

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

**IN THE MATTER OF THE RECEIVERSHIP OF 2110458 ONTARIO
LIMITED o/a LORETTA FLOUR, 2131413 ONTARIO LIMITED o/a
LORETTA FOODS, 787755 ONTARIO LIMITED o/a NEW DURHAM
TRADING, and o/a NDT FOOD SERVICE and o/a SKYWAY
WHOLESALE and TARBRAC HOLDINGS INC.**

**IN THE MATTER OF SECTION 243 OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended, and SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C. 43, as amended**

**MOTION RECORD
(returnable 17 January 2011)**

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as Receiver of 2110458 Ontario Limited o/a
Loretta Flour, 2131413 Ontario Limited o/a
Loretta Foods, 787755 Ontario Limited o/a New
Durham Trading, and o/a NDT Food Service and
o/a Skyway Wholesale and Tarbrac Holdings Inc.

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COURTS OF JUSTICE ACT, R.S.O. 1990, c. C. 43, as amended**

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TAB DOCUMENT

1. Notice of Motion returnable 17 January 2011
2. First Report of Ernst & Young Inc., as Receiver dated 10 January 2011
 - A Appendix A Receivership Order dated 26 November 2010
 - B Appendix B Proposed Timeline For Marketing and Sale of Flour and Spice Divisions
3. First Report of Ernst & Young Inc., as Interim Receiver dated 25 November 2010 (without Appendices)
4. Draft Order

TAB 1

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

**IN THE MATTER OF THE RECEIVERSHIP OF 2110458 ONTARIO
LIMITED o/a LORETTA FLOUR, 2131413 ONTARIO LIMITED o/a
LORETTA FOODS, 787755 ONTARIO LIMITED o/a NEW DURHAM
TRADING, and o/a NDT FOOD SERVICE and o/a SKYWAY
WHOLESALE and TARBRAC HOLDINGS INC.**

**IN THE MATTER OF SECTION 243 OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended, and SECTION 101 of the
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C. 43, as amended**

**NOTICE OF MOTION
(returnable 17 January 2011)**

ERNST & YOUNG INC., ("EYI") in its capacity as receiver and receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of 2110458 Ontario Limited ("**211**") o/a Loretta Flour, 2131413 Ontario Limited ("**213**") o/a Loretta Foods, 787755 Ontario Limited ("**787**") o/a New Durham Trading, and o/a NDT Food Service and o/a Skyway Wholesale and Tarbrac Holdings Inc. ("**Tarbrac**", and together with 211, 213 and 787, the "**Debtors**") will make a motion before a judge presiding over the Commercial List on 17 January 2011 at 10:00 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

THE MOTION WILL BE HEARD ORALLY.

THE MOTION IS FOR AN ORDER:

1. abridging the time of service of this Notice of Motion and Motion Record if necessary, and directing that any further service of this Notice of Motion and the Motion Record be dispensed with such that this Motion is properly returnable on 17 January 2011;

2. approving the marketing and sale process as described in the First Report of the Receiver dated 10 January 2011 (the "**First Report**");
3. approving the First Report and the activities of the Receiver as described therein;
4. approving the First Report of EYI, in its capacity as interim receiver (the "**Interim Receiver**") of the Debtors dated 25 November 2010, and the activities of the Interim Receiver as described therein; and
5. such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. On 10 November 2010, EYI was appointed Interim Receiver of the Debtors by Order of Mr. Justice Campbell (the "**Interim Receivership Order**"). EYI was appointed Receiver of the Debtors by Order of Mr. Justice Wilton-Siegel dated 26 November 2010 (the "**Receivership Order**");
2. the Debtors' business operations include a division known as the "Loretta Flour Division" which produces various types of hard wheat flour and a division known as the "Loretta Spice Division" which sources and redistributes spices and food mixes, and blends and repackages spices for home and institutional use;
3. the Receivership Order authorizes the Receiver to market any and all of the assets, property and undertakings of the Debtors;
4. the Receiver has developed a plan to market and sell the Loretta Flour Division and the Loretta Spice Division pursuant to the marketing and sales process described in the First Report;
5. the activities of the Receiver are within the scope of its mandate under the Receivership Order;
6. the activities of the Interim Receiver are within the scope of its mandate under the Interim Receivership Order;

7. section 243 of the *Bankruptcy and Insolvency Act* (Canada);
8. rules 1.04, 2.01, 2.03, 3.02 and 37 of the *Rules of Civil Procedure* (Ontario); and
9. such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. the First Report of Ernst & Young Inc., as Receiver dated 10 January 2011;
2. the First Report of Ernst & Young Inc., as Interim Receiver dated 25 November 2010 (without appendices); and
3. such further and other material as counsel may advise and this Honourable Court may permit.

10 January 2011

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SERVICE LIST

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AND TO: Daimlerchrysler Financial Services Canada Inc.
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AND TO: DCFS Canada Corp.
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AND TO: General Motors Acceptance Corporation of Canada, Limited
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AND TO: GMAC Leaseco Corporation
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AND TO: Leasebank Credit Corporation
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AND TO: Liftcapital Corporation
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AND TO: MCAP Leasing Inc.
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Burlington, ON L7L 6M1

AND TO: Mercedes-Benz Financial
2425 Matheson Blvd. E, Ste 300
Mississauga, ON L4M 5N7

AND TO: National City Commercial Capital,
A Division Of National City Bank, Can
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Toronto, ON M5X 1E4

AND TO: National Leasing Group Inc.
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AND TO: Quest Automotive Leasing Services
Div Of Scarborotown Chrysler Dodge
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Toronto, ON M1S 4A7

AND TO: Summit Credit Corporation
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AND TO: Toyota Credit Canada Inc.
80 Micro Court Suite 200
Markham, ON L3R 9Z5

AND TO: Travelers Financial (Alberta) Corporation
210, 2880 Glenmore Trail SE
Calgary, AB T2C 2E7

AND TO: Twin Hills Ford Lincoln Limited
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AND TO: Bysan Industrial Developments Limited
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AND TO: 447111 Ontario Limited
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AND TO: Weatta Holdings Inc.
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IN THE MATTER OF THE RECEIVERSHIP OF 2110458 ONTARIO LIMITED o/a LORETTA FLOUR, 2131413 ONTARIO LIMITED o/a LORETTA FOODS, 787755 ONTARIO LIMITED o/a NEW DURHAM TRADING, and o/a NDT FOOD SERVICE and o/a SKYWAY WHOLESALE and TARBRAC HOLDINGS INC.

IN THE MATTER OF SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended, and SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43, as amended

ONTARIO

**SUPERIOR COURT OF JUSTICE
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PROCEEDINGS COMMENCED AT TORONTO

NOTICE OF MOTION
(returnable 17 January 2011)

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Receiver of 2110458 Ontario Limited o/a Loretta Flour,

2131413 Ontario Limited o/a Loretta Foods, 787755

Ontario Limited o/a New Durham Trading, and o/a NDT

Food Service and o/a Skyway Wholesale and Tarbrac

Holdings Inc.

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TAB 2

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

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THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43, as amended**

**FIRST REPORT TO THE COURT
OF ERNST & YOUNG INC., AS RECEIVER**

January 10, 2011

BACKGROUND

1. On November 10, 2010, Bank of Montreal ("**BMO**") made an application to the Court for an order, and the Court made an order, appointing Ernst & Young Inc. ("**EYI**") as interim receiver (in such capacity, the "**Interim Receiver**") pursuant to section 47(1) of the *Bankruptcy & Insolvency Act* ("**BIA**") and pursuant to section 101 of the *Courts of Justice Act* ("**CJA**") of the assets, undertakings and properties of 2110458 Ontario Limited ("**211**") o/a Loretta Flour, 2131413 Ontario Limited ("**213**") o/a Loretta Foods, 787755 Ontario Limited ("**787**") o/a New Durham Trading, and o/a NDT Food Service and o/a Skyway Wholesale, and Tarbrac Holdings Inc. ("**Tarbrac**") (collectively, the "**Debtors**").

2. On November 26, 2010, EYI was appointed as receiver and receiver and manager (the “**Receiver**”) of the Debtors pursuant to section 243 of the BIA and section 101 of the CJA. A copy of the issued Receivership Order is attached as Appendix “A” to this Report.
3. The Receivership Order, among other things, authorizes and empowers the Receiver to:
 - (a) 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;
 - (b) sell the Property or any parts thereof outside the ordinary course of business:
 - (i) without the approval of the Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
 - (ii) with the approval of the 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* shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply; and

 - (c) carry out the sale process developed by EYI, in its capacity as Interim Receiver, for the Food Services (as defined below) business of the Debtors substantially in accordance with the timeline annexed as Schedule “E” to the First Report of the Interim Receiver dated November 25, 2010, with such changes as the Receiver considers necessary in its sole discretion, acting reasonably.

PURPOSE

4. This is the first report of the Receiver. The purpose of this First Report is to:
 - (a) Report to the Court on the status of the sale process for the Food Services (as defined below) business of the Debtors;
 - (b) Report to the Court on the Receiver's development of a plan to market and sell the Loretta Flour (as defined below) and Loretta Foods (as defined below) businesses; and
 - (c) request that the Court grant an Order:
 - (i) authorizing the Receiver to market and sell the Loretta Flour and Loretta Foods businesses pursuant to the plan developed by the Receiver; and
 - (ii) approving the actions of the Receiver as described in this Report.

Terms of Reference

5. In preparing this Report, the Receiver has relied upon the books and records of the Debtors, conversations with operating management and employees of the Debtors, and other information from various sources. The Receiver has assumed that the information it has been provided is accurate and complete. The Receiver has not audited, reviewed or otherwise verified such information.

FOOD SERVICE SALE PROCESS

6. As set out above, the Receivership Order authorizes the Receiver to carry out the sale process developed by the Interim Receiver for the Food Service and Catering ("**Food Services**") business of the Debtors substantially in accordance with the timeline annexed as Schedule "E" to the First Report of the Interim Receiver dated November 25, 2010 (the "**Food Services Timeline**"), with such changes as the Receiver considers necessary in its sole discretion, acting reasonably.

7. The Receiver remains of the view, as initially expressed in the First Report of the Interim Receiver, that the Food Service business should be marketed for sale forthwith, and that such an approach is unlikely to impair realizations from the remaining Property.
8. In preparing the Confidential Information Memorandum for distribution to potential purchasers of the Food Services business (the "**Food Services CIM**"), the Receiver experienced difficulty in obtaining separate financial information for Food Services due to the following:
 - (a) The financial statements of the Debtors, or any of them, have not been audited since the year ended December 31, 2008, and based on the information obtained to date by the Receiver, it is not certain whether the auditor at that time was in fact independent from the Debtors;
 - (b) The operating results of Food Services and the spice trading business formerly conducted by 787 (the "**Spice Trading Business**") were combined in the accounting records of 787;
 - (c) To the best of the Receiver's knowledge, separate financial statements or operating results for Food Services have never been prepared, and the current operating management for Food Services has never had visibility into the recorded operating results of Food Services; and
 - (d) Due primarily to the resignation of the Former Controller before the appointment of the Interim Receiver, there have been no personnel available at the Debtors who were capable of assisting to isolate the operating results of Food Services.
9. The contract controller engaged by the Receiver has attempted to isolate the results of Food Services by identifying all revenue and expenses in the accounting records of 787 for the years in question that are reasonably believed to relate to the Spice Trading Business, and separating those items from the accounting records of 787 for the years in question. However, there is no certainty that the resulting financial information completely or accurately reflects the stand-alone revenues and expenses of Food Services. The Receiver has included the estimated stand-alone financial information in

the Food Services CIM but has provided substantial caveats highlighting the limitations of the information and the reasons thereof, all as described above.

10. As a result of the time required to estimate stand-alone financial information, the Receiver did not begin to contact prospective purchasers, and distribute Food Services CIMs, until the week beginning December 20, 2010, which was approximately one week later than contemplated in the Food Services Timeline. The Receiver has nonetheless requested that prospective purchasers submit offers by January 14, 2011, which was the date indicated in the Food Services Timeline.
11. To date, the Receiver has:
 - (a) Identified 21 parties that the Receiver's research indicates are likely to have an interest in acquiring Food Services;
 - (b) Approached all of the prospective offerors and distributed the Food Services CIM to 10 of those parties, and
 - (c) Started providing facilities tours for the prospective purchasers that have expressed interest in touring the Food Services facility, with a view to completing all requested tours before the January 14 offer deadline described above.
12. The Receiver will provide the Court with further updates on the Food Services sale process in future reports.

LORETTA FLOUR AND LORETTA FOODS MARKETING PLAN

Loretta Flour Background

13. The primary assets of 211 are flour milling and sugar packing machinery (collectively the "**Flour Mill**") which are located in premises leased by the Debtors in Whitby, Ontario (the "**Whitby Premises**"). 211 operates under the registered trade name "**Loretta Flour**" and is also known as the "Loretta Flour Division" of the Debtors' operations. 211, in the past, produced various types of hard wheat flour from wheat sourced from Ontario and Western Canada. The Receiver understands that in the past the Flour Mill has produced flour to be sold under the Loretta brand name to various retailers by 213's

Loretta Foods business, as well as to wholesalers and bakeries in bulk. However, for a number of months before the appointment of the Receiver, all of 211's flour production was sold to Quality Food Brands, Inc. ("**QFB**"), an operating subsidiary of Synergy Brands, Inc. ("**Synergy**"), located in the United States, as discussed in greater detail below.

14. As noted above, the financial statements of the Debtors, or any of them, have not been audited since the year ended December 31, 2008, and, based on the information obtained to date by the Receiver, it is not certain whether the auditor at that time was in fact independent of the Debtors. In addition, the Receiver has experienced difficulty in obtaining separate financial information for 211 for the same reasons described in paragraph 8 in regards to the Food Services business as financial records of 211 include trading transactions that should be excluded from its reported operating results. According to its unaudited internal financial statements, and subject to the preceding limitations, 211 had revenues of approximately \$41.2 million and net income of approximately \$0.8 million for the nine months ended September 30, 2010.
15. The contract controller engaged by the Receiver has attempted to isolate the results of 211 by identifying all revenue and expenses in the accounting records of 211 for the years in question that are reasonably believed to not relate to the flour manufacturing operations with a view to backing those items out of the accounting records of 211 for the years in question. However, there is no certainty that the resulting financial information completely or accurately reflects the stand-alone revenues and expenses of 211.
16. Prior to the appointment of the Receiver, the Loretta Flour Division employed 10 people and day-to-day operations were directed by Mr. Nelipa, as Director of Operations, from the Whitby Premises. The employment of Mr. Nelipa by 211 was terminated by the Receiver after the Receiver became aware that, contrary to the Receiver's instructions to him, Mr. Nelipa directed the Flour Mill employees not to report to work the week following the Receiver's appointment. The Receiver also concurrently terminated the employment by 211 of four other employees who were not required for the level of production volume at the Flour Mill. Day-to-day operations have continued with the

assistance of the remaining employees of 211, supplemented as necessary by contract labour, under the direction of the Receiver.

17. As described above, for a number of months before the appointment of the Receiver, 211 sold all of its flour production to QFB, a subsidiary of Synergy. In developing a weekly cash flow forecast for the Debtors, the Interim Receiver had determined that the flour was in fact being sold to this customer, with which Mr. Gatti had a close business relationship, for less than its variable cost and that the customer had a large outstanding account receivable for previous flour purchases from 211. Consequently, the Interim Receiver had recommended to Mr. Gatti that 211 sell to the customer only on cash-on-delivery ("COD") terms, and at a price that exceeded its variable cost of production. Mr. Gatti declined to modify the sale pricing to a price exceeding its variable cost or credit terms on the grounds that the customer was of strategic importance and was a potential buyer of all assets of the Loretta Group, and that, therefore, it was important to maintain good relations with the customer.
18. The Receiver offered to continue to produce and sell flour to QFB, Synergy's subsidiary, but only (i) after QFB pays its outstanding flour invoices in the amount of approximately U.S. \$344,000, dating back to early 2010, (ii) provided that all future sales to QFB are on a COD basis, and (iii) provided that all future sales occur at an increased price that would exceed 211's variable costs of production. To date the customer has refused to pay the balance owed to 211 or to agree to the other terms set out above, and, accordingly, the flour mill is currently operating only at reduced volume to produce flour for sale to wholesalers and bakery customers.

Loretta Foods Background

19. 213 operates from leased premises located on Sismet Drive, Mississauga, Ontario (the "**Sismet Premises**"). 213 operates under the registered trade name "**Loretta Foods**" and is also known as the "Loretta Spice Division" of the Debtors' operations. 213 is responsible for blending and repackaging spices for use in various packs and sizes, as well as redistributing food mixes for consumer and institutional customers throughout Canada. The Loretta Spice Division employs approximately 34 people and day-to-day

operations are directed by Mr. John Coticone a Director of Operations located at the Sismet Premises.

20. As with the financial results of 211 and the Food Services business, independent audited financial statements for 213 are not available and the Receiver has experienced difficulty in obtaining separate financial information for 213 for the same reasons described in paragraph 8 in regards to the Food Services business as the financial records of 213 contain trading transactions that should be excluded from its reported operating results. According to its unaudited internal financial statements, and subject to the preceding limitations, 213 had revenues of approximately \$27.0 million and net income of approximately \$1.3 million for the nine months ended September 30, 2010.
21. The contract controller engaged by the Receiver has attempted to isolate the results of 213 by identifying all revenue and expenses in the accounting records of 213 for the years in question that are not reasonably believed to relate to the spice manufacturing and food mixes distribution businesses, with a view to backing those items out of the accounting records of 213 for the years in question. However, there is no certainty that the resulting financial information completely or accurately reflects the stand-alone revenues and expenses of 213.

Loretta Intellectual Property

22. A review of trademark registrations by Borden Ladner Gervais LLP (“BLG”), independent counsel to the Receiver, indicates that:
 - (a) the registered Canadian trademarks for the name Loretta, as they pertain to certain food products, are owned by 213 and that 213 also has a pending Canadian application for the Loretta design mark (the “Loretta” name surrounded by an oval and topped with leaves). These marks are collectively referred to in this Report as the “**Canadian Intellectual Property**”; and
 - (b) the registered U.S. trademark for the name Loretta, as it pertains to certain food products, is owned by Gourmet Select Foods Corp., Inc., a corporation that is

based in Syosset, New York and that the Receiver understands is an affiliate of Synergy.

23. In addition to sales of various spices by the Spice Business under the Loretta name and design, the Loretta name and design are also displayed on the wrapping of the various fresh foods sold by Food Services, and the Receiver understands that Loretta Flour has also sold flour packaged with the Loretta name and design directly to customers. The Receiver is not aware of any licensing or other agreement between 213 and either of 211 or 787 for the use of the Loretta name and design.
24. As discussed in the First Report of the Interim Receiver, the Food Services business does not appear to derive significant value from the Loretta brand, as the majority of its sales are made to persons such as mobile caterers that pick up products directly and to other customers who require their own label. Accordingly, the assets listed for sale in the Food Services CIM do not include the Canadian Intellectual Property.

Marketing Plan

25. Based on the above understanding of the Loretta businesses gained during the receivership described above, drawing on the experience of professionals from Ernst & Young Orenda Corporate Finance Inc. ("EYO", an affiliate of EYI) who specialize in the food and beverage industry, and taking into account the preliminary response from the potential purchasers of the Food Services business described above, the Receiver has now developed a detailed realization plan for the Flour and Spice businesses.
26. The Receiver is of the view that:
 - (a) The Spice and Flour businesses could be sold separately because:
 - (i) each has its own sales resources and the two businesses operate more or less independently;
 - (ii) neither has its own accounting or administrative resources;

- (iii) the degree of automation and production complexity is substantially higher for Flour than for Spice, meaning that the Spice business might present less integration risk for a purchaser than would Flour; and
 - (iv) the sales volume available from Flour is limited by the production capabilities of the Flour Mill, and the Receiver understands that substantial capital investment would be required to increase available sales volume. By comparison, production volume in the Spice business is scalable with lower incremental levels of capital investment.
 - (b) However, some purchasers might be interested in acquiring both the Spice and Flour businesses. A number of the parties who have been approached by the Receiver in connection with the Food Services business have expressed interest in a combined purchase of this nature. A purchaser could potentially realize synergies by acquiring both the Spice and Flour businesses, most notably:
 - (i) the potential to increase margins by manufacturing the flour sold under the Loretta brand name instead of buying it from a third party; and
 - (ii) the potential ability to consolidate facilities, likely by moving the Spice operations (which entail substantially less production equipment) to the facility that contains the Flour Mill.
 - (c) The Receiver understands from discussion with BLG that a trademark can only be owned by one entity, although it may be licensed to another party. If the Flour and Spice businesses were sold together this presumably would not be an issue. However, if the businesses were sold separately then the Spice business, which sells numerous products under the Loretta name, appears to be the most dependent on the Canadian Intellectual Property and therefore greater value would be derived by selling the Canadian Intellectual Property with the Spice business.
27. Taking into account all of the above, it is the Receiver's recommendation that the Flour and Spice business should be marketed to (i) the parties approached in connection with

the Food Services business that have expressed an interest in the Flour or Spice businesses, (ii) entities identified by EYO that carry on businesses similar to Flour or Spice or, in the view of EYO, might be able to realize synergies by acquiring Flour or Spice, and (iii) to private equity funds and other financial investors that are known by EYO to have an interest in the food & beverage sector and would consider purchases of mid-market businesses.

28. The Receiver recommends that in order to effect a timely sale, the Flour and Spice businesses should be marketed for sale by tender (as with the Food Services business). To take into account the considerations noted above, the Receiver recommends that prospective purchasers be permitted to submit offers for:
- (a) The Spice business, including the Receiver's right, title and interest (if any) in the Canadian Intellectual Property;
 - (b) The Flour business; or
 - (c) both the Spice (including the Canadian Intellectual Property) and Flour businesses.
29. In Appendix "B", the Interim Receiver has set out a proposed timeline for such a sales process that would allow a sale to be closed by April 1, 2011. The "required terms of sale" noted in Appendix "B" would include standard insolvency sale terms (as is, where is, no representations, no warranties). The timeline set out in Appendix B is longer than the timeline approved by the Court for the marketing and sale of the Food Services business because of the larger number of parties to be approached and the fact that certain of those parties may wish to evaluate two businesses rather than one.

INVESTMENT IN NORTH DAKOTA HOLDINGS LTD.

30. The Receiver does not yet have sufficient information to evaluate the realizable value, if any, of Tarbrac's investment in North Dakota Holdings Ltd. and, accordingly, it is not yet in a position to recommend a realization plan for this asset.

RELIEF SOUGHT BY THE RECEIVER

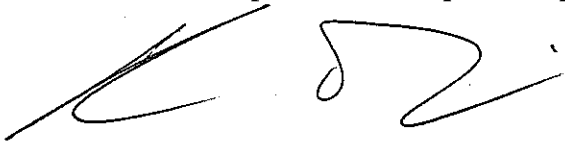
31. The Receiver respectfully requests that this Court grant an order:

- (a) authorizing the Receiver to commence the sale process for the Flour and Spice businesses, as set out above and in Appendix B to this Report, with such modifications as the Receiver, acting reasonably, considers appropriate in the circumstances; and
- (b) approving the activities of the Receiver as set out in this Report.

All of which is respectfully submitted this 10th day of January 2011.

ERNST & YOUNG INC.

Acting in its capacity as Receiver and Receiver and Manager of
2110458 Ontario Limited o/a Loretta Flour,
2131413 Ontario Limited o/a Loretta Foods,
787755 Ontario Limited o/a New Durham Trading,
and o/a NDT Food Service and o/a Skyway Wholesale
and Tarbrac Holdings Inc.
and not in its personal or corporate capacity.



Rahn Dodick, CA●CIRP
Vice-President

APPENDIX “A”

THE HONOURABLE MR.)
JUSTICE H.J. WILTON-SIDGOLD)

FRIDAY, THE 26th *TH*

DAY OF NOVEMBER, 2010

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

BETWEEN:

BANK OF MONTREAL

Applicant

and

2110458 ONTARIO LIMITED O/A LORETTA FLOUR,
2131413 ONTARIO LIMITED O/A LORETTA FOODS,
787755 ONTARIO LIMITED O/A NEW DURHAM TRADING, AND O/A NDT FOOD SERVICE
AND O/A SKYWAY WHOLESAL
AND TARBRAC HOLDINGS INC.

Respondents

ORDER

THIS MOTION made by the Applicant for an Order pursuant to subsection 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 Ernst & Young Inc. ("E&Y") as receiver and receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of 2110458 Ontario Limited o/a Loretta Flour ("211"), 2131413 Ontario Limited o/a Loretta Foods ("213"), 787755 Ontario Limited o/a New Durham Trading, NDT Food Service and Skyway Wholesale ("787") and Tarbrac Holdings Inc. ("Tarbrac", and, together with 211, 213 and 787, the "Debtors") was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the affidavit of Robert Kiefer, sworn November 10, 2010, and the Exhibits thereto, and the first report of E&Y, dated November 25, 2010 (the "First Report"), prepared in

its capacity as interim receiver of the Debtors (in such capacity, the "Interim Receiver"), and on hearing the submissions of counsel for Bank of Montreal, ~~counsel for Signature Bank, both secured creditors of the Debtors,~~ ^{#15} counsel for the Interim Receiver and proposed Receiver and counsel for the Debtors, no one else appearing although duly served as appears from the affidavit of service of Stella Kostopoulos sworn November 25, 2010, and on reading the consent of E&Y to act as the Receiver,

SERVICE

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

TITLE OF PROCEEDINGS

2. THIS COURT ORDERS that the title of the within proceedings is hereby amended to such that the Respondents shall be hereafter identified as "**2110458 ONTARIO LIMITED O/A LORETTA FLOUR, 2131413 ONTARIO LIMITED O/A LORETTA FOODS, 787755 ONTARIO LIMITED O/A NEW DURHAM TRADING, AND O/A NDT FOOD SERVICE AND O/A SKYWAY WHOLESALE AND TARBRAC HOLDINGS INC.**".

APPOINTMENT

3. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, E&Y is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, 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 in any way limiting the generality

of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

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

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to 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 \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; 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* shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (m) 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;
- (n) 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;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;

- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (s) to conduct examinations of any Person as the Receiver considers necessary or appropriate, including, without limitation, examinations of Guiseppe Gatti, Peter Nelipa, Taragh Bracken, Terry Mak, Michael Falcone or any other current or former director, officer, employee or independent contractor of the Debtors;
- (t) to undertake any investigations deemed necessary by the Receiver with respect to the location and/or disposition of assets reasonably believed to be, or to have been, property of the Debtors, including, without limitation, investigating the transactions entered into between one or more of the Debtors and North Dakota Holdings Ltd. ("NDHL"); and
- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons

acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. THIS COURT ORDERS that NDHL, its current and former directors, officers, employees and independent contractors shall provide such access to books records and documents, information, documents and assistance to the Receiver as the Receiver may request in connection with the dealings between NDHL and any of the Debtors and in connection with the business and affairs of NDHL as they relate to the business and affairs of the Debtors.

7. THIS COURT ORDERS that all Persons, including, without limitation, the current and former officers, directors and employees of any of the Debtors and NDHL shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, any transfer of Property outside of the ordinary course of business or obligation incurred by the Debtors outside of the ordinary course of business, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver

due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

8. 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.

9. THIS COURT ORDERS any and all Persons shall render any necessary assistance to the Receiver to locate, decode, access, and decrypt the Records and any and all information or electronic data to which the Receiver may not have ready and immediate access, including the provisions of all keys, information codes, passwords, pass phrases, or any other such information or knowledge necessary to achieve access thereto, and for the purpose of accessing electronic mail or other data operated or maintained by, or accessible to, the Debtors which may contain any of the Records, including, but not limited to, any electronic mail or other data stored on or pertaining to any email addresses used by the Debtors or their directors, officers and employees.

10. THIS COURT ORDERS that no Person shall destroy or alter any books, records, documents, information, material or Records related to or touching upon the Property, the Debtors, NDHL, or the business, affairs or dealings of the Debtors or NDHL.

11. THIS COURT ORDERS that, notwithstanding the generality of paragraphs 5 to 10 hereof, upon the Receiver's request:

- (a) NDHL shall provide copies of all Records in its possession relating to any transactions with one or more of the Debtors;
- (b) any financial institution which holds or has held accounts for one or more of the Debtors shall confirm the existence of such account(s) and shall provide copies of all statements relating to such account(s); and
- (c) Bell Sympatico, or any other provider of information technology services to the Debtors shall provide copies of any information related to the business of the Debtors requested by the Receiver.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

15. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

16. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the

date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

17. 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

18. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in 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

19. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

20. 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

21. 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

22. 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, 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.

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

24. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates

and charges of the Receiver 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

25. 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 \$500,000 (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.

26. 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.

27. 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.

28. 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.

SALE PROCESS FOR THE "FOOD SERVICE AND CATERING DIVISION"

29. THIS COURT ORDERS that the sale process developed by E&Y, in its capacity as the Interim Receiver, as outlined in the First Report, shall be carried out by the Receiver substantially in accordance with the timeline annexed as **Schedule "B"** hereto, with such changes as the Receiver deems appropriate in its sole discretion, acting reasonably.

GENERAL

30. 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.

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

32. 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.

33. 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.

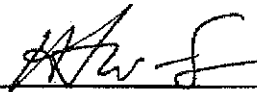
34. THIS COURT ORDERS that the Applicant shall have its costs of this Motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver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

35. 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.

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

NOV 26 2010

PER / PAR:



SCHEDULE "A"

RECEIVER'S CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Ernst & Young Inc., the receiver (the "Receiver") of the assets, undertakings and properties 2110458 Ontario Limited o/a Loretta Flour ("211"), 2131413 Ontario Limited o/a Loretta Foods ("213"), 787755 Ontario Limited o/a New Durham Trading and NDT Food Service ("787") and Tarbrac Holdings Inc. ("Tarbrac", and, together with 211, 213 and 787, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, 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 November, 2010 (the "Order") made in an action having Court file number ____-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

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

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

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

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the _____ day of _____, 20__.

**ERNST & YOUNG INC., solely in its capacity
as Receiver of the Property, and not in its
personal capacity**

Per: _____

Name:

Title:

SCHEDULE "B"

TIMELINE FOR MARKETING AND SALE OF FRESH FOODS AND CATERING DIVISION

November 29 to December 11, 2010	• Prepare brief Confidential Information Memorandum (CIM), including required terms of sale and timeline for submission of purchase offers, and brief Investment Overview e-mail for distribution to prospective purchasers. • Compile list of industry participants that are most likely to be prospective purchasers. • Accumulate available due diligence information and populate electronic data room.
December 14, 2010 to January 7, 2011	• Contact prospective purchasers by phone and e-mail. • Circulate Confidentiality Agreements to interested parties. • Parties executing a Confidentiality Agreement will receive the CIM and access to the electronic data room. • Provide facility tours, as requested.
January 14, 2011	• Deadline for submission of purchaser offers, including required terms of sale.
January 15, 2011 to January 28, 2011	• Analysis and negotiation of purchaser offers. • Selection of successful purchaser. • Application to Court for approval of sale agreement and vesting order. • Closing of sale transaction.

BANK OF MONTREAL

- and -

**2110458 ONTARIO LIMITED O/A LORETTA FLOUR,
2131413 ONTARIO LIMITED O/A LORETTA FOODS,
787755 ONTARIO LIMITED O/A NEW DURHAM TRADING, AND
O/A NDT FOOD SERVICE AND O/A SKYWAY WHOLESAL
AND TARBRAC HOLDINGS INC.**
Respondents

Applicant

Court File No. CV-10-8991-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at Toronto**

RECEIVERSHIP ORDER

AIRD & BERLIS LLP
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Lawyers for the Applicant

APPENDIX “B”

APPENDIX B

PROPOSED TIMELINE FOR MARKETING AND SALE OF FLOUR AND SPICE DIVISIONS

January 3 to January 18, 2011

- Prepare brief Confidential Information Memorandum (CIM), including required terms of sale and timeline for submission of purchase offers, and brief Investment Overview e-mail for distribution to prospective purchasers.
- Compile list of industry participants and financial investors that are most likely to be prospective purchasers.
- Accumulate available due diligence information.

January 19 to February 25, 2011

- Contact prospective purchasers by phone and Investment Overview e-mail.
- Circulate Confidentiality Agreements to interested parties.
- Parties executing a Confidentiality Agreement will receive the CIM and access to additional documentation.
- Provide facility tours as requested.

March 4, 2011

- Deadline for submission of purchaser offers including required terms of sale.

March 5 to April 1, 2011

- Analysis and negotiation of purchaser offers.
- Selection of successful purchaser.
- Application to Court for approval of sale agreement and vesting order.
- Closing of sale transaction.

IN THE MATTER OF THE RECEIVERSHIP OF 2110458 ONTARIO LIMITED o/a LORETTA FLOUR, 2131413 ONTARIO LIMITED o/a LORETTA FOODS, 787755 ONTARIO LIMITED o/a NEW DURHAM TRADING, and o/a NDT FOOD SERVICE and o/a SKYWAY WHOLESALE and TARBRAC HOLDINGS INC.

IN THE MATTER OF SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended, and SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43, as amended

ONTARIO

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

PROCEEDINGS COMMENCED AT TORONTO

**FIRST REPORT TO THE COURT OF
ERNST & YOUNG INC., AS RECEIVER**

BORDEN LADNER GERVAIS LLP

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Lawyers for Ernst & Young Inc., in its capacity as
Receiver of 2110458 Ontario Limited o/a Loretta Flour,
2131413 Ontario Limited o/a Loretta Foods, 787755
Ontario Limited o/a New Durham Trading, and o/a NDT
Food Service and o/a Skyway Wholesale and Tarbrac
Holdings Inc.

TAB 3

ONTARIO SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

**IN THE MATTER OF THE INTERIM RECEIVERSHIP OF 2110458 ONTARIO
LIMITED, 2131413 ONTARIO LIMITED,
787755 ONTARIO LIMITED AND TARBRAC HOLDINGS INC.**

**IN THE MATTER OF SECTION 47(1) OF THE *BANKRUPTCY & INSOLVENCY ACT*,
R.S.C. 1985, C. B-3, as amended, and SECTION 101 OF THE *COURTS OF JUSTICE ACT*
R.S.O. 1990, C.C. 43, as amended**

**FIRST REPORT TO THE COURT
OF ERNST & YOUNG INC. AS INTERIM RECEIVER**

November 25, 2010

BORDEN LADNER GERVAIS LLP

Barristers and Solicitors
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Lawyers for Ernst & Young Inc., in its capacity as
Court-appointed Interim Receiver.

ONTARIO SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

IN THE MATTER OF THE INTERIM RECEIVERSHIP OF 2110458 ONTARIO
LIMITED, 2131413 ONTARIO LIMITED,
787755 ONTARIO LIMITED AND TARBRAC HOLDINGS INC.

IN THE MATTER OF SECTION 47(1) OF THE *BANKRUPTCY & INSOLVENCY ACT*,
R.S.C. 1985, C. B-3, as amended, and SECTION 101 OF THE *COURTS OF JUSTICE ACT*
R.S.O. 1990, C.C. 43, as amended

FIRST REPORT TO THE COURT
OF ERNST & YOUNG INC. AS INTERIM RECEIVER

November 25, 2010

BACKGROUND

1. On November 10, 2010, Bank of Montreal ("BMO") made an application to the Court for an order, and the Court made an order (the "Appointment Order"), appointing Ernst & Young Inc. ("EYI") as an interim receiver (the "Interim Receiver") pursuant to Section 47(1) of the *Bankruptcy & Insolvency Act* and pursuant to Section 101 of the *Courts of Justice Act* of 2110458 Ontario Limited ("211"), 2131413 Ontario Limited ("213"), 787755 Ontario Limited ("787") and Tarbrac Holdings Inc. ("Tarbrac") (collectively the "Debtors"). A copy of the issued Appointment Order is attached as Appendix "A" to this Report.
2. The Interim Receiver was not authorized or directed to take possession or control of the Property (as defined below) of the Debtors. The Interim Receiver was authorized and directed to protect and preserve the assets of the Debtors, to review the affairs of the Debtors and to report to the Court in connection therewith. One of the initial tasks of the Interim Receiver is to report and make recommendations in respect of the sale of the businesses and assets of the Debtors. The Appointment Order ordered that the Interim Receiver be empowered and authorized, inter alia:
 - (a) to receive, preserve and protect the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including any proceeds thereof (collectively, the "Property"), and including, but not limited to, the changing of locks and security codes, the relocating of Property

to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (b) to monitor the receipts and disbursements of the Debtors, including, without limitation, the right to access all information related to the Debtors' accounts or finance activities at any financial institution, with any trade creditor or with any other party;
- (c) 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 Interim Receiver's powers and duties;
- (d) to develop a plan in furtherance of marketing any or all of the Property, including obtaining appraisals of all or any part of the Property as the Interim Receiver in its discretion may deem appropriate, advertising and soliciting offers in respect of the Property or any part or parts thereof, undertaking discussions and negotiations with parties known to have expressed an interest in any or all of the Property, and developing such terms and conditions of sale as the Interim Receiver in its discretion may deem appropriate;
- (e) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (f) to conduct any examinations under oath deemed necessary, including, without limitation, examinations of Guiseppe Gatti, Peter Nelipa or any other director, officer or employee of the Debtors; and
- (g) to undertake any investigations deemed necessary by the Interim Receiver with respect to the location and/or disposition of assets reasonably believed to be, or to have been, property of the Debtors.

PURPOSE

3. This is the first report of the Interim Receiver. The purpose of this Report is to:

- Provide the Court with an overview of the Debtors and their operations;
- Update the Court on the actions taken to date by the Interim Receiver in preserving and protecting the Property and in monitoring the receipts and disbursements of the Debtors;
- Update the Court on the actions taken to date by the Interim Receiver in investigating the location and/or disposition of assets reasonably believed to be, or to have been, property of the Debtors, and the issues identified through those procedures;

- Update the Court on the Interim Receiver's development of a plan in furtherance of marketing any or all of the Property, including the Interim Receiver's recommendation to the Court in that regard;
- Provide the Court with the Interim Receiver's recommendation in respect of the motion that the Interim Receiver understands BMO intends to make for the appointment of EYI as full Court-appointed receiver of the Debtors; and
- Seek the Court's approval of the Interim Receiver's activities to date, including activities undertaken by EYI in contemplation of its potential appointment as Interim Receiver.

Terms of Reference

4. In developing this Report, the Interim Receiver has relied upon unaudited financial information, the Debtors' records, and discussions with the management of the Debtors. The Interim Receiver has not audited, reviewed or otherwise verified such information. The Interim Receiver notes in particular that due to the significant difficulties experienced to date in obtaining information from the accounting system of the Debtors, as described in greater detail below, the Interim Receiver has been unable to corroborate many aspects of the information obtained through discussions with the management of the Debtors.
5. Monetary amounts in this Report are in Canadian dollars unless otherwise indicated. Where applicable in this Report, United States dollar amounts have been converted into Canadian dollars at par.

OVERVIEW OF THE DEBTORS AND THEIR OPERATIONS

Corporate and Senior Management Structure

6. The Interim Receiver's summary understanding of the ownership and senior management structure of the Debtors and their affiliates (collectively, the "**Loretta Group**") is set out below, and is also summarized for the convenience of the Court in Appendix "**B**" to this Report:
 - (a) Mr. Giuseppe Gatti is the individual responsible for overall direction of the Loretta Group. In the affidavit of Mr. Robert Kiefer filed with BMO's motion materials seeking the Appointment Order (the "**Kiefer Affidavit**"), Mr. Kiefer indicated his understanding that Mr. Gatti is the Vice-President of each of 211 and 213 and the Chief Operating Officer of 787. Mr. Gatti is listed on the Loretta Foods web site (www.lorettafoods.com) as the President and CEO of Loretta Foods;
 - (b) The common shares of Tarbrac are owned by Ms. Taragh Bracken, whom the Interim Receiver understands is the spouse of Mr. Gatti. Ms. Bracken is also the sole director of Tarbrac. The Interim Receiver understands that 100% of the

Class A preference shares of Tarbrac are held by GRS International Ltd., which also acts as broker for 787 on certain of the trading transactions described below;

- (c) 211, 213 and North Dakota Holdings Ltd. ("NDHL") are wholly-owned subsidiaries of Tarbrac. EYI was not appointed Interim Receiver of NDHL but, under the Appointment Order, is authorized to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have (whether in relation to NDHL or any other entity); and
- (d) the sole shareholder of 787 is Mr. Peter Nelipa. As described below, Mr. Nelipa is also the Director of Operations for the flour milling operations carried out by 211.

Operations

- 7. 211 operates primarily from leased premises located in Whitby, Ontario (the "**Whitby Premises**"). 211 operates under the registered trade name "**Loretta Flour**" and is also known as the "Loretta Flour Division" of the Loretta Group's operations. 211 produces various types of hard wheat flour from wheat sourced from Ontario and Western Canada. The majority of 211's sales are to retail, foodservice, and industrial customers located throughout Eastern Canada and the United States. The Loretta Flour Division employs 10 people and, according to its unaudited internal financial statements, had revenues of approximately \$41.2 million for the nine months ended September 30, 2010. Day-to-day operations are directed by Mr. Nelipa, as Director of Operations, from the Whitby Premises.
- 8. 213 operates from leased premises located on Sismet Drive, Mississauga, Ontario (the "**Sismet Premises**"). 213 operates under the registered trade name "**Loretta Foods**" and is also known as the "Loretta Spice Division" of the Loretta Group's operation. 213 is responsible for sourcing and redistributing spices and food mixes globally, as well as blending and repackaging spices for use in various packs and sizes to satisfy home use and institutional customers. The Loretta Spice Division employs approximately 34 people and, according to its unaudited internal financial statements, had revenues of approximately \$27.0 million for the nine months ended September 30, 2010. Day-to-day operations are directed by a Director of Operations located at the Sismet Premises.
- 9. 213 formerly operated from leased premises located at 6820 Davand Drive, Mississauga, Ontario. The Interim Receiver understands that the premises in question (the "**Vacant Davand Premises**") are still leased by the Debtors but are currently vacant.
- 10. 787 operates from leased premises located on 6815 Davand Drive in Mississauga, Ontario, (the "**Davand Premises**"). The Davand Premises also serve as the head office location for the Loretta Group.
- 11. 787 is also known as the "Food Service and Catering Division" of the Loretta Group's operations. Operating under the registered trade name "**NDT Food Service**", 787 is responsible for the daily production of food items, including sandwiches, grab and go meals, soups, fresh salads, desserts and pastries for sale by or in mobile caterers, vending

machines, contract caterers and convenience stores. Orders are taken and filled in person or online and are delivered to the customer or picked-up at the large, on site, cash and carry outlet store located at the Davand Premises. The Foodservice and Catering Division directly services large and small corporate, chain store and institutional client accounts with food products and catering services. The Food Service and Catering Division currently employs approximately 52 people. It is the Interim Receiver's understanding from discussions with management of the Debtors that the Food Service and Catering Division has weekly sales of approximately \$90,000. However, because the financial statements of 787 reflect the combined operating results of the Food Service and Catering Division and the trading activities described below, the Interim Receiver has not been able to separately identify the aggregate revenues of the Food Service and Catering Division for the nine months ended September 30, 2010. Day-to-day operations of the Food Service and Catering Division are directed by a Director of Operations and a Production Manager, both of whom are located at the Davand Premises.

12. In the recent past, 787 has also engaged in trading bulk sugar, flour, spices and other items, operating under the registered trade names "**New Durham Trading**" and/or "**Skyway Wholesale**." The Interim Receiver understands that this trading was conducted (i) to reduce or hedge the prices paid by 211 and 213 for their commodity inputs, (ii) as a broker, to earn commission income by sourcing low-cost commodities for major customers of 787 and other Loretta Group entities, and (iii) as a principal, for profit for its own account. These activities were directed by Mr. Gatti. It is the Interim Receiver's understanding that 787 is no longer conducting these activities, although certain of the related accounts receivable remain on its balance sheet.
13. It is the Interim Receiver's understanding that Tarbac is a holding company that holds investments in 211, 213 and NDHL and does not carry on any active business.
14. In the Kiefer Affidavit, Mr. Kiefer indicated his understanding that (i) NDHL leases facilities at 1115 West Elm Avenue, Monroe, Michigan (the "**Monroe Warehouse**") and Colgate, North Dakota for storage of inventory of the Debtors that is distributed by the Debtors to customers in the United States, and (ii) the estimated value of the Debtors' inventory located at the Monroe Warehouse as at August 31, 2010 was \$7,800,000. Based on the activities undertaken to date by the Interim Receiver in respect of NDHL, as discussed below, neither the current business activities of NDHL nor the disposition of the inventory formerly located at the Monroe Warehouse is well understood.

Secured Creditors

15. The primary secured creditors of the Debtors are BMO and Signature Bank, a New York-based financial institution ("**Signature**").
16. The Interim Receiver understands that BMO is owed approximately US\$17.6 million and C\$50,000 excluding costs and excluding interest accruing from November 4, 2010 (the "**BMO Debt**") and has security upon all of the assets of the Debtors (including a pledge of the shares of 787) as security for those obligations. These obligations arise under two agreements. The first is a term sheet pursuant to which BMO provided four credit

facilities to 787, 213 and 211. The Interim Receiver understands that Tarbac has guaranteed the obligations of 787, 213 and 211 to BMO under the term sheet. The second is a discounting facility agreement between 787 and BMO pursuant to which BMO factored certain of 787's accounts receivable. The Interim Receiver understands that 213, 211 and Tarbac have each guaranteed the obligations of 787 to BMO under that discounting facility agreement. The Interim Receiver understands that each of 213, 211, 787 and Tarbac have granted security interests and charges upon all of their property in favour of BMO as security for their obligations to BMO. In addition, the Interim Receiver understands that Mr. Nelipa has pledged the shares in 787 to BMO as security for the obligations arising under his guarantee of the obligations of the Debtors to BMO. The Interim Receiver has not undertaken a review of the security for the BMO Debt and accordingly does not express any opinion thereon.

17. The Interim Receiver understands that 787, 211 and 213 are indebted to Signature in the amount of approximately US\$12.3 million (the "**Signature Debt**") and that those Debtors have granted security to Signature for that obligation. The Interim Receiver also understands that Mr. Gatti and Tarbac have guaranteed those obligations to Signature. On November 22, 2010, Signature demanded payment. A copy of Signature's demand for payment is attached as Appendix "C". The Interim Receiver has not undertaken a review of the security for the Signature Debt and accordingly does not express any opinion thereon.

ACTIVITIES OF THE INTERIM RECEIVER, INCLUDING PRE-APPOINTMENT ACTIVITIES OF EYI

Activities Prior to Appointment

18. Prior to the issuance of the Appointment Order, EYI undertook numerous activities to plan for the execution of its responsibilities if appointed as Interim Receiver. These activities included:
 - (a) Numerous discussions with BMO and its 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 BMO by the Debtors. The Interim Receiver understands that the Signature loan agreement required the Debtors to provide Signature with the same information it provided to BMO;
 - (c) Discussion with a representative of GDR Advisory Group Inc. ("**GDR**"), a firm specializing in the performance of collateral examinations on behalf of lenders. GDR had previously been retained by BMO to perform test counts of the inventory that served as part of the collateral for the BMO Debt, and EYI's purpose in speaking to GDR was to obtain a better understanding of the premises where GDR had performed test counts and of the quantities and organization of inventory at those premises. GDR indicated to EYI that it had most recently test-counted inventory at the Monroe Warehouse and the Sismet Premises on August

31 and September 1, 2010, respectively, in conjunction with the Debtors' August 31 inventory counts;

- (d) Meeting briefly with Mr. Gatti and Mr. Michael Falcone (listed on the Debtors' web site at www.lorettafoods.com as the CFO of the Debtors) to obtain an understanding of the assets and operations of the Debtors, and particularly the physical location of Property of the Debtors; and
- (e) Visiting the Davand Premises and the Sismet Premises briefly with Mr. Gatti to obtain an understanding of the steps that would be required to preserve and protect the Property at those facilities. It was not feasible to visit the Whitby Premises before the hearing of the motion for appointment of the Interim Receiver.

Limitations on Availability of Financial Information to the Interim Receiver

- 19. The individual who formerly acted as controller (the "**Former Controller**") for the Loretta Group resigned on November 3, 2010. The Interim Receiver has been advised by Mr. Gatti, Mr. Falcone and the individuals remaining in the Loretta Group accounting department that the Former Controller performed virtually all of the critical accounting functions. The Interim Receiver has been advised that there is nobody remaining at the Loretta Group who could answer most of the Interim Receiver's questions relating to the financial performance of the Loretta Group.
- 20. The Interim Receiver was further advised by Mr. Gatti and Mr. Falcone that nobody else at the Loretta Group had complete access to the accounting system and certain other electronic data. The Interim Receiver has been advised that the Debtors have been unable to access the information in order to answer the Interim Receiver's questions.
- 21. The Interim Receiver obtained access to the accounting system and other electronic data on November 18, 2010. The Interim Receiver engaged a qualified individual, with whom EYI has had experience when she was the accounting controller in a previous receivership, on a contract basis to assist the Interim Receiver in obtaining information from the Loretta Group's accounting systems.
- 22. The absence of a qualified individual with detailed knowledge of the Loretta Group's accounting records and past transactions has significantly limited the ability of the Interim Receiver to exercise its powers efficiently, on a timely basis, and (in some cases) completely. For example:
 - (a) As described below, it was necessary for the Interim Receiver to develop a weekly cash flow forecast rather than reviewing one prepared by the Debtors;
 - (b) The Debtors have been unable to cost the Spice inventory count conducted by the Interim Receiver, thereby requiring the Interim Receiver to attempt to do so using alternative methods; and

- (c) The Interim Receiver has been unable to obtain consistent explanations for certain of the discrepancies described below.

Activities of the Interim Receiver to Preserve and Protect the Property

23. Since the issuance of the Appointment Order, the Interim Receiver has taken the following steps to preserve and protect the Property and to monitor receipts and disbursements of the Debtors:

- (a) Changed the locks and, where applicable, alarm system security codes at the Davand Premises, the Sismet Premises and the Whitby Premises. After visually confirming that they do not appear to be occupied, the Interim Receiver did not change the locks at the Vacant Davand Premises;
- (b) Provided keys to each of the premises to the applicable Director of Operations and to selected other employees (the Interim Receiver believes this is consistent with its mandate of protecting and preserving the Property but not taking possession or control of the Property which remains with the Debtors, subject to the terms of the Appointment Order);
- (c) Notified the Debtors' insurers of the appointment of the Interim Receiver, and requested that the Interim Receiver be added as a loss payee and additional named insured;
- (d) Conducted or arranged for inventory counts where it was cost-beneficial to do so. None of the Debtors maintains a perpetual inventory system.
 - (i) The Interim Receiver retained GDR, which had previously conducted test counts of the Debtors' inventory for BMO, to conduct a full count of physical inventory quantities at the Sismet Premises. As discussed in greater detail below, the Interim Receiver has not yet been able to obtain the aggregate book value corresponding to the physical count because it has not been able to obtain the unit costs that should be used to cost the inventory;
 - (ii) The Interim Receiver was able to conduct a full inventory count at the Whitby Premises when it changed the locks because the only inventory on site was a small quantity of finished goods;
 - (iii) The Interim Receiver did not conduct an inventory count at the Davand Premises because the inventory of the Food Services and Catering Division consists of a large number of perishable, low-dollar-value items, estimated by its Director of Operations to have an aggregate value of less than \$300,000, and for which a full count would be disruptive to the seven-day operation of the Food Services and Catering Division;

- (e) Arranged for the ability to electronically view the bank accounts recently established by the Debtors at the Canadian Imperial Bank of Commerce ("CIBC");
- (f) Worked with management of the Debtors to put in place procedures whereby support for all proposed payments by the Debtors is reviewed by the Interim Receiver, and the proposed payments are discussed by the Interim Receiver with the Debtors' management, as necessary, to provide the Interim Receiver with a reasonable level of comfort that the proposed payments relate to ordinary-course operation of the Debtors and do not constitute inappropriate dissipation of the Property;
- (g) Using information obtained from the applicable Directors of Operations and with a review of historical bank and disbursement records, developed a weekly cash flow forecast against which the Interim Receiver could benchmark actual receipts and disbursements and estimate funding requirements during a sale process. Due to the recent resignation of the Former Controller as discussed in greater detail above, the Debtors did not have a current cash flow forecast or the ability to update any cash flow forecasts prepared previously;
- (h) Worked with the Directors of Operations to establish procedures whereby (i) all supporting documentation for proposed shipments of inventory to customers is reviewed, and copies retained by the Interim Receiver prior to shipment of the goods in question, and (ii) copies of supporting documentation for all inventory receipts are provided to the Interim Receiver;
- (i) Obtained copies of the accounts receivable subledgers for 211, 213 and 787 and discussed with the accounts receivable accountant and with Mr. Gatti the balances indicated in those subledgers; and
- (j) Obtained copies of the fixed and leased asset listings of the Debtors that are available from the records of the Debtors, and attempted to confirm the existence and location of the major items on those lists. Other than a number of leased vehicles used by the Debtors' management and certain employees, the majority of the Debtors' fixed assets consist of the flour milling equipment at the Whitby Premises.

Activities of the Interim Receiver to Investigate the Location/Disposition of Assets

24. Subject to the significant information limitations described above, the information obtained to date by the Interim Receiver indicates that the working capital assets of the Debtors as at the date of the Appointment Order may be substantially less than those reported on the most recent unaudited internal financial statements and borrowing base certificates provided to BMO by the Debtors. Attached as Appendix "D" is a copy of the most recent consolidated unaudited internal financial statements of the Loretta Group (211, 213 and 787), which are as at September 30, 2010 (the "**September Statements**") together with the most recent unaudited internal financial statements for each of 213, 211,

787 and Tarbrac. All of those financial statements are as at September 30, 2010 except for Tarbrac which are as at December 31, 2009.

25. During the course of the Interim Receiver's review of the books, records and affairs of the Loretta Group, the Debtors have not been able to adequately account for approximately \$19 million of the inventory referred to in the September Statements. In addition, Mr. Gatti has advised that the amount of the accounts receivable set out in the September Statements is no longer accurate. The amount of the difference is very substantial. The Interim Receiver is continuing its review of the inventory and accounts receivable and is not currently in a position to comment on these differences including their rationale, accuracy, or the explanations provided for them
26. It is unclear whether sufficient value can be realized from the Property to fully repay the BMO Debt and the Signature Debt.
27. The Interim Receiver also notes that the amount of the Signature Debt reflected on the September Statements is approximately \$2.4 million less than the amount indicated in Signature's demand letter at Appendix "C".
28. To date, neither Mr. Gatti nor Mr. Falcone has been able to provide explanations in respect of inventory and accounts receivable that are consistent with the available financial information or supported by other documentation.
29. In view of the above, the Interim Receiver has also taken a number of preliminary steps to investigate the location and/or disposition of assets it believes may be, or have been, property of the Debtors. These steps have included:
 - (a) Retaining Honigman, Miller, Schwartz and Cohn LLP as U.S. counsel to the Interim Receiver to advise on matters relating to Property potentially located in the United States, particularly inventory potentially located in the Monroe Warehouse. Although GDR indicated to EYI prior to EYI's appointment that GDR had test-counted inventory of the Debtors (which, at the time, had a book value of approximately \$7.8 million) at the Monroe Warehouse on August 31, 2010, in Mr. Gatti's discussions with EYI prior to its appointment he indicated that there was currently no inventory of Loretta in the Monroe Warehouse, and to date he has been unable to provide a comprehensive or consistent explanation for the disposition of the inventory;
 - (b) Sending two representatives of the Interim Receiver to the Monroe Warehouse to inquire as to whether there was currently, or had recently been, any property of the Debtors on the premises. A representative of the organization occupying the warehouse indicated to the representatives of the Interim Receiver that his organization was not affiliated with the Loretta Group, although he was aware of the Loretta Group's financial situation, and refused to allow the representatives access to the premises or to answer any further questions; and
 - (c) Conducted an initial preliminary review of certain hard copy and electronic records of the Debtors that may be relevant to further investigation. The records

reviewed included, inter alia, wire transfer records from the Debtors' bank accounts indicating that between October 20, 2010 and October 26, 2010, 787 and 213 made wire transfers to bank accounts of NDHL in the aggregate amount of \$80,200 plus U.S. \$743,100.

30. Before taking further steps with respect to these matters, the Interim Receiver proposes to consult with BMO and Signature.

DEVELOPMENT OF MARKETING PLAN

31. Based on the understanding of the Debtors' businesses gained during the procedures described above, and drawing on the experience of professionals from Ernst & Young Orenda Corporate Finance Inc. ("EYO", an affiliate of EYI) who specialize in the food and beverage industry, the Interim Receiver has developed a general approach to the marketing of the Debtors' assets for sale. For reasons that will be described in greater detail below, to date, the Interim Receiver has only prepared a detailed realization plan for the Food Service and Catering Division.
32. The Interim Receiver is of the view that the Food Service and Catering Division:
- (a) Is separately managed, with its own Director of Operations, Production Manager and Purchasing Manager;
 - (b) Has minimal overlap or synergy with the Flour Division or Spice Division other than the use of the Loretta brand name label, which can also be found on name brand foods prepared by the other two divisions;
 - (c) Does not appear to derive significant value from the Loretta brand, as the majority of its sales are made to persons such as mobile caterers that pick up products directly and therefore have a level of familiarity with the Food Service and Catering Division employees;
 - (d) Has limited geographic scope and scalability due to the inherent limitations of transporting fresh foods, and is, therefore, likely to be of interest to a smaller group of potential purchasers, namely organizations that are either carrying on similar businesses or involved locally in areas of the food industry that would allow them to realize sales or purchasing synergies; and
 - (e) Has no apparent connection with the significant decline in accounts receivable or inventory noted in Appendix "C" or described above, because, as a largely cash-based business selling fresh foods, it has minimal accounts receivable or inventory.
33. Accordingly, the Interim Receiver is of the view that the Food Services and Catering Division (including the accounts receivable arising from the operation of that business) should be marketed forthwith for a potential sale of the property by a Court-appointed receiver, and that such an approach is unlikely to impair realizations from the remaining Property. In Appendix "E", the Interim Receiver has set out a proposed timeline for such

a sales process that would allow a sale to be closed by January 28, 2011. The "required terms of sale" noted in Appendix "E" would include standard insolvency sale terms (as is, where is, no representations, no warranties) as well as a requirement that the Interim Receiver (or, if the relief sought by BMO as described below is granted, the Court-appointed receiver) be allowed to continue to use the head office portion of the Davand Premises for a number of months to allow efficient administration of the receivership proceedings.

34. The Interim Receiver is still in the process of analyzing the factors driving value, and identifying the likely potential purchasers, at the Loretta Flour Division and Loretta Spice Division, and, accordingly, the Interim Receiver has not yet developed a detailed realization plan. The Interim Receiver expects that it (or, if the relief sought as described below is granted, the Court-appointed receiver) will apply to the Court in the near term for approval of a detailed realization plan for these assets.
35. The Interim Receiver does not currently have sufficient information to evaluate the realizable value, if any, of Tarbrac's investment in NDHL and, accordingly, it is not yet in a position to recommend a realization plan for this asset.

MOTION FOR APPOINTMENT OF RECEIVER

36. Based on the Interim Receiver's discussions with representatives of BMO and its advisors, the Interim Receiver understands that BMO intends to make a motion for an Order (the "**Receivership Order**"), inter alia,
 - (a) appointing EYI as Receiver (the "**Receiver**") of the Debtors;
 - (b) authorizing the Receiver to carry on the business of the Debtors;
 - (c) authorizing the Receiver to execute the sale process for the Food Services and Catering Division, as set out above and in Appendix E to this Report;
 - (d) authorizing the Receiver to develop and (with the further approval of the Court) execute detailed realization plans for the remaining Property;
 - (e) authorizing the Receiver to conduct inquiries and obtain copies of the books and records of NDHL as they relate to transactions with one or more members of the Loretta Group;
 - (f) authorizing the Receiver to exercise any shareholder, partnership, joint venture or other rights that the Debtors may have;
 - (g) authorizing the Receiver to make enquiries with Canadian financial institutions to determine if NDHL or members of the Loretta Group hold bank accounts with such financial institutions, and, if so, requiring such financial institutions to disclose the bank statements regarding such accounts;

- (h) authorizing the Receiver to contact Bell Sympatico (or any other provider of information technology services to the Loretta Group) and requiring that such service provider disclose information related to the Loretta Group;
 - (i) amending the style of cause for this proceeding to include the registered trade names of the Debtors;
 - (j) in addition to granting the standard administrative charge for fees and disbursements of the Receiver and its counsel, granting the Interim Receiver a first-ranking priority charge (the "**IR Admin Charge**") for all amounts that would be subject to the Interim Receiver's Charge pursuant to paragraph 14 of the Appointment Order, subject to the continued requirement that the Interim Receiver and its counsel pass their accounts pursuant to paragraph 15 of the Appointment Order;
 - (k) approving the activities of the Interim Receiver as set out in this Report.
37. The Interim Receiver recommends (with respect to the relief described in subparagraph 36(k) above, the Interim Receiver respectfully requests) that the Court grant the relief requested. The Interim Receiver is of the view that the appointment of the Receiver will allow the acceleration of realizations from the Property and a more efficient investigation of the significant discrepancies noted previously.
38. The Interim Receiver wishes to bring to the attention of the Court the requested amendments to the style of cause in this proceeding. In these proceedings to date, the Interim Receiver has observed that the vast majority of the parties involved know the Debtors only by their registered trade names. The Interim Receiver is of the view that amending the style of cause to include the trade names will increase the efficiency of the receivership proceedings by making it clear to affected parties that the Debtors and the names they recognize are one and the same.

All of which is respectfully submitted this 25th day of November 2010.

ERNST & YOUNG INC.

Acting in its capacity as Interim Receiver of
2110458 Ontario Limited, 2131413 Ontario Limited,
787755 Ontario Limited and Tarbrac Holdings Inc.
not in its personal or corporate capacity.

Per:

A handwritten signature in black ink, appearing to read "Mike Dean", written over a horizontal line.

Mike P. Dean, CA●CIRP
Senior Vice-President

BANK OF MONTREAL

**2110458 ONTARIO LIMITED, 2131413 ONTARIO LIMITED,
787755 ONTARIO LIMITED AND TARBRAC HOLDINGS INC.**

- and -

Applicant

Respondents

Court File No. CV-10-8991-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)
Proceedings commenced at Toronto**

INTERIM RECEIVERSHIP ORDER

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Lawyers for the Applicant

TAB 4

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

THE HONOURABLE) **DAY, THE DAY**
)
JUSTICE) **OF JANUARY, 2011**

**IN THE MATTER OF THE RECEIVERSHIP OF 2110458 ONTARIO
LIMITED o/a LORETTA FLOUR, 2131413 ONTARIO LIMITED o/a
LORETTA FOODS, 787755 ONTARIO LIMITED o/a NEW DURHAM
TRADING, and o/a NDT FOOD SERVICE and o/a SKYWAY
WHOLESALE and TARBRAC HOLDINGS INC.**

**IN THE MATTER OF SECTION 243 OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended, and SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C. 43, as amended**

ORDER

THIS MOTION, made by Ernst & Young Inc. ("EYI"), in its capacity as receiver and receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of 2110458 Ontario Limited o/a Loretta Flour, 2131413 Ontario Limited o/a Loretta Foods, 787755 Ontario Limited o/a New Durham Trading, and o/a NDT Food Service and o/a Skyway Wholesale and Tarbrac Holdings Inc. (collectively, the "**Debtors**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, filed, and the First Report of the Receiver dated 10 January 2011 (the "**First Report**"), filed, and on hearing the submissions of counsel for the

Receiver and such other counsel as were present, and on reading the affidavit of service of •, sworn on • January 2011, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record be and is hereby abridged such that the motion is returnable today and that further service thereof is hereby dispensed with.

APPROVAL OF ACTIVITIES

2. **THIS COURT ORDERS** that the activities of the Receiver, as described in the First Report, be and are hereby approved.
3. **THIS COURT ORDERS** that the activities of EYL, in its capacity as interim receiver of the Debtors, as described in the First Report of the Interim Receiver dated 25 November 2010, be and are hereby approved

APPROVAL OF SALE PROCESS

4. **THIS COURT ORDERS** that the marketing and sales process, as described in the First Report and as set forth in the "Timeline for Marketing and Sale of Flour and Spice Divisions" attached hereto as Schedule "A" (the "**Sales Process**"), be and is hereby approved and the Receiver is hereby authorized to implement the Sales Process.
 5. **THIS COURT ORDERS** that nothing in this Order shall require the Receiver to accept any offer received as a result of the Sales Process.
-

SCHEDULE A

TIMELINE FOR MARKETING AND SALE OF FLOUR AND SPICE DIVISIONS

January 3 to January 18, 2011

- Prepare brief Confidential Information Memorandum (CIM), including required terms of sale and timeline for submission of purchase offers, and brief Investment Overview e-mail for distribution to prospective purchasers.
- Compile list of industry participants and financial investors that are most likely to be prospective purchasers.
- Accumulate available due diligence information.

January 19 to February 25, 2011

- Contact prospective purchasers by phone and Investment Overview e-mail.
- Circulate Confidentiality Agreements to interested parties.
- Parties executing a Confidentiality Agreement will receive the CIM and access to additional documentation.
- Provide facility tours as requested.

March 4, 2011

- Deadline for submission of purchaser offers including required terms of sale.

March 5 to April 1, 2011

- Analysis and negotiation of purchaser offers.
- Selection of successful purchaser.
- Application to Court for approval of sale agreement and vesting order.
- Closing of sale transaction.

IN THE MATTER OF THE RECEIVERSHIP OF 2110458 ONTARIO LIMITED o/a LORETTA FLOUR, 2131413 ONTARIO LIMITED o/a LORETTA FOODS, 787755 ONTARIO LIMITED o/a NEW DURHAM TRADING, and o/a NDT FOOD SERVICE and o/a SKYWAY WHOLESALE and TARBRAC HOLDINGS INC.

IN THE MATTER OF SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended, and SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43, as amended

ONTARIO

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

PROCEEDINGS COMMENCED AT TORONTO

ORDER

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2131413 Ontario Limited o/a Loretta Foods, 787755
Ontario Limited o/a New Durham Trading, and o/a NDT
Food Service and o/a Skyway Wholesale and Tarbrac
Holdings Inc.

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IN THE MATTER OF THE RECEIVERSHIP OF 2110458 ONTARIO LIMITED o/a LORETTA FLOUR, 2131413 ONTARIO LIMITED o/a LORETTA FOODS, 787755 ONTARIO LIMITED o/a NEW DURHAM TRADING, and o/a NDT FOOD SERVICE and o/a SKYWAY WHOLESale and TARBRAC HOLDINGS INC.

IN THE MATTER OF SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended, and SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43, as amended

ONTARIO

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

PROCEEDINGS COMMENCED AT TORONTO

MOTION RECORD
(returnable 17 January 2011)

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Food Service and o/a Skyway Wholesale and Tarbrac
Holdings Inc.

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