

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

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

**ABINGDON MEAT PACKERS LIMITED and
DESIMONE INVESTMENTS LIMITED**

Respondents

**SECOND REPORT OF ALBERT GELMAN INC.
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER**

Table of Contents

I. Introduction and Background	5
II. Terms of Reference.....	6
III. Purpose of This Report.....	7
IV. Actions and Activities of the Receiver	8
V. Sales Process.....	14
VI. Receiver's Confidential Report.....	15
VII. Recommendation in Relation to the Purchase Agreement.....	16
VIII. Secured Creditors – Personal Property.....	16
IX. Secured Creditors – Real Property	20
X. Funding of the Receivership	21
XI. Accounts of the Receiver.....	21
XII. Receiver's Proposed Distribution	22
XIII. Receiver's Request for Approval	23

000042

- Appendix A** - Order of the Honourable Justice Miller dated May 26, 2015 - Appointing Order
- Appendix B** - First Report of the Receiver dated June 29, 2015, without appendices
- Appendix C** - Order of the Honourable Justice Rady dated July 21, 2015 – Sales Process Order
- Appendix D** - Receiver's Interim Statement of Receipts and Disbursements
- Appendix E** - Receiver's email to the Principals dated March 26, 2015
- Appendix F** - Site Plan Agreement
- Appendix G** - Letters between the Receiver and Mr. McGaffey dated September 8, 2015
- Appendix H** - Letter to Mr. McGaffey from the Receiver's counsel dated September 10, 2015
- Appendix I** - Letters to and from Simpson Wigle LLP
- Appendix J** - Advertisement of the sale of the Premises and Assets in the Globe & Mail dated July 30, 2015
- Appendix K** - Teaser document mailed to 260 federally and provincially (Ontario) licenced meat producers
- Appendix L** - AMPL PPSA search
- Appendix M** - Email from Penske
- Appendix N** - The DIL PPSA
- Appendix O** - Parcel register for the Premises dated April 16, 2015

000043

Appendix P - Legal Opinion from the Receiver's counsel

Appendix Q - Receiver's Certificate

Appendix R - The Receiver's Fee Affidavit

Appendix S - The Fee Affidavit of the Receiver's Counsel

000044

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(Dated January 12, 2016)

I. INTRODUCTION AND BACKGROUND

1. This second report (the "**Second Report**") is filed by Albert Gelman Inc. ("**AGI**") in its capacity as receiver (the "**Receiver**") appointed pursuant to the Order of the Honourable Justice Miller of the Ontario Superior Court of Justice, in Bankruptcy and Insolvency, dated May 26, 2015 (the "**Appointment Order**") over all of the assets, undertakings and properties (the "**Property**") of Abingdon Meat Packers Limited ("**AMPL**") and DeSimone Investments Limited ("**DIL**") (collectively the "**Debtors**"). The receivership application was commenced by the Debtors' senior secured creditor, the Bank of Montreal ("**BMO**"). A copy of the Appointment Order is attached hereto at **Appendix "A"**.

2. AMPL is a corporation incorporated under the laws of the province of Ontario. Lucio DeSimone, Joseph DeSimone and Antonio DeSimone (collectively, the

"Principals") are each officers and directors of AMPL. There are no other officers or directors of AMPL.

3. DIL is a corporation incorporated under the laws of the province of Ontario. The Principals are each officers and directors of DIL as well. There are no other officers or directors of DIL.

4. AMPL carried on business as an abattoir and processed lamb and veal from a building located at 1607 Abingdon Road, Caistor Centre, Ontario which is owned by DIL. Caistor Centre is located between Hamilton and Welland, Ontario (the **"Premises"**). The land size of the Premises is approximately 69 acres. The legal description of the Premises is described below.

5. AMPL ceased carrying on business at the end of February, 2015 and the facility has been idle since that time.

6. AMPL is a bankrupt and Deloitte Restructuring Inc. is the named trustee in bankruptcy.

7. Further background can be found in the Receiver's first report to the Court dated June 29, 2015 (the **"First Report"**) a copy of which, without appendices, is attached hereto as **Appendix "B"**.

8. On July 21, 2015, on motion of the Receiver, the Honourable Justice Rady of the Ontario Superior Court of Justice in Bankruptcy and Insolvency granted an order (the **"Sales Process Order"**) approving, among other things, the Receiver's intended process to market and sell the property of the Debtors (the **"Sales Process"**). A copy of the Sales Process Order is attached hereto as **Appendix "C"**.

II. TERMS OF REFERENCE

9. Any terms not otherwise defined in this Second Report shall have the meanings ascribed to them in the First Report.

000046

III. PURPOSE OF THIS REPORT

10. The purpose of this Second Report is to seek an order:

- a. approving this Second Report and the Confidential Second Report of the Receiver dated January 12, 2016 (the "**Confidential Second Report**") as well as the actions and activities of the Receiver described herein, including the Receiver's interim statement of receipts and disbursements as at January 11, 2016 (the "**Interim SRD**");
- b. to seek approval and authorization for the Receiver to enter into and carry out the terms of the sale transaction (the "**Transaction**") contemplated by an Agreement of Purchase and Sale executed on December 23, 2015 together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, (collectively, the "**Purchase Agreement**") between the Receiver and the Purchaser (defined in the Confidential Second Report) and vesting in the Purchaser, the Debtors right, title and interest in and to the following:
 - i. the property having a municipal address of 1607 Abingdon Road, Caistor Centre, Ontario, and a legal description being PT LT 15 CON 4 CAISTOR PTS 1, 2, 3, 4, 30R 876 Except PTS 1, 2, 3, 30R4290 & PT 1, 30 R7032; ST CS9886; WEST LINCOLN, PIN 46065-0008 (LT) (the "**Premises**"); and,
 - ii. various chattels, fixtures, equipment and vehicles as listed in the Purchase Agreement (the "**Assets**").
- c. approving an interim distribution of the sales proceeds from the Transaction as further detailed herein;
- d. sealing the Confidential Second Report until the Transaction has been completed and the funds are received by the Receiver. The Confidential

000047

Second Report contains, among other things, the Purchase Agreement, the appraisal of the Premises and the appraisals of the Assets;

- e. approving the fees and disbursements of the Receiver for the period from June 27, 2015 to December 31, 2015;
- f. approving the fees and disbursements of the Receiver's counsel, Harrison Pensa LLP, for the period from June 23, 2015 to January 6, 2016; and,
- g. providing for such further and other relief as this Honourable Court may deem just.

IV. ACTIONS AND ACTIVITIES OF THE RECEIVER

11. Attached as **Appendix "D"** is the Receiver's SRD. The actions and activities of the Receiver since the date of its First Report, and as reflected in the Receiver's SRD are set out below.

Maintenance of the Premises

12. As reported in its First Report, on March 26, 2015 the Receiver arrived at an agreement with the Principals to regularly attend at the Premises, attend to ongoing maintenance issues, maintain the refrigeration system, boiler system and water management systems, conduct required inspection and monitoring of the sewage works ponds and check the building for security. The Principals were to report regularly by email to the Receiver on all of these matters. A copy of the Receiver's email to the Principals advising of their duties to monitor the plant is attached hereto as **Appendix "E"**.

13. The Principals were advised regularly by way of email that their attendance at the Premises was also required pursuant to the terms of the insurance policy over the Premises and the Assets obtained by the Receiver.

14. Since the date of the First Report, the Principals reported by way of email to the Receiver as to the status of the Premises on the following dates: June 29, July 3, July 5, July 19, August 22, August 23, August 25, August 30 and September 4, 2015.

15. On September 18, 2015, the Receiver's counsel advised Mr. Bart Sarsh of Simpson Wigne LLP, counsel for the Debtors and the Principals, that the Receiver had changed the locks to the Premises and that it had made arrangements with a third party contractor to do weekly monitoring of the ponds located on the Premises. The Receiver's reasoning for changing the locks and engaging a third party was due to the fact that the Principals had become much less responsive to the Receiver's requests to attend at the Premises on a regular basis. The Receiver required that the Premises be attended on a regular basis for security reasons as well as for insurance purposes. The Receiver's counsel also advised Mr. Sarsh that if the Principals had any valid reason to require access to Premises, the Receiver would make arrangements to meet with them on reasonable notice.

16. The Receiver notes that on several occasions the Principals advised the Receiver that the plant needed to be cleaned and/or the grass at the Premises needed to be cut and that the Principals wished to have Mr. John Whittaker, a former employee of AMPL, clean the plant and his son, Mr. Brian Whittaker, cut the grass. On each occasion the Receiver advised the Principals that they were authorized to make arrangements with John and Brian Whittaker to perform the aforementioned tasks and that the Receiver would pay them directly. The Receiver agreed with each of the requests of the Principals with respect to the maintenance of the plant and Premises.

Purchase of Tractor

17. DIS owned a 2012 Case IH 110 Pro Tractor (VIN: ZCBE03474) and Loader (Serial No.: YCWLH5136) (collectively, the "Tractor"). Prior to the appointment of the Receiver, DIS entered into a financing agreement with CNH Capital Canada Ltd. ("CNH") to purchase the Tractor. CNH advised the Receiver that there was a balance of \$26,305.85 plus accruing interest owing to CNH in respect of the loan. Based on the Receiver's review of the appraised value of the Tractor, it concluded that there was

equity in the Tractor and that it was commercially reasonable for the Receiver to pay the CNH loan in full so that the Tractor was no longer encumbered. The appraisals of the equipment, including the Tractor are included as an appendix to the Confidential Second Report.

18. On August 19, 2015 CNH provided the Receiver with an undertaking advising that in consideration of payment by the Receiver in the amount of \$26,305.85 CNH would agree to release and discharge all interest in the Tractor (the "**CNH Undertaking**"). Upon obtaining the CNH Undertaking the Receiver issued payment to CNH. The Tractor is an included Asset in the Transaction.

Waste Water Management System

19. The Receiver has continued to retain Pollutech Environmental Limited ("**Pollutech**") to assist the Receiver with maintenance and compliance matters relating to the ponds located on the Premises.

20. The Receiver has continued to attend monthly conference calls with the Ministry of Environment and Climate Change ("**MOECC**"). Pollutech also attended these meetings acting as the Receiver's representative. Up until August 27, 2015, Luke DeSimone was also attending these monthly meetings. Luke DeSimone did not attend at any conference call meetings subsequent to this date as his attendance was no longer required nor requested by the Receiver.

Canada Revenue Agency ("**CRA**") Filings

21. The Receiver opened new business accounts for both DIS and AMPL and continues to file HST returns on a monthly basis. The Receiver received written confirmation from the CRA that the business accounts existing prior to the Receivership administration for both AMPL and DIS have been closed/cancelled. The Receiver has filed for and recovered refunds of HST totalling \$21,355.62 to date that arose on the input tax credits incurred during the receivership administration.

000050

Site Plan Agreement

22. On August 2, 2015 the Receiver received correspondence from the Township of West Lincoln (the "**Township**") requesting details regarding the Receiver's intention to finish the outstanding obligations pursuant to a site plan agreement entered into between DIS, the Township of West Lincoln and Farm Credit Canada in 2004 (the "**Site Plan Agreement**"). A copy of the Site Plan Agreement is attached hereto as **Appendix "F"**.

23. The Township confirmed that it held a deposit of approximately \$89,000 pursuant to the Site Plan Agreement (the "**Site Plan Deposit**").

24. On September 22, 2015, the Township provided the Receiver's counsel with a listing of the items that needed to be addressed by the Receiver in order for the Township to release the Site Plan Deposit.

25. The Receiver engaged Norrie Engineering Inc. ("**Norrie**") an engineering consulting firm, and the original designer of the Premises site plan, to determine what items remain outstanding in relation to the Site Plan Agreement and the estimated cost to complete same.

26. Norrie's report to the Receiver is dated November 30, 2015 and is attached to the Confidential Second Report.

Correspondence with Patrick McGaffey

27. As noted in its First Report, the Receiver received a letter from Mr. Patrick McGaffey on June 15, 2015 in his alleged capacity as the new President and CEO of the Debtors (the "**June 15 Letter**"). The Receiver responded to the June 15 Letter on June 18, 2015 (the "**June 18 Letter**"). As of the date of the First Report the Receiver had not received a response from Mr. McGaffey in respect of its June 18 Letter

28. On September 8, 2015 the Receiver received a second letter from Mr. McGaffey advising, among other things, that Mr. McGaffey was taking the steps to investigate all parties in "this transaction as to their role's and negligence in this matter unless [he is]

000051

brought up to speed on all transactions to date..." and that the Receiver was "... not protecting the value of the assets..." (the "**September 8 Letter**"). A copy of the September 8, 2015 is attached hereto as **Appendix "G"**.

29. The Receiver's counsel responded to September 8 Letter on September 10, 2015 advising that the Receiver continued to administer the Receivership in accordance with the Appointment Order (the "**September 10 Letter**"). Attached hereto as **Appendix "H** is a copy of the September 10 Letter.

30. As of the date of this Second Report the Receiver has not received a response from Mr. McGaffey in respect of its September 10 Letter, nor any other communication from Mr. McGaffey.

Proposed Meeting with Debtors and Mr. McGaffey

31. On July 10, 2015 the Receiver received an email from Luke DeSimone indicating that he would like to "...sit down for a face to face meeting..." with the Receiver, his lawyer and Mr. McGaffey. The Receiver responded that day advising that it would "...coordinate a meeting at [its] Mississauga office, or, if lawyers are to attend, perhaps otherwise [it] can meet at Bart Sarsh's office."

32. As of the date of this Second Report the Receiver has not received a response from Luke DeSimone as to a meeting.

Correspondence with Debtor's Counsel

33. As noted in its First Report, the Receiver received letters from Simpson Wigle LLP on May 26 and June 8, 2015 which the Receiver's counsel responded to on May 28 and June 12, 2015, respectively. Copies of the correspondence (redacted as appropriate) are attached at **Appendix "I"** to this report.

Other Actions of the Receiver

34. As further reported on below, O'Neil's Farm Equipment (1971) Ltd. ("**O'Neils**") holds a valid non-possessory lien under the *Repairs Storage Liens Act* ("**RSLA**") as

against the Tractor and a valid possessory lien under the RSLA as against a John Deer Mower.

35. The Receiver has recognized O'Neils' liens as valid for the following sums:

- a. Tractor: \$4,138.90; and,
- b. John Deer Mower: \$3,573.47.

36. The Receiver has agreed with O'Neils that O'Neils will sell the John Deere Mower on an "As Is Where Is" basis on behalf of the Receiver with the proceeds applied firstly to pay the HST from the sale, then to the RSLA lien on the John Deer Mower, then the remaining funds, if any, are to be split 75% to the Receiver and 25% to O'Neils.

37. AMPL was the owner of four (4) stun guns used in its operations. It is the Receiver's conclusion that these guns have limited or no value. Antonio (Tony) DeSimone has agreed to take possession of these stun guns, subject to AMPL, DIL and certain individuals who are guarantors of the obligations due to BMO releasing the Receiver from any claims, losses, demands in relation to such release and agreement that such release by the Receiver is reasonable and provident.

38. Due to the fact that the plant is not currently being heated, the Receiver was required to decommission and winterize the plant prior to the cold winter months in order to prevent damage which would result when temperatures drop below freezing.

39. The Receiver received a notice in the mail from the Co-operators Life Insurance Company ("**Co-operators**") dated September 28, 2015 indicating that DIL was the owner and beneficiary of a whole life insurance policy (the "**Policy**") which insured the life of Bice (Barbara) DeSimone ("**Insured**"). The Insured is the mother of the Principals. The insured benefit under the Policy is \$400,000, payable upon the death of the Insured. The cash surrender value of the Policy was \$29,024 as at September 27, 2015. The premiums are \$1,617.65 per month and are "level" - meaning the premiums do not increase during the life of the Insured. The ongoing premiums are currently being paid by deduction from the cash surrender value.

000053

40. The Receiver had no previous knowledge of the Policy. Co-operators have indicated to the Receiver that they will not provide any information in respect of the Policy to the Receiver until a form of consent to release information is signed by the Principals and the Insured. Mr. Sarsh advised the Receiver that the Principals and the Insured will provide their consent. As of the date of this report, however, the required consents have not been provided to the Receiver. Accordingly, the Receiver is currently not able to obtain any additional documentation with respect to the Policy.

V. SALES PROCESS

41. As noted above, the Receiver's proposed Sales Process was approved by the Court in the Sales Process Order (the "**Sales Process**"). Pursuant to the Sales Process offers were to be submitted to the Receiver on or before 3:00 p.m. EST on September 17, 2015 ("**Bid Deadline**").

42. Since the commencement of the Sales Process, the Receiver has:

- a. Advertised the sale of the Premises and Assets in the July 30, 2015 national edition of the Globe & Mail as well as the August 10, 2015 national edition of the NY Times. Copies of the Globe & Mail and New York Times advertisements are attached hereto as **Appendix "J"**.
- b. Directly contacted all parties who expressed an interest in the facility prior to the start of the Sales Process.
- c. Prepared and mailed a "Teaser" document to approximately 260 federally and provincially (Ontario) licenced meat producers. A copy of the "Teaser" document is attached hereto as **Appendix "K"**.
- d. Prepared a confidentiality and non-disclosure agreement ("**NDA**") as well as a confidential information memorandum ("**CIM**"). The CIM included the terms and conditions of sale, standard form of offer and agreement of purchase and sale. Copies of the NDA and CIM are attached as appendices to the Confidential Second Report.

- e. Distributed 20 NDA's to those prospective purchasers who contacted the Receiver to express an interest in obtaining additional information in respect of the assets for sale;
- f. Distributed 12 CIM's to those prospective purchasers who executed an NDA; and,
- g. Co-ordinated walk-throughs of the Premises with five (5) prospective purchasers of the Premises and/or Assets.

43. On or prior to the expiry of the Bid Deadline, the Receiver received five (5) offers for the purchase of the Assets and/or Premises.

44. Following the expiry of the Bid Deadline, the Receiver considered each of the offers. The Receiver's activities in considering the offers and ultimately selecting an offer are outlined in the Confidential Second Report.

VI. RECEIVERS CONFIDENTIAL REPORT

45. The Receiver has prepared the Confidential Second Report which includes, among other things, the Purchase Agreement as well as the two appraisals for each of the Assets and Premises.

46. The Receiver is seeking an Order sealing the Confidential Second Report from the general public until the closing of the Transaction or further Court order, as it contains sensitive commercial information about the value of the Assets and Premises, the release of which could negatively affect future marketing efforts should the Transaction not close.

47. The Receiver intends to provide a copy of the Confidential Second Report to Simpson Wigle LLP as counsel to the Debtors and the Principals and to Yachetti, Lanza & Restivo LLP as counsel to Bice DeSimone and the Estate of Gaetano DeSimone (guarantors of loans made by BMO) upon receipt of an executed confidentiality undertaking from all parties.

000055

48. For the reasons outlined in the Confidential Second Report, the Receiver is of the opinion that the proposed sale of the Assets and Premises represents the highest and best realization and is fair and reasonable to all stakeholders.

VII. RECOMMENDATION IN RELATION TO THE PURCHASE AGREEMENT

49. The Receiver recommends that this honourable Court authorize and approve the Receiver's completion of the Transaction contemplated by the Purchase Agreement and grant a vesting order in favour of the Purchaser for the following reasons:

- a) The Sales Process, as approved by the Court, was followed by the Receiver;
- b) as expanded upon in the Confidential Second Report, in the Receiver's opinion the Transaction represents the highest and best realization for the Assets and Premises under the circumstances;
- c) BMO, as the first ranking secured creditor of the Debtors, has consented to the sale notwithstanding it will result in a substantial shortfall on their claims; and,
- d) it is the Receiver's opinion that approval of the Purchase Agreement is fair and reasonable.

VIII. SECURED CREDITORS – PERSONAL PROPERTY

50. The Receiver conducted a search pursuant to the *Personal Property and Security Act* ("PPSA") in respect of both AMPL and DIL as at January 8, 2016 respectively.

51. The PPSA search for AMPL revealed the following registrations:

000056

Date of Registration	Registrant Name	Collateral Classification
October 17, 2006	Bank of Montreal	Inventory, equipment, accounts, other, motor vehicle
October 18, 2006	Bank of Montreal	Inventory, equipment, accounts, other, motor vehicle
November 2, 2012	Penske Truck Leasing Canada Inc.	Equipment, other and motor vehicle (specifically, two 2013 Freightline M2's)
November 26, 2012	Penske Truck Leasing Canada Inc.	Equipment, other and motor vehicle (specifically, 2013 Freightline M2)
October 10, 2013	GE Canada Equipment Financing G.P.	Equipment (specifically, 2013 Meat Processing Machine)

52. The AMPL search results confirm that, in addition to the registrations by BMO, registrations were made by Penske Truck Leasing Canada Inc. ("**Penske**") on November 2, 2015 and November 26, 2015 against several 2013 Freightliner M2's as well as by GE Canada Equipment Financing G.P. ("**GE Canada**") on October 10, 2013 against a 2013 meat processing machine (lamb conveyor equipment).

53. A copy of the AMPL PPSA search is attached hereto as **Appendix "L"**.

54. The Receiver contacted Penske who advised by way of email that during 2014 all the vehicles were returned to Penske by AMPL and that Penske was not a creditor of AMPL. Attached hereto as **Appendix "M"** is a copy of the email from Penske.

55. The Receiver contacted GE Canada who confirmed that they had financed the purchase of a 2013 meat processing machine (certain lamb conveyor equipment) and that AMPL remains indebted in the amount of \$35,316.45 as of June 30, 2015 (the "**GE Equipment**"). The GE Equipment was listed as an excluded asset in the Sales Process; however, all prospective purchasers were advised by the Receiver that if they desired to make an offer on the GE Equipment, the Receiver would forward the offer to

000057

GE for consideration. No offer was made for the GE Equipment nor was the GE Equipment included with the Assets sold to the Purchaser.

56. The PPSA search for DIL revealed the following registrations:

Date of Registration	Registrant Name	Collateral Classification
October 17, 2006	Bank of Montreal	Inventory, equipment, accounts, other, motor vehicle
October 18, 2006	Bank of Montreal	Inventory, equipment, accounts, other, motor vehicle
October 26, 2006	Bank of Montreal	Inventory, equipment, accounts, other, motor vehicle
March 1, 2013	CNH Capital Canada Ltd.	Equipment, motor vehicles (specifically, 2012 CaseIH 110 Pro and Loader)
November 17, 2014	O'Neil's Farm Equipment (1971) Ltd.	Equipment
November 17, 2014	O'Neil's Farm Equipment (1971) Ltd.	Equipment

57. The DIL search results confirm that, in addition to the registrations by BMO, registrations were made by CNH on March 1, 2013 against the Tractor as well as O'Neils on November 17, 2014 against various equipment.

58. A copy of the DIL PPSA search is attached hereto as Appendix "N".

59. As noted above, in August 2015 the Receiver paid the total outstanding amount owing to CNH in respect the Tractor, at which time CNH agreed to release and discharge their interest in Tractor.

60. The Receiver contacted O'Neil's who advised that they registered liens against both the Tractor and as against a John Deere Mower. The Receiver's counsel has reviewed the O'Neils' liens and has concluded that the liens are enforceable RSLA liens.

61. As provided for in the First Report, Harrison Pensa LLP has provided the Receiver with a legal opinion which affirms the validity and enforceability (subject to

000038

certain standard assumptions and qualifications) of BMO's security over the Debtors' personal property (the "**Legal Opinion**").

62. It is the Receiver's conclusion that the BMO security ranks in priority to all other secured creditors against AMPL's personal property save and except for a Purchase Money Security Interest in favour of GE over the GE Equipment and subject to the priority payables and charges under the Appointment Order.

63. It is the Receiver's conclusion that the BMO security ranks in priority to all other secured creditors against DIL's personal property save and except for a Purchase Money Security Interest in favour of CNH over the Tractor, the O'Neils liens under the RSLA and subject to the priority payable and charges under the Appointment Order.

Canada Revenue Agency (the "**CRA**") – HST and Source Deductions

64. CRA has filed a property claim with the Receiver indicating that DIL is in arrears of HST in the amount of \$8,775.00. The claim of CRA for unpaid HST ranks in priority to all other secured creditors with a security interest in the personal property assets of DIL.

65. CRA has filed a property claim with the Receiver indicating that AMPL is in arrears of its employee source deductions. The amount of this property claim is \$146,210.00 which ranks in priority to all other secured creditors with a security interest in the personal assets of AMPL.

Wage Earner Protection Program (the "**WEPP**")

66. The Receiver reported to the Court in its First Report that the Trustee in Bankruptcy of AMPL (the "**Trustee**") was administering the WEPP.

67. The Trustee has confirmed with the Receiver that there is an amount of \$5,002.24 secured against the current assets of AMPL pursuant to subsection 81.4 of the *Bankruptcy and Insolvency Act*.

000059

68. The Receiver did not realize upon any current assets of AMPL and, therefore, the secured claim pursuant to subsection 81.4 of the *Bankruptcy and Insolvency Act* will not be paid by the Receiver from the proceeds of the Transaction.

69. The Receiver is not aware of any agreements as between secured creditors altering the priority of claims.

70. BMO's security is a first ranking charge over the personal property included in the Transaction subject to:

- a. the Charges under the Appointment Order;
- b. the priority claims of CRA; and,
- c. O'Neils claim under the RSLA as against the Tractor in the sum of \$4,138.90

IX. SECURED CREDITORS – REAL PROPERTY

71. BMO holds a first collateral Charge on the Premises in the principal sum of \$4,300,000 which secures DIL's obligations as a principal debtor and a guarantor of AMPL's indebtedness to BMO.

72. BMO is owed \$5,013,026 as of January 7, 2016, plus daily accruing interest, comprised of the following:

- a. due from DIL: \$2,469,478; and,
- b. due from AMPL: \$2,543,548.

73. The Receiver has a Tax Certificate from the Township showing the sum of \$392,712.08 owing as of October 5, 2015, which account is a priority payable (as adjusted to the date of closing of the Transaction) and will be paid from the Sale Proceeds to the Township.

74. Interest and costs continue to accrue on the debt due to BMO.

75. Attached hereto at **Appendix "O"** is a parcel register for the Premises dated April 16, 2015 obtained from the Ontario Land Registry Office.

76. The Legal Opinion confirms the validity and enforceability (subject to certain standard assumptions and qualifications) of BMO's security over the Debtors' property including the Premises and Assets. Attached as **Appendix "P"** is a copy of the Legal Opinion.

77. BMO's security is a first ranking security over the Premises subject only to the charges under the Appointment Order and unpaid realty taxes¹.

X. FUNDING OF THE RECEIVERSHIP

78. In accordance with the Appointment Order, the Receiver has borrowed \$250,000 to date from the Bank of Montreal to fund its estimated costs associated with the Receivership administration. Attached hereto as **Appendix "Q"** is a copy of the Receiver's Certificate No. 2 dated July 9, 2015.

XI. ACCOUNTS OF THE RECEIVER

79. Attached hereto as **Appendix "R"** is the Affidavit of Joe Albert regarding the Receiver's fees for the period June 27 to December 31, 2015 accompanied by the supporting time dockets (the "**Receiver's Fees**"). BMO has advanced \$147,875.70 under the Receiver's Charge, in relation to the fees and disbursements of the Receiver to November 30, 2015. This amount is set out in the Receiver's SRD.

80. Attached hereto as **Appendix "S"** is the Affidavit of Lauren Lee regarding the fees and disbursements of Harrison Pensa LLP for the period from June 23 to January 6, 2016 accompanied by the supporting time dockets ("**Counsel Fees**").

¹ On the basis that the HST claim arose after the registration of the BMO Mortgage and advances of money thereunder.

81. The Receiver believes that the fees and disbursements indicated in Appendices "R" and "S" are reasonable and requests approval of its fees and disbursements, and the fees and disbursements of its counsel, Harrison Pensa LLP.

XII. RECEIVER'S PROPOSED DISTRIBUTION

82. The Receiver proposes the following distribution from the sale proceeds from the Transaction:

- a. Payment of the amount due on closing for realty taxes owing on the Premises;
- b. Payment of the charges due under the Appointment Order as follows:
 - i. The amount of \$250,000 due under Receiver's Certificate No. 2 to BMO plus accrued interest;
 - ii. The amount of \$147,875.70, advanced by BMO under the Receiver's Charge, in relation to the fees of the Receiver incurred to November 30, 2015; and
 - iii. Unpaid fees of the Receiver and it's counsel as to be taxed by this honourable Court.
- c. Payment of the sums due to CRA in priority as follows:
 - i. DIL: HST in the sum of \$8,775.00;
 - ii. AMPL: source deductions in the sum of \$146,210.00
- d. Payment to O'Neils in the amount of \$4,138.90 in respect of the lien registered against the Tractor.
- e. Payment to BMO of the remaining sum on hand, allowing for the Receiver to maintain a reserve to fund the continued administration of the estate.

000062

XIII. RECEIVER'S REQUEST FOR APPROVAL

83. The Receiver respectfully requests an Order of this Honourable Court:
- a. approving this Second Report and the Confidential Second Report of the Receiver, as well as the actions and activities of the Receiver described herein, including the Receiver's interim SRD;
 - b. approving and authorizing the Receiver to enter into and carry out the terms of the Transaction and Purchase Agreement;
 - c. approving an interim distribution of the sales proceeds from the Transaction as detailed herein;
 - d. sealing the Confidential Second Report until the Transaction has been completed and the funds are received by the Receiver;
 - e. approving the fees and disbursements of the Receiver for the period from June 27, 2015 to December 31, 2015;
 - f. approving the fees and disbursements of the Receiver's counsel, Harrison Pensa LLP, for the period from June 23, 2015 to January 6, 2016; and,
 - g. providing for such further and other relief as this Honourable Court may deem just.

All of which is respectfully submitted this 12th day of January, 2016.

ALBERT GELMAN INC.,
In its capacity as Court Appointed Receiver of
Abingdon Meat Packers Limited and
DeSimone Investments Limited

Per: 

Joe Albert, CPA, Licensed Insolvency Trustee

000063