

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

B E T W E E N :

**ROYAL BANK OF CANADA**

Plaintiff

- and -

**BIG THREE PREOWNED CENTRE LTD., and 1700773 ONTARIO INC.**

Defendants

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**MOTION RECORD OF THE RECEIVER**

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January 13, 2022

**HARRISON PENZA** <sup>LLP</sup>  
Barristers & Solicitors  
450 Talbot Street  
London, Ontario N6A 5J6

**Timothy C. Hogan (LSO #36553S)**  
**Robert Danter (LSO #69806O)**

Tel: (519) 679-9660  
Fax: (519) 667-3362  
Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)  
[rdanter@harrisonpensa.com](mailto:rdanter@harrisonpensa.com)

Lawyers for the Receiver,  
BDO Canada Limited

TO: Service List

## SERVICE LIST

TO: **ROYAL BANK OF CANADA**  
20 King Street West, 2<sup>nd</sup> Floor,  
Toronto, ON, Canada, M5H 1C

AND

TO: **BDO CANADA LIMITED**  
633 Colborne St Unit 100  
London, Ontario N6B 2V3

**Attention: Stephen N. Cherniak**  
Tel: (519) 660-6540  
Email: [scherniak@bdo.ca](mailto:scherniak@bdo.ca)

Receiver

AND

TO: **BIG THREE PREOWNED CENTRE LTD.**  
1725 Tecumseh Road W.  
Windsor, Ontario N9B 1V3

1677 Tecumseh Road West  
Windsor, ON N9B 1V1

AND

TO: **1700773 ONTARIO INC.**  
925 Provincial Road  
Windsor, Ontario N8W 5V9

AND

TO: **NATIONAL LEASING GROUP INC.**  
1558 Wilson Pl  
Winnipeg MB R3T 0Y4

AND

TO: **JAY HAZIME ALSO KNOWN AS JAMAL HAZIME**  
1677 Tecumseh Road West  
Windsor, Ontario N9B 1V1

1102 Langlois St,  
Windsor, Ontario N8A 2H5;

3154 Fazio Drive,  
Windsor, Ontario N9E 4G6

2248 Dandurand Blvd.  
Windsor, Ontario N9E 4Z7

AND  
TO: **ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL**  
65 Overlea Blvd, Suite 300  
Toronto ON M4H 1P1

AND  
TO: **GREYCLIFFE CONSULTANTS LTD.**  
c/o 443 Ouellette Avenue  
Windsor, ON N9A 6R4

AND  
TO: **ADIP INC.**  
625 Oxford Street West  
London, ON N6H 1T8

AND  
TO: **ALI HAMKA**  
633 Bay Street, Unit 1002  
Toronto, Ontario M5G 2G4

AND  
TO: **JUICE EXPRESS LTD.**  
770 Erie St E  
Windsor, ON N9A 3Y2

AND  
TO: **INSOLVENCY UNIT**  
Province of Ontario  
Email: [insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca)

AND  
TO: **CANADA REVENUE AGENCY**  
c/o Department of Justice  
Ontario Regional Office  
20 Adelaide St. W., Suite 400  
Toronto, ON M5H 1T1

**Attention: Rakhee Bhandari**  
Tel: (416) 952-8563  
Email: [rakhee.bhandari@justice.gc.ca](mailto:rakhee.bhandari@justice.gc.ca)

AND  
TO: **HER MAJESTY THE QUEEN IN RIGHT  
OF ONTARIO AS REPRESENTED BY  
THE MINISTRY OF FINANCE**  
Revenue Collections Branch – Insolvency Unit  
33 King Street W., P.O. Box 627  
Oshawa, ON L1H 8H5  
Email: [insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca)

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# Tab 1

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

**B E T W E E N :**

**ROYAL BANK OF CANADA**

**Plaintiff**

- and -

**BIG THREE PREOWNED CENTRE LTD., and 1700773 ONTARIO INC.**

**Defendants**

**NOTICE OF MOTION**

BDO Canada Limited (“**BDO**”), in its capacity as court-appointed receiver and manager (the “**Receiver**”), appointed pursuant to the Order of the Honourable Justice Hockin of the Ontario Superior Court of Justice dated November 29, 2011 (the “**Appointment Order**”) of the Property (as defined in the Appointment Order) of Big Three Preowned Centre Ltd. (“**Big Three**”) and 1700773 Ontario Inc. o/a 5 Diamond Motors (“**5 Diamond**”, and collectively, the “**Debtors**”) will make a Motion to a Judge.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard:

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

at the following location:

On Friday, January 28, 2022 at 10:00 a.m., or as soon after that time as the Motion can be heard by judicial teleconference via Zoom at London, Ontario, video conference details to be provided prior.

**THE MOTION IS FOR:**

1. An Order (Distribution and Discharge), substantially in the form attached hereto at Schedule "A", *inter alia*:
  - a. That the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today, and dispensing with further service and confirmation hereof;
  - b. Approving the Receiver's Second Report to the Court dated January 7, 2022 (the "**Second Report**") and the activities and conduct of the Receiver as detailed therein;
  - c. Approving the Professional Fees (as detailed in the Second Report), and payment of same;
  - d. Approving the Statement of Receipts and Disbursements as detailed in the Second Report;
  - e. Authorizing the Receiver to make the Proposed Distribution (as defined below), after payment of the Professional Fees;
  - f. Discharging BDO as Receiver, and releasing the Receiver from liability for its actions while acting in such capacity, save and except for the Receiver's gross negligence or willful misconduct; and,
2. Such further and other relief as counsel may request and this honourable court may permit.



## THE GROUNDS FOR THE MOTION ARE:

### The Debtors and the Appointment of the Receiver

1. Big Three operated as a used motor vehicle dealer from land and premises municipally known as 1725 Tecumseh Road West, Windsor, Ontario. 5 Diamond was a company carrying on business as a used motor vehicle dealer from lands and premises municipally known as 925 Provincial Road, Windsor, Ontario (the “**Provincial Road Property**”) owned by Big Three.
2. On application by Royal Bank of Canada (the “**Bank**”), BDO was appointed as Interim Receiver on November 4, 2011, and subsequently appointed as Receiver on November 29, 2011 by way of the Appointment Order.
3. On application by the Bank, and pursuant to Orders dated December 14, 2011, Big Three and 5 Diamond were adjudged bankrupts, and BDO was appointed Trustee in bankruptcy.
4. The Receiver did obtain an Order from this Court, dated April 3, 2012 (the “**AV/Distribution Order**”), providing for the following:
  - a. approval of the sale of the Provincial Road Property and the vesting all of Big Three’s right, title, and interest in the Provincial Road Property in the purchaser of same (the “**Provincial Road Transaction**”);
  - b. the distribution of funds from the Provincial Road Transaction as follows:
    - i. firstly, to pay unpaid professional fees of the Receiver and its legal counsel;
    - ii. secondly, after the creation of a reserve for employee claims under the *Wage Earner Protection Program Act* (“**WEPPA**”), potential deemed trust claims of the Crown, and the future costs of administration of the estate, to pay all residual net proceeds to the Bank.
5. As set out in the First Report of the Receiver dated March 21, 2012 (the “**First Report**”), the Receiver took additional action to sell certain vehicles owned by the Debtors, both at auction and by way of private sales, and collected the net proceeds of such sales.

### **Actions of the Receiver Subsequent to the First Report**

6. The Receiver completed the Provincial Road Transaction on April 5, 2012, and undertook the distributions approved pursuant to the AV/Distribution Order, including the distribution of \$1,000,000 to the Bank, and the settlement of all amounts owing to former employees of the Debtor under WEPPA.
7. The Receiver has continued to respond to enquiries from parties engaged in selling a vehicle with a registration under the *Personal Property Security Act* (“**PPSA**”) in favour of Big Three or 5 Diamond. Where relevant, the Receiver collected funds owing to the Debtors from these sales, and discharged the related PPSA registration. In other cases the Receiver discharged the registration to facilitate the transaction.
8. The Receiver has also taken the following actions:
  - a. continued to deposit post-dated cheques from certain “in-house” lease customers of the Debtors;
  - b. engaged a bailiff for the seizure and sale of a motorcycle in the possession of a non-paying customer of the Debtors; and,
  - c. obtained a property tax refund of \$3,223.25 in relation to the Provincial Road Property.
9. The Receiver is holding minimal funds in the estate following the distributions set out above.

### **Approval of the Professional Fees**

10. The Appointment Order requires the Receiver and its legal counsel to pass its accounts from time to time.
11. The Receiver has properly incurred fees and disbursements as detailed in the Second Report.
12. The fees incurred by the Receiver for services provided by legal counsel, Harrison Pensa LLP are detailed in the Second Report.

13. The Receiver seeks the approval of the Professional Fees, as defined in the Second Report.

### **Proposed Distribution**

14. The Receiver recommends the distribution as detailed in the Second Report, as follows:

- a. Unpaid Professional Fees; and,
- b. The balance of the funds residing in the Receiver's account, if any, and any residual funds that flow into the estate to the Bank, which will not be sufficient to repay the Debtor's indebtedness to the Bank in full.

(collectively, the "**Proposed Distribution**")

15. The Receiver seeks approval of the Proposed Distribution.

16. No claims have been submitted by the Canada Revenue Agency in relation to this matter.

### **Discharge**

17. Following the completion of the Proposed Distribution, the Receiver will have completed the administration of the estates of the Debtors and as such requests its discharge as Receiver of the Debtors.

18. Section 243 of the *BIA*.

19. Sections 100 and 137(2) of the *Courts of Justice Act*.

20. Rules 2, 3, 37, 38, and 60.10 of the *Rules of Civil Procedure*.

21. The grounds as detailed in the Second Report.

22. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. The Appointment Order;
2. The Second Report of the Receiver and the Appendices thereto; and
3. Such materials as counsel may advise and this Honourable Court may permit.

January 12, 2022

**HARRISON PENZA LLP**  
Barristers & Solicitors  
450 Talbot St.  
London, ON N6A 4K3

**Timothy C. Hogan (LSO#36553S)**  
**Robert Danter (LSO #69806O)**

Tel: 519-679-9660

Fax: 519-667-3362

Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)  
[rdanter@harrisonpensa.com](mailto:rdanter@harrisonpensa.com)

Solicitors for the Receiver, BDO Canada  
Limited

TO: Service List

SCHEDULE "A"

Court File No. 35-1303100T

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

THE HONOURABLE

)

FRIDAY, THE 28TH

JUSTICE

)

DAY OF JANUARY, 2022

)

B E T W E E N:

**ROYAL BANK OF CANADA**

Plaintiff

- and -

**BIG THREE PREOWNED CENTRE LTD. and 1700773 ONTARIO INC.**

Defendants

**ORDER**

**(DISTRIBUTION AND DISCHARGE)**

**THIS MOTION**, made by BDO Canada Limited in its capacity as the Court-appointed receiver (the "Receiver") of the undertakings, property and assets of Big Three Preowned Centre Ltd. and 1700773 Ontario Inc. o/a 5 Diamond Motors (the "Debtors"), for an Order:

1. That the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today and hereby dispensing with further service and confirmation hereof;
2. Approving the activities of the Receiver as set out in the Second Report of the Receiver dated January 7, 2022 (the "Second Report");
3. Approving the Professional Fees of the Receiver and its counsel, as defined and detailed in the Second Report, and payment thereof;

4. Approving the Receiver's Statement of Receipts and Disbursements, as defined and detailed in the Second Report (the "Statement of Receipts and Disbursements");
5. Authorizing the distribution of the remaining proceeds available in the estate of the Debtors, as detailed in the Second Report at section 7 thereof (the "Proposed Distribution");
6. Discharging BDO Canada Limited as Receiver of the undertaking, property and assets of the Debtors; and
7. Releasing BDO Canada Limited from any and all liability, as set out in paragraph 7 of this Order,

was heard this day by way of judicial teleconference via Zoom at the Court House, 80 Dundas Street, London, Ontario.

**ON READING** the Second Report, the affidavits of the Receiver and its counsel as to Professional Fees (the "Fee Affidavits"), and on hearing the submissions of counsel for the Receiver, no one else appearing although served as evidenced by the Affidavit of Tayler Reiners sworn January [ ], 2022, filed;

1. **THIS COURT ORDERS** that the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today and hereby dispensing with further service and confirmation hereof.
2. **THIS COURT ORDERS** that the activities of the Receiver, as set out in the Second Report, be and are hereby approved.
3. **THIS COURT ORDERS** that the Professional Fees, as set out in the Second Report and the Fee Affidavits, and payment thereof, be and are hereby approved.
4. **THIS COURT ORDERS** that the Statement of Receipts and Disbursements be and is hereby approved.
5. **THIS COURT ORDERS** that, after payment of the Professional Fees herein approved, the Receiver be and is authorized to make the Proposed Distribution to the Applicant, as described in the Second Report.

6. **THIS COURT ORDERS** that upon payment of the amounts set out in paragraphs 3 and 5 hereof, and upon the Receiver filing a certificate certifying that it has completed the other activities described in the Second Report, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtors, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of BDO Canada Limited in its capacity as Receiver.

7. **THIS COURT ORDERS AND DECLARES** that BDO Canada Limited is hereby released and discharged from any and all liability that BDO Canada Limited now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of BDO Canada Limited while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, BDO Canada Limited is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

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Justice, Ontario Superior Court of Justice

In Bankruptcy and Insolvency

ROYAL BANK OF CANADA

v. BIG THREE PREOWNED CENTRE LTD., et al.

Plaintiff

Defendants

Court File No. 35-1303100T

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

PROCEEDING COMMENCED AT LONDON

**ORDER  
(DISTRIBUTION AND DISCHARGE)**

**HARRISON PENZA** LLP  
Barristers & Solicitors  
450 Talbot Street  
London, Ontario N6A 5J6

**Timothy C. Hogan (LSO #36553S)  
Robert Danter (LSO #698060)**

Tel : (519) 679-9660

Fax: (519) 667-3362

Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)  
[rdanter@harrisonpensa.com](mailto:rdanter@harrisonpensa.com)

Lawyers for the Receiver,  
BDO Canada Limited



ROYAL BANK OF CANADA

v. BIG THREE PREOWNED CENTRE LTD., et al.

Plaintiff

Defendants

Court File No. 35-1303100T

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

PROCEEDING COMMENCED AT LONDON

**NOTICE OF MOTION**

**HARRISON PENZA** LLP  
Barristers & Solicitors  
450 Talbot Street  
London, Ontario N6A 5J6

**Timothy C. Hogan (LSO #36553S)  
Robert Danter (LSO #698060)**

Tel : (519) 679-9660

Fax: (519) 667-3362

Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)  
[rdanter@harrisonpensa.com](mailto:rdanter@harrisonpensa.com)

Lawyers for the Receiver,  
BDO Canada Limited

# Tab 2

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

**BETWEEN:**

**ROYAL BANK OF CANADA**

**Plaintiff**

- and -

**BIG THREE PREOWNED CENTRE LTD., and 1700773 ONTARIO INC.**

**Defendants**

**SECOND REPORT TO THE COURT SUBMITTED BY BDO CANADA LIMITED AS  
RECEIVER OF BIG THREE PREOWNED CENTRE LTD. and 1700773 ONTARIO INC.**

**January 7, 2022**

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## Appendices

- Appendix A** - Appointment Order dated November 29, 2011
- Appendix B** - First Report of the Interim Receiver dated November 16, 2011 (without appendices)
- Appendix C** - First Report of the Receiver dated March 21, 2012 (without appendices)
- Appendix D** - Provincial Road Property Approval and Vesting Order dated April 3, 2012
- Appendix E** - Statement of Receipts and Disbursements
- Appendix F** - Fee Affidavit of Stephen Cherniak for the interim and final accounts of BDO Canada Limited as Receiver sworn October 29, 2021
- Appendix G** - Fee affidavit of Thomas Masterson for the interim and final accounts of Harrison Pensa LLP sworn November 11, 2021

# 1. Introduction and Background

---

## 1.1 Introduction

- 1.1.1 This report is submitted by BDO Canada Limited in its capacity as Receiver (“**BDO**” or the “**Receiver**”) of the assets, undertakings and properties of Big Three Preowned Centre Ltd. (“**Big Three**”) and 1700773 Ontario Inc. o/a 5 Diamond Motors (“**5 Diamond**”) (the “**Debtors**”).
- 1.1.2 On application of the Royal Bank of Canada (“**RBC**” or the “**Bank**”), BDO was appointed as Interim Receiver by the Order of Madam Justice Rady dated November 4, 2011.
- 1.1.3 By Order of the Mr. Justice Hockin dated November 29, 2011, (the “**Appointment Order**”), BDO was discharged as Interim Receiver, and appointed as Receiver of the Debtors. A copy of the Appointment Order is attached as **Appendix A** to this report.

## 1.2 Background

- 1.2.1 Big Three was a company carrying on business as a used motor vehicle dealer from land and premises municipally known as 1725 Tecumseh Road West, Windsor, Ontario. 5 Diamond was a company carrying on business as a used motor vehicle dealer from lands and premises municipally known as 925 Provincial Road, Windsor, Ontario (the “**Provincial Road Property**”) owned by Big Three.
- 1.2.2 The Interim Receiver submitted its First Report to Court dated November 16, 2011 (“**Interim Receiver’s First Report**”). A copy of the Interim Receiver’s First Report (without appendices) is attached as **Appendix B**.
- 1.2.3 The Appointment Order discharged BDO as Interim Receiver and appointed BDO as Receiver.
- 1.2.4 On application by RBC, and pursuant to Orders dated December 14, 2011, Big Three and 5 Diamond were adjudged bankrupts, and BDO appointed Trustee in bankruptcy.
- 1.2.5 The Receiver submitted its First Report to the Court dated March 21, 2012 (the “**First Report**”) in support of a motion for, among other things,

- (a) an Order approving the agreement of purchase and sale effective February 6, 2012 (the “**Provincial Road Property APS**”) between the Receiver, as vendor, and ADIP Inc (“**ADIP**”), as purchaser, in respect of the Provincial Road Property and authorizing and directing the Receiver to enter into and complete the transaction contemplated by the Provincial Road Property APS (the “**Provincial Road Property Transaction**”) and thereafter to file the Receiver’s Certificate;
- (b) vesting in ADIP all of Big Three’s right, title and interest in and to the Provincial Road Property free and clear of any and all claims and encumbrances; and
- (c) approving the distribution of the funds in the Receiver’s account, after the closing of the Provincial Road Property Transaction, as follows:
  - (i) firstly to pay unpaid professional fees of the Receiver and its legal counsel;
  - (ii) secondly, to create a reserve for employee claims under the Wage Earner Protection Program Act (“**WEPPA**”), potential deemed trust claims of the Crown, and the future costs of administration of the estate (collectively, the “**Reserve**”);
  - (iii) Thirdly, after creation of the Reserve, to RBC.

1.2.6 A copy of the First Report (without appendices) is attached as **Appendix C**.

1.2.7 By Order dated April 3, 2012, (the “**Provincial Road Property Approval and Vesting Order**”), the Mr. Justice Grace, among other things, approved the Provincial Road Property Transaction and vested all of the Debtors’ right, title and interest to the Provincial Road Property in ADIP. A copy of the Provincial Road Property Approval and Vesting Order is attached as **Appendix D**.

1.2.8 The Provincial Road Property Approval and Vesting Order also approved the distribution of funds firstly to pay unpaid professional fees of the Receiver and its legal counsel, and lastly, after provision for the Reserve, to RBC.

1.2.9 As set out in the First Report, the Receiver took additional action to sell certain vehicles owned by the Debtors, both at auction and by way of private sales, and collected the net proceeds of such sales into the Receiver's account.



## 2. Terms of Reference

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- 2.1 In preparing this Second Report, the Receiver has relied upon unaudited and draft, internal financial information obtained from the Debtors' books and records and discussions with former management and staff (the "**Information**"). The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information and expresses no opinion, or other form of assurance, in respect of the Information.

### 3. Purpose of the Receiver's Second Report

---

- 3.1 This constitutes the Receiver's Second Report to the Court (the "**Second Report**") in this matter and is filed:
- (a) To provide the Court with information on:
    - (i) The Receiver's activities since the date of the First Report and the Receiver's activities as outlined herein;
  - (b) In support of an Order of the Court (the "**Discharge Order**"):
    - (i) approving the Second Report and the activities and conduct of the Receiver described herein
    - (ii) approving the Receiver's Statement of Receipts and Disbursements for the period November 10, 2011 to October 26, 2021 (the "**Statement of Receipts and Disbursements**");
    - (iii) approving BDO's accounts for professional fees and disbursements as Receiver ("**BDO Fees**");
    - (iv) approving the fees and disbursements of Harrison Pensa LLP ("**HP**" and "**HP Fees**", and collectively with the BDO Fees, the "**Professional Fees**");
    - (v) authorizing payment of the funds on hand, firstly to pay the unpaid Professional Fees, and lastly to pay the residual to RBC; and
    - (vi) approving the discharge of BDO as Receiver and thereupon to release BDO from any and all liability.

## 4. Receiver's Activities

---

- 4.1 The Receiver completed the sale of the Provincial Road Property to ADIP on April 5, 2012.
- 4.2 A 2002 Harley Davidson motorcycle, registered in the name of Justin Paul Andre DeRoy, a non-paying customer of the Debtors, was seized by a bailiff on behalf of the Receiver and sold in December 2012.
- 4.3 The Receiver continued to deposit post-dated cheques from certain "in-house" lease customers.
- 4.4 The Receiver continued to respond to enquiries from parties, generally former customers of the Debtors, who were selling a vehicle with a registration under the Personal Property Security Act ("**PPSA**") in favour of Big Three or 5 Diamond. Where the Receiver could determine that additional funds were owing to the Debtors, the Receiver collected such funds and discharged the PPSA registration. In other cases the Receiver discharged the registration to facilitate the transaction.
- 4.5 The Receiver engaged Cushman Wakefield to file a vacancy property tax rebate application in respect of the Provincial Road Property. A refund of \$3,223.25 was received.

## 5. Statement of Receipts and Disbursements of the Receiver

---

5.1 The Receiver maintains an account at RBC in London, Ontario. Attached as **Appendix E** is the Statement of Receipts and Disbursements. Details of the Receiver's receipts and disbursements are as follows:

### 5.2 Receipts

- (a) *Sale of Provincial Road Property (\$856,475.53)* — The Receiver received net proceeds of \$856,475.53, net real estate commissions and property tax arrears, from the sale of the Provincial Road Property.
- (b) *Sale of Vehicles - CAI (\$392,028.80)* — The Receiver received net proceeds of \$392,028.80 from Corporate Assets Inc. (“**CAI**”) from the auction of the vehicles.
- (c) *HST collected (\$50,984.35)* — CAI collected \$50,984.35 in HST on the sale of the vehicles. The Receiver remitted the HST collected, less input credits claimed by the Receiver, to Canada Revenue Agency (“**CRA**”).
- (d) *Sale of Vehicles - Miscellaneous (\$35,778.10)* — The Receiver received \$35,778.10 from Adesa Auctions, Metro Auto, MCA and private parties from the sale of vehicles that were not on the Debtors' premises at the time of the appointment of the Receiver.
- (e) *Received from TD Insurance (\$18,505.00)* — As outlined in the First Report the Receiver received \$18,505.00 from TD Insurance in relation to a 2004 Porsche vehicle that was involved in an accident and written off. The Receiver, in turn, paid the funds to Juice Express Ltd (“**JEL**”), the owner of the vehicle.
- (f) *In-house leasing (\$9,928.45)* — As outlined in the Interim Receiver's First Report, Big Three provided “in-house” leasing to various customers. The Receiver continued to deposit post-dated cheques from approximately seventeen (17) such customers. Total lease proceeds received were \$9,928.45.

- (g) *Property tax rebate (\$3,223.25)* — The Receiver filed a vacancy property tax rebate application for the Provincial Road Property and received a refund of \$3,223.25.
- (h) *Interest earned (\$3,802.60)* — The Receiver earned \$3,802.60 in interest on funds on hand.

### 5.3 Disbursements

- a) *Receiver's fees (\$157,500.05)* – BDO's accounts for the period November 4, 2011 to March 19, 2012, in the amount of \$117,033.72, excluding HST, were previously approved by the Court and paid. The Receiver paid its interim accounts for the period March 20, 2012 to January 31, 2014 in the amount of \$20,466.03, and is seeking Court approval of these invoices. The Receiver's final account from February 1, 2014, in the amount of \$20,000.30, is included in the Statement of Receipts and Disbursements, but has not yet been paid, pending Court approval.
- b) *Security (\$33,283.00)* – As outlined in the First Report, the Receiver maintained 24-hour security over the vehicles until the CAI auction, and periodic attendances at the Provincial Road Property until it was sold. The Receiver paid \$33,283.00 for security services, excluding HST.
- c) *HST paid (\$29,628.29)* – The Receiver paid \$29,628.29 in HST on its disbursements.
- d) *HST remitted (\$26,182.83)* – The Receiver remitted \$26,182.83 in HST, net of input credits claimed, to CRA.
- e) *Trustee in bankruptcy (\$26,300.00)* – As outlined in the First Report, the Receiver funded the bankrupt estates of Big Three and 5 Diamond a total of \$26,300.00, for the fees of the Trustee in Bankruptcy, costs of newspaper advertisements of the bankruptcies, independent legal advice obtained by the Trustee and other administrative expenses.
- f) *Juice Express Ltd. (\$18,505.00)* – As outlined in the First Report and section 5.2 (e) of this report, the Receiver paid \$18,505.00 to JEL.

- g) *Insurance (\$10,006.43)* – The Receiver paid \$10,006.43 in insurance premiums over the vehicles, and the Provincial Road Property, until their respective dates of sale.
- h) *Appraisal fees (\$9,056.59)* – The Receiver retained Metrix Southwest Inc. and Otto and Company to appraise the Provincial Road Real Property, and Gardner Auctions Inc. and Richard Lavin Auctions Inc. to appraise the vehicles. Total appraisal fees paid were \$9,056.59.
- i) *Big Star Auto – Vehicle purchase (\$8,475.00)* – Two vehicles located at the Provincial Road Property were registered to Big Star Auto (“**Big Star**”). The Receiver confirmed the amount owing to Big Star, and that the value of the vehicles exceeded the amount owing to Big Star. The Receiver paid Big Star \$8,475.00, took delivery of the vehicles, and sold them at the auction conducted by CAI.
- j) *Legal fees (\$8,150.80)* – The account of Miller Thomson LLP (“**MT**”) for the preparation of an Independent Legal Opinion on the security held by RBC, in the amount of \$4,970.00 was previously approved by the Court and paid. The Receiver retained the Bank’s legal counsel, HP to complete the sale of the Provincial Road Property for the Receiver. The Receiver paid HP’s account in the amount of \$3,180.80, excluding HST, and is seeking court approval of this invoice.
- k) *Utilities (\$7,419.76)* – The Receiver paid \$7,419.76 in utilities.
- l) *WEPPA (\$4,726.63)* – The Receiver paid \$4,726.63 to Service Canada for secured claims of former employees under WEPPA.
- m) *Consulting fees (\$3,440.00)* – The Receiver paid \$2,500.00 to Pinchin Environmental for a Phase I assessment of the Provincial Road Property and \$940.00 to Cushman and Wakefield for preparation of property tax vacancy rebate application.
- n) *Records retention (\$3,113.59)* – The Receiver paid \$3,113.59 for the shredding of older books and records, and storage of more current records.
- o) *Repairs and Maintenance (\$2,891.20)* – The Receiver paid \$2,891.20 for repairs, maintenance and snow removal at the Provincial Road Property.

- p) *Casual Labour (\$2,480.00)* – The Receiver paid \$2,480.00 for casual labour in connection with movement and maintenance of vehicles.
- q) *Vehicle Registration Reports (\$2,395.00)* – The Receiver paid \$2,395.00 to obtain vehicle registration reports for each vehicle in its possession. Such reports provided an ownership history and particulars of any liens registered against the vehicle.
- r) *Towing (\$1,620.00)* – The Receiver paid \$1,620.00 for the towing of vehicles from other locations to the Provincial Road Property and the repossession of vehicles.

## 6. Fees and Disbursements of the Receiver and Counsel to the Receiver

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- 6.1 Pursuant to Paragraph 18 of the Appointment Order, the Receiver and counsel to the Receiver shall be paid their reasonable Professional Fees in each case at their standard rates and charges and the Receiver and counsel to the Receiver have been granted 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 as security for payment of the Professional Fees.
- 6.2 Pursuant to paragraph 20 of the Appointment Order, the Receiver is at liberty, from time to time, to apply reasonable amounts, out of the monies in its hands, against the Professional Fees, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its Professional Fees when and as approved by the Court.
- 6.3 Attached as **Appendix F** is the fee affidavit of Stephen N. Cherniak sworn October 29, 2021 containing BDO's interim accounts as Receiver for the period March 20, 2012 to January 31, 2014, and its final account as Receiver for the period February 1, 2014 to October 26, 2021. BDO's final account includes an estimate to complete its duties as Receiver.
- 6.4 The Receiver's total fees are \$157,500.05, exclusive of HST.
- 6.5 The Receiver submits that the hourly rates charged by the Receiver and its staff are commensurate with commercially reasonable rates for mid-market insolvency firms in the Southwestern Ontario region.
- 6.6 The Receiver determined that RBC's legal counsel, HP, was in a position to efficiently complete the sale of the Provincial Road Property, and engaged HP for this task. Further, in view of its knowledge of the proceedings HP will attend to all court matters in connection with the Receiver's discharge. Attached as **Appendix G** is the fee affidavit of Thomas Masterson, sworn November 11, 2021, containing the interim account of HP for the period March 20, 2012 to April 5, 2012 and its final account for the period November 1, 2021 to November 11, 2021.



- 6.7 HP's total fees, inclusive of HST and disbursements, are \$6,159.52.
- 6.8 In addition, HP's fees to finalize all matters, including attendance at the motion to distribute funds and discharge the Receiver will not exceed \$10,000.00, exclusive of HST, and will be paid from the funds on hand, prior to the discharge of the Receiver.
- 6.9 It is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work done by the Receiver and HP in connection with the receivership during the relevant periods. The Receiver recommends approval of the Professional Fees by the Court.

## 7. Distribution

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- 7.1 As noted in the First Report, the Receiver obtained an Independent Legal Opinion from MT indicating that the security in favour of RBC is valid, binding and enforceable as first charge on the property of the Debtors, including the Provincial Road Property. A copy of the Independent Legal Opinion of MT was attached as **Appendix G** to the First Report.
- 7.2 RBC has advised the Receiver that the Debtors' indebtedness at February 16, 2012 was \$3,065,296.15, plus interest and costs accrued since that date.
- 7.3 The Provincial Road Property Approval and Vesting Order authorized the distribution of funds on hand, after the Reserve, to RBC.
- 7.4 On April 13, 2012, following the completion of the sale of the Provincial Road Property, the Receiver distributed \$1,000,000 to RBC, with proceeds obtained from both the Provincial Road Property Transaction and the sale of the Debtors' vehicles as outlined above and in the First Report.
- 7.5 The Receiver paid the secured claim of Service Canada of \$4,726.63 in respect of the claims of former employees under WEPPA.
- 7.6 No claims were submitted by CRA.
- 7.7 There will not be sufficient funds on hand to repay the indebtedness of RBC in full.
- 7.8 The Receiver is currently holding funds on hand of \$16,053.98, after payment of the Receiver's final account. The Receiver is seeking an Order to distribute the funds on hand, as follows:
- (a) Unpaid Professional Fees;
  - (b) The balance of the funds residing in the Receiver's account and any residual funds that flow into the estate to RBC.

## **8. Discharge of BDO as Receiver**

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8.1 BDO was appointed Receiver by the Appointment Order.

8.2 The administration of the estate and the duties of BDO as Receiver have been completed and on this basis the Receiver requests an Order for the discharge of BDO as Receiver of the Debtors.

## 9. Recommendations

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9.1. The Receiver recommends and respectfully requests that this Court grant the following:

- (a) the Discharge Order
  - (i) approving the Second Report and the activities and conduct of the Receiver described herein;
  - (ii) approving the Statement of Receipts and Disbursements;
  - (iii) approving the Professional Fees;
  - (iv) authorizing payment of the funds on hand, firstly to pay the unpaid Professional Fees, and lastly to pay the residual to RBC; and
  - (v) discharging and releasing BDO, as Receiver, in the normal course pursuant to an Order substantially in the form attached to the notice of motion, which is substantially in the form of the Template Order approved by the Commercial List Users Committee.

All of which is Respectfully Submitted this 7<sup>th</sup> day of January, 2022

BDO Canada Limited in its capacity as Court Appointed Receiver of Big Three Preowned Centre Ltd. and 1700773 Ontario Inc. o/a 5 Diamond Motors



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Per: Stephen N. Cherniak, CPA, CA, CIRP  
Licensed Insolvency Trustee  
Senior Vice President

# APPENDIX A

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

THE HONOURABLE  
JUSTICE HOCKIN

)  
)  
)

TUESDAY, THE 29TH DAY  
OF NOVEMBER, 2011

BETWEEN:

ROYAL BANK OF CANADA

Plaintiff

- and -

BIG THREE PREOWNED CENTRE LTD., 1700773 ONTARIO INC. and 1413596  
ONTARIO INC.

Defendants

**ORDER**

**THIS MOTION**, made by Royal Bank of Canada (the "Bank") for an Order pursuant to section 243 (1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O 1990 c. C.43, as amended (the "CJA") appointing BDO Canada Limited ("BDO") (the "Receiver") as receiver and receiver manager (in such capacities as the receiver (the "Receiver") without security, of all of the assets, undertakings and properties of Big Three Preowned Centre Ltd. and 1700773 Ontario Inc. (collectively the "Debtors") was heard this day at 80 Dundas Street, London, Ontario.

**ON READING** the Notice of Motion dated November 17, 2011 and the First Report of the Interim Receiver dated November 16 , 2011 and exhibits attached thereto and on hearing the submissions of counsel for the Bank, no one appearing for any other party on the service list although duly served as appears from the affidavit of service of Kelly Bryant sworn November 17, 2011 and on reading the consent of the Receiver to act as the Receiver,

### **SERVICE/FILING**

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

### **DISCHARGE OF INTERIM RECEIVER**

2. **THIS COURT ORDERS** that the Interim Receiver appointed by the Order of the Honourable Madam Justice Rady dated November 4, 2011 (the "Interim Receiver"), be and is hereby discharged and is hereby released from any and all liability that the Interim Receiver now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Interim Receiver while acting in its capacity as Interim Receiver herein, save and except for any gross negligence or wilful misconduct on the Interim Receiver's part. Without limiting the generality of the foregoing, the Interim Receiver is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised save and except for any gross negligence or wilful misconduct on the Interim Receiver's part.

### **APPOINTMENT**

3. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, BDO is hereby appointed Receiver, without security, of all of the Debtors' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof excluding the real property owned by Big Three Preowned Centre Ltd. and known municipally as 1725 Tecumseh Road, Windsor, Ontario N9B 1V3 (the "Property").

## RECEIVER'S POWERS

4. **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 and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- b. to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- c. to manage, operate and carry on the business of the Debtors, 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 Debtors;
- 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 Debtors or any part or parts thereof;



- f. to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- g. to settle, extend or compromise any indebtedness owing to the Debtors;
- h. to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- i. to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- j. to enter into a Listing Agreement with a real estate agent (the terms and appointment of which are within the discretion of the Receiver) to market and sell the real property known municipally as 925 Provincial Road, Windsor, Ontario N8W 5V9;
- 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 retain a licenced auctioneer to sell the Debtors' motor vehicles and ancillary shop equipment, and chattels relating to the business (the "Chattels") by way of a public auction (the "Motor Vehicle Auction"). The timing and terms of the Motor Vehicle Auction and appointment of the auctioneer are within the discretion of the Receiver. For all motor vehicles

and Chattels sold in the Motor Vehicle Auction, notice under section 63 (4) of the Ontario *Personal Property Security Act* ("PPSA") shall not be required;

- m. 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 \$30,000, provided that the aggregate consideration for all such transactions does not exceed \$300,000; and
  - ii. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 63(4) of the Ontario *PPSA*, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- n. 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;
- o. 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;
- p. to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- q. 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 Debtors;

- r. to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- s. to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- t. to take any steps reasonably incidental to the exercise of these powers;

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

4.1 **THIS COURT ORDERS** that title to the motor vehicles auctioned at the Motor Vehicle Auction shall vest in the purchaser free and clear of any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Rady dated November 4, 2011; and, (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

5. **THIS COURT ORDERS** that (i) the Debtors, (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 including all police authorities (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.

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

7. **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.

#### **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 DEBTORS OR THE PROPERTY**

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

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. **THIS COURT ORDERS** that all rights and remedies against the Debtors, 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 Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors 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 Debtors, 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 Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or 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 Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' 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 subsection 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 under the Wage Earner Protection Program Act ("WEPP").

## **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 Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately

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

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part or in respect of its obligations under section 81.4 (5) or 81.6(3) of the BIA or under WEPP. 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 any expenditure or liability which shall properly be made or incurred by the Receiver or made by the Interim Receiver, including the fees of the Receiver and made by the Interim Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property as security for such fees and disbursements, both before and after the granting of this Order, 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 (the "Receiver's Charge").

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

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 normal rates and charges of the Receiver and the Interim 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 \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, 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 section 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.

#### **GENERAL**

25. **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.

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

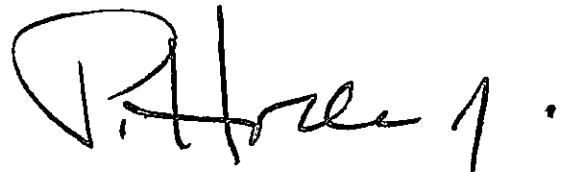
27. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, 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.

28. **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.

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

30. **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.

A handwritten signature in black ink, appearing to read "J. H. H. J.", is written above a horizontal line. The signature is cursive and includes a period at the end.

Justice, Ontario Superior Court of Justice

**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that BDO Canada Limited, the receiver and receiver manager (the "**Receiver**") without security, of all of the assets, undertakings and properties of Big Three Preowned Centre Ltd and 1700773 Ontario Inc. appointed by Order of the Ontario Superior Court of Justice (the "**Court**") dated the \_\_\_\_\_ day of November, 2011 (the "**Order**") made in an action having Court file number 35-1303100T, 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 Nova Scotia 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 (as defined in the Order), 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 Windsor, Ontario.

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

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property (as defined in the Order) 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 November, 2011.

BDO CANADA LIMITED, solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

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

Name:

Title:

ROYAL BANK OF CANADA

- and -

BIG THREE PREOWNED CENTRE LTD. et al

Plaintiff

Defendants

Court File No. 35-1303100T

---

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

Proceeding commenced at London

**ORDER**

Harrison Pensa LLP  
Barristers and Solicitors  
450 Talbot Street, 1st Floor  
P.O. Box 3237  
London, Ontario N6A 4K3

Timothy C. Hogan  
LSUC #36553S  
Tel: (519) 679-9660

Solicitors for the Plaintiff  
TCH/150339

## APPENDIX B

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

**B E T W E E N:**

**ROYAL BANK OF CANADA**

**Plaintiff**

**-and-**

**BIG THREE PREOWNED CENTRE LTD., 1700773 ONTARIO INC., AND 1413596  
ONTARIO INC.**

**Defendants**

**FIRST REPORT TO THE COURT SUBMITTED BY BDO CANADA LIMITED AS  
INTERIM RECEIVER OF BIG THREE PREOWNED CENTRE LTD., 1700773 ONTARIO  
INC., AND 1413596 ONTARIO INC.**

**November 16, 2011**



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## **Appendices**

**Appendix A - BDO Canada Limited Appointment Order as Interim Receiver**

# 1 Background

---

- 1.1 As set out in the Affidavit of Douglas Carmichael, sworn November 3, 2011 (the "Carmichael Affidavit") and filed in support of the interim receivership application made by the Royal Bank of Canada ("RBC"), Big Three Preowned Centre Ltd ("Big Three") was a company carrying on business as a used motor vehicle dealer from land and premises municipally known as 1725 Tecumseh Road West, Windsor, Ontario (the "Tecumseh Road Property"). 1700773 Ontario Inc., o/a 5 Diamond Motors ("5 Diamond") was a company carrying on business as a used motor vehicle dealer from lands and premises municipally known as 925 Provincial Road, Windsor, Ontario (the "Provincial Road Property"). 1413596 Ontario Inc., ("1413596") is a company whose head office is registered as being located at the Tecumseh Road Property.
- 1.2 1413596 was granted credit by RBC pursuant to a Visa facility which was on an unsecured basis.
- 1.3 Big Three, and 5 Diamond (collectively "the Debtors") major secured creditor is RBC, whom, according to the Carmichael Affidavit, are owed approximately \$3,045,000 pursuant to a number of loans to which RBC granted the following security:

## **Big Three**

- Inventory Security Agreement providing a security interest in, *inter alia*, all present and future floor plan units and related accounts receivable;

- Leased Unit Security Agreement a providing security interest in, *inter alia*, all present and future leased units and accounts receivable as it relates to present and future debts financed by RBC;
- General Security Agreement from Big Three covering all assets of Big Three;
- Security pursuant to Section 427 of the *Bank Act* (Canada) covering Big Three's stock and inventory;
- Unlimited Guarantee and Postponement of Claim signed by 5 Diamond;
- Collateral first mortgage in the principal sum of \$1,950,000 registered against title to the Provincial Road Property.

#### **5 Diamond**

- Inventory Security Agreement providing a security interest in, *inter alia*, all present and future floor plan units and related accounts receivable;
- Security pursuant to Section 427 of the *Bank Act* (Canada) covering 5 Diamond's stock and inventory;
- General Security Agreement from 5 Diamond covering all assets of 5 Diamond.

1.3 As set out in the Carmichael Affidavit, the Debtors have defaulted on their obligations to the RBC.

1.4 The following events were grounds for RBC to seek the appointment of an Interim Receiver:

- 5 Diamond's operating line is \$294,583.94 which is in excess of the limit approved by RBC;

- Big Three's operating line is \$201,185.32 which is in excess of the limit approved by RBC;
- The Ontario Motor Vehicle Industry Council ("OMVIC") advised RBC that OMVIC has put an administrative hold on the licences of Big Three and 5 Diamond as automobile dealers effectively ceasing their ability to sell vehicles;
- At the time of the Interim Receivership Application, the Windsor Police and the RCMP were seeking a warrant to enter all the buildings at the Tecumseh Road Property and the Provincial Road Property;
- There was a fire at the Provincial Road Property on or about the early morning of November 3, 2011. The fire was of a suspicious nature causing the Ontario Fire Marshall's office to investigate. No report has been issued that the Interim Receiver is aware of;
- Big Three and 5 Diamond effectively ceased operation as of November 3, 2011.

1.5 Given the aforementioned defaults and the cessation of operations of Big Three and 5 Diamond, RBC applied for and obtained an order (the "Appointment Order") on November 4, 2011 appointing BDO Canada Limited as Interim Receiver of Big Three, 5 Diamond and 1413596 ("BDO" or the "Interim Receiver"). A copy of the Appointment Order is attached as **Appendix A**.

1.6 The Appointment Order empowers the Interim Receiver to, among other things;

- Take possession and control of all of the assets, undertakings and properties of the Debtors that is subject to the security of RBC and any and

all proceeds, receipts and disbursements arising out of or from the property (the "Property");

- To receive, preserve, protect and maintain control of 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;
- To manage, operate and carry on the business of the Debtors, 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 Debtors;
- To execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- To receive and collect all monies and accounts now owed or hereafter owing to the Debtors;
- To take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

### **Terms of Reference**

1.7 In preparing this First Report of the Interim Receiver (the "First Report"), the Interim Receiver has relied upon the Debtors' books and records, including

information assembled and prepared by the Debtors and its employees. The Interim Receiver has not performed an audit or other verification of such information. The Interim Receiver expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this First Report, or relied upon by the Interim Receiver in preparing this First Report.

## 2 Purpose of this Report

---

2.1 The purpose of this First Report is to:

- Advise the Court of the Interim Receiver's activities with respect to the Property following the granting of the Appointment Order;
- Seek the Court's approval of such activities;
- Seek the discharge of the Interim Receiver; and
- Seek the Court's approval for the appointment of Receiver in order to authorize the Receiver to auction the vehicles of the Debtors and implement a sales and marketing plan for the sale of the Provincial Road Property.



## **3 Interim Receiver's Activities**

---

### **Premises**

- 3.1 Following the granting of the Appointment Order, the Interim Receiver attended at the Provincial Road Property and the Tecumseh Road Property to take possession of each premises.
- 3.2 The locks were changed at both locations and only the Interim Receiver or its agents have keys.
- 3.3 A security service had already been engaged 24 hours, 7 days a week at each location in order to safeguard the vehicles. This service was retained by the Interim Receiver.
- 3.4 The Interim Receiver arranged for the damage caused by the fire at the Provincial Road Property to be repaired in order to properly secure the premises.
- 3.5 RBC does not hold a charge/mortgage over the Tecumseh Road Property.

### **Vehicles**

- 3.5 The Interim Receiver physically counted and then arranged for the vehicles at the Tecumseh Road Property to be transported to the Provincial Road Property in order to reduce the cost of security service.
- 3.6 The Interim Receiver then inventoried the vehicles at the Provincial Road Property.
- 3.7 The result of the inventory count shows that the Interim Receiver is in possession of 85 vehicles and one motor cycle.

- 3.8 A reconciliation of vehicles that were on the RBC "floor plan audit list" and not located on the premises at the time the Interim Receiver took possession was prepared. This reconciliation identified twenty-four vehicles that are missing from the Debtors' inventory.
- 3.9 The Interim Receiver located seven vehicles at two auction houses in Windsor and Kitchener respectively and four vehicles at a dealership in Detroit, Michigan. The parties involved were served with a copy of the Appointment Order evidencing the Interim Receiver's interest in the vehicles.
- 3.10 Two vehicles were identified as sold and in possession of the purchasers. The proceeds have not yet been received from the finance company financing such purchases. The Interim Receiver has contacted the finance company to claim an interest in the proceeds to be advanced to pay the purchase prices.
- 3.11 The Interim Receiver is attempting to locate the remaining eleven vehicles.
- 3.12 The ownerships and keys for all vehicles were removed from both the Tecumseh Road Property and Provincial Road Properties and are being safeguarded at the offices of the Interim Receiver.

### **Insurance**

- 3.13 The Interim Receiver has contacted the insurer responsible for each location and served them with a copy of the Appointment Order. Insurance continues to be maintained at each location.

### **Mail Redirection**

3.14 The Interim Receiver has arranged for the mail from each location to be redirected to the offices of the Interim Receiver.

### **Books and Records**

3.13 The RCMP and the Windsor Police had seized the books and records for Big Three and 5 Diamond prior to the Appointment Order. The Interim Receiver was able to obtain a back up copy of the 5 Diamond books and records from one of the former employees. No such back up of records was available for Big Three. The Interim Receiver has requested a copy of the mirrored images of Big Three's computer hard drive from the RCMP. To date neither the RCMP nor any police agency have not provided this information. These books and records are required to administer the receivership estate.

### **Employees**

3.14 The Interim Receiver has retained the services of the former bookkeeper in order to assist the Interim Receiver with various duties such as preparing records of employment, T4's and WEPPA claims for the former employees, locating vehicles and corresponding paperwork, statutory government filings etc. No other employees have been retained by the Interim Receiver.

### **Banking**

3.15 The Interim Receiver has opened a bank account at the Royal Bank of Canada in order to deposit cheques and pay expenses of the Interim Receivership.

### **Leased Vehicles**

3.16 The Debtors were in the business of providing in-house leasing for certain of their customers. The Interim Receiver has taken possession of post dated cheques with respect to these leased vehicles and is attempting to compile a list of these customers and locate the documentation with respect to each leased vehicle.

## 4 Appointment of a Receiver

---

- 4.1 As the Appointment Order is restricted to preserving and protecting the Property, the Interim Receiver is seeking an Order of this Honourable Court discharging the Interim Receiver and appointing a Receiver.
- 4.2 The sought Order would allow the Receiver to auction the vehicles and market and sell the Provincial Road Property.
- 4.3 As the Debtors' ability to carry on as a licensed dealer of used vehicles has been suspended there is effectively no car dealership business for the Receiver to market and sell.
- 4.4 In addition, given the involvement of the local police, RCMP and the Ontario Fire Marshall, whose presence has been given extensive coverage in the local media, any goodwill attributable for the Debtors' businesses has evaporated.
- 4.5 It is in the best interest of the estate to have an auction of the vehicles located at the Provincial Road Property as soon as possible. The Interim Receiver recommends an auction of the Debtors vehicles on terms agreeable to the Receiver for the following reasons:
- The ongoing cost of securing and insuring the vehicles;
  - A public auction is a well recognized method of obtaining market value for the vehicles; and
  - Attempting to sell the vehicles on a "one-off" basis is not economically feasible.

- 4.6 The appointment of a Receiver would also allow the Provincial Road Property to be marketed and sold in a commercially reasonable manner thereby benefiting the estate.
- 4.7 The Interim Receiver recommends the Provincial Road Property be listed for sale by a real estate agent of the Receiver's choosing for the following reasons:
- Exposing the property to the market place through the Multiple Listing Service is a well recognized method to dispose of the Provincial Road Property in a commercially reasonable manner; and
  - An expeditious sale of the Provincial Road Property would reduce ongoing carrying costs such as utilities, property taxes and maintenance thereby maximizing the value to the estate.

## 5 Recommendations

---

- 5.1 The Interim Receiver recommends and requests that this Honourable Court:
- Approve the Interim Receiver's activities as outlined in the First Report;
  - Discharge the Interim Receiver and release BDO pursuant to an Order substantially in the form of the Template Order approved by the Commercial List Users Committee; and
  - Approve the appointment of a Receiver pursuant to an Order substantially in the form of the Template Order approved by the Commercial List Users Committee.

All of which is respectfully submitted this 16<sup>th</sup> day of November, 2011

BDO Canada Limited. in its capacity as  
Interim Receiver of  
Big Three Preowned Centre Ltd., 1700773 Ontario Inc.,  
and 1413596 Ontario Inc. and not in its  
personal capacity



Per: Stephen N. Cherniak, CA, CIRP  
Senior Vice President

ROYAL BANK OF CANADA

- and -

BIG THREE PREOWNED CENTRE LTD. et al

Plaintiff

Defendants

Court File No. 35-1303100T

---

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

Proceeding commenced at London

**FIRST REPORT OF THE INTERIM  
RECEIVER**

Harrison Pensa LLP  
Barristers and Solicitors  
450 Talbot Street, 1st Floor  
P.O. Box 3237  
London, Ontario N6A 4K3

Timothy C. Hogan  
LSUC #36553S  
Tel : (519) 679-9660

Solicitors for the Plaintiff  
TCH/150339



## APPENDIX C

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

**B E T W E E N:**

**ROYAL BANK OF CANADA**

**Plaintiff**

**-and-**

**BIG THREE PREOWNED CENTRE LTD., and 1700773 ONTARIO INC.,**

**Defendants**

**FIRST REPORT TO THE COURT SUBMITTED BY BDO CANADA LIMITED AS  
RECEIVER OF BIG THREE PREOWNED CENTRE LTD. and 1700773 ONTARIO INC.**

**March 21, 2012**

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## Appendices

- Appendix A** - BDO Canada Limited Appointment Order as Interim Receiver (“Interim Appointment Order”)
- Appendix B** - First Report of BDO Canada Limited as Interim Receiver (without appendices)
- Appendix C** - BDO Canada Limited Appointment Order as Receiver (“Receiver’s Appointment Order”)
- Appendix D** - Statement of Receipts and Disbursements
- Appendix E** - Interim Accounts of Receiver
- Appendix F** - Interim Account of the Receiver’s Counsel
- Appendix G** - Receiver’s Independent Legal Opinion
- Appendix H** - Real Property Abstract

# 1 Background

---

- 1.1 As set out in the Affidavit of Douglas Carmichael, sworn November 3, 2011 (the “Carmichael Affidavit”) and filed in support of the interim receivership application made by the Royal Bank of Canada (“RBC”), Big Three Preowned Centre Ltd (“Big Three”) was a company carrying on business as a used motor vehicle dealer from land and premises municipally known as 1725 Tecumseh Road West, Windsor, Ontario. 1700773 Ontario Inc., o/a 5 Diamond Motors (“5 Diamond”) was a company carrying on business as a used motor vehicle dealer from lands and premises municipally known as 925 Provincial Road, Windsor, Ontario. 1413596 Ontario Inc., (“1413596”) was a company whose head office is registered as being located at 1725 Tecumseh Road West, Windsor.
- 1.2 1413596 was granted credit by RBC pursuant to a Visa facility which was on an unsecured basis.
- 1.3 Big Three and 5 Diamond (collectively “the Debtors”) major secured creditor is RBC. According to the Carmichael Affidavit, RBC was owed approximately \$3,045,000 by the Debtors pursuant to a number of loans.
- 1.4 As detailed in the Carmichael Affidavit, the following events were grounds for RBC seeking the appointment of the Interim Receiver;
- Big Three’s operating line was \$201,185.32 which was in excess of the limit approved by RBC;
  - The Ontario Motor Vehicle Industry Council (“OMVIC”) advised RBC that OMVIC had put an administrative hold on the licenses of Big Three and 5

Diamond as automobile dealers effectively ceasing their ability to sell vehicles;

- At the time of the Interim Receivership Application, the Windsor Police and the RCMP were seeking a warrant to enter all the buildings at the Tecumseh Road Property and the Provincial Road Property;
- There was a fire at the Provincial Road Property on or about the early morning of November 3, 2011. The fire was of a suspicious nature causing the Ontario Fire Marshall's office to investigate.
- Big Three and 5 Diamond effectively ceased operation as of November 3, 2011.

1.5 Given the aforementioned defaults and the cessation of operations of Big Three and 5 Diamond, RBC applied for and obtained an order (the "Interim Appointment Order") on November 4, 2011 appointing BDO Canada Limited as Interim Receiver of Big Three, 5 Diamond and 1413596. A copy of the Interim Appointment Order is attached as **Appendix A**.

1.6 The Interim Appointment Order empowered the Interim Receiver to, among other things;

- Take possession and control of all of the assets, undertakings and properties of the Debtors that was subject to the security of RBC and any and all proceeds, receipts and disbursements arising out of or from the property (the "Property");
- To receive, preserve, protect and maintain control of 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;

- To manage, operate and carry on the business of the Debtors, 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 Debtors;
- To execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- To receive and collect all monies and accounts now owed or hereafter owing to the Debtors;
- To take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

1.7 On November 29, 2012, with the term of the Interim Receivership expiring December 2, 2011, RBC moved for the appointment of BDO as receiver and receiver manager pursuant to section 243 of the *Bankruptcy and Insolvency Act* (the "BIA"). The First Report of the Interim Receiver is dated November 16, 2011 (the "Interim Receiver's First Report") and was filed with RBC's motion and details the Interim Receiver's activities to that date. A copy of the Interim Receiver's First Report (without appendices) is attached as **Appendix B**.

1.8 The purpose of the Interim Receiver's First Report was to advise the Court of the Interim Receiver's activities and to seek an Order of the Court for the following:

- Discharge of the Interim Receiver;

- Appointment of a Receiver;
- Seek the power and authorization to sell the vehicles taken possession of by the Interim Receiver;
- Seek the power and authorization to list the property located at 925 Provincial Road, Windsor, Ontario (the "Real Property") for sale with a real estate agent; and
- Exclude the real property located at 1725 Tecumseh Road West, Windsor, Ontario from the Appointment as RBC did not have security over that real property.

1.9 The Court granted an order dated November 29, 2011 appointing BDO as receiver and receiver and manager pursuant to section 243 of the BIA (the "Receiver's Appointment Order"). A copy of the Receiver's Appointment Order is attached as **Appendix C.**

1.10 The Receiver's Appointment Order empowered and authorized the Receiver to among other things;

- to enter into a Listing Agreement with a real estate agent (the terms and appointment of which are within the discretion of the Receiver) to market and sell the Real Property;
- to retain a licensed auctioneer to sell the Debtors' motor vehicles and ancillary shop equipment, and chattels relating to the business (the "Chattels") by way of a public auction (the "Motor Vehicle Auction"). The timing and terms of the Motor Vehicle Auction and appointment of the auctioneer are within the discretion of the Receiver. For all motor vehicles



and Chattels sold in the Motor Vehicle Auction, notice under section 63 (4) of the Ontario Personal Property Security Act ("PPSA") shall not be required.

- to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- to receive, preserve, protect and maintain control of 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;
- to manage, operate and carry on the business of the Debtors, 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 Debtors;
- 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 the Receiver's Appointment Order;
- 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;

- 1.11 As detailed below, the Debtors were adjudged bankrupts pursuant to Bankruptcy Orders dated December 14, 2011 following application by the RBC. BDO Canada Limited (“BDO”) is named trustee in bankruptcy for the estates of both 170 and Big Three.
- 1.12 The Receiver understands that the principal of the Debtors, Jamal Hazime, is the subject of charges under the Criminal Code before the court in Windsor Ontario and is not in Canada at this time.

## **2 Terms of Reference**

---

2.1 In preparing this First Report of the Receiver (the “First Report”) the Receiver has relied upon the Debtors’ books and records, including information assembled and prepared by the Debtors and its employees. The Receiver has not performed an audit or other verification of such information. The Receiver expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this First Report, or relied upon by the Receiver in preparing this First Report.

## **3 Purpose of this Report**

---

3.1 The purpose of the First Report of the Receiver is to:

- Advise the Court of the Receiver's activities with respect to the Property following the granting of the Receiver's Appointment Order;
- Seek the Court's approval of such activities;
- Provide the Receiver's recommendation with respect to the sale of the Real Property;
- In the event that the Court approves the sale of the Real Property, seek an Order vesting the Real Property in the purchaser, ADIP Inc.;
- Request that the Court seal the Receiver's Confidential Supplement to the First Report dated March 19, 2012 (the "First Confidential Report") which contains an analysis of the offer received for the Real Property and the Receiver's rationale for recommending the sale;
- Obtain approval for a distribution of proceeds to RBC;
- Obtain approval of the Receiver's interim accounts;
- Obtain approval of the interim account of the Receiver's Counsel

## 4 Receiver's Activities

---

### ***Appraisal***

- 4.1 The Receiver commissioned Gardner Auctions Inc. ("GAI") to perform an appraisal of the Property excluding the Real Property. GAI's appraisal indicated a gross value of the Property of \$493,000.

### **Vehicles**

#### ***Auction***

- 4.2 As noted in the First Report of the Interim Receiver there were eight-five (85) vehicles and one (1) motorcycle in the possession of the Interim Receiver. The Receiver's Appointment Order gave the Receiver authority to sell the vehicles by public auction. The Receiver invited proposals from five (5) auctioneers. The following proposals were received;

<b><i>Auctioneer</i></b>	<b><i>Offer</i></b>
Syl-Mar, Burford, Ontario	Purchase \$335,000
Richard Lavin Auctioneers, Maidstone, Ontario	Straight auction
Corporate Assets, Toronto, Ontario	1) Purchase \$360,000 2) Net minimum guarantee - \$335,000
Hilco Asset Sales, Toronto, Ontario	1) Purchase - \$390,000 2) Net minimum guarantee - \$380,000
Infinity Asset Solutions, Concord, Ontario	Net minimum guarantee - \$250,000

- 4.3 The Receiver invited Corporate Assets Inc. ("CAI") and Hilco Asset Sales ("Hilco") to resubmit proposals to the Receiver. As a result, CAI increased their net minimum guarantee ("NMG") to \$387,000 and Hilco increased their NMG to \$387,500.
- 4.4 The Receiver selected CAI as their proposal resulted in less costs to the Receiver than Hilco's proposal. CAI requested \$20,000 for costs whereas Hilco requested \$30,000.
- 4.5 The Receiver selected the NMG option rather than the purchase option as the GAI appraisal indicated the gross revenues from the auction could create additional revenue for the Receiver.
- 4.6 The auction was held by CAI December 17, 2011. Gross sales were \$413,000. The Receiver's share was approximately \$393,000.
- 4.7 The shortfall as compared to GAI's appraisal related to the vehicles. The Receiver insisted that a vehicle history report be made available to potential purchasers at the auction. Many of the vehicles had been in accidents previously which was not reflected in GAI's appraisal and valuation.

### ***Other Vehicles***

#### ***Adesa Auction***

4.8 The Receiver also identified six (6) vehicles owned by the Debtors at Adesa Auctions located in Kitchener, Ontario. Adesa was advised of the Receiver's interest in these vehicles. The Receiver instructed Adesa to sell the vehicles at auction. Adesa remitted \$22,063.25 to the Receiver as net proceeds for the sale of these vehicles.

#### ***Motor City Auctions ("MCA")***

4.9 The Receiver identified two (2) vehicles owned by the Debtors located at MCA. MCA was advised of the Receiver's interest in these vehicles. MCA remitted \$4,226.20 to the Receiver as net proceeds from the sale of these vehicles.

#### ***Metro Auto***

4.10 The Receiver identified one (1) vehicle owned by the Debtors at Metro Auto located in Detroit. The vehicle was a 2006 Land Rover. However Metro Auto alleged set-offs and a mechanic's lien against this Land Rover. Metro Auto sold the Land Rover and remitted approximately \$1,700 to the Receiver taking into account their right of set-off.

#### ***Lamborghini***

4.11 The Receiver was made aware of a 2005 Lamborghini (the "Lamborghini") in a secure facility in Sarnia, Ontario owned by Mr. Jacques Beauchamp. Big Three had made a registration as against the Lamborghini under the PPSA.

- 4.12 Mr. Beauchamp provided evidence to the Receiver that he purchased the Lamborghini in May, 2010 for \$123,385. According to Mr. Beauchamp, Big Three and Mr. Beauchamp then reached an arrangement whereby possession of the Lamborghini was provided to Big Three to permit the leasing of the vehicle to a third party individual.
- 4.13 Further and according to Mr. Beauchamp it was agreed that title of the Lamborghini was to transfer to Big Three on the payment of \$123,385 plus an additional payment of \$26,500 for permitting Big Three to lease the vehicle to a third party. Big Three only made one lease payment of \$5,771 to Mr. Beauchamp reducing the amount Mr. Beauchamp claims to be owed to \$144,000 ( $\$123,385 + \$26,500 - \$5,771$ ).
- 4.14 In July, 2010 Mr. Beauchamp had the Lamborghini seized for nonpayment from Big Three's lessor. Big Three then paid Mr. Beauchamp \$80,288 for the release of the vehicle.
- 4.15 For reasons that were not made clear to the Receiver, the Ontario Provincial Police then re-seized the Lamborghini and returned the vehicle to the possession of Mr. Beauchamp.



- 4.16 Mr. Beauchamp has advised the Receiver he will release the Lamborghini to the Receiver for approximately \$138,000 comprised of the balance he feels he is owed on the vehicle (\$144,000 less \$80,000) or \$64,000 plus \$14,000 in interest and approximately \$60,000 in storage costs.
- 4.17 The Receiver had an auctioneer perform a desk-top appraisal of the Lamborghini, (Mr. Beauchamp will not allow the Receiver to view the vehicle) which valued the vehicle at approximately \$80,000.
- 4.18 Mr. Beauchamp refuses to alter his position of being owed \$138,000. As Mr. Beauchamp owns the Lamborghini there is no further action to be taken by the Receiver. Mr. Beauchamp will eventually have to deal with the Big Three lien on the vehicle when he attempts to sell same.

### ***Porsche***

- 4.19 The Receiver was contacted by Toronto Dominion Insurance regarding a 2004 Porsche (the "Porsche") which had been wrecked in an accident. The records of the Ontario Ministry of Transportation showed Five Diamond as the registered owner of the Porsche.
- 4.20 Around the same time the Receiver was contacted by the solicitor for a company known as Juice Express Ltd. ("JEL"). JEL was shown as the party that the licence plates on the Porsche were registered to.

- 4.21 JEL alleged that it had consigned the Porsche to 5 Diamond for the sale of same. Without notice to and without the consent of JEL, 5 Diamond had leased the vehicle to an individual named Ali Hamka.
- 4.22 The Porsche was wrecked while being driven by Mr. Hamka..
- 4.23 TD Insurance sent the Receiver a cheque for \$18,505 payable to the Receiver and Mr. Hamka (the "Insurance Cheque").
- 4.24 Counsel for the Receiver reviewed the claim of JEL and determined that JEL was the owner of the Porsche and held a valid claim to the Insurance Cheque and the proceeds thereof.
- 4.25 Counsel for JEL located Mr. Hamka and directed him to contact the Receiver to endorse the Insurance Cheque.
- 4.26 Following Mr. Hamka's endorsement of the Insurance Cheque, the Receiver paid the insurance funds to JEL.

***Carfinco***

- 4.27 The Receiver was also made aware of two car leases that were to be financed through a third party financier, Carfinco Inc. ("Carfinco"). Big Three did refer certain customers to Carfinco who would finance such customer's leasing of a vehicle. On each completed transaction Big Three was paid for the purchase of the vehicle by Carfinco and Carfinco would then lease to the consumer. Carfinco had agreed to lease two vehicles to two customers of Big Three but had yet to advance funds to Big Three. Despite the fact that funds were not advanced and title remained with

Big Three, agreements had been executed by the customers and the vehicles were in the possession of these two customers.

- 4.28 Carfinco was to advance \$22,100 for both vehicles. Given the Receivership of Big Three and 5 Diamond, Carfinco refused to advance the funds claiming set-off of approximately \$36,000 Carfinco claimed to be owed by the Debtors. The Receiver attempted to negotiate with Carfinco but was unsuccessful.
- 4.29 The Receiver contacted both customers and advised them either to find new financing or return the vehicles to the Receiver.
- 4.30 A 2006 Chevrolet Trailblazer was returned to the Receiver which was sold at the auction as part of the NMG to CAI.
- 4.31 The other vehicle (a 2003 Mazda Protégé) had been taken to Houston, Texas by the lessee. The Receiver contacted the lessee and requested that the lessee return the vehicle. The lessee advised the Receiver that the vehicle could be retrieved in Houston, Texas. Given the value of the vehicle (approximately \$2,000) the Receiver abandoned the vehicle. Big Three's lien remains on the vehicle.

#### ***Miscellaneous Vehicles***

- 4.32 The Receiver was also made aware of vehicles where the Debtors held a potential interest located at Easy Auto, All Star Collision and in the possession of an individual named Mohammed Mortada. The Receiver investigated the Debtors' interest in these vehicles. The Receiver concluded that the vehicles in the possession of Mr. Mortada and Easy Auto were no longer owned by the Debtors and that the vehicle in the possession of All Star Collision should be abandoned.

### **Ontario Motor Vehicle Industry Council**

- 4.33 As outlined in the First Report of the Interim Receiver, the Ontario Motor Vehicle Industry Council (“OMVIC”) put an administrative hold on the dealer licences of Big Three and 5 Diamond.
- 4.34 OMVIC has also received claims against their insurance fund from customers of Big Three and 5 Diamond who have been defrauded either for warranty payments that were received by the Debtors and not remitted to the third party warranty company or for having the terms of their financing contracts altered without their consent
- 4.35 The Receiver and Trustee in Bankruptcy (see below) are cooperating with OMVIC as OMVIC has requested that any claim OMVIC deals with must be a proven claim in the Bankruptcy of Big Three and 5 Diamond.
- 4.36 The Trustee is reviewing each claim received from defrauded customers to ensure they are valid.

### **Bankruptcy**

- 4.37 In order to properly deal with OMVIC claims and deal with 1725 Tecumseh Road West, Windsor (owned by Big Three but not secured to the RBC), the RBC petitioned the Debtors into Bankruptcy.
- 4.38 A Bankruptcy Order was issued against the Debtors on December 14, 2011.
- 4.39 The First Meeting of Creditors for the Debtors was held on January 9, 2012 in Windsor, Ontario. No issues arose from the meeting.

4.40 The Bankruptcy Trustee has been provided with an independent legal opinion from its Counsel, Miller Thomson LLP that the security granted to Big Three and 5 Diamond is valid and enforceable against the Trustee in Bankruptcy.

**1707 and 1725 Tecumseh Road West, Windsor, Ontario**

4.41 Big Three operated from premises at 1707 Tecumseh Road West (“1707”) and 1725 Tecumseh Road West (“1725”) in Windsor, Ontario. The properties are located side by side and appear to be one property but are legally two separate parcels. 1725 was excluded from the Property subject to the Receiver’s Appointment Order.

4.42 As outlined in the First Report of the Interim Receiver, the Debtors’ vehicles were moved from 1707 and 1725 to the Real Property to facilitate the auction sale. The Receiver also removed office furniture and a small amount of equipment from 1707 and 1725 and had it transported to the Real Property for sale in the auction.

4.43 The Receiver returned the premises at 1707 to the landlord, the estate of Sona Habibian.

4.44 1725 is owned by Big Three. Big Three granted a mortgage over 1725 to Greycliffe Consulting Ltd (“Greycliffe”). Greycliffe filed a proof of claim with the Trustee in bankruptcy in the amount of \$107,142.84. The Trustee obtained an opinion of value of 1725 in the range of \$185,000 to \$200,000. The Trustee registered its interest on title to 1725 in order to protect any potential equity for the bankrupt estate.

- 4.45 Greycliffe advised the Trustee they intended to foreclose on the property and has commenced an action in the Ontario Superior Court (Windsor) seeking an order of foreclosure as against title to 1725. Greycliffe was advised by Counsel that this action for foreclosure was stayed by the bankruptcy of Big Three.
- 4.46 The Trustee was approached by a lawyer acting for a party that was negotiating the purchase of 1707 from the estate of Sona Habibian. The lawyer advised the Trustee his client was also interested in 1725. The lawyer was directed by the Receiver to contact Greycliffe in order to deal with the first mortgage registered against 1725.
- 4.47 The lawyer advised that his client would be willing to pay the Trustee \$15,000 for the Trustee's interest in 1725, conditional on his client obtaining an assignment of Greycliffe's mortgage.
- 4.48 The Trustee communicated the offer to the Inspector of the bankrupt estate of Big Three.
- 4.49 Given the opinion of value of 1725, the uncertainty of the market for this property, the quantum due on the Greycliffe mortgage, property tax arrears (approximately \$5,000), legal costs of dealing with the Greycliffe foreclosure action and selling costs, the Inspector agreed to release the Big Three interest in 1725 for \$15,000.

### **Books and Records**

- 4.50 As outlined in the First Report of the Interim Receiver, the RCMP seized the books and records of Big Three and 5 Diamond. The Interim Receiver had requested a copy of the hard drive from the RCMP. This hard drive has recently been given to the Receiver for review.

### **Wage Earner Protection Program Act (“WEPPA”)**

- 4.51 The Receiver was able to prepare WEPPA claims for the employees of 5 Diamond from records in its possession. To date three (3) employees have filed claims for wages and vacation pay totaling \$5,428.26. Pursuant to section 81.3 of the BIA these obligations of 5 Diamond are a secured claim in favour of each such employee (to a maximum of \$2,000 each) (the “Employee Remuneration Charge”) as against the property of the 5 Diamond ranking ahead of every other claim, right, charge or security save and except for claims under section 81.1 of the BIA (“Thirty Day Claims”) and amounts referred to in section 67(3) of the BIA (“Crown Deemed Trusts”). The potential BIA Claim against 5 Diamond could be as high as \$8,170.50 if all employees file claims. The Employee Remuneration Charge is a Charge on the proceeds of current assets of 5 Diamond and will be paid in priority to all other creditors, save for Crown Deemed Trusts. The Receiver records no Thirty Day Claims.
- 4.52 The Receiver has been unable to properly assess the Employee Remuneration Charge for Big Three. As a copy of the hard drive has now been received from the RCMP, the Receiver will attempt to extract this information.

### **Canada Revenue Agency (“CRA”)**

- 4.53 CRA has contacted the Receiver to perform a payroll audit for the Debtors. The Receiver is not able to quantify at this time what the potential deemed trust exposure is.

## **Insurance**

- 4.54 Due to the Receiver's Appointment Order, the Receiver was able to compel the insurers of the Debtors to continue to provide insurance on terms in place prior to the Receiver's appointment.
- 4.55 The insurance at Big Three at 1707 Tecumseh Road West has been cancelled as the Receiver has abandoned the premises.
- 4.56 As all vehicles and assets have been sold the vehicle and asset insurance has been cancelled.
- 4.57 The remaining insurance in place is for the Real Property.

## **Environmental**

- 4.58 The Receiver contacted Pinchin Environmental Ltd., ("Pinchin") to perform a Phase I site assessment at the Real Property.
- 4.59 Pinchin reported no issues arising from the Phase I site assessment and that a Phase II assessment was not warranted.



## **5 Receiver's Sale of the Real Property**

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- 5.1 As set out in greater detail in the First Confidential Report, the Real Property was listed for sale on February 1, 2012. The Receiver accepted an offer to purchase the Real Property from ADIP Inc., ("ADIP") subject to court approval (the "Transaction"). The Receiver's analysis of the Transaction is contained in the First Confidential Report.
- 5.2 The Receiver requests that this Court seal the First Confidential Report in order to avoid the negative impact the dissemination of the confidential information contained therein would have if the Transaction failed to close for any reason. Publication of the purchase price would undermine the fairness of the resumption of the sale process that may be required if the Transaction does not close.
- 5.3 The Receiver has accepted ADIP's offer to purchase the Real Property, subject to the approval of this Court. The terms of the Transaction and a copy of the agreement of purchase and sale are included with the First Confidential Report.
- 5.4 The terms of the Transaction include the following:
- a. A binding agreement of purchase and sale, which is now unconditional except for court approval, has been entered into;
  - b. The sale is on an as-is, where-is basis;
  - c. The Receiver has received a cash deposit from ADIP of \$25,000;
  - d. The balance of the purchase price will be paid by certified cheque or other immediately available funds at the time of closing; and
  - e. The Receiver is to seek a vesting order from the Court.

- 5.5 The Receiver sought the input of RBC during the negotiation process with ADIP. RBC, Big Three's primary economic stakeholder, supports the Receiver in recommending that this Court approve the Transaction.
- 5.6 As of the date of the First Report, the Transaction is set to close April 6, 2012 subject to the Court seeing fit to approve the Transaction and grant the requested Vesting Order.
- 5.7 For the reasons set out in the First Confidential Report, it is the Receiver's view that the Transaction is appropriate and represents the best recovery available in the circumstances for the Debtors' estates.
- 5.8 The Receiver is satisfied that the Real Property subject to the Transaction was properly exposed to the relevant marketplace including the listing for sale of the Real Property through the Multiple Listing Service.
- 5.9 The Receiver is of the view, based on the facts and circumstances of this case, that the Transaction maximizes the realization for the benefit of the stakeholders of the Debtors and minimizes ongoing expenses of the Receivership. The Receiver believes that the Real Property was adequately exposed to the marketplace and to the potential purchasers of such a property. The Transaction's purchase price also approximates the appraisal values obtained by the Receiver. Given the foregoing, the Receiver is of the view that the Transaction is in the best interests the creditors.
- 5.10 Therefore, for the reasons set out in the First Confidential Report, the Receiver recommends that this Court approve the Transaction and the sale of the Real Property to ADIP.

## 6 Statement of Receipts and Disbursements of the Receiver

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6.1 The Receiver maintains an account at RBC in London, Ontario. Attached as **Appendix D** is the Receiver's statement of receipts and disbursements for the period November 10, 2011 through March 5, 2012. The Receiver's receipts and disbursements break down as follows:

### Receipts

- I. *Received from CAI* – as discussed earlier in the First Report, funds of \$392,028.80 were received from CAI regarding the auction of the Debtors' vehicles. The balance of funds received from CAI is comprised of the NMG of \$387,000 and profit sharing of \$5,028.80.
- II. *HST* – Approximately \$51,000 was received from CAI in Harmonized Sales Tax ("HST") on the sale of the vehicles. The Receiver will pay this sum of HST to CRA less the Receiver's input credits. Currently the balance payable to CRA is approximately \$33,000.
- III. *Sale of Other Vehicles* – As discussed earlier in the First Report the Receiver collected \$27,954.45 from Adesa Auctions, Metro Auto and MCA from the sale of vehicles that were not on the premises at the time of the Receivership.
- IV. *Received from TD Insurance/Paid to Juice Express Ltd.* – As outlined in the First Report, the Receiver received funds from TD Insurance in relation to the Porsche. As detailed above the

Porsche was owned by JEL and as such these funds were paid to JEL.

- V. *In-house Leasing* – As identified in the First Report of the Interim Receiver, Big Three was in the business of providing “in-house” leasing for certain customers. The Receiver identified seventeen (17) customers all of whom provided Big Three with post dated cheques representing monthly lease payments for ongoing leases. The majority of these cheques have been cashed by the Receiver. Total proceeds received by the Receiver to date on such lease payments total \$9,778.45.
- VI. *Miscellaneous Funds* – The Receiver has collected two refund cheques for insurance and utilities for a total of \$1,576.02.

**Disbursements:**

- I. *Receiver’s Fees* – The Receiver has been paid an interim invoice of \$92,169.53 (including HST) for which it is seeking the approval of this Court.
- II. *Security* – as outlined in the Interim Receiver’s First Report, it was necessary to have twenty-four (24) hour security to protect the Debtors’ vehicles. Initially security was required at both the Real Property and 1707 and 1725; however, after the vehicles were moved to the Real Property, security was only required at that location. The Receiver maintained twenty-four (24) hour security at the Real Property until shortly after the auction. Security has now been reduced to twice weekly attendances at the Real Property by

the security company. The Receiver has paid \$32,803 plus HST in security fees.

- III. *Insurance* – As discussed earlier in the First Report, insurance was maintained at both locations until 1707 and 1725 were abandoned and the vehicles were sold. Currently the insurance maintained is for the Real Property (building and liability). Insurance premiums of \$10,006.43 have been paid to date.
- IV. *Appraisal Fees* – The Receiver has paid \$9,056.69 for two real estate appraisals and an appraisal of the motor vehicles.
- V. *Big Star Auto Vehicle Purchase* – Two vehicles located at the Real Property were in the name of Big Star Auto. The Receiver confirmed Big Star was owed \$8,475 for these vehicles. Upon ascertaining the value of these vehicles was greater than the amount owing to Big Star Auto, the Receiver paid \$8,475 to Big Star Auto and the ownerships were delivered to the Receiver for transfer. The vehicles were sold at auction by CAI.
- VI. *Funds to Trustee in Bankruptcy* – The Receiver is funding the Trustee for both the Big Three and 5 Diamond bankrupt estates. \$6,300 has been transferred to date for newspaper advertisements, a meeting room for the First Meeting of Creditors, mail outs and legal fees for independent legal advice provided to the Trustee. The Trustee also paid a secured claim of \$1,630.35 for leased equipment that was sold at auction. The lease was reviewed by the

Receiver's independent legal counsel, Miller Thomson LLP and determined to be valid.

- VII. *Utilities* – The Receiver is paying the utilities at the Real Property. \$5,896.58 plus HST has been paid to date.
- VIII. *Environmental Assessment* – The Receiver paid \$2,500 plus HST to Pinchin Environmental Ltd for a Phase I assessment.
- IX. *Vehicle Registration Reports* – The Receiver paid \$2,395 plus HST for the vehicle registration report for each vehicle in its possession. These reports provided a history of the ownership of the vehicle as well as any liens registered against the vehicle.
- X. *Towing* – The Receiver paid \$1,620 plus HST for vehicle towing. The majority of the cost was to move the vehicles from 1707 and 1725 to the Real Property. There were also additional towing charges for repossessed vehicles.
- XI. *Repair & Maintenance* – The Receiver spent \$1,911 plus HST in repair and maintenance. Repair and maintenance expenses included repairs to the Real Property after the fire as well as snow plowing of the Real Property.
- XII. *Records Retention* – The Receiver spent \$1,000 plus HST in the shredding of older books and records no longer required.
- XIII. *Vehicle Repairs* – The Receiver spent \$870 plus HST to complete the repairs of a vehicle at a body shop. The Receiver ascertained the vehicle was worth in excess of costs of repair. The subject vehicle was subsequently sold in the auction.

XIV. *Mail Redirection* – the Receiver spent \$270 plus HST to redirect the mail from both the Real Property and 1707 and 1725 to the offices of the Receiver.

6.2 Based on the receipts and disbursements to date and taking into account the anticipated net proceeds of the Transaction, the Receiver believes that RBC will incur a substantial shortfall on the amount owed to it under the security granted by the Debtors.

## 7 Fees and disbursements of the Receiver and Counsel to the Receiver

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7.1 Attached as **Appendix E** are two interim accounts of the Receiver for the period November 4, 2011 to December 31, 2011 and for the period January 1, 2012 through March 9, 2012.

7.2 The Receiver submits that the hourly rates for the Receiver and its staff are commercially reasonable.

7.3 Attached as **Appendix F** is an interim account from Miller Thomson LLP for the legal fees for the Receiver's Counsel for the period \_\_\_\_\_ to \_\_\_\_\_

7.4 Pursuant to Paragraph 18 of the Appointing Order, any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees and disbursements of the Receiver and those of its legal counsel, shall be allowed on a passing of accounts and 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 (the "Receivers Charge").



## 8 Distribution

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- 8.1 The Receiver's Counsel, Miller Thomson LLP has reviewed the RBC security and the Receiver is advised that the RBC security is valid and enforceable as a first charge on the Property and the proceeds from the sale of the Real Property. The Receiver agrees with this position. A copy of Miller Thompson's report to the Receiver on the RBC security is attached as **Appendix G** to this Report.
- 8.2 RBC has advised the Receiver that the principal amount owed to RBC plus interest accrued to February 16, 2012 is \$3,065,296.15 plus legal and other enforcement costs..
- 8.3 The Receiver recommends and is seeking authorization to pay all net proceeds from the sale of the Real Property following the payment of the fees and disbursements of the Receiver and those of its Counsel to RBC and allowing for a reserve to deal with the Employee Remuneration Charge, the potential Crown Deemed Trusts and the costs for the continued administration of the estate (the "Reserve").
- 8.4 The Receiver is also seeking to pay to RBC a portion of the funds it is holding as Receiver from the auction of the motor vehicles.
- 8.5 A copy of a parcel abstract for the Real Property is attached at **Appendix H** to this Report. All parties with an interest in the Real Property have been served with the Receiver's motion materials. All parties with an interest in the Property with registrations under the PPSA are also being served with this Report.

## 9 Recommendations

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- 9.1 The Receiver recommends and requests that this Court grant an Order as follows:
- a. Approving the Transaction as outlined in the First Confidential Report;
  - b. Sealing the First Confidential Report until the closing of the Transaction;
  - c. Vesting the Real Property in ADIP free and clear of any liens, charges and encumbrances, as set out in the draft Approval and Vesting Order;
  - d. Approving the Receiver's activities as outlined in the First Report;
  - e. Approving the fees of the Receiver and those of its Counsel as outlined at **Appendix E and Appendix F.**
  - f. Approving a distribution to the RBC from the net proceeds of the sale of the Real Property as well as a portion of the sale of the vehicles, taking into account the Reserve.

All of which is respectfully submitted this 21<sup>st</sup> day of March, 2012

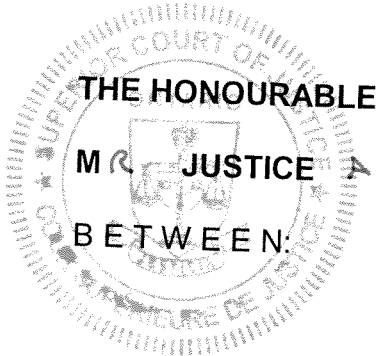
BDO Canada Limited. in its capacity as  
Receiver of Big Three Preowned Centre Ltd.,  
and 1700773 Ontario Inc., o/a 5 Diamond Motors  
and not in its personal capacity



Stephen N. Cherniak, CA, CIRP  
Senior Vice President

## APPENDIX D

ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY



THE HONOURABLE

M.R. JUSTICE

BETWEEN

A.D. Grace

)  
)  
)

TUESDAY THE 3rd DAY

OF APRIL, 2012

ROYAL BANK OF CANADA

Plaintiff

-and-

BIG THREE PREOWNED CENTRE LTD., 1700773 ONTARIO INC., and  
1413596 ONTARIO INC.

Defendants

ORDER

**THIS MOTION**, made by **BDO Canada Limited**, as court appointed receiver and manager, without security, of all of Big Three Preowned Centre Ltd's ("Big Three") and 1700773 Ontario Inc's ("**Five Diamond**") (collectively the "Debtors") current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof excluding the real property owned by Big Three and known municipally as 1725 Tecumseh Road, Windsor, Ontario N9B 1V3 (collectively the "**Property**") appointed by Order of the Honourable Justice Hockin dated November 29, 2011 (the "**Appointing Order**") for:

- (a) An Order that the time for service and filing of the Notice of Motion and the Motion Record be abridged and validated so that this motion is properly returnable today and hereby dispenses with further service hereof;
- (b) An Order approving the First Report of the Receiver dated March 21, 2012 (the "**First Report**") and the Supplemental Confidential Report to the First Report

- dated March 21, 2012 (the "**Supplemental Confidential Report**") and the activities and conduct of the Receiver detailed therein;
- (c) An Order that the sale transaction (the "**Transaction**") contemplated by an Agreement of Purchase and Sale (the "**Sale Agreement**") for property legally described as PT LT 89, 90 CON 3, DESIGNATED AS PTS 1, 2 ON PL 12R22575; WINDSOR S/T AND TW AS IN CE235097 (the "**Provincial Property**") between the Receiver and ADIP Inc. (the "**Purchaser**") made as of February 6, 2012 and appended to the Supplemental Confidential Report at Appendix "A" be approved and that the execution of the Sale Agreement by the Receiver is authorized and approved, and the Receiver be authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction;
- (d) An Order that upon the filing with this Honourable Court by the Receiver of a certificate (the "**Closing Certificate**") substantially in the form set out at Schedule "A" hereto, that title in and to the Provincial Property is hereby vested in the Purchaser absolutely and forever free and clear of and from any and all encumbrances, liens, claims, rights, title, interest, security interest, charges, pledges, mortgages, hypothecations, hypothecs, judgments, executions, writs of seizure and sale, options, adverse claims, levies, charges, remedies from facts which exist as of the date of this Order whether known or unknown, or any other rights, rights of use, disputes and debts of all persons or entities of any kind whatsoever and howsoever arising, whether contractual, statutory, by operation of law or otherwise, whether perfected, attached, registered or filed, whether secured, unsecured or otherwise and whether created by or pursuant to the

orders made in these proceedings including, without limitation, the encumbrances registered on title to the Provincial Property (as hereinafter defined as the "**Claims**") as set out at Schedule "B" hereto including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Appointing Order, and, (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**");

- (e) An Order that no holder of any of the Encumbrances that have been vested out pursuant to this Order shall take any steps, proceedings, or make any filings or claims in connection therewith against the Provincial Property in connection with any such encumbrance;
- (f) An Order that the *Bulk Sales Act*, R.S.O. 1990, c. B-14 does not apply to the Transaction and the Transaction may be completed without compliance with:
  - (a) the provisions of the *Mortgages Act*, R.S.O. 1990, c. M-40 as amended; or
  - (b) section 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"),or any other notice, requirement, statutory or otherwise which a creditor or other party may be required to issue in order to dispose of the collateral of the Debtors;
- (g) An Order that notwithstanding:
  - (a) the pendency of these proceedings; or
  - (b) the provisions of any federal statute;

that the vesting provisions contained herein will not be void or voidable at the instance of creditors or claimants and do not constitute nor shall they be deemed to be settlements, fraudulent preferences, assignments, fraudulent conveyances or other reviewable transactions under the *BIA* or any other applicable federal or provincial legislation, and they do not constitute conduct meriting an oppression remedy;

- (h) An Order that in furtherance of this Order and only upon the filing by the Receiver of the Closing Certificate with this Honourable Court, the Land Registrar for Essex (No. 12) is hereby directed and authorized to:
- (a) register this Order on the applicable abstract index or parcel register for the Provincial Property;
  - (b) enter or otherwise reflect the Purchaser as the owner on the applicable abstract or parcel register for the Provincial Property in place of Big Three Preowned Centre Ltd.;
  - (c) delete, at the time of registration of this Order from the abstract index or parcel register for the Property, each of the encumbrances set out in Schedule "B" hereto.
- (i) An Order that for the purposes of determining the nature and priority of Claims, the net proceeds received by the Receiver from the Transaction shall stand in the place and instead of the Provincial Property, and that any and all Encumbrances shall attach to the net proceeds from the sale of the Provincial Property with the same priority as they had with respect to the Provincial Property immediately prior to the sale, as if the Provincial Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale;

- (j) An Order that the Supplemental Confidential Report be sealed until such a time as the Transaction is complete and funds are received by the Receiver;
- (k) An Order that the Receiver's Statement of Receipts and Disbursements (as detailed in the First Report) be approved;
- (l) An Order that the fees and disbursements of the Receiver as disclosed in the Affidavits of Stephen Cherniak, sworn March 20, 2012 (the "**Receiver's Fees**") and the payment of same be approved;
- (m) An Order that the fees and disbursements of counsel to the Receiver as disclosed in the Affidavit of Sherry Kettle, sworn March 21, 2012 (the "**Counsel Fees**") and the payment of same be approved;
- (n) An Order that following the payment of the Receiver's Fees and the Counsel Fees as approved, the Receiver be and is hereby authorized to and the Court approves the distribution of a sum not to exceed \$3,065,296.15 to Royal Bank of Canada (the "**Bank**") plus the Bank's accruing interest from February 16, 2012 and all costs subject to maintaining sufficient reserves to satisfy outstanding obligations and to complete the administration of the receivership (the "**Interim Distribution**").
- (o) An Order that the Receiver be released and discharged from any and all liability that the Receiver now has or may hereafter have by reason of, or in any way arising out of, the action or omissions of the Receiver, prior to the date of this order in the relation to the Transaction and the Interim Distribution, while acting in its capacity as Receiver herein, except for liability due to gross negligence and wilful misconduct. Without limited the generality of the foregoing, the Receiver is



hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings prior to the date of this Order, including any claims made as against the proceeds subject to the Interim Distribution except for liability due to gross negligence and wilful misconduct.

- (p) Such further and other relief as counsel may request and this honourable court may permit.

**ON READING** the First Report and the Supplemental Confidential Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Susan Jarrell sworn March 21, 2012, filed,

1. **THIS COURT ORDERS** that the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged and validated so that this motion is properly returnable today and hereby dispenses with further service hereof.
2. **THIS COURT ORDERS** that the First Report and the Supplemental Confidential Report and the activities and conduct of the Receiver detailed therein be and are hereby approved.
3. **THIS COURT ORDERS** that the Transaction contemplated by the Sale Agreement be approved and that the execution of the Sale Agreement by the Receiver is authorized and approved, and the Receiver be authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction.

4. **THIS COURT ORDERS** that upon the filing with this Honourable Court by the Receiver of the Closing Certificate, that title in and to the Provincial Property is hereby vested in the Purchaser absolutely and forever free and clear of and from the Claims and Encumbrances.
5. **THIS COURT ORDERS** that no holder of any of the Encumbrances that have been vested out pursuant to this Order shall take any steps, proceedings, or make any filings or claims in connection therewith against the Provincial Property in connection with any such encumbrance.
6. **THIS COURT ORDERS** that the *Bulk Sales Act*, R.S.O. 1990, c. B-14 does not apply to the Transaction and the Transaction may be completed without compliance with:
  - (a) the provisions of the *Mortgages Act*, R.S.O. 1990, c. M-40 as amended; or
  - (b) section 244(1) of the *BIA*.or any other notice, requirement, statutory or otherwise which a creditor or other party may be required to issue in order to dispose of the collateral of a Debtors.
7. **THIS COURT ORDERS** that notwithstanding:
  - (a) the pendency of these proceedings; or
  - (b) the provisions of any federal statute;that the vesting provisions contained herein will not be void or voidable at the instance of creditors or claimants and do not constitute nor shall they be deemed to be settlements, fraudulent preferences, assignments, fraudulent conveyances or other reviewable transactions under the *BIA* or any other

applicable federal or provincial legislation, and they do not constitute conduct meriting an oppression remedy.

8. **THIS COURT ORDERS** that in furtherance of this Order and only upon the filing by the Receiver of the Closing Certificate with this Honourable Court, the Land Registrar for Essex (No. 12) is hereby directed and authorized to:

(a) register this Order on the applicable abstract index or parcel register for the Provincial Property;

(b) enter or otherwise reflect the Purchaser as the owner on the applicable abstract or parcel register for the Provincial Property in place of Big Three Preowned Centre Ltd.;


(c) delete, at the time of registration of this Order from the abstract index or parcel register for the Property, each of the encumbrances set out in Schedule "B" to this Order.

9. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds received by the Receiver from the Transaction shall stand in the place and in stead of the Provincial Property, and that any and all Encumbrances shall attach to the net proceeds from the sale of the Provincial Property with the same priority as they had with respect to the Provincial Property immediately prior to the sale, as if the Provincial Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

10. **THIS COURT ORDERS** that the Supplemental Confidential Report be sealed until such a time as the Transaction is complete and funds are received by the Receiver.

11. **THIS COURT ORDERS** that the Receiver's Statement of Receipts and Disbursements (as detailed in the First Report) be and are hereby approved;
12. **THIS COURT ORDERS** that the Receiver's Fees be and are hereby approved.
13. **THIS COURT ORDERS** that the Counsel Fees be and are hereby approved;
14. **THIS COURT ORDERS** the Interim Distribution of the following sum be made following the completion of the Transaction and after the payment of the Receivers Fees and Counsel Fees, and subject to the Reserve (as detailed in the First Report):
  - a. A sum not to exceed \$3,065,296.15 to the Royal Bank of Canada owing as at February 16, 2012.
15. **THIS COURT ORDERS** that the Receiver be released and discharged from any and all liability that the Receiver now has or may hereafter have by reason of, or in any way arising out of, the action or omissions of the Receiver, prior to the date of this order in the relation to the Interim Distribution, while acting in its capacity as Receiver herein. Without limited the generality of the foregoing, the Receiver is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings prior to the date of this Order, including any claims made as against the proceeds subject to the Interim Distribution.

ORDER ENTERED  
77-72  
APR 03 2012  
571

  
Justice, Ontario Superior Court of Justice  
GRACE J

SCHEDULE A

Court File No. 35-1303100T

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

BETWEEN:

ROYAL BANK OF CANADA

-and-

Plaintiff

BIG THREE PREOWNED CENTRE LTD., 1700773 ONTARIO INC., and  
1413596 ONTARIO INC.

Defendants

**RECEIVER'S CERTIFICATE**

**RE: BDO Canada Limited., IN ITS CAPACITY AS THE RECEIVER AND RECEIVER  
MANAGER without security, of the property legally described as PT LT 89, 90  
CON 3, DESIGNATED AS PTS 1, 2 ON PL12R22575; WINDSOR S/T AND T/W AS IN  
CE235097 (the "Defendants"), together with all income and proceeds derived  
therefrom (collectively, the "Property")**

**RE: OFFER TO PURCHASE FROM ADIP Inc. DATED FEBRUARY 6, 2012 (the  
"Agreement of Purchase and Sale")**

This certificate is delivered pursuant to paragraph 4 of the Order of the Honourable  
Justice \_\_\_\_\_ dated April \_\_\_\_\_, 2012.

The Receiver hereby certifies that all the terms and conditions under the Agreement of  
Purchase and Sale have been satisfied or waived to the satisfaction of the Receiver and  
that the transaction under the Agreement of Purchase and Sale has been completed in  
escrow.

DATED the      day of <sup>April</sup> March, 2012.

BDO CANADA LIMITED, solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

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

Name:

Title:

## SCHEDULE B

1. Instrument CE443536 registered on October 1, 2010 - Charge from Big Three Preowned Centre Ltd. to Royal Bank of Canada in the amount of \$1,950,000;
2. Instrument CE443537 registered on October 1, 2010 – No Assgn Rent Gen – *remarks: CE443536 - Rents* from Big Three Preowned Centre Ltd. to Royal Bank of Canada;
3. Instrument CE495713 registered on November 16, 2011 – Apl Court Order from Ontario Superior Court of Justice to Royal Bank of Canada.
4. Instrument CE498548 registered on December 5, 2011– Apl Court Order from Ontario Superior Court of Justice to Royal Bank of Canada
5. Instrument CE502288 registered on January 6, 2012 – Apl Tr Bk Owner from Big Three Preowned Centre Ltd. to BDO Canada Limited.
6. Execution No. 12-0000219 issued January 30, 2012 – Creditor Ministry of Revenue and Defendant, Big Three Preowned Centre Ltd. operating as Big Three Preowned Centre Ltd

ROYAL BANK OF CANADA  
Plaintiff

and  
BIG THREE PREOWNED CENTRE  
LTD., 1700773 ONTARIO INC. and  
1413596 ONTARIO INC.  
Defendants

Court File No. 35-1303100T

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

ORDER

**MILLER THOMSON LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

Alissa K. Mitchell LSUC#: 35104E  
Tel: 519.931.3510  
Fax: 519.858.8511

Lawyers for BDO Canada Limited in its capacity  
as Court-appointed receiver and receiver and  
manager of the Debtors



## APPENDIX E

**Big Three Preowned Centre Ltd and 1700773 Ontario Inc. o/a 5 Diamond Motors**  
**Statement of Receipts and Disbursements**  
**for the Period November 10, 2011 through October 26, 2021**

**Receipts:**

Sale of 925 Provincial Road	\$925,000.00	
Less: Commission	(36,583.26)	
Less: Property taxes	(31,941.21)	
		856,475.53
Received from CAI - re auction		392,028.80
HST collected		50,984.35
Miscellaneous sale of vehicles		36,336.30
Received from TD Insurance		18,505.00
In-house leasing		9,520.25
Property tax vacancy rebate		3,223.25
Misc Refunds		1,576.42
Interest		3,802.60
Cash on hand		100.35
		1,372,552.85

**Disbursements:**

Receiver's fees	\$157,500.05
Security	33,283.00
HST paid on disbursements	29,628.29
Funds paid to Trustee in Bankruptcy	26,300.00
HST remitted	26,182.63
Paid to Juice Express Ltd	18,505.00
Utilities	11,771.57
Appraisal fees	9,056.69
Big Star Auto - purchase vehicle interest	8,475.00
Legal fees	8,150.80
Insurance	6,634.57
WEPPA priority	4,726.63
Records retention	3,113.59
Casual labour	3,029.25
Environmental assessment	2,500.00
Vehicle Registration Reports	2,395.00
Towing	1,620.00
Repair & maintenance	1,362.00
Consulting re property tax rebate	940.00
Vehicle repairs	870.00
Mail redirection	270.00
Fees to Official Receiver	140.00
Bank charges	45.00
	356,499.07

Excess of receipts over disbursements		\$1,016,053.78
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**Represented by:**

Payments to the Royal Bank		1,000,000.00
Balance in Receiver's account as at October 26, 2021		16,053.98
		\$1,016,053.98

## APPENDIX F

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

IN THE MATTER OF THE RECEIVERSHIP OF BIG THREE PREOWNED CENTRE LTD AND  
1700773 ONTARIO INC

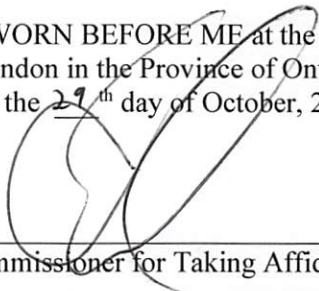
**AFFIDAVIT OF STEPHEN N. CHERNIAK**

I, **Stephen N. Cherniak**, of the City of London, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a Senior Vice-President of BDO Canada Limited, the Receiver (“Receiver”) of Big Three Preowned Centre Ltd and 1700773 Ontario Inc, (“Big Three” and “1700773”) and, as such, I have knowledge of the matters hereinafter deposed to.
2. By Order dated November 29, 2011 BDO Canada Limited was appointed Receiver of Big Three and 1700773 pursuant to an order of the Ontario Superior Court of Justice (the “Order”).
3. The Receiver’s First Report to the Court was approved by Justice Grace on April 3, 2012. The first account of the Receiver for the period November 4, 2011 to March 19, 2012 was also approved by the Order of Justice Grace on April 3, 2012.
4. Since the date of its last account the Receiver has been engaged in the following:
  - Finalize First Report of Receiver and attend court hearing on April 3, 2012;
  - Complete the sale of 925 Provincial Road, Windsor (the “Real Property”);
  - Prepare Records of Employment, T4’s and other payroll related matters;
  - Respond to requests from information from Ontario Provincial Police, Windsor Police, Canada Revenue Agency and Ontario Motor Vehicle Industry Council (“OMVIC”);
  - Assist with removal of liens, transfers of ownership and related issues for several vehicles purchased from auction by third parties;
  - Prepare Second Report of Receiver and Statement of Receipts and Disbursements;

- Various phone calls and email correspondence with lessees, vehicle purchasers, Royal Bank of Canada and other stakeholders;
5. In the course of performing the duties pursuant to the Order and as set out above at paragraph 4, the Receiver's staff expended 129.0 hours for the period of March 19, 2012 through October 26, 2021, including an estimate of 24 hours to finalize the administration of the estate. Attached hereto and marked as Exhibit "A" to this my Affidavit is the account of the Receiver together with a summary sheet.
  6. To the best of my knowledge, the rates charged by the Receiver throughout the course of these proceedings are comparable to the rates charged by other insolvency practitioners in the Ontario mid-market for providing similar insolvency and restructuring services.
  7. The hourly billing rates outlined in Exhibit "A" to this my Affidavit are not more than the normal hourly rates charged by BDO Canada Limited for services rendered in relation to similar proceedings.
  8. I verily believe that the fees and disbursements incurred by the Receiver are fair and reasonable in the circumstances.
  9. This Affidavit is sworn in support of the motion for approval of the Receiver's fees and disbursements and for no other or improper purposes.

SWORN BEFORE ME at the City of  
London in the Province of Ontario  
on the 27<sup>th</sup> day of October, 2021.



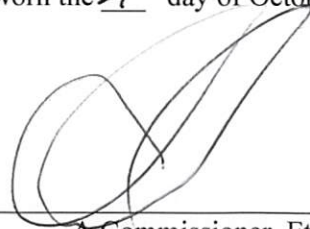
Commissioner for Taking Affidavits

**Chester Richard Szypula, a Commissioner, etc.,  
Province of Ontario, for BDO Canada Limited.  
Expires August 18, 2024.**



STEPHEN N. CHERNIAK, CPA, CA, CIRP  
Licensed Insolvency Trustee

Attached is Exhibit A  
To the Affidavit of Stephen N. Cherniak  
Sworn the 29<sup>th</sup> day of October, 2021.

A handwritten signature in black ink, consisting of several overlapping loops and a long, sweeping tail that extends to the right.

---

A Commissioner, Etc

Chester Richard Szypula, a Commissioner, etc.,  
Province of Ontario, for BDO Canada Limited.  
Expires August 18, 2024.

**Summary of Receiver's Accounts for the period  
March 19, 2012 through October 26, 2021**

<b>Invoice Date</b>	<b>Hours Expended</b>	<b>Fees &amp; Disbursements</b>	<b>HST</b>	<b>Invoice Total</b>
August 20, 2012	55.60	14,731.47	1,915.09	\$16,646.56
February 25, 2014	28.00	5,734.56	745.49	\$6,480.05
October 26, 2021	45.40	20,000.30	2,600.03	\$22,600.33
	<b>129.00</b>	<b>\$40,466.33</b>	<b>\$5,260.61</b>	<b>\$45,726.94</b>



Invoice #87230642  
Company Name  
HST Reg # 101518124RT0001

Ontario Superior Court of Justice  
80 Dundas Street  
London, Ontario

August 20, 2012

**Re: Big Three Preowned Centre Ltd., and 1700773 Ontario Inc., o/a 5 Diamond Motors**

For professional services rendered for the period March 20, 2012 through August 15, 2012 as per the attached detail:

Our Fee	\$14,600.00
Disbursements	
Mileage/parking - \$20.72	
PPSA searches - \$100.00	
Courier - \$10.75	
	<u>\$131.47</u>
Sub Total	\$14,731.47
HST	\$1,915.09
Total	<u><u>\$16,646.56</u></u>

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**REMITTANCE ADVICE**

Cheque Payments to:  
103-252 Pall Mall Street  
London, ON N6A 5P6

Invoice #	87230642
Amount	\$16,646.56



August 20, 2012

For Professional services rendered

<b>Staff</b>	<b>Date</b>	<b>Time</b>	<b>Comments</b>
Finnegan, M	20-Mar-12	1.5	Final edits to reports. Compile appendices to reports. Prepare affidavits for the reports. Deliver same to Miller Thomson for Motion.
Prieur, C	20-Mar-12	2.5	Prepare ROE's, look up employee addresses for T-4's, conversation with. Helen, email to S. Cherniak.
Finnegan, M	21-Mar-12	1	VIN letter to MTO for vehicle purchaser. PPSA searches on 5 vehicles.
Cherniak, S	21-Mar-12	0.5	Call from Alissa Mitchell. Small change to report. Email from T. Hogan re ministry lien.
Cherniak, S	22-Mar-12	0.5	Emails and calls from T. Hogan re report and court.
Finnegan, M	22-Mar-12	0.5	Pay bills.
Finnegan, M	23-Mar-12	0.5	Email to OMVIC with updated claims register.
Finnegan, M	26-Mar-12	0.5	HST returns filed.
Hooper, L	26-Mar-12	0.1	Issued cheque.
Finnegan, M	27-Mar-12	0.5	Bill payment. Review email from Windsor police re vin #, ppsa search on same.
Cherniak, S	27-Mar-12	0.5	Respond to emails from OMVIC and Windsor police.
Sharron, D	28-Mar-12	2	Record retention.
Cherniak, S	29-Mar-12	0.2	Records issue. Deal with vehicle at All Star Auto.
Finnegan, M	30-Mar-12	0.5	Arrange record retention pick up and storage.
Hooper, L	30-Mar-12	0.1	Issued cheque.
Finnegan, M	02-Apr-12	1.8	Send sale closing documents to Harrison Pensa. Call from Big 3 customer re problems with credit bureau reporting issue. Contact utilities and arrange meter readings for sale closing. Email to G4 Security re discontinuation of service after closing date. Pay bills.
Cherniak, S	02-Apr-12	1.2	Execute closing documents. Call from T. Hogan. Call from creditor. Emails from Harrison Pensa. Email to purchaser. Email to insurance company.
Cherniak, S	03-Apr-12	2.5	Attend at court re Big Three. Emails re update on order.

Finnegan, M	04-Apr-12	0.5	File administration as per court order.
Sharron, D	04-Apr-12	2	Record retention and destruction.
Hooper, L	04-Apr-12	0.1	Issued cheque.
Prieur, C	04-Apr-12	2	Attend location re: record retention.
Hooper, L	05-Apr-12	0.5	Deposit
Finnegan, M	05-Apr-12	0.5	Email from/to OMVIC re claim.
Cherniak, S	05-Apr-12	1	Closing of deal. Calls, emails, execute Receiver's certificate.
Cherniak, S	09-Apr-12	1	Review of correspondence from Harrison Pensa. Review R&D. Email to Windsor police re vehicle.
Finnegan, M	09-Apr-12	0.5	Update R & D.
Cherniak, S	10-Apr-12	0.6	Email from Windsor police on Gan vehicle. Call and email to Gan.
Cherniak, S	11-Apr-12	0.5	Review of correspondence from Harrison Pensa. Email to Matt Cunningham re property taxes.
Cherniak, S	12-Apr-12	0.3	Call from Andrew Gan. Update Windsor police.
Hooper, L	12-Apr-12	0.1	Bank reconciliation.
Cherniak, S	13-Apr-12	0.5	Letter to RBC re R&D.
Cherniak, S	16-Apr-12	0.6	Deliver cheque to RBC. Update.
Finnegan, M	16-Apr-12	0.3	Called to confirm Enwin utility was final billed as requested.
Hooper, L	16-Apr-12	0.1	Issued cheque.
Cherniak, S	17-Apr-12	0.5	Email from Matt Cunningham re property tax. Email from T. Hogan.
Cherniak, S	18-Apr-12	1.1	Draft affidavit for property tax refund. Call to Matt Cunningham. Deal with vehicle search.
Cherniak, S	19-Apr-12	0.6	Email to/from Windsor police and Gan. Changes to affidavit. Send to Matt Cunningham.
Hooper, L	19-Apr-12	0.1	Issued cheque.
Finnegan, M	23-Apr-12	0.5	Pay bills.
Cherniak, S	25-Apr-12	1	Compile information on debtor's criminal activities for RBC (Rod Moran)
Finnegan, M	27-Apr-12	0.5	HST return.

Cherniak, S	01-May-12	1.1	Numerous emails re abandoned vehicle at 925 Provincial. Emails to/from new owner. Emails to/from Corporate Assets. Review of file.
Finnegan, M	02-May-12	0.5	HST return.
Finnegan, M	03-May-12	0.5	Deposit
Cherniak, S	03-May-12	0.2	Email from RBC re fraud investigation.
Finnegan, M	07-May-12	0.5	Deposit
Hooper, L	10-May-12	0.1	Issued cheques.
Hooper, L	10-May-12	0.1	Bank reconciliation.
Hooper, L	11-May-12	0.1	Issued cheque.
Finnegan, M	11-May-12	0.5	Pay bills.
Finnegan, M	17-May-12	0.5	Call from purchaser - bought 3 vehicles in auction. PPSA search done, requested lien removal on 2 vehicles.
Hooper, L	24-May-12	0.1	Issued cheque.
Finnegan, M	25-May-12	0.1	Deal with purchaser and lien removal
Finnegan, M	28-May-12	0.5	Pay bills.
Hooper, L	28-May-12	0.1	Issued cheque.
Finnegan, M	29-May-12	0.5	Pay bill.
Cherniak, S	29-May-12	0.3	Email to/from Windsor police. Call from CRA.
Finnegan, M	04-Jun-12	0.5	Deposit
Finnegan, M	06-Jun-12	0.2	Return call to CRA re Receiver GST acct
Finnegan, M	07-Jun-12	0.5	Correspondence to CRA re HST Audit for Receiver's account.
Finnegan, M	11-Jun-12	0.5	Email from bailiff re motorcycle. Did ppsa search. RBC has a lien. Call from bailiff re update on vehicle.
Cherniak, S	11-Jun-12	0.3	Emails from bailiff re motorcycle.
Hooper, L	12-Jun-12	0.1	Bank reconciliation.
Cherniak, S	13-Jun-12	0.4	Call from CRA. Review file for document.
Finnegan, M	20-Jun-12	0.5	Call from vehicle purchaser re final payment and release of lien.
Hooper, L	12-Jul-12	0.1	Bank reconciliation

Cherniak, S	23-Jul-12	0.3	Review of correspondence from OPP and bailiff. Call to OPP re motorcycle.
Cherniak, S	25-Jul-12	0.3	Call to OPP re motorcycle.
Finnegan, M	30-Jul-12	0.4	Call from vehicle purchaser re ownership issue
Cherniak, S	01-Aug-12	0.6	Deal with Big Star ownership issue. Call to Gardner Auctions. Email to Corporate Assets.
Cherniak, S	02-Aug-12	0.2	Email from corporate Assets.
Cherniak, S	07-Aug-12	0.8	Email to Corporate Assets re vehicle. Draft letters to Bakir. Emails re repossession of motorcycle.
Finnegan, M	07-Aug-12	0.5	Emails to/from Corporate Assets re vehicle ownership document issues. Email to Big Star Auto re same.
Cherniak, S	08-Aug-12	0.5	Email from OPP re motorcycle. Begin work on affidavit.
Hooper, L	08-Aug-12	0.1	Issued cheque.
Hooper, L	08-Aug-12	0.1	Bank reconciliation.
Finnegan, M	10-Aug-12	0.5	Pay bills and ongoing discussions with Big Star Auto re ownership issue
Finnegan, M	13-Aug-12	1	Email follow up with Big Star re two vehicles. Prepare affidavit for S. Cherniak re motorcycle - send to OPP. Email/call to/from Kingsley Gardner re MTO ownership changeover.
Cherniak, S	13-Aug-12	0.5	Finish edits to affidavit re motorcycle. Deal with ownership issue.
Finnegan, M	15-Aug-12	1.5	Ongoing calls/emails re vehicle ownership transfer. Difficulties with MTO. Deal with Big Star re ownership. Attend at MTO for vehicle ownership transfer. Send new ownership to vehicle purchaser.
Cherniak, S	15-Aug-12	0.2	Ownership issue.

**55.6 Total Time**

Staff	Position	Rate	Time
Cherniak, S	Sr. Vice President	\$450	21.8
Finnegan, M	Administrative	\$125	23.3
Hooper, L	Administrative	\$90	2.0
Prieur, C	Sr. Administrator	\$200	8.5

**55.6**



Invoice #87683556  
Big Three Preowned Centre Ltd  
and 1700773 Ontario Inc.  
HST Reg # 101518124RT0001

Ontario Superior Court of Justice  
80 Dundas Street  
London, Ontario

February 25, 2014

**Re: Big Three Preowned Centre Ltd., and 1700773 Ontario Inc., o/a 5 Diamond Motors**

For professional services rendered for the period August 16, 2012 through January 31, 2014 as per the attached detail:

Our Fee	\$5,700.00
Disbursements	
PPSA vehicle searches - \$25.04	
Courier - \$9.52	
	<u>\$34.56</u>
Sub Total	\$5,734.56
HST	<u>\$745.49</u>
Total	<u><u>\$6,480.05</u></u>

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**REMITTANCE ADVICE**

Cheque Payments to:  
103-252 Pall Mall Street  
London, ON N6A 5P6

Invoice #	87683556
Amount	\$6,480.05

February 25, 2014

For professional services rendered

Staff	Date	Time	Narrative
Cherniak, S	16-Aug-12	0.2	Ownership issue.
Finnegan, M	16-Aug-12	1	Deal with Big Star re ownership. Attend at MTO for vehicle ownership transfer. Send new ownership to vehicle purchaser.
Finnegan, M	21-Aug-12	0.5	File administration
Finnegan, M	22-Aug-12	0.5	Filed HST returns
Cherniak, S	7-Sep-12	0.2	Call re motorcycle.
Hooper, L	11-Sep-12	0.1	Issued chq
Hooper, L	21-Sep-12	0.1	Bank rec
Finnegan, M	21-Sep-12	0.5	Call from someone who had in-house financing had some questions re his vehicle.
Cherniak, S	25-Sep-12	0.1	Call re property tax issue.
Cherniak, S	26-Sep-12	0.3	Call re property taxes. Call from Windsor police re vehicle.
Cherniak, S	27-Sep-12	0.5	Call with detective re vehicle. Review of docs.
Hooper, L	1-Oct-12	0.1	Bank rec
Cherniak, S	4-Oct-12	0.5	Call re motorcycle. Call to bailiff. Follow up on Chrysler 300.
Finnegan, M	30-Oct-12	0.8	Phone call from/to Big 3 customer re financing. Reconcile payments and arrange for balance owing to be paid in installments.
Hooper, L	6-Nov-12	0.1	Bank rec
Cherniak, S	8-Nov-12	1.2	Call from bailiff. Review files for cars. Send email re vins.
Cherniak, S	26-Nov-12	0.3	Call from RCMP. Review of file.
Hooper, L	11-Dec-12	0.1	Bank rec
Finnegan, M	11-Dec-12	0.3	Deposit
Finnegan, M	2-Jan-13	0.5	HST return and payment remittance
Hooper, L	16-Jan-13	0.1	Bank rec
Finnegan, M	23-Jan-13	0.5	Email from vehicle purchaser detailing problems with vehicle. Respond
Finnegan, M	1-Feb-13	0.5	Deposit
Cherniak, S	12-Feb-13	0.1	Deal with lien issue.
Cherniak, S	13-Feb-13	0.2	Deal with lien release.
Hooper, L	17-Feb-13	0.1	Bank rec
Hooper, L	15-Mar-13	0.1	Bank rec
Finnegan, M	4-Apr-13	0.3	Call from vehicle purchaser re RBC lien on vehicle
Hooper, L	13-Apr-13	0.1	Bank rec
Finnegan, M	16-Apr-13	0.2	Email from Harrison Pensa re lien removal. Call to vehicle purchaser re same
Finnegan, M	30-Apr-13	0.8	Deposit. PPSA search for lien
Hooper, L	12-May-13	0.1	Bank rec
Finnegan, M	30-May-13	0.4	File HST returns
Hooper, L	6-Jun-13	0.1	Bank rec
Cherniak, S	6-Jun-13	0.1	Update on file.
Cherniak, S	7-Jun-13	0.2	Email from T. Hogan. Call from OMVIC.

Staff	Date	Time	Narrative
Hooper, L	10-Jun-13	0.1	Chq issued
Finnegan, M	25-Jun-13	0.5	Call and fax to CRA re HST acct
Finnegan, M	27-Jun-13	0.5	File HST return
Hooper, L	8-Jul-13	0.1	Bank rec
Hooper, L	17-Jul-13	0.1	Issued chqs
Finnegan, M	18-Jul-13	0.5	Call from vehicle purchaser re lien on vehicle. Ran PPSA request RBC lien removal from Harrison Pensa.
Finnegan, M	19-Jul-13	0.5	Pay HST owing
Finnegan, M	8-Aug-13	0.3	Call from vehicle purchaser re lien/ownership problem
Finnegan, M	9-Aug-13	0.5	Further call from vehicle purchaser re ownership issue. Call to Gardners re MTO
Finnegan, M	12-Aug-13	0.5	Call from Gardners re vehicle ownership change. Prepare bill of sale re same
Finnegan, M	13-Aug-13	0.5	Call to vehicle owner re process for ownership change. Send docs to Windsor office re same.
Hooper, L	5-Sep-13	0.1	Bank rec
Hooper, L	8-Sep-13	0.1	Bank rec
Prieur, C	8-Oct-13	6	Review boxes of records received from RCMP
Prieur, C	9-Oct-13	5	Storage for records previously held by RCMP
Cherniak, S	9-Oct-13	0.1	Records issue.
Hooper, L	21-Oct-13	0.1	Bank rec
Finnegan, M	2-Dec-13	0.5	Deposit funds from City of Windsor re vacancy rebate
Hooper, L	11-Dec-13	0.1	Bank rec
Cherniak, S	31-Jan-14	0.1	Call from CRA.
		<b>28</b>	<b>Total time</b>

Staff	Position	Rate	Time
Cherniak, S	Sr. Vice President	\$450	4.1
Finnegan, M	Administrative	\$125	11.1
Hooper, L	Administrative	\$90	1.8
Prieur, C	Sr. Administrator	\$200	11.0
			<b>28.0</b>



Invoice #10262021  
Big Three Preowned Centre and  
1700773 Ontario Inc.  
HST Reg # 101518124RT0001

Ontario Superior Court of Justice  
80 Dundas Street  
London, Ontario

October 26, 2021

**Re: Big Three Preowned Centre Ltd., and 1700773 Ontario Inc., o/a 5 Diamond Motors**

For professional services rendered for the period April 28, 2014 Through October 26, 2021 as per the attached detail:

Our Fee	\$11,000.30
Estimated time to complete	9,000.00
	<hr/>
	20,000.30
HST	2,600.03
	<hr/>
Total	<u>\$22,600.33</u>

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**REMITTANCE ADVICE**

Cheque Payments to:  
100-633 Colborne Street  
London, ON N6B 2V3

Invoice #	10262021
Amount	\$22,600.33



October 26, 2021

For professional services rendered

Staff	Date	Time	Narrative
Cherniak, S	04/28/2014	0.2	Call from Harrison Pensa re sec 38 issue.
Cherniak, S	06/09/2014	0.2	Email from RBC re lien on vehicle.
Finnegan, M	06/12/2014	0.2	Calls, emails re requests for RBC lien removals.
Finnegan, M	07/16/2014	0.2	Review email from Cushman re outstanding bills, check file for timing and authorization of work.
Finnegan, M	07/22/2014	0.1	Call from Harrison Pensa re vehicle with a RBC lien for removal.
Finnegan, M	07/24/2014	0.5	Bill payment emails to/from Harrison Pensa re RBC lien on vehicle. Searched file and advised that lien can be removed.
Hooper, L	09/11/2014	0.1	Banking
Cherniak, S	09/30/2014	0.1	Review and approve WEPPA payment.
Finnegan, M	10/02/2014	0.5	Review and remit WEPPA payment to HRDC re Receiver's charge portion.
Hooper, L	10/15/2014	0.1	Banking
Hooper, L	01/07/2015	0.1	Banking
Finnegan, M	02/10/2015	0.2	Deposit payment for junker vehicle
Cherniak, S	03/24/2015	0.1	Email from property tax consultant. Respond.
Hooper, L	04/19/2015	0.1	Banking
Hooper, L	06/22/2016	0.1	Banking
Hooper, L	07/19/2016	0.1	Deposit
Hooper, L	08/11/2016	0.1	Banking
Hooper, L	12/12/2016	0.1	Banking
Flett, D	09/07/2017	0.5	Review court report status with S. Cherniak; review prior reports, receipts and disbursements.
Flett, D	09/14/2017	1.5	Prepare 2nd report of Receiver
Flett, D	09/15/2017	1	Continue with Receiver's Second report; review banking and receiver's invoices with M. Finnegan
Flett, D	09/18/2017	1.5	Prepare 2nd report of receiver, review accounting
Flett, D	09/19/2017	1.2	Review accounting and R&D with M. Finnegan; continue with 2nd report; review statement of receipts and disbursements; email to S Kettle re: Miller Thomson fees.
Cherniak, S	09/20/2017	0.2	Discuss report.
Flett, D	09/20/2017	0.6	Review report, receiver activities with S. Cherniak; review revised R&D.

Staff	Date	Time	Narrative
Flett, D	09/21/2017	0.8	Continue with 2nd Receiver's report; review legal fee accounting with M. Finnegan; revise R&D; review legal fees, receiver and trustee with S. Cherniak.
Flett, D	09/25/2017	1	Review legal fees and first report affidavit; additions and revisions to 2nd report
Cherniak, S	09/26/2017	0.1	Update on report.
Flett, D	09/26/2017	0.5	Finalize draft 2nd report and review with S. Cherniak;
Hooper, L	09/29/2017	0.1	Banking
Hooper, L	11/16/2017	0.1	Banking
Hooper, L	02/09/2018	0.1	Banking
Cherniak, S	07/18/2018	0.2	Call from Shauna re ownership.
Hooper, L	01/09/2019	0.1	Banking
Hooper, L	01/31/2019	0.1	Banking
Hooper, L	02/07/2019	0.2	Banking
Hooper, L	05/03/2019	0.2	Banking
Hooper, L	06/10/2019	0.1	Banking
Hooper, L	10/29/2019	0.1	Banking
Hooper, L	11/12/2019	0.1	Banking
Hooper, L	01/31/2020	0.1	Banking
Hooper, L	03/10/2020	0.1	Banking
Hooper, L	05/21/2020	0.2	Banking
Hooper, L	06/24/2020	0.1	Banking
Hooper, L	07/29/2020	0.1	Banking
Hooper, L	08/26/2020	0.1	Banking
Hooper, L	09/30/2020	0.1	Banking
Hooper, L	01/05/2021	0.1	Banking
Hooper, L	01/25/2021	0.1	Banking
Hooper, L	02/18/2021	0.1	Banking
Hooper, L	03/16/2021	0.1	Banking
Hooper, L	04/30/2021	0.1	Banking
Hooper, L	06/02/2021	0.1	Banking
Hooper, L	06/29/2021	0.1	Banking
Hooper, L	07/28/2021	0.1	Banking
Hooper, L	09/20/2021	0.1	Banking
Cherniak, S	09/21/2021	0.2	Begin review of report.
Cherniak, S	09/22/2021	0.4	Begin review of report.
Cherniak, S	10/01/2021	0.5	Review file.
Cherniak, S	10/05/2021	0.2	Review of report.
Cherniak, S	10/14/2021	1	Review of report.
Cherniak, S	10/18/2021	0.1	Discuss file with D. Flett.
Cherniak, S	10/19/2021	0.3	Deal with report.
Flett, D	10/20/2021	1.1	Review S. Cherniak comments on draft 2nd report to court and revisions to report; review receipts and disbursements and instructions to M. Finnegan
Finnegan, M	10/21/2021	0.3	Update R&D

Staff	Date	Time	Narrative
Flett, D	10/21/2021	0.7	Review updated receipts and disbursements and revisions; revisions to 2nd and final report, and forward to S. Cherniak with comments; review receiver and Harrison Pensa invoices re final report
Cherniak, S	10/21/2021	0.2	Review of edits to report.
Cherniak, S	10/22/2021	0.2	Discuss file with M. Finnegan.
Cherniak, S	10/25/2021	0.1	Email to D. Flett
Finnegan, M	10/25/2021	2.0	File administration and updated R&D
Flett, D	10/26/2021	2.7	review and summarize receiver invoices and court approval status; prepare receiver affidavit of fees; emails with SC re receiver, HP fees, final distribution; revisions to Receiver Second Report, Statement of Receipts and Disbursements
Cherniak, S	10/26/2021	1.0	Review report
Flett, D	10/27/2021	0.6	Revise report, fee affidavit
Cherniak, S	10/27/2021	0.5	Report issues.
Flett, D	10/28/2021	0.4	Email and Call with S. Cherniak re report completion and revisions to same
Cherniak, S	10/28/2021	0.2	Update on report
Cherniak, S	10/29/2021	0.6	Email to T. Hogan re report and deal with fee affidavit.
		28.4	Time
		17.0	Estimate time to complete
		<b>45.40</b>	<b>Total Time</b>

Staff	Position	Hourly Rate	Time
Cherniak, S	Sr. Vice President	\$495/\$525	4.3
Finnegan, M	Estate Administrator	\$125/\$195	3.0
Flett, D	Vice President	\$375/\$425	10.4
Hooper, Laura	Estate Administrator	\$125/\$195	3.7
Estimated time			17.0
			45.4

ROYAL BANK OF CANADA

v.

BIG THREE PREOWNED CENTRE LTD., et al.

Plaintiff

Defendants

Court File No. 35-1303100T

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

PROCEEDING COMMENCED AT LONDON

**FEE AFFIDAVIT**

**HARRISON PENZA** LLP  
Barristers & Solicitors  
450 Talbot Street  
London, Ontario N6A 5J6

**Timothy C. Hogan (LSO #36553S)  
Robert Danter (LSO #698060)**

Tel : (519) 679-9660

Fax: (519) 667-3362

Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)  
[rdanter@harrisonpensa.com](mailto:rdanter@harrisonpensa.com)

Lawyers for the Receiver,  
BDO Canada Limited

## APPENDIX G

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

**B E T W E E N :**

**ROYAL BANK OF CANADA**

**Plaintiff**

- and -

**BIG THREE PREOWNED CENTRE LTD., and 1700773 ONTARIO INC.**

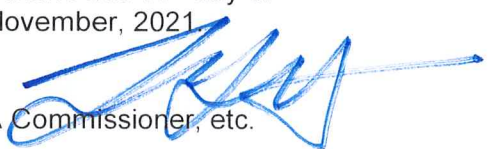
**Defendants**

**AFFIDAVIT OF THOMAS MASTERSON  
(Sworn November 11, 2021)**

I, **THOMAS MASTERSON**, of the City of London, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a solicitor qualified to practice law in the Province of Ontario and I am a lawyer with Harrison Pensa <sup>LLP</sup>, who acts as counsel for BDO Canada Limited, in its capacity as Court-Appointed Receiver of the Defendants, Big Three Preowned Centre Ltd. and 1700773 Ontario Inc. o/a 5 Diamond Motors in the within proceeding, and as such I have knowledge of the matters to which I hereinafter depose except for those matters based expressly upon information and belief.
2. Attached hereto and marked as **Exhibit "A"** is a summary of the time incurred by professionals at Harrison Pensa <sup>LLP</sup>, the hourly rate and fees associated with such and disbursements for the period of March 20, 2012 to April 5, 2012.
3. Attached hereto and marked as **Exhibit "B"** are particulars of time spent by professionals at Harrison Pensa <sup>LLP</sup> in connection with this matter for the period of March 20, 2012 to April 5, 2012 and an account statement detailing the services provided dated May 8, 2012.

4. Attached hereto and marked as **Exhibit "C"** is a summary of the time incurred by professionals at Harrison Pensa <sup>LLP</sup>, the hourly rate and fees associated with such and disbursements for the period of November 1, 2021 to November 11, 2021.
5. Attached hereto and marked as **Exhibit "D"** are particulars of time spent by professionals at Harrison Pensa <sup>LLP</sup> in connection with this matter for the period of November 1, 2021 to November 11, 2021 and an account statement detailing the services provided dated November 11, 2021.
6. The hourly billing rates set out in the Exhibits are comparable to the hourly rates charged by Harrison Pensa <sup>LLP</sup> for services rendered in relation to similar proceedings.
7. The fees and disbursements of Harrison Pensa <sup>LLP</sup> in this matter to November 11, 2021 are as follows:
  - a. Total Billed Fees and Disbursements from March 20, 2012 to April 5, 2012 - \$3,583.12;
  - b. Total Billed Fees and Disbursements from November 1, 2021 to November 11, 2021 - \$2,576.40;
  - c. **Total - \$6,159.52.**
8. The weighted average hourly rate charged by professionals at Harrison Pensa <sup>LLP</sup> is \$299.64.
9. I make this Affidavit in support of among other things, approval of fees and disbursements of the counsel for the Receiver.

**SWORN BEFORE ME** at the City )  
 of London, in the Province of )  
 Ontario this 11<sup>th</sup> day of )  
 November, 2021. )  
 )  
 A Commissioner, etc. )

  
 \_\_\_\_\_  
**THOMAS MASTERSON**

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

BETWEEN :

ROYAL BANK OF CANADA

Plaintiff

- and -

BIG THREE PREOWNED CENTRE LTD., and 1700773 ONTARIO INC.

Defendants

EXHIBITS

TABS "A" TO "D" ARE THE  
EXHIBITS TO THE AFFIDAVIT OF  
THOMAS MASTERSON  
SWORN THIS 11TH DAY OF NOVEMBER, 2021



A Commissioner for taking Affidavits



EXHIBIT A

(From March 20, 2012 to April 5, 2012)

	NAME	YEAR OF CALL	ACTUAL HOURS	HOURLY RATE	TOTAL
<b>Partners</b>	Christian J. Hamber	1995	6.70	\$400.00	\$2,680.00
<b>Clerks</b>	Jana Streith		0.10	\$140.00	\$14.00
<b>TOTAL FEES</b>					<b>\$2,694.00</b>
<b>HST ON FEES</b>					<b>\$350.22</b>
<b>TOTAL TAXABLE DISBURSEMENTS</b>					<b>\$400.80</b>
<b>TOTAL NON – TAXABLE DISBURSEMENTS</b>					<b>\$86.00</b>
<b>HST DISBURSEMENTS</b>					<b>\$52.10</b>
<b>TOTAL FEES, DISBURSEMENTS AND HST</b>					<b>\$3,583.12</b>

EXHIBIT B



HARRISON PENZA  
450 Talbot Street  
P.O. Box 3237  
LONDON ON N6A 4K3

Telephone: (519) 679 9660  
Facsimile: (519) 667 3362

BDO Canada Limited  
252 Pall Mall St., Suite 103  
London, ON N6A 5P6

May 8, 2012  
Invoice #: 123214

File #: 151808/Timothy C. Hogan  
RE: Big Three Preowned Centre Ltd. & 1700773 Ontario Inc.

**SUMMARY OF THIS INVOICE**

Total Fees	\$ 2,694.00
Total Disbursements	\$ 486.80
Total Tax	\$ <u>402.32</u>
TOTAL	\$ 3,583.12
APPLIED FROM TRUST	\$ <u>0.00</u>
TOTAL THIS INVOICE	\$ 3,583.12
TOTAL PRIOR OUTSTANDING INVOICES	\$ <u>0.00</u>
TOTAL DUE AND OWING:	\$ <u>3,583.12</u>

**PLEASE REMIT WITH PAYMENT  
TO HARRISON PENZA LLP**

GST \ HST REGISTRATION NO: R867630543  
Interest of 1.3% is charged based on the Courts of Justice Act at time of billing on all invoices over 30 days.

---

TERMS: DUE UPON RECEIPT - Mastercard and Visa Accepted  
HARRISON PENZA LLP, 450 Talbot Street, P.O. Box 3237, London ON N6A 4K3



HARRISON PENSA  
 450 Talbot Street  
 P.O. Box 3237  
 LONDON ON N6A 4K3

Telephone: (519) 679 9660  
 Facsimile: (519) 667 3362

BDO Canada Limited  
 252 Pall Mall St., Suite 103  
 London, ON N6A 5P6

May 8, 2012  
 Invoice #: 123214

File #: 151808/Timothy C. Hogan  
 RE: Big Three Preowned Centre Ltd. & 1700773 Ontario Inc.

TO ALL PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
20-Mar-12	To review agreement of purchase and sale;	.30	\$120.00	CJH
21-Mar-12	To review agreement of purchase and sale, requisition letter and title;	1.00	\$400.00	CJH
22-Mar-12	To review outstanding issues and documents required for closing; to review outstanding items for closing;	.50	\$200.00	CJH
29-Mar-12	To review title and transfers; to prepare, review and revise closing documents;	1.50	\$600.00	CJH
30-Mar-12	To review and revise draft order; to review outstanding issues for closing; to correspondence from and to purchaser's lawyer;	1.00	\$400.00	CJH
30-Mar-12	To obtaining certificate of status	.10	\$14.00	JST
2-Apr-12	To letter from BDO re signed documents; to review status of amended order;	.70	\$280.00	CJH
3-Apr-12	To correspondence between receiver and purchaser's lawyer re closing documents and arrangements;	.70	\$280.00	CJH
5-Apr-12	To closing transaction; To disbursing funds; To reporting to client;	1.00	\$400.00	CJH
Total Fees:			\$ 2,694.00	
Plus GST:			0.00	
Plus HST:			350.22	
<b>Total Fees (INCL TAX)</b>				<b>\$ 3,044.22</b>

**FEE SUMMARY:**

LAWYER	HOURS	RATE	AMOUNT
Christian J. Hamber	6.70	\$400.00	\$2,680.00
Jana Streith	.10	\$140.00	\$14.00

**NON-TAXABLE DISBURSEMENTS**

Government Filing Fees	\$26.00
Register Deed / Transfer	\$60.00
Total Non-Taxable Disbursements:	<u>86.00</u>

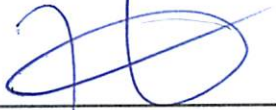
**TAXABLE DISBURSEMENTS**

Cyberbahn - Certificate of Status	12.00	
Real Estate Transaction Levy Surcharge	65.00	
Teranet Search	35.00	
Teranet Writs	17.00	
Courier	38.32	
B&W Photocopies	52.75	
Long Distance Charges	0.39	
Postage	1.22	
Telecopier/Facsimile	2.75	
Tax Certificate Search	66.37	
Teranet Registration Fee	10.00	
Registration Services	50.00	
Closing Services	50.00	
Total Taxable Disbursements:	\$ 400.80	
Plus GST:	0.00	
Plus HST:	<u>52.10</u>	
Total Disbursements (INCL TAX)		<u>\$ 538.90</u>

**TOTAL DUE & OWING** \$ 3,583.12

**THIS IS OUR ACCOUNT HEREIN**

***HARRISON PENSA LLP***

Per:   
 Timothy C. Hogan

E. & O.E.

GST \ HST REGISTRATION NO: R867630543  
 Interest of 1.3% is charged based on the Courts of Justice Act at time of billing on all invoices over 30 days.

---

TERMS: DUE UPON RECEIPT - Mastercard and Visa Accepted  
 HARRISON PENSA LLP, 450 Talbot Street, P.O. Box 3237, London ON N6A 4K3

EXHIBIT C

(From November 1, 2021 to November 11, 2021)

	NAME	YEAR OF CALL	ACTUAL HOURS	HOURLY RATE	TOTAL
<b>Partners</b>	Timothy C. Hogan	1995	0.50	\$450.00	\$225.00
<b>Associates</b>	Robert Danter	2016	2.60	\$275.00	\$715.00
	Thomas Masterson	2019	6.70	\$200.00	\$1,340.00
<b>TOTAL FEES</b>					<b>\$2,280.00</b>
<b>HST ON FEES</b>					<b>\$296.40</b>
<b>TOTAL TAXABLE DISBURSEMENTS</b>					<b>\$0.00</b>
<b>TOTAL NON – TAXABLE DISBURSEMENTS</b>					<b>\$0.00</b>
<b>HST DISBURSEMENTS</b>					<b>\$0.00</b>
<b>TOTAL FEES, DISBURSEMENTS AND HST</b>					<b>\$2,576.40</b>

## EXHIBIT D



HARRISON PENSA  
 450 Talbot Street  
 P.O. Box 3237  
 LONDON ON N6A 4K3

Telephone: (519) 679 9660  
 Facsimile: (519) 667 3362

BDO Canada Limited (London)  
 100-633 Colborne Street  
 London, ON N6B 2V3

November 11, 2021  
 Invoice #: \*\*\*\*\*  
 Account #: \*\*\*\*\*-151808

File #: 151808/Timothy C. Hogan  
 RE: Big Three Preowned Centre Ltd. & 1700773 Ontario Inc.

TO ALL PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
1-Nov-21	To draft Motion	2.00	\$400.00	THM
2-Nov-21	To draft Fee Affidavit	.60	\$120.00	THM
2-Nov-21	To draft Order	1.20	\$240.00	THM
5-Nov-21	To review and revise Report	1.20	\$240.00	THM
5-Nov-21	To draft Service List	.30	\$60.00	THM
8-Nov-21	To draft Motion Record	.50	\$100.00	THM
8-Nov-21	To revise draft Order	.30	\$60.00	THM
8-Nov-21	To revise Notice of Motion	.30	\$60.00	THM
8-Nov-21	To revise Fee Affidavit	.30	\$60.00	THM
9-Nov-21	Review/revise notice of motion and order	1.10	\$302.50	RDA
9-Nov-21	Revise notice, order, report	.50	\$137.50	RDA
10-Nov-21	Revise notice of motion	.30	\$82.50	RDA
10-Nov-21	Revise report	.70	\$192.50	RDA
11-Nov-21	Review/revise Order, motion and report	.50	\$225.00	TCH

Total Fees:	\$	2,280.00	
Plus GST:		0.00	
Plus HST:		296.40	
<b>Total Fees (INCL TAX)</b>			<b>\$ 2,576.40</b>

**FEE SUMMARY:**

LAWYER	HOURS	RATE	AMOUNT
Timothy C. Hogan	.50	\$450.00	\$225.00
Thomas Masterson	6.70	\$200.00	\$1,340.00



LAWYER	HOURS	RATE	AMOUNT
Danter Rob	2.60	\$275.00	\$715.00

**TOTAL DUE & OWING** **\$ 2,576.40**

**THIS IS OUR ACCOUNT HEREIN**

***HARRISON PENZA LLP***

Per: \_\_\_\_\_  
Timothy C. Hogan

E. & O.E.

**Harrison Pensa LLP is a registered payee with most Canadian banks.  
Payment can be made online through your bank's website or mobile app.**

GST / HST REGISTRATION NO: R867630543  
Interest of 0.5% is charged based on the Courts of Justice Act at time of billing on all invoices over 30 days

---

**TERMS: DUE UPON RECEIPT  
Cheque, Mastercard and VISA also accepted.**

Please make cheque payable to:  
HARRISON PENZA LLP, 450 Talbot Street, P.O. Box 3237, London ON N6A 4K3

ROYAL BANK OF CANADA

v.

BIG THREE PREOWNED CENTRE LTD., and 1700773 ONTARIO INC.

Plaintiff

Defendants

**Court File No. 35-1303100T**

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

Proceeding commenced at LONDON

**AFFIDAVIT OF THOMAS MASTERSON**

**Harrison Pensa** <sup>LLP</sup>  
Barristers and Solicitors  
450 Talbot Street  
London, Ontario N6A 4K3

**Timothy C. Hogan (LSO #36553S)**  
**Robert Danter (LSO #69806O)**

Tel: (519) 679-9660

Fax: (519) 667-3362

Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)  
[rdanter@harrisonpensa.com](mailto:rdanter@harrisonpensa.com)

Lawyers for the Receiver

ROYAL BANK OF CANADA

v.

BIG THREE PREOWNED CENTRE LTD., et al.

Plaintiff

Defendants

Court File No. 35-1303100T

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

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**SECOND REPORT OF THE RECEIVER**

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**HARRISON PENZA** LLP  
Barristers & Solicitors  
450 Talbot Street  
London, Ontario N6A 5J6

**Timothy C. Hogan (LSO #36553S)  
Robert Danter (LSO #698060)**

Tel : (519) 679-9660

Fax: (519) 667-3362

Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)  
[rdanter@harrisonpensa.com](mailto:rdanter@harrisonpensa.com)

Lawyers for the Receiver,  
BDO Canada Limited

ROYAL BANK OF CANADA

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**MOTION RECORD OF THE RECEIVER**

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**HARRISON PENZA** <sup>LLP</sup>  
Barristers & Solicitors  
450 Talbot Street  
London, Ontario N6A 5J6

**Timothy C. Hogan (LSO #36553S)**  
**Robert Danter (LSO #69806O)**

Tel : (519) 679-9660  
Fax: (519) 667-3362  
Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)  
[rdanter@harrisonpensa.com](mailto:rdanter@harrisonpensa.com)

Lawyers for the Receiver,  
BDO Canada Limited