EXCEPTING - DRAIN PLAN 40578 MLTO

- All units in a condominium plan
- All lots, blocks and parcels in a plan

Subject to the following instruments

- Currently on title

Instrument Number

1016911/4

1027254/4

1172845/4

1178743/4

1219900/4

1231064/4

- Registered prior in series

4. MORTGAGEE

- Individual    Full legal name required

- Corporation

Corporation Name

BANK OF MONTREAL

- In trust for self-directed registered account, detailed as follows

[Empty text box for details of self-directed account]

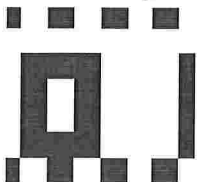
Address for Service

3RD FLOOR - 335 MAIN STREET

[Empty text box for address details]

For your protection, ensure the following before signing:

1. The exact image and the barcode below, are present on all pages.



2. The 32 character control number below is present and identical on all pages.

**83AC-5317-52CA-4C4A-A375-6FBA-33D3-2B97**

3. All 4 Mortgage content pages are present.



City	Province	Country	Postal Code
WINNIPEG	MB	CANADA	R3C 1C2

Share or fractional interest of the mortgage monies contributed  %

- Executor, Administrator
- Government and Government Agency

**5. TERMS AND PAYMENT PROVISIONS**

Mortgage Description

Mortgage Principal Amount

Standard Charge Mortgage Terms

Deposited at land titles as number  and name

Not applicable

Loan Description

Loan Principal Amount  Canadian Dollar (CAD)

Mortgage secures a revolving credit up to the loan principal amount

Payment Details

Prime is defined as

Scheduled Payments

Payable on Demand

Interest Rate

%

prime +  %

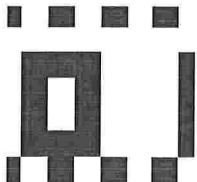
calculated

Interest only payments must be made

Additional Provisions

For your protection, ensure the following before signing:

1. The exact image and the barcode below, are present on all pages.



2. The 32 character control number below is present and identical on all pages.

**83AC-5317-52CA-4C4A-A375-6FBA-33D3-2B97**

3. All 4 Mortgage content pages are present.



- This mortgage secures the refundable portions of tenants' entrance fees as required by clause 28(2)(b) of *The Life Leases Act*.
- Covenantor will sign
- Guarantee Mortgage
- Collateral Mortgage

Details

- Secures present and future liabilities
- Secures current or running account
- Prepayment terms
- Other

**6. THE FARM LANDS OWNERSHIP ACT EVIDENCE**

The registration of this instrument does not contravene the provisions of *The Farm Lands Ownership Act* because

- The within land is not farm land as defined in *The Farm Lands Ownership Act*.
- All of the within lands are farm land and are being mortgaged pursuant to a *bona fide* debt obligation.
- Some of the within lands are farm land and the farm lands are being mortgaged pursuant to a *bona fide* debt obligation.
- Other

**7. INSTRUMENT PREPARED BY**

Given Name  Middle Names  Surname  Suffix

Company

Telephone +    Extension  E-Mail

File Number  Description

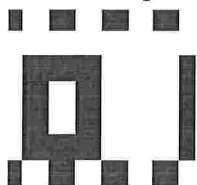
**Unlock Form and Remove Signature Pages**

**i** Once you have clicked the Lock Form and Create Signature Pages button, you will not be able to change the registration form. You will be able to fill in certain areas in the signature pages before printing.

If you want to change the registration form once the signature pages have been created, you must click the Unlock Form and Remove Signature Pages button. If you do this, you will lose all changes made to the signature pages. Any signature pages already printed will be invalid and will have to be regenerated, reprinted and, where they have already been signed, resigned.

**For your protection, ensure the following before signing:**

1. The exact image and the barcode below, are present on all pages.



2. The 32 character control number below is present and identical on all pages.

**83AC-5317-52CA-4C4A-A375-6FBA-33D3-2B97**

3. All 4 Mortgage content pages are present.





**SIGNATURE OF COVENANTORS**

I acknowledge receipt of a copy of this instrument and all of the terms herein and I agree to perform my obligations herein.

**COVENANTOR**

Signature	<input type="text"/>	Date	<input type="text"/>
Name	<input type="text" value="PETER BERGEN"/>		(YYYY-MM-DD)

**WITNESS**

Signature	<input type="text"/>	Address	<input type="text"/>
Name	<input type="text"/>		

Signature	<input type="text"/>	Date	<input type="text"/>
Name	<input type="text" value="ELIZABETH BERGEN"/>		(YYYY-MM-DD)

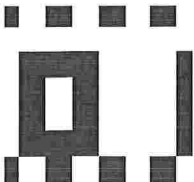
**WITNESS**

Signature	<input type="text"/>	Address	<input type="text"/>
Name	<input type="text"/>		

SINGULAR INCLUDES PLURAL AND VICE VERSA WHERE APPLICABLE. In this document "I" or "me" is to be read as all covenantors whether individual or corporate.

**For your protection, ensure the following before signing:**

1. The exact image and the barcode below, are present on all pages.



2. The 32 character control number below is present and identical on all pages.

**83AC-5317-52CA-4C4A-A375-6FBA-33D3-2B97**

3. All 4 Mortgage content pages are present.

SIGNATURES AND EVIDENCE

- 1. The mortgagor is or is entitled to be the owner of the land.
- 2. The mortgagor hereby mortgages to the mortgagee its interest in the land as security for performance of all its obligations herein.
- 3. The mortgagor promises to pay the principal amount and interest and all other charges and money hereby secured and to be bound by all the terms herein.
- 4. I acknowledge receipt of a copy of this instrument and all of the terms herein.
- 5. I am of the age of majority.
- 6. Additional evidence

Mortgagor 3816410 MANITOBA LTD.

Signature  Date   
 Name  (YYYY-MM-DD)  
 Employee  Officer  Director  
 Position  PRESIDENT

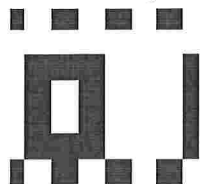
WITNESS

Signature  Address   
 Name

- This person witnessed all signatures by 3816410 MANITOBA LTD.
- The mortgagee is a financial institution and the witness is
- Document witnessed inside Canada by
  - Practising lawyer
  - Notary public in the Province of British Columbia or Quebec
  - A person entitled to administer oaths inside or outside of Manitoba i District Registrar approval required
- Document witnessed outside of Canada by a person entitled to administer oaths outside of Manitoba

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3. All 4 Mortgage content pages are present.



**WHO MAY BE A WITNESS**

Only those persons specified in the section 72.4 of *The Real Property Act* may act as a witness to this document.

**NOTICE TO WITNESSES**

By signing as witness you confirm that the person whose signature you witnessed:

- 1. Is either personally known to you, or that their identity has been proven to you.

AND

- 2. That they have acknowledged to you that they:
  - (a) are the person named in this instrument;
  - (b) have attained the age of majority in Manitoba; and
  - (c) are authorized to execute this instrument.

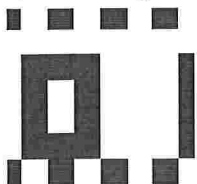
By virtue of section 194 of *The Real Property Act*, any statement set out in this document and signed by the party making the statement has the same effect and validity as an oath, affidavit, affirmation or statutory declaration given pursuant to *The Manitoba Evidence Act*.

***The Mortgage Act* provides that the mortgagor can obtain free of charge, from the mortgagee, a statement of the debts secured by this mortgage once every 12 months, or as needed for pay off or sale.**

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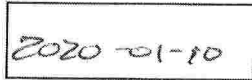

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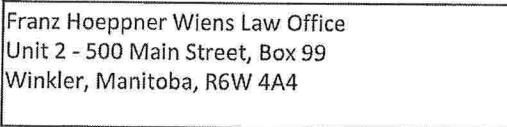
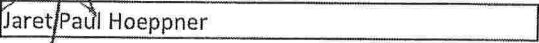
SIGNATURE OF COVENANTORS

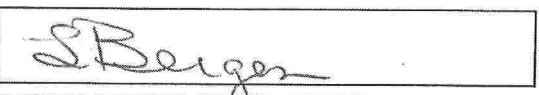
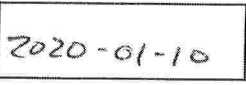
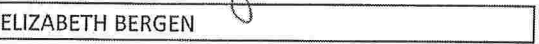
I acknowledge receipt of a copy of this instrument and all of the terms herein and I agree to perform my obligations herein.

COVENANTOR

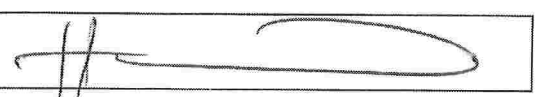
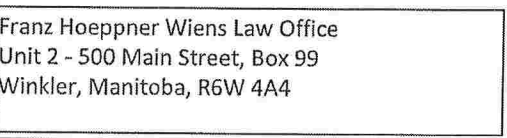
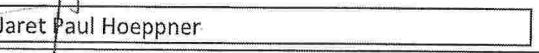
Signature  Date   
 Name  (YYYY-MM-DD)

WITNESS

Signature  Address   
 Name  Franz Hoepfner Wiens Law Office  
 Unit 2 - 500 Main Street, Box 99  
 Winkler, Manitoba, R6W 4A4

Signature  Date   
 Name  (YYYY-MM-DD)

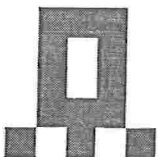
WITNESS

Signature  Address   
 Name  Franz Hoepfner Wiens Law Office  
 Unit 2 - 500 Main Street, Box 99  
 Winkler, Manitoba, R6W 4A4

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Do not alter or staple this form



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4. I acknowledge receipt of a copy of this instrument and all of the terms herein.
5. I am of the age of majority.
6. Additional evidence

[Empty box for additional evidence]

Mortgagor 3816410 MANITOBA LTD.

Signature

[Handwritten signature]

Date

2020-01-10

(YYYY-MM-DD)

Name

PETER BERGEN

Employee  Officer  Director

Position

PRESIDENT

WITNESS

Signature

[Handwritten signature]

Address

Franz Hoeppepner Wiens Law Office  
Unit 2 - 500 Main Street, Box 99  
Winkler, Manitoba, R6W 4A4

Name

Jaret Paul Hoeppepner

This person witnessed all signatures by 3816410 MANITOBA LTD.

The mortgagee is a financial institution and the witness is

Document witnessed inside Canada by

Practising lawyer

Notary public in the Province of British Columbia or Quebec

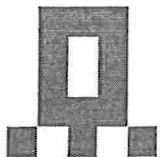
A person entitled to administer oaths inside or outside of Manitoba

District Registrar approval required

Document witnessed outside of Canada by a person entitled to administer oaths outside of Manitoba

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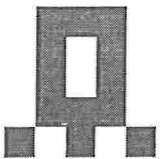
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- 3. All 4 Mortgage content pages are present.



Do not alter or staple this form

# Document Review



Registration #	Type	New Titles
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1249795/4      Mortgage

Notes

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- |   |           |               |                          |
|---|-----------|---------------|--------------------------|
| 1 | 2020-1-21 | Sandy Klassen | 3816410 MANITOBA LTD. OK |
| 2 | 2020-1-21 | Sandy Klassen | Lawyer OK                |



No. 4697386/1  
I CERTIFY THAT THIS INSTRUMENT IS  
DULY ENTERED AND REGISTERED IN  
THE LAND TITLES OFFICE, FOR THE  
DISTRICT OF WINNIPEG, ON THE  
DAY OF FEB 22 2016  
A.D. 2

BANK OF MONTREAL  
MANITOBA  
STANDARD CHARGE MORTGAGE TERMS  
ALL INDEBTEDNESS MORTGAGE  
(COMMERCIAL/FARM)

DEPOSIT INDEX  
ok → CL

Filing Number 3991699

The following set of standard charge mortgage terms (together with Schedule "A" attached hereto, the "Standard Charge Terms") shall be deemed to be included in each mortgage or charge in which it is referred to by its filing number as provided in Section 96(7) of *The Real Property Act*, R.S.M. 1988, except to the extent that the provisions of the Standard Charge Terms are excluded or varied by such mortgage or charge.

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FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D. C.

STANDARD CHARTERED BANK  
LONDON

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**B. DEFINITIONS**

In this set of Standard Charge Terms and in each Mortgage, the following terms shall have the following meanings:

1. **"Applicable Rate"** means:
  - (a) the applicable interest rate specified by the applicable note or agreement delivered by the Mortgagor to the Mortgagee or between the Mortgagor and the Mortgagee; or
  - (b) if the interest rate referred to in subsection (a) is not so specified, the applicable interest rate specified by the Mortgage.
2. **"Controlling Entity"** means any corporation or other entity which on the date of the Mortgage beneficially owned, directly or indirectly, shares, other securities or other equity interests issued by the Mortgagor or a Guarantor which have more than 50% of the total ordinary voting power of all shares, other securities and other equity interests issued by the Mortgagor or such Guarantor.
3. **"Default"** means a default referred to in section I.
4. **"Guarantor"** means a person who guaranteed payment of all or any Indebtedness.
5. **"Indebtedness"** means all present and future indebtedness and liability now or hereafter owing by the Mortgagor to the Mortgagee whether direct or indirect, absolute or contingent, or revolving or non-revolving, whether incurred by the Mortgagor alone or together with any other debtor or debtors and whether incurred pursuant to the provisions of the Mortgage or otherwise including all principal, interest, guarantee liabilities, letter of credit indemnity liabilities, bankers' acceptance indemnity liabilities, fees and expenses now or hereafter owing by the Mortgagor to the Mortgagee.
6. **"Insolvency Proceeding"** means a proceeding commenced under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act* or any other similar statute.
7. **"Lease"** means a lease, offer to lease or other similar agreement of or with respect to the Mortgaged Land in favour of, or held by the Mortgagor as tenant and referred to in the Mortgage, as such lease, offer to lease or other similar agreement is amended or replaced from time to time.
8. **"Mortgage"** means the applicable registered mortgage or charge (as amended from time to time) in which this set of Standard Charge Terms is incorporated by reference to its filing number (including all Schedules thereto), includes any such mortgage or charge registered electronically or otherwise and includes such mortgage or charge whether or not any provision of the Standard Charge Terms is excluded or varied.
9. **"Mortgaged Land"** means the real property described in the Mortgage, all appurtenances thereto and all estates and interests therein, and includes all buildings, plant, machinery, crops, erections and improvements, fixed or otherwise, present or future, built, grown, placed or put thereon including all fences, heating equipment, plumbing equipment, antennae, radiators, mirrors, air-conditioning equipment, ventilating equipment, fire alarm and protective systems, lighting and lighting fixtures, hay racks, barn fixtures, milking machine equipment, water tanks, pumps and windmills, water bowls and pipes, feed boxes, litter carriers and tracks, mobile homes affixed to the real property, furnaces, boilers, oil burners, stokers, water heating equipment, cooking and refrigeration equipment, window blinds, floor coverings, storm windows, storm doors, window screens, door screens, shutters and awnings, all apparatus and equipment appurtenant thereto, and all other fixtures and accessions of any kind or nature.
10. **"Mortgagee"** means the mortgagee or chargee referred to in the Mortgage and its successors and assigns.

11. “**Mortgagee’s Prime Rate**” means the fluctuating annual rate of interest determined by Bank of Montreal from time to time as the reference rate it will use to determine rates of interest payable by borrowers from Bank of Montreal of Canadian dollar loans made in Canada and designated by Bank of Montreal as its prime rate.
12. “**Mortgagor**” means the person or persons identified as the mortgagor or chargor in the Mortgage and his, her, its or their respective heirs, executors, administrators, personal representatives, successors and assigns.
13. “**Other Encumbrances**” means all statutory liens, construction liens, mechanics’ liens, builders’ liens, other liens, executions, mortgages, charges, and other encumbrances which charge or otherwise affect or could affect the Mortgaged Land but excludes the Mortgage.
14. “**Permitted Prior Mortgage**” means a mortgage or charge of the Mortgaged Land which ranks in priority to the Mortgage and which the Mortgagee has approved in writing.
15. “**Receiver**” means a receiver, receiver and manager or other similar person.
16. “**Schedule**” means a schedule to the Mortgage.
17. “**Taxes**” means all taxes, rates and assessments, municipal, provincial, federal or otherwise, with respect to the Mortgaged Land.

### C. OPERATION OF THE MORTGAGE

1. *Charge of Mortgaged Land.* In consideration of other valuable consideration and a loan advance made or other credit extended by the Mortgagee to the Mortgagor (the receipt and sufficiency of which are acknowledged by the Mortgagor), the Mortgagor hereby mortgages and charges the Mortgaged Land to and in favour of the Mortgagee as security for payment to the Mortgagee of all Indebtedness and as security for the observance and performance by the Mortgagor of all other obligations of the Mortgagor pursuant to or in respect of the Mortgage or the Standard Charge Terms. Subject to the provisions of the Mortgage, the Mortgagor releases to the Mortgagee, all the Mortgagor’s claims upon the Mortgaged Land.
2. *Repayment of Principal on Demand.* The Mortgagor shall pay all Indebtedness to the Mortgagee on demand by the Mortgagee for payment.
3. *Restriction on Voluntary Prepayments.* The Mortgagor shall not be entitled to prepay voluntarily any principal amount (including any principal amount owing with respect to a revolving line of credit or a demand loan) except to the extent agreed to by the Mortgagee in writing.
4. *Calculation and Payment of Interest.* The Mortgagor shall pay to the Mortgagee when due interest payable by the Mortgagor on each part of the Indebtedness (including interest on overdue interest) at the Applicable Rate which applies to such part of the Indebtedness. Interest shall accrue on each part of the Indebtedness from the date such part is incurred to the date such part is paid to the Mortgagee in full. Interest shall, both before and after Default, be calculated and payable monthly not in advance on the first day of each month unless otherwise agreed by the Mortgagor and the Mortgagee in writing. Whenever there is more than one Applicable Rate, the Applicable Rate referred to in sections D, E, G, J and K shall, unless otherwise agreed by the Mortgagee in writing, be the higher or highest of such Applicable Rates.
5. *Continuing Security.* The Mortgage shall be continuing security in favour of the Mortgagee for the payment of all Indebtedness, notwithstanding at any time and from time to time there is:
  - (a) any change in the nature, state or form of any account between the Mortgagor and the Mortgagee;
  - (b) any new advance by the Mortgagee to the Mortgagor, whether by way of loan, discount, the drawing of a cheque against an account of the Mortgagor or otherwise;

- (c) any discount or acceptance by the Mortgagee from or for the Mortgagor of any note, bill of exchange or other negotiable instrument or commercial paper;
- (d) any credit of any amount to any account of the Mortgagor by reason of deposit of moneys or otherwise; or
- (e) any renewal, replacement, substitution or alteration of any note, bill of exchange or other negotiable instrument or other commercial paper from time to time held by the Mortgagee or any reduction, satisfaction, payment, release or discharge thereof or of any other security therefor.

Nothing herein shall prejudice any of the Mortgagee's rights pursuant to or in respect of any note, bill of exchange, other agreement or other security now or hereafter held by the Mortgagee.

6. *Divided Parts of Mortgaged Land.* Every part of the Mortgaged Land into which the Mortgaged Land may hereafter be divided by a plan of subdivision or otherwise shall continue to be charged with payment of all Indebtedness but the Mortgagee may discharge any part or parts of the Mortgaged Land with or without sufficient consideration and without releasing the Mortgagor from the Mortgage and no person shall have any right to require the Indebtedness to be apportioned between or among such parts.

7. *Application of Amounts Paid.* Any and all amounts received by the Mortgagee with respect to Indebtedness before a Default shall, unless otherwise specified by the Mortgagee in writing, be applied firstly to reduce compound interest, secondly to reduce interest (other than compound interest), thirdly to reduce principal and fourthly to reduce any other Indebtedness. Any and all amounts received by the Mortgagee after a Default (including any and all amounts received from any security held by the Mortgagee) shall be applied by the Mortgagee in the manner determined by the Mortgagee in its sole discretion.

8. *Discharge of Mortgage.* If the Mortgagor shall duly pay to the Mortgagee all Indebtedness and the Mortgagee is not then obligated to extend any credit to the Mortgagor, the Mortgagor may request from the Mortgagee a discharge of the Mortgage and, upon delivery by the Mortgagee to the Mortgagor of a discharge of the Mortgage, the Mortgage shall terminate and cease to operate; provided that the Mortgage shall not terminate or cease to operate while any Indebtedness remains unpaid or while the Mortgagee is obligated to extend any credit to the Mortgagor only because, at any prior time or times, all Indebtedness had been paid in full. The Mortgagee shall not be obligated to deliver any partial discharge of the Mortgage.

9. *Consolidation of Mortgages.* To the extent permitted by law, the doctrine of consolidation shall apply with respect to *inter alia* the Mortgage.

#### **D. COVENANTS, REPRESENTATIONS AND WARRANTIES OF MORTGAGOR**

1. *Payment of Principal and Interest.* The Mortgagor shall pay to the Mortgagee when due all Indebtedness without deduction or set-off of any kind. The Mortgagor expressly agrees not to fail to pay any Indebtedness when due and not to reduce the amount of any due payment of any Indebtedness as a result, or in respect of any existing or future claim by the Mortgagor against the Mortgagee or against any other person whether such claim relates to any or all Indebtedness, the Mortgage, any other agreement between the Mortgagor and the Mortgagee, any other transaction or any other agreement or matter whatsoever.

2. *Observance and Performance of Other Obligations.* The Mortgagor shall duly and punctually observe and perform all the Mortgagor's existing and future obligations pursuant to the Mortgage and all the Mortgagor's existing and future obligations pursuant to any and all other existing and future agreements delivered by the Mortgagor to the Mortgagee or between the Mortgagor and the Mortgagee.

3. *Payment of Taxes.* The Mortgagor shall promptly pay all Taxes as they become due and, within one month after the date fixed for the payment of the last installment of Taxes in each year, shall deliver to the Mortgagee a receipted tax bill showing payment in full of all such Taxes payable during such year. If the Mortgagor fails to pay any Taxes as they become due, the Mortgagee may, at its option, pay the whole or any part of such Taxes. The amounts so paid by

the Mortgagee shall be payable forthwith by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage.

4. *Good Title and Free From Encumbrances.* The Mortgagor represents and warrants to the Mortgagee that the Mortgagor is the legal and beneficial owner of, and has good, absolute and indefeasible title and estate in fee simple to the Mortgaged Land (or the leasehold interest therein if section E applies), free of any Other Encumbrances except any Permitted Prior Mortgage, statutory liens that secure payment of amounts not in arrears, public utilities easements or minor easements or restrictive covenants that do not impair the value, marketability or use of the Mortgaged Land or other encumbrances consented to by the Mortgagee in writing, and free of any reservations, limitations, provisos or conditions whatsoever except those contained in the original grant thereof, if any, from the Crown; the Mortgagor has good right, full power and lawful and absolute authority to mortgage and charge the Mortgaged Land (or, if section E applies, its leasehold interest therein) to the Mortgagee in accordance with the provisions of the Mortgage.

5. *Insurance.* The Mortgagor shall maintain, in form, substance and amount and with insurers satisfactory to the Mortgagee, all insurance required by the Mortgagee from time to time with respect to the Mortgaged Land (including boiler, property, public liability, rental, environmental and business interruption insurance and insurance covering all crops grown on the Mortgaged Land insuring such crops against damage by hail and against perils covered by all-risk crop insurance). The Mortgagor shall deliver to the Mortgagee, from time to time at the Mortgagee's request, certificates of insurance and certified copies of such insurance policies showing all loss payable to the Mortgagee as first mortgagee (subject to the interests of the holder of any Permitted Prior Mortgage) and loss payee and containing a mortgage clause satisfactory to the Mortgagee. As additional and separate security for payment of all Indebtedness, the Mortgagor hereby assigns to the Mortgagee all the Mortgagor's present and future interests in and to all such present and future insurance policies and all proceeds therefrom. The Mortgagor shall not repair any damage using proceeds of any insurance without the Mortgagee's prior written consent and the Mortgagee may, at its discretion, apply any and all insurance proceeds to reduce Indebtedness. If the Mortgagor fails to maintain insurance required by the Mortgagee, the Mortgagee may arrange insurance with respect to the Mortgaged Land, the Mortgagor shall pay to the Mortgagee, on demand by the Mortgagee, all amounts paid by the Mortgagee to effect such insurance and the Mortgagor shall pay interest thereon at the Applicable Rate; and all such amounts owing by the Mortgagor shall be part of the Indebtedness and secured by the Mortgage. The Mortgagor shall, forthwith on the occurrence of any loss or damage, furnish at the Mortgagor's own expense all necessary proofs and do all necessary acts to enable the Mortgagee to obtain payment of the insurance monies. Any insurance monies received may, at the option of the Mortgagee, to the extent permitted by law, be applied to rebuild or repair the premises on the Mortgaged Land or be paid to the Mortgagor or any other person appearing by the registered title to be or to have been the owner of the Mortgaged Land, or be applied to pay Indebtedness whether or not then due, despite any law, equity or statute to the contrary. The Mortgagor, to the extent permitted by law, hereby waives any statutory or other right it may have to require any insurance proceeds to be applied in any particular manner.

6. *Payment of Other Encumbrances.* The Mortgagor shall promptly pay when due all amounts now or hereafter owing pursuant to or with respect to any Other Encumbrances and shall deliver to the Mortgagee, at the Mortgagee's request, evidence showing payment in full of all such amounts. If the Mortgagor fails to pay any Other Encumbrances when due, the Mortgagee may, at its option, pay the whole or any part of any present or future Other Encumbrances. The amounts so paid shall be payable forthwith by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage. In the event the Mortgagee pays any Other Encumbrance, it shall be entitled to all the equities, rights and securities of the person or persons so paid and to obtain an assignment of such Other Encumbrance so paid and of any right to payment and is hereby authorized to retain any discharge thereof without registration for so long as it may think fit to do so.

7. *Payment of Expenses.* The Mortgagor shall, on demand by the Mortgagee, pay all costs, charges, expenses (including legal fees as between a solicitor and his or her own client), commissions and fees which may be incurred by the Mortgagee in negotiating any credit or credits secured by the Mortgage, investigating the title to the Mortgaged Land, preparing and registering the Mortgage and other documents, administering any credit or credits extended by

the Mortgagee to the Mortgagor, inspecting the Mortgaged Land, collecting any Indebtedness, taking any proceeding in connection with or to collect any Indebtedness, taking and maintaining possession of the Mortgaged Land, maintaining and repairing the Mortgaged Land, and taking any other enforcement proceedings. The Mortgagor shall deliver to the Mortgagee, at the Mortgagee's request, evidence showing payment in full of all such amounts. If the Mortgagor fails to pay any such amounts as they become due, the Mortgagee may, at its option, pay any such amounts and the amounts so paid by the Mortgagee shall be payable forthwith by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage.

8. *Compliance with Laws.* The Mortgagor represents and warrants to the Mortgagee that, as at the date of the Mortgage, the Mortgagor has complied with, and the Mortgagor agrees that it shall comply with all laws, by-laws and regulations affecting the Mortgaged Land and all orders and decisions of any governmental authority, governmental agency or court having jurisdiction affecting the Mortgaged Land (including all such laws, by-laws, regulations, orders and decisions relating to the environment or to residential or other property, including those relating to the amount of rent charged by the Mortgagor with respect to any part of the Mortgaged Land). The Mortgagor shall, at the Mortgagor's expense, promptly and in good and workmanlike manner make all improvements, alterations, clean-ups and repairs and effect any change in use that may be required from time to time to so comply.

9. *Maintain in Good Repair and Avoid Waste.* The Mortgagor represents and warrants to the Mortgagee that, as at the date of the Mortgage, all buildings, erections, equipment, machinery and improvements on the Mortgaged Land are in good condition and repair and that all noxious weeds have been eradicated from the Mortgaged Land. The Mortgagor shall maintain all buildings, erections, equipment, machinery and improvements on the Mortgaged Land in good condition and repair to the satisfaction of the Mortgagee, shall eradicate all noxious weeds from the Mortgaged Land and shall not permit waste to be committed or suffered on the Mortgaged Land or any part thereof. The Mortgagee or its agent shall be entitled, from time to time, to enter on the Mortgaged Land to inspect the Mortgaged Land and to undertake any tests (including intrusive environmental tests) required by the Mortgagee. If the Mortgagor neglects to keep the Mortgaged Land or any buildings, erections, equipment, machinery or improvements on the Mortgaged Land in good condition and repair, fails to eradicate noxious weeds from the Mortgaged Land or commits or permits any act of waste on the Mortgaged Land (as to which the Mortgagee shall be the sole judge), or fails to comply with section D.8., the Mortgagee or its agent may enter upon the Mortgaged Land and make such repairs and undertake such work and take such action as the Mortgagee deems necessary. All costs of such inspection, testing, repairs, work and action shall be payable forthwith by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage.

10. *Environmental Representation and Indemnity.* The Mortgagor represents and warrants to the Mortgagee that there has not occurred, after the date the Mortgagor acquired an interest in the Mortgaged Land, any spill, leak, contamination or other material environmental problem affecting the Mortgaged Land or any part thereof (other than any such spill, leak, contamination or other environmental problem which has been remedied). The Mortgagor shall indemnify and save harmless the Mortgagee and any Receiver of the Mortgaged Land from any and all expenses and damages incurred or suffered by the Mortgagee or such Receiver as a result, or in respect of any spill, leak, contamination or other environmental problem affecting the Mortgaged Land or any part thereof. This indemnity shall survive the payment of all Indebtedness and the satisfaction, discharge or enforcement of the Mortgage or any other security.

11. *No Alterations or Change in Use.* The Mortgagor shall not, without the prior written consent of the Mortgagee, make, or permit to be made, any alterations or additions to the Mortgaged Land or any building thereon or change the Mortgagor's use of the Mortgaged Land or any building thereon and the Mortgagor shall not allow the Mortgaged Land to be unoccupied or unused.

12. *No Unapproved Charge or Encumbrance by Mortgagor.* The Mortgagor shall not, without the Mortgagee's prior written consent, mortgage, charge, lien or encumber the Mortgaged Land or any part thereof or any interest therein or permit any Other Encumbrance to remain thereon except for any Permitted Prior Mortgage, statutory liens that secure payment of amounts not in

arrears and public utilities easements or minor easements or restrictive covenants that do not impair the value, marketability or use of the Mortgaged Land.

13. *Change in Ownership or Spousal Status.* Upon any change or event affecting any of the following, namely:

- (a) the spousal status of the Mortgagor, if the Mortgagor is an individual;
- (b) the qualification of the Mortgaged Land as a matrimonial home; or
- (c) the ownership of the Mortgaged Land,

the Mortgagor shall forthwith advise the Mortgagee accordingly in writing and furnish the Mortgagee with full particulars thereof, the intention being that the Mortgagee shall be kept fully informed of the names and addresses of the owner or owners of the Mortgaged Land and of any spouse who is not an owner but who may have a legal right of possession of or interest in the Mortgaged Land. The Mortgagor shall furnish the Mortgagee with such evidence in connection with any of subsections (a), (b) and (c) of this provision as the Mortgagee may from time to time request.

14. *Expropriation.* If the Mortgaged Land or any part thereof is condemned or expropriated to an extent which, in the Mortgagee's sole discretion, materially affects the Mortgagee's security, all Indebtedness shall, at the option of the Mortgagee, be deemed to have become due and payable on the day before such condemnation or expropriation, and interest shall continue to accrue thereon, at the Applicable Rate, until the Mortgagee has been paid all Indebtedness. The Mortgagor shall pay to the Mortgagee from any condemnation or expropriation proceeds the full amount thereof, to be applied by the Mortgagee to reduce Indebtedness.

15. *Power of Attorney.* The Mortgagor hereby irrevocably appoints the Mortgagee or any Receiver appointed by the Mortgagee under or pursuant to the Mortgage or by any order of a court of competent jurisdiction, as the Mortgagor's attorney for all purposes to take any and all action deemed appropriate by the Mortgagee or such Receiver after the occurrence of a Default.

16. *Further Assurances.* The Mortgagor shall (and shall cause each person having or claiming to have an estate, right, title or interest in or to the Mortgaged Land to) at any time and from time to time, at the Mortgagee's request, do, execute and deliver or cause to be made, executed and delivered to the Mortgagee such further and other reasonable acts, deeds, conveyances, charges and assurances as may be required by the Mortgagee to fully and effectually carry out the intention and meaning of the Mortgage and the provisions included in the Mortgage and the reasonable cost of such further assurances shall be part of the Indebtedness and secured by the Mortgage.

17. *Business Purposes Only.* The Mortgagor shall use only for business purposes any amounts loaned by the Mortgagee to the Mortgagor and secured by the Mortgage.

18. *No Registration of Condominiums or Strata Title Developments.* The Mortgagor shall not, without the Mortgagee's prior written consent, register any condominium or strata title development with respect to all or part of the Mortgaged Land or any declaration or description with respect thereto and the Mortgagee shall not have any obligation to provide such consent.

19. *Delivery of Information.* The Mortgagor shall deliver to the Mortgagee, promptly at the Mortgagee's request, all financial statements and other information as the Mortgagee may request from time to time with respect to the Mortgagor, a Guarantor or the Mortgaged Land.

20. *No Litigation or Other Proceedings.* The Mortgagor represents and warrants that, as at the date of the Mortgage, there is no application, litigation, proceeding or investigation outstanding or, to the Mortgagor's knowledge, pending or threatened, against the Mortgagor or any Guarantor or with respect to the Mortgaged Land or any part thereof including any application, litigation, proceeding or investigation in respect of residential or other property by-laws or regulations. The Mortgagor shall notify the Mortgagee in writing of any such application, litigation, proceeding or investigation commenced after the date of the Mortgage, promptly after such commencement.



21. *Mortgagor a Canadian Resident.* The Mortgagor represents and warrants that, as at the date of the Mortgage, it is not a non-resident of Canada for purposes of the Income Tax Act and agrees that the Mortgagor shall not, without the Mortgagee's prior written consent, become a non-resident of Canada.

22. *Good Management of Mortgaged Land.* The Mortgagor shall at all times cause the Mortgaged Land to be managed in a commercially reasonable manner by the Mortgagor or by a property manager satisfactory to the Mortgagee, acting reasonably.

23. *Abutting Real Property.* The Mortgagor shall not, without the Mortgagee's prior written consent, acquire any real property which abuts the Mortgaged Land. If the Mortgagee gives such consent, the Mortgagor shall, at the Mortgagee's request, deliver to the Mortgagee a mortgage or charge of such abutting real property and of the Mortgaged Land in form and substance satisfactory to the Mortgagee.

#### **E. MORTGAGE OF LEASEHOLD INTEREST**

If the Mortgagor is not the owner of the Mortgaged Land in fee simple but is the owner of a leasehold interest in the Mortgaged Land as tenant, or as an assignee or successor of a tenant, pursuant to a Lease, the following provisions shall apply:

1. *Representations and Warranties.* The Mortgagor represents and warrants to the Mortgagee that, as at the date of the Mortgage:

- (a) the Lease is a good, valid and subsisting lease and has not been surrendered, forfeited or terminated or, except as specified in the Mortgage, amended, and the rents, covenants and provisions therein reserved and contained have been duly paid, performed and observed by the Mortgagor up to the date of the Mortgage; and
- (b) the Mortgagor has good right and full, lawful and absolute authority to charge, mortgage, demise and sublet the Mortgaged Land in accordance with the Mortgage and any consent thereto required of the applicable landlord has been obtained.

2. *Covenants Relating to Lease.* The Mortgagor agrees with the Mortgagee as follows:

- (a) The Mortgagor shall at all times fully perform and comply with all the obligations of the Mortgagor under or with respect to the Lease, or imposed on, assumed by or agreed to by the Mortgagor pursuant to any Other Encumbrances and, if the Mortgagor fails to do so, the Mortgagee may (but shall not be obliged to) take any action the Mortgagee deems necessary or desirable to prevent or to cure any default by the Mortgagor in the performance of or compliance with any such obligations. The Mortgagor shall promptly provide to the Mortgagee a copy of any notice the Mortgagor receives from the landlord, any prior mortgagee or encumbrancer, any claimant of any of the Other Encumbrances or any other person under or relating to the Lease of the Mortgaged Land. Upon receipt by the Mortgagee from the Mortgagor, the landlord, any prior mortgagee or encumbrancer, any claimant of any of the Other Encumbrances or any other person of any notice, including a notice of default, the Mortgagee may rely thereon and take any action with respect to such notice as may be required in the Mortgagee's sole discretion, including to cure a default even though the existence of such default or the nature thereof may be questioned or denied by or on behalf of the Mortgagor and the Mortgagee shall have the absolute and immediate right to enter in and upon the Mortgaged Land or any part thereof to such extent and as often as the Mortgagee, in its sole discretion deems necessary or desirable, in order to prevent or to cure any such default. The Mortgagee may pay and expend such amounts as the Mortgagee in its sole discretion deems necessary for any such purpose, and the amounts so paid shall be payable by the Mortgagor to the Mortgagee on demand by the Mortgagee with interest thereon at the Applicable Rate, and shall be a part of the Indebtedness and be secured by the Mortgage.

- (b) If the Mortgage is outstanding at the expiration of the term of the Lease and the Mortgagor refuses or neglects to exercise the Mortgagor's right, if any, to renew or extend the term of the Lease or refuses to pay any fees, costs, charges or expenses payable upon any such renewal or extension, the Mortgagee may effect such renewal or extension in the name of the Mortgagor or otherwise, and every such renewed or extended Lease shall remain and be mortgaged and charged pursuant to the Mortgage in accordance with the Mortgage.
- (c) From and after the execution and delivery of the Mortgage, the Mortgagor shall stand possessed of the Mortgaged Land for the remainder of the Lease in trust for the Mortgagee, and shall exercise any right to renew or extend the term of the Lease or to assign the Lease as the Mortgagee may direct, but subject to the Mortgagor's right of redemption under the Mortgage. The Mortgagor hereby irrevocably appoints the Mortgagee as the Mortgagor's attorney for and on behalf of the Mortgagor to exercise any such renewal or extension right and to assign the Lease and convey the leasehold interest in the Mortgaged Land and the reversion thereof as the Mortgagee shall at any time direct after the occurrence of a Default and, in particular, upon any sale made by the Mortgagee under any power of sale contained in the Mortgage or granted by statute to assign the Lease and convey the Mortgagor's leasehold interest in the Mortgaged Land and the reversion to a purchaser. The Mortgagee may at any time remove the Mortgagor or any other person from being a trustee of the Lease under the above declaration of trust and appoint a new trustee or trustees.
- (d) The Mortgagor shall not surrender, terminate, amend or modify the Lease or agree to do so without the prior written consent of the Mortgagee, which the Mortgagee may withhold in its absolute discretion. No release or forbearance of any of the Mortgagor's obligations under the Lease or under any Other Encumbrance shall release the Mortgagor from any of the Mortgagor's obligations under the Mortgage.
- (e) Unless the Mortgagee expressly consents in writing, the title in fee simple to the Mortgaged Land and the leasehold estate shall not merge but shall always remain separate and distinct, notwithstanding the union of said estates by purchase or otherwise.

3. *Last Day of Term Excepted.* Despite any other provision of the Mortgage, the last day of the term of the Lease and of any renewal or extension thereof and of any agreement therefor now held or hereafter acquired by the Mortgagor shall be excepted out of the mortgage, charge and demise contained in the Mortgage.

4. *Charge by way of Sublease.* Despite section C.1. and any other provision of the Mortgage (except section E.3.), the Mortgagor mortgages and charges, by way of sublease, the Mortgagor's leasehold interest in the Mortgaged Land pursuant to the Lease, the mortgages and charges contained in the Mortgage shall be by way of sublease and the Mortgagee shall not have any obligation or liability to the landlord or any other person pursuant to or in respect of the Lease.

5. *Leasehold Interests.* Wherever any reference is made in the Mortgage to any right of the Mortgagee to sell, transfer, assign, lease, sublease, alienate or otherwise deal with the Mortgaged Land, such reference shall be deemed, subject to section E.3., to relate to the existing and future rights and interests of the Mortgagor in the Mortgaged Land pursuant to the Lease.

#### **F. ASSIGNMENT OF LEASES AND RENTS**

If the Mortgagor or any predecessor of the Mortgagor grants or has granted any lease, offer to lease, tenancy agreement or other similar agreement of all or any part of the Mortgaged Land as landlord, the following provisions shall apply:

1. *Assignment.* As additional and separate security for payment of all Indebtedness, the Mortgagor hereby assigns, transfers and sets over to the Mortgagee, all the Mortgagor's rights and interests as landlord in all existing and future leases, tenancy agreements, offers to lease and other similar agreements with respect to all or part of the Mortgaged Land, and all rents, incomes, profits and other amounts now or hereafter arising from or out of all or part of the

Mortgaged Land or any building, improvement, fixture or part thereof forming part of the Mortgaged Land.

2. *Separate Assignments.* The assignment of each of the foregoing and of each of the rents, incomes, profits and other amounts by the Mortgagor to the Mortgagee pursuant to section F.1. shall be deemed to be a separate assignment so that the Mortgagee in its discretion may exercise its rights in respect of any or all of such leases, offers to lease, tenancy agreements or other similar agreements or the rents, incomes, profits or other amounts paid or payable thereunder.

3. *Collection by Mortgagor before Default.* Until there occurs a Default, the Mortgagor may collect, retain and apply all rents, incomes, profits and other amounts and deal with all leases, offers to lease, tenancy agreements and other similar agreements from time to time in accordance with sound business practice.

4. *No Liability of Mortgagee and Indemnity by Mortgagor.* Nothing herein shall obligate the Mortgagee to assume or perform (and nothing herein shall impose on the Mortgagee) any liability or obligation of the Mortgagor to any tenant or other person pursuant to or in respect of any lease, offer to lease, tenancy agreement, other similar agreement or otherwise and the Mortgagor hereby indemnifies and saves harmless the Mortgagee from any and all claims with respect thereto, provided that the Mortgagee may, at its sole option, assume or perform any such obligations as it considers necessary or desirable.

5. *Re-assignment.* The Mortgagee may, at any time without further request or agreement by the Mortgagor, reassign to the Mortgagor, or the Mortgagor's heirs, administrators, successors or assigns, any or all of the collateral referred to in section F.1.

6. *Application by Mortgagee.* The Mortgagee's obligations with respect to any amount collected by the Mortgagee shall be discharged by the application of such amount to reduce Indebtedness.

7. *Not Mortgagee in Possession.* Nothing contained herein shall have the effect of making the Mortgagee a mortgagee in possession of the Mortgaged Land.

#### **G. CONDOMINIUM OR STRATA TITLE DEVELOPMENT PROVISIONS**

If the Mortgaged Land is or includes one or more condominium units or strata title units, the following provisions shall apply:

1. *Compliance with Requirements.* The Mortgagor shall observe and perform each of the covenants and provisions required to be observed and performed pursuant to the Mortgage, all applicable statutes governing or affecting condominiums or strata title developments, and the declaration, description, by-laws and rules, as amended from time to time, of the applicable condominium corporation or strata corporation.

2. *Common Expense Payments.* The Mortgagor shall pay promptly when due any and all unpaid condominium or strata development fees, common expenses, common element expenses, assessments, levies, instalments, payments or any other amounts due to the applicable condominium corporation or strata corporation or any agent thereof by the Mortgagor and, at the Mortgagee's request, deliver to the Mortgagee evidence of the payment thereof.

3. *Right of Mortgagee to Pay.* If the Mortgagor does not pay when due any condominium or strata development fees, common expenses or other amounts referred to in section G.2., the Mortgagee may (but shall not be obliged to) pay such amounts, the Mortgagor shall forthwith pay such amounts to the Mortgagee with interest thereon at the Applicable Rate, and all such amounts owing by the Mortgagor to the Mortgagee shall be a part of the Indebtedness and secured by the Mortgage.

4. *Voting by Mortgagee.* The Mortgagor hereby irrevocably authorizes the Mortgagee to exercise the rights of the Mortgagor as an owner of the Mortgaged Land to vote or to consent in all matters relating to the affairs of the condominium corporation or strata corporation or arising under applicable law or the declaration or by-laws of the condominium or strata corporation, provided that:

- (a) in any case where the Mortgagee is entitled to receive and does receive notice of a meeting of owners, the Mortgagee may notify the condominium or strata corporation and the Mortgagor of its intention to exercise the right of the owner to vote or to consent at such meeting at least two days before the date specified in the notice for the meeting, failing which the Mortgagor may exercise such right to vote or consent at such meeting;
- (b) the Mortgagee shall not, by virtue of the giving to the Mortgagee of the right to vote or consent, be under any obligation to vote or consent or to protect the interests of the Mortgagor, and the Mortgagee shall not be responsible for any exercise or failure to exercise the right to vote or consent; and
- (c) nothing herein contained, including the exercise by the Mortgagee of the right to vote or consent, shall constitute the Mortgagee a mortgagee in possession.

#### **H. MORTGAGE AS SECURITY FOR A GUARANTEE**

If the Mortgagor has delivered to the Mortgagee or now or hereafter delivers to the Mortgagee a guarantee or guarantees of payment to the Mortgagee of indebtedness or liability of another or others, the Indebtedness shall include all indebtedness and liability now or hereafter owing by the Mortgagor to the Mortgagee pursuant to such guarantee or guarantees, whether direct or indirect, absolute or contingent, and the Mortgage shall secure payment of all such indebtedness and liability of the Mortgagor pursuant to such guarantee or guarantees in addition to all other Indebtedness. If any such guarantee is increased or otherwise amended, the Mortgage shall also secure payment of all indebtedness and liability now or hereafter owing by the Mortgagor to the Mortgagee pursuant to such guarantee as increased or otherwise amended.

#### **I. DEFAULT**

The Mortgagor shall be in default of the Mortgage and a Default shall occur pursuant to the Mortgage if:

- 1. the Mortgagor fails to pay any Indebtedness when due;
- 2. the Mortgagor or a Guarantor fails to comply with any obligation of the Mortgagor or the Guarantor pursuant to or in respect of the Mortgage or any existing or future note, instrument or agreement delivered by the Mortgagor and the Guarantors (or any of them) to the Mortgagee or between the Mortgagor and the Guarantors (or any of them) and the Mortgagee;
- 3. the Mortgagor fails to comply with any obligation of the Mortgagor pursuant to or in respect of any Permitted Prior Mortgage or any Other Encumbrance;
- 4. any representation or warranty made by the Mortgagor or a Guarantor in the Mortgage, any agreement between the Mortgagor and the Guarantors (or any of them) and the Mortgagee, or any loan or credit application made in connection with any Indebtedness was untrue when made;

5. a Receiver is appointed of any asset of the Mortgagor or of a Guarantor;
6. any construction lien, mechanics' lien or builders' lien is registered against all or any part of the Mortgaged Land and is not discharged within seven days after a request by the Mortgagee that such lien be discharged;
7. all or any part of the Mortgaged Land is condemned or expropriated;
8. the Mortgagor or a Guarantor becomes bankrupt or insolvent;
9. a petition in bankruptcy is filed against the Mortgagor or a Guarantor;
10. the Mortgagor or a Guarantor makes a proposal in bankruptcy or files a notice of intention to make a proposal in bankruptcy;
11. the Mortgagor or a Guarantor makes an application as a debtor in any Insolvency Proceeding or any other person makes an application against the Mortgagor or a Guarantor in any Insolvency Proceeding;
12. the Mortgagor sells, transfers or disposes of in any other manner the Mortgaged Land, any part thereof or any interest therein (unless the Mortgagee has approved in writing such sale, transfer or other disposition);
13. an execution, judgment or order of execution is filed or made against the Mortgaged Land or any part thereof and remains unsatisfied for a period of ten days;
14. the Mortgagor fails to pay when due any amount owing by the Mortgagor to the applicable condominium corporation or strata corporation or any agent thereof referred to in section G.2.; or
15. the Mortgagor or a Guarantor is not an individual and a change in control of the Mortgagor or such Guarantor occurs without the prior written consent of the Mortgagee; for the purposes hereof, a change in control of the Mortgagor or a Guarantor shall be deemed to occur if there occurs one or more sales, transfers or other dispositions of the beneficial ownership existing on the date of the Mortgage in the aggregate of:
  - (a) shares, other securities or other equity interests issued by the Mortgagor or such Guarantor which have more than 50% of the total ordinary voting power of all shares, other securities and other equity interests issued by the Mortgagor or such Guarantor; or
  - (b) shares, other securities or equity interests issued by any Controlling Entity which have more than 50% of the total ordinary voting power of all shares, other securities and other equity interests issued by such Controlling Entity.

## **J. REMEDIES OF MORTGAGEE**

1. *Acceleration and Termination of Obligation to Extend Credit.* Without prejudice to any right of the Mortgagee to demand at any time payment by the Mortgagor of any and all Indebtedness, upon the occurrence of a Default all Indebtedness (or any part thereof determined by the Mortgagee) shall, at the Mortgagee's option, forthwith become due and payable, the Mortgage shall become enforceable and the Mortgagee shall not be obligated to extend any further credit to the Mortgagor.

2. *Right of Entry.* Upon the occurrence of a Default, the Mortgagee may, at any time or times without the concurrence of any person, enter upon, take and maintain possession of the Mortgaged Land, inspect, complete the construction of, repair or maintain any buildings or other improvements thereon, lease, collect the rents, profits and other amounts derived from the Mortgaged Land and manage the Mortgaged Land as the Mortgagee may deem fit without hindrance or interruption by the Mortgagor or any other person, and all reasonable costs, charges and expenses, including legal fees on a solicitor and his or her own client basis, and disbursements, commissions and allowances for the time and services of any employees of the Mortgagee or any agent of the Mortgagee or other persons appointed for any such purpose shall be forthwith payable by the Mortgagor to the Mortgagee with interest thereon at the Applicable

Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage. Upon the occurrence of a Default, the Mortgagee may also enforce its security against all crops growing on the Mortgaged Land, the Mortgagee may, at any time or times without the concurrence of any person, enter upon the Mortgaged Land for the purpose of cutting, harvesting and removing such crops and for otherwise farming and working the Mortgaged Land, the Mortgagee may bring on the Mortgaged Land all machines, equipment and instruments necessary for such purposes, and the Mortgagee may use all yards, barns, granaries, grain bins or all other improvements and equipment located on the Mortgaged Land to carry out any of such activities.

3. *Sale.* Upon the occurrence of a Default which continues for at least fifteen days, the Mortgagee may, on at least thirty-five days' notice, sell the Mortgaged Land or any part or parts thereof, in accordance with the following provisions:

- (a) notice shall be given to such persons and in such manner and form and within such time as provided by law; provided that, in the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable, notice may be effectually given by leaving it with a person on the Mortgaged Land, if occupied, or by placing the same on some portion thereof, if unoccupied or, at the option of the Mortgagee, by mailing it by registered mail in a notice or letter addressed to the Mortgagor at the Mortgagor's last known address, or by publishing it once in a newspaper published in the area or region in which the Mortgaged Land is situated;
- (b) such notice shall be sufficient although not addressed to any person or persons by name or designation, and notwithstanding that any person to be affected thereby may be unknown, unascertained or under any disability;
- (c) sale of the Mortgaged Land may be by public auction or private sale or partly by one and partly by the other, for such price or prices as can reasonably be obtained therefor and on such terms as to credit or otherwise and with such conditions of sale and stipulations as to title or evidence of title or otherwise as the Mortgagee in its sole discretion shall deem appropriate;
- (d) in the event of any sale on credit or for part cash and part credit, the Mortgagee shall not be accountable for or charged with any moneys until actually received;
- (e) the Mortgagee may rescind or vary any contract of sale and may buy in and re-sell the Mortgaged Land or any part thereof without being answerable for any loss occasioned thereby;
- (f) the Mortgagee may sell all or any part of the buildings, fixtures, machinery, equipment, crops and standing or fallen trees separately from the Mortgaged Land and the purchaser shall have all necessary access to the Mortgaged Land for the purposes of severing, cutting and removal; and
- (g) subject to compliance with law, sales may be made from time to time of any part or parts of the Mortgaged Land to satisfy any part or parts of the Indebtedness then owing to the Mortgagee leaving the remaining outstanding Indebtedness secured by the Mortgage as a charge of the remainder of the Mortgaged Land.

4. *Sale or Lease.* The following shall apply with respect to any sale or lease by the Mortgagee, its agent or any Receiver of all or part of the Mortgaged Land after the occurrence of a Default:

- (a) no purchaser or lessee shall be bound to enquire into the legality, regularity or propriety of any sale or lease or be affected by notice of any irregularity or impropriety and no lack of default or lack of notice or other requirement or any irregularity or impropriety of any kind shall invalidate any sale or lease;
- (b) the Mortgagee may sell or lease all or part of the Mortgaged Land without entering into actual possession of the Mortgaged Land and, when it desires to take possession, it may break locks and bolts and while in possession shall only be accountable for moneys actually received by it;
- (c) the Mortgagor hereby appoints the Mortgagee as the Mortgagor's true and lawful attorney and agent to make application under any statute for consent to sever, sell or lease part or parts of the Mortgaged Land and to do all things and execute all documents to effectually complete any such severance, sale or lease;
- (d) the Mortgagee may lease or take sale proceedings notwithstanding that other mortgage proceedings have been taken or are then pending;
- (e) the Mortgagee shall not be responsible for any loss which may arise by reason of any such leasing or sale of the Mortgaged Land unless such loss is caused by the Mortgagee's willful misconduct; and
- (f) no sale, leasing or other dealing by the Mortgagee with the Mortgaged Land or any part thereof shall in any way change the liability of the Mortgagor or in any way alter the rights of the Mortgagee as against the Mortgagor or any other person liable for payment of any Indebtedness.

5. *Attornment.* To the extent the Mortgaged Land or any part thereof is not a residential premises so as to be subject to the provisions of the applicable statute governing residential tenancies, the Mortgagor hereby attorns to and becomes a tenant of such Mortgaged Land to the Mortgagee from year to year from the date of the execution of the Mortgage until the Mortgage is discharged at a rental equivalent to and applicable in satisfaction of the interest payments forming part of the Indebtedness, the legal relation of landlord and tenant being hereby constituted between the Mortgagee and the Mortgagor in regard to the Mortgaged Land. The Mortgagor agrees that neither the existence of this provision nor anything done by virtue hereof shall impose any obligation on the Mortgagee or render the Mortgagee a mortgagee in possession or accountable for any moneys except moneys actually received by the Mortgagee and the Mortgagee may, upon the occurrence of any Default, enter on the Mortgaged Land and terminate the tenancy hereby created without notice.

6. *Right to Distrain.* Upon the occurrence of a Default, to the extent permitted by law, the Mortgagee may distrain for payment of any and all Indebtedness upon the Mortgaged Land or any part thereof and all chattels situated thereon and by distress warrant recover, by way of rent reserved from the Mortgaged Land, such moneys as shall from time to time be or remain in arrears and all costs, charges and expenses incurred by or on behalf of the Mortgagee with respect to or in connection therewith as in like cases of distress for rent. The Mortgagor waives the right to claim exceptions and agrees that the Mortgagee shall not be limited in the amount for which it may distrain.

7. *Judgments and Non-Merger.* The taking of a judgment or judgments with respect to any of the covenants contained herein, in the Mortgage or otherwise shall not operate as a merger of any such covenants or affect the Mortgagee's right to receive interest under the Mortgage and each such judgment may provide, at the option of the Mortgagee, that interest thereon shall be computed and payable until such judgment has been fully paid and satisfied.

8. *Separate Remedies.* All remedies of the Mortgagee may be exercised from time to time separately or in combination and are in addition to and not in substitution for any other rights of the Mortgagee however created.

9. *Application of Proceeds and Mortgagor's Liability for Deficiency.* All amounts received by the Mortgagee or any Receiver pursuant to any enforcement of the Mortgage may be held by the Mortgagee as security for the Indebtedness or applied to reduce Indebtedness in such manner as may be determined by the Mortgagee and the Mortgagee may at any time apply or change any such appropriation of such payments to such part or parts of the Indebtedness as the Mortgagee may determine in its sole discretion. The Mortgagor shall be and remain liable to the Mortgagee for any deficiency. Any surplus amounts realized after payment of all Indebtedness shall be paid in accordance with applicable law.

10. *Mortgagor's Insolvency Proceedings.* The Mortgagor acknowledges that the Mortgaged Land is of such a unique nature that, if the Mortgagor seeks to reorganize or restructure its affairs pursuant to any Insolvency Proceeding, the Mortgagee would not have a sufficient commonality of interest with any other creditor or creditors of the Mortgagor such that the Mortgagee would be required to vote on any plan, reorganization, arrangement, compromise or other transaction in a class with any other creditor or creditors of the Mortgagor and, in that regard, the Mortgagor agrees that the Mortgagee shall be placed in its own exclusive class of creditors for voting purposes. The Mortgagor further agrees that:

- (a) it will give the Mortgagee not less than 10 days written notice prior to the commencement of any Insolvency Proceeding with respect to the Mortgagor;
- (b) in no circumstance will the Mortgagor seek an order which stays any right of the Mortgagee or, to the extent permitted by law, permit any right of the Mortgagee to be stayed, in any Insolvency Proceeding and, if any court-ordered or automatic stay is imposed on the Mortgagee, the Mortgagor hereby consents to an order lifting such stay as against the Mortgagee;
- (c) if an Insolvency Proceeding is commenced with respect to the Mortgagor, the Mortgagor will consent to an order directing that all rents or other revenues generated or received from or in respect of the Mortgaged Land be deposited to a segregated trust account under the sole control of the Mortgagee and that same shall not result in the Mortgagee's being a mortgagee in possession of, or in control or management of the Mortgaged Land or result in the acceleration of payment of any Indebtedness unless such acceleration is required by the Mortgagee in writing; and
- (d) it shall not, without the Mortgagee's prior written consent, propose or permit the sale or transfer of the Mortgaged Land or any part thereof, in or as part of any Insolvency Proceeding, for a net sale price less than the amount required to pay in full all Indebtedness outstanding as at the date of payment of such net sale proceeds to the Mortgagee.



## K. APPOINTMENT OF A RECEIVER

1. *Appointment.* Upon the occurrence of a Default, in addition to any other remedies available to the Mortgagee, the Mortgagee may by instrument in writing appoint a Receiver of all or any part of the Mortgaged Land and all rents, incomes, profits and other amounts now or hereafter arising therefrom. The Mortgagee may also apply to any court of competent jurisdiction for the appointment of a Receiver.

2. *Powers of Receiver.* Any Receiver appointed by the Mortgagee shall, to the extent permitted by law, have the following powers:

- (a) to enter upon, take possession of, use, and occupy the Mortgaged Land or any part thereof;
- (b) to collect all rents, incomes, profits and other amounts in respect of the Mortgaged Land and to carry on the business of the Mortgagor on the Mortgaged Land;
- (c) to borrow money required for the maintenance, preservation or protection of the Mortgaged Land or for carrying on the business of the Mortgagor and, in the discretion of the Receiver, to charge the Mortgaged Land in priority to the Mortgage as security for the principal amounts so borrowed, interest thereon and costs related thereto;
- (d) to sell, lease, or otherwise dispose of the Mortgaged Land or any part thereof on such terms and conditions and in such manner as the Receiver shall determine in its sole discretion, and to effect such sale by conveying in the name and on behalf of the Mortgagor or otherwise;
- (e) to demand, commence, continue or defend any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession of the Mortgaged Land, and to give valid and effectual receipts and discharges therefor and to compromise or give time for the payment or performance of all or any part of the rents, accounts receivable or any other obligation of any person to the Mortgagor;
- (f) to exercise any rights or remedies which could have been exercised by the Mortgagee against the Mortgagor or the Mortgaged Land or with respect thereto; and
- (g) to execute all documents required to effect any of the foregoing.

3. *Identity of Receiver and Removal.* Any Receiver so appointed by the Mortgagee may be any person or persons satisfactory to the Mortgagee, and the Mortgagee may remove any Receiver so appointed and appoint another or others instead.

4. *Receiver as Agent of Mortgagor.* Any Receiver appointed by the Mortgagee shall be deemed to be agent of the Mortgagor unless the Mortgagee expressly specifies in writing that the Receiver shall be agent of the Mortgagee. The Mortgagor agrees to ratify and confirm all actions of the Receiver acting as agent for the Mortgagor and to release and indemnify the Receiver in respect of all such actions.

5. *Receivership Expenses.* The Mortgagor shall pay to the Receiver, forthwith on demand by the Mortgagee or the Receiver, the amount of all reasonable fees, disbursements and other expenses incurred by the Receiver in the exercise of its powers hereunder, with interest thereon at the Applicable Rate from the date on which such sums are incurred. All such sums, together with interest thereon at the Applicable Rate, shall be part of the Indebtedness and secured by the Mortgage.

6. *No Enquiries Required.* No persons dealing with the Receiver or its agents, upon any sale or other dealing with the Mortgaged Land, shall be concerned to inquire as to their powers or as to the application of any money paid to them, such sale or dealing shall be deemed as regards such person to be within the powers hereby conferred and to be valid and effectual.

## L. MISCELLANEOUS

1. *Records of Mortgagee.* The records of the Mortgagee disclosing the amount of an extension of credit by the Mortgagee to the Mortgagor, the repayment of any principal amount of Indebtedness, the amount of accrued and unpaid interest owing by the Mortgagor and the amount of other Indebtedness (or any part thereof) at any time outstanding, shall constitute conclusive evidence thereof in the absence of mathematical error.

2. *Revolving Line of Credit.* The Mortgagee may wish to make loan advances and re-advances or otherwise extend credit to the Mortgagor from time to time up to a total outstanding principal amount not exceeding the principal amount referred to in the Mortgage. The Mortgage is and shall be continuing security to the Mortgagee for the payment of all Indebtedness. Any portion of the Indebtedness may be advanced or re-advanced by the Mortgagee or other credit may be extended by the Mortgagee in one or more sums at any future time or times and the amount of all such advances, re-advances or other credits when so made or extended shall be secured by the Mortgage and be payable by the Mortgagor with interest thereon at the Applicable Rate and the Mortgage shall be deemed to be taken as security for the ultimate balance of the monies hereby secured, provided that none of the execution or registration of the Mortgage or the advance in part of any monies or extension of any other credit by the Mortgagee shall obligate the Mortgagee to advance any unadvanced portion thereof or to extend any other credit. The Mortgage shall not be void or cease to operate because the Indebtedness secured hereby has at any time or times been paid in full.

3. *Assignment and Syndication.* The Mortgagee shall be entitled from time to time, both before and after a Default, without notice to, or the consent of the Mortgagor or any Guarantor:

- (a) to sell or assign all or part of the Indebtedness and the Mortgagee's interests in the Mortgage and any other security and agreements held by the Mortgagee; and
- (b) to syndicate all or part of the Indebtedness, the Mortgage and any other security and agreements held by the Mortgagee and to grant participations therein.

To facilitate the foregoing, the Mortgagee may provide each prospective purchaser, assignee, syndicated lender or participant and their respective advisers with financial and other information concerning the Indebtedness, the Mortgagor, the Mortgaged Land, any Guarantor, any other collateral or any other matter.

4. *General Indemnity by Mortgagor.* The Mortgagor hereby agrees, on demand by the Mortgagee, to indemnify and hold harmless the Mortgagee and its officers, directors, employees and agents from and against any and all claims, expenses, liabilities, losses and damages that may be asserted against or incurred by any of such indemnified persons arising out of, or in connection with the Mortgage, any Indebtedness or any claim, investigation, proceeding or litigation relating to any of the foregoing, regardless of whether any such indemnified person is a party thereto (including any and all breakage costs reasonably incurred by the Mortgagee in respect of any breach by the Mortgagor of any of its obligations under the Mortgage) and to reimburse each such indemnified person, on demand by the Mortgagee, for any and all reasonable legal and other expenses incurred in investigating, pursuing or defending any of the foregoing or otherwise in connection with any of the foregoing; provided that the foregoing indemnity shall not, as to any indemnified person, apply to any claim, expense, liability, loss or damage or related expense to the extent they are found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the wilful misconduct or gross negligence of such indemnified person.

5. *Effect of Sale.* No sale, conveyance, transfer or other dealing by the Mortgagor with the Mortgaged Land or any part thereof or any approval of the Mortgagee relating thereto shall in any way change or affect the liability of the Mortgagor or in any way alter the rights of the Mortgagee as against the Mortgagor or any other person or persons liable for payment of the Indebtedness or any part thereof.

6. *Dealings with the Mortgagor and Others.* The Mortgagee may grant time, renewals, extensions, indulgences, releases and discharges to, may take security from and give the same and any and all existing security up to, may abstain from taking security from or from perfecting security of, may accept compositions from, may amend the Mortgage, and may otherwise deal

with the Mortgagor and all other persons (including any principal debtor, any Guarantor or any owner of the Mortgaged Land) and security as the Mortgagee may see fit without prejudicing any rights of the Mortgagee under the Mortgage.

7. *Amendments to Mortgage.* The Mortgagor and the Mortgagee may from time to time amend the Mortgage (including to increase the interest rate specified by the Mortgage) by an amendment agreement between the Mortgagor and the Mortgagee, whether or not such amendment agreement (or notice thereof) is registered. This provision shall constitute notice of such amendments and the Mortgage shall secure payment of all Indebtedness (including all interest and other Indebtedness arising or resulting from such amendments) and retain its priority with respect thereto over any mortgage, charge or other instrument registered subsequent to the Mortgage.

8. *Waiver.* No waiver, condonation or excusing by the Mortgagee of any default, breach or other non-performance by the Mortgagor at any time or times in respect of any provision of the Mortgage (including any Default) shall operate as a waiver by the Mortgagee of any subsequent or other default, breach or non-performance or prejudice or affect in any way the rights of the Mortgagee in respect of any such subsequent or other default, breach or non-performance.

9. *Discharge or Assignment.* The Mortgagee shall be entitled to prepare or have its counsel prepare a discharge or assignment of the Mortgage and any other documents necessary to discharge or assign any other security held by the Mortgagee and shall have a reasonable time after payment of the Indebtedness in full within which to prepare, execute and deliver such instruments. All reasonable costs, fees and disbursements of the Mortgagee and the Mortgagee's counsel in connection with the preparation, review, execution and delivery of the discharge, assignment or any other documents necessary to discharge or assign the Mortgage or any other security shall, to the extent permitted by law, be paid by the Mortgagor to the Mortgagee and be secured by the Mortgage.

10. *No Obligation to Advance.* Nothing herein and nothing contained in the Mortgage shall obligate the Mortgagee to loan any amount to the Mortgagor or to extend any other credit to the Mortgagor.

11. *Appointment of Attorney Irrevocable.* Each appointment by the Mortgagor of an attorney in the Mortgage or the Standard Charge Terms is coupled with an interest and may not be revoked.

12. *Other Security.* The Mortgage is in addition to and not in substitution for any other security at any time held by the Mortgagee as security for payment of all or any part of the Indebtedness, and the Mortgagee may, at its option, pursue its remedies thereunder or under the Mortgage concurrently or successively. Any judgment or recovery under the Mortgage or under any other security held by the Mortgagee as security for payment of Indebtedness shall not affect the right of the Mortgagee to enforce or realize on the Mortgage or any other such security.

13. *Financing Statement.* To the extent permitted by law, the Mortgagor hereby waives its right to receive from the Mortgagee a copy of any financing statement, financing change statement, verification statement or other similar statement filed by or received by the Mortgagee or any agent of the Mortgagee.

14. *Notice.* Except as otherwise herein provided, any notice, demand or other communication to the Mortgagor referred to herein or in the Mortgage may be forwarded to the Mortgagor by personal delivery or mailed by prepaid ordinary or registered mail to the Mortgagor at the Mortgagor's last known address as shown on the Mortgagee's records. The Mortgagor shall be deemed to have received the same on the date of delivery, if personally delivered, or on the fourth day after the same is mailed by prepaid ordinary mail or registered mail, if mailed, even if the Mortgagor does not actually receive it.

15. *Different Currencies.* The payment of any part of the Indebtedness shall be made by the Mortgagor in the same currency as the currency in which such part of the Indebtedness is then denominated and all interest and fees shall be paid by the Mortgagor in the same currency as the currency in which that part of the Indebtedness to which they relate is denominated.

16. *Judgment Currency.* If in the recovery by the Mortgagee of any Indebtedness in any currency, judgment can only be obtained in another currency and, because of changes in the

exchange rate of such currencies between the date of judgment and payment in full of the amount of such judgment, the recovery under the judgment differs from the receipt by the Mortgagee of the full amount of such Indebtedness, the Mortgagor shall pay any such deficiency to the Mortgagee, such deficiency may be claimed by the Mortgagee against the Mortgagor as an alternative or additional cause of action and any surplus received by the Mortgagee shall be repaid to the Mortgagor.

17. *Foreign Exchange Rate Determinations.* Whenever any provision of the Mortgage requires or permits the determination of the rate of exchange between any currencies, such rate of exchange shall be determined by the Mortgagee based on its normal practice as at the date of such determination.

18. *Governing Law.* The Standard Charge Terms and the Mortgage shall be governed by the law of the jurisdiction in which the Mortgaged Land is located.

19. *Time of Essence.* Time shall be of the essence of the Mortgage.

20. *Severability.* If any provision of the Mortgage is found by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall not apply and the Mortgage shall remain in full force and effect without such provision.

21. *Interpretation.* Whenever the context so requires, words in the singular shall include the plural, words in the plural shall include the singular and words importing any gender shall include the other genders. Whenever used in the Standard Charge Terms, the Mortgage or any Schedule, the words "including" and "includes" shall mean "including, without limitation" and "includes, without limitation", respectively, and the word "person" shall include an individual, corporation, partnership, government, government agency and any other entity.

22. *Titles.* Titles used in the Standard Charge Terms, the Mortgage or any Schedule are inserted for convenience of reference only and shall not affect or modify the interpretation or construction of any provision of the Standard Charge Terms, the Mortgage or any Schedule.

23. *Joint and Several Obligations.* If there is more than one Mortgagor, all Mortgagors shall be jointly and severally liable for all obligations of the Mortgagors pursuant to the Mortgage.

24. *Schedule.* Schedule "A" shall form part of the Standard Charge Terms.

25. *Equivalent Rate Information.* Schedule "A" is a summary of various annual rates of interest calculated half-yearly not in advance equivalent to the corresponding annual rates calculated monthly not in advance or calculated quarter-annually not in advance. The rate of interest chargeable, calculated half-yearly not in advance, equivalent to each Applicable Rate, is shown by Schedule "A".

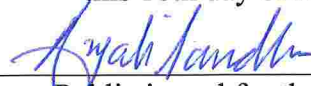
26. *Successors and Assigns.* All rights and powers of the Mortgagee shall enure to the benefit of and be exercisable by the Mortgagee and the Mortgagee's successors and assigns. All covenants, obligations and liabilities entered into or imposed on the Mortgagor shall be binding on the Mortgagor and the Mortgagor's heirs, executors, administrators, personal representatives, successors and assigns.

## SCHEDULE "A"

The interest rates set out in Column C are the annual interest rates calculated half-yearly not in advance which are equivalent to the corresponding annual interest rates calculated monthly not in advance set out in Column A and quarter-annually not in advance set out in Column B.

COLUMN A	COLUMN B	COLUMN C	COLUMN A	COLUMN B	COLUMN C
Interest rate calculated monthly not in advance	Interest rate calculated quarter-annually not in advance	Interest rate calculated half-yearly not in advance	Interest rate calculated monthly not in advance	Interest rate calculated quarter-annually not in advance	Interest rate calculated half-yearly not in advance
1.0000%	1.0008%	1.0021%	9.5000%	9.5754%	9.6900%
1.1250%	1.1261%	1.1276%	9.6250%	9.7024%	9.8201%
1.2500%	1.2513%	1.2533%	9.7500%	9.8294%	9.9502%
1.3750%	1.3766%	1.3789%	9.8750%	9.9565%	10.0804%
1.5000%	1.5019%	1.5047%	10.0000%	10.0836%	10.2107%
1.6250%	1.6272%	1.6305%	10.1250%	10.2107%	10.3410%
1.7500%	1.7526%	1.7564%	10.2500%	10.3378%	10.4714%
1.8750%	1.8779%	1.8823%	10.3750%	10.4650%	10.6019%
2.0000%	2.0033%	2.0084%	10.5000%	10.5921%	10.7324%
2.1250%	2.1288%	2.1344%	10.6250%	10.7194%	10.8630%
2.2500%	2.2542%	2.2606%	10.7500%	10.8466%	10.9937%
2.3750%	2.3797%	2.3868%	10.8750%	10.9739%	11.1244%
2.5000%	2.5052%	2.5131%	11.0000%	11.1011%	11.2552%
2.6250%	2.6307%	2.6394%	11.1250%	11.2285%	11.3861%
2.7500%	2.7563%	2.7658%	11.2500%	11.3558%	11.5170%
2.8750%	2.8819%	2.8923%	11.3750%	11.4832%	11.6480%
3.0000%	3.0075%	3.0188%	11.5000%	11.6106%	11.7791%
3.1250%	3.1331%	3.1454%	11.6250%	11.7380%	11.9102%
3.2500%	3.2588%	3.2721%	11.7500%	11.8654%	12.0414%
3.3750%	3.3845%	3.3988%	11.8750%	11.9929%	12.1727%
3.5000%	3.5102%	3.5256%	12.0000%	12.1204%	12.3040%
3.6250%	3.6360%	3.6525%	12.1250%	12.2479%	12.4354%
3.7500%	3.7617%	3.7794%	12.2500%	12.3755%	12.5669%
3.8750%	3.8875%	3.9064%	12.3750%	12.5031%	12.6985%
4.0000%	4.0133%	4.0335%	12.5000%	12.6307%	12.8301%
4.1250%	4.1392%	4.1606%	12.6250%	12.7583%	12.9618%
4.2500%	4.2651%	4.2878%	12.7500%	12.8859%	13.0935%
4.3750%	4.3910%	4.4151%	12.8750%	13.0136%	13.2253%
4.5000%	4.5169%	4.5424%	13.0000%	13.1413%	13.3572%
4.6250%	4.6428%	4.6698%	13.1250%	13.2691%	13.4892%
4.7500%	4.7688%	4.7973%	13.2500%	13.3968%	13.6212%
4.8750%	4.8948%	4.9248%	13.3750%	13.5246%	13.7533%
5.0000%	5.0209%	5.0524%	13.5000%	13.6524%	13.8854%
5.1250%	5.1469%	5.1800%	13.6250%	13.7803%	14.0177%
5.2500%	5.2730%	5.3078%	13.7500%	13.9082%	14.1499%
5.3750%	5.3991%	5.4355%	13.8750%	14.0360%	14.2823%
5.5000%	5.5252%	5.5634%	14.0000%	14.1640%	14.4147%
5.6250%	5.6514%	5.6913%	14.1250%	14.2919%	14.5472%
5.7500%	5.7776%	5.8193%	14.2500%	14.4199%	14.6798%
5.8750%	5.9038%	5.9474%	14.3750%	14.5479%	14.8124%
6.0000%	6.0300%	6.0755%	14.5000%	14.6759%	14.9451%
6.1250%	6.1563%	6.2037%	14.6250%	14.8040%	15.0779%
6.2500%	6.2826%	6.3319%	14.7500%	14.9320%	15.2108%
6.3750%	6.4089%	6.4603%	14.8750%	15.0601%	15.3437%
6.5000%	6.5353%	6.5887%	15.0000%	15.1883%	15.4766%
6.6250%	6.6616%	6.7171%	15.1250%	15.3164%	15.6097%
6.7500%	6.7880%	6.8456%	15.2500%	15.4446%	15.7428%
6.8750%	6.9145%	6.9742%	15.3750%	15.5728%	15.8760%
7.0000%	7.0409%	7.1029%	15.5000%	15.7011%	16.0092%
7.1250%	7.1674%	7.2316%	15.6250%	15.8293%	16.1425%
7.2500%	7.2939%	7.3604%	15.7500%	15.9576%	16.2759%
7.3750%	7.4204%	7.4892%	15.8750%	16.0859%	16.4094%
7.5000%	7.5470%	7.6182%	16.0000%	16.2143%	16.5429%
7.6250%	7.6736%	7.7472%	16.1250%	16.3427%	16.6765%
7.7500%	7.8002%	7.8762%	16.2500%	16.4710%	16.8102%
7.8750%	7.9268%	8.0053%	16.3750%	16.5995%	16.9439%
8.0000%	8.0535%	8.1345%	16.5000%	16.7279%	17.0777%
8.1250%	8.1801%	8.2638%	16.6250%	16.8564%	17.2116%
8.2500%	8.3068%	8.3931%	16.7500%	16.9849%	17.3455%
8.3750%	8.4336%	8.5225%	16.8750%	17.1134%	17.4795%
8.5000%	8.5604%	8.6519%	17.0000%	17.2420%	17.6136%
8.6250%	8.6871%	8.7815%	17.1250%	17.3706%	17.7477%
8.7500%	8.8140%	8.9111%	17.2500%	17.4992%	17.8819%
8.8750%	8.9408%	9.0407%	17.3750%	17.6278%	18.0162%
9.0000%	9.0677%	9.1704%	17.5000%	17.7564%	18.1506%
9.1250%	9.1946%	9.3002%	17.6250%	17.8851%	18.2850%
9.2500%	9.3215%	9.4301%	17.7500%	18.0138%	18.4195%
9.3750%	9.4484%	9.5600%	17.8750%	18.1426%	18.5540%

This is Exhibit "6" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023

  
\_\_\_\_\_  
A Notary Public in and for the Province of Manitoba

SECURITY AGREEMENT

To Bank of Montreal:

The undersigned (hereinafter called the "Debtor") hereby enters into this Security Agreement with the Bank of Montreal (hereinafter called the "Bank") for valuable consideration and as a general and continuing security for the repayment of all present and future indebtedness of the Debtor to the Bank and interest thereon and for the payment and discharge of all other present and future liabilities and obligations, direct or indirect, absolute or contingent, of the Debtor to the Bank, including future advances or other value to the Debtor by the Bank whether or not such future advances or value are given pursuant to a commitment, and for any present and future indebtedness of any person, firm or corporation whose indebtedness to the Bank is guaranteed at any time by the Debtor to the Bank (all such indebtedness, interest, liabilities and obligations being hereinafter collectively called the "Obligations").

List all premises and asset locations, by schedule, if necessary.

1. The Debtor hereby represents and warrants to the Bank that it has assets at the following locations in Manitoba:

550 GEORGE AVENUE UNIT 1  
WINKLER, MB R6W 0J4

2. The Debtor hereby

Attach a schedule, if equipment is to be listed.

(a) grants, bargains, assigns, transfers, sets over, mortgages and charges to the Bank as and by way of a fixed and specific mortgage and charge, and grants to the Bank a security interest in, all its present and future equipment, including without limiting the generality of the foregoing, all fixtures, plant, machinery, tools and furniture now or hereafter owned or acquired or in which the Debtor has an interest and any equipment specifically listed or otherwise described in any Schedule hereto, (all of which is hereinafter collectively called the "Equipment"); and

(b) grants, bargains, assigns, transfers, sets over, mortgages and charges to the Bank, and grants to the Bank a security interest in, all its present and future inventory, including, without limiting the generality of the foregoing, all raw materials, goods in process, finished goods and packaging material and goods acquired or held for sale or furnished or to be furnished under contracts of rental or service (all of which is hereinafter collectively called the "Inventory"); and

(c) assigns, transfers and sets over to the Bank, and grants to the Bank a security interest in, all its present and future debts, including, and without limiting the generality of the foregoing, accounts, contract rights, claims, monies and choses in action of every nature now due or hereafter to become due and owing to or owned by the Debtor (all of which is hereinafter collectively called the "Receivables"); and

(d) assigns, transfers and sets over to the Bank, and grants to the Bank a security interest in, all its present and future intangibles, including, without limiting the generality of the foregoing, all chattel paper, goodwill, patents, trademarks, copyrights, warehouse receipts, bills of lading, shares, warrants, bonds, debentures, debenture stock, bills, notes, instruments, writings, and other documents or industrial paper of every kind and nature, including without limitation client lists, client records and client files, now or hereafter owned or acquired or re-acquired by the Debtor or in which the Debtor has an interest (all of which is hereinafter collectively call the "Intangibles"); and

(e) grants, bargains, assigns, transfers, sets over, mortgages and charges to the Bank as and by way of a fixed and specific mortgage and charge, and grants to the Bank a security interest in, all personal property in any form or fixtures derived directly or indirectly from any dealing with the personal property referred to in this clause 2, and includes payment representing indemnity or compensation for loss or damage to the personal property referred to in this clause 2 (all of which is hereinafter collectively called the "Proceeds"); and

(f) charges in favour of the Bank as and by way of a floating charge its undertaking and all its property and assets, real and personal, movable or immovable, of whatsoever nature and kind, both present and future, other than property and assets hereby validly assigned or subjected to a specific mortgage and charge and the exceptions hereinafter contained, (all of which is hereinafter collectively call the "Undertaking").

For the purposes of this Security Agreement, the Equipment, Inventory, Receivables, Intangibles, Proceeds, Undertaking and other property and assets of the Debtor referred to in this clause 2 are hereinafter sometimes

collectively called the "Collateral".

3. The Collateral now situate in the Province of Manitoba is on the date hereof primarily situated or located at the location(s) set out in clause 1 hereof but may from time to time be located at other premises of the Debtor. The Collateral may also be located at other places in Manitoba while in transit to and from such locations and premises; and the Collateral may from time to time be situated or located at any other place in Manitoba when on lease or consignment to any lessee or consignee from the Debtor.

The Debtor covenants with the Bank not to remove the Collateral or any part thereof from the locations set out in clause 1 hereof, except as allowed for in the preceding paragraph and for sales in the ordinary course of business, without the prior written consent of the Bank.

4. The Debtor shall not without the prior written consent of the Bank sell or dispose of any of the Collateral in the ordinary course of business or otherwise; and if the amounts of any of the Receivables or Intangibles referred to in sub-clauses (c) or (d) of clause 2 above shall be paid to the Debtor, the Debtor shall receive the same as agent of the Bank and forthwith pay over the same to the Bank; provided however that the property and assets assigned or subjected to a mortgage, charge or security interest by sub-clauses (b) and (e) of clause 2 above may be sold or disposed of in the ordinary course of business, and for the purpose of carrying on the same, for value received and then only upon the express condition that on or before delivery to a third party the Debtor shall secure full settlement of the entire purchase price for the Collateral so sold in cash, notes, chattel paper and other property.

5. It is hereby declared that the last day of any term of years reserved by any lease, verbal or written, or any agreement therefor, now held or hereafter acquired by the Debtor, is hereby or shall be expected out of the mortgages, charges and security interests hereby created, but the Debtor shall stand possessed of the reversion of one day remaining in the Debtor in respect of any such term of years, for the time being demised, as aforesaid, upon trust to assign and dispose of the same as any purchaser of such term of years shall direct.

6. The Debtor shall at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all and singular every such further acts, deeds, financing statements, transfers, assignments, security agreements and assurances as the Bank may reasonably require for the better granting, transferring, assigning, charging, setting over, assuring and confirming unto the Bank the Collateral hereby mortgaged and charged or subjected to security interests or intended so to be or which the Debtor may hereafter become bound to mortgage, charge, transfer, assign or subject to a security interest in favour of the Bank and for the better accomplishing and effectuating of this Security Agreement. The Debtor hereby grants to the Bank the right to perfect by possession, repossession or seizure the security interests granted hereunder in any part of the Collateral.

7. The Debtor shall at all times have and maintain insurance over the Collateral against risks of fire (including so-called extended coverage), theft, and such other risks as the Bank may reasonably require in writing, containing such terms, in such form, for such periods and written by such companies as may be reasonably satisfactory to the Bank. The Debtor shall duly and seasonably pay all premiums and other sums payable for maintaining such insurance and shall cause the insurance money thereunder to be payable to the Bank as its interest hereunder may appear and shall, if required, furnish the Bank with certificates or other evidence satisfactory to the Bank of compliance with the foregoing insurance provisions.

8. The Debtor covenants with the Bank to maintain accurate books and records of the Collateral and the Debtor shall at all times upon request by the Bank furnish the Bank with such information concerning the Collateral and the Debtor's affairs and business as the Bank may reasonably request, including lists of Inventory and Equipment and lists of Receivables showing the letters, papers and other documents in any way evidencing or relating to the account.

9. The Debtor hereby undertakes to:

(a) Promptly pay the Obligations as they become due or are demanded;

(b) Maintain the Collateral in good condition and repair and to provide adequate storage facilities to protect the Collateral and not to permit the value of the Collateral to be impaired;

(c) Not, without the consent in writing of the Bank, create any liens upon, or assign or transfer as security or pledge or hypothecate as security or create a Security interest in or in any way encumber the Collateral or any part thereof ranking or purporting to rank in priority to or *pari passu* with the security interest, mortgage, hypothec, charge, lien or encumbrance created by this Security Agreement, save that the Debtor may create a purchase money security interest in Collateral hereafter acquired but only if such interest is perfected and



notification thereof is given to the Bank pursuant to the provisions of The Personal Property Security Act of Manitoba;

(d) Defend the title to the Collateral against all persons, firms or bodies corporate claiming any interest in the Collateral or any part thereof;

(e) Pay all taxes, assessments, and levies or charges from any source which may be assessed against the Collateral or any part thereof or which may result in a lien against the Collateral or any part thereof and shall insure the Collateral for loss or destruction by fire, wind, storm, and such other perils stipulated by the Bank in an amount not less than the full insurable value of the Collateral or the amount from time to time hereby secured, which is the lesser, with appropriate endorsement to secure the Bank as its interest shall appear. In the event the Debtor shall fail to provide adequate insurance when required to do so or to pay any of the said taxes, assessments, levies or charges the Bank may, without notice, at its option, but without any obligation or liability so to do, procure insurance and pay taxes or other charges and add said sums to the balance of the Obligations hereby secured or claim from the Debtor immediate reimbursement of such sums;

(f) Furnish such financial and operating statements of the Debtor to the Bank as may be requested by the Bank;

(g) Duly observe and conform to all valid requirements of any governmental authority relative to any of the Collateral and all covenants, terms and conditions upon or under which the Collateral is held;

(h) Give immediate notice to the Bank in the event of a change of the corporate or trade name of the Debtor or any proprietor or partner thereof.

10. The Debtor represents and warrants that:

(a) At the time the Debtor pledges, sells, assigns or transfers to the Bank any instrument, document of title, security, chattel paper or other property, or any interest therein, the Debtor shall be the lawful owner thereof and shall have good right to pledge, sell, assign or transfer the same, none of such property shall have been pledged, sold, assigned or transferred to any person other than the Bank, or in any way encumbered, and the Debtor shall defend the same against all claims and demands of all persons;

(b) If the Debtor is a corporation, it is a corporation duly organized and existing under the laws of Manitoba and is duly qualified and in good standing in every province or territory where it is doing business;

(c) If the Debtor is a corporation, the execution, delivery and performance hereof are within the Debtor's corporate powers, have been duly authorized, are not in contravention of any law or the terms of the Debtor's Charter, By-Laws or other incorporation document, or of any indenture, agreements or undertakings to which the Debtor is a party or by which it is bound.

11. The Debtor shall be in default under this Security Agreement upon the occurrence of any one to the following events:

(a) the Debtor shall default under any of the Obligations;

(b) the Debtor shall default in the due observance or performance of any covenant, undertaking or agreement heretofore or hereafter given to the Bank, whether contained herein or not;

(c) an execution or any other process of any court shall become enforceable against the Debtor or a distress or analogous process shall be levied upon the property of the Debtor or any part thereof;

(d) the Debtor shall become insolvent or commit an act of bankruptcy, or make an assignment in bankruptcy or a bulk sale of its assets or a bankruptcy petition shall be filed or presented against the Debtor and not be bona fide opposed by the Debtor;

(e) the Debtor shall cease to carry on business or threaten to cease to carry on business;

(f) the Bank believes, in good faith, that the prospect of payment or performance by the Debtor is impaired or that the Collateral or any part thereof is in danger of being lost, damaged or confiscated.

12. Upon any default under this Security Agreement, the Bank may declare any or all of the Obligations to be immediately due and payable and the Bank may demand the Debtor to gather the Collateral in a named location or locations and the Bank may proceed to realize the security hereby constituted and to enforce its rights by

entry; or by the appointment by instrument in writing of a receiver or receivers of the subject matter of such security or any part thereof and such receiver or receivers may be any person or persons, whether an officer or officers or employee or employees of the Bank or not, and the Bank may remove any receiver or receivers so appointed and appoint another or others in his or their stead; or by proceedings in any court of competent jurisdiction for the appointment of a receiver or receivers or for sale of the Collateral or any part thereof; or by any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity; and may file such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relative to the Debtor or the Collateral. Any such receiver or receivers so appointed shall have power to take possession of the Collateral or any part thereof and to carry on the business of the Debtor and to borrow money required for the maintenance, preservation or protection of the Collateral or any part thereof or the carrying on of the business of the Debtor, and to further charge the Collateral in priority to the security constituted by this Security Agreement as security for money so borrowed, and to sell, lease or otherwise dispose of the whole or any part of the Collateral on such terms and conditions and in such manner as he shall determine. In exercising any powers any such receiver or receivers shall act as agent or agents for the Debtor and the Bank shall not be responsible for his or their actions.

In addition, subject to Part 6 of the Manitoba Personal Property Security Act, the Bank may enter upon and lease or sell the whole or any part or parts of the Collateral and any such sale may be made hereunder by public auction, by public tender or by private contract, with or without notice and with or without advertising and without any other formality, all of which are hereby waived by the Debtor, and such sale shall be on such terms and conditions as to credit or otherwise and as to upset or reverse bid or price as to the Bank in its sole discretion may seem advantageous and such sale may take place whether or not the Bank has taken possession of such property and assets.

No remedy for the realization of the security hereof or for the enforcement of the rights of the Bank shall be exclusive of or dependent on any other such remedy, but any one or more of such remedies may from time to time be exercised independently or in combination. The term "receiver" as used in this Security Agreement includes a receiver and manager.

13. The Debtor hereby covenants, promises and agrees to and with the Bank that in case the sum of money realized upon any disposition of the Collateral referred to herein shall not be sufficient to pay the whole of the Obligations due at the time of such disposition, the Debtor shall and will forthwith pay or cause to be paid to the Bank an amount equal to the deficiency between the Obligations and the sum of money realized upon the said disposition of the Collateral provided for herein.

14. Notwithstanding any other section or provision of this Security Agreement, the Bank may collect, realize, sell or otherwise deal with Receivables or any part thereof in such manner, upon such terms and conditions and at such time or times, whether before or after default, as may seem to it advisable, and without notice to the Debtor (except in the case of a sale and then subject to provisions of Part 6 of the Personal Property Security Act of Manitoba). The Bank shall not be liable or accountable for any failure to collect, realize, sell or obtain payment of the Receivables or any part thereof and shall not be bound to institute proceedings for the purpose of collecting, realizing or obtaining payment of the same or for the purpose of preserving a right of the Bank, the Debtor or any other person, firm or corporation in respect of the same. All monies collected or received by the Debtor in respect of the Receivables shall be received as trustee for the Bank and shall be forthwith paid over to the Bank. All monies collected or received by the Bank in respect of the Receivables or other Collateral may be applied on account of such parts of the indebtedness and liability of the Debtor as to the Bank seems best or in the discretion of the Bank may be realized to the Debtor, all without prejudice to the liability of the Debtor or the Bank's right to hold and realize the security.

15. Any and all payments made in respect of the Obligations from time to time and money realized from any securities held therefor (including moneys realized on any enforcement of this Security Agreement) may be applied to such part or parts of the Obligations as the Bank may see fit, and the Bank shall at all times and from time to time have the right to change any appropriation as the Bank may see fit.

16. The Debtor agrees to pay all reasonable expenses, including solicitor's fees and disbursements and the remuneration of any receiver appointed hereunder, incurred by the Bank in preparation, perfection and enforcement of this Security Agreement and the payment of such expenses shall be secured hereby.

17. The Bank may waive any default herein referred to; provided always that no act or omission by the Bank in the premises shall extend to or be taken in any manner whatsoever to affect any subsequent default or the rights resulting therefrom.

18. The Debtor warrants and acknowledges that value has been given and that the Debtor has rights in the Collateral and that the Debtor and the Bank have not agreed to postpone the time of attachment of the security

interest granted in this Security Agreement.

19. The security hereof is in addition to and not in substitution for any other security now or hereafter held by the Bank.

20. Nothing herein shall obligate the Bank to make any advance or loan or further advance or loan or to renew any note or extend any time for payment of any of the Obligations of the Debtor to the Bank.

21. The Bank shall not be liable or accountable for any failure to seize, collect, realize, sell or obtain payment of the Collateral or any part thereof and shall not be bound to institute proceedings for the purpose of seizing, collecting, realizing or obtaining possession or payments of the same or for the purpose of preserving any rights of the Bank, the Debtor or any other person, firm or body corporate in respect of same.

22. The Bank or any assignee of this Security Agreement may, without further notice to the Debtor, at any time assign this Security Agreement and the security interest evidenced thereby. The Debtor expressly agrees that, with respect to such an assignment, re-assignment or transfer of this Security Agreement, the assignee or transferee shall have all of the Bank's rights and remedies under this Security Agreement and the Debtor will not assert as a defense, counterclaim, set-off, cross-complaint, or otherwise any claim, known or unknown, which he now has or hereafter acquires against the Bank in any action commenced by an assignee or transferee of this Security Agreement and will pay the Obligations, secured hereby to the assignee or transferee at its place of business as said Obligations become due.

23. The Debtor hereby acknowledges receiving a copy of this Security Agreement.

24. The Debtor hereby waives the right to receive any financing statement or financing change statement registered by the Bank and any confirmation of registration or verification statement issued.

25. This Security Agreement shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the Debtor and the Bank.


26. In construing this Security Agreement, terms herein shall have the same meaning as defined in The Personal Property Security Act, unless the context otherwise requires. The word "Debtor", the personal pronoun "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used depending upon whether the Debtor is one or more individuals, corporations, or partnerships and, if more than one, shall apply and be binding upon each of them severally. The term "successors" shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation and, where the Debtor is a partnership, any new partnership resulting from the admission of new partners or any other change in the Debtor, including, without limiting the generality of the foregoing, the death of any or all of the partners.

IN WITNESS WHEREOF this Security Agreement has been executed by the Debtor on the 10<sup>th</sup> day of January, 2020 (year).

Insert date of execution

To be signed by Debtor; if Debtor is a corporation ensure signatures are authorized and if the corporation has a corporate seal, affix corporate seal; Debtors name should be typed.

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT

By:   
Name: Peter Bergen  
Title: Authorized Signatory

CORPORATE AUTHORIZING RESOLUTION

Required only for a corporation.

"WHEREAS it is in the interests of the Company to enter into a Security Agreement with the Bank of Montreal as security for its present and future obligations to the Bank of Montreal and therein mortgage, charge, assign and otherwise transfer and encumber and grant security interests in all its present and future property and assets;

NOW THEREFORE BE IT RESOLVED THAT:

- 1. the Company do enter into, execute and deliver to the Bank of Montreal a Security Agreement substantially in the form of the draft Security Agreement presented to directors, subject to such alterations, amendments or additions to which the President or a Vice-President of the Company may agree;
2. the Company do mortgage, charge, assign and otherwise transfer and encumber and grant security interests in all its present and future equipment, inventory, receivables, intangibles, proceeds, undertaking and other property and assets as security for its present and future obligations to the Bank of Montreal, all as provided in the said draft Security Agreement;
3. the execution by the President or a Vice-President of the Company of the said Security Agreement shall be conclusive proof of his agreement to any amendments, alternations or additions incorporated therein;
4. the Chairman of the Board, the President or a Vice-President and another Vice-President, the Secretary, the Treasurer, an Assistant Secretary, an Assistant Treasurer or a Controller of the Company be and they are hereby authorized to execute and deliver the Security Agreement aforesaid on behalf of the Company and each of the officers of the Company are hereby authorized to execute all such other documents and writings and to do such other acts and things as may be necessary for fulfilling the Company's obligations under the said Security Agreement."

CERTIFICATE

To be completed by Secretary or other authorized officer; insert name of corporation. Insert appropriate date.

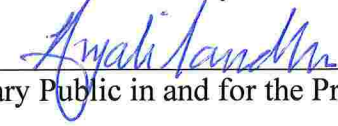
I am the Secretary of 3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT and I hereby certify that:

- 1. the forgoing is a true copy of a resolution properly passed by the board of directors or signed by all the directors entitled to vote thereon at a meeting of directors of the said Company on the 10th day of January, 2020 (year).
2. the attached Security Agreement is in the form of the draft Security Agreement referred to in the resolution and has been duly and properly executed by the proper officers of the Company under its corporate seal; and
3. the resolution was passed at a meeting duly called and held on the date aforesaid and at which a quorum of the directors was present throughout the meeting, all the directors having received proper notice of the meeting or waiving such notice in accordance with the by-laws of the Company.

To be signed by secretary or other authorized officer; if corporation has a corporation seal, affix corporation seal.

By: [Signature]
Name: Peter Bergen
Title: President/Secretary

This is Exhibit "7" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023



---

A Notary Public in and for the Province of Manitoba

THE UNDERSIGNED 3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT of 550 GEORGE AVENUE UNIT 1 in the CITY of WINKLER, R6W 0J4 in the Province of Manitoba, for valuable consideration HEREBY ASSIGNS AND TRANSFERS to the Bank of Montreal, (herein called the Bank), all accounts, debts and other intangibles, chattel paper, documents of title, instruments, securities and security interests (all such terms having the meaning of such terms in the Personal Property Security Act and herein collectively called the "said debts and securities") now due or hereafter to become due to the undersigned or which now are or may hereafter become vested in the undersigned and all proceeds and other rights and benefits in respect thereof.

AND the undersigned undertakes and promises to furnish to the Bank at any time and from time to time on demand a list of all its debtors with the amounts owing by each and all security and other rights and benefits in respect thereof and to assign and transfer the same to the Bank.

AND the undersigned hereby assigns and transfers and agrees to assign and transfer to the Bank all books and accounts, letters, invoices, papers and documents in any way evidencing or relating to all or any of the debts and securities and rights hereby transferred or agreed to be transferred, and to furnish the Bank with all information which may assist in the collection thereof.

AND without limiting the generality of the foregoing, the undersigned hereby assigns and transfers and agrees to assign and transfer any and all claims and other rights for insurance against loss by fire, water, misappropriation or otherwise to the real or personal property of the undersigned.

THE present assignment and transfer shall be a continuing collateral security to the Bank for the payment of all and every present and future indebtedness and liability direct or indirect of the undersigned to the Bank and any ultimate unpaid balance thereof with interest.

AND the undersigned agrees to pay all reasonable expenses, including solicitor's fees and disbursements incurred by the Bank or its agents in connection with the preparation and perfection of this assignment and in connection with the collection and realization of the said debts and securities and the payment of all such expenses shall be secured hereby.

AND the undersigned expressly authorizes the Bank to give notice to account debtors and collect and realize the said debts and securities and rights hereby transferred from time to time in such manner and at such times as it may in its discretion deem advisable including by appointment of receiver or agent or disposition for deferred payment (but it shall not be bound to realize the same, shall not be obliged to prepare the debts and securities for disposition, shall not be obliged to keep the same identifiable, and shall not be obliged to preserve rights against other persons unless it sees fit), and may appropriate the proceeds thereof in its absolute discretion on account of such parts of the said indebtedness and liability whether secured or unsecured as to the Bank may seem best; and such appropriations may be changed or varied from time to time at the discretion of the Bank; and the Bank before appropriating the same as aforesaid may deduct all reasonable costs, charges and expenses of realization including reasonable commissions for collection and all legal costs on a solicitor and his client basis all of which the undersigned agrees to pay to the Bank.

THE Bank may grant extensions, take and give up securities, accept compositions, grant releases and discharges and generally deal with the said debts and securities and rights in its absolute discretion without consent of or notice to the undersigned, and the Bank shall not be responsible for any loss or damage which may occur in consequence of the negligence of any officer, agent, receiver, sheriff or solicitor employed in the collection or realization thereof or while the debts, claims or securities are in the possession of the Bank.

IF the amounts of any of the said debts and securities and rights be paid to the undersigned, the

undersigned (or such one or other of them as shall receive the same) hereby agrees to receive the same as agent of and in trust for the Bank and forthwith to pay over the same.

THE UNDERSIGNED covenants not to substitute or modify any of the undersigned's rights under the debts, claims or securities, by agreement or otherwise, without the written consent of the Bank, and any substitution or modification not consented to may at the option of the Bank be treated as an act of default hereunder and under any other agreement between the undersigned and the Bank.

THE UNDERSIGNED hereby undertakes to do such other things and sign such further instruments as may from time to time be required by the Bank or any officer or solicitor thereof to vest in the Bank the said debts and securities and rights hereby assigned and transferred or agreed to be assigned and transferred, or to collect the same, and the Bank and its Officers are and each of them is irrevocably appointed attorneys or attorney to execute in the name and on behalf of the undersigned and the heirs or devisees, executors or administrators of the undersigned any assignment or other instrument for the said purpose and the said power of attorney shall not be revoked by the death of the undersigned.

THIS assignment is in addition to and not in substitution for any former assignment and shall not be merged in any subsequent assignment.

THE UNDERSIGNED waives receipt of any financing statement registered by the Bank and any confirmation of registration.

THE UNDERSIGNED acknowledges receipt of a copy of this General Assignment of Debts.

THIS assignment was executed on the 18<sup>th</sup> day of January, 2020 (year).

Applicable only  
in Alberta,  
British  
Columbia,  
Manitoba, New  
Brunswick,  
Nova Scotia,  
Northwest  
Territories,  
Nunavut,  
Newfoundland,  
Prince Edward  
Island and  
Saskatchewan.

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT

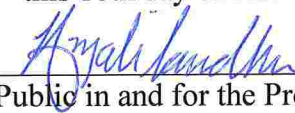
By : 

Name : Peter Bergen

Title : Authorized Signatory

© Registered trade-marks of Bank of Montreal

This is Exhibit "8" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023



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A Notary Public in and for the Province of Manitoba



To the  
**Bank of Montreal**  
335 MAIN ST  
WINNIPEG, MB R3C1C2

The Bank is hereby requested by the undersigned to grant and continue certain credit facilities (whether by loans, the acceptance of our bills of exchange, or otherwise) and to make loans or advances to the undersigned thereunder on the security of all property of the kind(s) hereinafter described of which the undersigned is now or may thereafter become the owner or in respect of which the undersigned does now have or hereafter may acquire rights, to wit

ALL INVENTORY ON HAND AND IN TRANSIT INCLUDING TRAILERS, SUPPLIES, PAINT, OUTFITTING, WELDING, TRAILER EQUIPMENT, PARTS, SCRAP METAL AND TOOLS

and/or on the security of warehouse receipts and/or bills of lading covering such property.

And the undersigned promise(s) and agree(s) to give the Bank security for all loans and advances by the Bank to the undersigned pursuant to this application for credit and promise to give security and any application(s) for credit and promise(s) to give security supplemental hereto, by way of assignment under Section 427 of the Bank Act covering all the property aforesaid which is now or may hereafter be in the place or places hereinafter designated, to wit

550 GEORGE AVE UNIT 1  
WINKLER, MB R6W 0J4

or in transit thereto or therefrom or in any other place or places in Canada in which any of the said property may be located.

The undersigned promise(s) and agree(s) to give the Bank from time to time and as often as requested by the Bank warehouse receipts and/or bills of lading covering all the property aforesaid or any part thereof which is now or may hereafter be covered by warehouse receipts or bills of lading, as security for all the said loans and advances.

And the undersigned will pay the Bank all costs, charges and expenses which the Bank may incur in enforcing or obtaining payment of the sums of money due to the Bank from the undersigned or in attempting so to do.

The undersigned hereby appoint(s) the person for the time being acting as manager of the above-mentioned branch of the Bank the attorney of the undersigned, on behalf of the undersigned to give from time to time to the Bank any and all security mentioned above and to sign or endorse and deliver any and all instruments and documents in connection therewith.

The Bank may from time to time take from the undersigned notes representing the said loans and advances or any part thereof; and any notes so taken shall not extinguish or pay the indebtedness created by such loans and advances but shall represent the same only.

No security acquired by the Bank shall be merged in any subsequent security or be taken to be substituted for any security previously acquired.

**Note** It is the express wish of the Parties that this agreement and any related documents be drawn up and executed in English. Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

**Note** DATED at WINNIPEG the 30<sup>th</sup> day of DEC, 2019

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT

By:   
Name: Peter Bergen  
Title: Authorized Signatory

® Registered trade-marks of Bank of Montreal

To the

BANK OF MONTREAL:

In consideration of the loan(s) or advance(s) being made and/or to be made hereafter by the BANK OF MONTREAL (hereinafter called "the Bank") to the undersigned (hereinafter called "the Customer") the Customer agrees with the Bank as follows:

1. All security now or at any time hereafter held by the Bank for the payment of any debt or liability of the Customer (the said security being hereinafter called "the security"), including, without limiting the generality of the foregoing, security by way of warehouse receipt or bill of lading or under Section 427 of the Bank Act, together with all property covered by or comprised in the security (the said property being hereinafter called "the property"), and all proceeds of the security and of the property, shall be continuing collateral security for the payment of such debt or liability and also for the payment of interest thereon and of all costs, charges and expenses of or incurred by the Bank in connection therewith, including solicitor and his own client legal costs, whether in protecting, preserving, possessing, preparing for disposition, disposing of, realizing or collecting the security or the property or attempting so to do or otherwise, and interest thereon at the rate and calculated in the manner agreed upon by the Customer and the Bank, all of which the Customer agrees to pay to the Bank.

2. The Customer shall keep the property insured to its full insurable value against loss or damage by fire, and, if requested by the Bank, against loss or damage from any other cause, with insurers approved by the Bank, and shall assign to the Bank the policies evidencing such insurance or all claims thereunder and/or have the loss made payable to the Bank as the Bank may require and shall deliver the policies to the Bank, and in the event of failure so to do the Bank may but shall not be bound to effect such insurance on the property as it sees fit and the Customer will on demand repay to the Bank the amount of any premiums paid by it with interest thereon at the rate and calculated in the manner agreed upon by the Customer and the Bank.

3. If the Bank surrenders to the Customer the security or the property or any part of either of them, the Customer shall receive the same in trust for and on behalf of the Bank and from time to time shall deal therewith as the Bank may direct and, at the request of the Bank, shall give to the Bank security on the property so surrendered, or covered by the security so surrendered, to the satisfaction of the Bank.

4. Until default by the Customer in payment of all or any part of the indebtedness and liability of the Customer to the Bank, or until notice by the Bank to the Customer to cease so doing, the Customer may sell such property from time to time in the ordinary course of business and remove the same for the purpose of delivery to purchasers thereof. The proceeds of all sales by the Customer of the property or any part thereof, including, without limiting the generality of the foregoing, cash, debts arising from such sales or otherwise, evidences of title, instruments, documents and securities, which the Customer may receive or be entitled to receive in respect thereof, are hereby assigned to the Bank and shall be paid or transferred to the Bank forthwith, and until so paid or transferred shall be held by the Customer in trust for the Bank. Execution by the Customer and acceptance by the Bank of an assignment of book debts or any additional assignment of any of such proceeds shall be deemed to be in furtherance hereof and not an acknowledgement by the Bank of any right or title on the part of the Customer to such book debts or proceeds.

5. The Customer shall at all times duly and seasonably pay and discharge all claims whatsoever in any way secured by or constituting a charge upon the property or any part thereof and particularly, but without limiting the generality of the foregoing, all wages, salaries and other remuneration of all employees employed by the Customer in connection with the business or farm of the Customer in respect of which any property covered by the security is held or acquired by the Customer, and shall from time to time at the request of the Bank exhibit to the Bank evidence of such payment and discharge and obtain and deliver to the Bank such waivers or releases as the Bank may deem necessary to secure to the Bank the priority of its rights in the property.

6. The Customer shall from time to time on demand and to the satisfaction of the Bank deliver to the Bank additional security, and in the event of failure by the Customer so to do or to make due payment to the Bank of any debt or liability or part thereof or to observe any provision of this agreement, the Bank may in its discretion cease or refrain from making loans or advances to the Customer whether under any credit extended by the Bank or otherwise, and all debts and liabilities of the Customer to the Bank shall at the option of the Bank be payable forthwith and without any demand, and the Bank is hereby authorized from time to time to sell at public or private sale or otherwise realize upon the security or any part thereof and all or any of the property whenever and wherever and for such price in money or other consideration and in such manner and upon such terms and conditions as the Bank deems best, the whole without advertisement or notice to the Customer or others and to deal with the proceeds as in this agreement provided or as otherwise agreed, without prejudice to its claim for any deficiency and free from any right of redemption on the part of the Customer which is hereby waived and released, the Customer expressly waiving all and every formality prescribed by custom or by law in relation to any such sale or other realization.

7. The Bank may from time to time, enter upon or into and occupy and use, enjoy and exercise free of charge and to the exclusion of all others, including the Customer, any and all premises and property (real and personal, immovable and movable) and rights, powers and privileges of or used, enjoyed or exercised by the Customer in connection with the property or any part thereof or in or upon which the same may be (not being the premises of a warehouseman or carrier) until the property shall be fully realized upon, and may from time to time appoint a receiver, receiver-manager or agent to act for the Customer, for whose acts the Customer alone shall be responsible, and the Customer shall have no power to revoke such appointment or determine such agency. Such receiver, receiver-manager or agent shall have and may exercise all the powers, rights and discretions granted to the Bank by this agreement and the Bank and any such receiver, receiver-manager or agent shall have the right from time to time in the name of the Customer to exercise any and all of the Customer's rights, powers and privileges of every kind and to do all acts and things which the Customer could do if acting, for the purpose of completing, selling, shipping or otherwise dealing with the property in such manner as the Bank may deem best for the purpose of realizing upon the security.

8. Any promissory note or bill of exchange received by the Bank together with any securities or documents attached thereto or received therewith shall be subject to the terms of this agreement and the Bank and holders for the time being of any such bill or note may at any time before or after its maturity and whether or not it has been dishonoured accept payment and deliver the securities or documents or accept partial payment from time to time and thereupon release part of the securities or of the property covered by the documents or any of them.

9. The Bank may from time to time apply

- (a) all payments which it receives,
- (b) the proceeds of sales by the Customer of the property or any part thereof, and
- (c) the proceeds of realization of any part of the security or of the property which are applicable generally to the debts and liabilities of the Customer to the Bank,

against, or as the Bank deems best, hold the same with all the powers, rights and discretions conferred on it by this agreement or otherwise, as continuing collateral security for the fulfilment of any or all obligations, present or future, direct or indirect, absolute or contingent, matured or not, of the Customer to the Bank whether arising from agreement or dealings between the Bank and the Customer or from any agreement or dealings with any third person by which the Bank may be or become in any manner whatsoever a creditor of the Customer or however otherwise arising and whether the Customer be bound alone or with another or others and whether as principal or surety, and any such application by the Bank may, in whole or in part, be changed by the Bank from time to time as it deems best.

The proceeds of realization of any part of the security or of the property which are applicable only to part of the debts and liabilities of the Customer to the Bank shall first be applied to such part of the debts and liabilities, and any surplus remaining after payment of such part may from time to time be held or applied by the Bank for the purposes set out in and in accordance with the preceding paragraph of this Clause 9.

10. The Bank may release, compromise, settle and adjust any claim, dispute or difference which may arise in respect of the security or of the property or the proceeds of either of them and may grant extensions of time and indulgences. The Bank may use any Clearing Houses established by The Canadian Bankers' Association and in all dealings with the Customer's accounts and with instruments may act pursuant to the rules and regulations under which such Clearing Houses are operated.

11. The Customer shall from time to time execute, draw, endorse and deliver all such instruments and documents and do all such acts and things as the Bank may deem necessary or desirable for the purpose of perfecting the title of the Bank to the security of the property or the proceeds of either of them or of carrying into effect any or all of the provisions of this agreement or of securing the fulfilment of such obligations as aforesaid of the Customer to the Bank. The Customer hereby appoints the Bank and its Vice-Presidents, Inspectors, Managers and persons for the time being acting as managers of branches of the Bank where an account of the Customer may be kept and any person or persons from time to time named by the Bank for the purposes hereinafter mentioned, and any one of them acting alone, the Attorneys and Attorney of the Customer with full power of substitution from time to time for and in the name of the Customer to do whatsoever the said Attorneys or Attorney may deem expedient for the purpose of carrying into effect any or all of the provisions of this agreement, and this appointment being made in consideration of a loan or loans, advance or advances, by the Bank to the Customer shall be irrevocable and shall be of full force and effect whenever and so often as any loan or advance by the Bank to the Customer is unpaid or any such obligation as aforesaid to the Bank is unfulfilled and notwithstanding any occurrence or event which would otherwise terminate such agency. Every power, right and discretion vested by law in the Bank or conferred upon it by this agreement may be exercised on its behalf by the said officers or acting officers of the Bank or any person from time to time named by the Bank for such purpose, and any one of them acting alone.

12. The Bank shall not be responsible for any failure to exercise or enforce or for any delay in the exercise or enforcement of any powers, rights or discretions of the Bank, including the failure to take steps to preserve rights against other persons nor for any act, default or misconduct of any agent, officer, employee or servant of the Bank and the Bank shall be accountable only for such moneys as it shall actually receive. The Bank shall not be responsible for any loss or damage to the property while in the possession of the Bank, a receiver or a sheriff, whether due to the negligence or other default of any of them or otherwise, and specifically the Bank shall not be obligated to preserve, repair, process, or prepare for disposition any of the property.

13. Any notice to or demand upon the Customer shall be sufficiently given if despatched by post addressed to the Customer at the address of the Customer as shown by the books kept in relation to the account of the Customer at the branch of the Bank from which notice or demand is despatched and shall be deemed to have been received by the Customer at the time when in the ordinary course of post it would be expected to reach the said address.

14. The benefit of all rules of law or equity and compliance with any statutory provisions now or hereafter in force inconsistent with any of the provisions of this agreement are hereby waived by the Customer.

15. The provisions hereof shall be in addition to all other remedies of the Bank existing in law and to all rights under agreements heretofore given and no sale or delivery by the customer of the property or any part thereof shall prejudice or affect the rights however arising of the Bank in or with respect to property so sold or delivered, and this shall be a continuing agreement and all its provisions shall extend to all loans and advances to the Customer by the Bank and all obligations of the Customer to the Bank at any time outstanding and to the security and the property as they may exist from time to time and all proceeds thereof; and every loan and advance heretofore, now or hereafter made shall be deemed to have been made upon the agreements herein contained.

16. This agreement shall be binding upon and enure to the benefit of the Customer and the Bank and the heirs, executors and administrators or successors and assigns, as the case may be, of each of them.

**Note** It is the express wish of the Parties that this agreement and any related documents be drawn up and executed in English. Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

**Note** Dated at Winnipeg, this 30<sup>th</sup> day of DEC, 2019.

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT

By:   
Name Peter Bergen  
Title: Authorized Signatory

® Registered trade-marks of Bank of Montreal

**Note** FOR GOOD AND VALUABLE CONSIDERATION, the undersigned hereby assigns to the BANK OF MONTREAL (hereinafter called "the Bank") as continuing security for the payment of all loans and advances made or that may be made by the Bank to the undersigned pursuant to the application for credit and promise to give security made by the undersigned to the Bank and dated the 30th day of Dec, 2019, and any application(s) for credit and promise(s) to give security supplemental thereto made or that may be made by the undersigned to the Bank or renewals of such loans and advances or substitutions therefor and interest on such loans and advances and on any such renewals and substitutions, all property and classes of property of the kind(s) hereinafter described of which the undersigned is now or may hereafter become the owner or in respect of which the undersigned does now have or hereafter may acquire rights, to wit, - *(description of property or classes of property, and if for fishing property, include a description of fishing equipment, supplies and products assigned, and the number, name and port of registry of any registered or recorded vessels)*

ALL INVENTORY ON HAND AND IN TRANSIT INCLUDING TRAILERS, SUPPLIES, PAINT, OUTFITTING, WELDING, TRAILER EQUIPMENT, PARTS, SCRAP METAL AND TOOLS

**Note** and that is now or may hereafter be in the place or places hereinafter, designated, to wit, - *(designate the place or places)*  
550 GEORGE AVE UNIT 1  
WINKLER, MB R6W 0J4

or in transit thereto or therefrom or in any other place or places in Canada in which any of the said property may be located or, where the property consists in whole or in part of fishing vessels, fishing equipment and supplies or products of the sea, lakes and rivers, wherever such property may be.

This security is given under the provisions of section 427 of the Bank Act.

The property now owned by the undersigned or in respect of which the undersigned now has or may hereafter acquire rights and hereby assigned is free from any mortgage, lien or charge thereon, other than previous assignments, if any, to the Bank, and the undersigned warrants that the property that may hereafter be acquired by the undersigned and is hereby assigned shall be free from any mortgage, lien or charge thereon, other than previous assignments, if any, to the Bank.

**Note** It is the express wish of the Parties that this agreement and any related documents be drawn up and executed in English. *Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais.*

**Note** DATED at WINNIPEG the 30th day of Dec, 2019.

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT

By:   
Name: Peter Bergen  
Title: Authorized Signatory

® Registered trade-marks of Bank of Montreal



**Company Legal Name: 3816410 MANITOBA LTD.**

**Document Name: LF54 - Security under Section 427 of the Bank Act  
(Continuing security on all property of specified kinds)**

**Customer Tracking ID: 624225632964900**

**Application ID: 200180560**

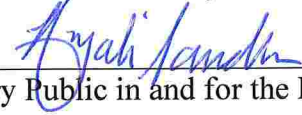
**Transaction ID: 300697703**

**ATTENTION:**

**Please do not remove or discard this sheet and ensure that it is returned with the attached document(s).**



This is Exhibit "9" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023



---

A Notary Public in and for the Province of Manitoba

**Guarantee for Indebtedness of an Incorporated Company**

To BANK OF MONTREAL:

IN CONSIDERATION of Bank of Montreal (the "Bank") dealing with **3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT** (the "Customer"), the undersigned hereby jointly and severally (solidarily in the Province of Québec) guarantees payment to the Bank of all present and future debts and liabilities in any currency, direct, indirect, contingent or otherwise, matured or not, including interest thereon, now or at any time, due or owing to the Bank from or by the Customer or by any successor of the Customer, whether arising from dealings between the Bank and the Customer or from other dealings or proceedings by which the Bank may be or become in any manner whatever a creditor of the Customer, wherever incurred and whether incurred by the Customer as principal or surety, alone or jointly with any other person, or otherwise howsoever. The liability of the undersigned (or each undersigned, if more than one), under this Guarantee, is limited to the aggregate amount of Two Million Three Hundred Seventy Four Thousand -- 00/100 Dollars \$2,374,000.00 plus interest thereon at a rate of 3.00 per cent per annum above the Bank's prime interest rate in effect from time to time, from and including the date of demand until payment, and legal or other costs, charges and expenses. The liability of the undersigned to make payment under this Guarantee shall arise immediately after demand for payment under this Guarantee has been made in writing by the Bank on the undersigned or any one of them, if more than one. The term "prime interest rate" means the floating annual rate of interest established from time to time by the Bank as the base rate it uses to determine rates of interest on Canadian dollar loans to customers in Canada and designated as Prime Rate.

IT IS AGREED that no change in the name, objects, capital stock, ownership, control or constitution of the Customer shall in any way affect the liability of the undersigned with respect to transactions occurring either before or after any such change. If the Customer amalgamates with one or more other corporations this Guarantee shall continue and apply to all debts and liabilities owing to the Bank by the corporation continuing from the amalgamation. The Bank shall not be required to inquire into or confirm the powers of the Customer or any of its directors or other agents acting or purporting to act on its behalf, and all amounts, liabilities, advances, renewals and credits in fact incurred, borrowed or obtained from the Bank shall be deemed to form part of the debts and liabilities hereby guaranteed, notwithstanding whether incurring such debts or liabilities exceeded the powers of the Customer or of its directors or agents, or was in any way irregular, defective or improper.

IT IS FURTHER AGREED that the undersigned shall be liable to the Bank in respect of all debts and liabilities, subject to the limitation, if any, set forth in the first paragraph of this Guarantee, stated to be owing to the Bank by the Customer under any agreement entered into by the Customer with respect to such debts and liabilities, notwithstanding whether any such agreement or any provision thereof is invalid, void, illegal, or unenforceable and notwithstanding whether such agreement was properly completed, entered into or authorized. Subject to the limitation, if any, set forth in the first paragraph of this Guarantee, the undersigned shall indemnify and save the Bank harmless from any losses which may arise by virtue of any debts and liabilities stated to be owing to the Bank by the Customer under any agreement entered into by the Customer with respect to such debts and liabilities, or any other agreement relating to any of the foregoing, being or becoming for any reason whatsoever in whole or in part (a) void, voidable, null, *ultra vires*, illegal, invalid, ineffective or otherwise unenforceable in accordance with its terms, or (b) released or discharged by operation of law (all of the foregoing being an "Indemnifiable Circumstance"). For greater certainty, the losses shall include the amount of all debts and liabilities owing to the Bank by the Customer which would have been payable by the Customer but for the Indemnifiable Circumstance. Nothing set out herein shall be interpreted as requiring any debts or liabilities which are hereby guaranteed to be documented by written agreement between the Bank and the Customer.

IT IS FURTHER AGREED that the Bank, without the consent of the undersigned and without exonerating in whole or in part the undersigned, may grant time, renewals, extensions, indulgences, releases and discharges to, may abstain from taking, perfecting or realizing upon security from, may release security to, may accept compositions from, and may otherwise change the terms of any of the debts and liabilities hereby guaranteed and otherwise deal with, the Customer and all other persons (including any other undersigned and any other guarantor) and security, as the Bank may see fit. No loss or diminution of any security received by the Bank from the Customer or others, whether the loss or diminution is due to the fault of the Bank or otherwise, shall in any way limit or lessen the liability of the undersigned under this Guarantee. All dividends, compositions, and amounts received by the Bank from the Customer or from any other person or estate capable of being applied by the Bank in reduction of the debts and liabilities hereby guaranteed, shall be regarded for all purposes as payments in gross, and the Bank shall be entitled to prove against the estate of the Customer upon any insolvency or winding-up in respect of the whole of said debts and liabilities, and the undersigned shall have no right to be subrogated to the Bank in respect of any such proof until the Bank has received from such estate payment in full of its claim with interest.

AND IT IS FURTHER AGREED that this shall be a continuing guarantee, and shall guarantee any ultimate balance owing to the Bank, including all costs, charges and expenses which the Bank may incur in enforcing or obtaining payment of amounts due to the Bank from the Customer either alone or in conjunction with any other person or otherwise howsoever, or attempting to do so. The Bank shall not be obliged to seek recourse against the Customer or any other person or realize upon any security it may hold before being entitled to payment from the undersigned of all debts and liabilities hereby guaranteed. The undersigned hereby renounces the benefits of discussion and division. The undersigned renounces claiming or setting up against the Bank any right which such undersigned may have to be subrogated in any of the rights, hypothecs, privileges and other security held from time to time by the Bank. The undersigned may terminate the further liability of such terminating party under this continuing Guarantee by providing ninety days' prior written notice to be given to the Bank. The liability of such terminating party shall continue under this Guarantee during such 90-day period, notwithstanding the death or insanity of such terminating party. After the expiry of such 90-day period, the terminating party shall be released from this Guarantee with respect to debts and liabilities arising after the expiry of such 90-day period but shall remain liable under this Guarantee in respect of all debts and liabilities owing to the Bank prior to the expiry of such 90-day period and also in respect of any contingent or future liabilities incurred to or by the Bank on or before such date which mature thereafter. Termination by the undersigned or the executors, liquidators, administrators or legal representatives of such undersigned shall not terminate the liability hereunder of any other undersigned. If after such termination any payment from the Customer must be returned to the Customer, or any successor or representative of the Customer, for any reason (including the designation of such payment as a mistake or as a preference following the bankruptcy of the Customer), then this

Guarantee shall continue after the termination as if such payment had not been made. A written statement from any manager or acting manager of the Bank purporting to show the amount at any particular time due and payable to the Bank, and guaranteed by this Guarantee, shall be conclusive evidence as against the undersigned that such amount is at such time so due and payable to the Bank and is guaranteed hereby. Each of the executors, liquidators, administrators and legal representatives of the undersigned shall immediately give notice in writing to the Bank of the death of such undersigned.

Insert name of  
Canadian  
Province in  
which  
Customer's  
account with  
the Bank is  
kept at the time  
Guarantee is  
given

THIS CONTRACT shall be construed in accordance with the laws of the Province of Manitoba and for the purpose of legal proceedings this contract shall be deemed to have been made in the said province and to be performed there, and the courts of that province shall have non-exclusive jurisdiction over all disputes which may arise under this contract, provided always that nothing herein contained shall prevent the Bank from proceeding at its election against the undersigned in the courts of any other province or country.

IF ANY PROVISION of this Guarantee is determined to be unenforceable, prohibited, invalid or illegal, it shall be severed from this Guarantee solely to the extent of such unenforceability, prohibition, invalidity or illegality and the remainder of such provision and the remainder of this Guarantee shall be unaffected thereby. The liability of the undersigned under this Guarantee shall not be terminated if this Guarantee is held to be unenforceable against any other undersigned.

ALL DEBTS AND LIABILITIES present and future of the Customer to the undersigned are hereby assigned (to the extent permitted by applicable law) to the Bank and postponed to the debts and liabilities of the Customer to the Bank and all such amounts paid to the undersigned or its assigns shall be received on behalf of and in trust for the Bank and shall immediately be paid over to the Bank.

THE UNDERSIGNED acknowledges that this Guarantee has been delivered free of any conditions and that no representations have been made to the undersigned affecting the liability of the undersigned under this Guarantee save as may be specifically embodied herein and agrees that this Guarantee is in addition to and not in substitution for any other guarantees now or subsequently held by the Bank.

THE UNDERSIGNED represents and warrants that (i) it fully understands the provisions of this Guarantee and its obligations hereunder; (ii) it has been afforded the opportunity to engage independent legal counsel, at its own expense, to explain the provisions of this Guarantee and its obligations hereunder; and (iii) it has either engaged legal counsel in connection with its execution of this Guarantee or has decided, at its sole discretion, not to do so.

THE UNDERSIGNED agrees, without limitation of the rights of the Bank under applicable law, that the Bank may apply any amounts owing to, or sum standing to the credit of, the undersigned with any office, branch, subsidiary or affiliate of the Bank to the payment when due of any amount owing by the undersigned hereunder. For this purpose, the Bank may convert any such amount or sum into the currency of the amount owing hereunder at a rate of exchange at which the Bank could purchase the relevant currency on the relevant date acting in good faith.

THIS GUARANTEE shall remain in effect notwithstanding any change in the circumstances having led the undersigned to execute this Guarantee and notwithstanding the termination of or a change in the office or duties of such undersigned or in any relationship between such undersigned and the Customer.

THE UNDERSIGNED acknowledges and agrees that the Bank may make a claim or demand payment hereunder notwithstanding any limitation period regarding such claim or demand set forth in the *Limitations Act, 2002* (Ontario) or under any other applicable law with similar effect and, to the maximum extent permitted by applicable law, any limitations periods set forth in such act or applicable law are hereby explicitly excluded or, if excluding such limitations periods is not permitted by such act or applicable law, are hereby extended to the maximum limitation period permitted by such act or applicable law. For greater certainty, the undersigned acknowledges and agrees that this Guarantee is a "business agreement" as defined under Section 22 of the *Limitations Act, 2002* (Ontario).

IN THIS GUARANTEE, unless the context otherwise requires, references to the undersigned shall be interpreted as referring to each of the undersigned if there is more than one undersigned.

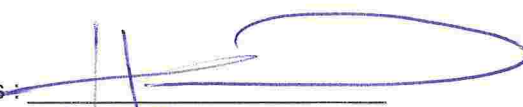
This clause applies to the Province of Québec only


It is the express wish of the parties hereto that this agreement and any related documents be drawn up and executed in English. Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

Dated this 13 day of January, 2020.

  
Name : Peter Bergen

  
Name : Elizabeth Bergen

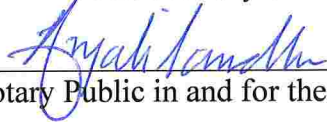
Witness :   
Name : Jaret Paul Hoepfner

Witness :   
Name : \_\_\_\_\_

**Christopher G. Doell**  
Box 1150, 564 Mountain Avenue  
Winkler, MB R6W 4B2  
Notary Public in and for the Province of Manitoba

® Registered trade-marks of Bank of Montreal

This is Exhibit "10" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023

  
A Notary Public in and for the Province of Manitoba

TO: BANK OF MONTREAL

WHEREAS 3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT (herein called the "Customer") is and/or may hereafter become indebted and/or may hereafter become further indebted or liable to the undersigned (herein called the "Investor") from time to time or to corporations, partnerships, trusts or other legal entities directly or indirectly owned or controlled by the Investor (such entities being herein called "Investor Entities");

AND WHEREAS the Investor has agreed to enter into this agreement in favour of Bank of Montreal (herein called the "Bank");

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Investor, including, without limitation, the Bank making advances from time to time to the Customer, accepting bills of exchange issued by the Customer or making other credit accommodations for the benefit of the Customer, the Investor covenants and agrees with the Bank as follows:

1. Subject to the provisions hereof, any and all present and future indebtedness and liability of the Customer to the Investor and to any Investor Entity (all of which present and future indebtedness and liability being herein collectively called "Investor Indebtedness") is hereby and shall hereafter be postponed and subordinate to all present and future indebtedness and liability whether actual or contingent of the Customer to the Bank (all of which present and future indebtedness and liability being herein collectively called "Bank Indebtedness"); and any and all security now or hereafter held, in whole or in part, by the Investor or any Investor Entity to secure Investor Indebtedness (all of which present and future security being herein called "Investor Security") is hereby and shall hereafter be postponed and subordinated to all security now or hereafter held by the Bank to secure Bank Indebtedness or any part thereof (all of which present and future Bank security being called "Bank Security").
2. In order to give effect to this agreement, the Investor hereby pledges, assigns, transfers and makes over to the Bank as collateral security for the due payment by the Customer of the Bank Indebtedness (i) any and all Investor Indebtedness which the Investor may now or hereafter have against the Customer, and (ii) any and all Investor Security in respect of such Investor Indebtedness, and agrees to cause all Investor Entities which are now or hereafter become a creditor of the Customer to pledge, assign, transfer and make over to the Bank as collateral security for the due payment by the Customer of the Bank Indebtedness (iii) any and all Investor Indebtedness which such Investor Entities may now or hereafter have against the Customer, and (iv) any and all Investor Security in respect of such Investor Indebtedness. The Investor also agrees, and agrees to cause all Investor Entities to agree, to deliver to the Bank all instruments evidencing a right to payment now or hereafter held by the Investor and all Investor Entities as part of the Investor Security or that otherwise relate to the Investor Indebtedness ("Investor Instruments") and, to the extent such Investor Instruments are not already part of the Investor Security, hereby pledges, assigns, transfers and makes over such Investor Instruments and the proceeds thereof to the Bank as collateral security for the due payment by the Customer of the Bank Indebtedness.
3. The Investor hereby subrogates to the Bank and agrees to cause all Investor Entities to subrogate to the Bank in all the rights of the Investor and all Investor Entities in respect to Investor Indebtedness, including rights under the Investor Security and rights under all Investor Instruments.
4. The security interest hereunder shall become enforceable (i) upon a failure of the Customer to comply with the terms, conditions and covenants of any part of the Bank Indebtedness or upon the occurrence of an event of default that makes any part of the Bank Indebtedness immediately due and payable, or (ii) upon any receivership, bankruptcy, liquidation or winding-up of the Customer, or (iii) upon any realization of any Investor Security. The Investor hereby authorizes the Bank and agrees to cause all Investor Entities to authorize the Bank to collect and receive any dividends or payments which may be payable to the Investor or such Investor Entities upon the security interest hereunder becoming enforceable. In the event that the total amount of Bank Indebtedness at such time is not paid in full, the Investor hereby authorizes the Bank, and agrees to cause all Investor Entities to authorize the Bank, to apply the amount of the dividends or payments so collected by the Bank in payment of the balance of the Bank Indebtedness and any costs, charges and expenses which the Bank may incur in enforcing or obtaining payment of the Bank Indebtedness, the surplus, if any, to be paid to the Investor or such Investor Entities.
5. The Investor shall execute all sworn statements of claim, assignments and other documents and do all matters and things which may be required by the Bank from time to time or which may be necessary or advisable to carry this agreement into effect, including such measures as may be required to cause Investor Entities which now or hereafter hold Investor Indebtedness of the Customer to enter into an agreement similar hereto.
6. The Investor irrevocably appoints the Bank (and any of its managers) as attorney of the Investor (with full power of substitution) to do, make and execute, in the name of and on behalf of the Investor, all such further acts, documents, matters and things which the Bank may deem necessary or advisable to accomplish the purposes of this agreement including, without limitation, the execution, endorsement and delivery of any documents, the filing or taking of any claims or actions, and the institution of any proceedings which the Bank determines is necessary or advisable to carry this agreement into effect. All acts of the attorney are hereby ratified and approved, and the attorney will not be liable for any act, failure to act or any other matter or thing, except to the extent caused by its own gross negligence or wilful misconduct. The Investor agrees to cause all Investor Entities which are now or hereafter become a creditor of the Customer to appoint the Bank (and any of

its managers) as attorney of the Investor (with full power of substitution) on the same terms.

7. The Investor agrees, and agrees to cause all Investor Entities to agree, that Investor Indebtedness owing on the date hereof and Investor Indebtedness which may hereafter become owing by the Customer to the Investor or to any Investor Entity, shall not be paid, withdrawn or substituted but shall hereafter either be retained by the Customer or be paid to the Bank pursuant to this agreement and that any moneys received by the Investor or by any Investor Entity or by any agent on account of any of the Investor Indebtedness shall be held in trust for the Bank, without being used, and forthwith paid to the Bank, except only to the extent that payments or repayments by the Customer to the Investor or Investor Entities are specifically permitted by this agreement.

8. Subject to the provisions of Paragraph 11 of this agreement, payment of reasonable interest by the Customer on the Investor Indebtedness is permitted; but, for greater certainty, repayment of principal is not permitted, unless otherwise expressly provided for in another provision of this agreement.

9. **This Paragraph 9 is applicable only if the Bank has inserted an amount in the blank herein, and shall otherwise be of no force or effect.** Subject to the provisions of Paragraph 11 of this agreement, repayment of principal owed by the Customer pursuant to the Investor Indebtedness in accordance with the terms thereof is permitted if, but only if, the aggregate Investor Indebtedness is at the time of such repayment not less than \$325,000.00 (the "**Minimum Amount**"), and no repayment shall be permitted or shall be deemed to be permitted hereunder which would cause the aggregate Investor Indebtedness to be less than the Minimum Amount.

10. **This Paragraph 10 is applicable only if (a) no amount has been inserted in the blank in Paragraph 9 above and (b) the Customer is subject to Affected Covenants, as defined below, and shall otherwise be of no force or effect.** Subject to the provisions of Paragraph 11 of this agreement, repayment of principal owed by the Customer pursuant to the Investor Indebtedness in accordance with the terms thereof is permitted if, but only if, the Customer is at the time of such repayment in compliance with any financial covenants in favour of the Bank then in force which are calculated with reference to the Investor Indebtedness which is postponed, assigned and subordinated by this agreement (the "**Affected Covenants**"), and no payment shall be permitted or shall be deemed to be permitted hereunder which would cause a breach of any of the Affected Covenants. The Investor, on its own behalf and on behalf of the Investor Entities, hereby (i) acknowledges that the determination of whether any particular financial covenant of the Customer in favour of the Bank is an Affected Covenant may be made in the sole discretion of the Bank and (ii) represents and warrants to and agrees with the Bank that it is familiar with the terms of the Affected Covenants, if any, in place as at the date of this agreement and that it will confirm the status of existing or future Affected Covenants with the Customer prior to any future repayment of Investor Indebtedness.

11. Payments or permitted repayments, if any, pursuant to Paragraphs 8, 9 or 10 of this agreement, may be made only (a) while the security interest referred to in Paragraph 4 of this agreement has not become enforceable in accordance with the terms thereof, (b) while the Customer is in compliance with the terms, conditions and covenants in respect of the Bank Indebtedness, and (c) subject to the Bank's verification procedures in respect of compliance by the Investor, the Investor Entities and the Customer with the terms hereof and with the terms, conditions and covenants in respect of the Bank Indebtedness, and the Investor, the Investor Entities and the Customer each agree to respond promptly to any request received from the Bank for information required to confirm such compliance.

12. Except with the prior written consent of the Bank, the Investor shall not assign or hypothecate and will cause any Investor Entity not to assign or hypothecate any Investor Indebtedness or any part thereof or any Investor Security or any part thereof to any other party or ask for or obtain any negotiable paper or other instrument evidencing a right to payment or other evidence of the same.

13. The covenants and agreements herein contained shall extend to and be binding upon, and enure to the benefit of, the successors and assigns of the Investor and the Bank.

14. This agreement shall be construed pursuant to and governed by the laws applicable in the province wherein the Branch of the Bank where the Customer's account is kept is located.

15. The Investor waives the right to receive any financing statement or financing change statement registered by the Bank and any confirmation of registration or verification statement issued.

16. The Investor acknowledges receipt of a copy of this agreement.

17. It is the express wish of the parties that this agreement and any related documents be drawn up and executed in English. Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

*[Signature page follows]*

Dated as of this 15 day of Jan., 2020 (year).

MURLIN HOLDINGS LTD.

By:

Name:

Title:

  
Murray Daetsen  
President

TO: BANK OF MONTREAL

We acknowledge receipt of notice in writing of the terms and conditions contained in the foregoing agreement and we agree to comply therewith. We shall not make any payment to the Investor or to any Investor Entity except as therein provided.

Dated as of this 10<sup>th</sup> day of Jan., 2020 (year).

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT

By:

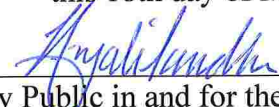
Name: Peter Bergen

Title: Authorized Signatory





This is Exhibit "11" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023

  
\_\_\_\_\_  
A Notary Public in and for the Province of Manitoba

**Postponement and Subordination  
Of Preferred Shares Rights Agreement**

TO BANK OF MONTREAL:

WHEREAS 3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT (herein called the "**Customer**") has (i) issued certain preference shares/preferred shares (the "**Preferred Shares**") to the undersigned (herein called the "**Investor**") or to corporations, partnerships, trusts or other legal entities directly or indirectly owned or controlled by the Investor (such entities being herein called "**Investor Entities**"), and/or (ii) may issue further Preferred Shares to the Investor or the Investor Entities pursuant to warrants, bonds, debentures, stock options or other rights to acquire any such Preferred Shares (collectively, the "**Claims**"), and is and/or may hereafter become indebted and/or may hereafter become further indebted or liable to the Investor or the Investor Entities from time to time pursuant to the obligations of the Customer and the rights of the Investor or the Investor Entities under the Preferred Shares and/or the Claims;

AND WHEREAS the Investor has agreed to enter into this agreement in favour of Bank of Montreal (herein called the "**Bank**");

NOW THEREFORE for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the Investor, including, without limitation, the Bank making advances from time to time to the Customer, accepting bills of exchange issued by the Customer or making other credit accommodations for the benefit of the Customer, the Investor covenants and agrees with the Bank as follows:

1. Subject to the provisions of paragraphs 4 and 5 hereof, the Investor hereby agrees that any and all present and future indebtedness and liability of the Customer to the Investor pursuant to the obligations of the Customer and the rights of the Investor under the Preferred Shares that the Investor owns and any Preferred Shares that the Investor acquires upon exercise of any Claims (all of which present and future indebtedness and liability being herein collectively called "**Investor Held Indebtedness**") is hereby and shall hereafter be postponed and subordinate to all present and future indebtedness and liability whether actual or contingent of the Customer to the Bank (all of which present and future indebtedness and liability being herein collectively called "**Bank Indebtedness**"). The Investor hereby agrees to cause all Investor Entities which are now or hereafter become a creditor of the Customer in connection with Preferred Shares to agree that any and all present and future indebtedness and liability of the Customer to each of the Investor Entities pursuant to the obligations of the Customer and the rights of any of the Investor Entities under the Preferred Shares that any of the Investor Entities own and any Preferred

Shares that any of the Investor Entities acquire upon exercise of any Claims (all of which present and future indebtedness and liability being herein collectively called "**Investor Entity Indebtedness**" and together with the Investor Held Indebtedness is called the "**Investor Indebtedness**") is hereby and shall hereafter be postponed and subordinate to all Bank Indebtedness.

2. In order to give effect to this agreement, the Investor hereby assigns, transfers, and makes over to the Bank any and all Investor Indebtedness which the Investor may now or hereafter have against the Customer and agrees to cause all Investor Entities which are now or hereafter become a creditor of the Customer in connection with Preferred Shares to assign, transfer and make over to the Bank any and all Investor Indebtedness which such Investor Entities may now or hereafter have against the Customer; and the Investor hereby subrogates to the Bank and agrees to cause all Investor Entities to subrogate to the Bank in all the rights of the Investor and all Investor Entities in respect thereto, and the Investor hereby authorizes the Bank and agrees to cause all Investor Entities to authorize the Bank to collect and receive any dividends or payments which may be payable to the Investor or such Investor Entities as Investor Indebtedness upon default by the Customer of any of its obligations pursuant to the Bank Indebtedness or in the course of any receivership, bankruptcy, liquidation or winding-up of the Customer, and in the event of the total amount of Bank Indebtedness at such time not being paid in full, the Investor hereby authorizes the Bank and agrees to cause all Investor Entities to authorize the Bank to apply the amount of any dividends or payments so collected by the Bank in payment of the balance of the Bank Indebtedness, the surplus, if any, to be paid to the Investor or such Investor Entities respectively.

3. The Investor shall execute all sworn statements of claim, assignments and other documents and do all matters and things which may be required by the Bank from time to time or which may be necessary or advisable to carry this agreement into effect, including such measures as may be required to cause Investor Entities which now or hereafter hold Investor Indebtedness to enter into an agreement similar hereto.

4. The Investor agrees, and agrees to cause all Investor Entities to agree, that any Investor Indebtedness owing and which may hereafter become owing by the Customer to the Investor or to any Investor Entity, including interest or dividends on any Investor Indebtedness, shall not be paid or withdrawn but shall hereafter either be retained by the Customer or be paid to the Bank pursuant to this agreement, unless the Bank's written consent is first obtained, and that any moneys or other payments received by the Investor or by any of the Investor Entities or by any agent on account of any of the Investor Indebtedness without the prior written consent of the Bank shall be held in trust for the Bank, without being used, and forthwith paid to the Bank.

5. The Investor agrees, and agrees to cause all Investor Entities to agree, that any redemption and/or retraction rights under the Preferred Shares shall not be exercised unless the Bank's written consent is first obtained, and that any moneys or other payments received by the Investor or by any of the Investor Entities or by any agent on account of any of the Investor Indebtedness in connection with the exercise of any redemption or retraction rights under the Preferred Shares without the prior written consent of the Bank shall be held in trust for the Bank, without being used, and forthwith paid to the Bank.

6. The Investor shall not sell, exchange or otherwise dispose of Preferred Shares, Claims or Investor Indebtedness or permit any Investor Entities to sell, exchange or otherwise dispose of Preferred Shares, Claims or Investor Indebtedness, other than by exercising rights to acquire Preferred Shares in accordance with the Claims.

7. Except with the prior written consent of the Bank, the Investor shall not assign, grant security over or hypothecate and will cause all Investor Entities not to assign, grant security over or hypothecate any Preferred Shares, Claims or Investor Indebtedness or any part thereof to any other party or ask for or obtain any negotiable paper or other evidence of the same.

8. The Bank Indebtedness shall be evidenced by the records of the Bank which shall constitute prima facie evidence of such indebtedness.

9. The covenants and agreements herein contained shall extend to and be binding upon, and enure to the benefit of, the successors and assigns of the Investor and the Bank.

10. If any provision of this agreement is determined, by any court of competent jurisdiction from which no appeal exists or is taken, to be illegal, invalid or unenforceable then the provision will be severed from this agreement and the remaining provisions shall remain in full force and effect.

11. The Investor waives the right to receive any financing statement or financing change statement registered by the Bank and any confirmation of registration or verification statement issued.

12. The Investor acknowledges that its liability under this agreement is absolute and unconditional and is not limited in any way.

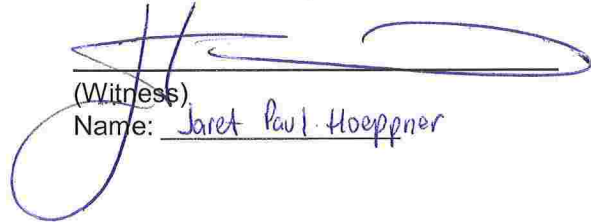
13. The Investor acknowledges receipt of a copy of this agreement.

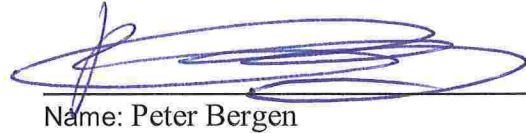
14. This agreement shall be construed pursuant to and governed by the laws applicable in the province wherein the Branch of the Bank where the Customer's account is kept is located.

15. It is the express wish of the parties that this agreement and any related documents be drawn up and executed in English. Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

Dated as of this 10<sup>th</sup> day of January, 2020 (year).

Executed in the presence of:

  
(Witness)  
Name: Jaret Paul Hoepfner

  
Name: Peter Bergen

\_\_\_\_\_  
(Witness)  
Name: \_\_\_\_\_

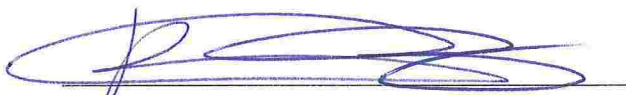
\_\_\_\_\_  
Name: \_\_\_\_\_

TO: BANK OF MONTREAL

We acknowledge receipt of notice in writing of the terms and conditions contained in the foregoing agreement and we agree to comply therewith. We shall not make any payment to the Investor or to any of the Investor Entities except as therein provided and shall not permit the redemption or retraction of the Preferred Shares unless the Bank's written consent is first obtained.

Dated as of this 16<sup>th</sup> day of January, 2020 (year).

3816410 MANITOBA LTD. O/A BERG'S  
TRAILERS & PREP AND PAINT

By:   
Name: Peter Bergen  
Title: Authorized Signatory

This is Exhibit "12" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023

*Ajayal Kumar*

\_\_\_\_\_  
A Notary Public in and for the Province of Manitoba

## STATUS OF TITLE

Title Number **1872413/4**  
Title Status **Accepted**  
Client File **0076354.01105/jg**



### 1. REGISTERED OWNERS, TENANCY AND LAND DESCRIPTION

3816410 MANITOBA LTD.

IS REGISTERED OWNER SUBJECT TO SUCH ENTRIES RECORDED HEREON,  
IN THE FOLLOWING DESCRIBED LAND:

LOT 1 BLOCK 2 PLAN 37465 MLTO  
IN S 1/2 3-3-4 WPM  
EXCEPTING - DRAIN PLAN 40578 MLTO

The land in this title is, unless the contrary is expressly declared, deemed to be subject to the reservations and restrictions set out in section 58 of *The Real Property Act*.

### 2. ACTIVE INSTRUMENTS

Instrument Type: **Caveat**  
Registration Number: **1016911/4**  
Instrument Status: **Accepted**

Registration Date: 1999-03-22  
From/By: TOWN OF WINKLER  
To: (GARY ROBERT GILMOUR AS AGENT)

Amount:  
Notes: No notes  
Description: DOMINANT & SERVIENT EASEMENT AGREEMENT FOR DRAINAGE

---

Instrument Type: **Caveat**  
Registration Number: **1027254/4**  
Instrument Status: **Accepted**

Registration Date: 2000-02-02  
From/By: MANITOBA HYDRO-ELECTRIC BOARD & MTS COMMUNICATIONS INC.  
To:

Amount:  
Notes: No notes  
Description: No description

Instrument Type: **Mortgage**  
Registration Number: **1249795/4**  
Instrument Status: **Accepted**

Registration Date: 2020-01-21  
From/By: 3816410 MANITOBA LTD.  
To: BANK OF MONTREAL

Amount: \$1,600,000.00  
Notes: No notes  
Description: No description

---

Instrument Type: **Personal Property Security Notice**  
Registration Number: **1249796/4**  
Instrument Status: **Accepted**

Registration Date: 2020-01-21  
From/By: Bank of Montreal  
To: Marc Unger as Agent

Amount:  
Notes: No notes  
Description: Expires on 2029/12/18 (Fixtures)

---

Instrument Type: **Certificate Of Judgment**  
Registration Number: **1283287/4**  
Instrument Status: **Accepted**

Registration Date: 2023-05-05  
From/By: Innovative Doors (2006) Ltd. and Estate of John Fehr  
Against: 3816410 Manitoba Ltd. and Peter Bergen

Amount: \$42,316.71  
Notes: No notes  
Description: file no. CI 23-01-38976 By agent: Joshua Lieberman

---

**3. ADDRESSES FOR SERVICE**

3816410 MANITOBA LTD.  
BOX 488  
WINKLER MB  
R6W 4A7

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**4. TITLE NOTES**

No title notes



<b>5. LAND TITLES DISTRICT</b>
Morden
<b>6. DUPLICATE TITLE INFORMATION</b>
Duplicate not produced
<b>7. FROM TITLE NUMBERS</b>
1813708/4          Balance
<b>8. REAL PROPERTY APPLICATION / CROWN GRANT NUMBERS</b>
No real property application or grant information
<b>9. ORIGINATING INSTRUMENTS</b>
Instrument Type: <b>Request To Issue Title - Internal</b>
Registration Number: <b>1054120/4</b>
Registration Date:         2002-05-09
From/By:                    MORDEN LAND TITLES OFFICE
To:
Amount:
<b>10. LAND INDEX</b>
Lot 1 Block 2 Plan 37465 EXC DRAIN PLAN 40578 (IN S 1/2 3-3-4W)

CERTIFIED TRUE EXTRACT PRODUCED FROM THE LAND TITLES DATA STORAGE SYSTEM OF TITLE NUMBER 1872413/4

## STATUS OF TITLE

Title Number **1872414/4**  
Title Status **Accepted**  
Client File **0076354.01105/jg**



### 1. REGISTERED OWNERS, TENANCY AND LAND DESCRIPTION

3816410 MANITOBA LTD.

IS REGISTERED OWNER SUBJECT TO SUCH ENTRIES RECORDED HEREON,  
IN THE FOLLOWING DESCRIBED LAND:

LOT 2 BLOCK 2 PLAN 37465 MLTO  
IN S 1/2 3-3-4 WPM  
EXCEPTING - DRAIN PLAN 40578 MLTO

The land in this title is, unless the contrary is expressly declared, deemed to be subject to the reservations and restrictions set out in section 58 of *The Real Property Act*.

### 2. ACTIVE INSTRUMENTS

Instrument Type: **Caveat**  
Registration Number: **1016911/4**  
Instrument Status: **Accepted**

Registration Date: 1999-03-22  
From/By: TOWN OF WINKLER  
To: (GARY ROBERT GILMOUR AS AGENT)

Amount:  
Notes: No notes  
Description: DOMINANT & SERVIENT EASEMENT AGREEMENT FOR DRAINAGE

---

Instrument Type: **Caveat**  
Registration Number: **1027254/4**  
Instrument Status: **Accepted**

Registration Date: 2000-02-02  
From/By: MANITOBA HYDRO-ELECTRIC BOARD & MTS COMMUNICATIONS INC.  
To:

Amount:  
Notes: No notes  
Description: No description

Instrument Type: **Mortgage**  
Registration Number: **1249795/4**  
Instrument Status: **Accepted**

Registration Date: 2020-01-21  
From/By: 3816410 MANITOBA LTD.  
To: BANK OF MONTREAL

Amount: \$1,600,000.00  
Notes: No notes  
Description: No description

---

Instrument Type: **Personal Property Security Notice**  
Registration Number: **1249796/4**  
Instrument Status: **Accepted**

Registration Date: 2020-01-21  
From/By: Bank of Montreal  
To: Marc Unger as Agent

Amount:  
Notes: No notes  
Description: Expires on 2029/12/18 (Fixtures)

---

Instrument Type: **Certificate Of Judgment**  
Registration Number: **1283287/4**  
Instrument Status: **Accepted**

Registration Date: 2023-05-05  
From/By: Innovative Doors (2006) Ltd. and Estate of John Fehr  
Against: 3816410 Manitoba Ltd. and Peter Bergen

Amount: \$42,316.71  
Notes: No notes  
Description: file no. CI 23-01-38976 By agent: Joshua Lieberman

---

### 3. ADDRESSES FOR SERVICE

3816410 MANITOBA LTD.  
BOX 488  
WINKLER MB  
R6W 4A7

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### 4. TITLE NOTES

No title notes

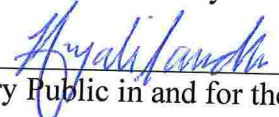
<b>5. LAND TITLES DISTRICT</b>
Morden
<b>6. DUPLICATE TITLE INFORMATION</b>
Duplicate not produced
<b>7. FROM TITLE NUMBERS</b>
1813712/4          Balance
<b>8. REAL PROPERTY APPLICATION / CROWN GRANT NUMBERS</b>
No real property application or grant information
<b>9. ORIGINATING INSTRUMENTS</b>
Instrument Type: <b>Request To Issue Title - Internal</b>
Registration Number: <b>1054120/4</b>
Registration Date:         2002-05-09
From/By:                    MORDEN LAND TITLES OFFICE
To:
Amount:
<b>10. LAND INDEX</b>
Lot 2 Block 2 Plan 37465 EXC DRAIN PLAN 40578 (IN S 1/2 3-3-4W)

CERTIFIED TRUE EXTRACT PRODUCED FROM THE LAND TITLES DATA STORAGE SYSTEM OF TITLE NUMBER 1872414/4

This is Exhibit "13" referred to in the  
affidavit of

MATHAN KUMAR

sworn (or affirmed) before me,  
this 18th day of MAY, 2023

  
A Notary Public in and for the Province of Manitoba

# Business Debtor

## Search by Business Debtor

Date: 2023-05-15  
Time: 8:27:23 AM  
Transaction Number: 10268847626  
User ID: Jennifer Goncalves

Business Name: 3816410 MANITOBA LTD.

Account Balance: \$4,437.00

2 exact matches were found.

1 similar match was found.

### EXACT MATCHES

Business Debtor Name	No. of Registrations
1. 3816410 MANITOBA LTD.	5
2. 3816410 Manitoba Ltd.	1

## 1. 3816410 MANITOBA LTD.

1.1 3816410 MANITOBA LTD.: Registration 202209113807 (2022-06-02 10:37:14 AM)	
Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2027-06-02
Debtor Address	1-550 GEORGE AVENUE WINKLER, MANITOBA Canada R6W 0J4
This registration is jointly registered with these individual debtors (surname, first given name, second given name)	BERGEN, PETER
Secured Parties (party code, name, address)	BANK OF MONTREAL 201 PORTAGE AVENUE, 17TH FLOOR WINNIPEG, MANITOBA Canada R3B 3K6
General Collateral Description	Pursuant to a Postponement Subordination of Preferred Shares Rights Agreement ("Postponement") granted by the Individual Debtor in favour of the Secured Party, any and all present and future indebtedness and liability of 3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT to the Individual Debtor pursuant to the Investor Held Indebtedness is postponed and subordinated to all present and future indebtedness and liability whether actual or contingent of 3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT to the Secured Party and assigned by the Individual Debtor in favour of the Secured Party.  Unless otherwise defined herein, all capitalized terms and expressions used herein shall have the same meaning as set out in the Postponement.

1.2 3816410 MANITOBA LTD.: Registration 202209113602 (2022-06-02 10:33:58 AM)	
Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2027-06-02
Debtor Address	1-550 GEORGE AVENUE WINKLER, MANITOBA Canada R6W 0J4
This registration is jointly registered with these individual debtors (surname, first given name, second given name)	BERGEN, ELIZABETH  BERGEN, PETER
Secured Parties (party code, name, address)	BANK OF MONTREAL 201 PORTAGE AVENUE, 17TH FLOOR

	WINNIPEG, MANITOBA Canada R3B 3K6
<b>General Collateral Description</b>	A security interest pursuant to a Guarantee (the "Guarantee") granted jointly and severally by the Individual Debtors in favour of the Secured Party dated January 13, 2020, the Individual Debtors did assign and postpone all debts and liabilities present and future of 3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT to the Individual Debtors to the Secured Party.  Unless otherwise defined herein, all capitalized terms and expressions used herein shall have the same meaning as set out in the Guarantee.

**1.3 3816410 MANITOBA LTD.: Registration 201921760804 (2019-12-18 8:17:24 AM)**

<b>Registered under</b>	The Personal Property Security Act
<b>Expiry Date (YYYY-MM-DD)</b>	2029-12-18
<b>Debtor Address</b>	550 GEORGE AVENUE, UNIT 1 WINKLER, MANITOBA Canada R6W 0J4
<b>Secured Parties (party code, name, address)</b>	BANK OF MONTREAL 335 MAIN STREET WINNIPEG, MANITOBA Canada R3C 1C2
<b>General Collateral Description</b>	*The security interest is taken in all of the debtor's present and after-acquired personal property.  In addition to, and without limiting the foregoing, all of the Business Debtor's present and future equipment, including, without limiting the generality of the foregoing, specifically:  (1) Grain Trailer Side Wall Jig (2) Main Body Tacking Jig (3) Hopper and Chassies Jig (4) Bomar 410-260 DG (5) 52ft x 14ft Booth, Serial Number F1308190500 (6) Graco ProMix 2KE, Serial Number A0109 (7) Polar Chip Guard Machine ULAD 6000, Serial Number BFE-616-022F (8) Blasting Bin (9) Sullair Model 16B-75H AcAc, Serial Number 20060280070 (10) 375 CFM Compressor (11) Sullair Model V160-75Hgza, Serial Number 003-6313 (12) 375 CFM Compressor (13) 2000 Toyota - 6000lb, Serial Number 34924 (14) 2002 Toyota - 8000lb, , Serial Number 70272 (15) 1998 Toyota - 5000lb, Serial Number 60999 (16) 1998 Cat Forklift, Rough Terrain, Serial Number 31A01896 (17) 2003 JCB 830, Serial Number 23005 (18) Paint Line (with Booth)
<b>Change History</b>	Registration Number: 201921916910 (2019-12-19 3:57:10 PM) Sections Changed: General Collateral Description  Registration Number: 201921901912 (2019-12-19 1:49:59 PM) Sections Changed: General Collateral Description

**1.4 3816410 MANITOBA LTD.: Registration 201921094308 (2019-12-05 2:58:56 PM)**

<b>Registered under</b>	The Personal Property Security Act
<b>Expiry Date (YYYY-MM-DD)</b>	2024-12-05
<b>Debtor Address</b>	550 GEORGE AVENUE UNIT 1 WINKLER, MB Canada R6W 0J4
<b>This registration is jointly registered with these business debtors</b>	BERG'S TRAILERS & PREP AND PAINT
<b>Secured Parties (party code, name, address)</b>	Bank of Montreal/Banque de Montreal 250 Yonge Street, 9th Floor Toronto, ON Canada M5B 2L7
<b>General Collateral Description</b>	LF32 All debts and other intangibles, chattel paper, documents of title, instruments, securities and security interest (all such terms having the meaning of such terms in the personal property security act and herein collectively called the "said debts and securities") now due or hereafter to become due to the debtor or which now are

or may hereafter become vested in the debtor and all proceeds and other rights and benefits in respect thereof. All books and accounts, letters, invoices, papers and documents in any way evidencing or relating to all or any of the debts and securities and rights hereby transferred or agreed to be transferred. Any and all claims and other rights for insurance against loss by fire, water, misappropriation or otherwise to the real or personal property of the debtor.

**1.5 3816410 MANITOBA LTD.: Registration 201900802400 (2019-01-16 8:20:12 AM)**

<b>Registered under</b>	The Personal Property Security Act
<b>Expiry Date (YYYY-MM-DD)</b>	2024-01-16
<b>Debtor Address</b>	1-550 GEORGE AVE WINKLER, MB CANADA R6W 0J4
<b>This registration is jointly registered with these business debtors</b>	BERG'S PREP & PAINT
<b>Secured Parties (party code, name, address)</b>	FINISHMASTER CANADA INC. 170 INDUSTRIEL BOULEVARD BOUCHERVILLE, QC CANADA J4X 2X3
<b>General Collateral Description</b>	ALL PERSONAL PROPERTY OF EVERY NATURE AND KIND WHATSOEVER AND WHERESOEVER SITUATE OF THE DEBTOR, NOW OR AT ANY TIME AND FROM TIME TO TIME OWNED BY THE DEBTOR.

**2. 3816410 Manitoba Ltd.**

**2.1 3816410 Manitoba Ltd.: Registration 201709314101 (2017-05-29 9:39:58 AM)**

<b>Registered under</b>	The Personal Property Security Act
<b>Expiry Date (YYYY-MM-DD)</b>	2025-05-29
<b>Debtor Address</b>	1 - 550 George Avenue Winkler, MB Canada R6W 0J4
<b>This registration is jointly registered with these business debtors</b>	Berg's Prep & Paint
<b>Secured Parties (party code, name, address)</b>	Integra Castings Inc. 1331 Chevrier Boulevard Winnipeg, MB Canada R3T 0Y4
<b>General Collateral Description</b>	The secured party claims an interest in the following serial numbered goods owned by the debtor(s):  - Forklift Serial No. LF501, 3,740lb LP (Komatsu) - Rough Terrain Forklift, Caterpillar Model #RC60, Serial No. 31A01896  in accordance with the General Security Agreement dated May 26, 2017, given by the debtor(s) in favour of the secured party.
<b>Change History</b>	Registration Number: 202000790410 (2020-01-15 2:48:13 PM) Sections Changed: Expiry Date

**END OF EXACT MATCHES**



## Business Debtor

Search by Business Debtor: 1 similar match was found.

Business Debtor Name	No. of Registrations
1. 3816410 Manitoba Ltd	1

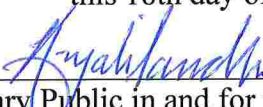
1. 3816410 Manitoba Ltd

Include in Printed Search Results

### 1.1 3816410 Manitoba Ltd: Registration 202303223004 (2023-03-01 5:47:13 PM)

Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2030-03-01
Debtor Address	1-550 George AVENUE Winkler, MB Canada R6W0J4
This registration is jointly registered with these individual debtors (surname, first given name, second given name)	Bergen, Pedro
Secured Parties (party code, name, address)	ROYAL BANK OF CANADA 10 YORK MILLS ROAD 3RD FLOOR Toronto, ON Canada M2P 0A2
Serial Numbered Goods (serial number, category, year, description)	3GCUYEED2MG227498 Motor Vehicle 2021 Chevrolet Silverado 1500

This is Exhibit "14" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023

  
\_\_\_\_\_  
A Notary Public in and for the Province of Manitoba

PRIORITY SUBORDINATION dated January 22, 2020

By:

**FINISHMASTER CANADA INC.**  
(hereinafter referred to as the "Subordinate Lender")

In favour of:

**BANK OF MONTREAL**  
(hereinafter referred to as the "Lender")

Re: **3816410 Manitoba Ltd. (the "Debtor")**

WHEREAS the Subordinate Lender has agreed to affirm that all of its mortgages, charges and/or security interests (including without limitation, Manitoba PPR Registration No. 201900802400, the particulars of which are attached in **Schedule "A"** attached hereto) in all the present and future personal property now owned or hereafter acquired by the Debtor (the "**Debtor's Property**") is/are postponed and subordinated to all of the Lender's existing and future mortgages, charges and/or security interests in all of the Debtor's Property (including without limitation, PPR Registration No. 201921760804 (Manitoba));

NOW THEREFORE, for good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the Subordinate Lender), the Subordinate Lender hereby agrees as follows:

1. **Postponement and Subordination.** The Subordinate Lender declares, covenants and agrees that any mortgages, charges and/or security interests it may have in the Debtor's Property (including without limitation Manitoba PPR Registration No. 201900802400) is/are postponed and subordinated in all respects to all of the existing and future mortgages, charges and/or security interests of the Lender in the Debtor's Property. The postponement and subordination contained herein shall apply in all events and circumstances regardless of: (a) the date of execution, attachment, registration (including any amendment to any registration) or perfection of any mortgage, charge or security interest held by the Subordinate Lender or the Lender; (b) the date of any advance(s) of monies or deliveries of personal property made to the Debtor by the Subordinate Lender or the Lender; (c) the date of default by the Debtor under any of the security documentation held by the Subordinate Lender or the Lender or the dates of crystallization of any floating charges held by the Subordinate Lender or the Lender; (d) any priority granted by any principle of law or any statute, including without limitation *The Personal Property Security Act* (Manitoba); or (e) any other matter whatsoever.
2. **No Amendment of the Manitoba PPR Registration.** Save for its proceeding to discharge Manitoba PPR Registration No. 201900802400, the Subordinate Lender declares, covenants and agrees that it shall not amend, supplement, restate, or otherwise modify the general collateral description of the Manitoba PPR Registration without the prior written consent of the Lender.
3. **Further Assurances.** The Subordinate Lender covenants that it shall from time to time execute such other and further instruments and documents as are or may become necessary or desirable to effectuate the intent of this Priority Subordination.
4. **General.** This Priority Subordination and everything herein contained shall enure to the benefit of and be binding upon the parties hereto and each of their respective successors and permitted assigns. This Priority Subordination shall be governed by and construed in accordance with the laws of the Province of Manitoba. The parties hereby attorn to the jurisdiction of the courts of the Province of Manitoba.

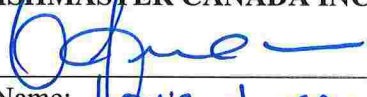
5. **Counterparts.** This Priority Subordination may be executed in any number of counterparts, including by way of electronic transmission, and each of such counterparts shall, for all purposes, be deemed to be an original, and all such counterparts shall together constitute one and the same agreement.

*[Remainder of page left intentionally blank. Signature page follows immediately hereafter.]*



IN WITNESS WHEREOF the Subordinate Lender has executed this Priority Subordination on the date first written above.

FINISHMASTER CANADA INC.

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

Name: Louis Dumou

Title: Corp. Secretary

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

Name:

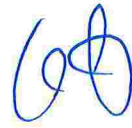
Title:

*\* I/We have the authority to bind the Corporation.*

**SCHEDULE "A"**

**THE MANITOBA PPR RESISTRATION**

Registration No.	Debtor	Secured Party	Collateral Description
201900802400	3816410 Manitoba Ltd.	Finishmaster Canada Inc.	All personal property of every nature and kind whatsoever and wheresoever situate of the Debtor, now or at any time and from time to time owned by the Debtor.



PRIORITY SUBORDINATION dated January 23, 2020,

By:

**INTEGRA CASTINGS INC.**  
(hereinafter referred to as the "Subordinate Lender")

In favour of:

**BANK OF MONTREAL**  
(hereinafter referred to as the "Lender")

Re: **3816410 Manitoba Ltd. (the "Debtor")**

WHEREAS the Subordinate Lender has agreed to affirm that all of its mortgages, charges and/or security interests (including without limitation, Manitoba PPR Registration No. 201709314101, as more fully described in Schedule "A" hereto, with said registration being defined herein as the "Manitoba PPR Registration") in all the serial number goods described in Schedule A acquired by the Debtor (the "Debtor's Property") is/are postponed and subordinated to all of the Lender's existing and future mortgages, charges and/or security interests in all of the Debtor's Property (including without limitation, PPR Registration No. 201921760804 (Manitoba));

NOW THEREFORE, for good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the Subordinate Lender), the Subordinate Lender hereby agrees as follows:

- 1. Postponement and Subordination.** The Subordinate Lender declares, covenants and agrees that any mortgages, charges and/or security interests it may have in the Debtor's Property (including without limitation the Manitoba PPR Registration) is/are postponed and subordinated in all respects to all of the existing and future mortgages, charges and/or security interests of the Lender in the Debtor's Property. The postponement and subordination contained herein shall apply in all events and circumstances regardless of: (a) the date of execution, attachment, registration (including any amendment to any registration) or perfection of any mortgage, charge or security interest held by the Subordinate Lender or the Lender; (b) the date of any advance(s) of monies or deliveries of personal property made to the Debtor by the Subordinate Lender or the Lender; (c) the date of default by the Debtor under any of the security documentation held by the Subordinate Lender or the Lender or the dates of crystallization of any floating charges held by the Subordinate Lender or the Lender; (d) any priority granted by any principle of law or any statute, including without limitation *The Personal Property Security Act* (Manitoba); or (e) any other matter whatsoever.
- 2. No Amendment of the Manitoba PPR Registration.** Save for its proceeding to discharge the Manitoba PPR Registration, the Subordinate Lender declares, covenants and agrees that it shall not amend, supplement, restate, or otherwise modify the general collateral description of the Manitoba PPR Registration without the prior written consent of the Lender.
- 3. Further Assurances.** The Subordinate Lender covenants that it shall from time to time execute such other and further instruments and documents as are or may become necessary or desirable to effectuate the intent of this Priority Subordination.
- 4. General.** This Priority Subordination and everything herein contained shall enure to the benefit of and be binding upon the parties hereto and each of their respective successors and permitted assigns. This Priority Subordination shall be governed by and construed in accordance with the laws of the

Province of Manitoba. The parties hereby attorn to the jurisdiction of the courts of the Province of Manitoba.

5. **Counterparts.** This Priority Subordination may be executed in any number of counterparts, including by way of electronic transmission, and each of such counterparts shall, for all purposes, be deemed to be an original, and all such counterparts shall together constitute one and the same agreement.

*[Remainder of page left intentionally blank. Signature page follows immediately hereafter.]*



IN WITNESS WHEREOF the Subordinate Lender has executed this Priority Subordination on the date first written above.

~~INTEGRA CASTINGS INC.~~

~~Per:~~

~~Name: JAMES UMLAH~~

~~Title:~~

Per:

Name:

Title:

PRBSIDENT & CEO

*I/We have the authority to bind the Corporation.*

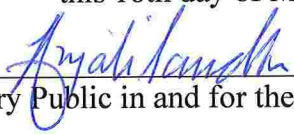
*Signature page to the Priority Postponement*

SCHEDULE "A"

THE MANITOBA PPR REGISTRATION

	Secured Party	Registration No.	Expiry Date	General Collateral Description
1.	Integra Castings Inc.	201709314101	2020-05-29	* The secured party claims an interest in the following serial numbered goods owned by the debtor(s): - Forklift Serial No. LF501, 3,740lb LP (Komatsu) - Rough Terrain Forklift, Caterpillar Model #RC60, Serial No. 31A01896 in accordance with the General Security Agreement dated May 26, 2017, given by the debtor(s) in favour of the secured party.

This is Exhibit "15" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023

  
A Notary Public in and for the Province of Manitoba

## Confirmation Letter / Lettre de confirmation

**Teranet Collateral Management Solutions Corporation / Teranet Solutions de gestion des garanties**

Suite 200, 4126 Norland Avenue, Burnaby, BC V5G 3S8

Authorized Section 427 Bank Act Registrar / Bureau d'enregistrement autorisé conformément à l'article 427 de la  
*Loi sur les banques.*

MLT Aikins LLP  
30th Floor, 360 Main Street  
Winnipeg, Manitoba  
R3C 4G1

2023/05/15 10:25 AM EDT

Ref / Objet: 05476898 0076354.01105

Attn: Jennifer Goncalves  
Acct# 1255

Tel/Tél: 1-204-957-4868

Fax/Télécopie: 1-204-957-0840

Dear Sir / Madam

Monsieur / Madame

Re: Bank Act Security - Section 427

Objet: Garanties données en vertu de la Loi sur les banques -  
article 427

We have processed your request(s) and hereby confirm  
the following results: (\*see below).

Nous avons donné suite à votre (vos) demande(s) et nous  
vous faisons part des résultats suivants: (\* voir ci-dessous).

Reference

Reference

(2) A search has been made of the notice of intention  
under the Bank Act registered in the province of  
Manitoba. As at the date and time above, our records  
indicate the following.

(2) Nous avons examiné les préavis qui se rapportent aux  
garanties données en vertu de la Loi sur les banques et qui  
sont enregistrés pour la province de: Manitoba. À la date et à  
l'heure indiquées ci-dessus.

Your search for the company

Votre recherche pour la société

*3816410 MANITOBA LTD.*

*3816410 MANITOBA LTD.*

returns the following results:

révèle les résultats suivants:

Type	Registration Name	Address	Date	Expires	Number	Bank
Type	Enregistrement au nom de	Adresse	Date	Expire	Numéro	Banque
(2)	3816410 Manitoba Ltd. Berg's Trailers & Prep and Paint	550 George Ave Unit 1 Winkler MB R6W0J4	2019/12/27 10:19 AM PST	2024/12/31	01325813	Bank of Montreal

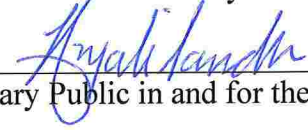


For Registrar / Pour le Régistrare

We acknowledge receipt of fees as follows:

Nous accusons réception des droits prescrits dont les  
montants s'établissent comme suit:

This is Exhibit "16" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023



---

A Notary Public in and for the Province of Manitoba



Southern Interior Tax Services Office  
Surrey BC V3T 5E1

April 06, 2022

3816410 MANITOBA LTD  
1 - 550 GEORGE AVE  
WINKLER MB R6W 0J4

Account Number  
89706 0828 RT0001

Dear Sir or Madam:

Re: GST / HST arrears -  
2019-03-31, 2019-08-31, 2020-02-29, 2020-03-31, 2020-04-30,  
2020-06-30, 2020-10-31, 2020-12-31, 2021-02-28, 2021-03-31,  
2021-04-30, 2021-06-30, 2021-07-31, 2021-08-31, 2021-09-30,  
2021-10-31, 2021-11-30, 2022-01-31

Balance: \$207,221.27

Thank you for proposing an arrangement to pay the amount you owe on your account.

We confirm that the terms of your arrangement are as follows:

Due date of first payment: April 15, 2022  
Number of payments: 6  
Payment interval (days): 30  
Amount of each payment: \$34,974.76

The payment arrangement shown above is acceptable if you meet all of the following conditions:

- you file current-year returns by the deadlines and pay any tax owing by the due dates.
- any postdated cheques must be honoured on the due date.

Note that interest will continue to add up at the prescribed rates until the amount you owe is paid in full.

.../2





Southern Interior Tax Services Office  
Surrey BC V3T 5E1

April 06, 2022

3816410 MANITOBA LTD  
1 - 550 GEORGE AVE  
WINKLER MB R6W 0J4

Account Number  
89706 0828 RT0001

Dear Sir or Madam:

Re: GST / HST arrears -  
2019-03-31, 2019-08-31, 2020-02-29, 2020-03-31, 2020-04-30,  
2020-06-30, 2020-10-31, 2020-12-31, 2021-02-28, 2021-03-31,  
2021-04-30, 2021-06-30, 2021-07-31, 2021-08-31, 2021-09-30,  
2021-10-31, 2021-11-30, 2022-01-31

Balance: \$207,221.27

Thank you for proposing an arrangement to pay the amount you owe on your account.

We confirm that the terms of your arrangement are as follows:

Due date of first payment: April 15, 2022  
Number of payments: 6  
Payment interval (days): 30  
Amount of each payment: \$34,974.76

The payment arrangement shown above is acceptable if you meet all of the following conditions:

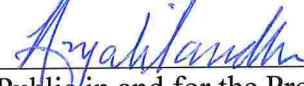
- you file current-year returns by the deadlines and pay any tax owing by the due dates.
- any postdated cheques must be honoured on the due date.

Note that interest will continue to add up at the prescribed rates until the amount you owe is paid in full.

.../2



This is Exhibit "17" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023



---

A Notary Public in and for the Province of Manitoba



**From:** KUMAR, MATHAN  
**Sent:** July 7, 2022 10:44 AM  
**To:** [peter@bergtrailers.com](mailto:peter@bergtrailers.com)  
**Subject:** Call today

Hi Peter,

As discussed, the excess situation on your account has continued since our last conversation. We will be returning the following cheques:

4,470.51CK NO.5023  
3,993.64CK NO.5071

The Bank has asked that you find another institution to conduct your banking. We understand that payroll is concerning to you and may provide assistance provided that you advise the bank 1 day prior with respect to which cheques are for payroll purposes. The bank will be returning all other items as NSF moving forward.

We discussed the possibility of the bank issuing demands and will hold off while you review your financing options, however that may change pending account activity and further updates to be provided by you prior to July 31<sup>st</sup>,2022.

I will be available to discuss further until July 18<sup>th</sup> at which point I will be on vacation for a couple of weeks.

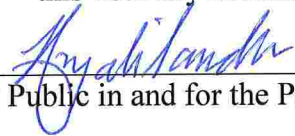
Thanks and regards,

Mathan Kumar  
Account Manager  
BMO Financial Group  
S.A.M.U., Western Canada, Winnipeg Main Branch, 201 Portage Ave 16<sup>th</sup> Floor (TR003)  
Winnipeg, MB. R3B 3K6| Tel: (204)985-2432| Fax: (204)985-2362|  
Email:[mathan.kumar@bmo.com](mailto:mathan.kumar@bmo.com)



This email and its attachments are confidential. Any unauthorized use or disclosure is prohibited. If you receive this email in error, please notify me by reply email and permanently delete the original without making any copies or disclosing its contents

This is Exhibit "18" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023

  
A Notary Public in and for the Province of Manitoba

**From:** KUMAR, MATHAN  
**Sent:** September 1, 2022 3:37 PM  
**To:** [peter@bergtrailers.com](mailto:peter@bergtrailers.com)  
**Subject:** update  
**Importance:** High

Hi Peter,

I am following up with respect to the below email (email thread below). The annual review is due by the end of the month and the bank requires your financial information in order to complete a further assessment.

Can you kindly provide an update with respect to your financing options and the information listed below? The information requested below will be required by Sept 9<sup>th</sup>, 2022.

- Minimum Notice to Reader Accountant Prepared Financial Statements, Corporate Notice of Assessment, and T-2 for the Borrower within 120 days of year-end.
- Aged Accounts Receivable Listing
- Aged Accounts Payable Listing
- Inventory Listing
- Equipment Listing
- Updated Personal Financial Statement to be provided by Guarantor
- T1 Personal Tax returns with NOA to be provided by the guarantor

If you would like to have a call regarding the above, I would be happy to accommodate and have availability from Sept 6 to 9<sup>th</sup> between 1pm to 5pm. Please let me know and I can send an invite.

Thank you,

Mathan Kumar  
Account Manager  
BMO Financial Group  
S.A.M.U., Western Canada, Winnipeg Main Branch, 201 Portage Ave 16<sup>th</sup> Floor (TR003)  
Winnipeg, MB. R3B 3K6 | Tel: (204)985-2432 | Fax: (204)985-2362 |  
Email: [mathan.kumar@bmo.com](mailto:mathan.kumar@bmo.com)



This email and its attachments are confidential. Any unauthorized use or disclosure is prohibited. If you receive this email in error, please notify me by reply email and permanently delete the original without making any copies or disclosing its contents

This is Exhibit "19" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023



---

A Notary Public in and for the Province of Manitoba

**From:** peter@bergtrailers.com <peter@bergtrailers.com>  
**Sent:** September 10, 2022 12:15 PM  
**To:** KUMAR, MATHAN <MATHAN.KUMAR@bmo.com>  
**Subject:** RE: update

**External Email:** Use caution with links and attachments. | **Courriel externe :** Faites preuve de prudence en ce qui a trait aux liens et aux pièces jointes.

MATHAN

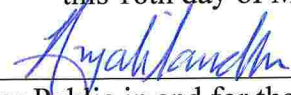
My account is coming in about to help with our books I do not inhouse that help me prepare this documents.

-----  
Peter Bergen  
***President – Berg Trailers***



[www.bergtrailers.com](http://www.bergtrailers.com)  
[peter@bergtrailers.com](mailto:peter@bergtrailers.com)  
1-550 George Ave,  
Winkler, MB R6W 0J4  
Cell: (204) – 362 1570

This is Exhibit "20" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023



---

A Notary Public in and for the Province of Manitoba

J. J. Burnell\*  
Partner

September 29, 2022

**VIA REGISTERED MAIL**3816410 Manitoba Ltd. o/a Berg's Trailers & Prep and Paint  
1 880J 15<sup>th</sup> Street, Box 99  
Winkler, Manitoba R6W 4A4  
Attn: Peter Bergen\* services provided by  
J J Burnell Law Corporation  
Direct Line: (204) 957-4663  
E-mail: jburnell@mltaikins.comKari E. Klassen  
Legal Assistant  
Direct Line: (204) 957-4649  
E-mail: kklassen@mltaikins.com

Dear Sir:

**Re: Indebtedness of 3816410 Manitoba Ltd. o/a Berg's Trailers & Prep and Paint (the "Debtor") to Bank of Montreal (the "Bank")**

**File No: 0076345-01105**

We are solicitors for the Bank in connection with the above-noted matter.

Enclosed for service upon you is a Notice of Intention to Enforce Security dated September 29, 2022 pursuant to 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA Notice**").

By means of a: (i) Letter of Agreement dated November 14, 2019 and accepted by the Debtor on December 2, 2019; (ii) Letter of Agreement – Amendment dated and accepted by the Debtor December 16, 2019; (iii) Commercial Card Agreement (Canadian Currency) dated and executed January 28, 2020; and (iv) Commercial Card Agreement (US Currency) dated and executed January 28, 2020 (together, the "**Credit Agreements**"), the Bank made available to you certain credit facilities (the "**Credit Facilities**") certain particulars of which are set out below.

We are advised by the Bank that as at September 20, 2022 you are indebted to the Bank in the amounts of \$2,040,614.37 CAD and \$68,916.16 USD with respect to the following Credit Facilities:

- Operating Demand Loan  
Account No. 0003-1949-040  
Total \$ 713,888.57 CAD  
Interest Rate at Bank's Prime Rate  
plus 5.0000%

2.	Demand Loan (Non-Revolving) Account No. 0003-1949-789 Total	\$ 69,075.50 CAD
	Interest rate at the Bank's Prime Rate plus 3.0000% per annum	
3.	Real Estate Financing Loan (Fixed Rate Term Loan) Account No. 0003-6989-797 Total	\$1,206,643.70 CAD
	Interest rate at 3.8100% per annum	
4.	MasterCard Facility Card No. *****9837 Total	\$ 43,853.25 CAD
	Interest rate at 18.4000% per annum	
5.	MasterCard Facility ("USD MC") Card No. *****5883 Total	\$ 68,916.16 USD
	Interest rate at 18.4000% per annum	
6.	Legal Fees, Costs and Other Expenses	\$ 6,895.95 CAD
7.	Fees	<u>\$ 257.40 CAD</u>
	<b>Total Indebtedness</b>	<b>\$2,040,614.37 CAD</b> <b>\$ 68,916.16 USD</b>

The Bank's Prime Rate is currently 5.45%.

In addition to the Credit Facilities being repayable upon demand, we are advised by the Bank that you have defaulted under the Credit Agreements by reason of, among other things:

- (a) Failing to pay all indebtedness due to BMO in connection with the Credit Facilities;
- (b) Failing to pay the outstanding balance under the USD MC by the due date;
- (c) Failing to comply with reporting requirements; and
- (d) Permitting the aggregate of all outstanding Advances under the Operating Demand Loan to exceed the Facility Authorization for that Facility.



On behalf of the Bank, we hereby demand payment in full of all outstanding amounts under the Credit Facilities, totaling \$2,040,614.37 CAD and \$68,916.16 USD as at September 20, 2022, which amounts are subject to daily fluctuations, together with principal, accrued and unpaid interest, all fees and expenses (including but not limited to all reasonable legal fees and disbursements on a solicitor and own client basis) and any other indebtedness arising under or in connection with the Credit Agreements (the "**Total Indebtedness**"). Interest shall continue to accrue on the outstanding amounts in accordance with the Credit Agreements. The exact amount of Total Indebtedness may be obtained by contacting the writer.

This demand shall constitute demand by the Bank under all security held by it on your property, as more particularly described in the enclosed BIA Notice, including, without limitation, (i) Mortgage No. 1249795/4 executed by the Debtor in favour of the Lender on January 10, 2020; (ii) Security Agreement executed by the Debtor in favour of the Lender on January 10, 2020; (iii) General Assignment of Debts, etc. executed by the Debtor in favour on January 10, 2020; (iv) Assignment of Moneys which May Become Payable Under Fire Insurance Policies executed by the Debtor on January 10, 2020; (v) Application for Credit and Promise to Give Bills of Lading, Warehouse Receipts, or Security under Section 427 of the Bank Act dated December 30, 2019 executed by the Debtor; (vi) Agreement as to Loans and Advances and Security therefor executed by the Debtor in favour of the Bank on December 30, 2019; and (vii) Security under sec. 427(1) of the Bank Act dated December 30, 2019 executed by the Debtor in favour of the Lender (the "**Security**").

Be advised that if payment of **\$2,040,614.37 CAD and \$68,916.16 USD, together with applicable interest, fees and costs**, is not delivered to our office in the form of a certified cheque or bank draft made payable to MLT Aikins LLP, In Trust, within ten (10) days if the date of this letter, the Bank shall exercise such remedies against you as are available to it pursuant to the terms of the applicable agreements held by the Bank and as at law generally. Those steps may include enforcement of the Security or the appointment of a receiver.

The Bank reserves the right to preserve and/or enforce the Security sooner than the time period specified in the enclosed BIA Notice if it deems its Security in any way to be endangered or in jeopardy, or if you consent to the earlier enforcement of the Security.

Sincerely,  
**MLT AIKINS LLP**

Per: JJ Burnell  
JJ Burnell (Sep 29, 2022 17:13 CDT)

J.J. BURNELL

Encl.

**NOTICE OF INTENTION TO ENFORCE SECURITY**  
**(Section 244(1) of the *Bankruptcy and Insolvency Act*)**

To: 3816410 Manitoba Ltd. o/a Berg's Trailers & Prep and Paint (the "**Debtor**"), an insolvent person

TAKE NOTICE THAT:

1. Bank of Montreal (the "**Bank**") a secured creditor, intends to enforce its security on the insolvent person's property described below:

- (a) Real and personal property, as described in the attached Schedule "A";
- (b) All of the Debtor's present and after-acquired personal property. In addition to, and without limiting the foregoing, all of the Debtor's present and future equipment, including, without limiting the generality of the foregoing, specifically:

- (1) Grain Trailer Side Wall Jig;
- (2) Main Body Tacking Jig;
- (3) Hopper and Chassies Jig;
- (4) Bomar 410-260 DG;
- (5) 52ft x 14ft Booth, Serial Number F1308190500;
- (6) Graco ProMix 2KE, Serial Number A0109;
- (7) Polar Chip Guard Machine ULAD 6000, Serial Number BFE-616-022F;
- (8) Blasting Bin;
- (9) Sullair Model 16B-75H AcAc, Serial Number 20060280070;
- (10) 375 CFM Compressor;
- (11) Sullair Model V160-75Hgza, Serial Number 003-6313;
- (12) 375 CFM Compressor;
- (13) 2000 Toyota - 6000lb, Serial Number 34924;
- (14) 2002 Toyota - 8000lb, Serial Number 70272;
- (15) 1998 Toyota - 5000lb, Serial Number 60999;
- (16) 1998 Cat Forklift, Rough Terrain, Serial Number 31A01896;
- (17) 2003 JCB 830, Serial Number 23005; and
- (18) Paint Line (with Booth);

- (c) All accounts, debts and other intangibles, chattel paper, documents of title, instruments, securities and security interests (all such terms having the meaning of such terms in *The Personal Property Security Act*) now due or hereafter to become due to the Debtor or which now are or may hereafter become vested in the Debtor and all proceeds and other rights and benefits in respect hereof and all books and accounts, letters, invoices, papers and documents in any way evidencing or relating to any of the debts and securities and rights transferred or agreed to be transferred. Any and all claims and other rights for insurance against

loss by fire, water, misappropriation or otherwise to the real or personal property of the Debtor; and

- (d) All inventory on hand and in transit including trailers, supplies, paint, outfitting, welding, trailer equipment, parts, scrap metal and tools and that is now or may hereafter be in the place or places hereinafter, designated, to wit, 550 George Ave Unit 1 Winkler, MB R6W 0J4.

2. The security that is to be enforced is in the form of the:

- Mortgage No. 1249795/4 executed by the Debtor in favour of the Lender on January 10, 2020;
- Security Agreement executed by the Debtor in favour of the Lender on January 10, 2020;
- General Assignment of Debts, etc. executed by the Debtor in favour on January 10, 2020;
- Assignment of Moneys which May Become Payable Under Fire Insurance Policies executed by the Debtor on January 10, 2020;
- Application for Credit and Promise to Give Bills of Lading, Warehouse Receipts, or Security under Section 427 of the Bank Act dated December 30, 2019 executed by the Debtor;
- Agreement as to Loans and Advances and Security therefor executed by the Debtor in favour of the Bank on December 30, 2019; and
- Security under sec. 427(1) of the Bank Act dated December 30, 2019 executed by the Debtor in favour of the Lender.

3. The total amount of indebtedness secured by the security is the sum of 2,040,614.37 CAD and \$68,916.16 USD, which amounts are subject to daily fluctuations, inclusive of interest, as at September 20, 2022 and legal and other expenses and fees.

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.

DATED at Winnipeg, Manitoba this 29<sup>th</sup> day of September, 2022.

Bank of Montreal  
By its Solicitor & Agent,  
MLT AIKINS LLP

Per: *JJ Burnell*  
JJ Burnell (Sep 29, 2022 17:13 CDT)  
J.J. BURNELL

SCHEDULE "A"

Mortgage No. 1249795/4 registered against the following lands:

TITLE NO. 1872413/4  
LOT 1 BLOCK 2 PLAN 37465 MLTO  
IN S ½ 3-3-4 WPM  
EXCEPTING – DRAIN PLAN 40578 MLTO


TITLE NO. 1872414/4  
LOT 2 BLOCK 2 PLAN 37465 MLTO  
IN S ½ 3-3-4 WPM  
EXCEPTING – DRAIN PLAN 40578 MLTO

Personal Property Security Notice No. 1249796/4 registered against the fixtures located on the following lands:

TITLE NO. 1872413/4  
LOT 1 BLOCK 2 PLAN 37465 MLTO  
IN S ½ 3-3-4 WPM  
EXCEPTING – DRAIN PLAN 40578 MLTO

TITLE NO. 1872414/4  
LOT 2 BLOCK 2 PLAN 37465 MLTO  
IN S ½ 3-3-4 WPM  
EXCEPTING – DRAIN PLAN 40578 MLTO

This is Exhibit "21" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023

  
A Notary Public in and for the Province of Manitoba

**J. J. Burnell\***  
Partner

September 29, 2022

**VIA REGISTERED MAIL**ELIZABETH BERGEN  
579 Pembina Ave.  
Winkler, Manitoba R6W 0K1PETER BERGEN  
579 Pembina Ave.  
Winkler, Manitoba R6W 0K1

Dear Sir / Madam:

**Re: Indebtedness of 3816410 Manitoba Ltd. o/a Berg's Trailers & Prep and Paint (the "Debtor") to Bank of Montreal (the "Bank")**  
**File No: 0076345-01105****\* services provided by  
J J Burnell Law Corporation**  
Direct Line: (204) 957-4663  
E-mail: jburnell@mltaikins.comKari E. Klassen  
Legal Assistant  
Direct Line: (204) 957-4649  
E-mail: kklassen@mltaikins.com

We are solicitors for the Bank in connection with the above-noted matter.

By a guarantee in writing dated January 13, 2020 (the "**Guarantee**") (copy enclosed), Elizabeth Bergen ("**Elizabeth**") and Peter Bergen ("**Peter**") jointly and severally guaranteed payment to the Bank of all present and future debts and liabilities in any currency, direct, indirect, contingent or otherwise, matured or not, including interest thereon, now or at any time, due or owing to the Bank from or by the Debtor or by any successor of the Debtor, whether arising from dealings between the Bank and the Debtor or from other dealings or proceedings by which the Bank may be or become in any manner whatever a creditor of the Debtor, wherever incurred and whether incurred by the Debtor as principal or surety, alone or jointly with any other person, or otherwise howsoever, limited to the aggregate amount of Two Million Three Hundred Seventy Four Thousand – 00/100 Dollars \$2,374,000.00 plus interest thereon at a rate of 3.00 per cent per annum above the Bank's prime interest rate in effect from time to time, from and including the date of demand until payment, and legal or other costs, charges and expenses.

Pursuant to the Guarantee, you assigned to the Bank and postponed to the debts and liabilities of the Debtor to the Bank all debts and liabilities present and future of the Debtor to Elizabeth and/or Peter ("**Assignment**").

By letter dated September 29, 2022 and provided to the Debtor (the “**Debtor Demand**”), a copy of which is enclosed, the Bank has demanded repayment in full of the Total Indebtedness (as defined in the Debtor Demand). The Total Indebtedness as at September 20, 2022 is \$2,040,614.37 CAD and \$68,916.16 USD, which amounts are subject to daily fluctuations.

On behalf of the Bank, we hereby demand payment from you under the Guarantee of the sums of \$2,040,614.37 CAD and \$68,916.16 USD together with all legal or other costs, charges and expenses.

On behalf of the Bank, we further hereby demand payment from you of all amounts owing under the Assignment.

This demand shall constitute demand by the Bank under all security held by it on your property, as more particularly described in the enclosed BIA Notice, including, without limitation the Guarantee (the “**Security**”).

Be advised that if payment of **\$2,040,614.37 CAD and \$68,916.16 USD, together with applicable interest, fees and costs**, is not delivered to our office in the form of a certified cheque or bank draft made payable to MLT Aikins LLP, In Trust, within ten (10) days of the date of this letter, the Bank shall exercise such remedies against you as are available to it pursuant to the terms of the applicable agreements held by the Bank and as at law generally. Those steps may include enforcement of the Security or the appointment of a receiver.

The Bank reserves the right to preserve and/or enforce the Security sooner than the time period specified in the enclosed BIA Notice if it deems its Security in any way to be endangered or in jeopardy, or if you consent to the earlier enforcement of the Security.

Enclosed herewith is a Notice of Intention to Enforce Security dated September 29, 2022 pursuant to 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA Notice**”).

Sincerely,

**MLT AIKINS LLP**

Per: JJ Burnell  
JJ Burnell (Sep 29, 2022 15:25 CDT)

J.J. BURNELL

Encl



**NOTICE OF INTENTION TO ENFORCE SECURITY**  
**(Section 244(1) of the *Bankruptcy and Insolvency Act*)**

To: ELIZABETH BERGEN AND PETER BERGEN (the “Debtors”)

TAKE NOTICE THAT:

1. Bank of Montreal (the “Bank”) a secured creditor, intends to enforce its security on the property of the insolvent person described below:

(a) All debts and liabilities present and future of 3816410 Manitoba Ltd. o/a Berg’s Trailers & Prep and Paint to the Debtors.

2. The security that is to be enforced is in the form of the:

- Guarantee for Indebtedness of an Incorporated Company executed January 13, 2020.

3. The total amount of indebtedness secured by the security are the sums of \$2,040,614.37 CAD and \$68,916.16 USD, which amounts are subject to daily fluctuations, inclusive of interest, as at September 20, 2022 and legal and other costs and fees.

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.

DATED at Winnipeg, Manitoba this 29<sup>th</sup> day of September, 2022.

Bank of Montreal  
By its Solicitor & Agent,  
MLT AIKINS LLP



JJ Burnell (Sep 29, 2022 15:25 CDT)

Per:

J.J. BURNELL

**COPY**

MLT Aikins LLP  
30th Floor - 360 Main Street  
Winnipeg, MB R3C 4G1  
T: (204) 957-0050  
F: (204) 957-0840

**J. J. Burnell\***  
Partner

September 29, 2022

**VIA REGISTERED MAIL**

3816410 Manitoba Ltd. o/a Berg's Trailers & Prep and Paint  
1 880J 15<sup>th</sup> Street, Box 99  
Winkler, Manitoba R6W 4A4  
Attn: Peter Bergen

\* services provided by  
**J J Burnell Law Corporation**  
Direct Line: (204) 957-4663  
E-mail: jburnell@mltaikins.com

Kari E. Klassen  
Legal Assistant  
Direct Line: (204) 957-4649  
E-mail: kklassen@mltaikins.com

Dear Sir:

**Re: Indebtedness of 3816410 Manitoba Ltd. o/a Berg's Trailers & Prep and Paint (the "Debtor") to Bank of Montreal (the "Bank")**

**File No: 0076345-01105**

We are solicitors for the Bank in connection with the above-noted matter.

Enclosed for service upon you is a Notice of Intention to Enforce Security dated September 29, 2022 pursuant to 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA Notice**").

By means of a: (i) Letter of Agreement dated November 14, 2019 and accepted by the Debtor on December 2, 2019; (ii) Letter of Agreement – Amendment dated and accepted by the Debtor December 16, 2019; (iii) Commercial Card Agreement (Canadian Currency) dated and executed January 28, 2020; and (iv) Commercial Card Agreement (US Currency) dated and executed January 28, 2020 (together, the "**Credit Agreements**"), the Bank made available to you certain credit facilities (the "**Credit Facilities**") certain particulars of which are set out below.

We are advised by the Bank that as at September 20, 2022 you are indebted to the Bank in the amounts of \$2,040,614.37 CAD and \$68,916.16 USD with respect to the following Credit Facilities:

1. Operating Demand Loan  
Account No. 0003-1949-040  
Total \$ 713,888.57 CAD  
Interest Rate at Bank's Prime Rate  
plus 5.0000%

2.	Demand Loan (Non-Revolving) Account No. 0003-1949-789 Total	\$ 69,075.50 CAD
	Interest rate at the Bank's Prime Rate plus 3.0000% per annum	
3.	Real Estate Financing Loan (Fixed Rate Term Loan) Account No. 0003-6989-797 Total	\$1,206,643.70 CAD
	Interest rate at 3.8100% per annum	
4.	MasterCard Facility Card No. *****9837 Total	\$ 43,853.25 CAD
	Interest rate at 18.4000% per annum	
5.	MasterCard Facility ("USD MC") Card No. *****5883 Total	\$ 68,916.16 USD
	Interest rate at 18.4000% per annum	
6.	Legal Fees, Costs and Other Expenses	\$ 6,895.95 CAD
7.	Fees	<u>\$ 257.40 CAD</u>
	<b>Total Indebtedness</b>	<b>\$2,040,614.37 CAD</b> <b>\$ 68,916.16 USD</b>

The Bank's Prime Rate is currently 5.45%.

In addition to the Credit Facilities being repayable upon demand, we are advised by the Bank that you have defaulted under the Credit Agreements by reason of, among other things:

- (a) Failing to pay all indebtedness due to BMO in connection with the Credit Facilities;
- (b) Failing to pay the outstanding balance under the USD MC by the due date;
- (c) Failing to comply with reporting requirements; and
- (d) Permitting the aggregate of all outstanding Advances under the Operating Demand Loan to exceed the Facility Authorization for that Facility.

On behalf of the Bank, we hereby demand payment in full of all outstanding amounts under the Credit Facilities, totaling \$2,040,614.37 CAD and \$68,916.16 USD as at September 20, 2022, which amounts are subject to daily fluctuations, together with principal, accrued and unpaid interest, all fees and expenses (including but not limited to all reasonable legal fees and disbursements on a solicitor and own client basis) and any other indebtedness arising under or in connection with the Credit Agreements (the "**Total Indebtedness**"). Interest shall continue to accrue on the outstanding amounts in accordance with the Credit Agreements. The exact amount of Total Indebtedness may be obtained by contacting the writer.

This demand shall constitute demand by the Bank under all security held by it on your property, as more particularly described in the enclosed BIA Notice, including, without limitation, (i) Mortgage No. 1249795/4 executed by the Debtor in favour of the Lender on January 10, 2020; (ii) Security Agreement executed by the Debtor in favour of the Lender on January 10, 2020; (iii) General Assignment of Debts, etc. executed by the Debtor in favour on January 10, 2020; (iv) Assignment of Moneys which May Become Payable Under Fire Insurance Policies executed by the Debtor on January 10, 2020; (v) Application for Credit and Promise to Give Bills of Lading, Warehouse Receipts, or Security under Section 427 of the Bank Act dated December 30, 2019 executed by the Debtor; (vi) Agreement as to Loans and Advances and Security therefor executed by the Debtor in favour of the Bank on December 30, 2019; and (vii) Security under sec. 427(1) of the Bank Act dated December 30, 2019 executed by the Debtor in favour of the Lender (the "**Security**").

Be advised that if payment of **\$2,040,614.37 CAD and \$68,916.16 USD, together with applicable interest, fees and costs**, is not delivered to our office in the form of a certified cheque or bank draft made payable to MLT Aikins LLP, In Trust, within ten (10) days if the date of this letter, the Bank shall exercise such remedies against you as are available to it pursuant to the terms of the applicable agreements held by the Bank and as at law generally. Those steps may include enforcement of the Security or the appointment of a receiver.

The Bank reserves the right to preserve and/or enforce the Security sooner than the time period specified in the enclosed BIA Notice if it deems its Security in any way to be endangered or in jeopardy, or if you consent to the earlier enforcement of the Security.

Sincerely,  
**MLT AIKINS LLP**

Per: JJ Burnell  
JJ Burnell (Sep 29, 2022 17:13 CDT)

J.J. BURNELL

Encl.

**NOTICE OF INTENTION TO ENFORCE SECURITY**  
**(Section 244(1) of the *Bankruptcy and Insolvency Act*)**

To: 3816410 Manitoba Ltd. o/a Berg's Trailers & Prep and Paint (the "Debtor"), an insolvent person

TAKE NOTICE THAT:

1. Bank of Montreal (the "**Bank**") a secured creditor, intends to enforce its security on the insolvent person's property described below:

- (a) Real and personal property, as described in the attached Schedule "A";
- (b) All of the Debtor's present and after-acquired personal property. In addition to, and without limiting the foregoing, all of the Debtor's present and future equipment, including, without limiting the generality of the foregoing, specifically:

- (1) Grain Trailer Side Wall Jig;
- (2) Main Body Tacking Jig;
- (3) Hopper and Chassies Jig;
- (4) Bomar 410-260 DG;
- (5) 52ft x 14ft Booth, Serial Number F1308190500;
- (6) Graco ProMix 2KE, Serial Number A0109;
- (7) Polar Chip Guard Machine ULAD 6000, Serial Number BFE-616-022F;
- (8) Blasting Bin;
- (9) Sullair Model 16B-75H AcAc, Serial Number 20060280070;
- (10) 375 CFM Compressor;
- (11) Sullair Model V160-75Hgza, Serial Number 003-6313;
- (12) 375 CFM Compressor;
- (13) 2000 Toyota - 6000lb, Serial Number 34924;
- (14) 2002 Toyota - 8000lb, Serial Number 70272;
- (15) 1998 Toyota - 5000lb, Serial Number 60999;
- (16) 1998 Cat Forklift, Rough Terrain, Serial Number 31A01896;
- (17) 2003 JCB 830, Serial Number 23005; and
- (18) Paint Line (with Booth);

- (c) All accounts, debts and other intangibles, chattel paper, documents of title, instruments, securities and security interests (all such terms having the meaning of such terms in *The Personal Property Security Act*) now due or hereafter to become due to the Debtor or which now are or may hereafter become vested in the Debtor and all proceeds and other rights and benefits in respect hereof and all books and accounts, letters, invoices, papers and documents in any way evidencing or relating to any of the debts and securities and rights transferred or agreed to be transferred. Any and all claims and other rights for insurance against

loss by fire, water, misappropriation or otherwise to the real or personal property of the Debtor; and

- (d) All inventory on hand and in transit including trailers, supplies, paint, outfitting, welding, trailer equipment, parts, scrap metal and tools and that is now or may hereafter be in the place or places hereinafter, designated, to wit, 550 George Ave Unit 1 Winkler, MB R6W 0J4.

2. The security that is to be enforced is in the form of the:

- Mortgage No. 1249795/4 executed by the Debtor in favour of the Lender on January 10, 2020;
- Security Agreement executed by the Debtor in favour of the Lender on January 10, 2020;
- General Assignment of Debts, etc. executed by the Debtor in favour on January 10, 2020;
- Assignment of Moneys which May Become Payable Under Fire Insurance Policies executed by the Debtor on January 10, 2020;
- Application for Credit and Promise to Give Bills of Lading, Warehouse Receipts, or Security under Section 427 of the Bank Act dated December 30, 2019 executed by the Debtor;
- Agreement as to Loans and Advances and Security therefor executed by the Debtor in favour of the Bank on December 30, 2019; and
- Security under sec. 427(1) of the Bank Act dated December 30, 2019 executed by the Debtor in favour of the Lender.

3. The total amount of indebtedness secured by the security is the sum of 2,040,614.37 CAD and \$68,916.16 USD, which amounts are subject to daily fluctuations, inclusive of interest, as at September 20, 2022 and legal and other expenses and fees.

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.

DATED at Winnipeg, Manitoba this 29<sup>th</sup> day of September, 2022.

Bank of Montreal  
By its Solicitor & Agent,  
MLT AIKINS LLP

Per: *JJ Burnell*  
JJ Burnell (Sep 29, 2022 17:13 CDT)  
J.J. BURNELL

## SCHEDULE "A"

Mortgage No. 1249795/4 registered against the following lands:

TITLE NO. 1872413/4

LOT 1 BLOCK 2 PLAN 37465 MLTO

IN S ½ 3-3-4 WPM

EXCEPTING – DRAIN PLAN 40578 MLTO

TITLE NO. 1872414/4

LOT 2 BLOCK 2 PLAN 37465 MLTO

IN S ½ 3-3-4 WPM

EXCEPTING – DRAIN PLAN 40578 MLTO

Personal Property Security Notice No. 1249796/4 registered against the fixtures located on the following lands:

TITLE NO. 1872413/4

LOT 1 BLOCK 2 PLAN 37465 MLTO

IN S ½ 3-3-4 WPM

EXCEPTING – DRAIN PLAN 40578 MLTO

TITLE NO. 1872414/4

LOT 2 BLOCK 2 PLAN 37465 MLTO

IN S ½ 3-3-4 WPM

EXCEPTING – DRAIN PLAN 40578 MLTO



# COPY

## Guarantee for Indebtedness of an Incorporated Company

To BANK OF MONTREAL:

IN CONSIDERATION of Bank of Montreal (the "Bank") dealing with **3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT** (the "Customer"), the undersigned hereby jointly and severally (solidarily in the Province of Québec) guarantees payment to the Bank of all present and future debts and liabilities in any currency, direct, indirect, contingent or otherwise, matured or not, including interest thereon, now or at any time, due or owing to the Bank from or by the Customer or by any successor of the Customer, whether arising from dealings between the Bank and the Customer or from other dealings or proceedings by which the Bank may be or become in any manner whatever a creditor of the Customer, wherever incurred and whether incurred by the Customer as principal or surety, alone or jointly with any other person, or otherwise howsoever. The liability of the undersigned (or each undersigned, if more than one), under this Guarantee, is limited to the aggregate amount of Two Million Three Hundred Seventy Four Thousand -- 00/100 Dollars \$2,374,000.00 plus interest thereon at a rate of 3.00 per cent per annum above the Bank's prime interest rate in effect from time to time, from and including the date of demand until payment, and legal or other costs, charges and expenses. The liability of the undersigned to make payment under this Guarantee shall arise immediately after demand for payment under this Guarantee has been made in writing by the Bank on the undersigned or any one of them, if more than one. The term "prime interest rate" means the floating annual rate of interest established from time to time by the Bank as the base rate it uses to determine rates of interest on Canadian dollar loans to customers in Canada and designated as Prime Rate.

IT IS AGREED that no change in the name, objects, capital stock, ownership, control or constitution of the Customer shall in any way affect the liability of the undersigned with respect to transactions occurring either before or after any such change. If the Customer amalgamates with one or more other corporations this Guarantee shall continue and apply to all debts and liabilities owing to the Bank by the corporation continuing from the amalgamation. The Bank shall not be required to inquire into or confirm the powers of the Customer or any of its directors or other agents acting or purporting to act on its behalf, and all amounts, liabilities, advances, renewals and credits in fact incurred, borrowed or obtained from the Bank shall be deemed to form part of the debts and liabilities hereby guaranteed, notwithstanding whether incurring such debts or liabilities exceeded the powers of the Customer or of its directors or agents, or was in any way irregular, defective or improper.

IT IS FURTHER AGREED that the undersigned shall be liable to the Bank in respect of all debts and liabilities, subject to the limitation, if any, set forth in the first paragraph of this Guarantee, stated to be owing to the Bank by the Customer under any agreement entered into by the Customer with respect to such debts and liabilities, notwithstanding whether any such agreement or any provision thereof is invalid, void, illegal, or unenforceable and notwithstanding whether such agreement was properly completed, entered into or authorized. Subject to the limitation, if any, set forth in the first paragraph of this Guarantee, the undersigned shall indemnify and save the Bank harmless from any losses which may arise by virtue of any debts and liabilities stated to be owing to the Bank by the Customer under any agreement entered into by the Customer with respect to such debts and liabilities, or any other agreement relating to any of the foregoing, being or becoming for any reason whatsoever in whole or in part (a) void, voidable, null, *ultra vires*, illegal, invalid, ineffective or otherwise unenforceable in accordance with its terms, or (b) released or discharged by operation of law (all of the foregoing being an "Indemnifiable Circumstance"). For greater certainty, the losses shall include the amount of all debts and liabilities owing to the Bank by the Customer which would have been payable by the Customer but for the Indemnifiable Circumstance. Nothing set out herein shall be interpreted as requiring any debts or liabilities which are hereby guaranteed to be documented by written agreement between the Bank and the Customer.

IT IS FURTHER AGREED that the Bank, without the consent of the undersigned and without exonerating in whole or in part the undersigned, may grant time, renewals, extensions, indulgences, releases and discharges to, may abstain from taking, perfecting or realizing upon security from, may release security to, may accept compositions from, and may otherwise change the terms of any of the debts and liabilities hereby guaranteed and otherwise deal with, the Customer and all other persons (including any other undersigned and any other guarantor) and security, as the Bank may see fit. No loss or diminution of any security received by the Bank from the Customer or others, whether the loss or diminution is due to the fault of the Bank or otherwise, shall in any way limit or lessen the liability of the undersigned under this Guarantee. All dividends, compositions, and amounts received by the Bank from the Customer or from any other person or estate capable of being applied by the Bank in reduction of the debts and liabilities hereby guaranteed, shall be regarded for all purposes as payments in gross, and the Bank shall be entitled to prove against the estate of the Customer upon any insolvency or winding-up in respect of the whole of said debts and liabilities, and the undersigned shall have no right to be subrogated to the Bank in respect of any such proof until the Bank has received from such estate payment in full of its claim with interest.

AND IT IS FURTHER AGREED that this shall be a continuing guarantee, and shall guarantee any ultimate balance owing to the Bank, including all costs, charges and expenses which the Bank may incur in enforcing or obtaining payment of amounts due to the Bank from the Customer either alone or in conjunction with any other person or otherwise howsoever, or attempting to do so. The Bank shall not be obliged to seek recourse against the Customer or any other person or realize upon any security it may hold before being entitled to payment from the undersigned of all debts and liabilities hereby guaranteed. The undersigned hereby renounces the benefits of discussion and division. The undersigned renounces claiming or setting up against the Bank any right which such undersigned may have to be subrogated in any of the rights, hypothecs, privileges and other security held from time to time by the Bank. The undersigned may terminate the further liability of such terminating party under this continuing Guarantee by providing ninety days' prior written notice to be given to the Bank. The liability of such terminating party shall continue under this Guarantee during such 90-day period, notwithstanding the death or insanity of such terminating party. After the expiry of such 90-day period, the terminating party shall be released from this Guarantee with respect to debts and liabilities arising after the expiry of such 90-day period but shall remain liable under this Guarantee in respect of all debts and liabilities owing to the Bank prior to the expiry of such 90-day period and also in respect of any contingent or future liabilities incurred to or by the Bank on or before such date which mature thereafter. Termination by the undersigned or the executors, liquidators, administrators or legal representatives of such undersigned shall not terminate the liability hereunder of any other undersigned. If after such termination any payment from the Customer must be returned to the Customer, or any successor or representative of the Customer, for any reason (including the designation of such payment as a mistake or as a preference following the bankruptcy of the Customer), then this

Guarantee shall continue after the termination as if such payment had not been made. A written statement from any manager or acting manager of the Bank purporting to show the amount at any particular time due and payable to the Bank, and guaranteed by this Guarantee, shall be conclusive evidence as against the undersigned that such amount is at such time so due and payable to the Bank and is guaranteed hereby. Each of the executors, liquidators, administrators and legal representatives of the undersigned shall immediately give notice in writing to the Bank of the death of such undersigned.

Insert name of  
Canadian  
Province in  
which  
Customer's  
account with  
the Bank is  
kept at the time  
Guarantee is  
given

THIS CONTRACT shall be construed in accordance with the laws of the Province of Manitoba and for the purpose of legal proceedings this contract shall be deemed to have been made in the said province and to be performed there, and the courts of that province shall have non-exclusive jurisdiction over all disputes which may arise under this contract, provided always that nothing herein contained shall prevent the Bank from proceeding at its election against the undersigned in the courts of any other province or country.

IF ANY PROVISION of this Guarantee is determined to be unenforceable, prohibited, invalid or illegal, it shall be severed from this Guarantee solely to the extent of such unenforceability, prohibition, invalidity or illegality and the remainder of such provision and the remainder of this Guarantee shall be unaffected thereby. The liability of the undersigned under this Guarantee shall not be terminated if this Guarantee is held to be unenforceable against any other undersigned.

ALL DEBTS AND LIABILITIES present and future of the Customer to the undersigned are hereby assigned (to the extent permitted by applicable law) to the Bank and postponed to the debts and liabilities of the Customer to the Bank and all such amounts paid to the undersigned or its assigns shall be received on behalf of and in trust for the Bank and shall immediately be paid over to the Bank.

THE UNDERSIGNED acknowledges that this Guarantee has been delivered free of any conditions and that no representations have been made to the undersigned affecting the liability of the undersigned under this Guarantee save as may be specifically embodied herein and agrees that this Guarantee is in addition to and not in substitution for any other guarantees now or subsequently held by the Bank.

THE UNDERSIGNED represents and warrants that (i) it fully understands the provisions of this Guarantee and its obligations hereunder; (ii) it has been afforded the opportunity to engage independent legal counsel, at its own expense, to explain the provisions of this Guarantee and its obligations hereunder; and (iii) it has either engaged legal counsel in connection with its execution of this Guarantee or has decided, at its sole discretion, not to do so.

THE UNDERSIGNED agrees, without limitation of the rights of the Bank under applicable law, that the Bank may apply any amounts owing to, or sum standing to the credit of, the undersigned with any office, branch, subsidiary or affiliate of the Bank to the payment when due of any amount owing by the undersigned hereunder. For this purpose, the Bank may convert any such amount or sum into the currency of the amount owing hereunder at a rate of exchange at which the Bank could purchase the relevant currency on the relevant date acting in good faith.

THIS GUARANTEE shall remain in effect notwithstanding any change in the circumstances having led the undersigned to execute this Guarantee and notwithstanding the termination of or a change in the office or duties of such undersigned or in any relationship between such undersigned and the Customer.

THE UNDERSIGNED acknowledges and agrees that the Bank may make a claim or demand payment hereunder notwithstanding any limitation period regarding such claim or demand set forth in the *Limitations Act, 2002* (Ontario) or under any other applicable law with similar effect and, to the maximum extent permitted by applicable law, any limitations periods set forth in such act or applicable law are hereby explicitly excluded or, if excluding such limitations periods is not permitted by such act or applicable law, are hereby extended to the maximum limitation period permitted by such act or applicable law. For greater certainty, the undersigned acknowledges and agrees that this Guarantee is a "business agreement" as defined under Section 22 of the *Limitations Act, 2002* (Ontario).

IN THIS GUARANTEE, unless the context otherwise requires, references to the undersigned shall be interpreted as referring to each of the undersigned if there is more than one undersigned.

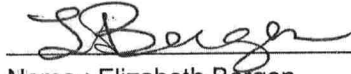
It is the express wish of the parties hereto that this agreement and any related documents be drawn up and executed in English. Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

This clause  
applies to  
the Province  
of Québec  
only

Dated this 13 day of January, 2020.



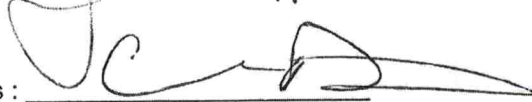
Name : Peter Bergen



Name : Elizabeth Bergen

Witness: 

Name : Jaret Paul Hoepfner

Witness: 

Name : \_\_\_\_\_

**Christopher G. Doell**

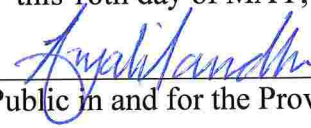
**Box 1150, 564 Mountain Avenue**

**Winkler, MB R6W 4B2**

**Notary Public in and for the Province of Manitoba**

® Registered trade-marks of Bank of Montreal

This is Exhibit "22" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023

  
A Notary Public in and for the Province of Manitoba

**THIS FORBEARANCE AGREEMENT** made effective [●], 2022 (the "**Effective Date**")

**AMONG:**

**3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT**

(the "**Borrower**")

-and-

**PETER BERGEN**

("Peter")

-and-

**ELIZABETH BERGEN**

("Elizabeth" and together with Peter, the "**Guarantors**" and together with the Borrower, the "**Debtors**")

-and-

**BANK OF MONTREAL**

("BMO" or the "**Lender**")

**WHEREAS:**

A. In this forbearance agreement and any schedules thereto (the "**Agreement**"), unless the context otherwise requires, all capitalized terms used, but not otherwise defined shall have the meaning ascribed thereto in the applicable Loan Documents (as hereinafter defined).

**Credit Facilities**

B. The Lender has made available loans and credit facilities (the "**Credit Facilities**" and each is a "**Credit Facility**") to the Borrower, in its capacity as borrower, pursuant to the terms, conditions, obligations, representations and warranties (the "**Loan Terms**") of:

- a Letter of Agreement by the Lender dated November 14, 2019 and accepted by the Borrower and Guarantors on December 2, 2019, as amended by an amendment dated December 16, 2019 (collectively, the "**Credit Agreements**"); and
- a Commercial Card Agreement (Canadian Currency) dated January 28, 2020 executed by the Lender and Peter, in his capacity as President of the Borrower (the "**CAD Card Agreement**"); and

- a Commercial Card Agreement (US Currency) dated January 28, 2020 executed by the Lender and Peter, in his capacity as President of the Borrower (the "**USD Card Agreement**" and together with the CAD Card Agreement, the "**MC Credit Agreement**"); and
- a Mortgage in favour of the Lender in the amount of \$1,600,000.00 together with the Lender's Standard Charge Mortgage Terms 4697386/1 (together, the "**Mortgage**"); and

C. The Credit Facilities include *inter alia*:

- **a Real Estate Financing Loan** (the "**Real Estate Loan**"), Account No. 0003-6989-797, in the amount of One Million Two Hundred and Eighty Thousand Dollars (\$1,280,000.00) CAD related to the equity takeout of 1-550 George Avenue, Winkler, MB (the "**Winkler Property**"). The Real Estate Loan is a closed term loan with an annual interest rate of 3.8100% per annum. The Real Estate Loan is payable on demand; provided that, until a demand for repayment is made by the Lender, it may be repaid by Borrower in either blended monthly payments of principal and interest or equal monthly payments of principal plus interest. The maximum amortization of the Real Estate Loan is 300 months beginning February 7, 2020; and
- **a Non-Revolving Demand Loan** (the "**Demand Loan**"), Account No. 0003-1949-789, with a credit limit of up to and One Hundred and Eighty Thousand Dollars (\$180,000.00) CAD to allow the Borrower to payout BDC and provide a capital injection to the Borrower. The Demand Loan is a closed term loan with an annual interest rate of the Lender's Prime Rate plus 1.7500% per annum, which has increased to the Prime Rate plus 3.000% as it was not repaid by the Maturity Date. The Demand Loan is repayable on demand; provided that, until a demand for repayment is made by the Lender, it may be repaid by Borrower in either blended monthly payments of principal and interest or equal monthly payments of principal plus interest; and
- **an Operating Demand Loan** (the "**Operating Loan**"), Account No. 0003-1949-040, presently having a limit of Eight Hundred Thousand Dollars (\$800,000.00) CAD. The Operating Loan is operating financing that has an annual interest rate of the Lender's Prime Rate plus 1.7500% per annum, which was increased to the Prime Rate plus 5.000% as a result of a default under the terms of the Operating Loan (advances exceed the facility authorization and NSF activity). The Operating Loan is payable on demand by the Lender;
- **a CAD Mastercard Facility** (the "**CAD MC Operating Credit**"), Account No. 5264 5500 0020 9837, an operating credit presently having a limit of Fifty Thousand Dollars (\$50,000) CAD and bearing interest at 18.4000% per annum. The CAD MC Operating Credit is payable on demand by Lender; and

- **a USD Mastercard Facility** (the "**USD MC Operating Credit**" and together with the CAD MC Operating Credit, the "**MC Operating Credit**"), Account No. 0003-4998-293, an operating credit presently having a limit of Fifty Thousand Dollars (\$50,000) USD and bearing interest at 18.4000% per annum. The USD MC Operating Credit is payable on demand by Lender; and
- The foregoing, the documents described in **Schedule "A"** hereto and all other documents now or hereafter held by the Lender in connection with or to secure the Credit Facilities, are collectively hereinafter referred to as the "**Loan Documents**".

D. Borrower is indebted to the Lender in respect of the Credit Facilities as of October 21, 2022 without set-off, defence, counterclaim, reduction or other claim against the Lender or in respect of the Credit Facilities, as follows, inclusive of principal, interest and other obligations for which payment is due:

<b>Real Estate Financing Loan</b> Account No. 0003-6989-797 Interest at 3.8100% per annum	\$1,203,911.24 CAD
<b>Demand Loan</b> Account No. 0003-1949-789 Interest at Lender's Prime Rate plus 3.0000% per annum	\$ 65,504.84 CAD
<b>Operating Loan</b> Account No. 0003-1949-040 Interest at Lender's Prime Rate plus 5.0000% per annum	\$ 775,702.60 CAD
<b>CAD MC Operating Credit</b> Account No. 0003-6989-797 Interest at 18.4000% per annum	\$ 49,998.05 CAD
<b>USD MC Operating Credit</b> Account No. 0003-4998-293 Interest at 18.4000% per annum	\$ 71,737.25 USD
<b>Canada Emergency Business Account Loan No.</b> 5112420000722763	\$ 60,000.00 CAD
<b>Legal Fees, Costs and Other Expenses</b>	\$ [●] CAD

E. The indebtedness of Borrower to the Lender in respect of the Credit Facilities changes from time to time, including, without limitation, in accordance with the

revolving nature of the Operating Loan and MC Operating Credit, payments made by Borrower, changes in interest rates, the obligations thereunder and the operation otherwise of the Credit Facilities. The indebtedness of Borrower to the Lender from time to time in respect of Credit Facilities is hereinafter referred to as the "**Loan Debt**".

- F. Payment of the Loan Debt and performance of the obligations of Borrower, as borrower, and the Peter and Elizabeth, as Guarantors, to the Lender in relation to the Loan Documents and Credit Facilities are secured by the security and additional documents, as more particularly described and listed in **Schedule "A"** hereto (the "**Security**"), which includes, without limitation, the GSA, GAD, Insurance Assignment, BA Application, BA Agreement, BA Security Agreement, (together the "**Personal Property Security**") the Guarantee and the Mortgage. Certain of the Personal Property Security is registered in the Manitoba Personal Property Registry and the Bank Act Registry as further described in **Schedule "B"**, and the GSA and Mortgage against Winkler Property as further described in **Schedule "C"** (collectively, the "**Registrations**").
- G. The Borrower is in default of its obligations under the Credit Facilities due to, among other things: (i) its failure to pay all Loan Debt due to Lender in connection with the Loan Documents; (ii) its failure to pay the outstanding balance under the USD MC Operating Credit by the due date; (iii) its failure to pay the outstanding balance under the CAD MC Operating Credit by the due date; (iv) its failure to comply with reporting requirements under the Loan Documents (including, but not limited to providing T1 personal tax returns with a notice of notice of assessment to be provided by the Guarantors within 120 days of the Borrower's fiscal year end and a minimum notice to reader accountant prepared financial statements, corporate notice of assessment and a T-2 for the Borrower within 120 days of the Borrower's year-end); and (v) it permitting the aggregate outstanding advances under the Operating Loan to exceed the Facility Authorization for that Credit Facility (together the "**Borrower Existing Defaults**").
- H. The Lender terminated the Borrower's access to the USD MC Operating Credit on September 29, 2022 and the CAD MC Operating Credit on October 21, 2022 in accordance with the terms of such agreements.
- I. Each of the Guarantors have defaulted under the Guarantee, to which they are a party, by failing to make payments when due under the Credit Facilities and Guarantee as evidenced by the Loan Debt ("**Guarantor Existing Defaults**" and together with the Borrower Existing Defaults, the "**Existing Defaults**").
- J. The Lender has issued and served formal demands for payment and a Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") on the Debtors by letters dated September 29, 2022. The demands and notices described in this Recital paragraph are hereinafter collectively referred to as the "**Demands**".
- K. The periods of notice prescribed by Sections 243(1.1) and 244(2) of the BIA have expired and the Debtors acknowledge that the Lender is entitled to enforce all Security held by the Lender in relation to the Debtors, and to seek an Order by the



Court of King's Bench (Manitoba) (the "**Court**") appointing a receiver (as defined by Section 243(2) of the BIA) in relation to the Debtors.

- L. The Debtors have requested that nevertheless the Lender to forbear from immediate enforcement of its rights in respect of the Loan Debt and from the enforcement of remedies (the "**Remedies**", and each is a "**Remedy**") lawfully available to it under the Security and at law, and to provide certain other accommodations, in order to provide the Debtors with additional time within which to reorganize and sell all or part of the Borrower's business (the "**Sale Process**"), and reorganize its financial affairs, and to comply with the Loan Terms (as same may be amended by this Agreement).
- M. The Lender has not waived the Existing Defaults (or any other defaults of the Debtors), but will agree to forbear from enforcing the Remedies upon the terms and conditions set out in this Agreement.
- N. In order to induce the Lender to forbear from immediate enforcement of the Security, the Debtors have voluntarily executed and delivered to and in favour of the Lender a Consent Order in the form attached as **Schedule "D"** hereto pursuant to Section 243 of the BIA, whereby the Debtors voluntarily consent to an Order of the Court appointing a receiver of all assets, properties, and undertakings of the Debtors (the "**Consent Receivership Order**") with the Consent Receivership Order to be held in trust by the Lender in accordance with the terms of this Agreement.
- O. The parties consider it to be in their mutual interest to enter into this Agreement in order to confirm the terms and conditions upon which the Lender will so forbear.
- P. This paragraph and the preceding recital paragraphs are hereinafter collectively referred to as the "**Preamble**".

**NOW THEREFORE** in consideration of the mutual covenants and agreements herein contained, including, without limitation, the agreement of the Lender to forbear on the terms and conditions hereof from exercising its lawful Remedies on the terms set out herein, and the payment of Ten (\$10.00) Dollars by each to the other, and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

#### **Confirmation and Acknowledgements**

- 1. The Debtors each confirm, acknowledge, affirm, agree with and represent to the Lender that:
  - (a) the facts set out in the Preamble are true and correct, and are incorporated into and form an integral part of this Agreement as if recited herein;
  - (b) the Schedules attached hereto form part of this Agreement and are integral hereto;
  - (c) each of the Loan Documents to which they are a party (i) is binding on whichever of the Debtors is a party thereto, (ii) is legal, valid, effective and

enforceable in accordance with its terms as of the date of execution thereof, (iii) is undiminished and in full force and effect, and (iv) except as may be expressly amended or restated by this Agreement, does and shall continue to apply in respect of all obligations of the Debtors to the Lender, including without limitation the obligations of the Debtors under this Agreement;

- (d) the Lender served the Demands upon each of the Debtors, was entitled to serve the Demands, has validly demanded the Loan Debt less the amount of the CEBA Loan, and the Demands remain in full force and effect;
- (e) in addition to the Existing Defaults, the Debtors are each presently in default of their respective obligations to the Lender in regard to the payment of the Loan Debt pursuant to the Loan Terms;
- (f) the Lender was entitled to terminate the Borrower's access to the MC Operating Credit in accordance with the terms thereof; provided that the Debtors remain liable to repay the outstanding Loan Debt incurred thereunder;
- (g) the Registrations have been duly registered in the requisite registry offices, are in full force and effect and are sufficient to perfect, otherwise give effect to and give notice of the security interests, and charges to which they relate in accordance with applicable law;
- (h) none of the Debtors have any defence, counterclaim or rights of set-off or reduction to any claims that may be brought by the Lender under the Security to which they are a party or any other Loan Document, and has no other claim of any kind whatsoever against the Lender;
- (i) except as expressly set out in this Agreement (i) the Lender has not made or held out any promises (expressly or by conduct or omission) or condoned or consented to or taken or omitted to take any action that would constitute a waiver or estoppel of any rights in respect of any or all of the Credit Facilities, the Loan Terms or the Loan Documents including, without limitation, rights to take lawful steps to recover the Loan Debt and/or enforce the Security, and (ii) the Lender is not committed to and has not agreed to forbear from exercising any of the Remedies or the Lender's other powers, rights, privileges and authorities, nor have the parties hereto established any course of conduct to the contrary by past action or inaction or by the execution of this Agreement or otherwise;
- (j) subject to the terms of this Agreement, the Loan Documents and all applicable laws (including laws which may require demand for payment and the giving of prior notice), the Lender shall be entitled in its sole discretion to exercise its rights, powers, privileges and authorities and enforce and realize upon the Remedies and Security as it sees fit;
- (k) the Debtors each hereby acknowledge that they have requested of the Lender, and the Lender has agreed (upon the terms and conditions more particularly described in this Agreement), to forbear from the immediate enforcement of the rights of the Lender pursuant to the Credit Agreements;

- (l) the Lender's Prime Rate as of the Effective Date is 5.95 %;
  - (m) the Lender's Professional Fees (as hereinafter defined) added to the Loan Debt to date are fair and reasonable; and
  - (n) the Debtors shall pay all of the reasonable legal costs of the Lender (on a solicitor and own client basis) that accrue from time to time relating to the preparation and oversight of this Agreement and all other matters relating to the Loan Terms and Credit Facilities, and shall pay all costs, expenses, disbursements and fees (including without limitation, professional fees of financial and real estate advisors to the Lender, legal fees on a solicitor and own client basis) reasonably incurred at any time in the collection of the Loan Debt, the taking of Remedies and the enforcement of the Security. The amounts of all such costs, expenses, disbursements and fees shall be added to the Loan Debt and the Lender shall be entitled, but not required, to debit such amounts from the Revised Operating Loan (as hereinafter defined) of the Borrower from time to time (together, the "**Lender's Professional Fees**").
2. The parties hereto hereby agree to toll and suspend the running of applicable statutes of limitations, laches or other doctrines related to the passage of time in relation to the Loan Debt and the Loan Documents and any entitlements arising therefrom or in relation thereto, and each of the parties agree that this Agreement is intended to be an agreement to, without limitation, extend or suspend all applicable limitation periods provided by legislation or otherwise at law forming a part of the governing law of this Agreement, and any contractual limitations on the commencement of proceedings, any claims or defences based on the application of any statute of limitation, contractual limitation or any time-related doctrine including waiver, estoppel and laches are hereby suspended. These tolling provisions will terminate upon the Termination of the Forbearance Period (as defined herein), at which time any time period tolled thereunder shall recommence running.
3. Each of the Guarantors, in their capacity as guarantors, consent to this Agreement, the terms of the Lender's forbearance and other accommodations set out herein, and to such modification of the Loan Terms as may result from the terms of this Agreement.

#### **Reservation of Rights**

4. Except to the extent expressly provided in this Agreement and in any documents delivered by the Lender pursuant to this Agreement:
- (a) nothing contained in this Agreement shall operate or be deemed or interpreted to operate, as a consent to or a waiver, condonation, diminution or amendment in respect of any Loan Term, right, power, authority, Remedy or privilege pursuant to any of the Loan Documents;
  - (b) nothing herein shall or shall be deemed or interpreted to vary, alter, release, waive, amend or discharge any Loan Terms, covenants,

obligations, representations or warranties contained in any of the Loan Documents, all of which remain in full force and effect, unamended;

- (c) no delay on the part of the Lender in the exercise of any Remedy, power, right, authority or privilege under any of the Loan Documents shall impair such remedy, power, right, authority or privilege or be construed to be a waiver of or to condone, in whole or in part, any default;
- (d) the execution of this Agreement shall not be construed to be a waiver of or to condone, in whole or in part, any default; and
- (e) the Lender expressly reserves all of its Remedies, powers, rights, authorities and privileges under each of the Loan Documents and under any document delivered pursuant to this Agreement, or in relation to the Credit Facilities and Loan Debt at law, in equity or otherwise, and all such Remedies are cumulative and are in addition to, without prejudice to and shall not be deemed to exclude, any other Remedy, power, right, authority and privilege allowed to the Lender hereunder or under any agreement delivered pursuant hereto or under the Loan Documents, and all Remedies and powers, rights, authorities and privileges of the Lender may be exercised concurrently as the Lender sees fit.

#### **Forbearance Period**

- 5. The obligation of the Lender to forbear pursuant to this Agreement shall be effective and continue for the period (the "**Forbearance Period**") commencing on the date hereof and continuing until the earlier of: (i) 12:01 PM (CST) on February 28, 2023; (ii) the date of full payment of the Loan Debt; and (iii) the date of an occurrence of a Forbearance Terminating Event (as hereinafter defined). The date upon which the Forbearance Period ends shall be referred to as the "**Termination of the Forbearance Period**".

#### **Further Forbearance Period**

- 6. The Lender shall not be obligated, required or expected to grant any extensions to the Forbearance Period under any circumstances, and nothing in this Agreement shall constitute any representation, warranty or acknowledgment by the Lender that it intends to, or will, grant any such extension.

#### **Forbearance and Other Agreements by the Lender**

- 7. Subject to the terms and conditions of this Agreement and any document(s) executed in connection herewith, the Lender agrees that during the Forbearance Period the Lender agrees that it shall:
  - (a) continue to provide the Credit Facilities in accordance with the Loan Terms and the terms and conditions of the Loan Documents as may be amended by this Agreement and those documents provided pursuant to or in connection with this Agreement; and
  - (b) forbear from exercising the Remedies.

### **Loan Document Amendments**

8. The terms and conditions of the Borrower's Credit Agreement are hereby amended effective [●] as follows:

#### *Demand Loan*

- (a) the interest rate applied to the Demand Loan shall be permanently increased from the Lender's Prime Rate plus 3.0000% per annum to the Lender's Prime Rate plus 5.0000% per annum.

#### *Operating Loan*

- (b) \$600,000.00 CAD of Loan Debt incurred under the Operating Loan will be converted to a new closed term loan (the "**New Term Loan**") and the Operating Loan maximum shall be permanently reduced from \$800,000.00 CAD to \$200,000.00 CAD (the "**Revised Operating Loan**").
- (c) The Revised Operating Loan shall continue to have an annual interest rate of the Lender's Prime Rate plus 5.000%
- (d) The New Term Loan, Account No. [●], shall:
- (i) have a maximum limit of \$600,000.00 CAD;
  - (ii) have an annual interest rate of the Lender's Prime Rate plus 5.000%; and
  - (iii) be due and owing in full at the expiry of the Termination of the Forbearance Period, provided that, until the earlier of the expiry of the Termination of the Forbearance Period, the Borrower shall be permitted to make interest only payments on the New Term Loan.

#### *Additional Reporting Requirements*

The following additional reporting requirements shall be imposed on the Debtors:

- (d) Borrower shall provide its **Minimum Notice to Reader** Accountant Prepared Financial Statements, Corporate Notice of Assessment, and T-2 to the Lender no later than ten (10) business days from the Effective Date;
- (e) Each of the Guarantors shall provide copies of their T1 personal tax returns and notices of assessments to the Lender no later than five (5) business days from the Effective Date; and
- (f) On a quarterly basis (Nov. 30, Feb. 28, August 30, May 31), the Borrower shall provide updated copies of the Equipment List, Inventory List, AP List and AR List (as each is hereinafter defined) to the Lender.

9. Except as specifically amended herein, all terms and conditions of the Loan Documents shall remain in full force and effect, unamended.

**Conditions to Forbearance and Other Agreements**

10. The agreements and obligations of the Lender under this Agreement are conditional upon and subject to full and timely compliance by the Debtors with all of the following conditions on or before December 15, 2022 (the "**Forbearance Conditions**"):

- (a) the Borrower shall provide satisfactory evidence to the Lender, as determined by the Lender in its sole discretion, that all property taxes in respect of the Winkler Property are current;
- (b) the Borrower shall provide certificates of insurance for all policies (the "**Insurance Policies**") held by the Borrower (as required by the Loan Documents) and shall have the Lender listed as first loss payee on each of such policies;
- (c) each Debtor shall provide an updated personal financial statement ("**PFS**") as of such date, in a form acceptable to Lender;
- (d) the Borrower shall provide a complete list of the Borrower's equipment (the "**Equipment List**") as of such date (including all locations of such equipment and where available serial numbers), in form and substance acceptable to Lender; and
- (e) the Borrower shall provide a complete list of the Borrower's inventory (the "**Inventory List**") as of such date (including all finished trailers and their respective locations), in form and substance acceptable to Lender;
- (f) the Borrower shall provide a complete list of the Borrower's aged accounts payable (the "**AP List**") as of such date, in form and substance acceptable to Lender; and
- (g) the Borrower shall provide a complete of the Borrower's aged accounts receivable list (the "**AR List**") as of such date, in form and substance acceptable to Lender.

11. During the Forbearance Period the Debtors shall do all of the following:

- (a) maintain the Insurance Policies in good standing and not modify or remove the policies without the prior written consent of the Lender;
- (b) on or before the first of each month during the Forbearance Period (and upon the expiry or Termination of the Forbearance Period), provide updated copies of the PFS, Equipment List, Inventory List, AP List and AR List;
- (c) provide prompt notice of any material occurrences in respect of the Sale Process;

- (d) cooperate and comply with the Lender's requests for information, which requests may be made directly by the Lender, or the Lender's legal or financial advisors, as may reasonably be requested from time to time;
- (e) the Borrower shall operate its Credit Facilities in the ordinary course and will not incur liabilities outside the day-to-day operations;
- (f) the Debtors shall not sell, dispose or otherwise transfer, directly or indirectly, any equipment, inventory or other collateral subject to the Security outside of the ordinary course of business, including as a result of the Sale Process;
- (g) the Debtors shall pay a forbearance fee of \$5,000.00 CAD to the Lender, which shall be paid by the Borrower to the Lender on the Effective Date, or be deducted by the Lender from the Revised Operating Loan upon the execution by the parties of this Agreement;
- (h) the Debtors shall pay all of the Lender's Professional Fees that accrue from time to time relating to the preparation and oversight of this Agreement and all other matters relating to the Loan Terms and Credit Facilities, and shall pay all costs, expenses, disbursements and fees (including without limitation, professional fees of financial and real estate advisors to the Lender, legal fees on a solicitor and own client basis) reasonably incurred at any time in the collection of the Loan Debt, the taking of Remedies and the enforcement of the Security. The amounts of all such costs, expenses, disbursements and fees shall be added to the Loan Debt and the Lender shall be entitled, but not required, to debit such amounts from the Revised Operating Loan from time to time;
- (i) the Debtors shall give the Lender prompt written notice of the happening of any event which could adversely affect or impair the ability of (i) the Debtors to comply with the terms and conditions of this Agreement and the Loan Terms, or (ii) the Debtors to pay the Loan Debt, or (iii) the Lender to collect the Loan Debt, or (iv) the Lender to enforce the Remedies and realize on the Security (and the documents provided pursuant to or in connection with this Agreement), or which may result in a material adverse change to the Debtors' operations or financial position; and
- (j) except as expressly provided in this Agreement, the Debtors shall pay when due all claims ("**Prior Claims**") which rank prior to the Loan Debt and the Security which shall include, without limitation, all amounts owing or required to be paid, where failure to pay any such amount could give rise to a claim pursuant to any law, statute, regulation or otherwise, which ranks or is capable of ranking in priority to the Security or otherwise in priority to any claim by the Lender for the repayment of any amounts owing to it. On or before the first of each month during the Forbearance Period and on the date of expiry or Termination of the Forbearance Period, each of the Debtors shall provide a statutory declaration, in a form acceptable to the Lender, that all such Prior Claims have been paid for the entire preceding period.

### **Representations and Warranties of the Debtors**

11. Each of the Debtors jointly and severally represent and warrant to the Lender that:
- (a) there exists no default or event of default under any of the Loan Documents or otherwise, or any other condition or occurrence of events that now constitute or would with the passage of time or giving of notice or both, constitute a default or event of default under any of the Loan Documents, other than the Existing Defaults;
  - (b) each of the Debtors have full capacity to enter into and perform their obligations hereunder; and
  - (c) the execution and delivery of this Agreement by each of the Debtors has been authorized by all necessary corporate action.

### **Covenants of the Debtors**

12. Each of the Debtors jointly and severally covenant and agree with the Lender that it shall comply fully with all of the terms and conditions of this Agreement, the Loan Documents and those documents provided pursuant to or in connection with this Agreement, including, but not limited to complying with all reporting requirements as set out in the Credit Agreements.

### **Forbearance Terminating Events**

13. The occurrence of any one or more of the following events (each a "**Forbearance Terminating Event**") shall entitle the Lender, in its sole discretion, to terminate the Forbearance Period (in which case the Lender shall give written notice to the Debtors in accordance with Section 22), namely:
- (a) any default or breach by the Debtors occurs under this Agreement, including, but not limited to the Forbearance Conditions, or under any document provided pursuant to or in connection with this Agreement, or any default or breach by the Debtors of any term, condition, obligation or covenant occurs under any of the Loan Documents;
  - (b) if the Debtors fail to make any payment when due to the Lender;
  - (c) any other creditor of any of the Debtors lawfully exercises or purports to exercise any rights against any of the property, assets or undertaking of any of the Debtors or if any of the Debtors, or any creditor thereof, brings any proceeding or lawfully takes any other action under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), *The Corporations Act* (Manitoba), the *Business Corporations Act* (Canada), the *Winding-Up Act* (Canada) or any similar legislation in Canada or the United States of America;
  - (d) if any steps are taken by any of the Debtors or a third party to wind up or dissolve any of the Debtors without the prior written consent of the Lender;



- (e) if any representation or warranty of any of the Debtors in this Agreement shall be false, misleading or incorrect in any material respect;
- (f) any default or failure by the Debtors to pay any of the Prior Claims when due;
- (g) if any financial reporting information or other reporting information provided to the Lender by any of the Debtors proves to be false, misleading, inaccurate or incorrect in any material respect;
- (h) the sale, lease, transfer, relocation, abandonment or any other disposition of assets of any of the Debtors out of the ordinary course of business which are subject to the Security, without the express prior written consent of the Lender;
- (i) upon request by the Lender the Debtors (or any of them) fail to acknowledge, in writing, the Loan Debt;
- (j) the payment of dividends or the return of capital by the Debtors; or
- (k) if the Lender, acting reasonably and in good faith, considers that a material adverse change has occurred or is reasonably anticipated to occur in (i) the business, affairs, or condition of any of the Debtors, financial or otherwise, including but not limited to a material change to the board of directors, senior management or its current legal and financial advisors of any of the Debtors or in the Optimization Plan, or (ii) in the security position of the Lender, after the date hereof for any reason whatsoever other than the Existing Defaults.

#### **Cross Default**

14. The Termination of the Forbearance Period shall, in the absence of full payment of the Loan Debt, constitute the occurrence of a default under each of the Loan Documents.

#### **Upon Termination of Forbearance**

15. Upon the Termination of the Forbearance Period, in the absence of full payment of the Loan Debt:
- (a) the Lender may immediately terminate the Credit Facilities without further notice or delay;
  - (b) the full amount of the Loan Debt shall be immediately due and payable; and
  - (c) the obligation of the Lender to forbear pursuant to this Agreement shall terminate and the Lender may, subject to applicable laws, take such actions in relation to the Debtors to exercise Remedies as it sees fit to protect and preserve its interests and to recover payment of the Loan Debt

and enforce obligations of the Debtors under this Agreement, those documents provided pursuant to or in connection with this Agreement and the Loan Documents, including, without limitation the issuance of the Consent Receivership Order in favour of the Lender against the Debtors, which Consent Receivership Order may be used by the Lender in order to recover the full amount of all outstanding Loan Debt owed by the Debtors at the time of the issuance of such Consent Receivership Order all without further notice, demand or request for payment being made upon the Debtors; and

- (d) In furtherance of the foregoing, the Debtors acknowledge and agree to the execution and delivery to the Lender, at the time of the execution of this Agreement, of the Consent Receivership Order substantially in the form attached hereto as **Schedule "D"**.

- 16. For greater certainty, the Lender's forbearance and the Lender's other accommodations described herein, shall terminate on the Termination of the Forbearance Period without requiring any further forbearance or delay on the part of the Lender.

#### **Release**

- 17. Each of the Debtors hereby:

- (a) remises, releases, acquits and forever discharges the Lender and its directors, officers, employees, agents, servants, attorneys, affiliates and representatives (and the respective executors, administrators, successors and assigns of each of the preceding) (collectively the "**Releasees**") from and against all claims, actions, causes of action, rights, costs, demands, expenses, suits, debts, duties, accounts and compensation whatsoever, heretofore and hereafter arising from events or occurrences of any kind whatsoever to and including the date of this Agreement, which do or may exist, whether known or unknown, suspected or unsuspected, foreseen or unforeseen (collectively, the "**Released Matters**"), including, without limitation, any of the same arising from or related in any manner whatsoever to anything done, omitted to be done or allowed to be done by any of the Releasees and in any way whatsoever connected to the Credit Facilities, the Security and the Loan Documents;
- (b) acknowledges, understands and agrees that:
  - (iv) the administration by the Lender of the Loan Debt, and the actions of the Lender in entering into this Agreement, respectively, has been fair and reasonable;
  - (v) this release is an essential and material term of this Agreement;
  - (vi) the agreements in this release are intended to be in full answer to and satisfaction of any injuries or damages of the Debtors, or any of them, in connection with the Released Matters;

- (vii) this release shall apply to all unknown or unanticipated results of the Released Matters, as well as those known and anticipated and every right, exemption from liability, defense and immunity of whatever nature and kind which may be applicable to any or all of the Releasees, or to which they or any of them shall be entitled to hereunder, shall also be available to and shall extend to protect every such Releasee;
- (c) represents and warrants that it has not transferred, conveyed or assigned, and has not purported to transfer, convey or assign, any right, title or interest in any Released Matter to any other person or entity and that the foregoing constitutes a full, effective and complete release of the Released Matters; and
- (d) acknowledges and confirms that it has reviewed and understood all of the provisions of this section and of this Agreement, and has received or was advised by the Lender to receive and had the full opportunity to receive independent legal advice with respect to same and willingly and voluntarily enters into this Agreement without any compulsion by or on behalf of any Releasee.

**General Matters**

- 18. Time of the Essence. Time is of the essence of this Agreement.
- 19. Further Assurances. The parties hereto shall promptly do all such further things as may be reasonably necessary to give effect to the intention of this Agreement.
- 20. Severability. If any provision of this Agreement shall be deemed or determined by any court of competent jurisdiction to be invalid or void, the remaining provisions shall remain in full force and effect.
- 21. Enurement. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.
- 22. Notices. Any notice required to be given to any party hereunder or under the Loan Documents may be given to that party at the addresses or email addresses set out below:

**To the Lender:**  
BMO Financial Group  
S.A.M.U., Western Canada,  
Winnipeg Main Branch,  
201 Portage Ave 16th Floor  
Winnipeg, MB  
Attention: Mathan Kumar  
Email: mathan.kumar@bmo.com

**To Debtors:**  
3816410 Manitoba Ltd. o/a  
Berg's Trailers & Prep and Paint  
1 880J 15th Street, Box 99  
Winkler, Manitoba R6W 4A4  
Attn: Peter Bergen

**With a copy to:**

MLT Aikins LLP

**With a copy to:**

3000-360 Main Street  
Winnipeg, MB  
Attention: J.J. Burnell  
Email: jburnell@mltaikins.com

Thompson Dorfman Sweatman  
LLP  
1700 – 242 Hargrave Street  
Winnipeg, MB  
Attention: Art Stacey  
Email: ajs@tdslaw.com

23. Entire Agreement. This Agreement constitutes the entire agreement of the parties relating to the subject matter hereof and may not be amended or modified except with the written consent of all parties. No provision in this Agreement shall be or be deemed or determined to be waived unless such waiver is express and in writing.
24. Terms to Apply. In the event of a contradiction between the terms of this Agreement and the Loan Documents, then the terms of this Agreement shall apply.
25. Governing Law. This Agreement shall be governed by the laws of the Province of Manitoba.
26. Records. The records of the Lender shall be *prima facie* proof of the outstanding amount of the Loan Debt owed by the Borrower to the Lender, the amount of any payment made, the amount of any part of the Loan Debt which is in default, and any notice or demand being made.
27. Exercise of Rights. Except as expressly set out in this Agreement (i) nothing herein shall or shall be deemed or interpreted to vary, alter, release, waive, amend or discharge any terms, covenants, obligations, representations or warranties contained in any of the Loan Documents, all of which remain in full force and effect, unamended (ii) all Remedies and powers, rights, authorities and privileges of the Lender hereunder and under any agreement delivered pursuant hereto are cumulative and are in addition to, without prejudice to and shall not be deemed to exclude, any other Remedy, power, right, authority and privilege allowed to the Lender hereunder or under any agreement delivered pursuant hereto or under the Loan Documents, and (iii) all Remedies and powers, rights, authorities and privileges of the Lender may be exercised concurrently as the Lender sees fit.
28. No Contra Proferentem. This Agreement has been negotiated and approved by the parties and, despite any rule or maxim of law or construction to the contrary, any ambiguity or uncertainty will not be construed against either of the parties by reason of authorship of any of the provisions of this Agreement.
29. Counterparts. This Agreement may be executed in paper form, by facsimile signature or by electronic signature and in any number of counterparts, each of which shall be deemed to be an original and all of which, taken together, shall be deemed to constitute one and the same instrument and notwithstanding the date of execution shall be deemed to bear the date as of the date of this Agreement. As such executed counterpart may be delivered by facsimile transmission or by e-mail in PDF format and will be deemed to be an original document, provided that any party executing this Agreement by facsimile copy or PDF format shall deliver an

originally executed copy of this Agreement immediately thereafter to each of the other parties hereto.

***~ Execution Page Follows ~***

**IN WITNESS WHEREOF** the parties have executed this Forbearance Agreement on the Effective Date:

**3816410 MANITOBA LTD. O/A  
BERG'S TRAILERS & PREP AND  
PAINT**

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

Name: Peter Bergen

Title: President

*I have authority to bind the  
Corporation.*

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**PETER BERGEN**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**ELIZABETH BERGEN**

**BANK OF MONTREAL (as Lender)**

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

Name: Mathan Kumar

Title: Account Manager

*I have authority to bind the bank.*

**SCHEDULE "A"**  
**LOAN DOCUMENTS**

**Part One - Credit Documents**

1. Letter of Agreement by the Lender dated November 14, 2019 and accepted by the Borrower and Guarantors on December 2, 2019
2. Letter of Agreement – Amendment by the Lender dated December 16, 2019 amending the Loan Agreement and accepted by the Borrower and Guarantors
3. Commercial Card Agreement (Canadian Currency) dated January 28, 2020 executed by the Lender and Peter, in his capacity as President of the Borrower
4. Commercial Card Agreement (US Currency) dated January 28, 2020 executed by the Lender and Peter, in his capacity as President of the Borrower
5. Mortgage No. 1249795/4 in favour of the Lender in the amount of \$1,600,000.00 together with the Lender's Standard Charge Mortgage Terms 4697386/1 charging the titles and lands legally described in **Schedule "B"**

**Part Two – Security Documents**

6. Security Agreement executed by Peter, in his capacity as authorized signatory of the Borrower in favour of the Lender on January 10, 2020 ("**GSA**")
7. General Assignment of Debts, etc. executed January 10, 2020 by the Borrower (the "**GAD**");
8. Assignment of Moneys which May Become Payable Under Fire Insurance Policies executed January 10, 2020 by Borrower (the "**Insurance Assignment**")
9. Application for Credit and Promise to Give Bills of Lading, Warehouse Receipts, or Security under Section 427 of the Bank Act dated December 30, 2019 executed by the Borrower in favour of the Lender ("**BA Application**")
10. Agreement as to Loans and Advances and Security therefor executed by the Borrower in favour of the Lender December 30, 2019 ("**BA Agreement**")
11. Security under sec. 427(1) of the Bank Act dated December 30, 2019 executed by the Borrower in favour of the Lender ("**BA Security Agreement**")
12. Guarantee for Indebtedness of an Incorporated Company in the amount of \$2,374,000.00 executed January 13, 2020 by Peter and Elizabeth

### **Part Three – Additional Documents**

13. Postponement Subordination of Preferred Shares Rights Agreement executed by Peter and acknowledged by Peter, in his capacity as authorized signatory of the Borrower on January 10, 2020
14. Assignment, Postponement and Subordination Agreement executed January 15, 2020 by Murry Doerksen, in his capacity as President of Murlin Holdings Ltd. and acknowledged by the Borrower on January 10, 2020



## **SCHEDULE "B"**

### **PERSONAL PROPERTY SECURITY REGISTRATIONS**

#### **GSA**

BMO has a registration registered in the MB PPR against the Borrower on December 18, 2019 under registration number 201921760804.

#### **GAD**

BMO has a registration registered in the MB PPR against the Borrower on December 5, 2019 under registration number 201921094308.

#### ***Bank Act Security***

Lender has a registration registered in the Bank Act Security Registry System against the Borrower dated December 27, 2019 at 10:19 AM PDT under registration number 01325813.

**SCHEDULE "C"**

**WINKLER PROPERTY**

**OWNER (Legal and Beneficial):** 3816410 MANITOBA LTD.

**CIVIC ADDRESS:** 1-550 George Avenue, Winkler, Manitoba

**Legal Description:**

**TITLE NO. 1872413/4:**

LOT 1 BLOCK 2 PLAN 37465 MLTO  
IN S 1/2 3-3-4 WPM  
EXCEPTING - DRAIN PLAN 40578 MLTO

**Encumbrances:**

- (a) Caveat No. 1016911/4 from/by the Town of Winkler re: Easement Agreement for Drainage
- (b) Caveat No. 1027254/4 from/by Manitoba Hydro-Electric Board & Mts Communications Inc.
- (c) Mortgage No. 1249795/4 in favour of BMO in the amount of \$1,600,000.00
- (d) Personal Property Security Notice No. 1249796/4 in favour of BMO re: fixtures

**TITLE NO. 1872413/4:**

LOT 2 BLOCK 2 PLAN 37465  
IN S ½ 3-3-4 WPM  
EXCEPTING – DRAIN PLAN 40578 MLTO

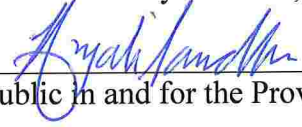
**Encumbrances:**

- (a) Caveat No. 1016911/4 from/by the Town of Winkler re: Easement Agreement for Drainage
- (b) Caveat No. 1027254/4 from/by Manitoba Hydro-Electric Board & Mts Communications Inc.
- (c) Mortgage No. 1249795/4 in favour of BMO in the amount of \$1,600,000.00 (Mortgage)
- (d) Personal Property Security Notice No. 1249796/4 in favour of BMO re: fixtures (GSA)

**SCHEDULE "D"**  
**CONSENT RECEIVERSHIP ORDER**

(see attached)

This is Exhibit "23" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023



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A Notary Public in and for the Province of Manitoba

## Court Registry System

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## File Details

(CI23-01-38976 INNOVATIVE DOORS (2006) LTD. vs 3816410 MANITOBA LTD.)

### Documents Filed (CI23-01-38976)

Doc #	Reg Date	Court Location	Document	Notes
1	04-Jan-2023	Winnipeg-KB	<a href="#">STATEMENT OF CLAIM - RULE 20A</a>	
2	17-Jan-2023	Winnipeg-KB	AFFIDAVIT OF SERVICE	OF ST/CL, ON 3816410 MANITOBA LTD. IN C/O PETER BERGEN, PERSONALLY, 11JAN2023 (20)
3	17-Jan-2023	Winnipeg-KB	AFFIDAVIT OF SERVICE	OF ST/CL, ON PETER BERGEN, PERSONALLY, 11JAN2023 (20)
4	02-Feb-2023	Winnipeg-KB	REQUISITION - DEFAULT NOTED ONLY	AGST 3816410 MANITOBA LTD COB AS BERG'S TRAILERS & PREP PAINT AND PETER BERGEN
5	27-Feb-2023	Winnipeg-KB	<a href="#">DEFAULT JUDGMENT, REQ, AFFT OF SERVICE</a>	AGST BOTH DEFS
6	04-May-2023	Winnipeg-KB	REQUISITION - CERTIFICATE OF JUDGMENT	\$42,316.71
7	08-May-2023	Winnipeg-KB	NOTICE OF GARNISHMENT & AFFT (AFTER JMT)	\$43,279.86, BANK OF MONTREAL, AGST 3816410 MANITOBA LTD. C.O.B AS BERG'S TRAILERS & PREP PAINT

### Parties (CI23-01-38976)

Party Type	Party Name	Lawyer
DEFENDANT 001	3816410 MANITOBA LTD.,	
DEFENDANT 002	BERGEN, PETER	
PLAINTIFF 001	INNOVATIVE DOORS (2006) LTD.,	<a href="#">WARD, Q.C., DOUGLAS G.</a>
PLAINTIFF 002	FEHR, RICHARD	<a href="#">WARD, Q.C., DOUGLAS G.</a>

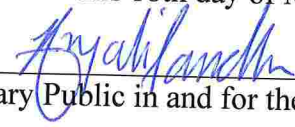
### Court Hearings (CI23-01-38976)

Court Hearings not found

### Related Files (CI23-01-38976)

Related Files not found

This is Exhibit "24" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023



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A Notary Public in and for the Province of Manitoba



This email and its attachments are confidential. Any unauthorized use or disclosure is prohibited. If you receive this email in error, please notify me by reply email and permanently delete the original without making any copies or disclosing its contents

**From:** JJ Burnell <[JBurnell@mltaikins.com](mailto:JBurnell@mltaikins.com)>  
**Sent:** January 23, 2023 2:29 PM  
**To:** Stacey, Art <[ajs@tdslaw.com](mailto:ajs@tdslaw.com)>  
**Cc:** KUMAR, MATHAN <[MATHAN.KUMAR@bmo.com](mailto:MATHAN.KUMAR@bmo.com)>  
**Subject:** URGENT BMO/BERGEN  
**Importance:** High

**External Email:** Use caution with links and attachments. | **Courriel externe :** Faites preuve de prudence en ce qui a trait aux liens et aux pièces jointes.

Art,

By letter dated September 29, 2022 Bank of Montreal (the “**Bank**”) the Bank made demand upon your clients. In good faith it attempted to negotiate a forbearance agreement to allow your client the time it said it needed to deal with its financial issues. The Bank has been more than reasonable and patient. Unfortunately, your client has refused and neglected to provide the requested forbearance. Accordingly, I am instructed to advise that the Bank is not prepared to extend further credit to your client and effective immediately the limit will be capped at \$793,032.08. To be clear, absent additional deposits, all cheques will be returned and all debits declined. Further, to ensure that there are no unauthorized transfers your client’s online banking access will be limited to “view only”. Lastly, if we are not able to reach agreement on the terms of a forbearance agreement in the next ten (10) days, upon the expiry of those ten (10) days the operating account will be converted to a term loan. All enforcement remedies following that date will continue to remain available to the Bank.

While the Bank remains willing to try and work with your client it cannot extend further credit outside of a forbearance agreement on terms only acceptable to your client.

**JJ Burnell\***

**Partner**

**P:** (204) 957-4663 | **E:** [JBurnell@mltaikins.com](mailto:JBurnell@mltaikins.com)

**MLT Aikins LLP**

30th Floor - 360 Main Street

Winnipeg, MB R3C 4G1

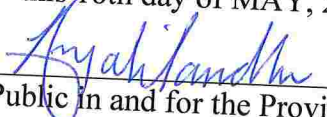
\*Law Corporation

[BIO](#) | [VCARD](#)



*Our offices are located on the territories of Indigenous peoples, including the First Nations of Treaties 1, 4, 6 and 7, the Coast Salish peoples, as well as other non-Treaty First Nations and Métis. [We are committed to reconciliation.](#)*

This is Exhibit "25" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023

  
A Notary Public in and for the Province of Manitoba



**THIS FORBEARANCE AGREEMENT** made effective **January 24, 2023** (the "**Effective Date**")

**AMONG:**

**3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT**

(the "**Borrower**")

-and-

**PETER BERGEN**

("Peter")

-and-

**ELIZABETH BERGEN**

("Elizabeth" and together with Peter, the "**Guarantors**" and together with the Borrower, the "**Debtors**")

-and-

**BANK OF MONTREAL**

("BMO" or the "**Lender**")

**WHEREAS:**

- A. In this forbearance agreement and any schedules thereto (the "**Agreement**"), unless the context otherwise requires, all capitalized terms used, but not otherwise defined shall have the meaning ascribed thereto in the applicable Loan Documents (as hereinafter defined).

**Credit Facilities**

- B. The Lender has made available loans and credit facilities (the "**Credit Facilities**" and each is a "**Credit Facility**") to the Borrower, in its capacity as borrower, pursuant to the terms, conditions, obligations, representations and warranties (the "**Loan Terms**") of:
- a Letter of Agreement by the Lender dated November 14, 2019 and accepted by the Borrower and Guarantors on December 2, 2019, as amended by an amendment dated December 16, 2019 (collectively, the "**Credit Agreements**"); and
  - a Commercial Card Agreement (Canadian Currency) dated January 28, 2020 executed by the Lender and Peter, in his capacity as President of the Borrower (the "**CAD Card Agreement**"); and

- a Commercial Card Agreement (US Currency) dated January 28, 2020 executed by the Lender and Peter, in his capacity as President of the Borrower (the "**USD Card Agreement**" and together with the CAD Card Agreement, the "**MC Credit Agreement**"); and
- a Mortgage in favour of the Lender in the amount of \$1,600,000.00 together with the Lender's Standard Charge Mortgage Terms 4697386/1 (together, the "**Mortgage**"); and

C. The Credit Facilities include *inter alia*:

- **a Real Estate Financing Loan** (the "**Real Estate Loan**"), Account No. 0003-6989-797, in the amount of One Million Two Hundred and Eighty Thousand Dollars (\$1,280,000.00) CAD related to the equity takeout of 1-550 George Avenue, Winkler, MB (the "**Winkler Property**"). The Real Estate Loan is a closed term loan with an annual interest rate of 3.8100% per annum. The Real Estate Loan is payable on demand; provided that, until a demand for repayment is made by the Lender, it may be repaid by Borrower in either blended monthly payments of principal and interest or equal monthly payments of principal plus interest. The maximum amortization of the Real Estate Loan is 300 months beginning February 7, 2020; and
- **a Non-Revolving Demand Loan** (the "**Demand Loan**"), Account No. 0003-1949-789, with a credit limit of up to and One Hundred and Eighty Thousand Dollars (\$180,000.00) CAD to allow the Borrower to payout BDC and provide a capital injection to the Borrower. The Demand Loan is a closed term loan with an annual interest rate of the Lender's Prime Rate plus 1.7500% per annum, which has increased to the Prime Rate plus 3.000% as it was not repaid by the Maturity Date. The Demand Loan is repayable on demand; provided that, until a demand for repayment is made by the Lender, it may be repaid by Borrower in either blended monthly payments of principal and interest or equal monthly payments of principal plus interest; and
- **an Operating Demand Loan** (the "**Operating Loan**"), Account No. 0003-1949-040, presently having a limit of Eight Hundred Thousand Dollars (\$800,000.00) CAD. The Operating Loan is operating financing that has an annual interest rate of the Lender's Prime Rate plus 1.7500% per annum, which was increased to the Prime Rate plus 5.000% as a result of a default under the terms of the Operating Loan (advances exceed the facility authorization and NSF activity). The Operating Loan is payable on demand by the Lender;
- **a CAD Mastercard Facility** (the "**CAD MC Operating Credit**"), Account No. 5264 5500 0020 9837, an operating credit presently having a limit of Fifty Thousand Dollars (\$50,000) CAD and bearing interest at 18.4000% per annum. The CAD MC Operating Credit is payable on demand by Lender; and

- a **USD Mastercard Facility** (the "**USD MC Operating Credit**" and together with the CAD MC Operating Credit, the "**MC Operating Credit**"), Account No. 0003-4998-293, an operating credit presently having a limit of Fifty Thousand Dollars (\$50,000) USD and bearing interest at 18.4000% per annum. The USD MC Operating Credit is payable on demand by Lender; and
- The foregoing, the documents described in **Schedule "A"** hereto and all other documents now or hereafter held by the Lender in connection with or to secure the Credit Facilities, are collectively hereinafter referred to as the "**Loan Documents**".

D. Borrower is indebted to the Lender in respect of the Credit Facilities as of January 25, 2023 (except for Legal Fees, Costs and Expenses as of December 31, 2022) without set-off, defence, counterclaim, reduction or other claim against the Lender or in respect of the Credit Facilities, as follows, inclusive of principal, interest and other obligations for which payment is due:

<b>Real Estate Financing Loan</b> Account No. 0003-6989-797 Interest at 3.8100% per annum	\$1,196,038.05 CAD
<b>Demand Loan</b> Account No. 0003-1949-789 Interest at Lender's Prime Rate plus 3.0000% per annum	\$ 58,085.14 <sup>1</sup> CAD
<b>Operating Loan</b> Account No. 0003-1949-040 Interest at Lender's Prime Rate plus 5.0000% per annum	\$ 768,193.25 CAD
<b>CAD MC Operating Credit</b> Account No. 0003-6984-777 Interest at 18.4000% per annum	\$ 52,382.68 CAD
<b>USD MC Operating Credit</b> Account No. 0003-4998-293 Interest at 18.4000% per annum	\$ 75,268.18 USD
<b>Canada Emergency Business Account Loan No.</b> 5112420000722763	\$ 60,000.00 CAD
<b>Legal Fees, Costs and Other Expenses</b>	\$ 0.00 CAD

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<sup>1</sup> Please note that this includes \$3,265.31 for legal fees which has been debited out of this Demand Loan.

- E. The indebtedness of Borrower to the Lender in respect of the Credit Facilities changes from time to time, including, without limitation, in accordance with the revolving nature of the Operating Loan and MC Operating Credit, payments made by Borrower, changes in interest rates, the obligations thereunder and the operation otherwise of the Credit Facilities. The indebtedness of Borrower to the Lender from time to time in respect of Credit Facilities is hereinafter referred to as the "**Loan Debt**".
- F. Payment of the Loan Debt and performance of the obligations of Borrower, as borrower, and the Peter and Elizabeth, as Guarantors, to the Lender in relation to the Loan Documents and Credit Facilities are secured by the security and additional documents, as more particularly described and listed in **Schedule "A"** hereto (the "**Security**"), which includes, without limitation, the GSA, GAD, Insurance Assignment, BA Application, BA Agreement, BA Security Agreement, (together the "**Personal Property Security**") the Guarantee and the Mortgage. Certain of the Personal Property Security is registered in the Manitoba Personal Property Registry and the Bank Act Registry as further described in **Schedule "B"**, and the GSA and Mortgage against Winkler Property as further described in **Schedule "C"** (collectively, the "**Registrations**").
- G. The Borrower is in default of its obligations under the Credit Facilities due to, among other things: (i) its failure to pay all Loan Debt due to Lender in connection with the Loan Documents; (ii) its failure to pay the outstanding balance under the USD MC Operating Credit by the due date; (iii) its failure to pay the outstanding balance under the CAD MC Operating Credit by the due date; (iv) its failure to comply with reporting requirements under the Loan Documents (including, but not limited to providing T1 personal tax returns with a notice of notice of assessment to be provided by the Guarantors within 120 days of the Borrower's fiscal year end and a minimum notice to reader accountant prepared financial statements, corporate notice of assessment and a T-2 for the Borrower within 120 days of the Borrower's year-end); and (v) it permitting the aggregate outstanding advances under the Operating Loan to exceed the Facility Authorization for that Credit Facility (together the "**Borrower Existing Defaults**").
- H. The Lender terminated the Borrower's access to the USD MC Operating Credit on September 29, 2022 and the CAD MC Operating Credit on October 21, 2022 in accordance with the terms of such agreements.
- I. Each of the Guarantors have defaulted under the Guarantee, to which they are a party, by failing to make payments when due under the Credit Facilities and Guarantee as evidenced by the Loan Debt ("**Guarantor Existing Defaults**" and together with the Borrower Existing Defaults, the "**Existing Defaults**").
- J. The Lender has issued and served formal demands for payment and a Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act (Canada)* (the "**BIA**") on the Debtors by letters dated September 29, 2022. The demands and notices described in this Recital paragraph are hereinafter collectively referred to as the "**Demands**".

- K. The periods of notice prescribed by Sections 243(1.1) and 244(2) of the BIA have expired and the Debtors acknowledge that the Lender is entitled to enforce all Security held by the Lender in relation to the Debtors, and to seek an Order by the Court of King's Bench (Manitoba) (the "**Court**") appointing a receiver (as defined by Section 243(2) of the BIA) in relation to the Debtors.
- L. The Debtors have requested that nevertheless the Lender to forbear from immediate enforcement of its rights in respect of the Loan Debt and from the enforcement of remedies (the "**Remedies**", and each is a "**Remedy**") lawfully available to it under the Security and at law, and to provide certain other accommodations, in order to provide the Debtors with additional time within which to reorganize and sell all or part of the Borrower's business (the "**Sale Process**"), and reorganize its financial affairs, and to comply with the Loan Terms (as same may be amended by this Agreement).
- M. The Lender has not waived the Existing Defaults (or any other defaults of the Debtors), but will agree to forbear from enforcing the Remedies upon the terms and conditions set out in this Agreement.
- N. In order to induce the Lender to forbear from immediate enforcement of the Security, the Debtors have voluntarily executed and delivered to and in favour of the Lender a Consent Order in the form attached as **Schedule "D"** hereto pursuant to Section 243 of the BIA, whereby the Debtors voluntarily consent to an Order of the Court appointing a receiver of all assets, properties, and undertakings of the Debtors (the "**Consent Receivership Order**") with the Consent Receivership Order to be held in trust by the Lender in accordance with the terms of this Agreement.
- O. The parties consider it to be in their mutual interest to enter into this Agreement in order to confirm the terms and conditions upon which the Lender will so forbear.
- P. This paragraph and the preceding recital paragraphs are hereinafter collectively referred to as the "**Preamble**".

**NOW THEREFORE** in consideration of the mutual covenants and agreements herein contained, including, without limitation, the agreement of the Lender to forbear on the terms and conditions hereof from exercising its lawful Remedies on the terms set out herein, and the payment of Ten (\$10.00) Dollars by each to the other, and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

**Confirmation and Acknowledgements**

- 1. The Debtors each confirm, acknowledge, affirm, agree with and represent to the Lender that:
  - (a) the facts set out in the Preamble are true and correct, and are incorporated into and form an integral part of this Agreement as if recited herein;
  - (b) the Schedules attached hereto form part of this Agreement and are integral hereto;

- (c) each of the Loan Documents to which they are a party (i) is binding on whichever of the Debtors is a party thereto, (ii) is legal, valid, effective and enforceable in accordance with its terms as of the date of execution thereof, (iii) is undiminished and in full force and effect, and (iv) except as may be expressly amended or restated by this Agreement, does and shall continue to apply in respect of all obligations of the Debtors to the Lender, including without limitation the obligations of the Debtors under this Agreement;
- (d) the Lender served the Demands upon each of the Debtors, was entitled to serve the Demands, has validly demanded the Loan Debt less the amount of the CEBA Loan, and the Demands remain in full force and effect;
- (e) in addition to the Existing Defaults, the Debtors are each presently in default of their respective obligations to the Lender in regard to the payment of the Loan Debt pursuant to the Loan Terms;
- (f) the Lender was entitled to terminate the Borrower's access to the MC Operating Credit in accordance with the terms thereof; provided that the Debtors remain liable to repay the outstanding Loan Debt incurred thereunder;
- (g) the Registrations have been duly registered in the requisite registry offices, are in full force and effect and are sufficient to perfect, otherwise give effect to and give notice of the security interests, and charges to which they relate in accordance with applicable law;
- (h) none of the Debtors have any defence, counterclaim or rights of set-off or reduction to any claims that may be brought by the Lender under the Security to which they are a party or any other Loan Document, and has no other claim of any kind whatsoever against the Lender;
- (i) except as expressly set out in this Agreement (i) the Lender has not made or held out any promises (expressly or by conduct or omission) or condoned or consented to or taken or omitted to take any action that would constitute a waiver or estoppel of any rights in respect of any or all of the Credit Facilities, the Loan Terms or the Loan Documents including, without limitation, rights to take lawful steps to recover the Loan Debt and/or enforce the Security, and (ii) the Lender is not committed to and has not agreed to forbear from exercising any of the Remedies or the Lender's other powers, rights, privileges and authorities, nor have the parties hereto established any course of conduct to the contrary by past action or inaction or by the execution of this Agreement or otherwise;
- (j) subject to the terms of this Agreement, the Loan Documents and all applicable laws (including laws which may require demand for payment and the giving of prior notice), the Lender shall be entitled in its sole discretion to exercise its rights, powers, privileges and authorities and enforce and realize upon the Remedies and Security as it sees fit;

- (k) the Debtors each hereby acknowledge that they have requested of the Lender, and the Lender has agreed (upon the terms and conditions more particularly described in this Agreement), to forbear from the immediate enforcement of the rights of the Lender pursuant to the Credit Agreements;
  - (l) the Lender's Prime Rate as of the Effective Date is 5.95 %;
  - (m) the Lender's Professional Fees (as hereinafter defined) added to the Loan Debt to date are fair and reasonable; and
  - (n) the Debtors shall pay all of the reasonable legal costs of the Lender (on a solicitor and own client basis) that accrue from time to time relating to the preparation and oversight of this Agreement and all other matters relating to the Loan Terms and Credit Facilities, and shall pay all costs, expenses, disbursements and fees (including without limitation, professional fees of financial and real estate advisors to the Lender, legal fees on a solicitor and own client basis) reasonably incurred at any time in the collection of the Loan Debt, the taking of Remedies and the enforcement of the Security. The amounts of all such costs, expenses, disbursements and fees shall be added to the Loan Debt and the Lender shall be entitled, but not required, to debit such amounts from the Revised Operating Loan (as hereinafter defined) of the Borrower from time to time (together, the "**Lender's Professional Fees**").
2. The parties hereto hereby agree to toll and suspend the running of applicable statutes of limitations, laches or other doctrines related to the passage of time in relation to the Loan Debt and the Loan Documents and any entitlements arising therefrom or in relation thereto, and each of the parties agree that this Agreement is intended to be an agreement to, without limitation, extend or suspend all applicable limitation periods provided by legislation or otherwise at law forming a part of the governing law of this Agreement, and any contractual limitations on the commencement of proceedings, any claims or defences based on the application of any statute of limitation, contractual limitation or any time-related doctrine including waiver, estoppel and laches are hereby suspended. These tolling provisions will terminate upon the Termination of the Forbearance Period (as defined herein), at which time any time period tolled thereunder shall recommence running.
3. Each of the Guarantors, in their capacity as guarantors, consent to this Agreement, the terms of the Lender's forbearance and other accommodations set out herein, and to such modification of the Loan Terms as may result from the terms of this Agreement.

#### **Reservation of Rights**

4. Except to the extent expressly provided in this Agreement and in any documents delivered by the Lender pursuant to this Agreement:
- (a) nothing contained in this Agreement shall operate or be deemed or interpreted to operate, as a consent to or a waiver, condonation, diminution

or amendment in respect of any Loan Term, right, power, authority, Remedy or privilege pursuant to any of the Loan Documents;

- (b) nothing herein shall or shall be deemed or interpreted to vary, alter, release, waive, amend or discharge any Loan Terms, covenants, obligations, representations or warranties contained in any of the Loan Documents, all of which remain in full force and effect, unamended;
- (c) no delay on the part of the Lender in the exercise of any Remedy, power, right, authority or privilege under any of the Loan Documents shall impair such remedy, power, right, authority or privilege or be construed to be a waiver of or to condone, in whole or in part, any default;
- (d) the execution of this Agreement shall not be construed to be a waiver of or to condone, in whole or in part, any default; and
- (e) the Lender expressly reserves all of its Remedies, powers, rights, authorities and privileges under each of the Loan Documents and under any document delivered pursuant to this Agreement, or in relation to the Credit Facilities and Loan Debt at law, in equity or otherwise, and all such Remedies are cumulative and are in addition to, without prejudice to and shall not be deemed to exclude, any other Remedy, power, right, authority and privilege allowed to the Lender hereunder or under any agreement delivered pursuant hereto or under the Loan Documents, and all Remedies and powers, rights, authorities and privileges of the Lender may be exercised concurrently as the Lender sees fit.

#### **Forbearance Period**

5. The obligation of the Lender to forbear pursuant to this Agreement shall be effective and continue for the period (the "**Forbearance Period**") commencing on the date hereof and continuing until the earlier of: (i) 12:01 PM (CST) on **March 31, 2023**; (ii) the date of full payment of the Loan Debt; and (iii) the date of an occurrence of a Forbearance Terminating Event (as hereinafter defined). The date upon which the Forbearance Period ends shall be referred to as the "**Termination of the Forbearance Period**".

#### **Further Forbearance Period**

6. The Lender shall not be obligated, required or expected to grant any extensions to the Forbearance Period under any circumstances, and nothing in this Agreement shall constitute any representation, warranty or acknowledgment by the Lender that it intends to, or will, grant any such extension.

#### **Forbearance and Other Agreements by the Lender**

7. Subject to the terms and conditions of this Agreement and any document(s) executed in connection herewith, the Lender agrees that during the Forbearance Period the Lender agrees that it shall:



- (a) continue to provide the Credit Facilities in accordance with the Loan Terms and the terms and conditions of the Loan Documents as may be amended by this Agreement and those documents provided pursuant to or in connection with this Agreement; and
- (b) forbear from exercising the Remedies.

### **Loan Document Amendments**

8. The terms and conditions of the Borrower's Credit Agreement are hereby amended effective the Effective Date as follows:

#### *Demand Loan*

- (a) the interest rate applied to the Demand Loan shall be permanently increased from the Lender's Prime Rate plus 3.0000% per annum to the Lender's Prime Rate plus 5.0000% per annum.

#### *Operating Loan*

- (b) \$600,000.00 CAD of Loan Debt incurred under the Operating Loan will be converted to a new closed term loan (the "**New Term Loan**") and the Operating Loan maximum shall be permanently reduced from \$800,000.00 CAD to \$200,000.00 CAD (the "**Revised Operating Loan**").
- (c) The Revised Operating Loan shall continue to have an annual interest rate of the Lender's Prime Rate plus 5.000%
- (d) The New Term Loan shall:
  - (i) have a maximum limit of \$600,000.00 CAD;
  - (ii) have an annual interest rate of the Lender's Prime Rate plus 5.000%; and
  - (iii) be due and owing in full at the expiry of the Termination of the Forbearance Period, provided that, until the earlier of the expiry of the Termination of the Forbearance Period, the Borrower shall be permitted to make interest only payments on the New Term Loan.

#### *Additional Reporting Requirements*

The following additional reporting requirements shall be imposed on the Debtors:

- (d) Borrower shall provide its **Minimum Notice to Reader** Accountant Prepared Financial Statements, Corporate Notice of Assessment, and T-2 to the Lender no later than ten (10) business days from the Effective Date;
- (e) Each of the Guarantors shall provide copies of their T1 personal tax returns and notices of assessments to the Lender no later than five (5) business days from the Effective Date; and

- (f) On a quarterly basis (Nov. 30, Feb. 28, August 30, May 31), the Borrower shall provide updated copies of the Equipment List, Inventory List, AP List and AR List (as each is hereinafter defined) to the Lender.
9. Except as specifically amended herein, all terms and conditions of the Loan Documents shall remain in full force and effect, unamended.

**Conditions to Forbearance and Other Agreements**

10. The agreements and obligations of the Lender under this Agreement are conditional upon and subject to full and timely compliance by the Debtors with all of the following conditions on or before **February 5, 2023** (the "**Forbearance Conditions**"):
- (a) the Borrower shall provide satisfactory evidence to the Lender, as determined by the Lender in its sole discretion, that all property taxes in respect of the Winkler Property are current;
  - (b) the Borrower shall provide certificates of insurance for all policies (the "**Insurance Policies**") held by the Borrower (as required by the Loan Documents) and shall have the Lender listed as first loss payee on each of such policies;
  - (c) each Debtor shall provide an updated personal financial statement ("**PFS**") as of such date, in a form acceptable to Lender;
  - (d) the Borrower shall provide a complete list of the Borrower's equipment (the "**Equipment List**") as of such date (including all locations of such equipment and where available serial numbers), in form and substance acceptable to Lender; and
  - (e) the Borrower shall provide a complete list of the Borrower's inventory (the "**Inventory List**") as of such date (including all finished trailers and their respective locations), in form and substance acceptable to Lender;
  - (f) the Borrower shall provide a complete list of the Borrower's aged accounts payable (the "**AP List**") as of such date, in form and substance acceptable to Lender; and
  - (g) the Borrower shall provide a complete of the Borrower's aged accounts receivable list (the "**AR List**") as of such date, in form and substance acceptable to Lender.
11. During the Forbearance Period the Debtors shall do all of the following:
- (a) maintain the Insurance Policies in good standing and not modify or remove the policies without the prior written consent of the Lender;
  - (b) on or before the first of each month during the Forbearance Period (and upon the expiry or Termination of the Forbearance Period), provide

updated copies of the PFS, Equipment List, Inventory List, AP List and AR List;

- (c) provide prompt notice of any material occurrences in respect of the Sale Process;
- (d) cooperate and comply with the Lender's requests for information, which requests may be made directly by the Lender, or the Lender's legal or financial advisors, as may reasonably be requested from time to time;
- (e) the Borrower shall operate its Credit Facilities in the ordinary course and will not incur liabilities outside the day-to-day operations;
- (f) the Debtors shall not sell, dispose or otherwise transfer, directly or indirectly, any equipment, inventory or other collateral subject to the Security outside of the ordinary course of business, including as a result of the Sale Process;
- (g) the Debtors shall pay a forbearance fee of \$5,000.00 CAD to the Lender, which shall be paid by the Borrower to the Lender on the Effective Date, or be deducted by the Lender from the Revised Operating Loan upon the execution by the parties of this Agreement;
- (h) the Debtors shall pay all of the Lender's Professional Fees that accrue from time to time relating to the preparation and oversight of this Agreement and all other matters relating to the Loan Terms and Credit Facilities, and shall pay all costs, expenses, disbursements and fees (including without limitation, professional fees of financial and real estate advisors to the Lender, legal fees on a solicitor and own client basis) reasonably incurred at any time in the collection of the Loan Debt, the taking of Remedies and the enforcement of the Security. The amounts of all such costs, expenses, disbursements and fees shall be added to the Loan Debt and the Lender shall be entitled, but not required, to debit such amounts from the Revised Operating Loan from time to time;
- (i) the Debtors shall give the Lender prompt written notice of the happening of any event which could adversely affect or impair the ability of (i) the Debtors to comply with the terms and conditions of this Agreement and the Loan Terms, or (ii) the Debtors to pay the Loan Debt, or (iii) the Lender to collect the Loan Debt, or (iv) the Lender to enforce the Remedies and realize on the Security (and the documents provided pursuant to or in connection with this Agreement), or which may result in a material adverse change to the Debtors' operations or financial position; and
- (j) except as expressly provided in this Agreement, the Debtors shall pay when due all claims ("**Prior Claims**") which rank prior to the Loan Debt and the Security which shall include, without limitation, all amounts owing or required to be paid, where failure to pay any such amount could give rise to a claim pursuant to any law, statute, regulation or otherwise, which ranks or is capable of ranking in priority to the Security or otherwise in priority to any claim by the Lender for the repayment of any amounts owing to it. On

or before the first of each month during the Forbearance Period and on the date of expiry or Termination of the Forbearance Period, each of the Debtors shall provide a statutory declaration, in a form acceptable to the Lender, that all such Prior Claims have been paid for the entire preceding period.

### **Representations and Warranties of the Debtors**

11. Each of the Debtors jointly and severally represent and warrant to the Lender that:
  - (a) there exists no default or event of default under any of the Loan Documents or otherwise, or any other condition or occurrence of events that now constitute or would with the passage of time or giving of notice or both, constitute a default or event of default under any of the Loan Documents, other than the Existing Defaults;
  - (b) each of the Debtors have full capacity to enter into and perform their obligations hereunder; and
  - (c) the execution and delivery of this Agreement by each of the Debtors has been authorized by all necessary corporate action.

### **Covenants of the Debtors**

12. Each of the Debtors jointly and severally covenant and agree with the Lender that it shall comply fully with all of the terms and conditions of this Agreement, the Loan Documents and those documents provided pursuant to or in connection with this Agreement, including, but not limited to complying with all reporting requirements as set out in the Credit Agreements.

### **Forbearance Terminating Events**

13. The occurrence of any one or more of the following events (each a "**Forbearance Terminating Event**") shall entitle the Lender, in its sole discretion, to terminate the Forbearance Period (in which case the Lender shall give written notice to the Debtors in accordance with Section 22), namely:
  - (a) any default or breach by the Debtors occurs under this Agreement, including, but not limited to the Forbearance Conditions, or under any document provided pursuant to or in connection with this Agreement, or any default or breach by the Debtors of any term, condition, obligation or covenant occurs under any of the Loan Documents;
  - (b) if the Debtors fail to make any payment when due to the Lender;
  - (c) any other creditor of any of the Debtors lawfully exercises or purports to exercise any rights against any of the property, assets or undertaking of any of the Debtors or if any of the Debtors, or any creditor thereof, brings any proceeding or lawfully takes any other action under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), *The Corporations Act* (Manitoba), the *Business Corporations Act*

(Canada), the *Winding-Up Act* (Canada) or any similar legislation in Canada or the United States of America;

- (d) if any steps are taken by any of the Debtors or a third party to wind up or dissolve any of the Debtors without the prior written consent of the Lender;
- (e) if any representation or warranty of any of the Debtors in this Agreement shall be false, misleading or incorrect in any material respect;
- (f) any default or failure by the Debtors to pay any of the Prior Claims when due;
- (g) if any financial reporting information or other reporting information provided to the Lender by any of the Debtors proves to be false, misleading, inaccurate or incorrect in any material respect;
- (h) the sale, lease, transfer, relocation, abandonment or any other disposition of assets of any of the Debtors out of the ordinary course of business which are subject to the Security, without the express prior written consent of the Lender;
- (i) upon request by the Lender the Debtors (or any of them) fail to acknowledge, in writing, the Loan Debt;
- (j) the payment of dividends or the return of capital by the Debtors; or
- (k) if the Lender, acting reasonably and in good faith, considers that a material adverse change has occurred or is reasonably anticipated to occur in (i) the business, affairs, or condition of any of the Debtors, financial or otherwise, including but not limited to a material change to the board of directors, senior management or its current legal and financial advisors of any of the Debtors or in the Optimization Plan, or (ii) in the security position of the Lender, after the date hereof for any reason whatsoever other than the Existing Defaults.

#### **Cross Default**

14. The Termination of the Forbearance Period shall, in the absence of full payment of the Loan Debt, constitute the occurrence of a default under each of the Loan Documents.

#### **Upon Termination of Forbearance**

15. Upon the Termination of the Forbearance Period, in the absence of full payment of the Loan Debt:
- (a) the Lender may immediately terminate the Credit Facilities without further notice or delay;
  - (b) the full amount of the Loan Debt shall be immediately due and payable; and

- (c) the obligation of the Lender to forbear pursuant to this Agreement shall terminate and the Lender may, subject to applicable laws, take such actions in relation to the Debtors to exercise Remedies as it sees fit to protect and preserve its interests and to recover payment of the Loan Debt and enforce obligations of the Debtors under this Agreement, those documents provided pursuant to or in connection with this Agreement and the Loan Documents, including, without limitation the issuance of the Consent Receivership Order in favour of the Lender against the Debtors, which Consent Receivership Order may be used by the Lender in order to recover the full amount of all outstanding Loan Debt owed by the Debtors at the time of the issuance of such Consent Receivership Order all without further notice, demand or request for payment being made upon the Debtors; and
  - (d) In furtherance of the foregoing, the Debtors acknowledge and agree to the execution and delivery to the Lender, at the time of the execution of this Agreement, of the Consent Receivership Order substantially in the form attached hereto as **Schedule "D"**.
16. For greater certainty, the Lender's forbearance and the Lender's other accommodations described herein, shall terminate on the Termination of the Forbearance Period without requiring any further forbearance or delay on the part of the Lender.

### **Release**

17. Each of the Debtors hereby:
- (a) remises, releases, acquits and forever discharges the Lender and its directors, officers, employees, agents, servants, attorneys, affiliates and representatives (and the respective executors, administrators, successors and assigns of each of the preceding) (collectively the "**Releasees**") from and against all claims, actions, causes of action, rights, costs, demands, expenses, suits, debts, duties, accounts and compensation whatsoever, heretofore and hereafter arising from events or occurrences of any kind whatsoever to and including the date of this Agreement, which do or may exist, whether known or unknown, suspected or unsuspected, foreseen or unforeseen (collectively, the "**Released Matters**"), including, without limitation, any of the same arising from or related in any manner whatsoever to anything done, omitted to be done or allowed to be done by any of the Releasees and in any way whatsoever connected to the Credit Facilities, the Security and the Loan Documents;
  - (b) acknowledges, understands and agrees that:
    - (iv) the administration by the Lender of the Loan Debt, and the actions of the Lender in entering into this Agreement, respectively, has been fair and reasonable;
    - (v) this release is an essential and material term of this Agreement;

- (vi) the agreements in this release are intended to be in full answer to and satisfaction of any injuries or damages of the Debtors, or any of them, in connection with the Released Matters;
- (vii) this release shall apply to all unknown or unanticipated results of the Released Matters, as well as those known and anticipated and every right, exemption from liability, defense and immunity of whatever nature and kind which may be applicable to any or all of the Releasees, or to which they or any of them shall be entitled to hereunder, shall also be available to and shall extend to protect every such Releasee;
- (c) represents and warrants that it has not transferred, conveyed or assigned, and has not purported to transfer, convey or assign, any right, title or interest in any Released Matter to any other person or entity and that the foregoing constitutes a full, effective and complete release of the Released Matters; and
- (d) acknowledges and confirms that it has reviewed and understood all of the provisions of this section and of this Agreement, and has received or was advised by the Lender to receive and had the full opportunity to receive independent legal advice with respect to same and willingly and voluntarily enters into this Agreement without any compulsion by or on behalf of any Releasee.

### **General Matters**

- 18. Time of the Essence. Time is of the essence of this Agreement.
- 19. Further Assurances. The parties hereto shall promptly do all such further things as may be reasonably necessary to give effect to the intention of this Agreement.
- 20. Severability. If any provision of this Agreement shall be deemed or determined by any court of competent jurisdiction to be invalid or void, the remaining provisions shall remain in full force and effect.
- 21. Enurement. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.
- 22. Notices. Any notice required to be given to any party hereunder or under the Loan Documents may be given to that party at the addresses or email addresses set out below:

**To the Lender:**  
BMO Financial Group  
S.A.M.U., Western Canada,  
Winnipeg Main Branch,  
201 Portage Ave 16th Floor  
Winnipeg, MB  
Attention: Mathan Kumar  
Email: mathan.kumar@bmo.com

**To Debtors:**  
3816410 Manitoba Ltd. o/a  
Berg's Trailers & Prep and Paint  
1 880J 15th Street, Box 99  
Winkler, Manitoba R6W 4A4  
Attn: Peter Bergen

**With a copy to:**

MLT Aikins LLP  
3000-360 Main Street  
Winnipeg, MB  
Attention: J.J. Burnell  
Email: jburnell@mltaikins.com

**With a copy to:**

Thompson Dorfman Sweatman  
LLP  
1700 – 242 Hargrave Street  
Winnipeg, MB  
Attention: Art Stacey  
Email: ajs@tdslaw.com

23. Entire Agreement. This Agreement constitutes the entire agreement of the parties relating to the subject matter hereof and may not be amended or modified except with the written consent of all parties. No provision in this Agreement shall be or be deemed or determined to be waived unless such waiver is express and in writing.
24. Terms to Apply. In the event of a contradiction between the terms of this Agreement and the Loan Documents, then the terms of this Agreement shall apply.
25. Governing Law. This Agreement shall be governed by the laws of the Province of Manitoba.
26. Records. The records of the Lender shall be *prima facie* proof of the outstanding amount of the Loan Debt owed by the Borrower to the Lender, the amount of any payment made, the amount of any part of the Loan Debt which is in default, and any notice or demand being made.
27. Exercise of Rights. Except as expressly set out in this Agreement (i) nothing herein shall or shall be deemed or interpreted to vary, alter, release, waive, amend or discharge any terms, covenants, obligations, representations or warranties contained in any of the Loan Documents, all of which remain in full force and effect, unamended (ii) all Remedies and powers, rights, authorities and privileges of the Lender hereunder and under any agreement delivered pursuant hereto are cumulative and are in addition to, without prejudice to and shall not be deemed to exclude, any other Remedy, power, right, authority and privilege allowed to the Lender hereunder or under any agreement delivered pursuant hereto or under the Loan Documents, and (iii) all Remedies and powers, rights, authorities and privileges of the Lender may be exercised concurrently as the Lender sees fit.
28. No Contra Proferentem. This Agreement has been negotiated and approved by the parties and, despite any rule or maxim of law or construction to the contrary, any ambiguity or uncertainty will not be construed against either of the parties by reason of authorship of any of the provisions of this Agreement.
29. Counterparts. This Agreement may be executed in paper form, by facsimile signature or by electronic signature and in any number of counterparts, each of which shall be deemed to be an original and all of which, taken together, shall be deemed to constitute one and the same instrument and notwithstanding the date of execution shall be deemed to bear the date as of the date of this Agreement. As such executed counterpart may be delivered by facsimile transmission or by e-mail



in PDF format and will be deemed to be an original document, provided that any party executing this Agreement by facsimile copy or PDF format shall deliver an originally executed copy of this Agreement immediately thereafter to each of the other parties hereto.

***~ Execution Page Follows ~***

**IN WITNESS WHEREOF** the parties have executed this Forbearance Agreement on the Effective Date:

**3816410 MANITOBA LTD. O/A  
BERG'S TRAILERS & PREP AND  
PAINT**


Per: 


Name: Peter Bergen  
Title: President

*I have authority to bind the Corporation.*

  
PETER BERGEN

  
ELIZABETH BERGEN

  
Witness

  
Witness

**BANK OF MONTREAL (as Lender)**

Per: 

Name: Mathan Kumar  
Title: Account Manager

*I have authority to bind the bank.*

**SCHEDULE "A"**  
**LOAN DOCUMENTS**

**Part One - Credit Documents**

1. Letter of Agreement by the Lender dated November 14, 2019 and accepted by the Borrower and Guarantors on December 2, 2019
2. Letter of Agreement – Amendment by the Lender dated December 16, 2019 amending the Loan Agreement and accepted by the Borrower and Guarantors
3. Commercial Card Agreement (Canadian Currency) dated January 28, 2020 executed by the Lender and Peter, in his capacity as President of the Borrower
4. Commercial Card Agreement (US Currency) dated January 28, 2020 executed by the Lender and Peter, in his capacity as President of the Borrower
5. Mortgage No. 1249795/4 in favour of the Lender in the amount of \$1,600,000.00 together with the Lender's Standard Charge Mortgage Terms 4697386/1 charging the titles and lands legally described in **Schedule "B"**

**Part Two – Security Documents**

6. Security Agreement executed by Peter, in his capacity as authorized signatory of the Borrower in favour of the Lender on January 10, 2020 ("**GSA**")
7. General Assignment of Debts, etc. executed January 10, 2020 by the Borrower (the "**GAD**");
8. Assignment of Moneys which May Become Payable Under Fire Insurance Policies executed January 10, 2020 by Borrower (the "**Insurance Assignment**")
9. Application for Credit and Promise to Give Bills of Lading, Warehouse Receipts, or Security under Section 427 of the Bank Act dated December 30, 2019 executed by the Borrower in favour of the Lender ("**BA Application**")
10. Agreement as to Loans and Advances and Security therefor executed by the Borrower in favour of the Lender December 30, 2019 ("**BA Agreement**")
11. Security under sec. 427(1) of the Bank Act dated December 30, 2019 executed by the Borrower in favour of the Lender ("**BA Security Agreement**")
12. Guarantee for Indebtedness of an Incorporated Company in the amount of \$2,374,000.00 executed January 13, 2020 by Peter and Elizabeth

### **Part Three – Additional Documents**

13. Postponement Subordination of Preferred Shares Rights Agreement executed by Peter and acknowledged by Peter, in his capacity as authorized signatory of the Borrower on January 10, 2020
14. Assignment, Postponement and Subordination Agreement executed January 15, 2020 by Murry Doerksen, in his capacity as President of Murlin Holdings Ltd. and acknowledged by the Borrower on January 10, 2020

## **SCHEDULE "B"**

### **PERSONAL PROPERTY SECURITY REGISTRATIONS**

#### **GSA**

BMO has a registration registered in the MB PPR against the Borrower on December 18, 2019 under registration number 201921760804.

#### **GAD**

BMO has a registration registered in the MB PPR against the Borrower on December 5, 2019 under registration number 201921094308.

#### ***Bank Act Security***

Lender has a registration registered in the Bank Act Security Registry System against the Borrower dated December 27, 2019 at 10:19 AM PDT under registration number 01325813.

**SCHEDULE "C"**

**WINKLER PROPERTY**

**OWNER (Legal and Beneficial):** 3816410 MANITOBA LTD.

**CIVIC ADDRESS:** 1-550 George Avenue, Winkler, Manitoba

**Legal Description:**

**TITLE NO. 1872413/4:**

LOT 1 BLOCK 2 PLAN 37465 MLTO  
IN S 1/2 3-3-4 WPM  
EXCEPTING - DRAIN PLAN 40578 MLTO

**Encumbrances:**

- (a) Caveat No. 1016911/4 from/by the Town of Winkler re: Easement Agreement for Drainage
- (b) Caveat No. 1027254/4 from/by Manitoba Hydro-Electric Board & Mts Communications Inc.
- (c) Mortgage No. 1249795/4 in favour of BMO in the amount of \$1,600,000.00
- (d) Personal Property Security Notice No. 1249796/4 in favour of BMO re: fixtures

**TITLE NO. 1872413/4:**

LOT 2 BLOCK 2 PLAN 37465  
IN S 1/2 3-3-4 WPM  
EXCEPTING – DRAIN PLAN 40578 MLTO

**Encumbrances:**

- (a) Caveat No. 1016911/4 from/by the Town of Winkler re: Easement Agreement for Drainage
- (b) Caveat No. 1027254/4 from/by Manitoba Hydro-Electric Board & Mts Communications Inc.
- (c) Mortgage No. 1249795/4 in favour of BMO in the amount of \$1,600,000.00 (Mortgage)
- (d) Personal Property Security Notice No. 1249796/4 in favour of BMO re: fixtures (GSA)

**SCHEDULE "D"**  
**CONSENT RECEIVERSHIP ORDER**

(see attached)

File No. \_\_\_\_\_

**THE KING'S BENCH**  
**Winnipeg Centre**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO  
SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY  
ACT R.S.C. 1985, c. B-3 AS AMENDED

BETWEEN:

BANK OF MONTREAL,

Applicant,

-and-

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT,

Respondent.

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**CONSENT TO RECEIVERSHIP ORDER**

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**MLT AIKINS LLP**  
Barristers & Solicitors  
30<sup>th</sup> Floor – 360 Main Street  
Winnipeg, Manitoba, R3C 4G1

**J.J. BURNELL / ANJALI SANDHU**  
Telephone: (204) 957-4663 / (204) 957-4760  
Facsimile: (204) 957-0840

File No. 0076354.01105

Box No. 3



**THE KING'S BENCH**  
**Winnipeg Centre**

IN THE MATTER OF:      THE APPOINTMENT OF A RECEIVER PURSUANT TO  
SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY  
ACT R.S.C. 1985, c. B-3 AS AMENDED

BETWEEN:

BANK OF MONTREAL,

Applicant,

-and-

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT,

Respondent.

**CONSENT TO RECEIVERSHIP ORDER**

The Respondent, **3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT** (the "**Debtor**"), agrees and consents to all of the following:

1.      The Debtor has been afforded the opportunity to review and has reviewed the terms of this Consent to Receivership Order and the draft Receivership Order which has been prepared by Bank of Montreal (the "**Bank**") and which is attached to this Consent to Receivership Order as **Schedule "A"**.
  
2.      The Debtor hereby consents to the Bank proceeding to file this Consent to Receivership Order with the Manitoba Court of King's Bench and to obtaining a Receivership Order from the Court appointing a receiver or receiver and manager 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 as though evidence had been heard and the Order pronounced by the Court on the merits of the Application, all without the requirement of service of any of the documents filed with the Court (which is hereby waived), or the necessity of further proceedings before the Court.

3. The Debtor has been afforded the opportunity to obtain legal advice prior to and after reviewing the terms of this Consent to Receivership Order and the Schedule thereto and has completed this Consent to Judgment without duress or any influence whatsoever.

In Witness Whereof this consent was executed this \_\_\_\_ day of \_\_\_\_\_, 2023

**3816410 MANITOBA LTD. O/A BERG'S  
TRAILERS & PREP**

\_\_\_\_\_  
Per:  
Title:  
*I have authority to bind the corporation*

SCHEDULE "A"

File No. \_\_\_\_\_

**THE KING'S BENCH**  
**Winnipeg Centre**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO  
SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY  
ACT R.S.C. 1985, c. B-3 AS AMENDED

BETWEEN:

BANK OF MONTREAL,

Applicant,

-and-

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT,

Respondent.

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ORDER  
(Appointing Receiver)

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**MLT AIKINS LLP**  
Barristers & Solicitors  
30<sup>th</sup> Floor – 360 Main Street  
Winnipeg, Manitoba, R3C 4G1

**J.J. BURNELL / ANJALI SANDHU**  
Telephone: (204) 957-4663 / (204) 957-4760  
Facsimile: (204) 957-0840

File No. 0076354.01105

Box No. 3

**THE KING'S BENCH**

**Winnipeg Centre**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY ACT R.S.C. 1985, c. B-3 AS AMENDED

THE HONOURABLE \_\_\_\_\_ ) \_\_\_\_\_, THE \_\_\_\_  
JUSTICE \_\_\_\_\_ ) DAY OF \_\_\_\_\_, 20\_\_

BETWEEN:

BANK OF MONTREAL,

Applicant,

-and-

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT,

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**") appointing \_\_\_\_\_ as receiver [and manager] (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of 3816410 Manitoba Ltd. o/a Berg's Trailers & Prep and Paint (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the affidavit of \_\_\_\_\_ sworn \_\_\_\_\_ and on hearing the submissions of counsel for the Applicant, no one appearing for any other party although duly served as appears from the affidavit of service of \_\_\_\_\_ sworn \_\_\_\_\_ and on reading the consent of \_\_\_\_\_ to act as the Receiver,

## **SERVICE**

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

## **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA, \_\_\_\_\_ 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 all proceeds thereof (the "**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, 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 undertake environmental or workplace safety and health assessments of the Property and operations of the Debtor;
- (j) 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;
- (k) 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;
- (l) 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 \$\_\_\_\_\_, provided that the aggregate consideration for all such transactions does not exceed \$\_\_\_\_\_; 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 59(10) of *The Personal Property Security Act* (Manitoba), [or section 134(1) of *The Real Property Act* (Manitoba), as the case may be,] shall not be required.

- (m) 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;
- (n) 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;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions 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;
- (q) 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;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the 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 provided; however, that nothing in this Order shall affect a Regulatory Body's investigation in respect of the Debtor or an action, suit or proceeding that is taken in respect of the Debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body of the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating

to the enforcement or administration of an Act of Parliament or of the legislature of a province.

#### **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 Environment Act* (Manitoba), *The Water Resources Conservation Act* (Manitoba), *The Contaminated Sites Remediation Act* (Manitoba), *The Dangerous Goods Handling and Transportation Act* (Manitoba), *The Public Health Act* (Manitoba) or *The Workplace Safety and Health Act* (Manitoba), 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 this Court, but nothing herein shall fetter this Court's discretion to refer such matters to a Master of this Honourable Court.

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 \$\_\_\_\_\_ (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 Applicant and the Receiver be at liberty to serve 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, facsimile or electronic 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 notice by courier, personal delivery or electronic 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.

26. THIS COURT ORDERS that counsel for the Receiver shall prepare and keep current a service list ("**Service List**") containing the name and contact information (which may include the address, telephone number and facsimile number or email address) for service to: the Applicant; the Receiver; and each creditor or other interested Person who has sent a request, in writing, to counsel for the Receiver to be added to the Service List. The Service List shall indicate whether each Person on the Service List has elected to be served by email or facsimile, and failing such election the Service List shall indicate service by email. The Service List shall be posted on the website of the Receiver at the address indicated in paragraph 27 herein. **For greater certainty, creditors and other interested Persons who have received notice of this Order and who do not send a request, in writing, to counsel for the Receiver to be added to the Service List, shall not be required to be further served in these proceedings.**

27. THIS COURT ORDERS that the Applicant, the Receiver, and any party on the Service List may serve any court materials in these proceedings by facsimile or by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Receiver may post a copy of any or all such materials on its website at [www. \\_\\_\\_\\_\\_](http://www._____). Service shall be deemed valid and sufficient if sent in this manner.

## **GENERAL**

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

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.



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

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

32. THIS COURT ORDERS that the Applicant shall have its costs of this 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 solicitor-client basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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

\_\_\_\_\_, 20\_\_

I, \_\_\_\_\_ OF THE FIRM OF \_\_\_\_\_ HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES:  
\_\_\_\_\_ AS DIRECTED BY THE HONOURABLE \_\_\_\_\_.

## SCHEDULE "A"

### RECEIVER CERTIFICATE

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

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

1. THIS IS TO CERTIFY that \_\_\_\_\_, the receiver (the "**Receiver**") of the assets, undertakings and properties 3816410 Manitoba Ltd. o/a Berg's Trailers & Prep and Paint (the "**Debtor**") 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 King's Bench, Winnipeg Centre (the "**Court**") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (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 \*\*\*, \*\*\*.

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\_\_.

\_\_\_\_\_, solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

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

Name:

Title:

This is Exhibit "26" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023

*Ajay Kumar*

---

A Notary Public in and for the Province of Manitoba



Bank of Montreal  
Attn: Specialized Demands-RBTPO  
250 Yonge St, 8th Fl  
Toronto ON M5B 2L7

## Notice details

Date FEB 01 2023

Contact name Oghogho Emokaro

Telephone number (431) 275-7218

Toll free number 1 833-343-0367

Account number 897060828RT0001

## Requirement to pay

The following taxpayer(s) owe(s) **\$193,527.66** for the account 897060828RT0001.

3816410 MANITOBA LTD (sometime carrying on  
business as BERG'S PREP & PAINT)  
1 - 550 GEORGE AVE  
WINKLER MB R6W 0J4

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 \$193,527.66, 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 317(1), (2), and/or (6) of the Excise Tax Act, subsections 289(1), (2), and/or (4) of the Excise Act, 2001, subsections 75(1), (2), and/or (5) of the Air Travellers Security Charge Act, or subsections 89(1), (2), and/or (4) of the Softwood Lumber Products Export Charge Act, 2006, or subsections 153(1), (2) and/or (4) of the Greenhouse Gas Pollution Pricing Act.

### 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.

Bank of Montreal  
ATTN: Specialized Demands-RBTPO  
250 Yonge St, 8th Fl  
Toronto ON M5B 2L7

## Notice details

Date

FEB 01 2023

### 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.

### 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 of this requirement.

For more information regarding requirements to pay, go to [canada.ca/cra-requirement-to-pay](https://canada.ca/cra-requirement-to-pay).



Collections Contact Officer

This is Exhibit "27" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023

  
\_\_\_\_\_  
A Notary Public in and for the Province of Manitoba



Canada Revenue  
Agency

Agence du revenu  
du Canada

Winnipeg Tax Centre (1231)  
Winnipeg MB R3C 3M2

February 14, 2023

BANK OF MONTREAL  
ATTN: SPECIALIZED DEMANDS-RBTPO  
250 YONGE ST, 8TH FL  
TORONTO ON M5B 2L7

Account Number  
89706 0828 RT0001

Dear Sir or Madam:

Re: Requirement to Pay  
Date: February 1, 2023  
Name: 3816410 MANITOBA LTD (sometime carrying on  
business as BERG'S PREP & PAINT)

Effective February 14, 2023, we have cancelled the "Requirement to Pay" of February 1, 2023, that we sent you under the "Excise Tax Act."

If money was available as of the date you received the Requirement to Pay, up to and including February 14, 2023, the date of the cancellation, but you have not yet sent this amount to the Canada Revenue Agency, please send it to us now.

The cancellation of the Requirement to Pay does not affect the rights of the Canada Revenue Agency under subsections 222(1) and (3) of the "Excise Tax Act" for collected GST/HST amounts. If you have any questions or want further information, please contact Oghogho Emokaro at 431-275-7218.

Thank you very much for your co-operation.

Yours truly,

Oghogho Emokaro  
Collections Contact Officer

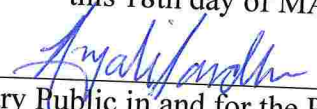
**Canada**

National Collections/Compliance Centre  
66 Stapon Rd  
Winnipeg MB R3C 3M2

Local : 431-275-7218  
Toll Free : 1-833-343-0367  
Fax : 866-514-7855  
Web site : canada.ca/taxes



This is Exhibit "28" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023

  
A Notary Public in and for the Province of Manitoba

File No. \_\_\_\_\_

**THE KING'S BENCH**  
**Winnipeg Centre**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO  
SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY  
ACT R.S.C. 1985, c. B-3 AS AMENDED

BETWEEN:

BANK OF MONTREAL,

Applicant,

-and-

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT,

Respondent.

---

**CONSENT TO RECEIVERSHIP ORDER**

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**MLT AIKINS LLP**  
Barristers & Solicitors  
30<sup>th</sup> Floor – 360 Main Street  
Winnipeg, Manitoba, R3C 4G1

**J.J. BURNELL / ANJALI SANDHU**  
Telephone: (204) 957-4663 / (204) 957-4760  
Facsimile: (204) 957-0840

File No. 0076354.01105

Box No. 3

**THE KING'S BENCH**  
**Winnipeg Centre**

IN THE MATTER OF:      THE APPOINTMENT OF A RECEIVER PURSUANT TO  
SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY  
ACT R.S.C. 1985, c. B-3 AS AMENDED

BETWEEN:

BANK OF MONTREAL,

Applicant,

-and-

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT,

Respondent.

**CONSENT TO RECEIVERSHIP ORDER**

The Respondent, **3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT** (the "**Debtor**"), agrees and consents to all of the following:

1.      The Debtor has been afforded the opportunity to review and has reviewed the terms of this Consent to Receivership Order and the draft Receivership Order which has been prepared by Bank of Montreal (the "**Bank**") and which is attached to this Consent to Receivership Order as **Schedule "A"**.
  
2.      The Debtor hereby consents to the Bank proceeding to file this Consent to Receivership Order with the Manitoba Court of King's Bench and to obtaining a Receivership Order from the Court appointing a receiver or receiver and manager 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 as though evidence had been heard and the Order pronounced by the Court on the merits of the Application, all without the requirement of service of any of the documents filed with the Court (which is hereby waived), or the necessity of further proceedings before the Court.

3. The Debtor has been afforded the opportunity to obtain legal advice prior to and after reviewing the terms of this Consent to Receivership Order and the Schedule thereto and has completed this Consent to Judgment without duress or any influence whatsoever.

In Witness Whereof this consent was executed this 1 day of March, 2023

**3816410 MANITOBA LTD. O/A BERG'S  
TRAILERS & PREP**

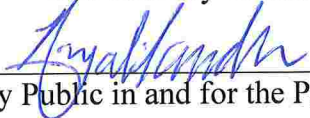
A handwritten signature in black ink, appearing to be 'J. Berg', written over a horizontal line.

Per:

Title: *President*

*I have authority to bind the corporation*

This is Exhibit "29" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023

  
\_\_\_\_\_  
A Notary Public in and for the Province of Manitoba

# Berg's Trailers & Prep and Paint

Supplier Aged Summary As at 01/31/2023

Name	Total	Current	31 to 45	46 to 60	61+
18 Wheeler Safety & Repair Shop	4,494.51	442.94	995.94	626.12	2,429.51
4 Wheel Country	1,523.99	0.00	0.00	0.00	1,523.99
6081488 MB Inc.	2,474.85	0.00	0.00	0.00	2,474.85
6448942 MB LTD.	10,286.45	0.00	0.00	0.00	10,286.45
Air Compressor Services	50.64	0.00	0.00	0.00	50.64
Air-Weigh	1,365.31	0.00	0.00	0.00	1,365.31
ALLSTREAM INC.	30.45	0.00	0.00	0.00	30.45
Amazon	813.39	0.00	0.00	0.00	813.39
Amazon.CA PRIME MEMBER	714.83	0.00	0.00	0.00	714.83
Ambassador Laser	1,198.40	392.00	0.00	313.60	492.80
Applifast	37,325.59	1,060.39	2,136.43	2,692.51	31,436.26
ASA Alloys	5,487.30	4,515.84	971.46	0.00	0.00
AuctionTime.com	1,303.84	0.00	0.00	0.00	1,303.84
Aztech Service & Testing	652.05	0.00	0.00	0.00	652.05
B. G. Auto Shop	2,050.99	734.71	62.88	341.71	911.69
Bailey Repair Service	9,369.86	0.00	-14,567.70	0.00	23,937.56
BBVA	1,504.00	0.00	0.00	0.00	1,504.00
Bell MTS Internet, a division of Bell Canada	1,135.36	0.00	0.00	0.00	1,135.36
Bell MTS Phone, a division of Bell Canada	729.85	0.00	118.72	0.00	611.13
Bend-It	-18.77	0.00	0.00	0.00	-18.77
Blow Out Fire & Safety	87.33	87.33	0.00	0.00	0.00
Blue Clay Colony	2,885.12	0.00	0.00	0.00	2,885.12
Border View Electric Ltd.	1,661.70	303.69	235.20	574.29	548.52
Borderland Manufacturing	45,990.89	40,225.72	21,963.36	0.00	-16,198.19
Borreguito Cimarron	359.00	0.00	0.00	0.00	359.00
Brunswick steel	6,820.65	2,132.21	0.00	81.56	4,606.88
Buyers Products Company	16,972.11	927.19	212.99	1,479.96	14,351.97
Canadian Cerebral Palsy	244.38	0.00	0.00	0.00	244.38
Canadian Lumber	-353.77	193.19	157.23	1,031.83	-1,736.02
Cascadia Metals	4,342.61	4,342.61	0.00	0.00	0.00
Centennial Farm Supply Ltd./ Petro Canada	155.28	0.00	0.00	0.00	155.28
Chariot Transport	-250.62	0.00	0.00	0.00	-250.62
Cloverdale Industrial Protective Coatings	66,321.79	16,445.78	9,253.80	7,734.96	32,887.25
CMAX	-169.53	0.00	0.00	0.00	-169.53
Cole International Inc.	1,536.65	379.57	509.74	647.34	0.00
Coop	17,197.23	0.00	6,439.99	1,227.77	9,529.47
Corpelli's Water	102.50	0.00	0.00	68.45	34.05
CWB National Leasing	226.65	0.00	0.00	0.00	226.65
D.A.Loewen Electric Ltd.	6,276.59	0.00	0.00	0.00	6,276.59
Day and Ross	-1,149.92	0.00	0.00	-1,029.54	-120.38
Dexter	272.09	0.00	0.00	0.00	272.09
DJ'S Family Restaurant	994.56	994.56	0.00	0.00	0.00

dl parts for trailers	1,093.90	815.28	0.00	0.00	278.62
Double S Agri Transport	1,356.00	0.00	0.00	0.00	1,356.00
DuLUX Paints	-1,312.88	-1,312.88	0.00	0.00	0.00
Duron Equipment Inc.	132.25	0.00	0.00	0.00	132.25
Dynaline	-106.47	0.00	0.00	0.00	-106.47
Eagleye Printing & Design	199.36	199.36	0.00	0.00	0.00
Eco Plus Sanitation and Cleaning Supplies	94.09	476.72	0.00	0.00	-382.63
ENCORE METALS	5,120.75	0.00	0.00	1,564.02	3,556.73
Essentra Components	619.92	0.00	0.00	0.00	619.92
Eveley International Corp	1,322.20	0.00	0.00	0.00	1,322.20
Extrudex Aluminum Corp.	3,582.10	0.00	0.00	0.00	3,582.10
Fairview Fittings	9,793.37	2,146.60	6,070.28	0.00	1,576.49
Fastenal Industrial Supplies	63.00	516.58	324.75	0.00	-778.33
Faucher Industries	-4,536.47	0.00	0.00	0.00	-4,536.47
Fehrway Feeds & Livestock Equipment	1,241.52	0.00	0.00	282.07	959.45
FinishMaster Canada Inc.	29,356.46	29,356.46	0.00	0.00	0.00
Fleet Brake	22,298.92	0.00	0.00	1,381.09	20,917.83
Fleetbrake	608.33	0.00	0.00	608.33	0.00
Fort Garry Industries	1,037.73	0.00	0.00	0.00	1,037.73
Gateway Resources	3.24	0.00	0.00	0.00	3.24
GenAg	-206.12	0.00	0.00	0.00	-206.12
General Metal	9,595.68	0.00	0.00	0.00	9,595.68
General Metal ( Albert Kornelson)	25,148.74	5,399.91	-1,906.58	110.21	21,545.20
George'S KITCHEN ICE CREAM	25.79	0.00	0.00	0.00	25.79
Gerry Bergen	-7.74	0.00	0.00	0.00	-7.74
Gingerwood's Purely Matural water	36.00	36.00	0.00	0.00	0.00
Gislason Targownik Peters	15,087.20	0.00	0.00	0.00	15,087.20
Glover International Trucks	-5,766.12	0.00	0.00	0.00	-5,766.12
Grainger Canada	625.17	625.17	0.00	0.00	0.00
Green Line Hose & Fittings	-82.32	0.00	0.00	0.00	-82.32
Green Valley Equipment	-136.26	0.00	0.00	0.00	-136.26
Heart and stroke Foundation	151.43	0.00	0.00	0.00	151.43
Heartland Security & Locksmith	22.60	0.00	0.00	0.00	22.60
HMFT Inc.	-428.42	0.00	-428.42	0.00	0.00
Hyva Corp USA	10,208.77	0.00	0.00	0.00	10,208.77
Impact Signs	1,653.75	551.25	0.00	551.25	551.25
Industrial Hardware	-1,146.40	-897.81	0.00	0.00	-248.59
Integrity Parts Plus	813.24	0.00	315.26	0.00	497.98
Ironmen Industries	156.44	0.00	0.00	0.00	156.44
JAMMY INCORPORATED.	209.58	0.00	0.00	0.00	209.58
Janzen Paint	59.71	0.00	0.00	0.00	59.71
Janzen's Paint & Decorating	66,462.47	4,496.19	2,474.93	2,399.19	57,092.16
Johan Friessen Friessen	-5,203.26	0.00	0.00	0.00	-5,203.26
John Deere Financial	61.05	1.49	0.00	0.00	59.56
John Peters	-7,000.01	-3,000.00	0.00	0.00	-4,000.01
John's PLG. HTG. Air Cond. LTD	179.20	0.00	0.00	0.00	179.20
Johnson Plastics	202.65	0.00	0.00	0.00	202.65

JPV Creative Promotions	7.96	0.00	0.00	0.00	7.96
JR Bearing & Power Ltd.	1,037.12	2,152.50	0.00	-1,115.38	0.00
JRT Metalworks Inc.	0.01	0.00	0.00	0.00	0.01
K&K Enterprise	10,355.64	1,175.55	0.00	0.00	9,180.09
Kal Tire	385.77	0.00	0.00	0.00	385.77
Kel's Custom TIG Welding	551.25	551.25	0.00	0.00	0.00
Keystone Pattern Inc	1,624.58	0.00	259.88	236.25	1,128.45
Kinedyne Canada Limited	2,651.67	0.00	0.00	0.00	2,651.67
Lakeshore Sales	1,818.63	0.00	0.00	0.00	1,818.63
Linde Gas	-130.62	-130.62	0.00	0.00	0.00
Lisa Bergen	-2,500.00	0.00	0.00	-2,500.00	0.00
Lode King	-1,845.23	0.00	0.00	0.00	-1,845.23
Lowry's Manufacturing. & Sales Ltd	-1,816.81	-1,526.31	0.00	0.00	-290.50
MacMor Ind ltd	1,279.69	231.11	94.52	0.00	954.06
Maintenance Welding Products	10,781.57	2,042.54	851.70	1,940.21	5,947.12
Manitoba Ag Days Inc.	2,100.00	0.00	0.00	0.00	2,100.00
Manitoba Hydro	35,833.15	0.00	0.00	22,436.94	13,396.21
Manitoba Hydro 6183227	1,763.71	0.00	1,763.74	0.00	-0.03
Manus Abrasive Systems Inc	-1,712.14	0.00	0.00	0.00	-1,712.14
Marinus Van Osch	1,125.00	1,125.00	0.00	0.00	0.00
Mark Elias	-254.32	-254.32	0.00	0.00	0.00
Marketbook	1,378.62	0.00	0.00	0.00	1,378.62
Maverick 105.1 FM	1,765.88	0.00	-1,838.85	0.00	3,604.73
McMaster-Carr	884.44	0.00	0.00	0.00	884.44
Michel's Industries	23,821.41	23,821.41	0.00	0.00	0.00
Mid Canada Fasteners & Tools	195.05	0.00	0.00	0.00	195.05
Mid-Canada Bearing Inc.	2,164.89	0.00	1,609.65	0.00	555.24
Minimizer	1,825.12	1,825.12	0.00	0.00	0.00
Minister of Finance	-7,484.23	0.00	0.00	0.00	-7,484.23
Murlin Holdings	1,750.00	0.00	0.00	0.00	1,750.00
New West Metals	-1,095.15	0.00	0.00	0.00	-1,095.15
Nordstrong Equipment Limited	640.50	0.00	0.00	0.00	640.50
Office Innovations Inc.	1,795.59	0.00	203.95	0.00	1,591.64
Pembina Sharpening Service	107.63	107.63	0.00	0.00	0.00
Pembina Thresherman's Museum	-250.00	0.00	-250.00	0.00	0.00
Pembina Valley Auto Service	819.00	0.00	0.00	0.00	819.00
Pembina Valley Canvas Ltd	1,252.65	0.00	0.00	0.00	1,252.65
Penner Interior Auto Detailing	983.86	0.00	0.00	0.00	983.86
Penner Waste Incorporated	3,602.39	1,148.28	0.00	0.00	2,454.11
Peter Friesen	-5,000.00	-5,000.00	0.00	0.00	0.00
Pitney Bowes	62.45	0.00	0.00	0.00	62.45
Pitney Works	-100.54	0.00	0.00	0.00	-100.54
Platinum Polishing	94.50	0.00	0.00	0.00	94.50
Platinum Truck Parts	-252.00	0.00	0.00	0.00	-252.00
Polysource Industries	19,596.32	0.00	0.00	0.00	19,596.32
Pressure Systems International (US)	-9,249.07	0.00	-9,249.07	0.00	0.00
Profound Engineering	690.00	0.00	0.00	0.00	690.00



Pro-Line Tool Supply	11,440.75	4,626.73	365.48	2,789.19	3,659.35
Purolator Freight	206.53	152.53	0.00	0.00	54.00
Purolator Inc.	5,955.27	0.00	0.00	0.00	5,955.27
RB Millwork	5,679.18	5,679.18	0.00	0.00	0.00
RCAP LEASING	1,828.06	0.00	0.00	497.58	1,330.48
Richland Transport Inc.US	-6,967.08	0.00	-6,954.04	0.00	-13.04
Ride-Air Controls Inc	10,177.74	1,282.85	0.00	0.00	8,894.89
Rite-Way Rentals	6,289.26	2,490.88	0.00	0.00	3,798.38
River City Express	4,161.89	965.91	0.00	0.00	3,195.98
Road Rig parts & service	116,490.57	19,868.94	5,006.20	486.75	91,128.68
Rocky Mountain Equipment	-61.60	0.00	-61.60	0.00	0.00
Schnell Industries Inc.	131.25	131.25	0.00	0.00	0.00
Scott Jarvis	-63.00	0.00	0.00	0.00	-63.00
Sealco Commercial Vehicle Products	12,010.93	11,416.99	0.00	-11,485.43	12,079.37
Secoya International Transport LLC.	13,449.16	0.00	0.00	6,933.16	6,516.00
SECURITRIM (Reflective Tape)	1,432.15	0.00	0.00	1,432.15	0.00
ShangKun Industrial Technology Co.,Ltd.	422.95	0.00	0.00	0.00	422.95
Silverline Industries LTD.	4,260.90	638.40	3,622.50	0.00	0.00
Simtax Consultants Inc.	78.75	0.00	0.00	0.00	78.75
Skeans	17.98	17.98	0.00	0.00	0.00
Smith Tire Ltd.	37,650.90	37,650.90	0.00	0.00	0.00
Soaring Eagle Grain Equipment Inc.	1,606.50	1,606.50	0.00	0.00	0.00
Southern Bouncerama	-504.00	0.00	0.00	0.00	-504.00
SP Plus Hector International Airport	78.00	0.00	0.00	0.00	78.00
Spaenaur	68.28	68.28	0.00	0.00	0.00
Speedy Glass	157.75	157.75	0.00	0.00	0.00
Spring WATERS HOTEL SU	868.00	0.00	0.00	0.00	868.00
Start-N-Charge	519.63	0.00	0.00	312.48	207.15
Steeltree	208.95	0.00	0.00	0.00	208.95
Summit motors	967.05	0.00	0.00	0.00	967.05
Sun Valley RV	44.10	0.00	0.00	0.00	44.10
Sun Valley Tire	23,264.54	0.00	11,991.00	0.00	11,273.54
The Western Producer Publications Limited	-10,479.26	0.00	0.00	0.00	-10,479.26
Thompson Dorfman Sweatman LLP	-5,000.00	0.00	-5,000.00	0.00	0.00
Traction Heavy Duty UAP Inc.	8,967.53	0.00	0.00	0.00	8,967.53
Trans East Trailers	12,690.38	4,715.00	0.00	3,815.58	4,159.80
Tri Form Poly	10,650.68	3,416.18	2,929.50	189.00	4,116.00
Triple L Excavating	912.99	763.36	0.00	149.63	0.00
Valley Fiber Ltd.	-1,479.60	191.68	0.00	187.92	-1,859.20
Valley Holsteing	-7,100.00	-1,700.00	-2,000.00	0.00	-3,400.00
Varsteel Ltd.	-785.40	0.00	0.00	0.00	-785.40
WESTLAND INSURANCE	3,097.29	0.00	0.00	0.00	3,097.29
Wink City Signs	847.00	0.00	0.00	0.00	847.00
Winkler & District Chamber Of Commerce	12.66	0.00	0.00	0.00	12.66
Winkler Canvas Ltd	2,300.01	0.00	0.00	-1,272.32	3,572.33
Winkler Forklift	1,635.20	0.00	0.00	0.00	1,635.20
Zach Bros Construction Ltd.	4,686.50	4,866.75	-466.78	0.00	286.53

**Total outstanding:**

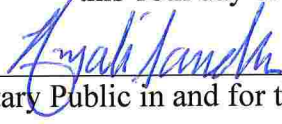
811,589.58 238,865.23 38,218.04 47,720.43 486,785.88

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**Generated On: 02/03/2023**

This is Exhibit "30" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023

  
A Notary Public in and for the Province of Manitoba

# Berg's Trailers & Prep and Paint

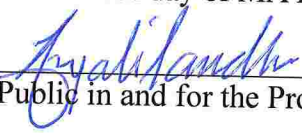
Customer Aged Summary As at 01/31/2023

Name	Total	Current	31 to 60	61 to 90	91+
Andrew Brown	-15,000.00	0.00	0.00	0.00	-15,000.00
Bar M Stock Farms Ltd	-0.02	0.00	0.00	0.00	-0.02
Blumengart Colony Farms Ltd.	11,307.14	0.00	0.00	0.00	11,307.14
Borderland Manufacturing	91.88	0.00	0.00	0.00	91.88
Bruce W. Brown Enterprises	-2,262.15	0.00	0.00	0.00	-2,262.15
Bruce W. Brown Enterprises Inc.	2,500.00	0.00	0.00	0.00	2,500.00
Canuck Trailers	20,081.25	0.00	20,081.25	0.00	0.00
Cash Customer	2,663.61	0.00	0.00	56.00	2,607.61
Clearview Consumers Coop	-787.50	0.00	0.00	0.00	-787.50
Cloverdale Paint	280.69	0.00	0.00	0.00	280.69
Corner Equipment	-4,956.00	0.00	0.00	0.00	-4,956.00
CWB National Leasing	-15,000.00	-15,000.00	0.00	0.00	0.00
Dan Hiebert (employee)	10.68	0.00	0.00	0.00	10.68
DDL Transport	72,743.75	0.00	0.00	0.00	72,743.75
Derrick Tyson	-599.20	0.00	0.00	0.00	-599.20
Diesel & Dust Farms LTD.	10,292.80	0.00	0.00	0.00	10,292.80
Double S Agri Transport	2,451.96	0.00	0.00	0.00	2,451.96
Dutton Transport Inc	168.00	0.00	0.00	0.00	168.00
Eddie Wiens	-10,292.80	0.00	0.00	0.00	-10,292.80
Enviro-Tech Powder Coating	1,084.65	1,084.65	0.00	0.00	0.00
FBR Farms Ltd	157.50	0.00	0.00	0.00	157.50
Folk Construction	-10,000.00	-10,000.00	0.00	0.00	0.00
General Metal Fabrication	3,899.70	550.20	0.00	0.00	3,349.50
Gerald Letexier	-1,000.00	0.00	0.00	0.00	-1,000.00
Glover International Trucks	1,251.13	0.00	118.65	0.00	1,132.48
Golden West Radio	661.50	0.00	0.00	0.00	661.50
Grant Recksiedler	22,724.80	0.00	0.00	0.00	22,724.80
High Reach Contracting Ltd	19,319.25	19,319.25	0.00	0.00	0.00
Innovative Doors	1.00	0.00	0.00	0.00	1.00
Integra Castings Inc.	39,071.73	33,724.09	5,347.64	0.00	0.00
J Wagner Farms Ltd	25,367.60	25,367.60	0.00	0.00	0.00
Jack Thiessen	173.25	0.00	0.00	0.00	173.25
Jacob Reimer	140.32	0.00	0.00	0.00	140.32
Jacob Remple	559.35	0.00	0.00	0.00	559.35
Janzen Pontiac	540.76	0.00	0.00	0.00	540.76
Jeff Heinrichs Staff	10.66	0.00	0.00	0.00	10.66
Jeremy Hoepfner	-5,400.00	-5,400.00	0.00	0.00	0.00
John Friessen	-3,800.00	0.00	0.00	0.00	-3,800.00
K&K Enterprise	82,397.70	82,397.70	0.00	0.00	0.00
K&K Trailer Sales	672.00	0.00	0.00	0.00	672.00
Kevin Peters ( Staff )	940.35	0.00	0.00	940.35	0.00
LAMAR TRAILERS INC	320.78	0.00	0.00	0.00	320.78

Landon Wieler	-8,500.00	-8,500.00	0.00	0.00	0.00
MacDon Industries	23,913.85	9,664.96	11,597.94	0.00	2,650.95
Marcel Sarrasin	1,719.22	0.00	0.00	0.00	1,719.22
Mario High Performance Diesel Inc.	250.00	0.00	0.00	0.00	250.00
Mark Knight	-5,000.00	-5,000.00	0.00	0.00	0.00
Matrix Metal Casting	8,665.24	0.00	8,665.24	0.00	0.00
Maxxim Industries	11,078.40	0.00	0.00	0.00	11,078.40
Maxxim Industries ( US Dollars )	3,365.02	0.00	0.00	0.00	3,365.02
Metalium Industries	5,761.52	3,049.37	0.00	0.00	2,712.15
Miami Colony	492.81	492.81	0.00	0.00	0.00
Monarch Industries	1,193.75	0.00	0.00	0.00	1,193.75
One Two Tree Service	444.92	0.00	0.00	0.00	444.92
Puma Trailers	9,964.17	0.00	0.00	0.00	9,964.17
Quade Transport Ltd	62,200.00	0.00	0.00	0.00	62,200.00
Rick Bresky Trucking Ltd.	-264.79	0.00	0.00	0.00	-264.79
Schwarz Farms Ltd	-16,000.00	-16,000.00	0.00	0.00	0.00
SGL Insurance	-500.00	0.00	0.00	0.00	-500.00
Shaun Aarden	560.82	0.00	0.00	0.00	560.82
Shaun Gelsing	895.65	0.00	0.00	0.00	895.65
Skinner Farms	1,260.00	0.00	0.00	0.00	1,260.00
Sun Valley Tire	942.38	0.00	0.00	0.00	942.38
Sunny Dairy	366.81	0.00	0.00	0.00	366.81
Tandem Equipment Finance Inc.	88,206.00	0.00	0.00	88,206.00	0.00
TerraCab	1,869.00	0.00	0.00	0.00	1,869.00
TOC Rental	-10,000.00	0.00	0.00	0.00	-10,000.00
Veqor S.A. de C.V.	134,729.96	2,832.40	0.00	0.00	131,897.56
VoltFlex	669.38	0.00	0.00	0.00	669.38
Western Producer	14,700.00	0.00	0.00	0.00	14,700.00
Woodbay Consulting Group Ltd	3,570.00	3,570.00	0.00	0.00	0.00
<b>Total outstanding:</b>	<b>589,342.23</b>	<b>122,153.03</b>	<b>45,810.72</b>	<b>89,202.35</b>	<b>332,176.13</b>

Generated On: 02/03/2023

This is Exhibit "31" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023

  
A Notary Public in and for the Province of Manitoba

# Bergs Equipment List

## WELDING:

Estimated Value:

### Welders:

Miller Syncrowave 250 DX	\$4,500
Lincoln DC 400	\$4,500
Miller Delta 302	\$4,500
Miller CP 302	\$4,500
Miller Matic 252	\$2,500
Miller Matic 252	\$2,500
Miller Matic 252	\$2,500
Miller Matic 252	\$2,500
Miller Matic 252	\$2,500
Miller Matic 252	\$2,500
Miller Matic 250	\$2,500

Hydraulic Press: \$2,000

### Jigs:

Grain Trailer Side Wall Jig	\$10,000
Main Body Tacking Jig	\$10,000
Hopper and Chassies Jig	\$10,000

### Work Bench:

Bench with Vices	\$1,250
Bench with Vices	\$1,250

### Drill Presses:

Empire Geared Head Milling and Drilling Machine- Z5030	\$4,500
Clarke Metalworker Model # BT100	\$300

Stand Up Grinder: \$500

Band Saws:

Bomar 410-260 DG \$10,000

Jet 16" \$2,000

Parts Compartments: \$7,000

Tool Box and Various Tools: \$12,000

Blasting:

Blasting Pod \$3,500

Blasting Pod \$3,500

Blasting Bin \$12,000

Tank \$6,000

Tank \$6,000

TOTAL: \$137,300



# Bergs Equipment List

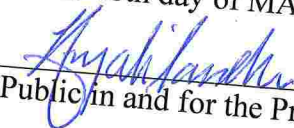
## LARGE INDUSTRIAL PAINT SHOP:

52ft x 14ft Booth	\$125,000
Graco Bulldog	\$2,500
Graco Bulldog	\$2,500
Graco ProMix 2KE	\$18,000
Graco 395 Airles	\$1,000
Graco Triton	\$1,500
Graco 37:1 Pump	\$3,500
3M Sander	\$200
3M Sander	\$200
3M Sander	\$200
3M Sander	\$200
Maktia Polisher	\$400
Snap On Eraser	\$300
Ultra Pro Grinder	\$200
Ultra Pro Grinder	\$200
IR Grinder	\$200
Ultra Pro Block Sander	\$100
Flexzilla 1/2" Inpack	\$200
TOTAL:	\$156,400

## CHIP GUARD:

Booth	
Polar Chip Guard Machine ULAD 600	\$25,000
Graco 2:1 Transfer Pump	\$1,500
Graco 2:1 Transfer Pump	\$1,500
DEWALT Miter Saw	\$200
Milwaukee 1/4" Inpack	\$100
Milwaukee Flash Light	\$100
Milwaukee Polisher	\$100
Stanley Socket Set	\$100
Graco Fusion Gun	\$1,800
Graco Fusion Gun	\$1,800
Probler Gun	\$2,500
TOTAL:	\$34,700

This is Exhibit "32" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023



A Notary Public in and for the Province of Manitoba

BILLING STATEMENT  
Contract 05 08 SOV78967087

BERG'S PREP 'N' PAINT  
1 550 GEORGE AVE

WINKLER MB  
R6W0J4

MIG INSURANCE GROUP LTD.

412 SASKATCHEWAN AVENUE WEST  
PORTAGE LA PRAIRIE, MB  
R1N 0M4

Phone: 204-857-8100

The amount of your insurance policy number SOV78967087 effective 2022-02-12 (year-month-day), is as follows:

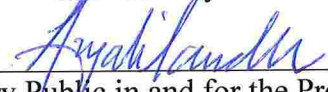
Premium	:	\$	52,629.00
Sales tax	:	\$	.00
Service charge ( 3% of premium)	:	\$	1,578.87
Balance payable	:	\$	54,207.87

In accordance with the Direct Pay Payment Plan, you have selected, we will make a first withdrawal in the amount of \$ 4,517.35 on 2022-02-21 (year-month-day). Thereafter, the amount of \$ 4,517.32 will be withdrawn on the 12 of each month (or on the day after if necessary) for the next 11 months.

The withdrawal(s) will be made from the account specified on the authorization form you previously submitted.

NOTE: It is important to notify your broker of any change concerning the payment of your premium.

This is Exhibit "33" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023

  
A Notary Public in and for the Province of Manitoba

**From:** [Peter Bergen](#)  
**To:** [KUMAR, MATHAN](#)  
**Subject:** Re: Excess  
**Date:** Friday, April 21, 2023 10:12:29 AM  
**Attachments:** [image001.png](#)  
[image001.png](#)

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**External Email:** Use caution with links and attachments. | **Courriel externe :** Faites preuve de prudence en ce qui a trait aux liens et aux pièces jointes.

Matham

We'll have a deposit here within a 1/2 hour so also I talk to Art my Lawyer I'm coming into Winnipeg on Monday and we're also gonna meet with the potential of buyer.

Peter

On Fri, Apr 21, 2023, 8:27 a.m. KUMAR, MATHAN <[MATHAN.KUMAR@bmo.com](mailto:MATHAN.KUMAR@bmo.com)> wrote:

Hi Peter,

Your account is in excess again. Please cover prior to noon today otherwise, we will have to return items.

1904 USD TFR 4787-613 40,042.20FX 182,733.86DR

AT1.33474 HC \$0.00

30000.00

2004 DE 12,869.66CD

40,758.41DS FIRMAFOREIGNEXC BUS/ENT 210,622.61DR

2104 INTERAC ETRNSFR RECVD 1,000.00CW **209,622.61DR**

ANNA WOLF {

Thanks

Mathan Kumar

Account Manager

BMO Financial Group

S.A.M.U., Western Canada, Winnipeg Main Branch, 201 Portage Ave 16<sup>th</sup> Floor (TR003)

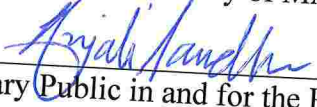
Winnipeg, MB. R3B 3K6| Tel: (204)985-2432| Fax: (204)985-2362|

Email: [mathan.kumar@bmo.com](mailto:mathan.kumar@bmo.com)



This email and its attachments are confidential. Any unauthorized use or disclosure is prohibited. If you receive this email in error, please notify me by reply email and permanently delete the original without making any copies or disclosing its contents

This is Exhibit "34" referred to in the  
affidavit of  
MATHAN KUMAR  
sworn (or affirmed) before me,  
this 18th day of MAY, 2023

  
A Notary Public in and for the Province of Manitoba

**From:** [KUMAR, MATHAN](#)  
**To:** [Peter Bergen](#)  
**Subject:** RE: Account  
**Date:** Wednesday, April 19, 2023 10:39:00 AM  
**Attachments:** [image001.png](#)

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Hi Peter,

I will wait until noon before returning any items. I see that the account is \$7685.86 over the limit and we will be required to return an item. I see a cheque for \$25,000 that would be returned should a deposit not occur by noon.

As discussed previously, we cannot allow this behavior to continue and has happened quite a bit since coming into our special loans department.

Thanks

Mathan Kumar

Account Manager

BMO Financial Group

S.A.M.U., Western Canada, Winnipeg Main Branch, 201 Portage Ave 16<sup>th</sup> Floor (TR003)

Winnipeg, MB. R3B 3K6| Tel: (204)985-2432| Fax: (204)985-2362|

Email: [mathan.kumar@bmo.com](mailto:mathan.kumar@bmo.com)



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**From:** Peter Bergen <[peter@bergtrailers.com](mailto:peter@bergtrailers.com)>  
**Sent:** April 19, 2023 7:55 AM  
**To:** KUMAR, MATHAN <[MATHAN.KUMAR@bmo.com](mailto:MATHAN.KUMAR@bmo.com)>  
**Subject:** Account

**External Email:** Use caution with links and attachments. | **Courriel externe :** Faites preuve de prudence en ce qui a trait aux liens et aux pièces jointes.

Mathan

Can you hold the account for day looks like we are by about \$7000 over, their \$100000.00 wire delayed on us.

Peter