



Court File No.

**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 APPLICATION**

**TO THE RESPONDENT**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by Canadian Western Bank (the "**Applicant**"). The claim made by the Applicant appears on the following page.

**THIS APPLICATION** will come on for a hearing

- In writing
- In person
- By telephone conference
- By video conference

at the Court at 330 University Avenue, Toronto, Ontario via Zoom video conference, on \_\_\_\_\_ at \_\_\_\_\_, before a judge presiding over the Commercial List.

For the video conference details to attend the application, please refer to the service email circulating the application record and advise if you intend to join the application by emailing [sfernandes@cassels.com](mailto:sfernandes@cassels.com).

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

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

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

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar

Address of court office: Superior Court of Justice  
330 University Avenue  
Toronto ON  
M5G 1R7

TO: **SERVICE LIST**

Court File No.

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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**

**SERVICE LIST  
(As of April 25, 2023)**

<b>TO:</b>	<p><b>CASSELS BROCK &amp; BLACKWELL LLP</b> 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p> <p><b>Jeremy Bornstein LSO #65425C</b> Tel: 416.869.5386 jbornstein@cassels.com</p> <p><b>Stephanie Fernandes LSO#85819M</b> Tel: 416.860.6481 sfernandes@cassels.com</p> <p><i>Lawyers for the Applicant</i></p>
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<b>AND TO:</b>	<p><b>CANADIAN WESTERN BANK</b> 300-2000 Argentina Road Plaza #1 Mississauga, ON L5N 1P7</p> <p><b>Tyson Hartwell</b> Email: Tyson.Hartwell@cwbank.com</p> <p><i>Applicant</i></p>
<b>AND TO:</b>	<p><b>MNP LTD.</b> 300-111 Richmond Street West Toronto, ON M5H 2G4</p> <p><b>Jerry Henechowicz</b> Tel: 416.515.3924 Email: jerry.henechowicz@mnp.ca</p> <p><b>Deborah Hornbostel</b> Tel: 416.515.3885 Email: deborah.hornbostel@mnp.ca</p> <p><i>Proposed Receiver</i></p>
<b>AND TO:</b>	<p><b>DICKINSON WRIGHT LLP</b> 199 Bay Street, Suite 2000 Commerce Court West, Toronto ON M5L 1G4</p> <p><b>John D. Leslie</b> Email: JLeslie@dickinson-wright.com</p> <p><b>Lisa S. Corne</b> Email: LCorne@dickinson-wright.com</p> <p><i>Counsel to Proposed Receiver</i></p>
<b>AND TO:</b>	<p><b>INDEX HOLDING GROUP INC. ET AL</b> 110 Herdwick Street Brampton, ON L6S 0A5</p> <p><b>Abdul Muqet</b> Tel: 647-771-0762 Email: muqet.rana@hotmail.com</p> <p><i>Respondents</i></p>
<b>AND TO:</b>	<p><b>1778130 ONTARIO INC.</b> 20 Moonlight Pl Brampton, ON L6P 0G8</p> <p><i>Mortgagee of 425 Wharncliffe Road Inc.</i></p>

<b>AND TO:</b>	<b>1000017398 ONTARIO INC.</b> 53 Celestine Drive Etobicoke, ON M9R 3N2  <b>Attention: Mohammad Khalid Raja</b>  <i>Secured Creditor of Index Foods Inc. and Index International Inc.</i>
<b>AND TO:</b>	<b>2851605 ONTARIO INC.</b> 101-101 Westmore Drive Etobicoke, ON M9V 3Y6  <b>Attention: Mohammad Shafique</b>  <i>Secured Creditor of 2700774 Ontario Inc.</i>
<b>AND TO:</b>	<b>2851606 ONTARIO INC.</b> 101-101 Westmore Drive Etobicoke, ON M9V 3Y6  <b>Attention: Mohammad Shafique</b>  <i>Secured Creditor of 2723710 Ontario Inc.</i>
<b>AND TO:</b>	<b>2851604 ONTARIO INC.</b> 101-101 Westmore Drive Etobicoke, ON M9V 3Y6  <b>Attention: Mohammad Shafique</b>  <i>Secured Creditor of Index Holdings Group Inc.</i>
<b>AND TO:</b>	<b>2752908 ONTARIO INC./MIDTOWN CAPITAL</b> 2300 Yonge Street Toronto, ON M4P 1E4  <b>Attention: Marissa Brown and Peter Tieu</b>  <i>Secured Creditor of 2700774 Ontario Inc.</i>
<b>AND TO:</b>	<b>TOYOTA CREDIT CANADA INC.</b> 80 Micro Court Markham, ON L3R 9Z5  <i>Secured Creditor of Index Group of Companies Inc.</i>

<b>AND TO:</b>	<b>THE BANK OF NOVA SCOTIA</b> 1 St. Clair Avenue East Toronto, ON M4T 1Z3  <b>Jeff Johnston</b> Email: jeff.johnston@scotiabank.com  <b>Ferdous Ahmed</b> Email: ferdous.ahmed@scotiabank.com  <i>Secured Creditor of Index Group of Companies Inc.</i>
<b>AND TO:</b>	<b>HYUNDAI CAPITAL LEASE INC.</b> 123 Front Street, Suite 1000 Toronto, ON M5J 2M3  <i>Secured Creditor of Index Group of Companies Inc.</i>
<b>AND TO:</b>	<b>GENESIS MOTOR FINANCE</b> 123 Front Street, Suite 1000 Toronto, ON M5J 2M3  <i>Secured Creditor of Index Group of Companies Inc.</i>
<b>AND TO:</b>	<b>DENCAN FRANCHISE SYSTEMS, LIMITED PARTNERSHIP</b> 310-1755 W. Broadway Vancouver, BC V6J 4S5  <b>Stephen Jackson</b> Email: sjackson@northland.ca  <b>Bobby Naicker</b> Tel: 604-730-6622 Email: BNaicker@Dennys.ca  AND  <b>DFO LLC</b> 203 East Main Street Spartangurg, South Carolina, United States 29319  <b>Attention: General Counsel</b>  <i>Franchisor</i>

<b>AND TO:</b>	<b>POPEYES LOUISIANA KITCHEN, INC.</b> 5707 Blue Lagoon Drive Miami, Florida, United States 33126  <b>Rob Manuel</b> Email: rob.manuel@popeyes.com  <b>Josh Brubacher</b> Tel: 905-339-5746 Email: jbrubacher@rbi.com  <i>Franchisor</i>
<b>AND TO:</b>	<b>ABDUL SHEIKH</b> Tel: 647.219.5303 Email: fpilot@renocon.ca  <i>Party to Assignment and Postponement of Claim in favour of the Applicant</i>
<b>AND TO:</b>	<b>SYED JAVED ALI</b> Email: javed@inspirationgroup.ca  <i>Party to Assignment and Postponement of Claim in favour of the Applicant</i>
<b>AND TO:</b>	<b>MANSOOR SHEIKH</b> Email: mansoor@restaurants4u.ca  <i>Party to Assignment and Postponement of Claim in favour of the Applicant</i>
<b>AND TO:</b>	<b>RAJANDEEP SINGH DHILLON</b> Email: rajandhillonrealtor@gmail.com  <i>Party to Assignment and Postponement of Claim in favour of the Applicant</i>
<b>AND TO:</b>	<b>2292696 ONTARIO INC.</b>  <b>Abdul Sheikh</b> Tel: 647.219.5303 Email: fpilot@renocon.ca  <b>Mansoor Shiekh</b> Email: mansoor@restaurants4u.ca  <i>Party to Assignment and Postponement of Claim in favour of the Applicant</i>

<b>AND TO:</b>	<b>DEPARTMENT OF JUSTICE (CANADA)</b> Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1  <b>Diane Winters</b> Tel: 647-256-7459 Email: diane.winters@justice.gc.ca
<b>AND TO:</b>	<b>INSOLVENCY UNIT ONTARIO MINISTRY OF FINANCE</b> 6 <sup>th</sup> Floor, 22 King Street West Oshawa, ON L1H 8H5  Email: Insolvency.Unit@ontario.ca  <b>Leslie Crawford</b> Tel: 905-433-5657 Email: leslie.crawford@ontario.ca  <b>Steven Groeneveld</b> Email: steven.groeneveld.ontario.ca
<b>AND TO:</b>	<b>CANADA REVENUE AGENCY</b> 1 Front Street West Toronto, ON M5J 2X6  <b>Pat Confalone</b> Tel: 416-954-6514 Email: pat.confalone@cra-arc.gc.ca  <b>Sandra Palma</b> Email: sandra.palma@cra-arc.gc.ca
<b>AND TO:</b>	<b>CORPORATION OF THE CITY OF LONDON</b> 3000 Dufferin Avenue London, ON N6A 5K6  <b>Barry Card</b> Tel: 519.661.2489 Ext. 4560 Email: bcard@london.ca



### Email Service List

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bcard@london.ca

## APPLICATION

1. The Applicant, Canadian Western Bank (“**CWB**”), as lender, makes an application for an order substantially in the form attached hereto as **Schedule “A”**, 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, among other things:

- (a) if necessary, abridging the time or service and filing of this notice of application and application record or, in the alternative, dispensing with same;
- (b) appointing MNP Ltd. (“**MNP**”) as receiver, without security, over all the assets, undertakings and property (collectively, the “**Property**”) of Index Holding Group Inc. (“**IHG**”), Index Group Of Companies Inc. (“**IGC**”), Index International Inc. (“**III**”), Index Foods Inc. (“**IFI**”), 2640179 Ontario Inc. (“**2640179**”), 11030434 Canada Ltd. (“**11030434**”), 2700774 Ontario Inc. (“**2707774**”), 2700767 Ontario Inc. (“**2700767**”), 2683960 Ontario Ltd. (“**2683960**”), 11030418 Canada Inc. (“**11030418**”), 2723710 Ontario Inc. (“**2723710**”), 2718366 Ontario Inc. (“**2718366**”), 2737332 Ontario Inc. (“**2737332**”), 2737334 Ontario Inc. (“**2737334**”), 2723714 Ontario Inc. (“**2723714**”), 2723716 Ontario Inc. (“**2723716**”), 2737338 Ontario Inc. (“**2737338**”, and together with IGC, III, IFI, 2640179, 11030434, 2700774 Ontario Inc., 2700767, 2683960, 11030418, 2723710, 2718366, 2737332, 2737334, 2723714, 2723716, the “**2020 ELSA Guarantors**”), 2790760 Ontario Inc. (“**2790760**”), 2775290 Ontario Inc. (“**2775290**”), 2775296 Ontario Inc. (“**2775296**”), 421 Wharnccliffe Ltd. (“**421 Wharnccliffe**” and together with 2790760, 2775290, 2775296, the “**2021 ELSA Guarantors**”, and the 2020 ELSA Guarantors together with the 2021 ELSA Guarantors, the “**Corporate Guarantors**”, the Corporate Guarantors together with IHG, the “**Index Group**”, and together with

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Muqet (as defined below), the “**Loan Parties**”) and 425 Wharnclyffe Road Inc. (“**425 Wharnclyffe**”, and together with the Loan Parties, the “**Forbearance Parties**”, and the Forbearance Parties excluding Muqet, the “**Respondents**”, and each a “**Respondent**”); and,

- (c) such further and other relief as may be requested by the Applicant and as this Honourable Court considers just.

2. The grounds for the application are:

***Background***

- (a) CWB is an Alberta-based national diversified financial services organization that provides specialty business banking services.
- (b) The Respondents are composed of (a) the Index Group, which is a restaurant group involved in the development and operations of Popeye’s Louisiana Chicken (“**Popeye’s**”) and Denny’s franchise restaurants and (b) two holding companies that own real property (as described in more detail below).
- (c) The Respondent, IHG, is a holding company and is the corporate parent of the Index Group and the borrower under the Facilities (as defined below). More specifically, IHG is the owner of all of the shares in the capital of each of the Corporate Guarantors with the exceptions of 2723710 and 2775290 (which are 50% owned by IHG and 50% owned by parties not related to the Forbearance Parties) and 2640179 (which is 50% owned by Muqet (as define below) and 50% owned by a party not related to the Forbearance Parties).

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- (d) Abdul Muqet (“**Muqet**”) is the principal and President of the Index Group and owns 100% of the shares in the capital of IHG. Muqet is also the sole director and officer of IHG and most of the other Respondents.
- (e) The Respondent, the Corporate Guarantors (other than 421 Wharnclyffe), are entities with the sole purpose of developing and/or owning and operating Popeye’s or Denny’s franchise restaurants.
- (f) The Respondent, 421 Wharnclyffe, is the registered owner of the real property municipally known as 421 Wharnclyffe Road South, London, Ontario and legally described as Part Lot 1 and Part Lot 29, Pts 1 & 2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER (“**421 Real Property**”).
- (g) The Respondent, 425 Wharnclyffe, is the registered owner of the real property municipally known as 425 Wharnclyffe South, London, Ontario, and legally described as PT LTS 1 & 2, PL 29, PART 2, 33R2551, S/T 929439, IF ANY, S/T 837774, IF ANY, S/T 583284, IF ANY; LONDON/WESTMINSTER (“**425 Real Property**”).
- (h) CWB established several loan facilities in favour of IHG to (a) finance the operations of IHG’s business including day-to-day operations and construction financing for certain franchise restaurants and (b) refinance a previously existing mortgage related to the 421 Real Property (collectively, the “**Facilities**”).
- (i) The Facilities include the following:
  - (i) On June 23, 2020, CWB and IHG entered into an equipment loan and security agreement (as amended, the “**2020 ELSA**”) pursuant to which

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CWB made available to IHG five committed non-revolving loan facilities in the aggregate maximum principal amount of approximately \$8,986,000;

- (ii) On November 16, 2021, CWB and IHG entered into a second equipment loan and security agreement (the “**2021 ELSA**”) pursuant to which CWB made available to IHG three loan facilities in the aggregate maximum principal amount of approximately \$3,000,000;
- (iii) On December 21, 2021, CWB and IHG entered into a third equipment loan and security agreement in respect of real estate (the “**2021 Real Estate ELSA**”) pursuant to which CWB made available to IHG a mortgage loan in the aggregate maximum principal amount of approximately \$1,075,000; and
- (iv) CWB also made available to IHG a revolving line of credit in the maximum amount of \$250,000 and a Visa credit card with a credit limit of \$175,000.
- (j) As security for the Facilities, CWB was granted, among other things, the following:
  - (i) *2020 ELSA Facility*: (i) a general security agreement by IHG and the 2020 ELSA Guarantors; and (ii) an unlimited guarantee and indemnity by IHG and the 2020 ELSA guarantors;
  - (ii) *2021 ELSA Facility*: (i) a general security agreement by IHG and the Corporate Guarantors; (ii) an unlimited guarantee and indemnity by IHG and the Corporate Guarantors; and

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- (iii) *2021 Real Estate ELSA Facility*: (i) a first-ranking mortgage against the 421 Real Property (the “**421 Mortgage**”).
  
- (k) In connection with the Forbearance Agreement (as defined below), 425 Wharnclyffe and Muqet also provided secured guarantees to CWB in respect of the obligations and indebtedness due and owing under the Facilities. The security provided by 425 Wharnclyffe includes, among other things, (i) a general security agreement and (ii) a third-ranking mortgage against the 425 Real Property (the “**425 Mortgage**”).
  
- (l) The security granted by the Respondents to CWB, as applicable, is cross-collateralized, cross-guaranteed and cross-defaulted in respect of the Respondents’ obligations and indebtedness to CWB.

***Defaults and Forbearance Agreement***

- (m) Events of defaults by the Respondents have occurred and are continuing in respect of the Facilities, including without limitation:
  - (i) IHG’s failure to make payments when due under the Facilities;
  
  - (ii) termination by the landlord of certain real property leases in connection with restaurants either operated by or planned for development by the Index Group; and
  
  - (iii) registration of subordinate liens in respect of IHG and certain Corporate Guarantors without CWB’s consent.

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- (n) After those defaults occurred, on January 18, 2023, CWB delivered demand letters and notices of intention to enforce security pursuant to the BIA to the Loan Parties.
- (o) CWB thereafter entered into a forbearance agreement with the Forbearance Parties on February 15, 2023 (the “**Forbearance Agreement**”) agreeing to forbear, subject to the terms thereof until June 30, 2023. In connection with the Forbearance Agreement, the Respondents executed a consent to receivership order in favour of CWB substantially in the form of order proposed in this Application (the “**Consent**”).
- (p) After the Forbearance Agreement was entered into, Certain Forbearance Termination Events (as defined in the Forbearance Agreement) occurred, including among others:
  - (i) a major fire at the Liberty Popeye’s resulting in a material adverse change in the business or operations of 2700774;
  - (ii) failure by IHG to pay CWB certain amounts when due in respect of the Facilities;
  - (iii) failure by the Forbearance Parties to fully cooperate with CWB and/or provide CWB with certain reporting required in respect of the Facilities;
  - (iv) registration of subordinate liens in respect of the 425 Real Property and 2700774 without CWB’s consent;

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- (v) delivery of requirements to pay by Canada Revenue Agency to CWB in respect of the failure by certain Corporate Guarantors to pay an aggregate of \$356,381.55 in taxes.
  
- (q) Accordingly, on April 12, 2023, CWB delivered a demand letter and notice of intention to enforce security pursuant to the BIA to 425 Wharnccliffe.

***Other Creditors and Stakeholders***

- (r) Searches conducted against the Respondents pursuant to the Personal Property Security Act (the “PPSA”) in Ontario disclose the following registrations:
  - (i) a first priority registration made against each of the Respondents in favour of CWB;
  - (ii) a registration against IHG in favour of 2851604 Ontario Inc.;
  - (iii) a registration against IGC in favour of (i) Toyota Credit Canada Inc., (ii) The Bank of Nova Scotia, (iii) Hyundai Capital Lease Inc. and Genesis Motor Finance;
  - (iv) a registration against III in favour of 1000017398 Ontario Inc.;
  - (v) a registration against IFI in favour of 1000017398 Ontario Inc.;
  - (vi) a registration against 2700774 in favour of 2851605 Ontario Inc., and 2752908 Ontario Ltd. / Midtown Capital; and
  - (vii) a registration against 2723710 in favour of 2851606 Ontario Inc.



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- (s) There are no other registrations under the Ontario PPSA in respect of any of the Respondents.
- (t) A search of title against the 421 Real Property discloses the following registrations:
  - (i) the 421 Mortgage in favour of CWB; and
  - (ii) a notice of general assignment of rents in favour of CWB.
- (u) There are no other mortgages or liens registered against title to the 421 Real Property. In addition to the forgoing, there is also a property standards order registered by The Corporation of the City of London and a notice registered by CWB relating to an amending agreement to amend a typographical error in the debenture attached as a schedule to the 421 Mortgage.
- (v) A search of title against the 425 Real Property discloses the following registrations:
  - (i) three mortgages registered in favour of 1778130 Ontario Inc.;
  - (ii) two notices of general assignments of rents in favour of 1778130 Ontario Inc.;
  - (iii) the 425 Mortgage in favour of CWB; and
  - (iv) a notice of general assignment of rents in favour of CWB.
- (w) There are no other mortgages or liens registered against title to the 425 Real Property.

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- (x) As of April 17, 2023, there are tax arrears owing on (i) the 421 Real Property in the amount of \$21,626.15 and (ii) the 425 Real Property in the amount of \$46,742.99.
- (y) Certain amounts are also owed by the Respondents in respect of (i) unpaid rent to certain of their landlords, (ii) taxes including unpaid Harmonized Sales Tax remittances to CRA, and (iii) Canadian Emergency Business Account Loans to the Government of Canada.
- (z) Several of the Respondents' creditors who are current or former shareholders of certain members of the Index Group granted assignments and postponements of claims in favour of CWB in connection with the 2020 ELSA and 2021 ELSA.
- (aa) The Index Group collectively has between 70 and 80 employees.

### ***Receivership***

- (bb) As of April 11, 2023, the amount owing in respect of the Facilities was \$8,141,405.08. CWB has lost confidence in the Respondents and their efforts to repay the Facilities. As a result, CWB is seeking to appoint MNP as receiver.
- (cc) In accordance with the terms of the Consent and the Forbearance Agreement, the Forbearance Parties have irrevocably consented to the appointment of a receiver over the Respondents and CWB may seek and is seeking to have the receivership order granted (which is substantially in the form of the Consent).
- (dd) Appointment of a receiver is within CWB's rights under the security granted by the Respondents.

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- (ee) It is in the best interests of all parties that a receiver be appointed to realize on the Property in a manner that is efficient, open and transparent. The proposed receiver, MNP, would be required to seek court approval for the sale of all or any of the Property on notice to all interested parties.
- (ff) It is just and convenient in the circumstances to appoint a receiver over the Property with the power to market and sell the Property for the benefit of CWB and any other creditors.
- (gg) MNP is qualified and is prepared to act as receiver if so appointed.
- (hh) Section 101 of the *Courts of Justice Act*, RSO, c. C.43, as amended.
- (ii) Section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended.
- (jj) Rules 1.04, 1.05, 3.02, 16.08 and 38 of the *Rules of Civil Procedure*, RRO 1990, c. C.43.
- (kk) Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) The affidavit of Tyson Hartwell sworn April \_\_, 2023;
- (b) The consent of MNP to act as receiver; and
- (c) Such other materials as counsel may advise and this Honourable Court may permit.

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April 25, 2023

**Cassels Brock & Blackwell LLP**

2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

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jbornstein@cassels.com

**Stephanie Fernandes LSO #: 85819M**

Tel: 416.860.6481  
sfernandes@cassels.com

Lawyers for the Applicant

**Schedule "A"**

**Form of Receivership Order**

Attached.

Court File No. CV-●-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) ●, THE ●  
JUSTICE ● )  
DAY OF ●, 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  
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**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., 421 Wharnclyffe Ltd. and 425 Wharnclyffe Road Inc. (collectively, the “Debtors”), or any one or more of them, and in all proceeds arising therefrom; and (b)(i) the real property municipally known as 421 Wharnclyffe 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 (ii) the real property municipally known as 425 Wharnclyffe Road South, London, Ontario, and as legally described as PT LTS 1 & 2, PL 29, PART 2, 33R2551, S/T 929439, IF ANY, S/T 837774, IF ANY, S/T 583284, IF ANY; LONDON/WESTMINSTER (the “425 Real Property”, and together with the 421 Real Property, the “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 ●, 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 ● sworn ●, 2023 and on reading the consent of ● to act as the Receiver,

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application 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](http://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.

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**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., 421 Wharnccliffe Ltd. and 425 Wharnccliffe Road Inc. (collectively, the "Debtors"), or any one or more of them, and in all proceeds arising therefrom; and (b)(i) 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 (ii) the real property municipally known as 425 Wharnccliffe Road South, London, Ontario, and as legally described as PT LTS 1 & 2, PL 29, PART 2, 33R2551, S/T 929439, IF ANY, S/T 837774, IF ANY, S/T 583284, IF ANY; LONDON/WESTMINSTER (the "425 Real Property", and together with the 421 Real Property, the "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

Respondents

Court File No. CV-●-

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

PROCEEDING COMMENCED AT  
TORONTO

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**ORDER  
(APPOINTING RECEIVER)**

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**Cassels Brock & Blackwell LLP**

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Lawyers for the Applicant



CANADIAN WESTERN BANK  
Applicant

- and -

INDEX HOLDING GROUP INC. et al.  
Respondents

Court File No.

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

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF APPLICATION**

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