

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

B E T W E E N:

CANADIAN WESTERN BANK

Applicant

and

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

Respondents

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

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

(Returnable September 21, 2023)

September 15, 2023

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SERVICE LIST
(updated September 14, 2023)

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AND TO:	2851605 ONTARIO INC. 101-101 Westmore Drive Etobicoke, ON M9V 3Y6 Attention: Mohammad Shafique <i>Secured Creditor of 2700774 Ontario Inc.</i>
AND TO:	2851606 ONTARIO INC. 101-101 Westmore Drive Etobicoke, ON M9V 3Y6 Attention: Mohammad Shafique <i>Secured Creditor of 2723710 Ontario Inc.</i>
AND TO:	2851604 ONTARIO INC. 101-101 Westmore Drive Etobicoke, ON M9V 3Y6 Attention: Mohammad Shafique <i>Secured Creditor of Index Holdings Group Inc.</i>
AND TO:	TM Law Professional Corporation 7900 Hurontario Suite #507 Brampton, ON L6Y 0P6 TAHIR MAJEED Email: tahir@tmlaw.ca <i>Lawyers for 2851604 Ontario Inc., 2851605 Ontario Inc. and 2851606 Ontario Inc.</i>

AND TO:	2752908 ONTARIO INC./MIDTOWN CAPITAL 2300 Yonge Street Toronto, ON M4P 1E4 Attention: Marissa Brown and Peter Tieu <i>Secured Creditor of 2700774 Ontario Inc.</i>
AND TO:	TOYOTA CREDIT CANADA INC. 80 Micro Court Markham, ON L3R 9Z5 <i>Secured Creditor of Index Group of Companies Inc.</i>
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AND TO:	HYUNDAI CAPITAL LEASE INC. 123 Front Street, Suite 1000 Toronto, ON M5J 2M3 <i>Secured Creditor of Index Group of Companies Inc.</i>
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Tab 1

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

B E T W E E N:

CANADIAN WESTERN BANK

Applicant

and

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

Respondents

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

NOTICE OF MOTION
(Returnable September 21, 2023)

MNP LTD., in its capacity as Court-Appointed receiver (the “**Receiver**”) of the Respondents will make a motion to a Judge of the Commercial List, on Thursday, September 21, 2023 at 10:30 a.m., or as soon after that time as the Motion can be heard.

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

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

[X] By video conference.

THE MOTION IS FOR Orders:

1. Abridging the time for service and filing of this Notice of Motion and the Motion Record such that the Motion is properly returnable on September 21, 2023 and dispensing with further service thereof;
2. Approving the Third Report of the Receiver dated September 15, 2023 (the “**Third Report**”) and the activities and recommendations of the Receiver described therein;
3. Approving the sale transaction (the “**Denny’s Transaction**”) contemplated by the Offer to Purchase dated September 11, 2023 between the Receiver and 100058120 Ontario Inc. (the “**Purchaser**”), (the “**Denny’s APA**”) as outlined in the Third Report;
4. Authorizing the Receiver to carry out all activities required to complete the Denny’s Transaction;
5. Upon delivery of a certificate by the Receiver confirming the completion of the Denny’s Transaction, vesting in the Purchaser, the right, title and interest of the Debtor in and to the Purchased Assets (as defined in the Agreement), free and clear of all encumbrances, estates, rights, title, liens, interest and claims;
6. Requiring Abdul Muqet to attend before an authorized person to be examined under oath by the Receiver, and to produce all documents and records in his possession or under his control relating to the assets, property and undertakings of the Respondents, including without limitation,

all personal electronic devices and computers, Ipads, tablets, magnetic tapes or discs, USB devices, and cellular phones;

7. Sealing Confidential Appendices A to D, including Confidential Tabs I to IV attached to Confidential Appendix D, to the Third Report (the “**Confidential Appendices**”); and

8. Such further relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

9. Pursuant to an Order of the Honourable Mr. Justice Penny dated May 8, 2023 (the “**Appointment Order**”), MNP Ltd. was appointed as Receiver of all of the Debtor’ assets, property, and undertakings (the “**Property**”). The Property includes certain franchised restaurant businesses operated by the Debtor pursuant to agreements with Dencan Franchise Systems Limited Partnership and DFO LLC (together, “**Denny’s**”).

10. The Appointment Order was obtained on the application of Canadian Western Bank (“**CWB**”), the Respondents’ first- ranking secured creditor;

11. CWB is expected to suffer a significant shortfall in the recovery of the indebtedness owing to it by the Respondents;

12. The Appointment Order, among other things, authorizes the Receiver to market and sell the Property;

13. On May 23, 2023, the Receiver delivered its First Report to Court in which the Receiver outlined a proposed marketing and sale process in respect of the Property, including the franchise restaurant businesses operated by the Debtor;

14. Any prospective purchaser of the Denny's franchise restaurants operated by the Respondents must be approved by Denny's, and Denny's has informed the Receiver that unless a prospective purchaser is an existing approved franchisee or experienced franchise restaurant operator, the approval process would take approximately six to eight weeks, without any guaranteed results;

15. The targeted sale process was designed to balance the need to minimize the ongoing costs of continued operations, while exposing the Property to the most likely acceptable purchasers, in order to maximize the recoveries for stakeholders;

16. With the support of CWB, the Receiver implemented the sale process outlined in its First Report, including distributing a teasor, entering into non-disclosure agreements, establishing a data room, circulating a confidential information memorandum, publishing notice of the sale process in a nationally circulated food service trade journal and on the Receiver's website, and providing tours of the Respondents' operations;

17. The sale process implemented by the Receiver was reasonable in the circumstances, given the nature of the Respondents' businesses and assets;

18. At the completion of the sale process, the Purchaser was selected as the successful bidder in respect of an operating Denny's franchise restaurant located at 195 Henry Street, Brantford, Ontario;

19. The Denny's Transaction represents the highest and best offer available for the Purchased Assets, and is supported by CWB;

20. Based upon the information currently available to the Receiver, there is reason to believe that certain payments by the Respondents were not received by the apparent payees, and the Receiver has questions regarding the location of certain assets, and the application of funds advanced by CWB to the Respondents;

21. Despite the Receiver's efforts to obtain information from the Respondents' principal, Abdul Muqet, he is no longer represented by counsel and no longer responding to the Receiver's efforts to contact him.

22. The confidential appendices contain confidential information which may negatively impact realization upon the Property if the Denny's Transaction does not close, and information of a sensitive and confidential nature regarding the Receiver's ongoing investigation of the Respondents' businesses and assets; and

23. Such further other grounds as Counsel may advise and this Honorable Court may permit.

24. Section 249 of the *Bankruptcy and Insolvency Act*; and

25. Rules 3.02(1), 16.08 and 37 of the *Rules of Civil Procedure*.

26. Such further and other grounds as the lawyers may advise.

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

1. The Third Report of the Receiver dated September 15, 2023; and

2. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

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September 15, 2023

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Lawyers for the Receiver

TO: **SERVICE LIST**

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CANADIAN WESTERN BANK
Applicant

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

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

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

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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Lawyers for the Receiver

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Service List

Tab 2

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

BETWEEN:

CANADIAN WESTERN BANK

Applicant

- and -

**INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC.,
INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO
INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO
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Respondents

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C-43, AS AMENDED

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

September 15, 2023

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- Appendix “C”** Approval and Vesting Order dated May 29, 2023 re Wharncliffe Transaction
- Appendix “D”** Second Report of the Receiver dated July 19, 2023
- Appendix “E”** Approval and Vesting Order dated July 24, 2023 re Popeyes Transaction
- Appendix “F”** Corporate Searches of Devcor and Rev-co retrieved June 6, 2023
- Appendix “G”** Letter from Lisa Corne to Devcor dated June 21, 2023
- Appendix “H”** Correspondence from Devcor’s counsel dated June 30, 2023
- Appendix “I”** Correspondence from Devcor’s counsel dated July 14, 2023
- Appendix “J”** Email from Sabio Law dated September 12, 2023
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- Appendix “L”** Template Letter to Vendors
- Appendix “M”** Interim Statement of Receipts and Disbursements

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- Confidential Appendix “B”** Summary of Offers Receiver for Denny’s
- Confidential Appendix “C”** Summary of Denny’s Key Business Terms
- Confidential Appendix “D”** Receiver’s Assessment of Reviewable Transactions

INTRODUCTION

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

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

3. As set out in the Hartwell Affidavit, as at April 11, 2023, the amount of \$8,141,405.08 was owing by the Index Group to CWB, and CWB was concerned that it would suffer a shortfall in the recovery of that indebtedness after monetization of the Property. The Receiver has obtained an opinion from its independent counsel, Dickinson Wright LLP (“**DW**”), that subject to the usual qualifications, CWB holds valid, enforceable and first ranking security over all of the Property.

4. Based upon the information reviewed to date by the Receiver, the Receiver estimates that CWB will suffer a significant shortfall in the recovery of its first ranking secured claim, and that there will be no funds available for distribution to any subordinate secured or unsecured creditors of the Index Group.

5. The Companies include either federally or provincially incorporated entities that operated six Popeye’s Louisiana Kitchen (“**Popeye’s**”), two Denny’s (“**Denny’s**”) restaurant franchises and had commenced construction of three Denny’s franchise restaurants in and around the Greater Toronto Area.

6. Before the closing of the Wharncliffe Transaction (as defined and discussed below), 421 Wharncliffe Ltd. (“**421 Wharncliffe**”) was the registered owner of a vacant lot located at 421 Wharncliffe Road South, London, Ontario (the “**421 Property**”).

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

	Entity	Franchisee	Location	Status
1.	2775290 Ontario Inc.	Denny’s	Brantford	Operating
2.	11030434 Canada Ltd.	Denny’s	Burlington	Operating
3.	2790760 Ontario Inc.	Denny’s	Newmarket	Under construction
4.	2775296 Ontario Inc.	Denny’s	Rexdale	Under construction
5.	2723716 Ontario Inc.	Denny’s	Woodbine Markham	Under construction
6.	2700774 Ontario Inc.	Popeyes	Oshawa	Operating
7.	Index Foods Inc.	Popeyes	Dundas St. W., Whitby	Operating
8.	Index International Inc.	Popeyes	Dundas St. E. Whitby	Operating
9.	11030418 Canada Inc.	Popeyes	Baldwin St. Brooklyn	Lease terminated pre receivership – closed
10.	2723710 Ontario Inc.	Popeyes	Popeyes Liberty St.	Closed due to pre- receivership fire – Lease terminated
11.	2700767 Ontario Inc.	Popeyes	Napanee	Lease terminated pre receivership – equipment sold permanently closed
12.	2683960 Ontario Ltd.	Popeyes	Uxbridge	Lease terminated pre- receivership – equipment sold permanently closed

8. The Receiver filed its first report dated May 23, 2023 (the “**First Report**”) with this Court to, among other things:

- (a) review an offer received for the 421 Property and the Agreement of Purchase and Sale dated March 29, 2023 (the “**421 APA**”) entered into between the Receiver and Muhammad Saleem, in trust for a corporation to be formed, as purchaser (the “**Purchaser**”), as amended by the First Amendment to Agreement of Purchase and Sale dated May 15, 2023 between the Receiver and the Purchaser in respect of the 421 Property and the transaction contemplated therein (the “**Wharncliffe Transaction**”);

- (b) set out the Receiver’s proposed sale process (the “**Sale Process**”) for the Companies’ Popeye’s and Denny’s franchise operations and the Companies’ other Property; and
- (c) obtain an order (s), *inter alia*:
 - i. authorizing the Receiver to take such steps as are necessary and appropriate to facilitate the closing of the Wharncliffe Transaction;
 - ii. vesting 421 Wharncliffe’s right, title and interest, if any, in and to the 421 Property in the Purchaser, free and clear of any encumbrances, save and except as otherwise contemplated by the 421 APA; and
 - iii. approving the Sale Process as set out therein and instructing the Receiver to complete the Sale Process.

A copy of the First Report (without appendices) is attached hereto as **Appendix “B”**.

9. On May 29, 2023, the Court issued an Approval and Vesting Order (the “**Wharncliffe AVO**”) that, among other things:

- (a) approved and authorized the Receiver to complete the Wharncliffe Transaction; and
- (b) upon the registration of title of the 421 Property with the local municipal land registry into the name of the Purchaser and the Receiver issuing the prescribed certificate regarding same, vested title absolutely in the Purchaser, free and clear of any and all security interests and other encumbrances.

A copy of the Wharncliffe AVO is attached hereto as **Appendix “C”**.

10. The Receiver filed its second report dated July 19, 2023 (the “**Second Report**”) with this Court to, among other things, update the Court with respect to:

- (a) the completion of the Wharncliffe Transaction;
- (b) the continued operation of the remaining Popeye’s and Denny’s restaurants;
- (c) the realizations to-date from certain of the Popeye’s locations where the leases had been terminated by their respective landlords;

- (d) the potential realizations available from deposits and other amounts paid by the Companies in advance for equipment yet to be installed in the Denny's locations under construction;
- (e) the sale process conducted by the Receiver for the sale of the operating Popeye's and Denny's locations and the results therefrom;
- (f) an offer to purchase the three operating Popeye's locations and the Agreement of Purchase and Sale dated July 18, 2023 (the "**Popeyes APA**") entered into between the Receiver and Varun Kakkar, as purchaser (the "**Popeyes Purchaser**"), and the transaction contemplated therein (the "**Popeyes Transaction**"); and,
- (g) obtain an order (s), *inter alia*:
 - i. approving the Popeyes APA and authorizing the Receiver to complete the Popeyes Transaction; and
 - ii. vesting the Companies' right, title and interest, if any, in and to the Popeyes locations in the Purchaser, free and clear of any encumbrances, save and except as otherwise contemplated by the Popeyes APA.

A copy of the Second Report (without appendices) is attached hereto as **Appendix "D"**.

11. On July 24, 2023, the Court issued an Approval and Vesting Order (the "**Popeyes AVO**") that, among other things:

- (a) approved the Popeyes APA and authorized the Receiver to complete the Popeyes Transaction; and
- (b) upon completion of the Popeyes Transaction and the Receiver issuing the prescribed certificate regarding same, vested title absolutely in the Popeyes Purchaser, free and clear of any and all security interests and other encumbrances.

A copy of the Popeyes AVO is attached hereto as **Appendix "E"**.

PURPOSES OF THIS THIRD REPORT

12. The purpose of the Receiver’s third report (the “**Third Report**”) is to update the Court with respect to:

- (a) the Receiver’s activities since the date of the Second Report dated July 19, 2023;
- (b) the status of the Popeyes Transaction;
- (c) the continued operation of the remaining Popeye’s and Denny’s restaurants;
- (d) the realizations to-date from certain of the Popeye’s locations where the leases had been terminated by their respective landlords;
- (e) the potential realizations available from deposits and other amounts paid by the Companies in advance for equipment yet to be installed in the Denny’s locations under construction;
- (f) the Receiver’s initial review of various transactions (the “**Reviewable Transactions**”) that the Receiver is of the view require further investigation and an expansion of the Receiver’s powers to include examination of the sole director and officer of the Companies, Abdul Muqet (“**Muqet**”);
- (g) the sales process conducted by the Receiver for the sale of the operating Denny’s locations and the results therefrom;
- (h) the transaction (the “**Denny’s Transaction**”) contemplated in the offer to purchase two operating Denny’s locations by 1000581220 Ontario Inc. (the “**Denny’s Purchaser**”), as purchaser, on September 11, 2023, and accepted by the Receiver on September 11, 2023 (the “**Denny’s Offer**”). A copy of the Denny’s Offer, as amended, is attached as **Confidential Appendix “A”**;
- (i) the Companies’ potential liabilities for unremitted HST and employee source deductions;
- (j) the Receiver’s recommendation for an order (s), *inter alia*:
 - i. approving the Denny’s Offer and authorizing the Receiver to complete the Denny’s Transaction;

- ii. authorizing the Receiver to take such steps as are necessary and appropriate to facilitate the closing of the Denny's Transaction;
- iii. vesting the Companies' right, title and interest, if any, in and to the Purchased Assets (as defined in the Denny's Offer) in the Purchaser, free and clear of any encumbrances, save and except as otherwise contemplated by the Denny's Offer;
- iv. to require Muqet to attend an examination under oath by the Receiver;
- v. approving the Third Report and the activities of the Receiver as set out herein; and,
- vi. such other matters considered relevant to the Receiver's administration of this proceeding.

TERMS OF REFERENCE

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

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

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

- (h) obtained by attending at the Companies' Popeye's and Denny's locations on an on-going basis;
- (i) as provided by former employees of the Index Group that were retained by the Receiver on a contract basis; and
- (j) as otherwise available to the Receiver and its counsel.

15. Except as described in this Third Report, the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with the Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada.

16. All currency references are in Canadian Dollars unless otherwise specified.

ACTIVITIES TO DATE

17. The Receiver's activities since July 19, 2023 have concentrated on:

- (a) maintaining insurance coverage for the Companies' assets and restaurant operations;
- (b) communicating with all of the Companies' landlords, the Popeye's and Denny's franchisors regarding the five remaining operations and maintenance issues, employee matters, rent payments and the Receiver's completion of the Popeyes Transaction;
- (c) contacting and corresponding with the Companies' food and other service providers to ensure continuation of supplies;
- (d) investigating the Reviewable Transactions;
- (e) contracting with employees, ascertaining payroll arrears information, payment thereof or preparation of Wage Earner Protection Program filing information;
- (f) filing of the Receiver's monthly payroll remittance and HST reports with Canada Revenue Agency ("CRA");
- (g) arranging for critical repairs and equipment maintenance at the operating Popeyes and Denny's locations;

- (h) along with the Receiver’s counsel and CWB:
 - (i) negotiating the Denny’s Offer and related agreements; and
 - (ii) discussing and negotiating various extensions of time to the proposed closing of the Popeyes Transaction;
- (i) responding to various CRA audit requests for the Companies pre-receivership accounts; and
- (j) preparing this Third Report.

ASSET REALIZATIONS

18. The Receiver has to the date of this Third Report net realizations of \$613,730 from the Index Group’s assets as summarized in the table below:

Index Entity	Assets Realized Upon	Net Proceeds
421 Wharnccliffe Road	Sale of real property	\$ 509,647
Various	Funds on deposit	73,857
Index Holdings Group Inc.	Vehicle insurance recovery	11,388
Popeyes Baldwin/Brooklyn	Equipment and furniture	10,777
Popeyes Liberty Village	Equipment and furniture	8,061
		\$ 613,730

EMPLOYEES

19. As set out in the First and Second Reports, the Receiver’s representative attended at each Operating Popeyes and Denny’s to, among other things, meet with the employees on site to advise of the Receiver’s appointment, introduce the Receiver’s new management Dahiem’s Management Services Inc. (“**DHS**”) and discuss the continuation of operations. At that time, the Receiver was advised that almost all employees’ biweekly pay was outstanding for between four to six weeks totaling approximately \$150,000. To-date the Receiver has paid approximately \$166,000 for unpaid wages and vacation pay to those employees that are continuing to work at the remaining operating locations. Additional WEPP claims are being processed for 5 non-continuing and other employees whose employment was terminated after the Receiver’s appointment.

POPEYES APA & OPERATIONS**Continued Operations of Popeyes Franchises**

20. As set out in the Second Report, following discussions with seven Popeye's local franchisees recommended by the Popeyes franchisor, on May 8, 2023, the Receiver entered into a management agreement (the "**Popeyes Management Agreement**") with DHS that owns and operates over 20 Popeyes franchises to manage the Operating Popeyes. In summary, DHS as agent of the Receiver, assumed full management responsibility other than payment of payroll and operating expenses. DHS's monthly management fee is \$2,000 per location plus disbursements and HST.

21. Following Court Approval of the Popeyes APA, the Receiver terminated the Popeyes Management Agreement with DHS effective August 4, 2023 and contemporaneously entered into a management agreement with the Popeyes Purchaser (the "**Popeyes Purchaser Management Agreement**"). The terms and conditions of the agreement parallel the Popeyes Management Agreement other than the Popeyes Purchaser not being entitled to a monthly management fee.

22. The Receiver has been in on-going communication with the Popeyes Purchaser and Popeyes Franchisor regarding critical repairs and general maintenance deficiencies at these locations. Between August 1 and September 12, 2023, the Receiver has incurred approximately \$37,000 for repairs and maintenance of air conditioning and filtration systems, refrigeration compartments as well as plumbing and drainage issues. The liability for these expenditures as between the Popeyes Purchaser and Receiver pursuant to the Popeyes APA will be resolved at the time of closing of the Popeyes Transaction.

2700767 Ontario Inc. o/a Popeyes Napanee ("Popeyes Napanee")

23. As set out in the Second Report, on May 2, 2023, immediately prior to the Court's issuance of the Appointment Order, the Receiver met with the Companies' sole director and officer, who advised that this location was closed due to a lack of staff availability. However, shortly after its appointment, the Receiver was advised that the landlord, Devcor Capital Inc. ("**Devcor**") had distrained on Popeyes Napanee's assets at this location.

24. A Popeyes franchisee in the area subsequently contacted the Receiver to inquire about who had the authority to sell this location, including all of the assets still situated there and the lease.

25. The Receiver then contacted Devcor and was advised that Devcor had completed its distraint against the Popeyes Napanee’s assets, including those still on site, and sold the assets to Rev-co Inc. (“**Rev-Co**”), based on two appraisals it had obtained.

26. Corporate searches of Devcor and Rev-Co dated June 6, 2023 indicate that their directors are George, Peter and Stamatina Karamounzos for Devcor and Gus Karamountzos for Rev-Co. Both Devcor and Rev-Co share the same address. It appears that Devcor and Rev-Co are related entities. A copy of Devcor and Rev-Co’s corporate searches are attached as **Appendix “F”**.

27. On June 21, 2023, DW wrote to Devcor advising of the Receiver’s concern that these assets were sold to an apparently related party, contrary to the legal requirements of distraint, and that the Receiver reserved its right to claim damages against Devcor resulting from the irregular distress. A copy of the correspondence is attached as **Appendix “G”**.

28. By email dated June 30, 2023, Devcor’s counsel responded stating Devcor and Rev-Co are not related parties. A copy of that email is attached as **Appendix “H”**.

29. A copy of the most recent correspondence from Devcor’s counsel dated July 14, 2023 is attached as **Appendix “I”**. Devcor continues to insist that Devcor and Rev-Co are not related parties and will not provide the Receiver with details of the sale and disposition of Popeyes Napanee’s assets by Devcor, and Rev-Co.

30. In the circumstances, the Receiver has no alternative but to recommend that the Court issue an Order that compels full production from Devcor and Rev-Co on the relationship between Devcor and Rev-Co as well as full details of the sale proceeds from the sale of the Popeyes Napanee location to a third party.

2723710 Ontario Inc. o/a Popeyes Liberty (“Popeyes Liberty”)

31. As set out above, on June 30, 2023 the available equipment and other fixed assets from this location were removed and liquidated by way of a public auction for net proceeds of \$8,061.

32. On March 8 and 18, 2023 (before the Receiver’s appointment), two fires occurred at this location. Popeyes Liberty notified its insurer, Gore Mutual Insurance, of the potential loss, and a claims adjuster was appointed (“**Adjuster**”).

33. On September 12, 2023, following repeated assurances from the Adjuster that it was finalizing its calculation of Popeyes Liberty's compensation would be presented to the Receiver by July 31, 2023, the Adjuster advised that on a preliminary basis it calculated the claim payable to for fire damage to the equipment at approximately \$52,000 but did not have a calculation of the compensation due for the damages to the furniture and leaseholds.

34. The Receiver is continuing its follow-up with the Adjuster to settle the claim at the earliest possible date.

STATUS OF POPEYES TRANSACTION

35. As set out at section 19 of the Popeyes APA, the Popeyes Purchaser had until 25 days after Court approval, to obtain the consent of the respective landlords for an assignment of the premises' lease and the consent of the Popeyes franchisor to an assignment of the franchise agreement on substantially the same terms as those in place with the Index Group.

36. The Receiver has been in on-going contact with the Popeyes Purchaser, landlords and Popeyes franchisor to obtain updates on the Popeyes Purchaser's progress in obtaining the consents or alternatively negotiate new leases and franchise agreements.

37. Although the Popeyes APA was not conditional upon the Popeyes Purchaser obtaining financing, the Receiver was advised by the Popeyes Purchaser's counsel, Sabio Law ("Sabio"), that it could not obtain the required third party consents by the contemplated closing date since it had, among other things, not secured its financing.

38. Following continued negotiation between the Receiver and the Popeyes Purchaser as well as the Receiver's consultations with CWB, the Receiver and Popeyes entered into an Amending Agreement dated September 11, 2023 that, among other things:

- (a) extends the date for the waiver or satisfaction of the condition requiring third party consents to September 22, 2023;
- (b) allocates the Purchase Price among the Popeyes Purchaser's three corporations to assist in confirming its financing;
- (c) requires the Popeyes Purchaser to increase its deposit by \$50,000;

and establishes October 4, 2023, as the closing date of the Popeyes Transaction. Copies of the emails to DW from Sabio dated September 12, 2023 regarding the need for the extension to obtain financing and the Amending Agreement are attached hereto as **Appendices “J” and “K”**, respectively.

DENNY’S APA AND OPERATIONS

Continued Operations of Denny’s Franchises

39. As set out in the First and Second Reports, following service of CWB’s Notice of Motion and Application for the Receiver’s appointment, the Receiver met with the Denny’s Franchisor to discuss the status and continuation of the operations of the Companies’ Denny’s locations (the **“Operating Denny’s”**). Based on discussions and assessments with the current management of these locations, the Receiver continued operations with the current management team in place.

40. The Receiver has continued the operations of the Brantford location but ceased operations of the Burlington location in early August. On-going contact with the manager is in place to confirm suitable standards of operations are being maintained. To-date, the Receiver is not aware of any complaints or other issues arising from the Operating Denny’s customers, employees or the Denny’s Franchise.

DENNY’S OFFER AND RECOMMENDATIONS

41. A summary of the Offers received for the Denny’s location is attached hereto as **Confidential Appendix “B”**.

42. As set out in the Second Report, the Receiver and CWB did not consider the Offers for the operating Denny’s received by the Sale Process Offer Deadline of July 4, 2023 as reasonable in the circumstances. Accordingly, with CWB’s consent, negotiations of the proposed purchase price continued with the parties that submitted offers for the operating Denny’s. Concurrently, the Receiver approached other prospective purchasers that expressed an interest in acquiring the operating Denny’s.

43. On or about August 15, 2023, the Receiver reached an agreement on the key business terms with 1000581220 Ontario Inc. (the **“Denny’s Purchaser”**) for the purchase of the remaining Denny’s operating locations as well as the Denny’s Purchaser entering into a new lease for the Denny’s Newmarket location that was under construction. As part of these business terms, the Denny’s

Purchaser advised it would be only acquitting the Denny's Burlington removable assets and not continuing operations. A summary of the business terms agreed to is attached hereto as **Confidential Appendix "C"**.

44. In order to keep the Denny's Burlington location operating, the Receiver was incurring cash flow shortfalls averaging approximately \$25,000 per month to maintain the location as a going concern, which is more than just the monthly rent of \$14,443.90 for this location. The Receiver was advised by the Denny's Franchisor that the Denny's Purchaser currently operates multiple Denny's locations in western Canada and would likely be easily approved. In light of the above and in order to limit operating losses, the Receiver terminated operations at Denny's Burlington effective August 8, 2023.

45. On September 11, 2023, the Receiver and the Denny's Purchaser entered into an Offer to Purchase the Denny's Brantford location on a going-concern basis, the removable assets at the Denny's Burlington location, the assets still located at the Denny's Newmarket location, should the Denny's Purchaser enter into a new lease for that location, and a first right of refusal to purchase any other Denny's fixtures and equipment acquired by the Index Group that the Receiver recovers.

46. The Receiver recommends that the Court issue an order approving the Denny's APA and authorizing the Receiver to complete the Denny's Transaction and vesting title to the Property in the Purchaser for the following reasons:

- (a) the Appointment Order authorized the Receiver to market and sell the Property;
- (b) the most likely prospective purchasers were canvassed for approximately four (4) weeks using several marketing techniques, including direct solicitation to prospective purchasers and online advertisements;
- (c) the Denny's APA represents the highest and best offer received during the Sale Process with the highest likelihood of closing;
- (d) in the event the Denny's Transaction is not completed, the Receiver will be required to consider offers that are not the highest or otherwise best bids submitted and will incur significant additional costs to continue the Denny's operations;
- (e) absent the completion of the Denny's Transaction, a protracted marketing period will continue to be necessary for the remaining Denny's Brantford location. The

ongoing professional fees would likely further erode the proceeds available for distribution with no certainty that a superior transaction could be completed;

- (f) completion of the Denny's Transaction would provide continued employment for the Denny's Brantford's current employees; and,
- (g) CWB has advised that it supports the completion of Denny's Transaction notwithstanding that the proceeds of realization from all the Index Group's assets are anticipated to be significantly less than the amounts owing to it from the Companies.

47. In the Receiver's opinion, the Denny's APA represents the best and highest offer for the Property and the Sale Process was fair and reasonable. The Receiver made sufficient effort to obtain the best price and has not acted improvidently. Accordingly, the Receiver respectfully requests that the Court approve the Denny's Transaction, grant an order vesting the right, title and interest in the Property in the Purchaser and authorizing the Receiver to take all steps necessary to complete the Denny's APS.

REVIEWABLE TRANSACTIONS

Denny's Franchises Under Construction

48. As set out in the Second Report, shortly after its appointment, the Receiver met with the respective landlords of the real properties in Newmarket, Rexdale and Markham at which the Index Group purported to be constructing new Denny's restaurants. The Receiver's inspections and discussions with the landlords revealed that, other than removal of interior leaseholds, preliminary HVAC and sub-floor plumbing lines installations, there was no evidence of any additional equipment, fixturing or other leaseholds at these sites.

49. The Receiver reviewed the above findings with CWB and its counsel. CWB then provided the Receiver with a summary of the advances it made to the Index Group for construction of Denny restaurants at these locations, including invoices issued to the Index Group by third parties and copies of Index Group's paid cheques or wires to third parties. CWB's advances and their purported purpose are summarized in the table below:

Denny's Location	General Contractor	Equipment	Signage	Other	Total
Newmarket	24,523	788,477	-	-	813,000
Rexdale	14,680	657,219	36,614	-	708,514
Markham	413,170	136,248	132,558	114,504	796,479
Total	452,373	1,581,944	169,172	114,504	2,317,993

50. Following the Receiver's inspection and consultation with CWB and its counsel, DW sent a letter to each of the purported payees to request that they provide, by July 6, 2023, copies of all invoices, contracts, shipping documents and other information considered necessary to locate any assets paid for by the Index Group that the Receiver might realize upon or obtain a refund for unperformed services. A copy of a template letter to the vendors is attached as **Appendix "L"**.

51. The Receiver's review of the additional information regarding these payments is discussed in greater detail in **Confidential Appendix "D"**, including Confidential Tabs I to V attached thereto.

CONFIDENTIAL APPENDICES

52. The Receiver is of the view that **Confidential Appendices "A" to "C"** should be sealed until the closing of the Denny's Transaction and any potential transaction for the sale of the Operating Denny's or further order of the Court, as the information contained therein is commercially sensitive, and if disclosed, would suppress realizations or prejudice the sale of the Operating Denny's. In addition, **Confidential Appendix "D"**, including Confidential Tabs I to V attached thereto, contain highly sensitive information, disclosure of which would prejudice the Receiver's ongoing investigation of the Reviewable Transactions and should be sealed pending further order of the Court. The Receiver does not believe that any party will suffer prejudice if the Confidential Appendices are sealed in the proposed manner.

INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

53. The Receiver's Interim Statement of Receipts and Disbursements as at September 8, 2023, (the "**Interim R&D**") reports net interim receipts over disbursements totaling \$520,023. The Receiver respectfully requests that the Court approve the Interim R&D. A copy of the Interim R&D is attached hereto as **Appendix "M"**.

STATUTORY LIABILITIES

54. To date the Receiver has not received any trust claims from CRA for unremitted HST or employee source deductions. CRA has assigned one agent in its insolvency department to handle the filing of trust claims; however, all Companies have outstanding returns. For most accounts, no payments have been remitted to CRA since 2021.

55. The Receiver has been contacted by several auditors assigned to audit the various Companies' HST and payroll accounts, but as the Receiver did not find any proper accounting records at the offices of the Companies and Muqet has failed to turnover accounting records, the Receiver is unable to assist CRA with its claims determination. Muqet has also failed to respond to the requests of the CRA auditors. The Receiver is awaiting an update from CRA as to the filing of claims.

56. At the appropriate time, the Receiver intends to bring a motion seeking an Order to authorize and direct the Receiver to file an assignment in bankruptcy in respect of certain of the Index Group Entities and authorizing the Receiver to act as trustee in bankruptcy in respect of such entities for the primary purpose of reversing the priority of certain CRA claims relative to CWB's security.

CONCLUSION AND RECOMMENDATION

57. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court grant the relief detailed in paragraph 12(j) of this Report.

All of which is respectfully submitted this 15th day of September, 2023.

MNP LTD.

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

Per:



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

Appendix A

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) MONDAY, THE 8th
JUSTICE PENNY) DAY OF MAY, 2023

CANADIAN WESTERN BANK

Applicant

- and -

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

Respondents

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

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, RSO 1990, c. C.43, as amended (the "CJA") appointing MNP Ltd. ("MNP") as receiver (in such capacities, the "Receiver") without security, of: (a) all of the properties, assets and undertaking (collectively, the "Personal Property") of Index Holding Group Inc., Index Group of Companies Inc., Index

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

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

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, MNP is hereby appointed Receiver, without security, of the Property of the Debtors.

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, including without limitation the Debtors' bank accounts related to the Property wherever located;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, or any one or more of them, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform or disclaim any contracts of the Debtors, or any one or more of them, in respect of the Property;
- (d) to engage consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors, or any one or more of them, with respect to the Property or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors, or any one or more of them, with respect to the Property and to exercise all remedies of the Debtors, or any one or more of them, in collecting such monies, including, without limitation, to enforce any security held by the Debtors, or any one or more of them;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors, or any one or more of them, with respect to the Property;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, or any one or more of them, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, or any one or more of them, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, or any one or more of them, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

11. THIS COURT ORDERS that all rights and remedies against the Debtors, or any one or more of them, the Receiver, or affecting the Property, including, without limitation, licenses and permits, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors, or any one or more of them, to carry on any business which the Debtors, or any one or more of them, is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors, or any one or more of them, from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

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

FUNDING OF THE RECEIVERSHIP

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, fees, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

26. THIS COURT ORDERS that The Guide Concerning Commercial List E-Service (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL www.mnpdebt.ca/Index-Group-et-al.

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

on the records of the Debtors, or any one or more of them, and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

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

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

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

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

32. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the

Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors, or any one or more of their estates, with such priority and at such time as this Court may determine.

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

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



SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

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

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the

Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

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

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

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

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

DATED the ____ day of _____, 20__.

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

Per: _____
Name:
Title:

CANADIAN WESTERN BANK

- and -

INDEX HOLDING GROUP INC., et al.

Applicant

Court File No. CV-23-00698447-00CL **046**
Respondents

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

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(APPOINTING RECEIVER)**

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Lawyers for the Applicant

Appendix B

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

BETWEEN:

CANADIAN WESTERN BANK

Applicant

- and -

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

Respondents

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C-43, AS AMENDED

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

May 23, 2023

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APPENDICES

- Appendix “A”:** Appointment Order dated May 8, 2023
- Appendix “B”:** 421 Wharncliffe Agreement of Purchase and Sale dated March 29, 2023
- Appendix “C”:** Popeye’s Management Agreement dated May 15, 2023
- Appendix “D”:** 421 Wharncliffe First Amendment to Agreement of Purchase and Sale
- Appendix “E”:** Parcel Registry for 421 Property
- Appendix “F”:** Order of the Corporation of the City of London re: 421 Property
- Appendix “G”:** Notice Registered on Title to the 421 Property
- Appendix “H”:** Receiver’s Proposed Sale Process

INTRODUCTION

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

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

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

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

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

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

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

PURPOSE OF THIS REPORT

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

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

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

TERMS OF REFERENCE

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

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

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

- (i) as provided by former employees of the Index Group that were retained by the Receiver on a contract basis; and
 - (j) as otherwise available to the Receiver and its counsel.
2. Except as described in this First Report, the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with the Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada.
9. All currency references are in Canadian Dollars unless otherwise specified.

ACTIVITIES TO DATE

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

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

Popeye's Franchises

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

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

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

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

Denny's Franchises

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

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

Employees

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

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

421 APA

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

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

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

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

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

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

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

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

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

PROPOSED SALE PROCESS

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

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

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

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

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

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

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

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

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

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

CONCLUSION AND RECOMMENDATION

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

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

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

MNP LTD.
Court-appointed Receiver and Manager of
Index Holding Group Inc. and certain of its related and affiliated entities
Per:



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

Appendix C

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

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

B E T W E E N:

(Court Seal)

CANADIAN WESTERN BANK

Applicant

and

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

Respondents

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

APPROVAL AND VESTING ORDER

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

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

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

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

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

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

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

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

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

6. THIS COURT ORDERS that, notwithstanding:

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

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

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

8. THIS COURT ORDERS that the First Report and the activities of the Receiver set out in the First Report be and are hereby approved.

9. THIS COURT ORDERS that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the First Report detailed in paragraph 8 hereof.

Schedule A – Property

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

PIN 08398-0360(LT)

Schedule B – Form of Receiver’s Certificate

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

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

B E T W E E N:

CANADIAN WESTERN BANK

Applicant

and

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

Respondents

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

RECEIVER’S CERTIFICATE

RECITALS

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

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

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

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

THE RECEIVER CERTIFIES the following:

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

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

[Signature follows on page 2 of this Certificate]

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

Per: _____

Name:

Title:

Schedule C

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

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

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

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

CANADIAN WESTERN BANK
Applicant

-and-
Respondents

INDEX HOLDING GROUP INC. et al.

Court File No. CV-23-00698447-00CL **071**

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

PROCEEDING COMMENCED AT
TORONTO

ORDER

DICKINSON WRIGHT LLP

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199 Bay Street
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Lawyers for the Receiver

Email for parties served:
Service List

Appendix D

Court File No. CV-20-00698447-00CL

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

BETWEEN:

CANADIAN WESTERN BANK

Applicant

- and -

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

Respondents

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C-43, AS AMENDED

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

July 19, 2023

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APPENDICES

Appendix “A”	Appointment Order dated May 8, 2023
Appendix “B”	First Report of the Receiver dated May 23, 2023
Appendix “C”	Approval and Vesting Order dated May 29, 2023 re Wharncliffe Transaction
Appendix “D”	Letter to Devcor Capital Inc. (“Devcor”) dated June 21, 2023
Appendix “E”	Responding Email from Devcor’s counsel
Appendix “F”	Corporate Searches of Devcor and Rev-co Inc.
Appendix “G”	Template letter to suppliers sent June 22, 2023

CONFIDENTIAL APPENDICES

Confidential Appendix “A”	Summary of Offers Received
Confidential Appendix “B”	Offer from Varun Kakkar

INTRODUCTION

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

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

3. As set out in the Hartwell Affidavit, as at April 11, 2023, the amount of \$8,141,405.08 was owing by the Index Group to CWB, and CWB was concerned that it would suffer a shortfall in the recovery of that indebtedness after monetization of the Property. The Receiver has obtained an opinion from its independent counsel, Dickinson Wright LLP (“**DW**”), that subject to the usual qualifications, CWB holds valid, enforceable and first ranking security over all of the Property.

4. Based upon the information reviewed to date by the Receiver, the Receiver estimates that CWB will suffer a significant shortfall in the recovery of its first ranking secured claim, and that there will be no funds available for distribution to any subordinate secured or unsecured creditors of the Index Group.

5. The Companies include either federally or provincially incorporated entities that operated six Popeye’s Louisiana Kitchen (“**Popeyes**”), two Denny’s Restaurants (“**Denny’s**”) franchises and had commenced construction of three Denny’s in and around the Greater Toronto Area.

6. Before the closing of the Wharncliffe Transaction (as defined and discussed below), 421 Wharncliffe Ltd. (“**421 Wharncliffe**”) was the registered owner of a vacant lot located at 421 Wharncliffe Road South, London, Ontario (the “**421 Property**”).

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

	Entity	Franchisee	Location	Status
1.	2775290 Ontario Inc.	Denny's	Brantford	Operating
2.	11030434 Canada Ltd.	Denny's	Burlington	Operating
3.	2790760 Ontario Inc.	Denny's	Newmarket	Under construction
4.	2775296 Ontario Inc.	Denny's	Rexdale	Under construction
5.	2723716 Ontario Inc.	Denny's	Woodbine Markham	Under construction
6.	2700774 Ontario Inc.	Popeyes	Oshawa	Operating
7.	Index Foods Inc.	Popeyes	Dundas St. W., Whitby	Operating
8.	Index International Inc.	Popeyes	Dundas St. E. Whitby	Operating
9.	11030418 Canada Inc.	Popeyes	Baldwin St. Brooklyn	Lease terminated pre receivership – closed
10.	2723710 Ontario Inc.	Popeyes	Popeyes Liberty St.	Closed due to pre- receivership fire – Lease terminated
11.	2700767 Ontario Inc.	Popeyes	Napanee	Lease terminated pre receivership – equipment sold permanently closed
12.	2683960 Ontario Ltd.	Popeyes	Uxbridge	Lease terminated pre- receivership – equipment sold permanently closed

8. The Receiver filed its first report dated May 23, 2023 (the "**First Report**") with this Court to, among other things:

- (a) review an offer received for the 421 Property and the Agreement of Purchase and Sale dated March 29, 2023 (the "**421 APA**") entered into between the Receiver and Muhammad Saleem, in trust for a corporation to be formed, as purchaser (the "**Purchaser**"), as amended by the First Amendment to Agreement of Purchase and Sale dated May 15, 2023 between the Receiver and the Purchaser in respect of the 421 Property and the transaction contemplated therein (the "**Wharncliffe Transaction**");
- (b) set out the Receiver's proposed sale process (the "**Sale Process**") for the Companies' Popeye's and Denny's franchise operations and the Companies' other Property; and

- (c) obtain an order (s), *inter alia*:
 - i. authorizing the Receiver to take such steps as are necessary and appropriate to facilitate the closing of the Wharncliffe Transaction;
 - ii. vesting 421 Wharncliffe's right, title and interest, if any, in and to the 421 Property in the Purchaser, free and clear of any encumbrances, save and except as otherwise contemplated by the 421 APA;
 - iii. approving the Sale Process as set out therein and instructing the Receiver to complete the Sale Process;
 - iv. approving the First Report and the activities of the Receiver as set out therein; and
 - v. such other matters considered relevant to the Receiver's administration of this proceeding.

A copy of the First Report (without appendices) is attached hereto as **Appendix "B"**.

9. On May 29, 2023, the Court issued an Approval and Vesting Order (the "**Wharncliffe AVO**") that, among other things:

- (a) approved and authorized the Receiver to complete the Wharncliffe Transaction;
- (b) upon the registration of title of the 421 Property with the local municipal land registry into the name of the Purchaser and the Receiver issuing the prescribed certificate regarding same, vested title absolutely in the Purchaser, free and clear of any and all security interests and other encumbrances;
- (c) approved the Receiver's activities to the date of the First Report and noted that the Court did not have time to review or comment on the Receiver's proposed Sale Process as set out in the First Report.

A copy of the Wharncliffe AVO is attached hereto as **Appendix "C"**.

PURPOSES OF THIS SECOND REPORT

10. The purpose of the Receiver's second report, (the "**Second Report**") is to update the Court with respect to:

- (a) the Receiver's activities since the date of the First Report dated May 23, 2023;
- (b) the completion of the Wharncliffe Transaction;
- (c) the continued operation of the remaining Popeyes and Denny's restaurants;
- (d) the realizations to-date from certain of the Popeye's locations where the leases had been terminated by their respective landlords;
- (e) the potential realizations available from deposits and other amounts paid by the Companies in advance for equipment yet to be installed in the Denny's locations under construction;
- (f) the sales process conducted by the Receiver for the sale of the operating Popeyes and Denny's locations and the results therefrom;
- (g) an offer to purchase the three operating Popeyes locations and the Agreement of Purchase and Sale dated July 18, 2023 (the "**Popeyes APA**") entered into between the Receiver and Varun Kakkar, as purchaser (the "**Purchaser**"), and the transaction contemplated therein (the "**Popeyes Transaction**"). A copy of the Popeyes APA, as amended is attached as **Confidential Appendix "A"**;
- (h) the Companies' potential liabilities for unremitted HST and employee source deductions;
- (i) the review of CWB's security by Receiver's counsel, DW;
- (j) the Receiver's recommendation for an order (s), *inter alia*:
 - i. approving and authorizing the Receiver to complete the Popeyes APA, and approving the Transaction set out therein;
 - ii. authorizing the Receiver to take such steps as are necessary and appropriate to facilitate the closing of the Transaction;

- iii. vesting the Companies' right, title and interest, if any, in and to the Popeyes locations in the Purchaser, free and clear of any encumbrances, save and except as otherwise contemplated by the Popeyes APA;
- iv. approving the Second Report and the activities of the Receiver as set out herein; and,
- v. such other matters considered relevant to the Receiver's administration of this proceeding.

TERMS OF REFERENCE

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

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

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

- (j) as otherwise available to the Receiver and its counsel.

13. Except as described in this Second Report, the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with the Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada.

14. All currency references are in Canadian Dollars unless otherwise specified.

ACTIVITIES TO DATE

15. The Receiver's activities since May 23, 2023, the date of First Report, have concentrated on:
- (a) confirming insurance coverage for the Companies assets and restaurant operations;
 - (b) communicating with all of the Companies' landlords with respect to HVAC and other site issues, rent payments and the Receiver's proposed realization strategy;
 - (c) contacting and corresponding with the Companies' food and other service providers to ensure continuation of supplies;
 - (d) contracting with employees, ascertaining payroll arrears information, payment thereof or preparation of Wage Earner Protection Program filing information;
 - (e) arranging for the redirection of payments from Uber Eats, Door Dash and Skip the Dishes to the Receiver's accounts;
 - (f) arranging for the release of amounts due to the Companies from credit and debit card payment processors to the Companies' accounts controlled by the Receiver;
 - (g) arranging for close out of the Companies known bank accounts and the transfer of funds to the Receiver's bank accounts;
 - (h) arranging for the pick-up of vehicles leased or financed by the Companies and driven by the Companies' sole officer and director, Mr. Abdul Muquet ("**Muquet**");
 - (i) arranging for the turnover of funds improperly collected by Muquet;

- (j) ongoing management of the five ongoing restaurants and attending to required site repairs and maintenance and employment matters;
- (k) attending to various discussions with prospective purchasers regarding the Sale Process and responding to due diligence inquiries as well as conducting inspections of the Companies' business locations;
- (l) filing Receivership Reports based on available information;
- (m) filing of the Receiver's monthly payroll remittance and HST reports with Canada Revenue Agency ("CRA");
- (n) responding to various CRA audit requests for the Companies pre-receivership accounts; and
- (o) preparing this Second Report.

COMPLETION OF THE WHARNCLIFFE TRANSACTION

16. On June 13, 2023 the Receiver completed the Wharncliffe Transaction for gross proceeds of \$565,000. Outstanding property taxes of \$22,335.63 were paid to the City of London and realty commission of \$37,290 was paid to Royal LePage Downsview Realty Inc. upon the completion of that transaction.

POPEYES FRANCHISES

Continued Operations of Popeyes Franchises

17. As set out in the First Report, prior to its appointment, the Receiver met with the Popeyes Franchisor to discuss the status of the Companies' operating Popeyes locations (the "**Operating Popeyes**") and the various issues related to continuing those operations.

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

19. The Popeyes Franchisor provided the Receiver with a list of seven Popeyes franchisees in Durham and surrounding regions that it recommended be retained to manage the Operating Popeyes.

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

Employees

21. As set out in the First Report, the Receiver's representative attended at each Operating Popeyes and Denny's to, among other things, meet with the employees on site to advise of the Receiver's appointment, introduce DHS and discuss the continuation of operations. At that time, the Receiver was advised that almost all employees' biweekly pay was outstanding for between four to six weeks totaling approximately \$150,000.

22. CWB advanced \$125,000 by way of a Receiver's Certificate that in combination with funds retrieved from the Companies' bank accounts has allowed the Receiver to pay substantially all of the payroll arrears. To-date the Receiver has paid approximately \$166,000 for unpaid wages and vacation pay to those employees that are continuing to work at the remaining operating locations. Additional WEPP claims for 5 non-continuing employees are being processed.

Popeyes Terminated Lease Locations

2700767 Ontario Inc. o/a Popeyes Napanee ("Popeyes Napanee")

23. On May 2, 2023, immediately prior to the Court's issuance of the Appointment Order, the Receiver met with the Companies' sole director and officer, who advised that this location was closed due to a lack of staff availability. However, shortly after its appointment, the Receiver was advised that the landlord, Devcor Capital Inc. ("**Devcor**") had distrained on Popeyes Napanee's assets at this location.

24. A Popeyes franchisee in the area subsequently contacted the Receiver to inquire about who had the authority to sell this location, including all of the assets still situated there and the lease.

25. The Receiver then contacted Devcor and was advised that Devcor had completed its distraint against the Popeyes Napanee's assets, including those still on site, and sold the assets to Rev-co Inc. ("**Rev-Co**"), based on two appraisals it had obtained.

26. On June 21, 2023, DW wrote to Devcor advising of the Receiver's concern that these assets were sold to an apparently related party, contrary to the legal requirements of distraint, and that the Receiver reserved its right to claim damages against Devcor resulting from the irregular distress. A copy of the correspondence is attached as **Appendix "D"**.

27. On July 14, 2023 Devcor's counsel responded stating Devcor and Rev-Co are not related parties. A copy of this correspondence is attached as **Appendix "E"**

28. Corporate searches of Devcor and Rev-Co dated June 6, 2023 indicate that their directors are Mr. George, Peter and Stamatina Karamounzos for Devcor and Mr. Gus Karamountzos for Rev-Co. Both Devcor and Rev-Co share the same address. It appears that Devcor and Rev-Co are related entities. A copy of Devcor and Rev-Co's corporate searches are attached as **Appendix "F"**.

29. The Receiver is continuing its review and investigation of the disposition of Popeyes Napanee's assets by Devcor. Should the Receiver be unable to resolve this situation to its satisfaction, it may seek the advice and direction of the Court to compel full production on the relationship between Devcor and Rev-Co as well as the sale proceeds from the sale of the Popeyes Napanee location.

2723710 Ontario Inc. o/a Popeyes Liberty ("Popeyes Liberty")

30. On March 8 and 18, 2023, two fires occurred at this location. As a result of these fires and other on-going defaults by Popeyes Liberty in its lease with the landlord, Lifestyle Developments Inc. ("**Lifestyle**"), on March 20, 2023, Lifestyle terminated Popeyes Liberty's lease.

31. Prior to the Receiver's appointment, Popeyes Liberty notified its insurer, Gore Mutual Insurance, of the potential loss, and a claims adjuster was appointed ("**Adjuster**"). The Adjuster has advised the Receiver that it is finalizing its calculation of Popeyes Liberty's loss that should be provided to the Receiver by the end of July 2023.

32. Following extended discussions with Lifestyle and a clean up of these premises, the Receiver arranged for the removal of the available equipment and other assets on site by Benaco Sales Ltd. ("**Benaco**") a liquidator who will be auctioning off these assets on July 20, 2023.

11030418 Canada Inc. o/a Popeyes Baldwin St., Brooklyn (“Popeyes Brooklyn”)

33. Prior to the receivership, Popeyes Brooklyn’s lease to these premises was terminated by the landlord, Villbrook Inc. (“**Villbrook**”).

34. Following discussions with Villbrook regarding the possibility of the Receiver selling this location to another Popeyes franchisee as a going-concern and Villbrook releasing the premises to the purchaser, Villbrook informed the Receiver that it had re-leased the premises and required the removal of Popeyes Brooklyn’s equipment and assets on site.

35. On May 31, 2023, Benaco removed the available equipment and assets on site which were submitted to auction on June 21, 2023. Benaco has advised that net auction proceeds of \$14,582.60 will be remitted to the Receiver.

DENNY’S FRANCHISES**Continued Operations of Denny’s Franchises**

36. As set out in the First Report, following service of CWB’s Notice of Motion and Application for the Receiver’s appointment, the Receiver met with the Denny’s Franchisor to discuss the status and continuation of the operations of the Companies’ Denny’s locations (the “**Operating Denny’s**”). Based on discussions and assessments with the current management of these locations, the Receiver continued operations with the current management team in place.

37. The Receiver has continued the operations of these locations and is in on-going contact with the managers in place to confirm suitable standards of operations are being maintained. To-date, the Receiver is not aware of any complaints or other issues arising from the Operating Denny’s customers, employees or the Denny’s Franchise.

Status of Denny’s Franchises Under Construction

38. Shortly after its appointment, the Receiver met with the respective landlords at each of the Denny’s locations under construction. The Receiver’s findings and observations are set out below:

2790760 Ontario Inc. o/a Denny's Newmarket ("Denny's Newmarket")

39. The landlord's representative advised that construction on this location had ceased over six months ago. On inspection it appeared that all interior leaseholds had been removed and preliminary HVAC and sub-floor plumbing lines had been installed. There was no evidence of any additional equipment, fixturing or other leaseholds on site.

2775296 Ontario Inc. o/a Denny's Rexdale ("Denny's Rexdale")

40. The landlord's representative advised that the lease to this location was terminated and construction had ceased several months ago. On inspection, it appeared, much like the Denny's Newmarket, that all interior leaseholds had been removed and preliminary HVAC and sub-floor plumbing lines had been installed. There was no evidence of any additional equipment, fixturing or other leaseholds on site.

2723716 Ontario Inc. o/a Denny's Markham ("Denny's Markham")

41. The landlord's representative advised that the lease to this location was effectively terminated since the Companies could not obtain a variance to the local by-laws to allow a restaurant to operate at this location. Construction had ceased several months ago. On inspection, it appeared, much like the Denny's Newmarket and Rexdale locations, that all interior leaseholds had been removed, HVAC and kitchen exhaust ducts and sub-floor plumbing lines had been installed. There was no evidence of any additional equipment, fixturing or other leaseholds on site.

42. The Receiver reviewed the above findings with CWB and its counsel. CWB then provided the Receiver with a summary of its advances to the Index Group including invoices issued to the Index Group and copies of Index Group's paid cheques or wires to third parties. CWB's advances and their purported purpose are summarized in the table below:

Denny's Location	General Contractor	Equipment	Signage	Other	Total
Newmarket	24,523	788,477	-	-	813,000
Rexdale	14,680	657,219	36,614	-	708,514
Markham	413,170	136,248	132,558	114,504	796,479
Total	452,373	1,581,944	169,172	114,504	2,317,993

43. Based on the observed status of these locations and the information provided by CWB, on June 22, 2023, DW sent by email a notice to each of the parties that had been paid in respect of the above invoices requesting they provide by July 6, 2023 copies of all contracts, shipping documents and other information considered necessary to locate any assets paid for by the Index Group that the Receiver might realize upon or obtain a refund for unperformed services. A copy of a template letter to the vendors is attached as **Appendix “G”**.

44. Based on a further review of the payments by the Index Group, it was determined that approximately \$155,000 was paid to 2359958 Ontario Inc. (“**235 Ontario**”) and 2841628 Ontario Inc. (“**284 Ontario**”) for the installation of walk-in coolers, air conditioning signage, engineering and related drawings for Denny’s Markham. There was no evidence of any of the above services or equipment or signage installations having been provided at this location. A corporate search of 284 Ontario lists Muqet as one of the directors and the registered office address is Muqet’s home address, which is also the registered office address for the vast majority of the Companies. The Receiver is continuing to investigate whether suspicious payments were made to other alleged suppliers that may be related to Muqet.

45. The Receiver has been in contact with certain of the vendors that responded to its correspondence and has located some of the equipment paid for by the Index Group. The Receiver is in the process of verifying the equipment located and assessing the realizable value of this equipment.

46. The Receiver intends to continue its investigation of the recoverability of these payments by the Index Group for these locations. Should the Receiver not obtain satisfactory responses from the vendors, the Receiver may seek the advice and direction of the Court to require production of documents from and/or examinations of the applicable vendors.

SALE PROCESS

47. The Appointment Order, among other things, authorized the Receiver to market and sell the Property which includes the operating Popeyes and Denny’s Franchises.

48. As set out in the First Report, the Receiver consulted with CWB and the Popeyes and Denny’s Franchisors regarding a sale process. The Franchisors’ consent is required for the assignment of the franchise agreement as a condition of the sale of an existing franchise location. Specifically, the Franchisors have advised the Receiver that unless a prospective purchaser of a franchise location is

already or is easily approved by the Franchisor, the approval process could take between six to eight weeks with no certainty of approval.

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

50. As set above in paragraphs 8 and 9, the Receiver sought the Court's approval to implement the proposed Sale Process and bid deadline set out in the First Report and summarized below. A summary of the Sale Process implemented by the Receiver with the support of CWB, that also mirrors the proposed Sales Process set out in the First Report, is set out below:

Event		Timeline
1	Prepared a list of Prospective Purchasers, the Teaser, the NDA, the Data Room, CIM, draft APS, and draft advertisements	Prior to June 5, 2023
2	Published notice of the sale in a nationally circulated food service trade journal and website.	During the week of June 5, 2023
3	Published notice of the sale on the Receiver's website and through the Insolvency Insider e-mail publication	Commencing on June 5, 2023
4	Distributed Teaser and the NDA to those identified as Prospective Purchasers	Commencing on June 5, 2023
5	Commenced distribution of CIM and provided data room access to Prospective Offerors, after receiving executed copy of NDA	Commencing on June 5, 2023
6	Provided tours of the Index Group's remaining operations	From June 13 to June 30, 2023
7	Held discussions with Prospective Offerors to provide updates and to resolve their queries	From June 13 to June 30, 2023
8	Deadline for submission of Offers	July 4, 2023 at 5:00 PM (Toronto Time) (the "Deadline")

51. Although the Court did not have sufficient time prior to the motion on May 29, 2023 to review and approve the Receiver's proposed Sale Process, in order to preserve the value of the Property and minimize the costs and professional fees being incurred to continue operations of the remaining

locations, the Receiver commenced the Sale Process in accordance with the above timeline and terms set out in the First Report. Furthermore, the Receiver's Sale Process limited the due diligence period required by prospective purchasers during which time the Property would be essentially "off the market", if being sold by a business broker.

SALE PROCESS RESULTS

52. On June 5, 2023, a Teaser was sent to twenty-four parties that the Receiver, Denny's and Popeyes Franchisors considered to be prospective purchasers that the Franchisors would approve. In addition, the Receiver concurrently advertised the opportunity in an online banner ad for June 2023's Foodservice and Hospitality Magazine and in the Insolvency Insider's digital weekly electronic newsletter.

53. Twelve parties executed NDA agreements and were provided with access to the Receiver's secure on-line data room (the "**Data Room**") that contained a Confidential Information Memorandum, information regarding the remaining operations sales history and operating costs, the Receiver's terms of sale and a form of offer. Twelve prospective purchasers entered and reviewed the contents of the Data Room. Of these, at least six prospective purchasers attended at the operating businesses to conduct additional on-site due diligence

54. A Summary of the Offers (the "**Offers**") received by the July 4, 2023 deadline is attached as **Confidential Appendix "A"**.

POPEYES APA

55. The Receiver and its counsel reviewed the Offers with CWB and its counsel. Based on that review and with the consent of CWB, the Receiver took steps to accept Varun Kakkar's offer for all three of the operating Popeyes, consisting of Index International Inc., Index Foods Inc. and 2700774 Ontario Inc., and negotiate the Popeyes APA attached hereto as **Confidential Appendix "B"**.

56. The Receiver and CWB did not consider the Offers received for the operating Dennys as reasonable in the circumstances. Accordingly, with CWB's consent, negotiations of the proposed purchase price are continuing with the parties that submitted offers for the operating Dennys. Concurrently, the Receiver is approaching other prospective purchasers that expressed an interest in acquiring the operating Dennys. Should the Receiver reach an agreement regarding the sale of the

operating Dennys, it intends to schedule an appointment with the Court for approval of the contemplated transaction.

POPEYES APA RECOMMENDATIONS

57. The Receiver recommends that the Court issue an order approving the Popeyes APA and authorizing the Receiver to complete the Popeyes Transaction and vesting title to the Property in the Purchaser for the following reasons:

- (a) the Sale Process was conducted in accordance with the Appointment Order;
- (b) the most likely prospective purchasers were canvassed for approximately four (4) weeks using several marketing techniques, including direct solicitation to prospective purchasers and online advertisements;
- (c) the Popeyes APA represents the highest and best offer received during the Sale Process with the highest likelihood of closing;
- (d) in the event the Popeyes Transaction is not completed, the Receiver will be required to consider offers that are not the highest or otherwise best bids submitted and will incur significant additional costs to continue the Popeyes operations;
- (e) absent the completion of the Popeyes Transaction, a protracted marketing period will continue to be necessary. The ongoing professional fees would likely further erode the proceeds available for distribution with no certainty that a superior transaction could be completed;
- (f) completion of the Popeyes Transaction would provide continued employment for the operating Popeyes current employees; and,
- (g) CWB has advised that it supports the completion of Popeyes Transaction notwithstanding that the proceeds of realization from all the Index Group's assets are anticipated to be significantly less than the amounts owing to it from the Companies.

58. In the Receiver's opinion, the Popeyes APA represents the best and highest offer for the Property and the Sale Process was fair and reasonable. The Receiver made sufficient effort to obtain

the best price and has not acted improvidently. Accordingly, the Receiver respectfully requests that the Court approve the Popeyes Transaction, grant an order vesting the right, title and interest in the Property to the Purchaser and authorize the Receiver to take all steps necessary to complete the Popeyes APS.

CONFIDENTIAL APPENDICES

59. The Receiver is of the view that **Confidential Appendices “A” and “B”** should remain sealed until the earlier of 60 days following the closing of the Popeyes Transaction and any potential transaction for the Operating Denny’s or further order of the Court, as the information contained therein is commercially sensitive and could prejudice the sale of these entities in the event the Popeyes Transaction does not close. The Receiver does not believe that any party will suffer prejudice if the Confidential Appendices are sealed in this manner.

STATUTORY LIABILITIES

60. To date the Receiver has not received any trust claims from CRA for unremitted HST or employee source deductions. CRA has assigned one agent in its insolvency department to handle the filing of trust claims; however, all Companies have outstanding returns. For most accounts, no payments have been remitted to CRA since 2021.

61. The Receiver has been contacted by several auditors assigned to audit the various Companies’ HST and payroll accounts, but as the Receiver did not find any proper accounting records at the offices of the Companies and Muqet has failed to turnover accounting records, the Receiver is unable to assist CRA with its claims determination. Muqet has also failed to respond to the requests of the CRA auditors. The Receiver is awaiting an update from CRA as to the filing of claims.

CONCLUSION AND RECOMMENDATION

62. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court grant the relief detailed in paragraph 10(j) of this Report.

All of which is respectfully submitted this 19th day of July, 2023.

MNP LTD.

Court-appointed Receiver and Manager of

Index Holding Group Inc. and certain of its related and affiliated entities

Per:



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

Appendix E

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

THE HONOURABLE)
)
JUSTICE KIMMEL) MONDAY, THE 24TH
 DAY OF JULY, 2023

B E T W E E N:

(Court Seal)

CANADIAN WESTERN BANK

Applicant

and

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

Respondents

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by MNP Ltd. in its capacity as the Court-appointed receiver (the “**Receiver**”) of Index Foods Inc., Index International Inc., and 270074 Ontario Inc. (collectively, the “**Debtors**”), for an order, *inter alia*, approving the sale transaction (the “**Popeyes Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and Varun Kakkar (the “**Purchaser**”) dated July 19, 2023 (the “**Sale Agreement**”) and appended to the Second Report of the Receiver dated July 19, 2023 (the “**Second Report**”), and vesting in the Purchaser, the right, title and interest of the Debtors in and

to the Purchased Assets (as defined in the Sale Agreement), was heard this day via judicial video conference, at Toronto, Ontario.

ON READING the Second Report and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, Canadian Western Bank, no one appearing for any other person on the service list, although served as appears from the affidavit of Jennifer Samuels sworn July 20, 2023, filed:

1. THIS COURT ORDERS that that the time for service of the Receiver's Notice of Motion and Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS AND DECLARES that the Popeyes Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Popeyes Transaction and for the conveyance of the Purchased Assets as defined in the Sale Agreement to the Purchaser.
3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the right, title and interest of the Debtors in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of

the Honourable Penny dated May 8, 2023; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged.

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

5. THIS COURT ORDERS that, notwithstanding:

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

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

6. 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.

7. THIS COURT ORDERS that the Second Report and the activities of the Receiver set out in the Second Report be and are hereby approved.

8. THIS COURT ORDERS that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the Second Report detailed in paragraph 8 hereof.

9. THIS COURT ORDERS that Confidential Appendices A and B to the Second Report be and are hereby sealed pending the closing of the Popeyes Transaction, or further Order of this Court.

Schedule A – Form of Receiver’s Certificate

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

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

B E T W E E N:

CANADIAN WESTERN BANK

Applicant

and

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

Respondents

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

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an the Order of the Honourable Mr. Justice Penny of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated May 8, 2023, MNP Ltd. was appointed receiver (the “**Receiver**”) of all of the assets, properties and undertakings of Index Foods Inc., Index International Inc., and 2700774 Ontario Inc. (the “**Debtors**”) and the other Respondents herein.

B. Pursuant to an Order of the Court dated July 24, 2023, the Court approved the transaction (the “**Popeyes Transaction**”) contemplated in an Agreement of Purchase and Sale dated July ●, 2023 between Karun Kakkar (the “**Purchaser**”) and the Receiver and the Purchaser (the “**Sale**”).

Agreement”), and provided for the vesting in the Purchaser of the Debtors’ right, title and interest in and to the Purchased Assets which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; and (ii) the Popeyes Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

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

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

[Signature follows on page 2 of this Certificate]

MNP LTD., solely in its capacity as Receiver of the Debtors, and not in its personal capacity.

Per: _____
Name:
Title:

CANADIAN WESTERN BANK
Applicant

-and-
Respondents

INDEX HOLDING GROUP INC. et al.

Court File No. CV-23-00698447-00CL **100**

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

PROCEEDING COMMENCED AT
TORONTO

ORDER

DICKINSON WRIGHT LLP

Barristers & Solicitors
199 Bay Street
Suite 2200, Box 447
Commerce Court Postal Station
Toronto, ON M5L 1G4

JOHN D. LESLIE (29956P)

Email: JLeslie@dickinsonwright.com
Tel: 416-646-3801

LISA S. CORNE (27974M)

Email: lcorne@dickinsonwright.com
Tel: 416-646-4608

Lawyers for the Receiver

Email for parties served:
Service List

Appendix F

Ministry of Public and
Business Service Delivery

Profile Report

DEVCOR CAPITAL INC. as of June 06, 2023

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	DEVCOR CAPITAL INC.
Ontario Corporation Number (OCN)	5037300
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Amalgamation	September 01, 2020
Registered or Head Office Address	1770 Argentia Road, Mississauga, Ontario, Canada, L5N 3S7

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

A handwritten signature in black ink, appearing to read "V. Quintanilla W.".

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 10

Name GEORGE KARAMOUNTZOS
Address for Service 1770 Argentia Road, Mississauga, Ontario, Canada, L5N 3S7
Resident Canadian Yes
Date Began September 01, 2020

Name PETER KARAMOUNTZOS
Address for Service 1770 Argentia Road, Mississauga, Ontario, Canada, L5N 3S7
Resident Canadian Yes
Date Began September 01, 2020

Name STAMATINA KARAMOUNTZOS
Address for Service 1770 Argentia Road, Mississauga, Ontario, Canada, L5N 3S7
Resident Canadian Yes
Date Began September 01, 2020

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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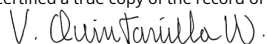
Active Officer(s)

Name GEORGE KARAMOUNTZOS
Position Secretary
Address for Service 1770 Argentia Road, Mississauga, Ontario, Canada, L5N 3S7
Date Began September 01, 2020

Name PETER KARAMOUNTZOS
Position President
Address for Service 1770 Argentia Road, Mississauga, Ontario, Canada, L5N 3S7
Date Began September 01, 2020

Name STAMATINA KARAMOUNTZOS
Position Treasurer
Address for Service 1770 Argentia Road, Mississauga, Ontario, Canada, L5N 3S7
Date Began September 01, 2020

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.



Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Corporate Name History

Name

DEVCOR CAPITAL INC.

Effective Date

September 01, 2020

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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Additional historical information may exist in paper or microfiche format.

Amalgamating Corporations

Corporation Name
Ontario Corporation Number

DEVCOR DEVELOPMENTS INC.
1921504

Corporation Name
Ontario Corporation Number

OGI CAPITAL INC.
1999735

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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Document List

Filing Name	Effective Date
Annual Return - 2022 PAF: PETER KARAMOUNTZOS	March 27, 2023
Annual Return - 2021 PAF: Peter KARAMOUNTZOS	June 14, 2022
CIA - Initial Return PAF: PETER KARAMOUNTZOS - DIRECTOR	October 16, 2020
BCA - Articles of Amalgamation	September 01, 2020

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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Ministry of Public and
Business Service Delivery

Profile Report

REV-CO INC. as of June 06, 2023

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	REV-CO INC.
Ontario Corporation Number (OCN)	5046012
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Amalgamation	March 01, 2021
Registered or Head Office Address	1770 Argentia Road, Mississauga, Ontario, Canada, L5N 3S7

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

A handwritten signature in black ink, appearing to read "V. Quintanilla W.".

Director/Registrar

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Active Director(s)

Minimum Number of Directors	1
Maximum Number of Directors	10

Name	GUS KARAMOUNTZOS
Address for Service	1770 Argentia Road, Mississauga, Ontario, Canada, L5N 3S7
Resident Canadian	Yes
Date Began	March 01, 2021

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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Active Officer(s)

Name GUS KARAMOUNTZOS
Position President
Address for Service 1770 Argentia Road, Mississauga, Ontario, Canada, L5N 3S7
Date Began March 01, 2021

Name GUS KARAMOUNTZOS
Position Secretary
Address for Service 1770 Argentia Road, Mississauga, Ontario, Canada, L5N 3S7
Date Began March 01, 2021

Name GUS KARAMOUNTZOS
Position Treasurer
Address for Service 1770 Argentia Road, Mississauga, Ontario, Canada, L5N 3S7
Date Began March 01, 2021

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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Corporate Name History

Name

Effective Date

REV-CO INC.

March 01, 2021

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

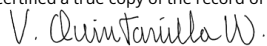
Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report.

Additional historical information may exist in paper or microfiche format.

Amalgamating Corporations**Corporation Name**
Ontario Corporation NumberFRANCHISE GROUP INC.
2100292**Corporation Name**
Ontario Corporation NumberREV-CO INC.
2163316**Corporation Name**
Ontario Corporation NumberOBSIDIAN GROUP INTERNATIONAL INC.
2099743**Corporation Name**
Ontario Corporation NumberSENGA HOLDINGS INC.
2101978**Corporation Name**
Ontario Corporation NumberNORTHPIKE CAPITAL GROUP INC.
1858209

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.



Director/Registrar

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Active Business Names

Name	MAIN STREET SUITES
Business Identification Number (BIN)	310472618
Registration Date	March 22, 2021
Expiry Date	March 21, 2026

Name	MAIN STREET HOTEL
Business Identification Number (BIN)	310473129
Registration Date	March 22, 2021
Expiry Date	March 21, 2026

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Document List

Filing Name	Effective Date
Annual Return - 2022 PAF: GUS KARAMOUNTZOS	March 27, 2023
Annual Return - 2021 PAF: Gus KARAMOUNTZOS	June 15, 2022
CIA - Initial Return PAF: GUS KARAMOUNTZOS - DIRECTOR	March 10, 2021
BCA - Articles of Amalgamation	March 01, 2021

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

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V. Quintanilla W.

Director/Registrar

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Appendix G



199 BAY STREET, SUITE 2200
P.O. BOX 447, COMMERCE COURT POSTAL STATION
TORONTO, ON CANADA M5L 1G4
TELEPHONE: (416) 777-0101
FACSIMILE: (416) 865-1398
<http://www.dickinsonwright.com>

LISA S. CORNE
LCorne@dickinsonwright.com
(416) 646-4608

June 21, 2023

VIA EMAIL (john@devcor.com)

John Rizakos
In-House Legal Counsel
Devcor Capital Inc.
1770 Argentia Road
Mississauga, Ontario L5N 3S7

Dear Mr. Rizakos:

Re: Canadian Western Bank v. Index Holding Group Inc., et al.
Court File No.: CV-23-00698447-00CL
Our File No.: 41260-124

We represent MNP Ltd (the “**Receiver**”), in its capacity as Court-Appointed Receiver of 2700767 Ontario Inc. (the “**Debtor**”). A copy of the Order appointing the Receiver is attached for your reference (the “**Appointment Order**”).

We have reviewed the Notice of Landlord’s Distress by Devcor Capital Inc. (“**Devcor**”) dated January 17, 2023 relating to the Debtor’s property (the “**Property**”) located at the premises known as 9 Jim Kimmert Boulevard, Unit 6, Napanee. We have also reviewed the Bill of Sale dated January 23, 2023 from Devcor to Rev-Co Inc. (“**Rev-Co**”) pursuant to which Devcor sold the Property to Rev-Co.

It appears from the Ontario corporate profile reports in respect of Devcor and Rev-Co that the two companies are related to each other and under common control. As you know, the law governing distress requires that distrained property be sold to an arm’s length third party, so as to preserve the fairness of the process. The sale by Devcor to Rev-Co appears to contravene the legal requirements.

We further understand that Rev-Co has resold some or all of the Property it purchased from Devcor to a third party which operates a Popeye’s franchise.

Pursuant to paragraph 5 of the Appointment Order, you are required to forthwith provide copies of all sale documentation in relation to the subsequent sale of assets by Rev-Co. Please provide us with all information and documents relating to the resale of the Property within 10 days from the date of this letter.

John Rizakos
June 21, 2023
Page 2

The Receiver reserves all of its rights and remedies to proceed against Devcor and Rev-Co in respect of the irregular distraint, including a claim for damages in respect of all losses suffered.

Very truly yours,

DICKINSON WRIGHT LLP



Lisa S. Corne

LSC/jss
Encl.

cc: Jerry Henechowicz (*Jerry.Henechowicz@mdp.ca*)

4869-6797-8603 v2 [41260-124]

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) MONDAY, THE 8th
JUSTICE PENNY) DAY OF MAY, 2023

CANADIAN WESTERN BANK

Applicant

- and -

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

Respondents

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

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, RSO 1990, c. C.43, as amended (the "CJA") appointing MNP Ltd. ("MNP") as receiver (in such capacities, the "Receiver") without security, of: (a) all of the properties, assets and undertaking (collectively, the "Personal Property") of Index Holding Group Inc., Index Group of Companies Inc., Index

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

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

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, MNP is hereby appointed Receiver, without security, of the Property of the Debtors.

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, including without limitation the Debtors' bank accounts related to the Property wherever located;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, or any one or more of them, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform or disclaim any contracts of the Debtors, or any one or more of them, in respect of the Property;
- (d) to engage consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors, or any one or more of them, with respect to the Property or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors, or any one or more of them, with respect to the Property and to exercise all remedies of the Debtors, or any one or more of them, in collecting such monies, including, without limitation, to enforce any security held by the Debtors, or any one or more of them;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors, or any one or more of them, with respect to the Property;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, or any one or more of them, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, or any one or more of them, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, or any one or more of them, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

11. THIS COURT ORDERS that all rights and remedies against the Debtors, or any one or more of them, the Receiver, or affecting the Property, including, without limitation, licenses and permits, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors, or any one or more of them, to carry on any business which the Debtors, or any one or more of them, is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors, or any one or more of them, from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

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

FUNDING OF THE RECEIVERSHIP

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, fees, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

26. THIS COURT ORDERS that The Guide Concerning Commercial List E-Service (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL www.mnpdebt.ca/Index-Group-et-al.

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

on the records of the Debtors, or any one or more of them, and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

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

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

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

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

32. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the

Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors, or any one or more of their estates, with such priority and at such time as this Court may determine.

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

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



SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

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

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the

Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

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

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

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

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

DATED the ____ day of _____, 20__.

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

Per: _____
Name:
Title:

Applicant

Court File No. CV-23-00698447-00CL Respondents **139**

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

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(APPOINTING RECEIVER)**

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

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

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

Lawyers for the Applicant

Appendix H

From: John Rizakos <john@devcor.com>
Sent: Friday, June 30, 2023 5:13 PM
To: Lisa S. Corne <LCorne@dickinson-wright.com>
Cc: jerry.henechowicz@mdp.ca; John D. Leslie <JLeslie@dickinson-wright.com>
Subject: EXTERNAL: RE: Canadian Western Bank v. Index Holding Group Inc., et al. - Court File No.: CV-23-00698447-00CL

Good afternoon Lisa,
Receipt is acknowledged of your letter dated June 21, 2023.

Devcor Capital Inc. ("Devcor") and Rev-Co Inc. ("Rev-Co") are distinct legal entities. For your information, Devcor has no ownership interest in Rev-Co. Furthermore, none of the directors and officers of Devcor are directors or officers of Rev-Co. The individuals that control Devcor do not assert control over Rev-Co.

Please be advised that Devcor will vigorously defend any action that your client may take with respect to the distraint taken by Devcor against the assets of the former Popeye's Napanee franchisee.

Thank you.

John Rizakos
In-House Legal Counsel
Devcor Capital Inc.
1770 Argentia Road
Mississauga, Ontario L5N 3S7
Tel: 905-814-8030 x321
Fax: 905-814-8272

You are receiving this communication because you have an existing relationship with Devcor Capital Inc. or have requested information from us. If you prefer not to receive future electronic communications from Devcor Capital Inc. please reply to the sending party with your unsubscribe request or send a request in writing to: Anti-Spam, Devcor Capital Inc., 1770 Argentia Road, Mississauga, Ontario L5N 3S7.

From: Lisa S. Corne <LCorne@dickinson-wright.com>
Sent: Wednesday, June 21, 2023 10:57 AM
To: John Rizakos <john@devcor.com>
Cc: Lisa S. Corne <LCorne@dickinson-wright.com>; jerry.henechowicz@mdp.ca; John D. Leslie <JLeslie@dickinson-wright.com>
Subject: Canadian Western Bank v. Index Holding Group Inc., et al. - Court File No.: CV-23-00698447-00CL

Please see attached correspondence.

Appendix I

From: John Rizakos <john@devcor.com>
Sent: Friday, July 14, 2023 10:42 AM
To: Lisa S. Corne <LCorne@dickinson-wright.com>
Cc: jerry.henechowicz@mdp.ca; John D. Leslie <JLeslie@dickinson-wright.com>;
deborah.hornbostel@mdp.ca
Subject: EXTERNAL: RE: Canadian Western Bank v. Index Holding Group Inc., et al. - Court File No.: CV-23-00698447-00CL

Hi Lisa,
Receipt is acknowledged of your letter dated July 10, 2023.
According to the Ontario Corporate Profile Report for Devcor Capital Inc., that was provided with your letter, Gus Karamountzos is not a director (or officer) of Devcor Capital Inc.
Thank you.

John Rizakos
In-House Legal Counsel
Devcor Capital Inc.
1770 Argentia Road
Mississauga, Ontario L5N 3S7
Tel: 905-814-8030 x321
Fax: 905-814-8272

You are receiving this communication because you have an existing relationship with Devcor Capital Inc. or have requested information from us. If you prefer not to receive future electronic communications from Devcor Capital Inc. please reply to the sending party with your unsubscribe request or send a request in writing to: Anti-Spam, Devcor Capital Inc., 1770 Argentia Road, Mississauga, Ontario L5N 3S7.

Appendix J

From: Juhi Pancholi <Juhi@sabiollp.com>
Sent: Tuesday, September 12, 2023 11:01 AM
To: Lisa S. Corne <LCorne@dickinson-wright.com>
Cc: Jennifer S. Samuels <JSamuels@dickinson-wright.com>; Jerry Henechowicz <Jerry.Henechowicz@mdp.ca>; Deborah Hornbostel <Deborah.Hornbostel@mdp.ca>; Kunwar Kohli - Sabio Law LLP <kunwar@sabiollp.com>
Subject: RE: EXTERNAL: RE: AMENDMENT AGREEMENT.docx

Hello Lisa,

As you are aware, the primary objective of entering into an Amendment Agreement was to provide clarity in terms of Purchase Price allocation as per lender requirements, and not to make further amendments that suit the interests of either parties. Our client has agreed to the closing date of October 4, 2023, however, no further changes to Section 16. Closing was agreed between the parties and therefore will not be amended in the Amendment Agreement.

Your client is requested to sign the attached Amendment Agreement, which is alignment with lender requirements, and send back the signed copy at the earliest to avoid any further delays from your end.

Best Regards,

Juhi Pancholi | Transaction Legal Analyst

201 County Court Blvd., Suite 601, Brampton, Ontario L6W 4L2

P | 905-677-1110

F | 905-677-1120

E | juhi@sabiollp.com

W | <https://protect-us.mimecast.com/s/OJmiCwp7qyh8Z970sgsnBJ?domain=sabiollp.com>

NOTICE OF CONFIDENTIALITY.

This communication, including any information transmitted with it, is intended only for the use of the addressee(s) and is confidential. If you are not an intended recipient or responsible for delivering the message to an intended recipient, any review, disclosure, conversion to hard copy, dissemination, reproduction or other use of any part of this communication is strictly

*We are delighted to inform you that our **office** has moved to the new address located at **201 County Court Blvd., Suite 601, Brampton, ON L6W 4L2**. Please note that the main telephone and fax numbers & email addresses remain unchanged. If you have any questions about the move, please don't hesitate to get in touch on **(905)-677-1110***

From: Juhi Pancholi <Juhi@sabiollp.com>
Sent: September 12, 2023 12:42 PM
To: Lisa S. Corne <LCorne@dickinson-wright.com>
Cc: Jennifer S. Samuels <JSamuels@dickinson-wright.com>; Jerry Henechowicz <Jerry.Henechowicz@mnp.ca>; Deborah Hornbostel <Deborah.Hornbostel@mnp.ca>; Kunwar Kohli - Sabio Law LLP <kunwar@sabiollp.com>
Subject: RE: EXTERNAL: RE: AMENDMENT AGREEMENT.docx
Importance: High

CAUTION: This email originated from outside of the MNP network. Be cautious of any embedded links and/or attachments.
MISE EN GARDE: Ce courriel ne provient pas du réseau de MNP. Méfiez-vous des liens ou pièces jointes qu'il pourrait contenir.

Hello Lisa,

We have been further advised that the chosen Lender requires a minimum of 3 weeks from the date of receipt of the Amendment Agreement reflecting the allocation of Purchase Price to finance the deal. To avoid any further delays, you are requested to expedite the process and send us the signed copy of the Amendment latest by end of day today.

148

Best Regards,

Juhi Pancholi | Transaction Legal Analyst

201 County Court Blvd., Suite 601, Brampton, Ontario L6W 4L2

P | 905-677-1110

F | 905-677-1120

E | juhi@sabiollp.com

W | www.sabiollp.com



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NOTICE OF CONFIDENTIALITY.

This communication, including any information transmitted with it, is intended only for the use of the addressee(s) and is confidential. If you are not an intended recipient or responsible for delivering the message to an intended recipient, any review, disclosure, conversion to hard copy, dissemination, reproduction or other use of any part of this communication is strictly

*We are delighted to inform you that our **office** has moved to the new address located at **201 County Court Blvd., Suite 601, Brampton, ON L6W 4L2**. Please note that the main telephone and fax numbers & email addresses remain unchanged. If you have any questions about the move, please don't hesitate to get in touch on **(905)-677-1110***

Appendix K

AMENDMENT AGREEMENT

This AMENDMENT AGREEMENT (this “Amendment”) is made as of September 11, 2023, by and between:

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

(the “Vendor” or “Receiver”)

– And –

VARUN KAKKAR

(the “Purchaser”)

(Each individually referred to as the “Party,” and collectively as the “Parties”.)

WHEREAS by Order of the Ontario Superior Court of Justice (the “Court”) granted on the 8th day of May, 2023 in Court File No. CV-20-00646729-00CL (the “Appointment Order”), MNP Ltd. was appointed Receiver of all the property, assets and undertaking of the Debtors.

WHEREAS pursuant to an Order of the Court dated July 24, 2023, the Court approved the sale of certain assets by the Receiver to Varun Kakkar (the “Transaction”) pursuant to an Offer to Purchase dated July 19, 2023 (the “Purchase Agreement”).

AND WHEREAS both Parties are desirous to amend the said Purchase Agreement to provide a more detailed breakdown of the Purchase Price allocation for clarity.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, **THE PARTIES AGREE AS FOLLOWS:**

- 1. **Definitions.** Capitalized terms which are used herein without definition and which are defined in the Purchase Agreement shall have the same meanings herein as in the Purchase Agreement.
- 2. **Amendment to Section 2. Definitions:** The below definitions shall be inserted under Section 2 of the Purchase Agreement as follows:

“Closing” or “Closing Date” shall mean October 4, 2023, and further subject to the meaning ascribed under Section 16 hereof;

“Purchaser Corporation” shall mean and include any one or all of the following corporations: 15224721 Canada Inc., 15223873 Canada Inc., and 15224705 Canada Inc.;

“Third Party Condition Date” shall mean September 22, 2023;”

- 3. **Amendment to Section 3. Purchase Price:** The below shall be inserted as Section 3.3 under the Purchase Agreement as follows:

“3.3 The Purchase Price for the Purchased Assets shall be allocated in the following manner:

Respondent Entity	Business	Municipal Address	Purchaser Corporation	Amount
Index Foods Inc. (“IFI”)	IFI Whitby Popeyes	965 Dundas Street West, Whitby, Ontario	15224721 Canada Inc.	\$680,000.00

Index International Inc. (“III”)	III Whitby Popeyes	1525 Dundas Street East, Whitby, Ontario	15223873 Canada Inc.	\$480,000.00
2700774 Ontario Inc. (“2700774”)	Oshawa Popeyes	22 Stevenson Road, Oshawa, Ontario	15224705 Canada Inc.	\$590,000.00
Total Purchase Price				\$1,750,000.00

”

4. The Purchaser shall pay an additional \$50,000.00 (Fifty Thousand Canadian Dollars) to the Receiver on or before the execution of this Amendment, which shall be held as an additional deposit on the same terms and conditions as the First Deposit and the Second Deposit existing under the Purchase Agreement.
5. Except as expressly provided herein, all other terms and conditions in the said Purchase Agreement shall remain in full force and effect.
6. This Amendment, together with the said Purchase Agreement, constitutes the entire agreement between the Parties.

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be duly executed by their respective authorized officers as of the date first above written.

VARUN KAKKAR

By: _____
Name: Varun Kakkar
Title:

MNP LTD. in its capacity as Court-appointed receiver and manager of the Debtors' assets, undertakings and properties and not in its personal or corporate capacity.

By: _____
Name:
Title:

I have authority to bind the corporation.

Appendix L



199 BAY STREET, SUITE 2200
 P O BOX 447, COMMERCE COURT POSTAL STATION
 TORONTO, ON CANADA M5L 1G4
 TELEPHONE: (416) 777-0101
 FACSIMILE: (416) 865-1398
<http://www.dickinsonwright.com>

LISA S CORNE
 LCorne@dickinsonwright.com
 (416) 646-4608

June 22, 2023

VIA EMAIL

To Supplier:

Dear Sir/Madame:

**Re: MNP Ltd. in its capacity as Receiver of Index Holding Group Inc. et al
 Court File No.: CV-23-00698447-00CL
 Our File No.: 41260-124**

We represent MNP Ltd, in its capacity as Court Appointed Receiver (the “**Receiver**”) of the Index Holding Group Inc., Index Group of Companies Inc., Index International Inc., Index Foods Inc., 2640179 Ontario Inc., 11030434 Canada Ltd., 2700774 Ontario Inc., 2700767 Ontario Inc., 2683960 Ontario Ltd., 11030418 Canada Inc., 27723710 Ontario Inc., 2718366 Ontario Inc., 2737332 Ontario Inc., 2737334 Ontario Inc., 2723714 Ontario Inc., 2723716 Ontario Inc., 2737338 Ontario Inc., 2790760 Ontario Inc., 2775290 Ontario Inc., 2775296 Ontario Inc., and 421 Wharnclyffe Ltd. (collectively, the “**Debtors**”).

A copy of the Order of the Honourable Justice Penny dated May 8, 2023 (the “**Appointment Order**”) appointing the Receiver is attached for your reference.

The Receiver has asked us to review the payment(s) made to you by Index Holding Group Inc. on _____ in the amount of \$_____.

Pursuant to Paragraph 5 of the Appointment Order, you are required to provide to the Receiver, forthwith upon request, all documents, accounting records, contracts, orders, and other records and information in any way related to the business carried on by the Debtors.

On behalf of the Receiver, we require that you please provide copies of all contracts, purchase orders, delivery receipts, installation confirmations and any other relevant information relating to the payment to you of \$_____, including, without limitation, the following:

1. Copies of all invoices relating to the payment;
2. A description of all goods and services supplied;

<Company>
June 22, 2023
Page 2

3. Evidence of the date, time, and location of the delivery of the goods and services supplied;
4. A copy of any contract and/or purchase order relating to the goods or services supplied; and
5. The present location of the goods delivered or supplied.

The Receiver requires the above information by no later than July 6, 2023. Please forward the above information directly to the Receiver by email to jerry.henechowicz@mdp.ca.

Thank you for your anticipated cooperation.

Very truly yours,

DICKINSON WRIGHT LLP



Lisa S. Corne

LSC/jss
Encl.

cc: Jerry Henechowicz (Jerry.Henechowicz@mdp.ca)
Deborah Horton (dghorton@lawdocspress.com)
John D. Leslie

4869-7538-3915 v5 [41260-124]

Appendix M

Index Group of Companies
Interim Statement of Receipts and Disbursements
For the period May 8 to September 8, 2023

Particulars	May 8 to September 8, 2023							Total
	Popeyes			Denny's		Index Group		
	1525 Dundas	965 Dundas	22 Steveson Rd	Burlington	Brantford	General Acct		
Receipts								
Sales	\$ 224,876	\$ 178,258	\$ 278,026	\$ 147,927	\$ 254,896	\$ -	\$ 1,083,982	
HST collected on sales	29,234	23,173	36,143	19,230	33,136	-	140,918	
Sale of assets- 421 Wharncliffe	-	-	-	-	-	564,983	564,983	
Sale of assets- Popeyes Baldwin/Brooklyn	-	-	-	-	-	25,260	25,260	
Sale of assets- Popeyes Liberty Village	-	-	-	-	-	10,076	10,076	
Insurance settlement - vehicle	-	-	-	-	-	11,388	11,388	
Funds at deposit at CIBC	-	17,819	22,000	34,038	-	-	73,857	
Advance from Canadian Western Bank	30,000	20,000	30,000	4,983	40,000	-	124,983	
Purchaser deposits	-	-	-	-	-	324,984	324,984	
Interest earned	501	435	516	394	534	4,457	6,837	
Total receipts	320,111	286,685	409,885	300,072	395,067	655,446	2,367,266	
Disbursements								
Sysco/Gordon - food purchases	98,819	98,504	158,419	53,133	113,755	-	522,629	
Gross payroll (post receivership)	77,380	57,394	108,636	126,657	148,297	-	518,364	
Gross payroll arrears (Pre receivership)	35,564	27,652	41,376	39,196	22,478	-	166,265	
Payroll services	167	119	150	160	198	-	793	
Repayment of Canadian Western Bank Advance	-	-	-	-	-	125,035	125,035	
Insurance	422	2,947	2,832	3,080	2,689	700	12,670	
Rent	24,372	30,378	26,288	54,634	53,063	-	188,734	
Repairs	5,984	3,326	1,772	1,075	4,864	-	17,021	
Equipment rental	-	-	-	-	7,750	-	7,750	
Utilities- Heat, water, hydro, wifi	2,280	3,345	2,352	2,485	2,930	-	13,392	
Commission paid- 421 Wharncliffe	-	-	-	-	-	33,000	33,000	
Property taxes- 421 Wharncliffe	-	-	-	-	-	22,336	22,336	
Auction expenses- 72 Baldwin and Popeyes	-	-	-	-	-	14,483	14,483	
Appraisal fee- 72 Baldwin	-	-	-	-	-	1,300	1,300	
Commission paid- Popeyes Liberty Village	-	-	-	-	-	2,015	2,015	
Royalties and fees	16,072	12,100	29,141	6,773	10,386	-	74,473	
Popeyes Interim Management	6,200	6,200	6,200	-	-	-	18,600	
OSB Filing fee	-	-	-	-	-	75	75	
Legal fees	-	-	-	-	-	44,248	44,248	
Misc expenses	1,761	1,654	3,567	1,940	3,385	80	12,386	
HST paid	6,724	7,375	7,529	8,484	11,152	10,410	51,673	
Total disbursements	275,743	250,994	388,263	297,616	380,946	253,681	1,847,243	
Excess of Cash Receipts over Disbursements	\$ 44,368	\$ 35,691	\$ 21,622	\$ 2,456	\$ 14,120	\$ 401,765	\$ 520,023	

Confidential Appendix A

Referred to in the Third Report of the Receiver dated
September 15, 2023

Subject to Sealing Request

Confidential Appendix B

Referred to in the Third Report of the Receiver dated
September 15, 2023

Subject to Sealing Request

Confidential Appendix C

Referred to in the Third Report of the Receiver dated
September 15, 2023

Subject to Sealing Request

Confidential Appendix D

Referred to in the Third Report of the Receiver dated
September 15, 2023

Subject to Sealing Request

Tab 3

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

THE HONOURABLE) THURSDAY, THE 21ST
)
JUSTICE CAVANAGH) DAY OF SEPTEMBER, 2023

B E T W E E N:

(Court Seal)

CANADIAN WESTERN BANK Applicant

and

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

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

ORDER

THIS MOTION, made by MNP Ltd. in its capacity as the Court-Appointed receiver (the “Receiver”) of 2775290 Ontario Inc. (the “Debtor”), for an order, *inter alia*, approving the sale transaction (the “Denny’s Transaction”) contemplated by an agreement of purchase and sale (the “Sale Agreement”) between the Receiver and 1000581220 Ontario Inc. (the “Purchaser”) dated September 11, 2023 (the “Sale Agreement”) and appended to the Third Report of the Receiver dated September 15, 2023 (the “Third Report”), and vesting in the Purchaser, the right, title and interest of the Debtor in and to the Purchased Assets (as defined in the Sale Agreement), and other

relief as set out in the Notice of Motion was heard this day via judicial video conference, at Toronto, Ontario.

ON READING the Third Report and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, Canadian Western Bank, no one appearing for any other person on the service list, although served as appears from the affidavit of Jennifer Samuels sworn September 15, 2023, filed:

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

Sale Approval and Vesting

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

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the right, title and interest of the Debtor in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without

limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Penny dated May 8, 2023; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and, for greater certainty, this Court orders that all of the encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged.

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

5. THIS COURT ORDERS that, notwithstanding:

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

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

Examination of Abdul Muqet

6. THIS COURT ORDERS that Abdul Muqet shall attend, at such time and place as the Receiver may appoint before an authorized person for an examination under oath by the Receiver, and produce to the Receiver prior to the examination, any and all books, documents, contracts,

orders, accounting records, other papers in his possession, or under his control relating to the assets, business or affairs of the Respondents, including without limitation, all personal electronic devices and computers, Ipads, tablets, magnetic tapes or discs, USB devices, and cellular phones, any computer or other data storage media containing information relating to the Respondents.

7. THIS COURT ORDERS that the Receiver will provide Abdul Muqet with notice of the time and place of the examination at least two days prior to the examination.

Approval of Third Report

8. THIS COURT ORDERS that the Third Report and the activities of the Receiver set out in the Third Report be and are hereby approved.

9. THIS COURT ORDERS that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the Third Report detailed in paragraph 8 hereof.

Receipts and Disbursements

10. THIS COURT ORDERS that the Receiver's interim statement of receipts and disbursements for the period from May 8 to September 8, 2023 attached as Appendix M to the Third Report be and is hereby approved.

Sealing Order

11. THIS COURT ORDERS that Confidential Appendices A through C to the Third Report be and are hereby sealed pending the closing of the Denny's Transaction and any transaction for the sale of the Operating Denny's, or further Order of this Court.

12. THIS COURT ORDERS that Confidential Appendix D, including Confidential Tabs I through IV attached to Confidential Appendix D, to the Third Report be and are hereby sealed pending further Order of the Court.

General

13. 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.

Schedule A – Form of Receiver’s Certificate

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

CANADIAN WESTERN BANK

Applicant

and

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

Respondents

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

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an the Order of the Honourable Mr. Justice Penny of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated May 8, 2023, MNP Ltd. was appointed receiver (the “**Receiver**”) of all of the assets, properties and undertakings of 2775290 Ontario Inc. (the “**Debtor**”) and the other Respondents herein.

B. Pursuant to an Order of the Court dated September ●, 2023, the Court approved the transaction (the “**Denny’s Transaction**”) contemplated in an Agreement of Purchase and Sale dated September ●, 2023 between 1000581220 Ontario Inc. (the “**Purchaser**”) and the Receiver

(the “Sale Agreement”), and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; and (ii) the Denny’s Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

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

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

[Signature follows on page 2 of this Certificate]

MNP LTD., solely in its capacity as Receiver of the Debtor, and not in its personal capacity.

Per: _____
Name:
Title:

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

PROCEEDING COMMENCED AT
TORONTO

ORDER

DICKINSON WRIGHT LLP

Barristers & Solicitors
199 Bay Street
Suite 2200, Box 447
Commerce Court Postal Station
Toronto, ON M5L 1G4

JOHN D. LESLIE (29956P)

Email: Jleslie@dickinsonwright.com
Tel: 416-646-3801

LISA S. CORNE (27974M)

Email: lcome@dickinsonwright.com
Tel: 416-646-4608

Lawyers for the Receiver

Email for parties served:
Service List

Tab 4

Court File No. — CV-23-00698447-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

<u>THE HONOURABLE</u>)	<u>THURSDAY, THE 21ST</u>
)	
THE HONOURABLE)	WEEKDAY, THE #
)	
JUSTICE — <u>CAVANAGH</u>)	DAY OF MONTH <u>SEPTEMBER, 20YR2023</u>

BETWEEN:

PLAINTIFF(Court Seal)**Plaintiff**CANADIAN WESTERN BANKApplicant

—and—

DEFENDANT

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

Respondents**Defendant**

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ MNP Ltd. in its capacity as the Court-Appointed receiver (the "Receiver") of ~~the undertaking, property and assets of~~ ~~[DEBTOR]~~ ~~(the "~~2775290 Ontario Inc. (the "Debtor")~~)~~, for an order, *inter alia*, approving the sale transaction (the "Denny's Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and ~~[NAME OF PURCHASER]~~ ~~(the "~~

1000581220 Ontario Inc. (the “Purchaser”) dated [DATE]September 11, 2023 (the “Sale Agreement”) and appended to the Third Report of the Receiver dated [DATE]September 15, 2023 (the “Third Report”), and vesting in the Purchaser, the ~~Debtor’s~~ right, title and interest of the Debtor in and to the Purchased Assets ~~described~~ (as defined in the Sale Agreement ~~(the “Purchased Assets”))~~, and other relief as set out in the Notice of Motion was heard this day at 330 University Avenue, via judicial video conference, at Toronto, Ontario.

ON READING the Third Report and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~ counsel for the Applicant, Canadian Western Bank, no one appearing for any other person on the service list, although ~~properly~~ served as appears from the affidavit of [NAME]Jennifer Samuels sworn [DATE]September 15, 2023, filed¹:

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

Sale Approval and Vesting

2. ~~1.~~ THIS COURT ORDERS AND DECLARES that the Denny’s Transaction is hereby approved,² and the execution of the Sale Agreement by the Receiver³ is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional

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

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

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

documents as may be necessary or desirable for the completion of the Denny's Transaction and for the conveyance of the Purchased Assets as defined in the Sale Agreement to the Purchaser.

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

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

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

relating to the Purchased Assets are hereby expunged and discharged ~~as against the Purchased Assets.~~

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

~~4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale⁸, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.~~

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

~~6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada Personal Information Protection and Electronic Documents Act, the Receiver is authorized and permitted to disclose~~

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

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

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

~~and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "•" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.~~

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

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

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

Examination of Abdul Muqet

6. THIS COURT ORDERS that Abdul Muqet shall attend, at such time and place as the Receiver may appoint before an authorized person for an examination under oath by the Receiver, and produce to the Receiver prior to the examination, any and all books, documents, contracts, orders, accounting records, other papers in his possession, or under his control relating to the assets, business or affairs of the Respondents, including without limitation, all personal electronic devices and computers, Ipads, tablets, magnetic tapes or discs, USB devices, and

cellular phones, any computer or other data storage media containing information relating to the Respondents.

7. THIS COURT ORDERS that the Receiver will provide Abdul Muqet with notice of the time and place of the examination at least two days prior to the examination.

Approval of Third Report

8. THIS COURT ORDERS ~~AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act (Ontario)*~~that the Third Report and the activities of the Receiver set out in the Third Report be and are hereby approved.

9. THIS COURT ORDERS that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the Third Report detailed in paragraph 8 hereof.

Receipts and Disbursements

10. THIS COURT ORDERS that the Receiver's interim statement of receipts and disbursements for the period from May 8 to September 8, 2023 attached as Appendix M to the Third Report be and is hereby approved.

Sealing Order

11. THIS COURT ORDERS that Confidential Appendices A through C to the Third Report be and are hereby sealed pending the closing of the Denny's Transaction and any transaction for the sale of the Operating Denny's, or further Order of this Court.

12. THIS COURT ORDERS that Confidential Appendix D, including Confidential Tabs I through IV attached to Confidential Appendix D, to the Third Report be and are hereby sealed pending further Order of the Court.

General

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

Revised: January 21, 2014

Schedule A – Form of Receiver’s Certificate

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

PLAINTIFFCANADIAN WESTERN BANK

Applicant
Plaintiff

-and-

DEFENDANT

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

~~Defendant~~

Respondents

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

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an the Order of the Honourable ~~[NAME OF JUDGE]~~ of Mr. Justice Penny of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated ~~[DATE OF ORDER], [NAME OF RECEIVER]~~ May 8, 2023, MNP Ltd. was appointed ~~as the~~ receiver (the “Receiver”) ~~of the undertaking, property and assets of [DEBTOR]~~ “Receiver”) of all of the assets, properties and undertakings of 2775290 Ontario Inc. (the “Debtor”) and the other Respondents herein.

B. Pursuant to an Order of the Court dated [DATE] September •, 2023, the Court approved the transaction (the “Denny’s Transaction”) contemplated in an Agreement of Purchase and Sale made as of [DATE OF AGREEMENT] (the “Sale Agreement”) between the Receiver [Debtor] and [NAME OF PURCHASER] (the “Purchaser”) dated September •, 2023 between 1000581220 Ontario Inc. (the “Purchaser”) and the Receiver (the “Sale Agreement”), and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; and (ii) ~~that the conditions to Closing as set out in section • of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and~~ (iii) the Denny’s Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

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

[Signature follows on page 2 of this Certificate]

-2-10-

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

Per: _____

Name:

Title:

CANADIAN WESTERN BANK
Applicant

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT
TORONTO

ORDER

DICKINSON WRIGHT LLP

Barristers & Solicitors
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Lawyers for the Receiver

Email for parties served:
[Service List](#)

CANADIAN WESTERN BANK
Applicant

-and-
Respondents

INDEX HOLDING GROUP INC. et al.

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

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

PROCEEDING COMMENCED AT
TORONTO

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

A DICKINSON WRIGHT LLP

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Suite 2200, Box 447
Commerce Court Postal Station
Toronto, ON M5L 1G4

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Lawyers for the Receiver

Email for parties served: Service List