

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

**IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Sections 243(1) and 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended**

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

**THE TORONTO-DOMINION BANK**

Applicant

- and -

**1882540 ONTARIO INC.**

Respondent

**MOTION RECORD  
(Returnable July 8, 2016)**

July 7, 2016

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## **TAB 1**

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

**IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended**

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

**THE TORONTO-DOMINION BANK**

Applicant

**- and -**

**1882540 ONTARIO INC.**

Respondent

**NOTICE OF MOTION  
(Returnable July 8, 2016)**

**THE TORONTO DOMINION BANK** (the “**Bank**” or the “**Applicant**”) and **DODICK LANDAU INC.** (“**Dodick Landau**”), in its capacity as court-appointed receiver of 1882540 Ontario Inc. (the “**Receiver**”) will make a motion to a Judge presiding over the Commercial List on July 8, 2016, at 9:30 a.m. or as soon after that time as the motion can be heard at the Courthouse located at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** This Motion is to be heard orally.

**THIS MOTION IS FOR:**

1. An Order, *inter alia*:
  - (a) abridging the time for service of this Notice of Motion and the materials filed in support of the motion and dispensing with further service thereof;
  - (b) directing that the definition of “Debtor”, as expanded in the Order made by this Honourable Court on June 13, 2016 (the “**Expansion Order**”), is void *ab initio* with respect to 1873349 Ontario Inc. (“**187**”);
  - (c) directing the Receiver to deliver any funds in its possession acquired in respect of 187, save and except the amount of \$300,000, of which \$98,000 shall be distributed to the Receiver and \$202,000 shall be held by the Receiver until such time as the parties agree to a further distribution of the funds as between the Receiver and 187;
  - (d) releasing Dodick Landau from any and all liability with respect to its actions regarding 187; and
  - (e) such further and other relief as counsel may advise and that this Court may permit.

**THE GROUNDS FOR THE MOTION** are as follows:

2. Pursuant to an Order of this Honourable Court dated May 19, 2016 (the “**Initial Order**” and together with the Expansion Order, the “**Receivership Order**”), Dodick Landau was appointed as Receiver of the property, assets and undertaking of 1882540 Ontario Inc.

(“188” or the “Company”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*<sup>1</sup> (the “BIA”) and section 101 of the *Courts of Justice Act*<sup>2</sup> (the “CJA”).

3. Pursuant to the Expansion Order, the definition of “Debtor” in the Initial Order was expanded to include 1632032 Ontario Ltd., 1665651 Ontario Ltd., 2495584 Ontario Inc. and 187 (the latter three parties together with 188, the “WAB Group”).
4. The Receiver has substantially completed its investigations of the books and records of 187 and has concluded that 187 should be removed from the Receivership Order.

**Investigative activities leading to the inclusion of 187 in the definition of “Debtor”**

5. The Company operates an online flower retail and delivery business from several retail and distribution locations. The Company and its director and President, Cesario Ginjo, also operate the same online and retail flower delivery business using multiple domain sites.
6. During the Receiver’s investigation after the Initial Order, it discovered that the operation and functions of the Debtor are substantially intertwined with other numbered companies that form the WAB Group. For instance, the various domain sites are run from the same locations, with the same employees, assets and inventory.

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<sup>1</sup> R.S.C. 1985, c. B-3, as amended.

<sup>2</sup> R.S.O. 1990 c. C-43, as amended.

7. Mr. Ginjo is the principal of each company of the WAB Group. Funds were constantly transferred amongst the accounts without regard to observing corporate formalities. The Receiver had receipts demonstrating that the Debtor was funding the expenses of the WAB Group, even though sales receipts of the WAB Group were not deposited into the Debtor's accounts with the Bank.
8. As such, the Receiver required access to the property, assets, books and records of the WAB Group in order to track the Company's property.

#### **Investigation of 187 since the Expansion Order**

9. Since the Expansion Order, the Receiver has examined the accounting records and transactions of 187 to ascertain whether property of 188 had been inappropriately transferred to 187. Further, the Receiver took possession of approximately \$1.2 million held in a bank account owned by 187.
10. The Receiver's investigation was conducted with the assistance of 1-800-flowers.com, Inc., which owns approximately 20% of the shares of 188 and is related to 1800flowers.ca, which owns the website where 187 sells online flowers.
11. Through its investigation, the Receiver has concluded that 187 does not hold property of 188, save and except for certain amounts due and payable to the Receiver for 188's share of sale proceeds for online sales made prior to the commencement of the Receivership.



Further, the Receiver has concluded that 187's operations are not integrated with that of 188, as was previously suspected.

12. As such, it is appropriate in the circumstances to remove 187 from the definition of "Debtor" void *ab initio*.
13. Such other grounds as counsel may advise and this Honourable Court may deem just.

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

1. Second Report of the Receiver to the Court dated July 7<sup>th</sup>, 2016; and
2. such further and other evidence as counsel may advise and this Honourable Court may permit.

July 7, 2016

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**(As at July 7, 2016)**

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<b>AND TO:</b>	<b>MERCEDES BENZ FINANCIAL SERVICES CANADA CORPORATION</b> 2680 Matheson Boulevard East Suite 500 Mississauga ON L4W 0A5
<b>AND TO:</b>	<b>1632032 ONTARIO INC.</b> 1444 Dupont Street Unit 11 Toronto ON M6P 4H3
<b>AND TO:</b>	<b>BANK OF MONTREAL</b> 234 Simcoe Street 2 <sup>nd</sup> Floor Toronto ON M5T 1T4
<b>AND TO:</b>	<b>BANK OF MONTREAL</b> 1 First Canadian Place 100 King Street West Suite 2100 Toronto ON M5X 1A1  <b>Attention: Legal Department</b>

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IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Sections 243(1) and 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

THE TORONTO-DOMINION BANK and  
Applicant

1882540 ONTARIO INC.

Respondent

Court File No.: CV-16-11398-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

**NOTICE OF MOTION**  
**Returnable July 8, 2016**

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Lawyers for the Applicant

## **TAB 2**



ONTARIO  
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in  
the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

1882540 ONTARIO INC.

Respondents

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SECOND REPORT TO THE COURT  
OF DODICK LANDAU INC., AS RECEIVER

July 7, 2016

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**BACKGROUND**

1. On May 19, 2016, The Toronto-Dominion Bank (“**TD**”) made an application to the Court for an order (the “**Initial Order**”), which the Court granted, appointing Dodick Landau Inc. (“**DLI**”) as receiver (in such capacity, the “**Receiver**”) pursuant to section 243 of the *Bankruptcy & Insolvency Act* (“**BIA**”) and section 101 of the *Courts of Justice Act* (“**CJA**”) of the assets, undertakings and property (collectively, the “**Property**”) of 1882540 Ontario Inc. (“**188**” or the “**Company**”). A copy of the issued Initial Order is attached hereto as Appendix “**A**”.
2. On June 13, 2016, the Court granted an order (the “**Expansion Order**” and together with the Initial Order, the “**Receivership Order**”) expanding the definition of “**Debtor**” in the Initial Order to include

1665651 Ontario Ltd. (“166”), 2495584 Ontario Inc. (“249”), 1873349 Ontario Inc. (“187”) and 1632032 Ontario Ltd. (collectively with 188, the “Debtors”). A copy of the issued Expansion Order is attached hereto as Appendix “B”.

3. The Receivership Order, among other things, authorizes and empowers the Receiver to:
  - (a) take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
  - (b) receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
  - (c) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
  - (d) report to, meet with and discuss with such affected persons 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; and
  - (e) market any or all of the Property, including soliciting offers in respect of the Property and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.

## **PURPOSE**

4. This is the second report to the Court of the Receiver (the “**Second Report**”). The purpose of this Second Report is to support the Receiver’s request that the Court grant an Order directing that the definition of “Debtor” in the Receivership Order be void *ab initio* with respect to 187.

## **DISCLAIMER**

5. In preparing this Second Report, the Receiver has relied upon certain unaudited, draft and/or internal financial information, the Company’s books and records that were available to the Receiver, discussions with the management of the Company and information from other third-party sources (collectively, the “**Information**”). Except as described in this Second Report:
  - (a) 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 Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information; and
  - (b) the Receiver has prepared this Report in its capacity as a Court-appointed officer.
6. Unless otherwise stated, all monetary amounts contained herein are in Canadian dollars.

## **Operations**

7. As described in the First Report of the Receiver dated June 10, 2016 (the “**First Report**”):
  - (a) the Debtors sells fresh flowers to individual consumers and corporations, including funeral homes, primarily through its online websites, websites of its corporate partners (e.g. Costco

Wholesale) and from leased premises (the “**Premises**”). The Company was the lessee of each of the Premises; and

- (b) it is the Receiver’s understanding that the majority of the Debtors’ sales are made to consumers through a number of websites registered in the name of either CMG Media Group or Mr. Ginjo personally. According to the records maintained by the Ministry, CMG Media Group is not a corporation or business name registered in Ontario. In the case of 1800flowers.ca (the “**Website**”), the domain is registered in the name of 1800flowers.com, Inc. (“**Flowers**”), which owns approximately 20% of the shares of 188. In addition, online sales are made through corporate partner websites (“**Partner Websites**”) who earn a commission for providing access to their online customers.

Attached as **Appendix “C”** is a copy of the First Report (without appendices).

#### **1873349 ONTARIO INC.**

8. As outlined in the First Report, based on the information in the possession of the Receiver at that time, the Receiver understood that 187 was controlled by Mr. Ginjo and in possession of property of 188 as it received all of the receipts associated with online orders made through the Website and 188 incurred all of the costs to fill those orders. As described in the First Report, the re-direction of receipts away from 188 to 166 and 249 was carried-out by Mr. Ginjo. It was understood that Mr. Ginjo had done the same with receipts from sales through the Website.
9. Following the issuance of the Expansion Order, the Receiver took possession of approximately \$1.2 million (the “**Funds**”) from a demand deposit bank account in the name of 187. Flowers notified the Receiver that the Funds were the property of 187 and the Receivership Order should not include 187. Subsequently, Flowers provided the Receiver with information to explain 187’s relationship with 188,

which included a Hosting Agreement, a Share Purchase Agreement, bank statements and monthly revenue sharing calculations.

10. Following its review of the information provided by Flowers, the Receiver has the following understanding of the relationship between 188 and 187:
  - (a) 187 is a Canadian holding company owned by Flowers which was granted the right to use the Website;
  - (b) 187 receives the proceeds of the sales of flowers through the Website in Canada in its bank accounts;
  - (c) on May 1, 2014, 188 signed a hosting agreement (the “**Hosting Agreement**”) with 187 and Flowers, whereby 188 hosts the Website and is responsible for filling all Canadian flower orders received through the Website. 187 paid 188 either 70% or 75% of the sales proceeds for fulfilling its responsibilities under the Hosting Agreement and retained the remaining amount as its commission for sourcing the flower order;
  - (d) 188 used its share of the sales proceeds to fund all operating expenses relating to the order processing and administration functions associated with these sales; and
  - (e) on September 25, 2012, 187 entered into a Share Purchase Agreement with 188 whereby it purchased a minority ownership interest in 188 and retained an option to purchase additional shares of 188 by the Fall of 2016.
  
11. Following the Receiver’s review of the information obtained from Flowers, the Receiver has been able to determine that the majority of the Funds obtained from 187’s bank account is properly the property of 187 and represents an accumulation of its sales commissions since 2014. The Receiver has also

ascertained that certain amounts are owed to 188 by 187 from the Funds representing 188's share of sale proceeds for online sales made in the months prior to the commencement of the Receivership, which have not yet been remitted by 187 to 188. Flowers has fully cooperated with the Receiver and has acknowledged that certain of the Funds are payable to the Receiver.

12. The Receiver has not yet completed its review of 187's records and awaits some additional information it has requested from Flowers. The Receiver is confident that it will be able to complete its review of the transactions and records regarding 187 and consensually determine the proper amount owing to 188's estate by 187 without further intervention from the Court. To date, in accordance with the Hosting Agreement, Flowers has agreed to a distribution of \$98,000.00 to the Receiver from the Funds which represents the balance payable by 187 to 188 for May 2016 flower orders. In addition, the Receiver proposes to hold \$202,000.00 in its third-party trust account pending completion of its review. Upon completion of such review, any excess funds in the possession of the Receiver, not due and owing to 188, will be immediately returned to 187.

## **CONCLUSION**

13. Based on the foregoing, the Receiver is now satisfied that 187's operations are not integrated with that of 188, 166 and 249 and, therefore, had the information been known at the time, would not have been placed into receivership. As such, the Receiver recommends that the Receivership Order be amended such that the inclusion of 187 under the definition of "Debtor" be declared void *ab initio*.

## **RELIEF SOUGHT BY THE RECEIVER**

14. The Receiver respectfully requests that this Court grant an order declaring (a) the inclusion of 187 as a "Debtor" in the Receivership Order be void *ab initio*; (b) directing that the Receiver retain \$202,000.00 in respect of amount which remains owing by 187 to 188 until such time as the proper amount can be

ascertained, distribute \$98,000.00 to the Receiver and the balance returned to 187; and (c) releasing the Receiver from any and all liability that may arise with respect to its actions in regards to 187.

All of which is respectfully submitted this 7<sup>th</sup> day of July 2016.

**DODICK LANDAU INC.**

Acting in its capacity as Receiver of 1882540 Ontario Inc.,  
1665651 Ontario Ltd., 2495584 Ontario Inc.,  
1873349 Ontario Inc. and 1632032 Ontario Ltd.  
and not in its personal or corporate capacity.

Per:



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Rahn Dodick, CA, CIRP, LIT  
President

## **APPENDIX “A”**



ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE )  
JUSTICE *Newson* )  
)

THURSDAY, THE 19<sup>TH</sup>  
DAY OF MAY, 2016

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

THE TORONTO-DOMINION BANK

Applicant

- and -

1882540 ONTARIO INC.

Respondent

**ORDER**  
(appointing Receiver)

THIS APPLICATION made by The Toronto-Dominion Bank (the "**Bank**") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Dodick Landau Inc. ("**Dodick Landau**") as receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of 1882540 Ontario Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, wherever located, whether leased or owned, including but not limited to, the following premises:

1. 1444 Dupont Street, Unit 11, Toronto, Ontario, M6E 1C4;
2. 65A Wingold Avenue, North York, Ontario, M6B 1P8;
3. 494 Gilbert Ave, Toronto, ON, M6E 4X5;
4. 843 King Street West, Oshawa, ON, L1J 2L5;
5. 343-3750-46 AVE SE, Calgary, AB, T2B 0L1; and
6. 4487 Chemin de la Cote-des-Neiges, Montreal, QC, H3V 1E7,

(the “**Premises**”) was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Daniel Prupas sworn May 17, 2016 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and on reading the consent of Dodick Landau to act as the Receiver,

**SERVICE**

1. **THIS COURT ORDERS** that this Application insofar as it relates to the appointment of a Receiver may proceed without notice and 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.

2. **THIS COURT ORDERS** that the Debtor, Receiver and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in

satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

### **APPOINTMENT**

3. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Dodick Landau is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor, including the Premises, acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

### **RECEIVER'S POWERS**

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, arranging for the provision of utilities and insurance, the relocation of the Property to safeguard it, the engagement of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of

business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (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 \$10,000, provided that the aggregate consideration for all such transactions does not exceed \$50,000; 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* (“PPSA”), subsection 60(4) of the Alberta PPSA, subsection 59(6) of the British Columbia PPSA and section 2784 of the *Civil Code of Quebec*, where applicable, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.
- (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 register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (r) to make an assignment in bankruptcy on behalf of the Debtor; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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

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

5. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations,

governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “Persons” and each being a “Person”) shall forthwith advise the Receiver of the existence of any Property in such Persons’ possession or control, shall grant to the Receiver immediate and continued access to the Property, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, bank account information and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “Records”) in such Persons’ 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 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the

information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

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

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

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 DEBTOR OR THE PROPERTY**

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or



with leave of this Court and any and all Proceedings currently underway against or in respect of the Debtor 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 Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

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 Debtor, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering,

interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

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, 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 Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in

respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

#### **PIPEDA**

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 Debtor, 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 \$50,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon,

in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in 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.

#### **RETENTION OF LAWYERS**

26. **THIS COURT ORDERS** that the Receiver may retain solicitors to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation, those conferred by this Order. Such solicitors may include Thornton Grout Finnigan LLP, solicitors for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent solicitors in respect of any legal advice or services where a conflict exists, or may exist.

## SERVICE AND NOTICE

27. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (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 <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) 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 ‘<<http://dodick.ca/public-documents/what-a-bloom-inc/>>’.

28. **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, facsimile or email transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery, facsimile or email 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

29. **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.

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

31. **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.

32. **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.

33. **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 Debtor's estate with such priority and at such time as this Court may determine.

34. **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.



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ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

MAY 19 2016

PER / PAR: 

SCHEDULE "A"

RECEIVER CERTIFICATE

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

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

1. THIS IS TO CERTIFY that Dodick Landau Inc., the receiver (the "Receiver") of the assets, undertakings and properties 1882540 Ontario Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 2016 (the "Order") made in an action 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 \_\_\_\_\_, 2016.

DODICK LANDAU INC., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

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

Name:

Title:

THE TORONTO-DOMINION BANK

and

1882540 ONTARIO INC.

Applicant

Respondent

Court File No.: CV-16-11398-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER APPOINTING RECEIVER

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TD West Tower, Toronto-Dominion Centre  
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Lawyers for the Applicant, The Toronto-Dominion Bank

## **APPENDIX “B”**

Court File No.: CV-16-11398-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE )  
JUSTICE *HAINES* )

MONDAY, THE 13<sup>TH</sup>

DAY OF JUNE, 2016

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

THE TORONTO-DOMINION BANK

Applicant

- and -

1882540 ONTARIO INC.

Respondent

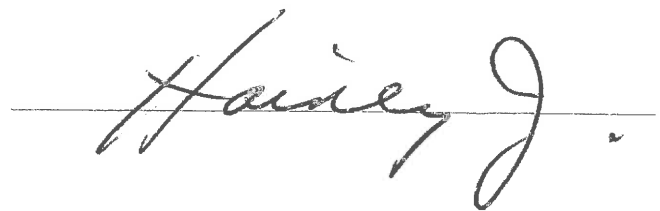
**ORDER**  
(Expanding Receivership Order)

THIS MOTION made by The Toronto-Dominion Bank (the "Bank") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and/or section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") expanding the definition of "Debtor" in the Order of Mr. Justice Newbould dated May 19, 2016 (the "Receivership Order") to include 1665651 Ontario Ltd., 2495584 Ontario Inc., 1873349 Ontario Inc. and 1632032 Ontario Ltd. and excluding 1444 Dupont Street, Unit 11, Toronto, Ontario, M6E 1C4 from the definition of "Premises" of the Debtor was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of Dodick Landau Inc. in its capacity as Court-appointed Receiver of the Debtor and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, no one else being served with this motion,

**SERVICE**

1. **THIS COURT ORDERS** that this Motion may proceed without notice and that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the definition of “Debtors” in the Receivership Order is hereby expanded to include 1665651 Ontario Ltd., 2495584 Ontario Inc., 1873349 Ontario Inc. and 1632032 Ontario Ltd.
3. **THIS COURT ORDERS** that the definition of “Premises” in the Receivership Order shall hereby exclude 1444 Dupont Street, Unit 11, Toronto, Ontario, M6E 1C4.
4. **THIS COURT ORDERS** that Confidential Exhibit “K” shall be sealed on the Court file, kept confidential and not form part of the public record.
5. **THIS COURT ORDERS** that all other provisions of the Receivership Order shall remain in place unaffected by this Order.



ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

JUN 13 2016

PER / PAR: 

THE TORONTO-DOMINION BANK

and

1882540 ONTARIO INC.

Applicant

Respondent

Court File No.: CV- 16-11398-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER  
(Expanding Receivership Order)

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Lawyers for the Applicant, The Toronto-Dominion Bank



## **APPENDIX “C”**

ONTARIO  
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Sections 243(1) and 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

1882540 ONTARIO INC.

Respondent

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FIRST REPORT TO THE COURT  
OF DODICK LANDAU INC., AS RECEIVER

June 10, 2016

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BACKGROUND

1. On May 19, 2016, The Toronto-Dominion Bank (“TD”) made an application to the Court for an order (“**Receivership Order**”), which the Court granted, appointing Dodick Landau Inc. (“DLI”) as receiver (in such capacity, the “**Receiver**”) pursuant to section 243 of the *Bankruptcy & Insolvency Act* (“BIA”) and section 101 of the *Courts of Justice Act* (“CJA”) of the assets, undertakings and property (collectively, the “**Property**”) of 1882540 Ontario Inc. (“188”; the “**Debtor**”). A copy of the issued Receivership Order is attached as **Appendix “A”** to this Report.
2. The Receivership Order, among other things, authorizes and empowers the Receiver to:
  - (a) take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (c) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (d) report to, meet with and discuss with such affected persons 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; and
- (e) market any or all of the Property, including soliciting offers in respect of the Property and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.

## PURPOSE

3. This is the first report to the Court of the Receiver (the “**First Report**”). The purpose of this First Report is to:
  - (a) provide the Court with an overview of the Debtor and its operations;
  - (b) update the Court on the actions taken to date by the Receiver in preserving and protecting the Property;
  - (c) update the Court on the actions taken to date by the Receiver in its investigation of the location and/or disposition of assets reasonably believed to be, or to have been, property of the Debtor, and the issues identified through those procedures;
  - (d) support the Applicant’s request that the Court grant an Order:
    - (i) expanding the definition of “Debtor” in the Receivership Order granted on May 19, 2016 to include 1665651 Ontario Ltd. (“**166**”), 2495584 Ontario

Inc. (“**249**”), 1873349 Ontario Inc. (“**187**”) and 1632032 Ontario Ltd. (“**163**”); and

- (ii) removing the location of the debtor listed in the Receivership Order as 1444 Dupont Street, Unit 11, Toronto, Ontario, M6E 1P8.

#### **DISCLAIMER**

4. In preparing this First Report, the Receiver has relied upon certain unaudited, draft and/or internal financial information, the Company’s books and records that were available to the Receiver, discussions with the management of the Company (“**Management**”) and information from other third-party sources (collectively, the “**Information**”). Except as described in this First Report:
  - (a) 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 Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information; and
  - (b) the Receiver has prepared this Report in its capacity as a Court-appointed officer.
5. Future oriented financial information referred to in this First Report was prepared based on Management’s estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.
6. Unless otherwise stated, all monetary amounts contained herein are in Canadian dollars.

## OVERVIEW OF THE DEBTOR AND ITS OPERATIONS

### Corporate and Senior Management Structure

7. The Receiver's understanding of the ownership and management structure and operations of the Debtor and its affiliates is set out below:

(a) *188:*

According to the records maintained by the Ontario Ministry of Government Services (the "**Ministry**"), the Debtor was formed by way of amalgamation of 1404605 Ontario Limited ("**140**") and 2023644 Ontario Ltd. ("**202**"), pursuant to the laws of the Province of Ontario on September 21, 2012. In addition, on May 21, 2013, 188 was registered as an extra-provincial corporation in Alberta. Although not registered with the Ministry, the Debtor operates as "What a Bloom".

188's registered head office is listed as 1444 Dupont St., Unit 11, Toronto, Ontario, M6P 4H3 ("**Dupont Location**"), however, the Receiver has learned that in or around April 2014, the Dupont Location was sold and 188 moved its head office to 65A Wingold Avenue, Toronto, Ontario, M6B 1P8 (hereinafter defined as the "**Head Office**") and remained the Head Office until the date of the Receivership.

Mr. Cesario Ginjo ("**Mr. Ginjo**") is the individual responsible for overall direction of the Debtor. The Corporation Profile Report for the Borrower lists Cesario Ginjo, James F. McCann and Ilda Rites-Ginjo as its directors and Cesario Ginjo as the President of the Borrower. Attached as **Appendix "B"** is a true copy of the Corporation Profile Report with respect to the Debtor.

(b) *166:*

Pursuant to the records maintained by the Ministry, 166 was incorporated on April 11, 2012 and lists the Dupont Location as its registered head office. Although not registered with the Ministry, 166 also operates as "Michael Adams Gourmet". Mr. Ginjo is registered as the sole officer and director of 166. It appears that 166 also operated from the Head Office until the Receiver was appointed and has since

relocated its operations to 2700 Dufferin Street, Unit 81, Toronto, ON, (“**Dufferin Location**”). The lease for the Dufferin Location is in the name of 188 which subleased it to 166. Attached as **Appendix “C”** is a true copy of the Corporation Profile Report with respect to 166.

There are registrations in favour of Bank of Montreal (“**BMO**”) and Lease Check Ltd. against 166 pursuant to the *Personal Property Security Act* (the “**PPSA**”). The Receiver has been unable to ascertain whether BMO is currently financing 166 but has been put on notice in respect of the receivership of the Debtor. Attached as **Appendix “D”** is a copy of a certified PPSA Enquiry Response Certificate from the Ministry dated May 23, 2016 in respect of 166.

(c) 249:

Pursuant to the records maintained by the Ministry, 249 was incorporated on December 11, 2015 and lists the Head Office Location as its registered head office. Mr. Ginjo is a director, President, Treasurer and Secretary of 249. Mr. James McCann is also listed as a director. Attached as **Appendix “E”** is a true copy of the Corporation Profile Report with respect to 249.

There are no registrations against 249 pursuant to the PPSA. Attached as **Appendix “F”** is a copy of a certified PPSA Enquiry Response Certificate from the Ministry dated May 19, 2016 in respect of 249.

(d) 187:

Pursuant to the records maintained by the Ministry, 187 was incorporated on April 23, 2012 and lists 1 Old Country Road, Suite 500, Carle Place, New York as its registered head office address. The directors and officers of 187 are Susan Janice Conway, Gerard Gallagher, Thomas Hartnett, James McCann, Christopher McCann and William Shea. It is the Receiver’s understanding that 187 records sales received through the 1800flowers.ca website and the Debtor funds all of the operating expenses relating to the order processing and administration functions

with respect to 187 from the Wingold Location. Attached as **Appendix “G”** is a true copy of the Corporation Profile Report with respect to 187.

There are no registrations against 187 pursuant to the PPSA. Attached as **Appendix “H”** is a copy of a certified PPSA Enquiry Response Certificate from the Ministry dated May 19, 2016 in respect of 187.

(e) *163:*

Pursuant to the records maintained by the Ministry, 163 was incorporated on September 14, 2004 and is the real estate holding company that owns 494 Gilbert Avenue, Toronto, Ontario (the “**Production Centre**”) which was used as a storage and fulfillment centre for flower orders in the Greater Toronto Area for 188 and its affiliates. Ilda Rites-Ginjo, Mr. Ginjo’s former spouse, is listed as the President, Secretary and Treasurer and is the sole director of 163. As outlined in the affidavit of Daniel Prupas, sworn May 17, 2016 (the “**Prupas Affidavit**”), a copy of which is attached (without exhibits) as **Appendix “I”**, 163 provided written guarantees of the Debtor’s obligations to TD as set out in more detail below. Attached as **Appendix “J”** is a true copy of the Corporation Profile Report with respect to 163.

166, 249 and 187, together are referred to as the “**WAB Group**” in this First Report.

## **Operations**

8. The WAB Group sells fresh flowers to individual consumers and corporations, including funeral homes, primarily through its online websites, websites of its corporate partners (e.g. Costco Wholesale) and from leased premises at the following locations:
  - (a) the Head Office;
  - (b) the Production Centre; and
  - (c) the following retail operations, which are also used to service local production from online sales:

- (i) 343-3750-46 Avenue SE, Calgary AB;
- (ii) 843 King Street West, Oshawa, ON; and
- (iii) 4487 Chemin de la Cote-des-Neiges, Montreal, QC (the “**Montreal Location**”).

(collectively, the “**Retail Locations**”).

- 9. It is the Receiver’s understanding that each of the Head Office, the Production Centre and the Retail Locations (collectively, the “**Premises**”) are leased facilities and 188 is the lessee in all cases. As mentioned earlier, the real property over which the Production Centre is situated is owned by 163.
- 10. It is the Receiver’s understanding that the majority of the WAB Group’s sales are made to consumers through a number of websites registered in the name of CMG Media Group or Mr. Ginjo personally. According to the records maintained by the Ministry, CMG Media Group is not a corporation or business name registered in Ontario. In the case of 1800flowers.ca, in the name of 1800flowers.com. As noted in the Prupas Affidavit, 1800flowers.ca is related to the American publically-traded 1-800-flowers.com, Inc. which was founded by Jim McCann and which owns approximately 20% of the shares of the Debtor. In addition, online sales are made through corporate partner websites (“**Partner Websites**”) who earn a commission for providing access to their online customers.
- 11. The website operated by the What A Bloom Group that are known to the Receiver at this time include:
  - (a) whatabloom.com
  - (b) memorialflowers.ca
  - (c) dignity.memorialflowers.ca
  - (d) 1800flowers.ca
  - (e) flowercrazy.com



(f) flowerscanada.com

(collectively, the “**WAB Websites**”).

12. At the time the Receivership Order was granted, the addresses for each of the Premises were listed on each of the WAB Websites, however, these locations have since been removed.
13. The partners owning Partner Websites through which the WAB Group sells fresh flowers, which are known to the Receiver at this time, include Costco Wholesale, FTD, Dignity Memorial, among others.
14. Following the date of the Receivership Order, Mr. Ginjo has:
  - (a) continued to operate the same, or similar, fresh flower sale and distribution operations in the names of 166, 249 and 187 using the Dufferin Location as his new head office and continuing to receive fresh flower orders from the WAB Group Websites, which he controls;
  - (b) financed this new fresh flower sales operation by utilising pre-receivership sales receipts which he has assigned to 166, 249 and 187. The Receiver has investigated these transactions with information found in the Head Office records in its possession, and information provided to the Receiver by TD, as set out below;
  - (c) interfered with the operation of the Receivership by redirecting accounts receivable payable to the Debtor to his new business after the Receivership commenced. On May 27, 2016, the Receiver deposited a cheque in its trust account payable to the Debtor from the Greater Toronto Airport Authority (“GTAA”) totalling approximately \$5,000 which was received in the Debtor’s mail. On June 1, 2016, the GTAA had the cheque returned. When the Receiver enquired as to why this was done, the GTAA advised that Mr. Ginjo had contacted them, advised them that the cheque was stolen and asked that they cancel the cheque and re-issue it. Mr. Ginjo then picked up the cheque from the GTAA personally and deposited it into a non-Debtor bank account. The GTAA advised that they are in receipt of the

Receiver's letter dated May 20, 2016 advising them of the Receivership, however, they claim that they had only received the letter after June 1, 2016 after the cheque was already returned. On another occasion, Mr. Ginjo requested a credit card from a customer and charged that customer for an amount the customer owed to 188:

- (d) claimed that three vehicles in the possession of the Receiver, and registered in the name of 140 (one of the pre-amalgamation entities of the Debtor) are his property and should be available for his use in his new business. Following verification, the Receiver advised him that he has no right to them and maintained possession of the vehicles. In addition, there is one vehicle owned by 140 that is missing, which the Receiver believes may be in the possession of Mr. Ginjo, however, to date, Mr. Ginjo has not denied that this vehicle is in his possession but has not returned the vehicle. The Receiver is in possession of a fourth vehicle registered to 166. Mr. Ginjo has requested that the Receiver return this vehicle to him. To date, and since the Debtor funded the costs associated with this vehicle, the Receiver has not returned this vehicle to Mr. Ginjo; and
- (e) counsel to the Receiver was contacted by counsel to the owner of the Montreal Location, Service Corporation International (Canada) ULC ("SCI") in respect of the continued operation of the business at that location. The Montreal Location was leased by 188 from SCI as a retail operation and a distribution centre for orders placed through [dignity.memorialflowers.ca](http://dignity.memorialflowers.ca). The operations of the Montreal Location were governed by a Master Relationship Agreement between 188 and SCI, a copy of which is attached as Appendix "K". The Receiver was recently informed by counsel to SCI that Mr. Ginjo had advised SCI that 166 was now operating the Montreal Location. On June 8, 2016, the Receiver terminated the lease for the Montreal Location.

15. Mr. Ginjo has treated each of the WAB Group entities as interchangeable and has disregarded the actual contractual relationships between the entities unless it suited his purposes.

## CREDITORS

### Secured Creditors

#### TD

16. As set out in the Prupas Affidavit, TD was the operating lender and primary secured creditor of the Debtor. As at May 16, 2016, the Debtor was indebted to the Bank under its credit facilities in the principal amount of \$1,497,849.64 (“**TD Debt**”).
17. The Receiver understands that TD holds:
  - (a) two guarantees from 163 in the maximum principle amounts of \$72,000 and \$239,000 respectively (the “**163 Guarantees**”); and
  - (b) unlimited guarantees from each of Mr. Ginjo and Ms. Ilda Rites-Ginjo in respect of the TD Debt.

163, Mr. Ginjo and Ms. Rites-Ginjo are collectively referred to as the “**Guarantors**”.
18. As set out in the Prupas Affidavit, in support of the 163 Guarantees, 163 granted a security agreement to TD dated May 8, 2014 (the “**GSA**”). Attached as **Appendix “L”** are copies of the 163 Guarantees and the GSA.
19. TD registered its security interest against 163 pursuant to the PPSA on July 18, 2014 against all classes of collateral, except “consumer goods”. Business Development Bank of Canada (“**BDC**”) has a registration prior to the registration of TD over all categories of collateral except for “consumer goods”. Attached as **Appendix “M”** is a copy of a certified PPSA Enquiry Response Certificate from the Ministry dated February 15, 2016 in respect of 163.
20. As outlined in the Prupas Affidavit, on February 18, 2016, TD demanded payment from each of the Guarantors in respect of their respective indebtedness to TD and TD issued a Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and*

*Insolvency Act* (Canada) (a “**BIA Notice**”) to 163. Attached as **Appendix “N”** are copies of the demand letter and the BIA Notice issued to 163 by TD.

#### **BDC**

21. The Receiver understands that the BDC:
  - (a) is a secured creditor of the Debtor with regards to three loans totalling approximately \$150,000; and
  - (b) has subordinated priority of its security interest in the Debtor in favour of TD pursuant to a priority agreement dated May 5, 2014.

#### **Canada Revenue Agency (“CRA”)**

22. The Receiver understands that in relation to the criminal investigation described below, the CRA registered a security interest under the PPSA against the Debtor in the approximate amount of \$1.8 million on January 15, 2016 (the “**CRA Registration**”).

#### **Unsecured Creditors**

23. To date, the Receiver has calculated the Debtor’s unsecured debt to be approximately \$660,000. These unsecured creditors are primarily trade creditors and suppliers.

#### **RECENT EVENTS**

24. On December 3, 2014, the CRA commenced a trust accounts examination with respect to the payroll source deductions, HST and income tax trust accounts of the Debtor and requested a review of the Debtor’s books and records for the period-ended November 30, 2014.
25. On May 28, 2015, TD entered into its credit facility agreement with the Debtor which was further amended on October 6, 2015.
26. On January 15, 2016, the CRA made the CRA Registration against the Debtor.

27. In early February 2016, TD discovered unusual transactions involving the Debtor's accounts. TD transferred the 188 account to its special loans group for further investigation.
28. On February 18, 2016, TD moved to enforce its security and issued demands to the Debtor and the Guarantors, accompanied by BIA Notices in favour of the Debtor and 163.
29. On March 11, 2016 the Debtor entered into a forbearance agreement (the "**Forbearance Agreement**") with TD.
30. On March 30, 2016, CRA advised the Debtor that it has commenced a criminal investigation with respect to the financial operations of the Debtor, its pre-amalgamation entities (1404605 Ontario Limited and 2023644 Ontario Ltd.) as well as 1784936 Ontario Inc., 1723534 Ontario Inc. and 1757742 Ontario Ltd. Mr. Ginjo is a director and officer of each of these legal entities under criminal investigation. Under the authority of Section 487 and 489 of the *Criminal Code*, CRA exercised warrants to remove books and records from the Head Office and Production Centre as well as other non-Debtor locations. The Receiver understands that this investigation remains ongoing. The Debtor did not inform TD that it was under criminal investigation. The Receiver discovered the criminal investigation when it found a letter from CRA to the Debtor at the Head Office, a copy of which is attached as **Appendix "O"**.
31. In early April 2016, TD expressed to the Debtor its concerns with regards to the reliability of the values on the borrowing base certificate TD had received from the Debtor for the month of February 2016. The Debtor certified in its February 2016 borrowing base certificate that its borrowing base totalled approximately \$1.3 million which was comprised of margined accounts receivable of approximately \$1.1 million and margined non-perishable inventory of approximately \$242,000.
32. As described in further detail below, according to the Debtor's accounting records, gross accounts receivable at the date of the Receivership had a book value of approximately \$45,000 and the Receiver obtained a liquidation proposal of the non-perishable inventory at the Head Office and the Production Centre estimating their gross realizable value at

\$25,000 to \$35,000, including furniture, fixtures and equipment, none of which are margined. Based on the Receiver's review to date of the Debtor's books and records, it appears that the margined asset values provided by the Debtor to TD in its margining certificate were significantly overstated.

33. On April 11, 2016, DLI was hired as a consultant (the "**Consultant**") by TD to review the business of the Debtor. In the Forbearance Agreement, the Debtor consented to the Bank's right to appoint a consultant.
34. On April 26, 2016, TD advised the Debtor that it committed a termination event pursuant to the Forbearance Agreement and that, among other things, if it did not consent to the Consultant's engagement and allow it to carry-out a business review of 188, TD would terminate the Debtor's loan facility.
35. On April 28, 2016 the Debtor provided its acknowledgement and agreement to the appointment of DLI, however, the Debtor requested that the Consultant's review not commence until after Mother's Day since Mother's Day weekend was the Debtor's busiest time of the year. The Debtor was granted this short deferral in order to attempt to gain its cooperation, however, after Mother's Day weekend, the Debtor refused to cooperate with TD, did not permit the Consultant to carry-out its business review and stopped responding to inquiries made by TD or its legal counsel.
36. As described above, on May 19, 2016, the Court granted an Order appointing DLI as Receiver.

## **ACTIVITIES OF THE RECEIVER, INCLUDING PRE-APPOINTMENT ACTIVITIES OF DLI**

### **Activities Prior to Appointment**

37. Prior to the issuance of the Receivership Order, DLI undertook numerous activities to plan for the execution of its responsibilities if appointed as Receiver. These activities included:
  - (a) discussions with TD and its legal counsel to obtain a preliminary understanding of the assets, operations and liabilities of the Debtors;

- (b) review of the financial information and borrowing base certificates provided to TD by the Debtor; and
- (c) numerous attempts to meet Mr. Ginjo in person to obtain an understanding of the assets and operations of the Debtor, and particularly the physical location of the Property, in order to plan the steps that would be required to preserve and protect the Property.

### **Limitations on Availability of Financial Information to the Receiver**

- 38. The Receiver has been advised by Mr. Ginjo that there is no individual available who could provide certain financial information requested by the Receiver. Mr. Ginjo first advised that he was the only person with access to the Debtor's accounting records. Later, he advised that a former employee did all the bookkeeping but has refused to provide the Receiver with the name of that former employee.
- 39. Prior to the Receivership appointment, DLI asked Mr. Ginjo whether all sales receipts were deposited at TD. Mr. Ginjo advised that all sales receipts have always been deposited at TD. As a result of the Receiver's investigations, which are described in further detail below, it appears that the majority of the WAB Group's sales receipts were deposited in bank accounts owned by 166 and 187, and not the TD accounts owned by 188.
- 40. On May 27, 2016, the Receiver obtained access to what appears to be the Debtor's accounting system.
- 41. The absence of a qualified individual with knowledge of the accounting records and past transactions has limited the ability of the Receiver to exercise its powers on a timely basis.

### **Activities of the Receiver to Preserve and Protect the Property**

- 42. Since the issuance of the Receivership Order, the Receiver has taken the following steps to preserve and protect the Property of the Debtor:
  - (a) changed the locks at the Production Centre and Wingold Location. After sending agents to the Retail Locations, the Receiver determined that it was not cost effective

to take possession of the Retail Locations as there was likely no net realizable value available to the Receivership in the assets at the Retail Locations;

- (b) attended at the Dupont Location, which is the registered office of the Debtor, in order to take possession of this location, however, the Receiver was advised by the current occupant upon its attendance that 163, which had previously leased the Dupont Location to the Debtor, had sold the property to a third-party purchaser and the Debtor had vacated the Dupont Location on or around April 2015. Consequently, the Receiver did not take possession of the Dupont Location. As the occupant of the Dupont Location was concerned at the time the Receiver attended at the Premises, he had contacted the police. The representatives of the Receiver remained on site until the Police arrived, cooperated with the Police's inquiries, provided a copy of the Court Order to the Police, as well as to the occupant, and advised them both of the circumstances resulting in the Receiver's attendance at the Dupont Location;
- (c) notified the Receiver's insurer of the appointment of the Receiver and placed insurance coverage over the assets in the Receiver's possession;
- (d) arranged for a count of furniture, fixtures and equipment and invited liquidation proposals from three liquidators. Only one liquidator, Danbury Global Ltd., agreed to submit a liquidation proposal while the other liquidators responded that the value of the assets were not significant enough for it to be worth their while to submit a proposal;
- (e) obtained copies of the accounts receivable subledger of the Debtor and issued letters to customers who received credit from the Debtor in order to pursue collection;
- (f) forwarded the Debtor's mail to the Receiver's office from each of its locations; and
- (g) obtained copies of the fixed and leased asset listings of the Debtor that are available from the records of the Debtor, and attempted to confirm the existence and location of the items on those lists. Other than a number of leased and owned vehicles used



by the Debtor to make flower deliveries, the majority of the Debtor's fixed assets consist of furniture, fixtures and equipment and appear to have a nominal value.

#### **Activities of the Receiver to Investigate the Location/Disposition of Assets**

43. Subject to the information limitations described above, the information obtained to date by the Receiver indicates that the working capital assets of the Debtor as at the date of the Receivership Order may be substantially less than those reported on the most recent unaudited internal financial statements and borrowing base certificates provided to TD by the Debtor. Attached as **Appendix "P"** is a copy of what the Receiver believes to be the most recent consolidated unaudited internal financial statements of the WAB Group as at April 30, 2016 (the "**April Statements**").
44. During the course of the Receiver's review of the books, records and affairs of the WAB Group, the Debtor has not been able to adequately account for approximately \$1.1 million of the inventory and \$3.5 million of accounts receivable referred to in the April Statements. This discrepancy is substantial.
45. To date, Mr. Ginjo has been unable to provide explanations in respect of inventory and accounts receivable that are consistent with the available financial information or supported by other documentation.
46. Based on the information available to the Receiver to date, it is unlikely that sufficient value can be realized from the Property of the Debtor to fully repay the TD Debt.
47. In view of the above, in consultation with TD, the Receiver has taken a number of steps to investigate the location and/or disposition of assets it believes may be, or have been, the Property of the Debtor. These steps centered around a review of certain hard copy and electronic banking records of the Debtor obtained from TD directly, and those found at the Head Office. The records reviewed included, inter alia, wire transfer records, cancelled cheques and bank statements from bank accounts for the period of December 1, 2015 to the date of the Receivership.

48. It appears that accounting and banking transactions associated with the flower selling operations at the Premises for the period up to the date of the Receivership are recorded on two Quickbook files saved on a desktop computer located at the Head Office and used by Mr. Ginjo. These Quickbook files include banking transactions recorded in bank accounts owned by 188 at TD (A/C #1968-5306024 and #1968-5304285) as well as an account owned by 166 at BMO (A/C #27952-1995912). In addition, Mr. Ginjo opened a new bank account at BMO on March 30, 2016 (A/C #29492-1989413) which is owned by 249. There are no transactions in the Quickbooks file with respect to this account. However, included among the Debtor records were banking records for this account which included numerous transactions with 188's TD A/C #1968-5306024 and 166's BMO A/C #1995912.
49. The Receiver has reviewed the banking and accounting records in its possession in detail in order to gain an understanding of the flow of receipts and disbursements (“**R&D**”) throughout the WAB Group’s operations during the period of December 1, 2015 to the date of the Receivership (the “**Period**”). In summary, it appears that:
- (a) all, or substantially all, of the sales receipts from the WAB Group’s operations are received by six bank accounts owned by four legal entities as follows:
- (i) two TD Bank accounts (A/C #1968-5306024 and #1968-5304285) owned by 188 and used to collect WAB Group Partner Websites sales receipts and to pay all of the WAB Group’s operating expenses, until April 2016;
  - (ii) one Royal Bank of Canada (“**RBC**”) account owned by 188 (A/C #1009703) which was opened in April 2016, which received funds from 187 and transferred those funds to 166 and 249;
  - (iii) one BMO account owned by 166 (A/C # 27952-1995912) which appears to receive all sales receipts from all website sales, except 1800flowers.ca;
  - (iv) one BMO account owned by 249 (A/C # 29492-1989413) opened on March 30, 2016 which began to collect the WAB Group Partner Websites sales receipts and pay all of WAB Group’s operating expenses beginning in April 2016, instead of 188 as described above; and

- (v) JP Morgan Chase (A/C #400010430) owned by 187 which appears to collect all online sales receipts from 1800flowers.ca flower sales.
- (b) approximately \$2.3 million of known receipts from third-parties were received during the Period by 166 and 187 of which 100% were received from online website flower sales. As the Receiver's information is not complete, and for the most part is based on TD receipt records, there are likely additional receipts received by 166 and 187 not recorded on the R&D;
- (c) during the Period, 166 and 187 transferred approximately \$2.3 million to 188 (TD accounts #5306024 and #5304285) which was used to fund third-party disbursements during the Period for the WAB Group operations which totalled approximately \$2.4 million;
- (d) beginning on March 30, 2016, 249 received approximately \$680,000 from related parties, in addition to approximately \$66,000 it received from customer sales, to fund third-party disbursements for the WAB Group operations which totalled approximately \$759,000;
- (e) as described above, on March 30, 2016 CRA advised 188 that it had commenced a criminal investigation with respect to the financial operations of 188. Also on March 30, 2016, Mr. Ginjo opened a new account in the name of 249 (BMO account #1989413) and began receiving transfers into it from related parties to fund WAB Group's operating expenses, as described above. It appears that beginning on March 30, 2016, 249 replaced 188 as the entity being used by the WAB Group to receive related party funds and fund all the operating expenses of the WAB Group; and
- (f) during the Period, approximately \$397,000, \$28,000 and \$17,000 was paid by 188, 166 and 249, respectively, to Mr. Ginjo and/or Ilda Ginjo. In addition, Cesario and/or Ilda Ginjo transferred approximately \$161,000, \$119,000 and \$17,000 to 188, 166 and 249, respectively, during the Period. In addition, approximately \$200,000 in credit card bills were paid by 188 during the Period.

Therefore, it appears that the Debtor's bank accounts at TD and RBC were funded by the bank accounts owned by 166 and 187, at BMO and JP Morgan Chase, with sufficient funds to pay the operating expenses of the WAB Group. The remaining sales receipts were kept by 166 and 187 or possibly diverted elsewhere by Mr. Ginjo. The Receiver is not aware of any agreement in place between these related parties permitting this funding arrangement. As well, the Receiver is not aware of TD agreeing to 188 utilising its TD operating line to fund all of the operating expenses of the WAB Group while the operating line did not receive all of the receipts which those expenses contributed to generating. It appears that 166 and 187 transferred sufficient funds to 188 only to fund the WAB Group's operating expenses and nothing more. There remains a possibility that either 166, 187, 249 or all three, have Property of the Debtor in their possession. Without extending the Receivership Order to include these entities, the Receiver will be unable to take possession of any of the Debtor's Property which may be in the possession of these related parties.

A detailed analysis of these transactions is included in the R&D prepared by the Receiver which is attached as **Appendix "Q"** to this Report.

## CONCLUSION

50. Based on the foregoing, it appears that the Property of 188 has been diverted to 187, 166 and 249 in order to avoid it being used to repay 188's secured creditors. In addition, 187, 249 and 166 are only shell companies used to receive online flower sales receipts and prior to the Receivership had no significant operations of their own. Therefore, due to the fact that the cash management functions, and operations, of the WAB Group are integrated, the Receiver has been unable to perform all of its functions, including taking possession of any Property of the Debtor that is in the possession of 166, 249 and 187.
51. Consequently, for the reasons described in this First Report, the Receiver is of the view that it would be just and convenient for the Receivership Order to be expanded to include 187, 166 and 249 as additional debtors.

52. TD is seeking the appointment of a receiver in respect of 163 pursuant to section 243 of the BIA. The Receiver is of the view that the Receivership Order should be expanded to also include 163.

#### **RELIEF SOUGHT BY THE APPLICANT**

53. The Applicant respectfully requests that this Court grant an order:

- (a) extending the Receivership Order granted on May 19, 2016 to include 166, 249, 187 and 163; and
- (b) removing the location of the debtor listed in the Receivership Order as 1444 Dupont Street, Unit 11, Toronto, Ontario, M6E 1P8.

All of which is respectfully submitted this 10<sup>th</sup> day of June 2016.

#### **DODICK LANDAU INC.**

Acting in its capacity as Receiver of  
1882540 Ontario Inc. o/a What A Bloom Canada, Memorial  
Flowers, Flower Crazy, Flowers Canada, Hanna Florist, Special  
Moments and 1800flowers.ca  
and not in its personal or corporate capacity.

Per:



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Rahn Dodick, CA, CIRP, LIT  
President

## **TAB 3**

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

THE HONOURABLE

)

FRIDAY, THE 8<sup>TH</sup>

JUSTICE

)

DAY OF JULY, 2016

)

**IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended**

**THE TORONTO-DOMINION BANK**

Applicant

- and -

**1882540 ONTARIO INC.**

Respondent

**ORDER  
(Reducing Receivership Order)**

**THIS MOTION** made by Dodick Landau Inc. in its capacity as Court-appointed Receiver (the "**Receiver**"), without security, over the assets, undertaking and property of 1882540 Ontario Inc., 1665651 Ontario Ltd., 2495584 Ontario Inc., 1873349 Ontario Inc. and 1632032 Ontario Ltd. was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Second Report of Dodick Landau Inc. in its capacity as Court-appointed Receiver of the Debtor and the Exhibits thereto and on hearing the submissions of

counsel for the Receiver, counsel to 1873349 Ontario Inc. and no one else appearing although served as evidenced by the Affidavit of Rachel Bengino sworn July 7, 2016, filed.

**SERVICE**

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

2. **THIS COURT ORDERS** that the definition of “Debtor”, as expanded in the Order made by this Honourable Court on June 13, 2016, is void *ab initio* with respect to 1873349 Ontario Inc.

3. **THIS COURT ORDERS AND DIRECTS** that the Receiver shall deliver any funds in its possession acquired in respect of 1873349 Ontario Inc., save and except the amount of \$300,000, of which \$98,000 shall be distributed to the Receiver and \$202,000 shall be held by the Receiver until such time as the parties agree to a further distribution of the funds as between the Receiver and 1873349 Ontario Inc.

4. **THIS COURT ORDERS AND DECLARES** that any dispute with respect to the amount to be further distributed pursuant to paragraph 3 shall be determined by this Court.

5. **THIS COURT ORDERS AND DECLARES** that Dodick Landau Inc. is hereby released and discharged from any and all liability that Dodick Landau Inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Dodick Landau Inc. in its actions in respect of 1873349 Ontario Inc., save and except for any gross negligence or wilful misconduct on Dodick Landau Inc.’s part.



6. **THIS COURT ORDERS** that all other provisions of the Receivership Order shall remain in place unaffected by this Order.

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THE TORONTO-DOMINION BANK

and

1882540 ONTARIO INC.

Applicant

Respondent

Court File No.: CV-16-11398-00CL

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

Proceedings commenced at Toronto

**ORDER  
(Reducing Receivership Order)**

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Lawyers for the Applicant, The Toronto-Dominion Bank  
and the Court-appointed Receiver, Dodick Landau Inc.

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Sections 243(1) and 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

THE TORONTO-DOMINION BANK      and  
Applicant

1882540 ONTARIO INC.

Respondent

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MOTION RECORD  
(RETURNABLE JULY 8, 2016)

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