

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**COMERICA BANK**

**Applicant**

**- and -**

**MTB INDUSTRIES INC.**

**Respondent**

**MOTION RECORD  
(Motion returnable June 19, 2009)**

June 16, 2009

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## **TAB 1**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**COMERICA BANK**

**Applicant**

**- and -**

**MTB INDUSTRIES INC.**

**Respondent**

**NOTICE OF MOTION  
(Returnable June 19, 2009)**

**ALVAREZ & MARSAL CANADA ULC (“A&M”)** in its capacity as court appointed receiver (the **“Receiver”**) of the assets, properties and undertakings of MTB Industries Inc. (the **“Debtor”**) will make a motion to a Judge presiding over the Commercial List on Friday, the 19<sup>th</sup> day of June, 2009 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order in the form attached as Schedule “A” hereto, *inter alia*, (the **“Draft Order”**):
  - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record herein, and dispensing with further service thereof;
  - (b) approving the first report to Court of the Receiver dated June 16, 2009 (the **“First Report”**) and the activities of the Receiver as set out therein;

- (c) authorizing the Receiver to file an assignment into bankruptcy in the name of and on behalf of the Debtor;
  - (d) approving the auction services agreement between 1416088 Ontario Limited c.o.b Danbury Industrial (“**Danbury**”) and the Receiver dated June 15, 2009 (the “**Auction Agreement**”) in the form attached to the First Report, in respect of the sale of the Assets (as defined in the Auction Agreement) and vesting the Assets in the respective Purchasers free and clear of any and all claims, encumbrances and security interests;
  - (e) sealing and treating as confidential the unredacted version of the Auction Agreement and the offer comparison attached as confidential appendices to the First Report pending completion of the auction or further Court order, and
2. such further and other relief as counsel may advise and to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

- 1. On May 4, 2009, upon application of Comerica Bank, Justice Campbell granted an order appointing A&M as Receiver (the “**Appointment Order**”);
- 2. Prior to the granting of the Appointment Order, the operations of the Debtor ceased. The Debtor had manufactured metal stampings, primarily for tier-one suppliers to the North American automotive sector;
- 3. A&M has conducted a marketing process, as described in the First Report in respect of the liquidation of the assets of the Debtor. As a result the Receiver has negotiated the Auction Agreement with Danbury and seeks approval of such agreement;
- 4. The facts as set out in the First Report;

5. Section 101 of the CJA; rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*; and
6. 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; and
2. such further and other material as counsel may advise and this Honourable Court may permit.

June 16, 2009

**FRASER MILNER CASGRAIN LLP**

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in its capacity as court appointed receiver of MTB  
Industries Inc.*

**TO: SERVICE LIST**

IN THE MATTER OF THE RECEIVERSHIP OF MTB INDUSTRIES INC.

AND IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*, AS AMENDED.

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF MOTION**  
**(Returnable June 19, 2009)**

**FRASER MILNER CASGRAIN LLP**

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**TAB A**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. ) FRIDAY, THE 19<sup>TH</sup> DAY OF  
 )  
JUSTICE < ) JUNE, 2009

COMERICA BANK

Applicant

- and -

MTB INDUSTRIES INC.

Respondent

**ORDER**

THIS MOTION, made by Alvarez & Marsal Canada ULC (“**A&M**”) in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of MTB Industries Inc. (the “**Debtor**”) for an order in the form attached as schedule “A” to the notice of motion of the Receiver dated June 16, 2009 (the “**Notice of Motion**”) *inter alia*: (i) abridging and validating the timing and method of service of this Motion Record so that this Motion is properly returnable; (ii) approving the first report to Court of the Receiver dated June 16, 2009 (the “**First Report**”) and the activities of the Receiver as set out therein; (iii) authorizing the Receiver to file an assignment into bankruptcy in the name of and on behalf of the Debtor; and (v) approving the auction services agreement between 1416088 Ontario Limited c.o.b Danbury Industrial (“**Danbury**”) and the Receiver dated June 15, 2009 (the “**Auction Agreement**”) in the

form attached to the First Report, in respect of the Assets (as defined in the Auction Agreement) and vesting the Assets in the respective Purchasers free and clear of any and all claims, encumbrances and security interests; and (v) sealing and treating as confidential the unredacted version of the Auction Agreement and the offer comparison attached as confidential appendices to the First Report (the "Confidential Appendices") pending completion of the auction or further Court order, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the First Report and on hearing the submissions of counsel for the Receiver and Comerica Bank, no one else appearing and making submissions although duly served as appears from the affidavit of service of ◇ sworn ◇, 2009;

#### **Service**

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

#### **Approval of Receiver's Activities**

2. **THIS COURT ORDERS** that the First Report and the activities of the Receiver as set out therein, be and are hereby approved.

#### **Authority of Receiver**

3. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to file an assignment into bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, in the name of and on behalf of the Debtor and that nothing in these proceedings restricts any entity affiliated with A&M from acting as trustee in bankruptcy of the Debtor.

#### **Approval of Auction Agreement**

4. **THIS COURT ORDERS** that the Auction Agreement and the transactions contemplated therein (the "**Transactions**") be and are hereby approved.



5. **THIS COURT ORDERS** that the execution of the Auction Agreement by the Receiver is hereby authorized and approved and the Receiver is hereby authorized to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions or otherwise in accordance with the Auction Agreement.
6. **THIS COURT ORDERS** that upon delivery of a bill of sale from Danbury to a purchaser of Assets (a "Purchaser"), a Purchaser takes such Assets set out on such bill of sales, free and clear of and from any and all claims, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, conditional sales contracts or title retention agreements, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, judgments, orders, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise and whether created by or pursuant to the orders made in these proceedings or other proceedings (collectively, the "**Claims**") including, without limiting the generality of the foregoing all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to such Assets are hereby expunged and discharged as against such Assets.
7. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Assets shall stand in the place and stead of the Assets, and that from and after the delivery of the applicable bill of sale all Claims and Encumbrances shall attach to the net proceeds from the sale of the Assets with the same priority as they had with respect to the Assets immediately prior to the sale, as if the Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
8. **THIS COURT ORDERS** that, notwithstanding:

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

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

9. **THIS COURT ORDERS AND DECLARES** that any Transactions contemplated by Auction Agreement is exempt from the application of the *Bulk Sales Act* (Ontario).

**Sealing**

10. **THIS COURT ORDERS** that the Confidential Appendices to the First Report shall be and are hereby sealed and treated as confidential pending completion of the auction or further order of this Court.
-

**Court File No: 09-CL-8163**  
**MTB INDUSTRIES INC.**  
**Respondent**

**-and -**

**COMERICA BANK**  
**Applicant**

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**TORONTO**

**ORDER**  
**(June 19, 2009)**

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## **TAB 2**

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

**BETWEEN :**

**COMERICA BANK**

**Applicant**

**- and -**

**MTB INDUSTRIES INC.**

**Respondent**

**FIRST REPORT OF THE RECEIVER  
ALVAREZ & MARSAL CANADA ULC.**

**INTRODUCTION**

1. This first report is filed by Alvarez & Marsal Canada ULC ("A&M") in its capacity as Court-appointed receiver (the "**Receiver**") of MTB Industries Inc. ("**MTB**" or the "**Company**"). Pursuant to an order of the Ontario Superior Court of Justice (the "**Court**") dated May 4, 2009 (the "**Appointment Order**"), A&M was appointed Receiver of MTB's assets, property, and undertaking (the "**Property**") but was specifically not empowered to carry on the business or operations of MTB. A copy of the Appointment Order is attached as **Appendix A**.

**PURPOSE OF THIS REPORT**

2. This first report is filed by the Receiver:
  - (a) to provide an update to the Court on the Receiver's activities since granting of the Appointment Order; and
  - (b) in support of the Receiver's motion seeking, an order from this Honourable Court, *inter alia*:

- (i) approving the activities of the Receiver from May 4, 2009 to the date of this Report;
- (ii) approving the Auction Services Agreement dated June 15, 2009 between the Receiver and 1416088 Ontario Limited (c.o.b Danbury Industrial) ("**Danbury**") relating to the sale of MTB's plant machinery and equipment (the "**Auction Agreement**");
- (iii) temporarily sealing an unredacted version of the Auction Agreement and a comparison of the terms of the Auction Agreement as against other auction proposals received by the Receiver (collectively, the "**Confidential Appendices**") until the completion of the auction or further order of the Court; and
- (iv) providing the Receiver with the power to file an assignment into bankruptcy on behalf of the Company in accordance with the *Bankruptcy and Insolvency Act*.

## **BACKGROUND**

- 3. MTB was incorporated and carried on business pursuant to the laws of the Province of Ontario. The Company was a supplier to most Automotive OEM and Tier I companies. Prior to ceasing its operations on or about May 1, 2009, the Company employed approximately 90 non-unionized employees.
- 4. MTB borrowed certain funds from Comerica Bank ("**Comerica**") under a number of loan facilities to the Company including a Revolving Demand Loan, Reducing Term Loan, Revolving Reducing Term Loan, and Reducing Term Loan (for Capex Financing) (all as defined by the affidavit of Laura L. Benson sworn May 1, 2009 (The "**Comerica Affidavit**"). The Comerica Affidavit was filed by Comerica in support of the Appointment Order, and a copy of the body of which, without Exhibits, is attached as **Appendix B** hereto.

5. According to the Comerica Affidavit as of April 30, 2009, the total amount of the indebtedness owed by the Company to Comerica pursuant to the Loan Facilities was \$7,785,380.24, broken down as follows:

	<u>Loan Facility</u>	<u>Principal Amount</u>	<u>Interest</u>
(a)	Revolving Demand Loan	\$ 890,002.37	\$ 1,963.14
(b)	Reducing Term Loan	\$ 1,330,000.00	\$ 5,748.15
(c)	Revolving Reducing Term Loan	\$ 3,535,714.29	\$ 15,281.06
(d)	Reducing Term Loan	\$ 2,000,000.00	\$ 6,671.23

6. The Company, in support of the loans being made by Comerica, granted to Comerica a general security agreement dated July 8, 2005 (the “**Comerica Security Agreement**”).
7. Fraser Milner Casgrain LLP, counsel to the Receiver, has provided an opinion to the Receiver that, subject to customary assumptions and qualifications, the Comerica Security Agreement is valid and would be enforceable against a trustee in bankruptcy of MTB. A copy of the security opinion, which also addresses certain potential priority claims including prior registrations in favour of Bank of Nova Scotia as well as potential purchase money security interests is attached hereto as **Appendix C**.
8. In addition to the Comerica Security Agreement, Export Development Canada (“**EDC**”) executed guarantees each dated July 3, 2008 whereby EDC guaranteed payment to Comerica with respect to a Revolving Demand Loan and Reducing Term Loan plus interest and costs with respect to the said Loan Facilities.
9. In or about December 2008, the Company began to default on its payment obligations to Comerica with respect to the Loan Facilities. By letters dated March 17, 2009, Comerica made demands in full against the Company and delivered Notice of Intention to Enforce Security pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3 as amended.
10. In the period that followed, the Company and its financial advisors attempted to restructure the Company’s affairs informally with Comerica and others. However, on

Thursday, April 30, 2009 the Company's major customer, Multimatic Inc., advised MTB that they were removing their work from the Company and would no longer support the Company. Accordingly, the Company ceased operations and terminated all of its employees on May 1, 2009. Without the business of Multimatic Inc., the Company was unable to sustain its operations.

11. Also, around that time, certain other customers of the Company advised the Company that they did not intend to continue business relations with the Company and would be pulling their tooling. As a result, the Company was no longer able carry on and operate the business and as such ceased all operations and terminated its employees effective May 1, 2009. As the Company was in default under its Loan Facilities, Comerica, applied for the appointment of the Receiver and the Appointment Order was granted on May 4, 2009.

#### **THE RECEIVER'S ACTIVITIES TO DATE**

12. On May 4, 2009, the Receiver took control of the Property and the premises at 20 Barnes Court, Concord, Ontario (the "**Debtor's Premises**"). Pursuant to the terms of the Appointment Order, the Receiver was not empowered, and did not, operate the business of the Company.
13. The Receiver's activities since its appointment included, *inter alia*, the following:
  - (a) securing the Property, including arranging for security patrols and a safety inspection of the Debtor's Premises;
  - (b) engaging a limited number of the Company's former employees on a term and task basis to assist in the safeguarding and asset realization;
  - (c) attending at the Debtor's Premises on a regular basis to, *inter alia*, address various matters related to the closure of MTB's business and cessation of its operations;
  - (d) freezing the Company's existing bank accounts and opening new bank accounts under the name of the Receiver;



- (e) engaging in regular discussions with stakeholders including, Comerica Bank, equipment lessors, the landlord of the Debtor's Premises and various others regarding the status of the receivership proceedings;
- (f) performing the Receiver's duties and obligations under the *Wage Earner Protection Program Act* ("WEPPA"), including notifying employees of the existence of the WEPPA, gathering and assembling required information, filing the required information electronically with Service Canada, and addressing employee enquiries related to the WEPPA;
- (g) arranging for the preparation of and distributing records of employment to former employees and addressing general employee enquiries;
- (h) contacting various utility and service providers to ensure continuation of essential services during the receivership period and to cancel those services that were not essential;
- (i) arranging for proposals on the auction or sale of MTB's fixed assets from credible auctioneers and other parties considered to be potential purchasers of the assets;
- (j) notifying the Company's creditors and customers to advise of the receivership and to provide general information in respect of the proceedings;
- (k) liaising with former MTB officers and the Company's insurance broker to determine the extent of coverage available to the Receiver under MTB's existing insurance policies and to arrange continued coverage for the Property;
- (l) collecting accounts receivable and following up on outstanding balances;
- (m) coordinating the return of customer owned tooling;
- (n) arranging for the removal of oils and coolants from the Company's premises, as considered necessary to ensure no environmental issues result during the Receivership;

- (o) arranging for the Company's accounting records to be updated through the date of the Receiver's appointment in order to obtain a complete record of the Company's accounts receivable, inventory and accounts payable;
- (p) arranging for the review of various equipment lease agreements to assess validity and priority;
- (q) arranging for the return of the leased equipment to De Lage Landen Financial Services Canada Inc., Nissan Canada Inc. and Ford Credit Canada Leasing Company;
- (r) reviewing the status of priority claims and deemed trusts; and
- (s) responding to creditor and other enquiries.

#### **PENSION PLAN**

- 14. The Receiver learned that MTB maintained a defined contribution pension plan for certain of its employees. According to the books and records of the Company, the Company was approximately 3 months in arrears in the required pension plan contributions (owing approximately \$39,000) prior to the date of the Appointment Order.
- 15. The Receiver wrote letters to both the Financial Services Commission of Ontario and the Canada Revenue Agency advising of the Appointment Order and of the fact that the Receiver is unwilling to assume any role or responsibility regarding the administration of MTB's pension plan. Further the Receiver advised that MTB no longer had the resources to administer the pension plan.

#### **DISCUSSIONS WITH LANDLORD**

- 16. GPM Real Property 10 Ltd. and GPM (1) GP Inc. (collectively the "**Landlord**") has been in discussions with the Receiver. The Receiver has paid occupation rent to the Landlord since the date of the Appointment Order at the rates as set out in the applicable leases.

17. The Landlord has raised concerns regarding the sale of certain items from the Debtor's Premises which it claims are fixtures and the Receiver continues to discuss such with the Landlord.
18. Further the Landlord has provided the Receiver with a copy of a memorandum of agreement between the Landlord, Comerica Bank and MTB dated August 3, 2005 (the "**Pit Restoration Agreement**"). In accordance with the Pit Restoration Agreement, MTB paid approximately \$120,000 (the "**Escrow Funds**") to be held by an escrow agent (which the Receiver now understands is the Landlord's counsel, McCarthy Tetrault).
19. Although, the Receiver continues to consider the terms of the Pit Restoration Agreement, it appears to provide that the Escrow Funds are to be used to restore certain 'pits' in which equipment is located on the Debtor's Premises, should Comerica take possession of the Debtor's Premises and sell the Assets. A copy of the Pit Restoration Agreement is attached as **Appendix D**.

#### **PROPOSED SALE AUCTION PROPOSALS**

20. The Receiver solicited liquidation proposals and cash offers for MTB's capital assets from the following parties:
  - Maynard's Industries Ltd. ("**Maynards**")
  - Danbury
  - Great American Group
  - Platinum Asset Management
  - Hilco Asset Sales Canada ("**Hilco**")
  - Corporate Assets Inc.
21. Overall, it was apparent that the market for the MTB assets, given the ongoing restructuring and consolidation of the North American auto industry, is severely depressed. The above parties expressed a high degree of uncertainty as to the marketability of these and similar assets in the current environment and a general unwillingness to assume the risk of purchasing the assets outright or providing an auction net minimum guarantee.

22. Potential auctioneers were provided approximately two weeks to submit auction proposals. Proposals were only received from Maynards, Danbury and Hilco, the remainder choosing not to submit a bid. A comparison of the bids received is attached as **Appendix E**. The Receiver is asking that such comparison be sealed as the Receiver is of the view such information is commercially sensitive and could effect realizations should it become public.
23. The Auction Agreement, received from Danbury represented the highest certain recovery for the MTB estate based on a combination of auction period, net minimum guarantee and potential upside sharing. A redacted version of the Auction Agreement is attached as **Appendix F**. The only portions redacted are the references to the net minimum guarantee, potential upside sharing as well as the estimated values of the Assets as agreed to between Danbury and the Receiver for purposes of adjusting the net minimum guarantee amount. The Receiver has been advised by Comerica that it supports the approval of the Auction Agreement.
24. A unredacted version of the Auction Agreement is attached as **Appendix G**. The Receiver will ask the Court to seal the unredacted version of the Auction Agreement pending completion of the auction or further order of the Court as the Receiver believes that the redacted information is commercially sensitive and should it become public realizations will likely be effected.

#### **POWER TO BANKRUPT THE COMPANY**

25. As the Company has previously ceased operations, the Receiver is of the view that a bankruptcy will bring necessary certainty to the process in respect of potential priority amounts and creditor claims.
26. As such, the Receiver is requesting that it be granted the power to assign MTB into bankruptcy in accordance with the *Bankruptcy and Insolvency Act*.

#### **RECEIVER'S RECEIPTS AND DISBURSEMENTS**

27. A summary of the Receiver's receipts and disbursements from the Date of Appointment to June 15, 2009 is attached hereto as **Appendix H**. The receipts and disbursements do

not include any disbursements related to pre-filing wages or vacation pay as such amounts were paid current as at the Receiver's appointment.

#### **RECOMMENDATIONS**

28. Based on the foregoing, the Receiver respectfully recommends that the Court grant an the relief set out in paragraph 2(b) above.

All of which is respectfully submitted this 16th day of June, 2009.

**Alvarez & Marsal Canada ULC, solely in its capacity as  
Court-Appointed Receiver and of  
MTB Industries Inc.**

A handwritten signature in black ink, appearing to read "John R. Walker", followed by a period.

Per: John R. Walker

**TAB A**

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

THE HONOURABLE Mr )

MONDAY, THE 4<sup>TH</sup> DAY

JUSTICE CL Campbell )

OF MAY, 2009

**COMERICA BANK**

**Applicant**

- and -

**MTB INDUSTRIES INC.**

**Respondent**

**ORDER**

THIS MOTION, made by the Applicant for an Order pursuant to section 243(2) 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 ALVAREZ & MARSAL CANADA ULC as interim receiver and receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of MTB INDUSTRIES INC. (the "Debtor") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Laura L. Benson sworn May 1, 2009 and the Exhibits thereto and on hearing the submissions of counsel for the <sup>Applicant</sup> Plaintiff and <sup>Respondent</sup> Defendant and on reading the consent of Alvarez & Marsal Canada ULC 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 so that this motion is properly returnable today and hereby dispenses with further service thereof.

## APPOINTMENT

2. THIS COURT ORDERS that pursuant to section <sup>243(2) BCC</sup> ~~47(1)~~ of the BIA and section 101 of the CJA, Alvarez & Marsal Canada ULC is hereby appointed Receiver, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property").

## RECEIVER'S POWERS

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

- (a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to 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 powers and duties conferred by this Order provided the Receiver shall not manage, operate and carry on the business of the Debtor;



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

- (i) without the approval of this Court in respect of any transaction not exceeding \$100,000.00, provided that the aggregate consideration for all such transactions does not exceed \$500,000.00; 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.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers,

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

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

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

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

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

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

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

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

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

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

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any

registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

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

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

#### **CONTINUATION OF SERVICES**

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

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

12. 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**

13. THIS COURT ORDERS AND DECLARES that all employees of the Debtor are hereby terminated. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

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

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. 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**

16. 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. 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**

17. THIS COURT ORDERS that any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "Receiver's Charge").

18. THIS COURT ORDERS 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.

19. 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**

20. 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 \$100,000.00 (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.

21. 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.

22. 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.

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

#### **GENERAL**

24. 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.



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

26. 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.

27. 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.

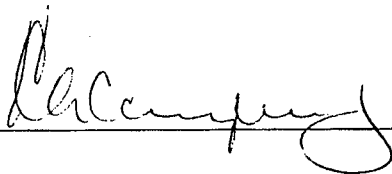
28. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver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

29. 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.:

MAY 04 2009

PER / PAR: T✓



A handwritten signature, likely of the Receiver, is written over a horizontal line.

## **SCHEDULE "A"**

### **RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that Alvarez & Marsal Canada ULC the interim receiver and receiver and manager (the "Receiver") of all of the assets, undertakings and properties of MTB Industries Inc. appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the 4<sup>th</sup> day of May, 2009 (the "Order") made in an action having Court file number \_\_\_\_\_, 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 (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, and 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 defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

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

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Alvarez & Marsal Canada ULC, solely in its  
capacity  
as Receiver of the Property (as defined in the  
Order), and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

COMERICA BANK - AND - MTB INDUSTRIES INC.

9  
Court File No. 08-CL-8163

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
Proceedings Commenced at Toronto

ORDER

Miller, Canfield, Paddock and Stone, LLP  
Barristers & Solicitors  
443 Ouellette Avenue  
Suite 300, P.O. Box 1390  
Windsor, Ontario N9A 6R4

John D. Leslie  
Tel: (519) 977-1551  
Fax: (519) 977-1565  
Email: [leslie@millercanfield.com](mailto:leslie@millercanfield.com)

Lawyers for Comerica Bank

**TAB B**

Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

COMERICA BANK

Applicant

- and -

MTB INDUSTRIES INC.

Respondent

**AFFIDAVIT OF LAURA L. BENSON**

I, LAURA L. BENSON, of the City of Detroit, in the State of Michigan, United States of America,  
make oath and say as follows:

1. I am the Vice President of Special Assets Group of Comerica Bank, a secured creditor of the Respondent and as such, have knowledge of the matters herein after deposed to except where such information has been received from others, in which case I have stated the source of the information and believe it to be true.

**BACKGROUND**

2. The Defendant, MTB Industries Inc. (the "Company") is an Ontario corporation, incorporated and carrying on business pursuant to the laws of the Province of Ontario.

2. The Company is a supplier to most Automotive OEM and Tier I companies who borrowed certain funds from the Plaintiff, Comerica Bank ("Comerica") under different loan facilities which is described more particularly herein.

### **THE INDEBTEDNESS**

4. Specifically, in or about July 28, 2008, Comerica provided a number of loan facilities to the Company including a Revolving Demand Loan, Reducing Term Loan, Revolving Reducing Term Loan, and Reducing Term Loan (Capex Financing). Attached hereto and marked as "Exhibit A" to this my affidavit is a copy of the Loan Facilities.

5. The Company, in support of the loans being made by Comerica, granted to Comerica a General Security Agreement covering all of the Company's assets. Attached hereto and marked as "Exhibit B" to this my Affidavit is a copy of the General Security Agreement dated July 8, 2005.

6. The General Security Agreement was registered under the PPSA on June 28, 2005. Attached hereto and marked as "Exhibit C" to this my Affidavit is a certified copy of the PPSA search dated December 15, 2008 and a verbal PPSA search dated May 1, 2009.

7. In addition to the security granted by the Company, Export Development Canada (hereinafter referred to as the "Guarantor") executed Guarantees each dated July 3, 2008 whereby the Guarantor guaranteed payment on demand to Comerica with respect to a Revolving Demand Loan and Reducing Term Loan (Capex Financing) plus interest and costs with respect to the said Loan Facilities. Attached hereto and marked as "Exhibit D" to this my affidavit is copies of the Guarantee Agreements.

8. In or about December 2008, the Company began to default on its payment obligations to Comerica with respect to the Loan Facilities.

### **THE DEMANDS**

9. By letters dated March 17, 2009, Comerica made demands in full against the Company and delivered Notice of Intention to Enforce Security pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3 as amended. Also on this date, Comerica provided Acceleration Notice to the Guarantor in accordance with the Guarantees. Attached hereto and marked as "Exhibit E" to this my affidavit is a copy of the demands and Notices.

### **THE GENERAL SECURITY AGREEMENT**

10. The terms of the General Security Agreement provides for the Events of Default in paragraphs 4.1 as follows:

4.1 Upon the occurrence of any of the following events (each an "Event of Default"), the Debtor shall be in default under this Agreement:

- (a) Any failure to pay the Indebtedness or any other indebtedness when due, or such portion of it as may be due, by acceleration or otherwise; or
- (b) Any failure or neglect to comply with, or breach of or default under, any term of this Agreement, or any other agreement or commitment between Borrower, Debtor or any guarantor of any of the Indebtedness ("Guarantor") and Bank; or
- (c) Any warranty, representation, financial statement, or other information made, given or furnished to Bank by or on behalf of Borrower, Debtor or any Guarantor shall be, or shall prove to have been, false or materially misleading when made, given, or furnished; or
- (d) Any loss, theft, substantial damage or destruction to or of any Collateral, or the issuance or filing of any attachment, levy, garnishment or the commencement of any proceeding in connection with any Collateral or of any other judicial process of, upon or in respect of Borrower, Debtor and Guarantor, or any Collateral; or



- (e) Sale or other disposition by Borrower, Debtor or any Guarantor of any substantial portion of its assets or property or voluntary suspension of the transaction of business by Borrower, Debtor or Guarantor, or death, dissolution, termination of existence, merger, amalgamation, consolidation, insolvency, business failure, or assignment for the benefit of creditors of or by Borrower, Debtor or any Guarantor; or commencement of any proceedings under any applicable bankruptcy or insolvency laws or laws for the relief of debtors by or against Borrower, Debtor or any Guarantor; or the appointment of a Receiver (as defined below), trustee, court appointee, sequestrator or otherwise, for all or any part of the property of Borrower, Debtor or any Guarantor; or
- (f) Bank deems the margin of Collateral insufficient or itself insecure, in good faith believing that the prospect of payment of the Indebtedness or performance of this Agreement is impaired or shall fear deterioration, removal, or waste of Collateral; or
- (g) A default shall occur under any instrument, agreement or other document evidencing, securing or otherwise relating to any of the Indebtedness.

11. The terms of the General Security Agreement also provide for the appointment of a Receiver in subparagraphs 4.2(4) and (5) as follows:

4.2 Upon the occurrence of any Event of Default, Bank may at its discretion and without prior notice to Debtor declare any or all of the Indebtedness to be immediately due and payable, and shall have any may exercise any one or more of the following rights and remedies:

- (4) Appoint, remove and reappoint any person or persons, including an employee or agent of Bank to be a receiver ("Receiver") which term shall include a receiver and manager of, or agent for, all or any part of the Collateral. Any such Receiver shall, as far as concerns responsibility for his acts, be deemed to be the agent of Debtor and not of Bank, and Bank shall not in any way be responsible for any misconduct, negligence or nonfeasance of such Receiver, his employees or agents. Except as otherwise directed by Bank, all money received by such Receiver shall be received in trust for and paid to Bank. Such Receiver shall have all of the powers and rights of Bank described in this Section 4.2(4) or as otherwise provided under the PPSA or the *Bankruptcy and Insolvency Act* (Canada). Bank may either directly or through its agents or nominees, exercise any or all powers and rights of Bank or any Receiver or any nominee or agent of Bank, whether directly or for services rendered (including, without limitation, fees of outside counsel calculated on a solicitor and his own client basis, auditor's costs, other legal expenses and Receiver remuneration) in enforcing this Agreement and all such expenses together with any money owing as a result of any borrowing permitted hereby or pursuant to any applicable law shall be a charge on the proceeds of realization and shall be secured hereby; and/or

- (5) Personally or by its agents, attorneys, or appointment of a Receiver, enter upon any premises where Collateral may then be located, and take possession of all or any of it and/or render it unusable, and without being responsible for loss or damage to such Collateral, hold, operate, sell, lease, or dispose of all or any Collateral at one or more public or private sales, lease, or other disposition, at places and times and on terms and conditions as Bank may deem fit, without any previous demand or advertisement; and except as provided in this Agreement, all notice of sale, lease or other disposition, and advertisement, and other notice or demand, any right or equity of redemption, and any obligation of a prospective purchaser or lessee to inquire as to the power and authority of Bank to sell, lease, or otherwise dispose of the Collateral or as to the application by Bank of the proceeds of sale or otherwise, which would otherwise be required by, or available to Debtor under applicable law are expressly waived by Debtor to the fullest extent permitted.

12. The Company has failed to comply with the above noted terms of the General Security Agreement referred to in paragraph 10 herein constituting an Event of Default. Specifically, the Company has failed to pay the Indebtedness when due, or such portion of it as may be due, by acceleration or otherwise. Despite repeated demands, the Company has refused or neglected to cure such defaults.

13. At all material times, Comerica has been continuously working with the Company in the hopes of working towards a favourable resolution for both Comerica and the Company. However, the Company is no longer able to carry on business and as of the date of this affidavit, the Company has ceased its operations.

14. As of the dates indicated below, the following indebtedness excluding interest was owing to Comerica by the Company:

<u>Loan Facility</u>	<u>Principal Amount</u> (as of May 1/09)	<u>Interest</u> (as of April 30/09)
(a) Revolving Demand Loan	\$ 890,002.37	\$ 1,963.14
(b) Reducing Term Loan	\$ 1,330,000.00	\$ 5,748.15

(c)	Revolving Reducing Term Loan	\$ 3,535,714.29	\$ 15,281.06
(d)	Reducing Term Loan (Capex Financing)	\$ 2,000,000.00	\$ 6,671.23

15. As of May 1, 2009, interest currently accrues at Comerica's prime rate plus 0.75 % for the Revolving Demand Loan, at Comerica's prime rate plus 2.50% for the Reducing Term Loan, at Comerica's prime rate plus 2.50% for the Revolving Reducing Term Loan, and Comerica's prime rate plus 1.50% for the Reducing Term Loan (Capex Financing).

16. As of April 30, 2009 the total amount of the indebtedness owed by the Company to Comerica pursuant to the Loan Facilities is \$ 7,785,380.24.

17. In order to protect the Plaintiff and to preserve the security under the Loan Facilities, the Plaintiff seeks an Order that a Receiver of all of the assets, collateral and undertakings of the Company be made by the Court in the form of the Order as attached to this Motion. This Order is further necessitated as I have been advised by my legal counsel and I am of the opinion and verily believe, that on Thursday April 30, 2009 the Company's major customer, Multimatic Inc., has advised that they are removing their tooling from the Company and will no longer support the Company. Without the business of Multimatic Inc., the Company is unable to sustain its operations.

18. Furthermore, I have been advised that certain other customers of the Company have also advised the Company that they do not intend to continue business relations with the Company and will be pulling their tooling. I am advised that as a result, the Company can no longer carry on and operate the business and as such has ceased all operations.

19. I am advised by my solicitors that the Company has terminated its employees on the date of this Affidavit.


20. I am of the opinion and verily believe that it is just and convenient for a Receiver to be appointed for, *inter alia*, the reasons that the Company is in default under its Loan Facilities, triggering Comerica's right to appoint a Receiver under the General Security Agreement.

21. The Applicant proposes that Alvarez & Marsal Canada ULC of the City of Toronto be appointed as Receiver and Manager of the Company without security. Alvarez & Marsal Canada ULC specializes in an extensive selection of services including but not limited to audit and assurance, advisory, and tax, and has had extensive experience in receivership and related insolvency matters. Alvarez & Marsal Canada ULC has consented to their appointment as Receiver. Attached hereto and marked as "Exhibit F" is a copy of the Consent.

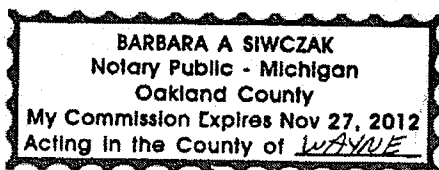
22. The Applicant undertakes to abide by any Order concerning damages that the Court may make if it ultimately appears that the granting of the Order has caused damages to the Company for which the Applicant ought to compensate the Company.

23. For the foregoing reasons, I swear this affidavit in support of a motion for an Order that Alvarez & Marsal Canada ULC be appointed as Receiver and Manager of the Company and for no other or improper purpose.

SWORN BEFORE ME at the  
City of Detroit, State of Michigan  
this 1<sup>st</sup> day of May, 2009.

  
A Notary Public for the State of Michigan

  
Laura L. Benson



**TAB C**



## FRASER MILNER CASGRAIN LLP

June 16, 2009

Alvarez & Marsal Canada ULC  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2000  
Toronto, ON M5J 2J1

Attention: John Walker

Dear Sirs:

**Re: MTB Industries Inc. – Ontario Security Review**

You have asked us in your capacity as court appointed receiver (the “**Receiver**”) of MTB Industries Inc. (“**MTB**”) pursuant to the Order of the Honourable Justice Campbell of the Ontario Superior Court of Justice dated May 4, 2009, to review certain loan and security documentation relating to the obligations of MTB to Comerica Bank Canada Branch (“**Comerica**”). The scope of our review is limited to the security and related documentation provided by Miller, Canfield, Paddock and Stone LLP on behalf of Comerica and those obtained from public records, as set out in Schedule “A” (collectively, the “**Documents**”).

### **Summary**

By way of overview, our conclusions are as follows, (defined terms used in this summary are defined below):

**Personal Property Security** – The Security Agreement held by Comerica appears to have been properly executed and delivered by MTB and grants security interest in the property charged thereunder in favour of Comerica. A *Personal Property Security Act* (Ontario) (the “**PPSA**”) financing statement was properly filed by Comerica against MTB in Ontario to perfect security interests in the applicable personal property charged by the Security Agreements. Our searches indicate that there are two registrations in favour of The Bank of Nova Scotia – Scotia Plaza and one registration in favour of The Bank of Nova Scotia/Scotia Plaza Branch which predate the Comerica registration (collectively, the “**BNS Registrations**”). The BNS Registrations are each against ‘equipment’ and ‘other’ assets of MTB. The Receiver has been provided with copies of a

lease between MTB and The Bank of Nova Scotia ("BNS") dated May 27, 2008 (unsigned by MTB) which relates to a 1000 ton Verson, bed size 108" x 72", 12" stroke, SPM 20-60, SN 25919, Dallas 50,000 lb uncoiler with coil car, SN 12958, Dallas Straightener, 125 @ 78" wide SN 1290 and Dallas Feeder, 125 @ 78" wide, SN 52963, which appears to be restating a fully executed lease dated September 23, 2002 in respect of the same equipment. The Receiver has not provided us with any documentation indicating that the security interest in this equipment of BNS is subordinate to that of Comerica.

The Receiver has also been provided with a copy of a fully executed lease between MTB and The Bank of Nova Scotia dated November 25, 2004 in respect of a New Versa Fork-lift 60/80 with Riggers powerboom attachment with stand. Section 3(i)(g) of the Minister's Order made under the PPSA (the "**Minister's Order**") provides that where a motor vehicle is included in the collateral a financing statement shall set out an indication that a motor vehicle is included. None of the BNS Registrations includes an indication that a motor vehicle is included.

Other than the BNS Registrations there are no PPSA registrations which are currently on the PPSA register filed against MTB which date to a time prior to the registration in favour of Comerica. There are, however, registrations made after the date of the Comerica registration in favour of each of GE Canada Equipment Financing G.P. ("**GE Canada**"), Ford Credit Canada Leasing ("**Ford**"), Nissan Canada Inc. ("**Nissan**") and De Lage Landen Financial Services Canada Inc. ("**De Lage**"), CNC Associates, Inc. ("**CNC**") and GE VFS Canada Limited Partnership ("**GE VFS**").

Our searches revealed two registrations in favour of GE Canada. One of these registrations was made on April 19, 2007 listing "inventory", "equipment", "accounts" and "other" as the collateral classifications. The second registration was made on June 5, 2008 (the "**June 5 Registration**") listing "equipment" as the collateral classification. The Receiver has also been provided with a lease agreement dated April 19, 2007 between GE Canada (signature missing) and MTB in respect of a New DEMO Sodick Wire EDM Machine and related items and accessories and a copy of an estoppel letter addressed to Torkin Manes Cohen and Arbus LLP, Comerica and MTB which represents in favour of those parties that the registration only relates to a "New Demo Sodick Wire EDM Machine" with accessories, attachments, accessions, spare parts, replacements, substitutions, exchanges, trade-ins, intangibles and proceeds relating thereto. GE Canada has claimed a PMSI over this equipment and we see no reason for the Receiver to dispute this claim.

The Receiver has also been provided with a copy of a lease agreement dated June 3, 2008 between MTB and GE Canada in respect of a lift truck. GE Canada has claimed a PMSI in the lift truck subject to that lease, however the relevant PPSA registration has been filed only against "equipment" without also checking the "motor vehicles included" collateral classification. In addition the Receiver has been provided with an executed Certificate of Completion and Acceptance as well as an Acknowledgement of Delivery Date each signed by MTB which identify April 28, 2008 as the delivery date of the subject lift truck with the result that the June 5 Registration was not done within the time period required for GE Canada to perfect a PMSI in the subject lift truck. GE Canada has indicated that it has evidence that the lift truck was in fact

delivered on a later date, however we understand that this evidence has not yet been provided to the Receiver.

Our searches also revealed one registration in favour of GE VFS Canada Limited Partnership. This registration was effected January 28, 2008 and is against the "equipment" and "other" assets of MTB. The Receiver has been provided with a copy of a lease with GE VFS dated December 7, 2007 in respect of a refurbished fork lift. GE VFS did not file its financing statement within the prescribed time to perfect a PMSI in this fork lift. GE VFS has advised the Receiver's counsel that it does not dispute that its registration was not filed in a timely fashion. In addition, although this lease is in respect of a fork lift, GE VFS did not check off the "motor vehicle included" box in the collateral classifications which raises the issue discussed above in respect of compliance with the Minister's Order.

Our searches also reveal registrations in favour of each of Ford, Nissan and De Lage. The Receiver was provided with copies of lease agreements with Ford in respect of a 2006 Ford Expedition, with Nissan in respect of a 2007 Nissan Murano and with De Lage in respect of a 2007 American Lincoln Sweeper. Each of these motor vehicles has been returned to the applicable creditor as (i) in the case of Ford and Nissan the lease agreements were determined to be true leases and registered under the PPSA and (ii) in the case of De Lage, the steps necessary to obtain a PMSI had been completed within the prescribed period.

With respect to the registration in favour of CNC in respect of certain equipment, this registration was not filed against MTB within the prescribed time period for CNC to claim a valid PMSI.

Finally there is a PPSA registration in favour of Return on Innovation Capital Ltd., as Agent. As discussed below the Receiver was provided with a copy of an intercreditor agreement in respect of this registration subordinating ROI's indebtedness to that of Comerica.

Our searches also revealed a registration in respect of a *Repair and Storage Liens Act* (Ontario) claim by Ready Machinery & Equipment (Canada) Inc. ("**Ready Machinery**") We understand that the Receiver has been advised that MTB disputes that any amount is owing to Ready Machinery. We understand that the Receiver has requested additional information and documentation in this regard but that this information and documentation has not yet been received.

Other than as set out above you have not made us aware of any evidence, indicating that these subsequent registrations may relate to a claim which could have priority to that of Comerica either by way of a valid PMSI, or upon some other basis such as a postponement, and you have further advised that, other than as indicated above, you are not aware that any such party has claimed priority based upon such security or the registration of such security.

Validity and Enforceability: – As more particularly discussed in the "Opinion" section below, and subject to the assumptions and qualifications contained in the "Assumptions and Qualifications" section below, in our opinion, the Security Agreement is valid and would be enforceable against a trustee in bankruptcy of MTB, and is a security interest which is registered first in point of time (except as noted above) with respect to the named collateral classes



(inventory, equipment, accounts, other and motor vehicle included), in accordance with the terms of the Security Agreement, subject to any other interests in the same collateral not discussed above of which, as noted above, the Receiver is not aware.

Our detailed comments regarding the security review conducted are set out below.

### **Loan Agreements**

On July 28, 2008, Comerica Bank issued a letter loan agreement to MTB which was accepted and agreed to by MTB providing for

- (a) a revolving demand loan facility in the maximum principal amount of \$1,000,000,
- (b) a reducing term loan facility in the maximum principal amount of \$2,052,000 as at the date of the letter loan agreement,
- (c) a revolving reducing term loan facility in the maximum amount of \$4,282,142.86 as at the date of the letter loan agreement, and
- (d) a reducing term loan facility in the maximum principal amount of the lesser of \$2,000,000 and 80% of the hard cost of a new stamping press.

The Loan Agreement provides that each loan advance or other extension of credit made by Comerica to MTB is to be evidenced by a promissory note or other agreement or evidence of indebtedness acceptable to Comerica. Four promissory notes evidencing the indebtedness have been provided in the original principal amounts of \$1,000,000; \$2,000,000; \$2,052,000 and \$4, 282,142.88.

### **Security Agreement**

A security agreement was delivered by MTB to Comerica dated July 8, 2005 (the "Security Agreement") pursuant to which MTB granted Comerica a security interest in all of its personal, present and after-acquired property and undertaking as a continuing security interest and lien to secure payment of all existing and future indebtedness of MTB to Comerica.

### **Intercreditor Agreement**

We have been provided by Miller, Canfield, Paddock and Stone, LLP with a copy of an intercreditor agreement entered into between Return on Innovation Advisors Ltd. ("ROI Advisors") as agent for Return on Innovation Fund Inc. ("ROI Fund") and ROI Sceptre Monthly Income Fund ("ROI Sceptre"), MTB and Comerica dated October 17, 2007 whereby ROI agrees, among other things to subordinate its indebtedness to and in favour of Comerica together with a letter notifying MTB, Comerica, Torkin Manes Cohen Arbus LLP, GPM Real Property (10) Ltd. and GPM (10) GP Inc. of an agency assignment, participation and security sharing agreement resulting in Return on Innovation Capital Ltd. acting as agent for ROI Fund, ROI Sceptre, ROI High Yield Private Placement Fund and ROI Global Pension Fund.

## **SEARCH RESULTS**

### **Corporate, Personal Property and Security Searches**

Corporate and security searches were conducted against MTB. A summary of the results of searches conducted against MTB are attached hereto as Schedule "B".

The security search results confirm that Comerica filed a financing statement against MTB with Registration No. 20050628 1125 1862 1497 and Reference File No. 616462848 against Inventory, Equipment, Accounts, Other, and Motor Vehicle Included (the "**Comerica Registration**"), as renewed for a 5 year period by Registration No. 20080506 1440 1862 0588 expiring on February 1, 2010.

The only registrations which are prior in time, are the BNS Registrations. The BNS Registrations bear Registration No. 20020617 1052 1529 6638 and Reference File No. 884410716, Registration No. 20031212 1947 1531 3111 Reference File No. 601790715 and Registration No. 20041124 1453 1530 0407 Reference File No. 610838091.

## **ASSUMPTIONS AND QUALIFICATIONS**

1. We have not received or reviewed any opinions that may have been delivered by counsel with respect to the corporate status of MTB, its corporate power and capacity to deliver the various documents and perform their obligations thereunder, or the authorization, execution, delivery and enforceability of the various documents. We have not received or reviewed any officer's certificates which may have been delivered in connection with the various documents.
2. In delivering our opinion below, we are not expressing any opinion with respect to any right, title or interest of MTB in or to any property or the ranking or priority of any of the security interests created by the Security Agreements, or any other security, other than as expressly stated in this opinion. We have assumed that the indebtedness owing by MTB is due and owing by MTB to Comerica.
3. We have assumed, as at the time of delivery of the Documents by MTB, (a) the corporate existence of MTB, (b) that MTB had the corporate power and capacity to enter into the Documents and perform their obligations thereunder, (c) that MTB took all necessary action to authorize the execution, delivery and performance of its obligations to Comerica and under any loan and security documentation related thereto and (d) that MTB executed and delivered the Security Agreements and all loan and security documentations related thereto.
4. Our opinion is limited to Ontario law.
5. Our opinion does not extend to any personal property of MTB located outside Ontario or to any real property.

6. We have assumed the currency, completeness, truth and accuracy of all facts set forth in the official public records, certificates and documents provided by public officials, or otherwise delivered to us.
7. We have assumed that value was given sufficient for purposes of attachment under the PPSA at the time of the execution of the Security Agreement and that Comerica did not agree to postpone the time for attachment of any security interest created by the Security Agreement.
8. We have assumed with respect to all documents examined by us, the genuineness of all signatures, the legal capacity of individuals signing such documents, the authenticity of all certificates and other documents submitted to us as originals, and the conformity to originals of all documents submitted to us as certified or notarial copies or as telecopied or otherwise electronically transmitted or reproduced.
9. The enforceability of the Security Agreement and the rights and remedies set out therein or any judgment arising out of or in connection therewith may be limited by any applicable bankruptcy, insolvency, winding-up, reorganization, arrangement, moratorium or other similar laws affecting creditors' rights generally, including without limitation, laws relating to fraudulent preferences and conveyances.
10. The enforceability of the Security Agreement and the rights and remedies set out therein may be limited by general principles of equity and the obligation to act in a reasonable manner, and no opinion is given as to any specific remedy that may be granted, imposed or rendered (including without limitation equitable remedies of specific performance and injunction).
11. The enforcement of the Security Agreement is subject to the discretion of an Ontario Court to impose restrictions on the rights of creditors to enforce immediate payment of amounts stated to be payable on demand.
12. The validity and enforceability of provisions of the Security Agreements that purport to sever from the Security Agreement any provision that is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of the provisions of the Security Agreement would be determined only in the discretion of an Ontario Court.
13. Provisions of the Security Agreement which purport to exculpate the secured party from liability for its acts or which purport to confirm the continuance of obligations notwithstanding any act or omission or other matter are subject to the discretion of an Ontario Court.
14. No opinion is expressed as to the enforceability of any provisions in the Security Agreement which suggests that modifications, amendments, consents or waivers of or with respect to the Security Agreement that are not in writing will be ineffective.

15. Wherever any matter or thing is to be determined or done in the discretion of the secured party, such discretion may be required to be exercised in a commercially reasonable manner and in good faith.
16. An Ontario Court may decline to enforce the rights of indemnity and contribution under the Security Agreement to the extent that they are found to be contrary to equitable principles or public policy.
17. An Ontario Court may decline to enforce those provisions of the Security Agreement which purport to allow a determination, calculation or certificate of a party thereto as to any manner provided for therein to be final, conclusive and binding upon any other party thereto if such determination is found to be inaccurate on its face or to have reached or made on an arbitrary or fraudulent basis.
18. We express no opinion on the enforceability of any provisions of the Security Agreement (i) dealing with the waiving of legal, statutory or equitable rights or doctrines, (ii) purporting to relieve any party from any duty or the consequence of its own negligence, or (iii) that provide, or have the effect of providing, for the payment of rates and/or fees which may exceed the "criminal interest rate" provisions of the Criminal Code (Canada) or that may be characterized as an unenforceable penalty.
19. The enforceability of the Security Agreement is subject to the limitations contained in the *Limitations Act, 2002* (Ontario), and we express no opinion as to whether an Ontario Court may find that any provision of the Security Agreement will be unenforceable as an attempt to vary or exclude a limitation period under that Act.
20. With respect to intangibles such as accounts receivable of MTB, no opinion is expressed under the terms of this opinion with respect to the laws of any jurisdiction (other than Ontario) to the extent that such laws may govern the validity, perfection, effect of perfection or non-perfection of the security interests created by the Security Agreement as a result of the application of Ontario conflict of law rules.
21. No opinion is expressed as to the enforceability against any person (other than MTB) of the charges or security interests granted by the Security Agreement that, upon the occurrence of an event of default, attach or extend to real or personal property of MTB in respect of which a consent of a third party is required and has not, at such time, been obtained.
22. With respect to the charge of, or transfer or pledge or assignment of, or the granting of a security interest in, any account or like personal property pursuant to the Security Agreements, notice may have to be given to the obligor thereunder and Comerica may be subject to the equities between the obligor and the grantor of the security interest in the event that it wishes to enforce any such account or like personal property as against the obligor under such account or like personal property.
23. No opinion is expressed as to the creation, validity or enforceability of any charge of, assignment or transfer of or security interest in, or as to the enforceability of the Security

Agreement insofar as it relates to, any of the following property or any interest of MTB therein: (i) any policy of insurance or contract of annuity; (ii) any permits, quotas, licenses and other property which is not personal property; and (iii) any property consisting of a receivable, license, approval, privilege, franchise, permit, lease or agreement (collectively, the "Special Property") to the extent that the terms of the Special Property or any applicable law prohibits its assignment or requires as a condition of its assignability, a consent, approval, notice or other authorization or registration which has not been made or given.

24. No opinion is being delivered with respect to any personal property to which the PPSA does not apply.
25. We express no opinion as to any security interest created by the Security Agreement with respect to any property of MTB that is transformed in such a way that it is not identifiable or traceable or any proceeds of property of MTB that are not identifiable or traceable.
26. We did not investigate whether, any steps were taken in connection with the registration of the Security Agreement or of any of the interests created thereunder: (i) under the *Patent Act* (Canada), the *Trademarks Act* (Canada), the *Industrial Designs Act* (Canada), the *Integrated Circuit Topography Act* (Canada), the *Copyright Act* (Canada) or the *Plant Breeders' Rights Act* (Canada); (ii) in respect of any vessel which is registered or recorded under the *Canada Shipping Act*; (iii) in respect of any rolling stock to which the provisions of the *Canada Transportation Act* (Canada) or the *Railways Act* (Ontario) may apply; or (iv) under the *Financial Administration Act* (Canada).
27. We express no opinion as to the priority of the security interest created by the Security Agreement as against any statutory liens, charges, deemed trusts or other priorities.

#### OPINION

Based on and subject to the foregoing, our opinion is as follows:

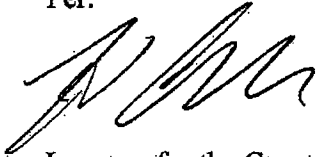
1. The Security Agreement appears to have been properly executed and delivered by Comerica and satisfactory to grant security interests in the property charged thereunder in favour of Comerica in Ontario.
2. The Security Agreement is valid and would be enforceable against a trustee in bankruptcy of MTB.
3. A PPSA financing statement was properly filed by Comerica against MTB in Ontario to perfect security interests in applicable personal property charged by the Security Agreement.
4. The registration of the security interests granted under the Security Agreement is first in point of time with respect to the named collateral classes (inventory, equipment, accounts, other and motor vehicle included), with the exception of the BNS Registrations which are first in point of time with respect to the "equipment" and "other" collateral classes, in accordance with the terms of the Security Agreement, but the security interests

granted under the Security Agreement may be subject to the claims of subsequently registered parties, such as those claiming valid PMSIs in the same collateral or claiming priority upon some other basis, neither of which the Receiver has investigated other than in respect of GE VFS, GE Canada, Ford, Nissan, CNC and De Lage.

We would be pleased to discuss any questions you might have in connection with this report at your convenience.

FRASER MILNER CASGRAIN LLP

Per:

A handwritten signature in black ink, appearing to be 'AM', is written over the printed name 'Alvaraz and Marsal'.

Lawyers for the Court Appointed Receiver  
Alvaraz and Marsal

## **SCHEDULE "A"**

### **DOCUMENTS REVIEWED**

1. Commitment Letter issued by Comerica Bank to MTB Research Limited dated as of July 28, 2008.
2. Variable Rate-Installment Note dated July 28, 2009 by MTB in favour of Comerica in the original principal amount of CDN \$2,052,000.
3. Variable Rate-Installment Note dated July 28, 2009 by MTB in favour of Comerica in the original principal amount of CDN \$4,282,142.88.
4. Variable Rate-Installment Note dated July 28, 2009 by MTB in favour of Comerica in the original principal amount of CDN \$2,000,000.
5. Master Revolving Note dated July 8, 2005 by MTB in favour of Comerica in the original principal amount of CDN \$1,000,000.
6. General Security Agreement granted by MTB in favour of Comerica dated July 8, 2005.
7. Intercreditor Agreement among ROI, MTB and Comerica dated October 17, 2006.

**SCHEDULE "B"**  
**ONTARIO SEARCH SUMMARY**  
**MTB INDUSTRIES LTD.**

**Corporate History**

MTB Industries Inc. was incorporated on October 3, 2001 pursuant to the laws of the Province of Ontario.

MTB Industries Inc.'s head office is located in Concord, Ontario and does not operate under any business styles.

**Registered Office**

20 Barnes Court  
 Concord, Ontario L4K 4L4

**Officers and Directors**

Guy Cavallini  
 462 Silken Laumann Drive  
 Newmarket, Ontario L3X 2H9

Director, General Manager

David Copeland  
 178 Beech Avenue  
 Toronto, Ontario M4E 3H9

Director

John C. London  
 RR#4  
 Action, Ontario L7J 2M1

Director

David Myers  
 451 Silken Laumann Drive  
 Newmarket, Ontario L3X 2H9

Director, President, Secretary,  
 Chief Executive Officer

Ants Tuulus  
 20 Barnes Court  
 Concord, Ontario L4K 4L4

Comptroller



**Security Search Results****I. *Personal Property Security Act***

File currency: May 27, 2009

1.     File No:                               884416716  
        Registration No:               20020617 1052 1529 6638  
        Debtor:                           MTB Industries Inc.  
        Debtor Address:               20 Barnes Court, Concord, ON, L4K 4L4  
        Secured Party:                **The Bank of Nova Scotia – Scotia Plaza**  
        Secured Party Address:       **44 King St. W., Toronto, ON, M5H 1H1**  
        Collateral Classification:    Equipment, Other  
        Collateral Description:       None  
        Registration Date:             June 17, 2002  
        Registration Period:           6 years  
        Expiry Date:                   June 17, 2008  
        Amended by:                   20080520 1456 1530 7595  
        Reason:                         Renewal for 6 years
  
2.     File No:                               601790715  
        Registration No:               20031212 1947 1531 3111  
        Debtor:                           MTB Industries Inc.  
        Debtor Address:               20 Barnes Court, Concord, ON, L4K 4L4  
        Secured Party:                **The Bank of Nova Scotia – Scotia Plaza**  
        Secured Party Address:       **44 King St. W., Toronto, ON, M5H 1H1**  
        Collateral Classification:    Equipment, Other  
        Collateral Description:       None  
        Registration Date:             December 12, 2003  
        Registration Period:           6 years  
        Expiry Date:                   December 12, 2009
  
3.     File No:                               610838091  
        Registration No:               20041124 1453 1530 0407  
        Debtor:                           MTB Industries Inc.  
        Debtor Address:               20 Barnes Court, Unit A, B & C, Concord, ON, L4K 4L4  
        Secured Party:                **The Bank of Nova Scotia/Scotia Plaza Branch**  
        Secured Party Address:       **44 King St. W., Toronto, ON, M5H 1H1**  
        Collateral Classification:    Equipment, Other  
        Collateral Description:       None  
        Registration Date:             November 24, 2004  
        Registration Period:           6 years  
        Expiry Date:                   November 24, 2010

4.      **File No:** 616462848  
**Registration No:** 20050628 1125 1862 1497  
**Debtor:** MTB Industries Inc.  
**Debtor Address:** 20 Barnes Court, Concord, ON, L4K 4L4  
**Secured Party:** Comerica Bank  
**Secured Party Address:** 2485 Oullette Avenue, Unit 101, Windsor, ON, N8X 1L5  
**Collateral Classification:** Inventory, Equipment, Accounts, Other, Motor Vehicle  
Included  
**Collateral Description:** None  
**Motor Vehicle Description:** None  
**Registration Date:** June 28, 2005  
**Registration Period:** 10 years  
**Expiry Date:** June 28, 2015  
**Amended by:** 20080506 1440 1862 0588  
**Reason:** Renewal for 5 years
5.      **File No:** 629244531  
**Registration No:** 20060926 1655 1590 2643  
**Debtor:** MTB Industries Inc.  
**Debtor Address:** 20 Barnes Court, Concord, ON, L4K 4L4  
**Secured Party:** Return on Innovation Advisors Ltd., as Agent  
**Secured Party Address:** 43 Colborne Street, Suite 300, Toronto, ON, M5E 1E3  
**Collateral Classification:** Inventory, Equipment, Accounts, Other, Motor Vehicle  
Included  
**Collateral Description:** None  
**Motor Vehicle Description:** None  
**Registration Date:** September 26, 2006  
**Registration Period:** 10 years  
**Expiry Date:** September 26, 2016  
**Amended by:** 20070328 1531 1590 2088  
**Reason:** Assignment to Return on Innovation Capital Ltd., as Agent
6.      **File No:** 634164885  
**Registration No:** 20070410 1038 1531 9560  
**Debtor:** MTB Industries Inc  
**Debtor Address:** 20 Barnes Crt, Concord, ON, L4K 4L4  
**Secured Party:** Nissan Canada Inc.  
**Secured Party Address:** 5290 Orbitor Drive, Mississauga, ON, L4W 4Z5  
**Collateral Classification:** Equipment, Motor Vehicle Included  
**Collateral Description:** None  
**Motor Vehicle Description:**

<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>V.I.N.</u>
2007	Nissan	Murano	JN8AZ08W27W638233

**Registration Date:** April 10, 2007  
**Registration Period:** 4 years  
**Expiry Date:** April 10, 2011

7. File No: 634432041  
 Registration No: 20070417 1944 1531 8610  
 Debtor: MTB Industries Inc  
 Debtor Address: 20 Barnes Court, Concord, ON, L4K 4L4  
 Secured Party: De Lage Landen Financial Services Canada Inc.  
 Secured Party Address: 100-1235 North Service Road W, Oakville, ON, L6M 2W2  
 Collateral Classification: Equipment, Other, Motor Vehicle Included  
 Collateral Description: None  
 Motor Vehicle Description: Year Make Model V.I.N.  
 2007 American Lincoln 7750-LP Sweeper 683185
- Registration Date: April 17, 2007  
 Registration Period: 4 years  
 Expiry Date: April 17, 2011
8. File No: 634505769  
 Registration No: 20070419 1122 6093 7746  
 Debtor: MTB Industries Inc.  
 Debtor Address: 20 Barnes Crt, Unit A, B, C, Vaughan, ON, L4K 4L4  
 Secured Party: GE Canada Equipment Financing G.P.  
 Secured Party Address: 2300 Meadowvale Blvd., Suite 100, Mississauga, ON, L5N 5P9  
 Collateral Classification: Inventory, Equipment, Accounts, Other  
 Collateral Description: None  
 Registration Date: April 19, 2007  
 Registration Period: 6 years  
 Expiry Date: April 19, 2013
9. File No: 638556912  
 Registration No: 20070828 1253 1902 7512  
 Debtor: Gaetano Cavallini  
 Date of Birth: September 28, 1966  
 Debtor Address: 462 Silken Laumann Dr., Newmarket, ON, L3X 2H9  
 Debtor: Gaetano Cavallini  
 Date of Birth: September 28, 1966  
 Debtor Address: 462 Silken Laumann Dr., Newmarket, ON, L3X 2H9  
 Secured Party: CNC Associates, Inc.  
 Secured Party Address: 2900 Challenger Place, Oxnard, CA, 93030  
 Collateral Classification: Equipment, Other

**Collateral Description:** The following is collateral information for this Lease: Schedule 'A' Equipment Schedule This schedule is attached to and made part of a certain conditional sales agreement, number 24584001, between Haas Automation, Inc., as seller, and MTB Industries Inc., as buyer. Quantity Equipment description serial number (1) Haas Vertical Machining Center, Model VF – 5/50 including: (1) 3 Phase Isolation Transformer(1) Table Spacer(1) High Intensity Lighting (1) 4<sup>th</sup> Axis Drive and Wiring(1) Visual Quick Code Probing System(1) 24 Pull Studs, CT50(1) Tooling Certificate

**Registration Date:** August 28, 2007

**Registration Period:** 5 years

**Expiry Date:** August 28, 2012

**Amended by:** 20090206 1705 1901 6611

**Reason:** Change Debtor from Gaetano Cavallini 462 Silken Laumann Dr., Newmarket, ON, L3X2H9 (DOB: 28 Sep 1966) to MTB Industries Inc. A, B, C-20 Barnes Court, Concord, ON, L4K 4L4. Change Debtor from Gaetano Cavallini 462 Silken Laumann Dr. Newmarket, ON, L3X2H9 (DOB: 28 Sep 1966) to David A Myers 451 Silken Laumann Dr. Newmarket, ON, L3X2H9 (DOB: 14 Dec 1961) change general collateral from the following is collateral information for this lease: Schedule 'A' Equipment Schedule This schedule is attached to and made part of a certain conditional sales agreement, number 24584001, between Haas Automation, Inc., as seller, and MTB Industries Inc., as buyer. Quantity Equipment description serial number (1) Haas Vertical Machining Center, Model VF – 5/50 including: (1) 3 Phase Isolation Transformer(1) Table Spacer(1) High Intensity Lighting (1) 4<sup>th</sup> Axis Drive and Wiring(1) Visual Quick Code Probing System(1) 24 Pull Studs, CT50(1) Tooling Certificate. Collateral Classes: Equipment, to the following is Collateral Information for this Lease: Schedule 'A' Equipment Schedule This Schedule is attached to and made part of a certain conditional sales agreement, number 24584001, between Haas Automation, Inc., as Seller, and MTB Industries Inc., as buyer. Quantity Equipment description serial number (1) Haas Vertical Machining Center, Model VF-5/50 including: (1) 3 Phase Isolation Transformer (1) Table Spacer (1) High Intensity Lighting (1) 4<sup>th</sup> Axis Drive and Wiring (1) Visual Quick Code Probing System (1) 24 Pull Studs, CT50 (1) Tooling Certificate

10. **File No:** 642312288

**Registration No:** 20080128 0923 4043 7812

**Debtor:** MTB Industries Inc.

**Debtor Address:** 20 Barnes Crt, Vaughan, ON, L4K 4L4

**Secured Party:** GE VPS Canada Limited Partnership

**Secured Party Address:** 2300 Meadowvale Blvd., Suite 200, Mississauga, ON, L5N 5P9

**Collateral Classification:** Equipment, Other

- Collateral Description: None  
 Registration Date: January 28, 2008  
 Registration Period: 6 years  
 Expiry Date: January 28, 2014
11. File No: 645829497  
 Registration No: 20080605 1602 5064 5059  
 Debtor: MTB Industries Inc.  
 Debtor Address: 20 Barnes Court, Unit A, B, C, Vaughan, ON, L4K 4L4  
 Secured Party: General Electric Canada Equipment Finance G.P.  
 Secured Party Address: 5500 North Service Road, 8<sup>th</sup> Floor, Burlington, ON, L7L 6W6  
 Collateral Classification: Equipment  
 Collateral Description: None  
 Registration Date: June 5, 2008  
 Registration Period: 4 years  
 Expiry Date: June 5, 2012
12. File No: 653416515  
 Registration No: 20090513 1125 5059 0351  
 Debtor: MTB Industries Inc.  
 Debtor Address: 20 Barnes Court, Concord, ONT, L4K 4L4  
 Secured Party: Ready Machinery & Equipment (Canada) Inc.  
 Secured Party Address: 8080 Lawson Road, R.R. #4, Milton, ONT, L9T 5C4  
 Collateral Classification: Not listed  
 Collateral Description: None  
 Registration Date: May 13, 2009  
 Registration Period: 2 years  
 Expiry Date: May 13, 2011
13. File No: 653549733  
 Registration No: 20090520 1451 1530 2564  
 Debtor: MTB Industries Inc.  
 Debtor Address: 20 Barnes CRT, Concord, ONT, L4K 4L4  
 Secured Party: Ford Credit Canada Leasing, a Div/of Canadian Road Leasing Co  
 Secured Party Address: PO Box 2400, Edmonton, AB, T5J 5C7  
 Collateral Classification: Equipment, Other, Motor Vehicle Included  
 Collateral Description: None  
 Motor Vehicle Description: 

<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>V.I.N.</u>
2006	Ford	Expedition	1FMPU16576LA12905

 Registration Date: May 20, 2009  
 Registration Period: 1 year  
 Expiry Date: May 20, 2010

**II. Execution Search Results (Toronto, Newmarket)**

Date of Search: April 21, 2009

File currency: April 21, 2009

CLEAR

**III. Bank Act Search Results (Ontario)**

Date of Search: April 21, 2009

File currency: April 21, 2009

CLEAR

**IV. Official Receiver Search Results (Canada)**

Date of Search: April 21, 2009

File currency: April 16, 2009

CLEAR

**V. Petitions**

Date of Search: April 21, 2009

File currency: April 20, 2009

CLEAR

**TAB D**

**MEMORANDUM OF AGREEMENT** made as of the 3rd day of August, 2005.

**BETWEEN:**

**MTB INDUSTRIES INC.**

a corporation incorporated under  
the laws of the Province of Ontario;

(hereinafter called "MTB")

- and -

**BARNES COURT BUSINESS PARK INC.**

a corporation incorporated under  
the laws of the Province of Ontario;

(hereinafter called the "Landlord")

- and -

**TORKIN MANES COHEN ARBUS LLP**

Solicitors of the Municipality of Metropolitan  
Toronto, in the Province of Ontario;

(hereinafter called the "Escrow Agent")

- and -

**COMERICA BANK**

A Michigan banking corporation and an authorized foreign bank  
under the *Bank Act* (Canada);

(hereinafter called the "Bank")

**WHEREAS** the Bank has agreed to grant a credit facility to MTB, and MTB has granted a security interest over its assets pursuant to a Security Agreement entered into between MTB and the Bank as of July 8, 2005 (the "Security Agreement")

**AND WHEREAS** in connection with the Bank agreeing to grant a credit facility to MTB the Landlord has agreed to subordinate to the Bank any lien and security interest it may claim against any of MTB's machinery, equipment, inventory, fixtures or other property (the "Lessee's Property") located at the premises leased by MTB from the Landlord at 20 Barnes Court, Concord, Ontario, Buildings A, B, C and H (the "Leased Premises") pursuant to the Bank's form of Lessor's Acknowledgement and Subordination executed by the Landlord in favour of the Bank as of August 3, 2005 (the "Subordination Agreement"), subject to the terms and conditions as provided herein;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the premises and of the respective covenants and agreements hereinafter contained and other



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good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the parties hereto), the parties hereto covenant and agree with each other as follows:

1. The Subordination Agreement and the Security Agreement shall be subject to the terms hereof and shall be deemed amended to the extent necessary to give effect to the terms hereof.

2. MTB, the Landlord and the Bank hereby appoint the Escrow Agent, and the Escrow Agent hereby agrees to act, as escrow agent in accordance with the terms and conditions of this Agreement.

3. If the Bank, in exercising its rights under the Security Agreement, takes possession of the Lessee's Property for the purpose of removal and sale of same the Bank shall notify the Landlord in writing that it has taken possession of the Lessee's Property for the purpose of removal and sale of same and, subject to the terms hereof, remove all, but not less than all, of the Lessee's Property from the Leased Premises and thereafter notify the Landlord in writing of such removal.

4. Within sixty (60) days of receiving notice from the Bank of the removal by the Bank of all, but not less than all, of the Lessee's Property from the Leased Premises the Landlord shall have caused the following to occur:

- (a) all loose wires, pipes and conduits leading to and from the Lessee's Property located at the Leased Premises shall be "capped off" at a point not closer than the nearest point to such item of Lessee's Property on the wall or ceiling of the Leased Premises to which such wires, pipes and conduits are attached, to the satisfaction of the Landlord, acting reasonably; and
- (b) restore, in a good and workmanlike manner to the same level as the contiguous floor, those portions of the concrete floor of the Leased Premises, all as more particularly outlined in red on the diagram of the Leased Premises annexed hereto as Schedule "A";

the obligations pursuant to subsections 4(a) and 4(b) herein being referred to herein as the "Restoration";

5. Prior to carrying out its obligations under Section 4 above the Landlord shall have either obtained the Bank's written consent to the Landlord's written quote for the cost of completing the Restoration or alternatively the Landlord shall have obtained written quotes for the completion of the Restoration from at least three qualified arm's-length contractors (copies of which written quotes the Landlord shall have provided to the Bank) and the Landlord shall have retained to complete the Restoration the contractor who provided the lowest of such quotes. The cost of completing the Restoration shall be borne and paid in the following sequence of priority and to the extent of the availability of such funds:

- (a) from all funds then held by the Escrow Agent in the Restoration Fund as described in Section 6 hereof; and
- (b) to the extent that the Restoration Fund is insufficient to cover the costs of the Restoration, by the Bank to a maximum of \$50,000.

120

50

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For greater certainty the Bank shall not be responsible for any costs of Restoration in excess of the \$50,000 referred to above. Furthermore the Bank shall not be obliged to pay any of the \$50,000 referred to in subsection 5(b) above if the Restoration is not completed within the timeframe specified in Section 4 above.

6. MTB shall deposit with the Escrow Agent \$5,000 per month in an interest-bearing trust account (the "Restoration Fund") on or before the last day of each month commencing on August 31, 2005 until the earlier of (i) the aggregate amount of the Restoration Fund, including interest paid on the balance thereof, reaching \$120,000; (ii) the date upon which the Bank, in exercising its rights under the Security Agreement, takes possession of the Lessee's Property for the purpose of removal and sale of same; or (iii) the date of termination, for any reason, of the lease agreement governing any part of the Leased Premises. Once the aggregate amount of the Restoration Fund including interest paid on the balance thereof, reaches the amount set forth in subsection 6(i) hereof any interest earned thereafter in the Restoration Fund shall be paid by the Escrow Agent directly to MTB. For greater certainty, the last deposit by MTB to the Escrow Agent in order to reach the aggregate amount required to be deposited pursuant to subsection 6(i) hereof will be less than \$5,000, taking into account accrued interest. Notwithstanding the foregoing, if, after the date hereof, excavations are made in the floor of the Leased Premises in addition to those outlined on Schedule "A" hereto then the Landlord and MTB shall amend Schedule "A" accordingly and the aggregate amount to be paid by MTB into the Restoration Fund as set forth in subsection 6(i) hereof shall be increased by such amount as shall be agreed to by the Landlord and MTB without affecting the amount of MTB's monthly deposit to the Restoration Fund. Furthermore, the Bank shall not be obliged, under any circumstances, to deposit any amounts with the Escrow Agent in respect of the Restoration Fund and, for greater certainty, the Subordination Agreement shall continue to be enforceable notwithstanding any failure of MTB to pay any amount required pursuant to this Section 6. Any default of MTB in paying any monthly deposit to the Restoration Fund as required pursuant to this Section 6 shall be deemed to be a default of MTB under the lease agreements governing any part of the Leased Premises.

7. Following the receipt by the Escrow Agent of written invoices, in a form satisfactory to the Escrow Agent acting reasonably, from the party or parties which conducted the Restoration, the Escrow Agent shall pay out of the Restoration Fund the invoices of such parties in amounts not exceeding the applicable quote obtained pursuant to Section 5 hereof and to the extent that there are sufficient funds in the Restoration Fund to do so. Upon completion of the Restoration any funds remaining in the Restoration Fund shall be paid to the Bank to be dealt with pursuant to the terms of the Security Agreement. To the extent that the funds in the Restoration Fund are insufficient to cover the costs of the Restoration the Escrow Agent shall provide written notice to the Landlord and the Bank accordingly, together with an accounting of such shortfall and copies of the invoices received in respect of the Restoration, and the Bank shall forthwith pay such shortfall up to the amount not exceeding the applicable quote obtained pursuant to Section 5 hereof, subject to the maximum aggregate amount of \$50,000 payable by the Bank.

8. If the Bank has not taken possession of the Lessee's Property for the purpose of removal and sale of same pursuant to the terms of the Security Agreement and (i) the registrations of the Bank's security in respect of the Lessee's Property under the *Personal Property Security Act* (Ontario) are discharged; or (ii) the lease agreement governing any part of the Leased Premises expires, the Escrow Agent shall, in the case of subsection 8(i) above, forthwith following receipt

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of discharge statements evidencing such discharge, and in the case of subsection 8(ii) above, forthwith following its receipt of notice of such expiry, remit to MTB all funds held in the Restoration Fund. For purposes of subsection 8(ii) above the Landlord shall promptly notify the Escrow Agent in writing of the expiry of the lease agreement governing any part of the Leased Premises.

9. Notwithstanding anything else herein, MTB shall be entitled at any time and from time to time in its sole discretion to arrange for a letter of credit to be issued by the Bank or another financial institution in favour of the Escrow Agent in the amounts of, and in lieu of, its obligations to deposit funds into the Restoration Fund pursuant to Section 5 hereof.

10. The acceptance by the Escrow Agent of its duties and obligations under this Agreement is subject to the following terms and conditions, which the parties to this Agreement hereby agree shall govern and control with respect to its rights, duties, liabilities and immunities:

- (a) The Escrow Agent shall not be responsible or liable in any manner whatever for the sufficiency of any funds deposited with it.
- (b) The Escrow Agent shall be protected in acting upon any written notice, request, waiver, consent, receipt, statutory declaration or other paper or document furnished to it, not only as to its due execution and the validity and effectiveness of its provisions but also as to the truth and acceptability of any information therein contained, which it in good faith believes to be genuine and what it purports to be. The Landlord, MTB and the Bank jointly and severally agree to indemnify and save harmless the Escrow Agent from and against any and all liabilities and claims made against it in respect of any action or thing it may take or do or omit to take or do in connection herewith except as a result of its wilful neglect or default hereunder. This indemnity shall survive the termination of this Agreement.
- (c) Except for acts of gross negligence or misconduct, the Escrow Agent shall not be liable for any act done or step taken or omitted by it in good faith, or for any mistake of fact or law.
- (d) The Escrow Agent may consult with and obtain advice from legal counsel in the event of any question as to any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in good faith in accordance with the opinion and instructions of such counsel.
- (e) The Escrow Agent shall have no duties except those which are expressly set forth herein, and it shall not be bound by any notice of claim or demand with respect thereto, or any waiver, modification, amendment, termination or rescission of this Agreement, unless received in writing, and executed by the Landlord, MTB and the Bank and, if its duties herein are affected, unless it shall have given its prior written consent thereto.
- (f) In the event of a dispute between the parties with respect to the matters herein, the Escrow Agent may, at its option, deposit all funds, documents and certificates

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held by it hereunder with a court of competent jurisdiction and seek directions from such court.

- (g) Nothing herein shall prevent the Escrow Agent from acting on behalf of the Landlord or MTB in the event of a dispute, provided Escrow Agent shall have either deposited documents pursuant to subsection 10(f) above or shall have found a replacement escrow agent which must be a law firm or such other party as may be agreed to by the parties hereto.

- (h) The Bank shall not be obliged to pay any fees or expenses of the Escrow Agent.

11. Upon payment in full of the Restoration Fund in accordance with the terms hereof the Escrow Agent shall thereafter be released of all its obligations hereunder.

12. This Agreement may be amended or cancelled by and upon written notice to the Escrow Agent at any time given jointly by the Landlord, MTB and the Bank, but the duties or responsibilities of the Escrow Agent may not be increased without its consent.

13. All dollar amounts expressed herein shall be denominated in Canadian currency.

14. Any dispute, difference or question arising among any of the parties concerning the construction, meaning, effect or implementation of this Agreement or any part hereof will be settled by a single arbitrator mutually agreed upon by the parties hereto, or failing agreement, an arbitrator appointed pursuant to the *Arbitration Act, 1991* (Ontario) or similar legislation. The decision of such arbitrator appointed pursuant to this Agreement or such Act will be final and binding on the parties and no appeal will lie therefrom.

15. Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered in person, transmitted by telecopy or similar means of recorded electronic communication or sent by registered mail, charges prepaid, addressed as follows:

if to MTB as follows:

20 Barnes Court  
Concord, Ontario N9A 6P1  
Attn: David Myers, President  
E-mail: davidmyers@mtbindustries.ca  
Telecopy No.: (905) 660-1290

with copy to:  
Michael Hanley  
Turkin Manes Cohen Artus LLP  
151 Yonge Street  
Toronto, Ontario M5C 2W7  
E-mail: mhanley@turkinmanes.com  
Telecopy No.: 1-888-497-8651

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if to the Landlord as follows:

70 Connie Crescent, Unit 2 and 3  
Concord, Ontario  
L4K 1L6  
Attention: Mr. Peter DiGiuseppe  
E-mail \_\_\_\_\_  
Fax No: (905) 669-8995

with copy to:  
Torkin Manes Cohen Arbus LLP  
151 Yonge Street, Suite 1500  
Toronto, Ontario M5C 2W7  
Attention: Mr. Joseph Feldman  
E-mail [jfeldman@torkinmanes.com](mailto:jfeldman@torkinmanes.com)  
Telecopy No: 1-888-812-2556

if to the Escrow Agent as follows:

Torkin Manes Cohen Arbus LLP  
151 Yonge Street, Suite 1500  
Toronto, Ontario M5C 2W7  
Attention: Mr. Joseph Feldman  
E-mail [jfeldman@torkinmanes.com](mailto:jfeldman@torkinmanes.com)  
Telecopy No: 1-888-812-2556

if to the Bank as follows:

Midtown Business Centre  
2485 Ouellette Avenue  
Unit 101  
Windsor, Ontario  
N8X 1L5  
Attention: Mr. Randall J. Morris  
E-mail [rjmorris@comerica.com](mailto:rjmorris@comerica.com)  
Fax No: (519) 250-1271

with copy to:  
McCarthy Tetrault  
One London Place, Suite 2000  
London, Ontario N6A 5R8  
Attention: F. Glenn Jones  
E-mail [gjones@mccarthy.ca](mailto:gjones@mccarthy.ca)  
Telecopy No: 1-519-660-3599

Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a business day, on the next following business day) or, if mailed, on the third business day following the

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date of mailing; provided, however, that if at the time of mailing or within three business days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid.

16. This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal personal representatives, successors and assigns.

17. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties irrevocably attorn to the jurisdiction of the courts of the Province of Ontario.

18. The parties to this Agreement acknowledge and agree that the recitals to this Agreement are true and correct in substance and in fact and that they are incorporated into and form an integral part of this Agreement.

19. The parties hereto shall sign such further and other documents, cause such meetings to be held, cause such resolutions to be passed and such by-laws to be enacted, exercise their vote and influence and do and perform (and cause to be done and performed) such further and other acts or things as may be necessary or desirable in order to give full effect to this Agreement and every part hereof.

20. This Agreement may be executed by fax and in counterparts.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement as of the date first above written.

MTB INDUSTRIES INC.

By: \_\_\_\_\_

David Myers, President

BARNES COURT BUSINESS PARK INC.

By: \_\_\_\_\_

Peter DiGiuseppe, Secretary

TORKIN MANES COHEN ARBUS LLP

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

Joseph Feldman, Partner

02/14/2008 15:13 FAX

010/012

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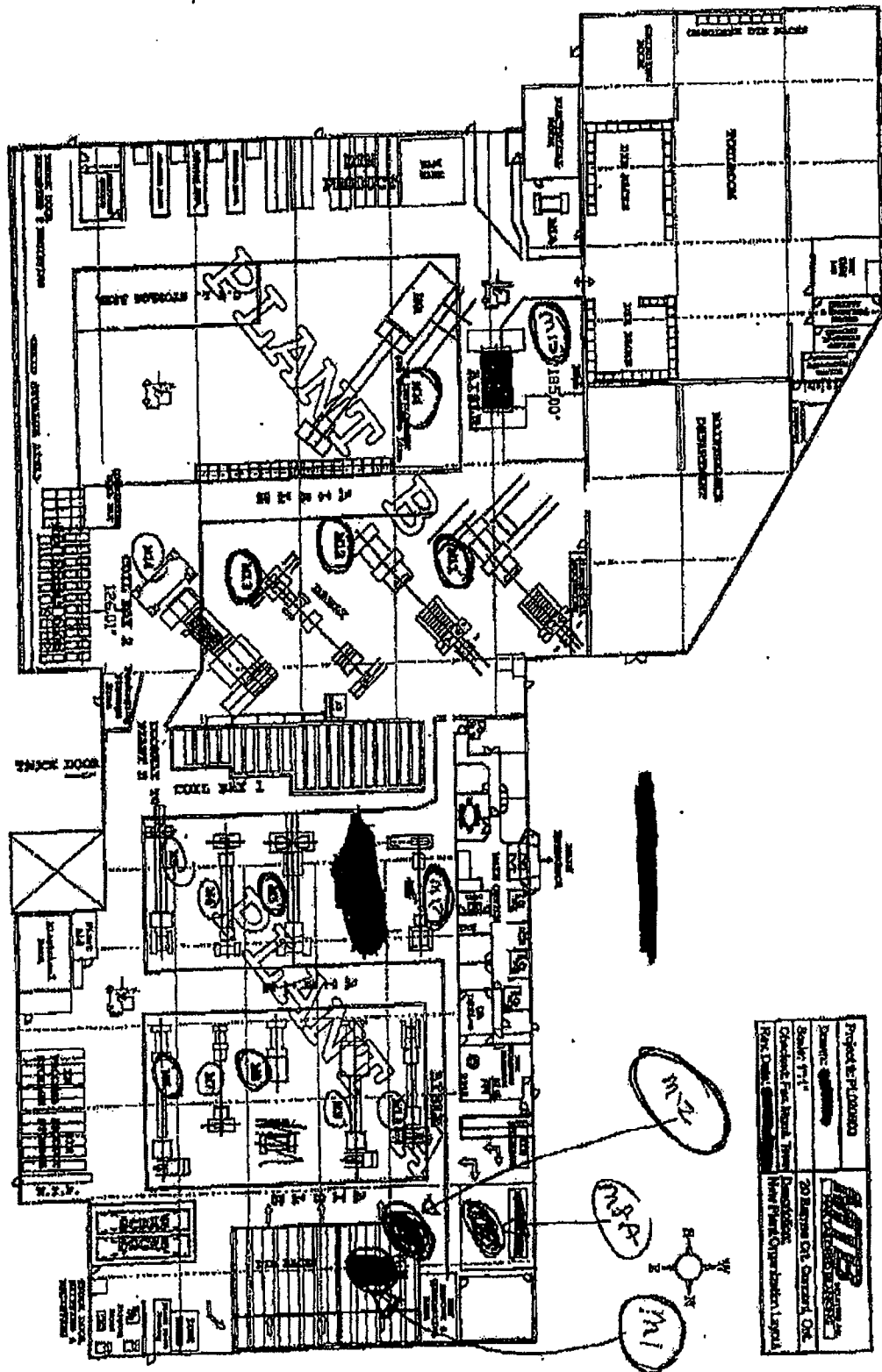
COMERICA BANK

By: 

Name: R. J. MORRIS

Title: V.P.

## SCHEDULE "A"





**MTB Industries Inc**  
**Pit Summary**  
**4-Aug-05**

<u>press:</u>	<u>pit size:</u>
M1	medium
M2	small
M3	small
M4	n/a
M5	n/a
M6	medium
M7	n/a
M8	medium
M8A	n/a
M9	n/a
M10	n/a
M11	medium
M12	medium
M13	medium
M14	n/a
M15	large
M16	large
M17	large
<hr/>	
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**TAB E**  
**(Subject to sealing request)**

## **TAB F**

# AUCTION SERVICES AGREEMENT

This Agreement is made as of June 15, 2009 between

**ALVAREZ & MARSAL CANADA ULC in its capacity as  
court appointed receiver and manager of MTB Industries Inc.  
("MTB")**

and

**1416088 ONTARIO LIMITED c.o.b Danbury  
Industrial** a corporation incorporated under the  
laws of the Province of Ontario (the "**Auctioneer**")

## RECITALS

A. Pursuant to an order of the Honourable Mr. Justice Campbell of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated May 4, 2009, as amended, Alvarez & Marsal Canada ULC ("**A&M**") was appointed as receiver (the "**Receiver**") over the assets, property and undertaking of MTB.

B. The Receiver and the Auctioneer desire to enter into this Agreement in relation to the sale by the Auctioneer, for and as agent for the Receiver, of certain of the property and assets of MTB located at 20 Barnes Court, Concord, Ontario (the "**Premises**").

FOR VALUE RECEIVED, the parties agree as follows:

## SECTION 1 – INTERPRETATION

### 1.1 Definitions

In this Agreement:

- (1) *Account* has the meaning ascribed to it in Section 2.5(1);
- (2) *Approval and Vesting Order* has the meaning ascribed to it in Section 4.1(a);
- (3) *Approval Date* means the date on which the Approval and Vesting Order is granted by the Court;
- (4) *Assets* means the right, title and interest of MTB in and to the assets listed on Schedule "A" located at the Premises or remotely;

- (5) **Auction Date** means the date of July 9, 2009;
- (6) **Business Day** means a day on which banks are open for business in the City of Toronto, Ontario but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (7) **Buyer's Premium** means the 12% fee in excess of the bid price charged to purchasers by the Auctioneer upon all sales of the Assets, except in the case of web cast purchases where the fee charged to the purchaser shall be 15% in excess of the bid price;
- (8) **Claims** has the meaning ascribed to it in Section 5(1);
- (9) **Commencement Date** is the date upon which the Approval and Vesting Order is granted;
- (10) **Court** has the meaning ascribed to it in the recitals hereto;
- (11) **Encumbrance** means any encumbrance, lien, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, adverse claim, exception, reservation, easement, right of occupation, matter capable of registration against title, option, right of pre-emption, privilege or any agreement to create any of the foregoing;
- (12) **Excluded Assets** means all property of MTB other than the Assets;
- (13) **Gross Sales Proceeds** has the meaning ascribed to it in Section 2.5(1);
- (14) **Interim Inspection** has the meaning ascribed to it in Section 2.8(5);
- (15) **Landlord** means Barnes Court Business Park Inc., and includes its respective agents, employees, property managers, successors and assigns;
- (16) **Liquidation Period** means the period commencing on the Commencement Date, unless the Receiver and the Auctioneer agree in writing to a later date, and ending at 12 noon (Toronto time) on the Termination Date;
- (17) **MTB** has the meaning set forth in the recitals hereto;
- (18) **Net Minimum Guaranteed Amount** means the amount referred to in Section 2.3;
- (19) **Person** means any natural person, sole proprietorship, partnership, corporation, trust, joint venture, any governmental authority or any incorporated or unincorporated entity or association of any nature;
- (20) **Premises** has the meaning set forth in the recitals hereto;
- (21) **Receiver** has the meaning set forth in the recitals hereto;
- (22) **Sales Process** has the meaning ascribed to it in Section 2.1;

- (23) *Sales Taxes* has the meaning ascribed to it in Section 2.14;
- (24) *Termination Date* means August 31, 2009; and
- (25) *Transaction* means the liquidation, sale and removal of the Assets contemplated by this Agreement.

## **1.2 Interpretation Not Affected by Headings, etc.**

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to a "Section" followed by a number and/or a letter refer to the specified section of this Agreement. The terms "this Agreement", "hereof", "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular section hereof.

## **1.3 Extended Meanings**

Words importing the singular include the plural and *vice versa*, words importing gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term "including" means "including, without limitation," and such terms as "includes" have similar meanings.

# **SECTION 2 – SALE OF ASSETS**

## **2.1 Sale of Assets**

The Auctioneer, in a commercially reasonable manner and otherwise in accordance with the terms and conditions of this Agreement, shall conduct a sale of the Assets from the Premises on behalf of and strictly as agent of the Receiver by way of one or more private orderly liquidation sales and one or more public auctions (collectively, the "**Sales Process**"). The Transaction shall be completed by no later than the Termination Date at the Premises. The Auctioneer agrees that payment terms for all sales shall be by cash, debit, credit card, wire transfer, certified cheque or a draft drawn on a chartered Canadian bank. Without limiting any other rights of the Receiver pursuant to this Agreement, but subject to the Auctioneer's rights under Section 2.3(2), the Auctioneer acknowledges that the Receiver may exclude any Assets made available for sale from the Transaction if such Assets are determined to be subject to an actual, pending or threatened ownership interest or claim by a third party, provided that the Receiver provides written notice to the Auctioneer describing such Assets prior to the sale of such Assets by the Auctioneer.

## **2.2 As Is, Where Is**

The Auctioneer acknowledges that it has made such inspections of the Assets as it deems appropriate and it is understood that the Assets are to be sold by the Auctioneer on behalf of and

strictly as agent of the Receiver on an "as is, where is" and "final sale" basis, at the Auctioneer's and the purchaser's own risk, and that the Receiver, other than as set forth in Section 3.1(b) hereof, has not and will not make or be subject to any representation, warranty or condition, whether statutory (including, without limitation, under sale of goods or similar legislation), express or implied, oral or written, legal, equitable, collateral or otherwise, as to fitness for purpose, marketability, condition, quantity or quality thereof or in respect of any other matter or thing whatsoever. Any descriptions provided to any purchasers or prospective purchasers by the Auctioneer's sales staff, which may include former employees of MTB hired by the Auctioneer, shall be given solely on behalf of the Auctioneer in its own capacity and not as agent for the Receiver or MTB, and the Receiver or MTB shall have no obligations with respect thereto. The Auctioneer agrees that the auction terms will provide that all sales are final and that signs will be prominently displayed at the Premises advising purchasers that all sales are final.

### 2.3 Net Minimum Guarantee

(1) The Auctioneer guarantees that the amount (net of any Sales Taxes and Buyer's Premium collected) to be paid by the Auctioneer to the Receiver for the sale of the Assets (the "**Net Minimum Guaranteed Amount**") shall not be less than The Net Minimum Guaranteed Amount shall be subject to adjustment as set out in Section 2.3(2) (the "**Net Minimum Guaranteed Amount**"), notwithstanding that the actual proceeds generated from the sale of the Assets may be less than the Net Minimum Guaranteed Amount. The Net Minimum Guaranteed Amount shall be paid to the Receiver in accordance with Section 2.4 of this Agreement. In the event that the actual proceeds generated from the sale of the Assets exceed the Net Minimum Guaranteed Amount, such proceeds shall be paid in accordance with Section 2.5 of this Agreement.

(2) To the extent that the Receiver excludes any of the Assets made available for sale from the Transaction pursuant to Section 2.1 (a "**Removed Asset**"), the Net Minimum Guaranteed Amount shall be reduced by the proportionate amount of the value of the Removed Asset in respect of the total value of the Assets. All asset values will be those set out in set out in the asset listing provided in Schedule "A". Provided however that where the Removed Asset is at the time of its exclusion from the Sales Process subject to an unconditional offer to purchase that continues to be open for acceptance by the Auctioneer, the Net Minimum Guaranteed Amount shall not be reduced by the Reduction Amount, but shall instead be reduced by the purchase price for Removed Asset. To the extent that the Receiver wishes for the Auctioneer to include in the sale an asset not currently listed on Schedule "A" (an "**Additional Asset**"), the Auctioneer and the Receiver shall negotiate in good faith in an attempt to reach agreement as to the value of the Additional Asset, and provided such agreement can be reached, Schedule "A" will be amended to include the Additional Asset and the Net Minimum Guaranteed Amount shall be increased by ninety percent (90%) of the appraised value of the Additional Asset. Any adjustment to the Net Minimum Guaranteed Amount in relation to the addition of an Additional Asset as provided for herein shall be subject to the prior approval of the Monitor.

## 2.4 Payment of Net Minimum Guaranteed Amount

The Auctioneer shall pay a deposit of 15% to the Receiver following the granting of the Approval and Vesting Order and shall forthwith pay to the Receiver all proceeds less the taxes on any private negotiated sales prior to the auction, all such private sales are required to meet the approval of the Receiver, and if necessary, the Court. The balance of the Net Minimum Guaranteed Amount shall be paid to the Receiver no later than 1 business day prior to the Auction.

All monies payable to the Receiver shall be paid to the Receiver by certified cheque, wire transfer or draft drawn on a chartered Canadian bank and held by the Receiver pending further order of the Court.

## 2.5 Payment of Sales Proceeds and Trust Account

(1) The Auctioneer shall establish one or more trust accounts with The Toronto-Dominion Bank (collectively, the "**Account**") into which all proceeds realized from the sale of any of the Assets, whether by auction or private sale, including, without limitation, the Sales Taxes and the Buyer's Premium relating thereto (collectively, the "**Gross Sales Proceeds**") shall be deposited or transferred. The Auctioneer agrees that no monies other than the Gross Sales Proceeds with respect to the sale of Assets hereunder shall be deposited or transferred into the Account. The Auctioneer shall provide to the Receiver on a regular basis, but not less frequently than bi-weekly (i) a complete accounting of the deposits and any withdrawals made to and from the Account, and (ii) a detailed accounting of the Assets sold, which accounting shall include a description of each Asset sold sufficient to permit it to be identified, the identity of the purchaser and the amount of the purchase price, Sales Taxes and Buyer's Premium paid.

(2) The Gross Sales Proceeds shall be deposited when, as and however received, on a daily or more frequent basis, to the Account to be held in trust for the parties entitled thereto pursuant to this Agreement (the "**Beneficiaries**") and disbursed by the Auctioneer, as trustee, to the Beneficiaries in accordance with this Agreement.

(3) On the first Business Day of each bi-weekly period following the commencement of the Liquidation Period, the Auctioneer will distribute all funds on deposit in the Account representing all proceeds from the sale of Assets, howsoever realized (but subject to maintaining any reserves required for payment of applicable Sales Taxes collected) as follows:

- (a) until the Receiver has received an aggregate amount equal to the Net Minimum Guaranteed Amount, all funds, net of Sales Taxes collected, shall be distributed 100% to the Receiver;
- (b) upon receipt of the Net Minimum Guaranteed Amount by the Receiver, the amount of any Buyer's Premium collected then held in the Account, net of Sales Taxes, shall be distributed to the Auctioneer;



- (c) upon receipt of the Net Minimum Guaranteed Amount by the Receiver and receipt of the Buyer's Premium (in accordance with Section 2.5(3)(b)) by the Auctioneer, any funds remaining in the Account, net of Sales Taxes, shall be distributed to the Auctioneer to an aggregate maximum amount of up to (the "Auctioneer's Payment") as compensation for its services and to reimburse the Auctioneer for expenses incurred in connection with the Transaction; and
- (d) after payment of the Buyer's Premium collected and the Auctioneer's Payment, the Receiver shall receive 85% and the Auctioneer shall receive 15% of all remaining funds in the Account, net of Sales Taxes.

It is understood and agreed that the payments referenced in subparagraphs (a) through (d) of this Section 2.5(3) shall be made net of the amount of the applicable Sales Taxes collected by the Auctioneer, which Sales Tax amounts will be remitted by the Auctioneer from the Account.

## **2.6 Accounting for Sale Proceeds and Records**

The Auctioneer shall provide the Receiver with a complete and detailed final accounting with respect to the sale of all Assets, all transactions relating to the Account and all amounts payable to the Receiver and the Auctioneer within twenty-one (21) days following the Termination Date. The Auctioneer shall maintain such books and records relating to the sale of the Assets and Sales Process as would a prudent business person and shall provide the Receiver with access to and copies of such books and records, including electronic and computer records, upon request. The Auctioneer and the Receiver, shall in good faith attempt to complete all account reconciliations and payments, and resolve any matters in dispute, within fifteen (15) days following the Accounting Deadline.

## **2.7 Access to the Premises**

- (1) Subject to Sections 2.7(2) and 2.8, the Receiver shall grant the Auctioneer, without charge, access to the Premises until the Termination Date for the purposes of carrying out the Transaction as contemplated under this Agreement. For greater certainty and subject to Sections 2.7(2) and 2.8 and provided that the Auctioneer is otherwise in compliance with this Agreement, the Auctioneer shall have rent-free use of the Premises until the Termination Date. Subject to Section 2.7(2), during the Liquidation Period, the Receiver and its respective employees, agents and professionals shall continue to have unrestricted access to the Premises.

## **2.8 Obligations with Respect to the Premises**

- (1) The Auctioneer shall deliver vacant possession of the Premises by no later than the Termination Date.
- (2) The Auctioneer agrees to leave the Premises in a clean and broom-swept condition and shall be responsible for all costs of clean-up of the Premises. Notwithstanding the foregoing, the Auctioneer shall not be responsible for the costs of (i) removal, clean-up or disposition of any of MTB's books and records; (ii) removal of any unsold or abandoned equipment provided that the

Auctioneer agrees to assist the Receiver remove such equipment at the expense of the Receiver; (iii) filling any pits in the floor in which the Assets were located; and (iv) any environmentally hazardous chemicals or substances found at the Premises, save and except to the extent that any discharge, spill or release of any environmentally hazardous chemicals or substances is caused by the Auctioneer or Persons for whom it is responsible.

(3) The Auctioneer agrees that it and its invitees shall act in a prudent and responsible manner while at the Premises and the Premises shall be maintained by the Auctioneer in the same state of repair as existed as at the commencement of the Liquidation Period, reasonable wear and tear excepted. The Auctioneer undertakes to restore the Premises to their condition as at the commencement of the Liquidation Period and to repair any damages caused by the Auctioneer, its invitees or anyone for whom it is in law responsible at its sole expense forthwith but in any event, before the expiry of the Liquidation Period. For greater certainty, the Auctioneer shall not be responsible for repairing any damages existing prior to the Commencement Date, except any such damages caused by the Auctioneer, its invitees or anyone for whom it is in law responsible prior to the Commencement Date.

(4) Without limiting the provisions of Section 2.8(1), 2.8(2) and 2.8(3), the Auctioneer undertakes to shear off any protruding bolts remaining after removal of equipment and to repair any damage caused to the Premises due to the removal of any Assets and to properly cap all gas and electrical connections, at all times using properly licensed and qualified trades people.

(5) The Receiver and the Auctioneer, acting reasonably, agree to conduct periodic inspections of each of the Premises to identify any damage caused after the Auctioneer enters upon the Premises and, without limiting the foregoing, in respect of the Premises, the Receiver and the Auctioneer shall conduct an interim inspection by not later than three (3) days prior to the date that the Auctioneer agrees or is required to vacate the Premises (the "**Interim Inspection**"). The Auctioneer shall immediately conduct or cause to be conducted all repairs, restoration and clean-up of the Premises identified as being required pursuant to any Interim Inspection and to complete such work forthwith. Following the Interim Inspection and on the final day of the Auctioneer's intended occupancy of the Premises, the Receiver and the Auctioneer shall conduct a final inspection of the condition of such premises together, noting and identifying any deficiencies or damage to the Premises caused during the Liquidation Period that has not been repaired, restored or completed by the Auctioneer in accordance with its obligations. It is agreed that the Auctioneer shall not be responsible for repairing any damages to the Premises that are demonstrated to have been caused by the Receiver or any equipment lessors that are given access to such premises under Section 2.8 of this Agreement in connection with the removal of their leased property.

(6) The Auctioneer agrees to provide the Receiver with at least seven (7) Business Days' written notice regarding the removal by any purchaser of an Asset, the removal of which may require repairs to be made to any part of the premises.

## **2.9 Payment of Occupancy Costs**

The Receiver shall be responsible to pay when due all of the following costs and expenses to the extent referable to the Liquidation Period:

- (a) rent and other occupancy costs relating to the Premises;
- (b) all utilities and other reasonable overhead expenses relating to the Premises; and
- (c) pro-rated property taxes in respect of the Premises.

The Auctioneer agrees that, at the Receiver's option, the Receiver may pay or be reimbursed for the foregoing costs and expenses from the Net Minimum Guarantee payment pursuant to paragraph 2.4.

## **2.10 Expenses**

Other than those expenses which are the responsibility of the Receiver as set out in Section 2.9 and elsewhere in this Agreement, the Auctioneer shall be responsible for all costs and expenses incurred in connection with the Transaction, including without limitation, long distance telephone costs, postage, courier services, supplies needed by the Auctioneer, bank and credit or debit card charges, cheque verification services and personnel hired or provided by the Auctioneer. The Auctioneer shall reimburse the Receiver to the extent that such expenses are incurred by the Auctioneer and paid by the Receiver and such amounts paid to the Receiver are in addition to and shall not reduce or otherwise affect the amount of the Net Minimum Guaranteed Amount or the Receiver's entitlement pursuant to Section 2.5.

## **2.11 Persons to be Engaged by the Auctioneer**

The Auctioneer shall be responsible at its own cost for providing competent persons to prepare for and perform all tasks relating to the Transaction. It is understood that the Receiver is not or will not be the employer of or a contracting party with any person engaged by the Auctioneer relating to the Sales Process or the Transaction, nor will either of them be liable to pay any amounts to or with respect to any such persons. The Receiver does not warrant or guarantee that any of MTB's former employees or independent contractors can be engaged by the Auctioneer for all or any part of the Liquidation Period.

## **2.12 Trade Names**

The Auctioneer shall be permitted and is hereby granted a non-exclusive, temporary licence to use the names "MTB" and "Mak Tailored Blanking Industries" and may make reference to the appointment of the Receiver solely for the purposes of this Agreement and any advertising pursuant to Section 2.13 during the Liquidation Period.

### 2.13 Advertising

The Auctioneer, at its own expense, shall advertise and otherwise promote the liquidation and auction of the Assets by all appropriate means, as approved by the Receiver in relation to the Premises, in order to give adequate exposure to the Assets to the maximum number of potential purchasers. All advertising copy is to be submitted initially to the Receiver and the Monitor for approval (which approval shall not be unreasonably withheld) not less than five (5) Business Days prior to its first publication and use by the Auctioneer. If the Receiver has not objected to the Auctioneer's proposed advertising within two (2) Business Days after receipt of the Auctioneer's proposal, the Receiver will be deemed to have approved such advertising. The Auctioneer shall be responsible for paying all costs of advertising which costs shall be included in the expenses recoverable pursuant to Section 2.5(3)(b).

### 2.14 Authorizations and Remittance of Taxes

The Auctioneer shall be responsible for ensuring that all necessary governmental or other approvals, permits or authorizations are obtained in order to conduct the Sales Process in compliance with all applicable laws. In addition, the Auctioneer shall ensure that all applicable taxes and duties including, without limitation, Federal, Provincial and municipal income, sales and other taxes and all applicable withholding taxes (collectively, the "Sales Taxes") are collected and remitted to the proper authorities when due and shall file all applicable reports and documents required by the applicable taxing authorities. The Receiver will be given access to the computation of gross receipts for verification of all Sales Taxes collections and remittances. The Auctioneer agrees to indemnify and save the Receiver harmless from and against all claims for payment of all Sales Taxes, including penalties and interest thereon, and any liability or costs incurred as a result of any failure to pay such taxes when due and all claims arising out of any failure to obtain all necessary government or other approvals, permits or authorizations.

### 2.15 Insurance

(1) The Auctioneer will be responsible for arranging liability insurance covering injuries to persons and property in relation to and in connection with the Auctioneer's access to, use and occupation of the Premises and shall be responsible for the costs of such insurance. The said insurance shall be in form and substance satisfactory to the Receiver, acting reasonably, and shall provide for not less than \$3,000,000 coverage per occurrence. The Auctioneer shall provide proof of such insurance to the Receiver prior to its entry onto the Premises to commence the Sale Process.

(2) The Receiver shall maintain the existing insurance coverage against loss of or damage to the Assets (provided that in the event such insurance is less than on a replacement cost basis the Receiver will increase such insurance to be at least on a replacement cost basis) and shall be responsible for the costs of such insurance until the earlier of (i) the date the Auctioneer has vacated the Premises, and (ii) the expiry of the Liquidation Period.

(3) In the event that all or any material part of the Assets are destroyed or damaged by fire or other casualty or stolen at any time prior to the sale of such Assets, the insurance proceeds

attributable to such damaged Assets shall be deemed to be the proceeds of the sale of such Assets for the purposes of this Agreement and, for greater certainty, shall be included for the purposes of distributing funds in accordance with Section 2.5. The Receiver and the Auctioneer agree not to settle any insurance claim without the prior written consent of the other, such consents not to be unreasonably withheld.

### **SECTION 3- REPRESENTATIONS AND WARRANTIES**

#### **3.1 Representation and Warranty of the Receiver**

the Receiver represents and warrants to the Auctioneer, that:

- (a) subject to the granting of the Approval and Vesting Order, the Receiver will have the right to enter into and carry out its obligations under this Agreement.

#### **3.2 Representation and Warranty of the Auctioneer**

The Auctioneer represents and warrants to the Receiver that it has full right, power and authority to enter into and carry out its obligations under this Agreement and this Agreement has been duly and validly authorized, executed and delivered by the Auctioneer.

### **SECTION 4 - CONDITIONS**

#### **4.1 Mutual Conditions**

The obligations of the Receiver and the Auctioneer are subject to the conditions that:

- (a) an order in form and substance acceptable to the Auctioneer and the Receiver, each acting reasonably, shall have been made by the Court authorizing the Receiver to enter into this Agreement, approving this Agreement and the Transaction and vesting in any purchaser the interest of MTB in an asset free and clear of any claims or Encumbrances (the "Approval and Vesting Order"); and
- (b) prior to the commencement of the Sales Process by the Auctioneer, the Approval and Vesting Order shall not have been stayed, varied or vacated, and no order shall have been issued and no action or proceeding shall be pending to restrain or prohibit the completion of the Transaction.

If the conditions set out above are not satisfied by the time provided therefore (or have not been waived by the Receiver or the Auctioneer as applicable), then this Agreement shall be terminated without any penalty or liability whatsoever to the Receiver or the Auctioneer.

#### **4.2 Condition for the Benefit of the Receiver**

Prior to commencing the Sales Process, the Auctioneer shall have paid the Net Minimum Guaranteed Amount to the Receiver and shall have satisfied its obligations pursuant to section 2.15(1) of this Agreement.

#### **4.3 Condition for the Benefit of the Auctioneer**

If at any time following the granting of the Approval and Vesting Order, the Receiver is enjoined from completing the Transaction or a substantial portion of the Assets are removed from the control of the Receiver then this agreement shall be terminated upon payment by the Receiver to the Auctioneer of \$25,000 plus the actual out of pocket expenses incurred by the Auctioneer up to that point.

### **SECTION 5 -INDEMNITY**

(1) The Auctioneer agrees to indemnify, defend and hold the Receiver and its employees, agents and representatives harmless from and against all claims, damages, losses, injuries or costs suffered or incurred, including, without limitation, reasonable counsel fees and expenses (collectively, "**Claims**"), resulting from or relating to the breach of any of its obligations, agreements, representations or warranties under this Agreement, including without limitation, Claims caused to property or persons through the actions or negligence of the Auctioneer, its invitees or anyone for whom it is in law responsible including any claims arising from the breach of the Auctioneer's obligations under Section 2.14 of this Agreement. This indemnity shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

(2) The Receiver agrees to indemnify, defend and hold the Auctioneer and its employees, agents and representatives harmless from and against all Claims resulting from or relating to the breach of the Receiver's representation and warranty set out in Section 3.1(a) of this Agreement. This indemnity shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

(3) Notwithstanding any other provision of this Agreement, the maximum aggregate liability of an indemnifying party under this Agreement shall not exceed the lesser of the replacement value of the Assets (having regard to the state of use and repair thereof) and the amount of the Gross Sales Proceeds net of Sales Taxes.

### **SECTION 6 – GENERAL**

#### **6.1 Notices**

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery (in which case it

shall be left with a responsible officer of the recipient) and by electronic communication addressed to the recipient as follows:

in the case of the Receiver:

Alvarez & Marsal Canada ULC  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2000  
P.O. Box 22  
Toronto, ON, Canada M5J 2J1

Attention: Philip J. Reynolds  
Telephone: 416-847-5168  
Facsimile: 416-847-5201  
E-mail: [preynolds@alvarezandmarsal.com](mailto:preynolds@alvarezandmarsal.com)

with a copy to:

Fraser Milner Casgrain LLP  
1 First Canadian Place  
100 King Street West  
Toronto, ON M5X 1B2

Attention: Jane O. Dietrich  
Telephone: 416 863-4467  
Facsimile: 416 863-4592  
E-Mail: [jane.dietrich@fmc-law.com](mailto:jane.dietrich@fmc-law.com)

in the case of the Auctioneer:

Danbury Industrial  
1200 Sheppard Avenue East  
Suite 302  
Toronto, Ontario  
M2K 2S5

Attention: David Ordon  
Telephone No: 416.630.5241  
Facsimile No.: 416.630.6260

with a copy to:

Kestenberg Siegal Lipkus  
65 Granby Street  
Toronto, Ontario

M5B 1H8

Attention: Alan Siegal  
Telephone: 416 342 1100  
Facsimile: 416 342-1101  
E-mail: asiegal@ksllaw.com

or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication shall be conclusively deemed to have been given, if given by personal delivery, on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if transmitted before 5 o'clock p.m. on a Business Day and on the Business Day following the transmittal thereof if not so transmitted.

## **6.2 Disputes**

If any dispute arises under or relating to this Agreement, including without limitation, the amounts paid or to be paid to the Receiver or the Auctioneer pursuant to this Agreement or any indemnity provided herein, the Receiver and the Auctioneer will work diligently and in good faith to attempt to resolve such dispute. Any such dispute may be determined by the Court supervising MTB's receivership proceeding by way of an expedited process and/or trial of an issue, upon motion brought by any affected party on notice to the other.

## **6.3 Time of Essence**

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Receiver and the Auctioneer or by their respective solicitors.

## **6.4 Currency**

All references herein to money amounts are in Canadian Dollars.

## **6.5 Agreement Costs**

The parties agree to bear their own respective legal and other expenses for preparing, negotiating and executing this Agreement and any related documents.

## **6.6 Further Assurances**

Each party shall, at the other party's expense, from time to time execute and deliver, or cause to be executed and delivered, all such documents and instruments and do, or cause to be done, all such acts and things as the other party may, either before or after the Transaction, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.



#### **6.7 Obligations to Survive**

The obligations, representations and warranties of the parties hereto shall survive the completion of the Transaction.

#### **6.8 Entire Agreement**

This Agreement constitutes the only agreement between the parties with respect to the subject matter hereof and supersedes any and all prior negotiations and understandings. No amendment of this Agreement shall be binding unless in writing and signed by the parties hereto. No waiver by a party of any breach of this Agreement shall take effect or be binding upon the party unless it is in writing, signed by the party providing the waiver, and, unless otherwise expressly stated therein, any such waiver shall be limited to the specific breach waived.

#### **6.9 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the parties hereby irrevocably attorns to the non-exclusive jurisdiction of the Courts of the Province of Ontario.

#### **6.10 Benefit of Agreement**

This Agreement shall be binding upon and ensure to the benefit of the parties hereto and their respective successors and permitted assigns; provided that the Auctioneer shall not assign the benefit of this Agreement without the prior written consent of the Receiver.

#### **6.11 Severability**

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provisions validity or enforceability in any other jurisdiction.

#### **6.12 Agency Relationship**

The Auctioneer acknowledges that it will not hold itself out as agent of the Receiver except as specifically provided for in this Agreement and that the Auctioneer's authority as agent for the Receiver is limited to the powers specifically provided for in this Agreement.

#### **6.13 Counterparts**

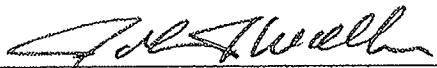
This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement.

**6.14 Facsimile Execution – Transmission by E-mail**

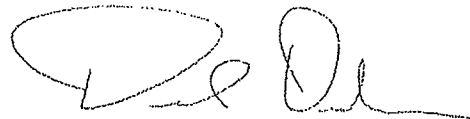
Receipt by facsimile transmission, or by e-mail in pdf format, of an executed copy of this Agreement will be deemed to be receipt of an original.

The parties have executed this Agreement as of the above-written date.

**ALVAREZ & MARSAL CANADA ULC**  
solely in his capacity as court appointed  
receiver and manager of MTB Industries Inc.

By:   
Name: **JOHN J. WALKER**  
Title: **MANAGING DIRECTOR**

**1416088 ONTARIO INC.** o/a Danbury  
Industrial



By: \_\_\_\_\_  
Name: David Ordon  
Title: President

## SCHEDULE A

### ASSET AND VALUE LISTING - MTB INDUSTRIES INC., IN RECEIVERSHIP

#### SUMMARY

#### VALUE

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ITEM.	QT.	MARE	MODEL.	SERIAL #	YR	ASSET	DESCRIPTION
							MTB INDUSTRIES 20 BARNES COURT CONCORD, ON L4K 4L4
							BAY 41
1	1	CLEARING NIAGARA	S4-600-108-72	10.4634	1987	M1	600 TON 4-POINT ECCENTRIC GEARED STRAIGHT SIDE PRESS, BED SIZE 108" x 72"; STROKE 30"; SHUT HEIGHT 40.5"; ADJUSTMENT 6"; SPM 20; AIR CLUTCH, AIR COUNTERBALANCE, SAFETY LIGHT CURTAIN, WINDOWS, WINTRESS AUTOMATION; REBUILT IN 2003
2	1	UNKNOWN	N/A	N/A	N/A	N/A	PERIECTOR 15,000 LBS x 40" CAPACITY UNCOILER C/W SNUBBER, HYDRAULIC OPERATED OVER ARM, EMERSON CONTROL TECHNIQUES UNIDRIVE UNIT, LOOPCO COIL CAR MOUNTED ON TRACK, 15,000LBS. CAPACITY, 20-HP FREQUENCY DRIVE; ANCLAY 24" x 250" CAPACITY LEVELER, 5 ROLLS, 2 OVER 3 WITH (2) SETS ENTRY AND EXIT PINCH ROLLERS, HOLD-DOWN ARM, ENTRY PEELER TABLE, EXIT CONVEYOR, COLT FEEDER, 50" x 187" CAPACITY FEEDER C/W ENTRY PEELER TABLE, HYDRAULIC PINCH ROLLERS, PLC CONTROLLER, INDRAMAT C7A COMPUTERIZED PRESS MONITORING SYSTEM, ELECTRICS, PRESS CONTROLS
3	1	VERSON	S2-500-84-12 T.P	12328	1956	M2	500 TON 2-POINT ECCENTRIC GEARED STRAIGHT SIDE PRESS, BED SIZE 84" x 42"; STROKE 8"; SHUT HEIGHT 21"; ADJUSTMENT 4"; SPM 20-30; AIR CLUTCH, AIR COUNTERBALANCE, SAFETY LIGHT CURTAIN, WINDOWS
4	1	CUSTOM BUILT & FABRICATED	N/A	N/A	N/A	N/A	CUSTOM BUILT UNCOILER, 28" x 10,000 LBS. CAPACITY OVER ARM, HYDRAULIC OPERATED 10-HP; CUSTOM BUILT 11-ROLL STRAIGHTENER, 5 OVER 6 C/W (2) SETS OF PINCH ROLLS, PNEUMATIC BREAKER AND HOLD-DOWN, 48" x 250" CAPACITY, 25-HP FREQUENCY DRIVE; CUSTOM BUILT SERVO FEED SYSTEM, 20" x 187" C/W EMERSON MODEL A300, DRIVE C/W T21 DATA ENTRY TERMINAL, ALLEN BRADLEY 550 PLC CONTROLLER, COMPUTERIZED PRESS MONITORING SYSTEM, ALL ELECTRICS, PRESS CONTROLS AND SAFETY SYSTEMS
5	1	CLEARING	S2-300-108-54	51-1399	1970	MSA	300 TON 2-POINT ECCENTRIC GEARED STRAIGHT SIDE PRESS, BED SIZE 108" x 54"; STROKE 16"; SHUT HEIGHT 40"; ADJUSTMENT 12"; SPM 20; AIR CLUTCH, AIR COUNTERBALANCE, SAFETY LIGHT CURTAIN, WINDOWS, WINTRESS AUTOMATION
6	1	RENEILLI	550MSS PM2500 x 1500	CO312-825	1978	M6	550 METRIC TON 2-POINT ECCENTRIC GEARED STRAIGHT SIDE PRESS, BED SIZE 96" x 60"; STROKE 12.59"; SHUT HEIGHT 39-37"; ADJUSTMENT 5.9"; SPM 15-25; AIR CLUTCH, AIR COUNTERBALANCE, SAFETY LIGHT CURTAIN, WINDOWS

SCHEDULE A - PAGE 2

ITg111	QTY	MARV.	MODEL	SERIAL	YR	ASSET	DESCRIPTION
7	1	CUSTOM BUILT & FABRICATED	N/A	N/A	N/A	N/A	CUSTOM BUILT 36" FEEDER; 72" AUTOMATIC FLATTENER/FLATTENER, 5 ROLL, 2 OVER 3 VARIABLE SPEED, HYDRAULIC DRIVES; 1987 PERFECTO UNCOILER 40" x 20,000-LBS CAPACITY C/W 1-21 DATA ENTRY TERMINAL, ELECTRICAL OPERATED COIL TRANSFER CAR
8	1	BENELLI	P2M14002P/245 011400	1179	1985	M8	400 METRIC TON 2-POINT ECCENTRIC GEARED STRAIGHT SIDE PRESS, BED SIZE 55" x 97"; STROKE 20"; SHUT HEIGHT 32"; ADJUSTMENT 4"; SPM 18-36, AIR CLUTCH, AIR COUNTERBALANCE, SAFETY LIGHT CURTAIN, WINDOWS, PRESS AUTOMATION
9	1	CUSTOM BUILT & FABRICATED	N/A	N/A	N/A	N/A	11 ROLL LEVELER AND HYDRAULIC ENTRY LOOP TABLE; CUSTOM BUILT SERVO FEEDER, 40" x 187" CAPACITY C/W EMERSON VARIABLE SPEED DRIVE, ENTRY LOG ROLLERS AND GUIDE
10	1	VERSON	S1-400-36-36T	24861	1974	M10	400 METRIC TON 2-POINT ECCENTRIC GEARED STRAIGHT SIDE PRESS, BED SIZE 36" x 36"; STROKE 10"; SHUT HEIGHT 32"; ADJUSTMENT 8"; SPM 40, AIR CLUTCH, AIR COUNTERBALANCE, SAFETY LIGHT CURTAIN, WINDOWS, PRESS AUTOMATION, DIE LOAD SYSTEM, DIE FEED IN LOGS
11	1	CUSTOM BUILT & FABRICATED	N/A	N/A	N/A	N/A	UNCOILER, 15,000-LBS x 48" CAPACITY C/W HYDRAULIC SNUBBER ARM; COLT 72" x 187" LEVELER, 7 ROLLS 3 OVER 4 C/W (2) SETS OF PINCH ROLLS, HYDRAULIC ENTRY PEELER TABLE, CONVEYOR EXIT ROLLS, 15-HP AC VARIABLE SPEED DRIVE; COLT MODEL CERF-40-36 36" W SERVO FEEDER 7-ROLL LEVELER, 3 OVER 4 C/W (2) SETS OF PINCH ROLLS, INDRAMAT MODEL CTA4 PLC CONTROL, COMPUTERIZED PRESS MONITORING, ELECTRICS, PRESS CONTROLS AND SAFETY SYSTEMS, SIN: 1141153
12	1	BLISS	SE2-1000-132-54	50121	1965	M2A	1,000 TON 2-POINT ECCENTRIC GEARED STRAIGHT SIDE PRESS, BED SIZE 132" x 54"; STROKE 12"; SHUT HEIGHT 37"; ADJUSTMENT 10"; SPM 15-50, AIR CLUTCH, AIR COUNTERBALANCE, SAFETY LIGHT CURTAIN, WINDOWS, PRESS AUTOMATION
13	1	UNKNOWN	N/A	N/A	N/A	N/A	30,000 LB. CAPACITY POWER PAYOFF REEL, COIL CAR, 72" X 125" STRAIGHTENER, THREADING TABLE AND FEEDER
14	1	BLISS	8C2-600-84848P	C0413-877	1972	M3	600 TON 2-POINT ECCENTRIC GEARED STRAIGHT SIDE PRESS, BED SIZE 84" x 48", STROKE 8", SHUT HEIGHT 27"; SPM 20-60; AIR CLUTCH, AIR COUNTERBALANCE, SAFETY LIGHT CURTAIN, WINDOWS, PRESS AUTOMATION

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ITEM	QTY	MAKE	MODEL	SERIAL #	YR	ASSET	DESCRIPTION
15	1	MCKAY	N/A	6482	N/A	N/A	CENTERING REEL, 50,000 LBS x 72" CAPACITY C/W HYDRAULIC OVERARM, COIL BUGGY, LOADING SYSTEM, 25-HP TRAVERSE DRIVE AND HYDRAULIC LOOPING TABLE; TPM CUSTOM BUILT LEVELER C/W 31 ROLLS 5 OVER 6, C/W (2) SETS PINCH ROLLS, 72" x 3/8" CAPACITY 50-HP AC DRIVE, LENZE FEEDER 55" x 250" C/W ALLEN BRADLEY PLC PROCESSOR, DUAL SERVO ROLLS, ENTRY GUIDE ROLLERS, COMPUTERIZED PRESS MONITORING SYSTEM, ELECTRICS, PRESS CONTROL AND SAFETY SYSTEM.
16	1	DANLY	SS2-400-60-48	50040301	1950	M4	400 TON 2-POINT ECCENTRIC GEARED STRAIGHT SIDE PRESS, BED SIZE 60" x 48", STROKE 18", SHUT HEIGHT 30"; SPM 20; AIR CLUTCH, AIR COUNTERBALANCE, SAFETY LIGHT CURTAIN, WINDOWS, WINTRESS PRESS AUTOMATION
17	1	AMERICAN	1000	6092	1978	N/A	COMBINATION UNCOILER/TRANSFER COIL, CART, 20,000-LBS CAPACITY, 48" WIDE CAPACITY C/W HYDRAULIC SNUBBER ARM, AMERICAN 84" WIDE FLATTENER, 2 OVER 3 ROLLS, 15-HP AND 2 SETS PINCH ROLLS, COLT AUTOMATION MODEL CERFS40-42 FEEDER/STRAIGHTENER, 40" x 42" CAPACITY, GUIDE ROLLER ASSEMBLY, PEELER ROLLS C/W INDRAMAT PLC CONTROLLER, COMPUTERIZED PRESS MONITORING SYSTEM, ELECTRONICS, PRESS
18	1	NIAGARA	BPI-600-48-48	47108	1973	M5	600 TON SINGLE POINT STRAIGHT SIDE PRESS, BED SIZE 48" x 98"; STROKE 6"; SHUT HEIGHT 38", ADJUSTMENT 8"; SPM 30; AIR CLUTCH, AIR COUNTERBALANCE, SAFETY LIGHT CURTAIN, WINDOWS (NOT IN SERVICE AT TIME OF INSPECTION)
19	1	REVOLATOR	1975	3131'SO4	N/A	N/A	20,000 x 37" HYDRAULIC UPENDER, AUTOMATIC FEED CO, CENTERING REEL, UNCOILER, 20,000-LBS x 48" CAPACITY, HYDRAULIC OPERATED SNUBBER OVERARM AND FEED TABLE; AUTOMATIC FEED CO/TPM CUSTOM BUILT LEVELER, 40" x 250" CAPACITY, 5 ROLLS, 2 OVER 3, 2 SETS OF PINCH ROLLS, ENTRY AND EXIT ROLLERS, HYDRAULIC OPERATED, EXIT LOOP TABLE, 15-HP VARIABLE AC DRIVE; INDRAMAT SERVO FEED, 48" x 250" CAPACITY, EMERSON PLC SERVO SYSTEM, ROLLS AND CONTROLS, COMPUTERIZED PRESS MONITORING SYSTEM, ELECTRICS, PRESS CONTROLS AND SAFETY SYSTEMS
BAY #12							
20	1	BLISS	S154-1000-108x84	30137-1	1973	M 11	1000 TON 4-POINT ECCENTRIC GEARED STRAIGHT SIDE PRESS, BED SIZE 108" x 84", STROKE 8", SHUT HEIGHT 45"; ADJUSTMENT 12"; SPM 20-60; AIR CLUTCH, AIR COUNTERBALANCE, SAFETY LIGHT CURTAIN, WINDOWS

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SCHEDULE A - PAGE 4							
ITEM	QTY	NIMCV...	MODEL:	SERIAL#	-YR	ASSET	DESCRIPTION
21	1	AUTOMATIC FEED CO.	N/A	3487	N/A	N/A	COIL LOADING CAR, 60,000-LBS CAPACITY; 1973 AUTOMATIC FEED CO. MODEL 607272 UNCOILER, S/N 3488, DUAL HEAD CONE TYPE, 50,000-LBS x 72" CAPACITY, HYDRAULIC EXPANSION, ENTRY FEED TABLE; 1973 AUTOMATIC FEED CO. MODEL 7-472 LEVELER, S/N 3150, 60,000-LBS. CAPACITY, 12" TO 72" CAPACITY MAX. .025" TO 125" THICKNESS, 360 TO 2,700 IN. MIN SPEED, HOLD-DOWN SNUBBER, ARM EXIT AND ENTRY LOOPING TABLES; 1973 AUTOMATIC FEED CO. MODEL 772 SERVO FEEDER/STRAIGHTENER, S/N 3492, 12" TO 72" HYDRAULIC CAPACITY MAX. C/W RESOURCE PLC CONTROLS INCLUDING RUN-OUT STEEL BELT CONVEYOR, 24"W x 20"L, COMPUTER CONTROL CONSOLE, RESOURCE DATA CONTROL PANEL, COMPUTERIZED PRESS MONITORING SYSTEM, ALL ELECTRICS, PRESS CONROLS AND SAFETY SYSTEMS
22	1	BLISS	SEA-1250-108- 96	30097-1	N/A	M12	1250 TON 4-POINT ECCENTRIC GEARED STRAIGHT SIDE PRESS, BED SIZE 108" x 96", STROKE 12", SHUT HEIGHT 38", ADJUSTMENT 12"; SPM 15-46; AIR CLUTCH, AIR COUNTERBALANCE, SAFETY LIGHT CURTAIN, WINDOWS, MAKSTEEL PRESS AUTOMATION; REBUILT
23	1	AUTOMATIC FEED	507472DE	4162	N/A	N/A	SURFACE TRACK MOUNTED HYDRAULIC COIL CAR, 50,000 LBS x 74" CAPACITY, HYDRAULIC EXPANSION MANDREL, ADJUSTABLE SLIDE BASE, CUSTOM BUILT HOLD-DOWN ROLL STAND AND ENTRY FEED TABLE; AUTOMATIC FEED 84" STRAIGHTENER; COIL FEED MODEL 10-84 PRESS FEED, LENZE SERVO DRIVE CONTROL, 84" CAPACITY, COMPUTERIZED PRESS MONITORING SYSTEM, ELECTRICS, PRESS CONTROLS
24	1	DANLY	S4-800-144-84	56-112701	1956	M13	800 TON 4-POINT ECCENTRIC GEARED STRAIGHT SIDE PRESS, BED SIZE 144" x 84"; STROKE 30"; SHUT HEIGHT 44"; ADJUSTMENT 12"; SPM 22; AIR CLUTCH, AIR COUNTERBALANCE, SAFETY LIGHT CURTAIN, WINDOWS
25	1	DANLY	S2-1600444-60 QDC	N/A	N/A	N/A	1600 TON 2-POINT ECCENTRIC GEARED STRAIGHT SIDE PRESS, BED SIZE 144" x 60"; STROKE 30"; SHUT HEIGHT 80"; ADJUSTMENT 18"; SPM 8-16; AIR CLUTCH, AIR COUNTERBALANCE, ROLL OUT BOLSTER
26	1	SCHULER	D2 1200-1250- 144-96	1102-01	1987	M15	2000/1250 TON DOUBLE ACTION TOGGLE TYPE STRAIGHT SIDE PRESS, BED SIZE 144" x 96"; STROKE 42", SHUT HEIGHT 82"; ADJUSTMENT 10"; SPM 8-16; AIR CLUTCH, AIR COUNTERBALANCE, HMS SERIES 900 TRI- AXIS TRANSFER SYSTEM, S/N: 24053 <i>(PRESS HAS BEEN CONVERTED TO SINGLE ACTION)</i>
27	1	LOT	LOT	LOT	LOT	LOT	CUSTOM BUILT BLANK LOADING SYSTEM WITH FEEDER STAND AND (2) ABB MULTI-AXIS ROBOTIC MANIPULATORS, S/N: N/A

ITEM #	QTY	MAKE	MODEL	SERIAL #	YR	ASSET	DESCRIPTION	IC
28	1	AMCA	1 NX 1.2 695	12101 5017	N/A	MIR	200 TON 2 POINT ECCENTRIC GEARED STRAIGHT SIDE PRESS, BED SIZE 145" x 72", STROKE 16", SHUT HEIGHT 48", ADJUSTMENT 16" SPM 16 TR. AIR CLUTCH, AIR COUNTERBALANCE	B
29	1	AUTOMATIC FEED CO.	167472	N/A	N/A	N/A	COIL STAND, COIL CAR C/W HYDRAULIC COIL CYLINDER 84" x 40,000 LBS. CAPACITY UNCOILER C/W HOLD-DOWN DOUBLE MANUVEL. AUTOMATIC FEED CO. 72" FEEDER C/W PINCH ROLLERS, LENSEL SERVO DRIVE, ALLEN BRADLEY MODEL PAMBLATION 5500C CONTROLLER	B
30	1	VERSON	NH-200 216-81T	27341	N/A	MIR	2000 TON 4 POINT ECCENTRIC GEARED STRAIGHT SIDE PRESS, BED SIZE 216" x 64", STROKE 14", SHUT HEIGHT 77", ADJUSTMENT 10", SPM 15-29, AIR CLUTCH, AIR COUNTERBALANCE, SAFETY LIGHT CURTAIN, WINDOWS, WITH MINISTEK 72" FEED LINK, S/N'S 134601, 135019, 135022	C
31	1	VERSON	142-2160-240-51T	21687	1970 S	MIR	2000 TON 4 POINT ECCENTRIC GEARED STRAIGHT SIDE TRANSFER PRESS, BED SIZE 216" x 64", STROKE 14", SHUT HEIGHT 77", ADJUSTMENT 10", SPM 15-29, AIR CLUTCH, AIR COUNTERBALANCE, SAFETY LIGHT CURTAIN, WINDOWS, WITH MINISTEK 72" FEED LINK, S/N'S 134601, 135019, 135022, WITH AIR YOUNG ROBOTIC BLANK FEEDER	C
							TOOL ROOM	
32	1	CHEVALIER	17G-013M	A380A025	1996	N/A	16" x 18" HAND FEED SURFACE GRINDER WITH MAGNETIC CHUCK	C
33	1	PRIOTH	17G-5 1760A	90021203	N/A	N/A	18" x 32" HYDRAULIC SURFACE GRINDER WITH MAGNETIC CHUCK	B
34	1	BLANCHARD	18	1391	N/A	N/A	36" ROTARY SURFACE GRINDER, 18" REGIMENTED CHUCK, 35 HP, COOLANT, WITH BL. DRESSER	B
35	1	E.C. MAIER	EXM615	50657	N/A	N/A	VERTICAL ROLLING CARRIAGE METAL CUTTING BAND SAW	G
36	1	PRIOTH	18 45	N/A	N/A	N/A	18" VERTICAL METAL CUTTING BAND SAW, TABLE SIZE: 20" x 24", BLADE MACHINE	B
37	1	EXCELC	605	6023152	N/A	N/A	3 HP VERTICAL VARIABLE SPEED MILLING MACHINE, TABLE SIZE 9" x 47", 481AM 2 AXIS DR0	G
38	1	FIRST	16-1-112VS	11211521	N/A	N/A	3 HP VERTICAL VARIABLE SPEED MILLING MACHINE, TABLE SIZE 9" x 47", 481AM 2 AXIS DR0	G
39	1	BARER	1A 25A	14225	N/A	N/A	PRODUCTION STYLE FLOOR STANDING DRILL PRESS, POWER QUIL. FEED, COOLANT, 20" x 24" TABLE	B
40	1	MAS	VL4A	3316	N/A	N/A	1' x 9" COLUMN RADIAL DRILL, BOX TABLE, COOLANT	G



SCHEDULE A - PAGE 6

ITEM	QTY	MAKE	MODEL	Sp:DOI/	YR	ASSET #	DESCRIPTION	
41	1	TOS	#4	10764	N/A	N/A	VERTICAL PRODUCTION TYPE MILLING MACHINE, TABLE SIZE 12" x 60"; 45-2000 RPM, 4-KW SPINDLE MOTOR	0
42	1	FIRST	LC-1-1/2VS	30820060	N/A	N/A	3-HP VERTICAL VARIABLE SPEED MILLING MACHINE, TABLE SIZE 9" x 42"	G
43	1	STANKO	161316P	5244	N/A	N/A	16" TOOL ROOM LATHE, 20-2000 RPM, 3 AND 4 JAW CHUCKS, THREAD CHASING, SPINDLE BORE 2"	0
44	1	THERMAL DYNAMICS	PAK-38XL	Y82848A 19 2001D	N/A	N/A	PLASMA ARC CUTTING SYSTEM (NOT INSPECTED BY THE APPRAISER)	G
45	1	CINCINNATI	SERIES 5	N/A	N/A	N/A	12' x 135 TON MECHANICAL PRESS BRAKE, 10'-6" BETWEEN HOUSING	G
46	1	CHEVALIER	PSG-612C	A 1 77A005	N/A	N/A	6" x 12" HAND FEED SURFACE GRINDER WITH MAGNETIC CHUCK	0
47	1	MEUSEL	MIL	MIL-39447	N/A	N/A	10/20" x 60 C.C. GAP BED TOOL ROOM LATHE, 28-1250 RPM; TAPER ATTACHMENT, THREAD CHASING, SAND 4 JAW CHUCKS, STEADY REST, THREADING	0
48	1	FIRST	LC-1-1/2vs	81010077	N/A	N/A	3-HP VERTICAL VARIABLE SPEED MILLING MACHINE, TABLE SIZE 9" x 42"; 2-AXIS DRO	G
49	1	FIRST	LC-1-1/2VS	40220629	N/A	N/A	3-HP VERTICAL VARIABLE SPEED MILLING MACHINE, TABLE SIZE 9" x 42"; 2-AXIS DRO	0
50	1	MEUSER	M50R	39057	N/A	N/A	6' x 13" COLUMN RADIAL DRILL, BOX TABLE, COOLANT	G
51	1	LUCAS	42B60	42B1619	N/A	N/A	4" HORIZONTAL TABLE TYPE BORING MILL; TRAVELS: X=12", Y=60", Z=72"; NEWALL 3-AXIS DRO	0
52	1	BAXTER	115B	5403	N/A	N/A	VERTICAL ROLLING CARRIAGE METAL CUTTING BAND SAW	G
53	1	YOUR	YSG	4630401	N/A	N/A	350mm x 150mm HAND FEED SURFACE GRINDER WITH MAGNETIC CHUCK	0
54	1	11. CEGIELSKI	GRV554	718352	N/A	N/A	7' x 20" COLUMN RADIAL DRILL, DRILL TABLE	0
							CMM ROOM	
55	1	TRIMEX	TL-CNC	2145	N/A	N/A	CMM WITH RENISHAW PH10 PROBE	0
							COMPRESSORS	
56	1	KAESER	CSD75	100265.0070 /1007	N/A	N/A	75-HP ROTARY SCREW TYPE PACKAGED AIR COMPRESSOR, SIGMA CONTROLS, WITH MODEL KRD400 400 SCFM AIR DRYER AND VERTICAL STEEL RECEIVING TANK	G

ITEM	QT.	MAKE	MODEL	SERIAL #	YR	ASSET	DESCRIPTION	
57	2	AIRSCREW	N/A	N/A	N/A	N/A	150-HP ROTARY SCREW TYPE PACKAGED AIR COMPRESSOR WITH TG MODEL T4200 REFRIGERATED AIR DRYER S/N: 81083 AND VERTICAL STEEL RECEIVING TANK	0
58	1	LOT	LOT	LOT	LOT	LOT	MISC. LOT THROUGHOUT PLANT, INCLUDING: DOUBLE END PEDESTAL GRINDERS; COLUMN MOUNTED ELECTRIC JIB CRANES; BELT SANDERS; 7.5-HP CENTRAL DUST COLLECTION SYSTEM; SURFACE PLATES; WORK BENCHES; HOLD DOWN SETS; VISES; AIR HOSE; HOSE REELS; PRECISION AND INSPECTION MEASURING INSTRUMENTS; LAYOUT TABLES; PARTS RACKS; SLINGS; HOISTS; SHELVES; PALLET RACKING; SURPLUS ROBOTS; NEW/USED REPAIR AND REPLACEMENT PARTS; SMALL TANK-MOUNTED AIR COMPRESSORS; PORTABLE WELDERS; PRESSURE WASH SYSTEM; CHOP SAW; HAND TRUCKS; DIE RACKS; PARTS BINS; WASTE OIL TANK; HARDNESS TESTER; SURFACE PLATES; SCISSOR LIFT TABLES; FILTER CARTS; DIE SETUP CARTS; COUPLERS; FITTINGS; MISC. HARDWARE; PERISHABLE TOOLING; PALLET JACKS; BARREL PUMPS; BARREL CARTS; HAND TOOLS; PNEUMATIC HAND TOOLS; FLOOR SCRUBBER; 5-10-15- TON COIL CRANE HOOKS; 20- TON COIL CRANE HOOK; ETC.	0
							CRANES	
59	1	DEMAG	N/A	N/A	N/A	N/A	10-TON DOUBLE GIRDER TOP RIDING TRAVELLING BRIDGE CRANE; 30' SPAN WITH PENDANT CONTROLS AND ELECTRIC CABLE HOIST	0
60	1	P & H	N/A	N/A	N/A	N/A	15-TON DOUBLE GIRDER TOP RIDING TRAVELLING BRIDGE CRANE; 60' SPAN WITH PENDANT CONTROLS AND ELECTRIC CABLE HOIST	G
61	2	CANADIAN OVERHEAD HANDLING, INC.	N/A	2498A, 2498B	N/A	N/A	15-TON DOUBLE GIRDER TOP RIDING TRAVELLING BRIDGE CRANE; 72' SPAN WITH PENDANT CONTROLS AND ELECTRIC CABLE HOIST (EACH VALUE: \$7,500/\$13,500)	C
62	2	DEMAG/SOS	N/A	98488, 63938	N/A	N/A	15-TON DOUBLE GIRDER TOP RIDING TRAVELLING BRIDGE CRANE; 35' SPAN WITH PENDANT CONTROLS AND ELECTRIC CABLE HOIST (EACH VALUE: \$5,000/\$7,000)	G
63	1	LOT	LOT	LOT	LOT	LOT	MISC. LOT THROUGHOUT OFFICES	0
							TOTAL OWNED EQUIPMENT:	
							LEASED EQUIPMENT	
64	1	RASTER	11R400/2200NL 4S	101285	1986	M7	400 TON STRAIGHT SIDE PUNCH PRESS, BED SIZE 144" x 96"; SPM 8-16; AIR CLUTCH, AIR COUNTERBALANCE	0
65	1	RASTER	60.75	19-5000.1	N/A	N/A	FEED SYSTEM, 20,000 LB. CAPACITY UNCOILER C/W OVER ARM, INDRAMAT SERVO FEED	

ITEM	QT	MAKE..	MODEL	SERIAL #	YR ASSET	Description	
66	1	VERSON	SE4-1000-108-72	25919		M14 1000 TON 4-POINT ECCENTRIC GEARED STRAIGHT SIDE PRESS, BED SIZE 108" x 72", STROKE 12", SHUT HEIGHT 40"; ADJUSTMENT 12"; SPM 60; AIR CLUTCH, AIR COUNTERBALANCE, SAFETY LIGHT CURTAIN, WINDOWS	G
67	1	DALLAS	6988	12958		78" X 72" X 50,000 L.B. CAPACITY CAV CRADLE, 40-HP, EUROTHERM 590 DIGITAL DRIVE, OVERARM, DALLAS MODEL 89428 78" X 125" CAPACITY 3 OVER 4 ROLL STRAIGHTENER, SIN 12960, DALLAS 78" FEEDER, SERVO DRIVE 33-HP S/N 25919	
68	1	SILENT HOIST	FKS20	21277	1998	40,000 L.B. CAPACITY LP-GAS FORKLIFT, SOLID TIRES, OVERHEAD GUARD, 100" MAX LIFT HEIGHT	
69	1	SILENT HOIST	6180 TITAN SERIES	21577	1998	18,000 L.B. CAPACITY LP-GAS POWERED FORKLIFT, SOLID TIRES, OVERHEAD GUARD, SIDE SHIFT, 219" MAX LIFT HEIGHT	
70	4	HYSTER	S80XL2	000400599 3V 0004D1019 34 D00401101 04 000401019		8,000 L.B. CAPACITY LP-GAS POWERED FORK LIFT, OVERHEAD GUARD, SOLID TIRES, SIDE SHIFT (EACH VALUE \$6,000/\$7,250)	G
71	1	HYSTER	S120XL	000400967 8X		12,000 L.B. CAPACITY LP-GAS POWERED FORKLIFT, SOLID TIRES, OVERHEAD GUARD, 100" MAX LIFT HEIGHT	B
72	1	HYSTER	S155XL	13024003272 R		15,000 L.B. CAPACITY LP-GAS POWERED FORKLIFT, SOLID TIRES, OVERHEAD GUARD, 100" MAX LIFT HEIGHT	B
73	1	VERSA LIFT	60180	2260		60,000/50,000 L.B. CAPACITY FORK LIFT, OVERHEAD GUARD, SOLID TIRES, SIDE SHIFT, 120" MAX LIFT HEIGHT	
74	1	POWER BOSS	9082	13935123	2003	N/A LP-GAS POWERED FLOOR SCRUBBER	G
75	1	HAAS	VF-5	1061460	2007	N/A 3-AXIS VERTICAL CNC MACHINING CENTER, TABLE SIZE 23" X 62", TRAVELS: X= 60", Y= 28", Z= 25", 7,500 RPM, 30-HP, 2-SPEED GEAR DRIVE, 30-POSITION ATC, CHIP AUGER	E
76	1	SODICK	AQ 537L	N/A		N/A LINEAR MOTOR WIRE EDM, TRAVELS: 23" X 15" X 14", U/V 4.8" X 4.8", WIRE DIA. .012"-.006", MAX WORKPIECE 31" X 21" X 14", MAX WEIGHT 2,200 L.B., LQ33W CONTROL, S/N 0261	E
77	1	HMS			2008	Complete Transfer Line	New
						TOTAL LEASED EQUIPMENT:	
						TOTALS:	

**TAB G**  
**(Subject to sealing request)**

**TAB H**

## APPENDIX H

### IN THE MATTER OF THE RECEIVERSHIP OF MTB INDUSTRIES INC.

#### SCHEDULE OF RECEIPTS AND DISBURSMENTS

MAY 4, 2009 TO JUNE 15, 2009

#### Receipts

Regular accounts receivable collections	\$ 653,280	
Customer deposits (to be returned)	90,253	
Miscellaneous	10,045	
Total Receipts		\$ 753,578

#### Disbursements

Employee costs	\$ (40,491)	
Cost advances returned	(71,603)	
Environmental waste management costs	(63,386)	
Equipment rental	(1,053)	
Occupancy costs (rent, property taxes) - paid to June 14/09	(131,881)	
Insurance	(7,142)	
Professional fees (Receiver/legal)	(210,922)	
Utilities	(477)	
Government remittances	(656)	
Security, asset safeguarding and other	(7,465)	
Total Disbursements		(535,076)
Net Receipts Over Disbursements from May 4 to June 15, 2009 (current bank balance)		\$ 218,502

**COMERICA BANK**

Respondent

*Lawyers for the Receiver, Alvarez & Marsal  
Canada ULC*