

TAB 4

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

THE HONOURABLE MADAM) THURSDAY, THE 13th
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JUSTICE CHIAPPETTA) DAY OF JUNE, 2019
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B E T W E E N :

Estate/Court File No. 31-2481648
Estate/Court File No. 31-2481649

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
GREEN EARTH ENVIRONMENTAL PRODUCTS, A GENERAL PARTNERSHIP
ESTABLISHED IN THE PROVINCE OF ONTARIO, AND GREEN EARTH STORES
LTD., A CORPORATION INCORPORATED IN THE PROVINCE OF ONTARIO**

Applicants

**ORDER
(RE: APPROVAL OF FEES & CONDUCT AND DISCHARGE OF
CHIEF RESTRUCTURING ADVISOR)**

THIS MOTION, made by Green Earth Environmental Products (“**GEEP**”) and Green Earth Stores Ltd. (“**GESL**” and collectively with GEEP, the “**Applicants**”) and by the secured creditors, Matthew McBride Enterprises Corp. (“**McBride Enterprises**”) and Beckstette Enterprises Corp. (“**Beckstette Enterprises**”, and together with McBride Enterprises the “**Enterprises**”) pursuant to the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3, as amended (the “**BIA**”) for an Order, among other things, (a) appointing Crowe Soberman Inc. as receiver (in such capacity, the “**Receiver**”), pursuant to section 243(1) of the BIA and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), without security, of all of the assets, undertakings and properties of each of GESL and GEEP (b) authorizing and directing the Receiver to make certain distributions (c) approving fees of Crowe Soberman Inc., in its capacity as proposal trustee of GEEP and GESL (in such capacity, the “**Proposal Trustee**”) and its counsel, Stikeman Elliot LLP (b) approving the Third Report of the Proposal Trustee, to be filed (the “**Third Report**”) and its conduct as set out therein, and (c) discharging FAAN Advisors Group Inc., in its capacity as Chief Restructuring Advisor to the Applicants (in such

capacity, the “**Chief Restructuring Advisor**”) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants and the Enterprises, the Affidavit of Matthew McBride sworn June 7, 2019 and exhibits thereto, the Third Report which includes, among other appendices, the Fee Affidavit of Hans Rizzari and the Fee Affidavit of Elizabeth Pillon (collectively, the “**Fee Affidavits**”), on hearing the submissions of counsel for the Applicants and the Enterprises, the Proposal Trustee, and such other counsel as were present as indicated on the Counsel Slip, no one else appearing although duly served as appears from the Affidavit of Service of Alina Stoica sworn June ●, 2019, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Third Report is hereby abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion, the Motion Record and Third Report is hereby dispensed with.

APPROVAL OF PROPOSAL TRUSTEE’S REPORTS AND CONDUCT

2. **THIS COURT ORDERS** that the Third Report and the activities and conduct of the Proposal Trustee described therein are hereby approved, provided, however, that only the Proposal Trustee, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely on or utilize in any way such approvals.

APPROVAL OF FEES OF PROPOSAL TRUSTEE AND ITS COUNSEL

3. **THIS COURT ORDERS** that the fees and disbursements of the Proposal Trustee and the Proposal Trustee’s counsel, Stikeman Elliot LLP, as disclosed in the Third Report and detailed in the Fee Affidavits, be and are hereby approved.

DISCHARGE AND RELEASE OF CHIEF RESTRUCTURING ADVISOR

4. **THIS COURT ORDERS** that upon the appointment of the Receiver, the Chief Restructuring Advisor shall be discharged as Chief Restructuring Advisor to the Applicants, provided that notwithstanding its discharge herein, the Chief Restructuring Advisor shall

continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings.

5. **THIS COURT ORDERS** that upon the appointment of the Receiver, the Chief Restructuring Advisor shall be released and discharged from any and all liability that the Chief Restructuring Advisor now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of the Chief Restructuring Advisor while acting in its capacity as Chief Restructuring Advisor herein, save and except for any gross negligence or wilful misconduct on the Chief Restructuring Advisor's part. Without limiting the generality of the foregoing, the Chief Restructuring Advisor is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within proceedings.

6. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Chief Restructuring Advisor in any way arising from or related to its capacity or conduct as Chief Restructuring Advisor in these proceedings, except with prior leave of this Court and on prior written notice to the Chief Restructuring Advisor and such further order securing, as security for costs, the solicitor and his own client costs of the Chief Restructuring Advisor in connection with any proposed action or proceeding as the Court hearing the motion for leave to proceed may deem just and appropriate.

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
GREEN EARTH ENVIRONMENTAL PRODUCTS AND GREEN EARTH STORES LTD.**

Estate/Court File No.: 31-2481648
Estate/Court File No.: 31-2481649

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

Proceeding commenced at Toronto

**ORDER
RE: APPROVAL OF FEES AND CONDUCT
(JUNE 13, 2019)**

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Lawyers for the Applicants, Matthew McBride
Enterprises Corp. and Beckstette Enterprises
Corp.

TAB 5

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM

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WEDNESDAY, THE 13th

JUSTICE CHIAPPETTA

DAY OF JUNE, 2019

B E T W E E N :

Estate/Court File No. 31-2481648

Estate/Court File No. 31-2481649

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
GREEN EARTH ENVIRONMENTAL PRODUCTS, A GENERAL PARTNERSHIP
ESTABLISHED IN THE PROVINCE OF ONTARIO, AND GREEN EARTH STORES
LTD., A CORPORATION INCORPORATED IN THE PROVINCE OF ONTARIO**

Applicants

ORDER

(Appointing Receiver and Distribution of Monies)

THIS MOTION, made jointly by the Applicants, Green Earth Environmental Products (“**GEEP**”) and Green Earth Stores Ltd. (“**GESL**”), and the secured creditors, Matthew McBride Enterprises Corp. (“**McBride Enterprises**”) and Beckstette Enterprises Corp. (“**Beckstette Enterprises**”), and together with the McBride Enterprises, the “**Secured Creditors**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing Crowe Soberman Inc. as receiver (in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and properties of each of GEEP and GESL (collectively, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Matthew McBride sworn June 7, 2019 and exhibits thereto (the “**McBride Affidavit**”), the Third Report (the “**Third Report**”) of Crowe Soberman Inc., in its capacity as proposal trustee of the

Applicants (in such capacity, the “**Proposal Trustee**”), on hearing the submissions of counsel for the Applicants, Secured Creditors, the Proposal Trustee, and such other counsel as were present as indicated on the Counsel Slip, no one else appearing although duly served as appears from the Affidavit of Service of Alina Stoica sworn June *, 2019, filed, and on reading the consent of Crowe Soberman Inc. to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and Third Report is hereby abridged and validated so that this Motion is properly returnable today and further service of the Notice of Motion, Motion Record and Third Report is hereby dispensed with.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Crowe Soberman Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to the business carried on by the Debtors, including all proceeds thereof (the “**Property**”), with such appointment effective June 18, 2019.

RECEIVER’S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security

personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

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

- (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 \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required, 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;

- (l) 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;
- (m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (n) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (o) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to

enter into occupation agreements for any property owned or leased by the Debtors;

- (p) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (q) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.
- (r) and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, 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 DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the

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

NO INTERFERENCE WITH THE RECEIVER

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

RECEIVER TO HOLD FUNDS

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

PIPEDA

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 Debtors, 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, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER’S ACCOUNTS

17. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of

this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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 standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

DISTRIBUTIONS ON BEHALF OF GEEP

20. **THIS COURT AUTHORIZES AND DIRECTS** the Receiver to distribute the monies held by the Receiver on behalf of GEEP after the date of the deemed bankruptcy of GEEP, net of any monies the Receiver determines are required for the administration of the receivership of GEEP and to pay any other obligations of GEEP that rank ahead of the Assigned Indebtedness (as defined in the McBride Affidavit), and the GEEP Enterprise Indebtedness (as defined in the McBride Affidavit) (collectively, the "**Priority Claims**"), in order of priority as follows:

- (a) first to pay any amounts owing to the beneficiaries under the Administration Charge (as defined in the Administration Order dated March 7, 2019 (the "**Administration Order**"));
- (b) second to pay any amounts owing to the beneficiaries of the KERA Charge (as defined in the Administration Order);
- (c) third to pay any amounts owing by GEEP for source deductions, which are subject to the super priority deemed trust, if any;

- (d) fourth to repay an amount to the Secured Creditors in respect of the secured indebtedness assigned by Royal Bank of Canada, which when combined with the amount repaid by the Receiver from the monies held by GESL to the Secured Creditors in respect of the Assigned Indebtedness results in the Assigned Indebtedness being repaid in full; and
- (e) fifth to repay amounts to the Secured Creditors on a *pro rata* basis until \$734,798 owing by GEEP is repaid in full to McBride Enterprises and \$734,867 owing by GEEP is repaid in full to Beckstette Enterprises.

DISTRIBUTIONS ON BEHALF OF GESL

21. **THIS COURT AUTHORIZES AND DIRECTS** the Receiver to distribute the monies held by the Receiver on behalf of GESL after the date of the deemed bankruptcy of GESL, net of any monies the Receiver determines are required for the administration of the receivership of GESL, and to pay any other obligations of GESL that rank ahead of the Assigned Indebtedness, and the GESL Enterprises Indebtedness (as defined in the McBride Affidavit), including any Priority Claims , in order of priority as follows:

- (a) first to pay any amounts owing to the beneficiaries of the Administration Charge;
- (b) second to pay any amounts owing to the beneficiaries of the KERA Charge;
- (c) third to pay any amounts owing by GESL for source deductions, which are subject to the super priority deemed trust, if any;
- (d) fourth to repay the Assigned Indebtedness less the amount available to be paid by monies held by the Receiver from GEEP which results in the Assigned Indebtedness being repaid in full to the Secured Creditors; and
- (e) fifth to repay amounts owing to the Secured Creditors on a *pro rata* basis until \$2,424,777 owing by GESL is repaid in full to McBride Enterprises and \$2,411,077 owing by GESL is repaid in full to Beckstette Enterprises.

22. **THIS COURT ORDERS THAT** notwithstanding any other provision of this Order and without in any way limiting the protections for the Receiver set forth in this Order or the BIA, the Receiver shall have no obligation to distribute any monies to any party unless the Receiver is holding sufficient funds adequate to effect any such distribution.

SERVICE AND NOTICE

23. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://crowesoverman.com/insolvency/engagements/green-earth-stores-ltd-green-earth-environmental-products>.

24. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors’ creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

25. **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.

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

27. **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.

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

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.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER
(Appointing Receiver and Distribution of Monies)
(Returnable June 13, 2019)**

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Lawyers for the Applicants, Matthew McBride
Enterprises Corp. and Beckstette Enterprises
Corp.

TAB 6

Revised: January 21, 2014
s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver

Court File No. ~~_____~~ **ONTARIO**
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE ~~_____~~ MADAM) ~~WEEKDAY~~ WEDNESDAY, THE # 13th
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)
)
JUSTICE ~~_____~~ CHIAPPETTA) DAY OF ~~MONTH~~ JUNE, ~~20YR~~ 2019

BETWEEN:

PLAINTIFF¹

Plaintiff

~~-and-~~

DEFENDANT

Defendant

Estate/Court File No. 31-2481648
Estate/Court File No. 31-2481649

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
GREEN EARTH ENVIRONMENTAL PRODUCTS, A GENERAL PARTNERSHIP
ESTABLISHED IN THE PROVINCE OF ONTARIO, AND GREEN EARTH STORES
LTD., A CORPORATION INCORPORATED IN THE PROVINCE OF ONTARIO

Applicants

ORDER

(~~appointing~~ Appointing Receiver and Distribution of Monies)

THIS MOTION, made ~~by the Plaintiff² for an Order~~ jointly by the Applicants, Green Earth Environmental Products ("GEEP") and Green Earth Stores Ltd. ("GESL"), and the secured creditors, Matthew McBride Enterprises Corp. ("McBride Enterprises") and Beckstette

¹ ~~The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application.
This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

² ~~Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".~~

Enterprises Corp. (“Beckstette Enterprises”, and together with the McBride Enterprises, the “Secured Creditors”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “CJA”) appointing ~~[RECEIVER'S NAME]~~Crowe Soberman Inc. as receiver ~~[and manager]~~ (in such capacities, the “Receiver”) without security, of all of the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~ (the “Debtor”~~each of GEEP and GESL (collectively, the “Debtors”)~~) acquired for, or used in relation to a business carried on by the ~~Debtor~~Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the ~~affidavit of [NAME] sworn [DATE] and the Exhibits thereto and~~Notice of Motion of the Applicants, the Affidavit of Matthew McBride sworn June 7, 2019 and exhibits thereto (the “McBride Affidavit”), the Third Report (the “Third Report”) of Crowe Soberman Inc., in its capacity as proposal trustee of the Applicants (in such capacity, the “Proposal Trustee”), on hearing the submissions of counsel for ~~[NAMES], no one appearing for [NAME]~~the Applicants, Secured Creditors, the Proposal Trustee, and such other counsel as were present as indicated on the Counsel Slip, no one else appearing although duly served as appears from the ~~affidavit~~Affidavit of ~~service~~Service of ~~[NAME]~~Alina Stoica sworn ~~[DATE]~~June *, 2019, filed, and on reading the consent of ~~[RECEIVER'S NAME]~~Crowe Soberman Inc. to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Motion Third Report is hereby abridged and validated³ so that this ~~motion~~Motion is properly returnable today and ~~hereby dispenses with~~ further service ~~thereof.~~ of the Notice of Motion, Motion Record and Third Report is hereby dispensed with.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, ~~[RECEIVER'S NAME]~~Crowe Soberman Inc. is hereby appointed Receiver, without

³~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

security, of all of the assets, undertakings and properties of the ~~Debtor~~Debtors acquired for, or used in relation to athe business carried on by the ~~Debtor~~Debtors, including all proceeds thereof (the "Property"), with such appointment effective June 18, 2019.

RECEIVER'S POWERS

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

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

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the ~~Debtor~~Debtors and to exercise all remedies of the ~~Debtor~~Debtors in collecting such monies, including, without limitation, to enforce any security held by the ~~Debtor~~Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the ~~Debtor~~Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the ~~Debtor~~Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the ~~Debtor~~Debtors, the Property or the Receiver, and to settle or compromise any such proceedings.⁴ 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 \$~~_____~~50,000, provided that the aggregate consideration for all such transactions does not exceed \$~~_____~~500,000; and

⁴~~This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, ~~[or section 31 of the Ontario *Mortgages Act*, as the case may be,]⁵~~ 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;

- (l) ~~(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;
- (m) ~~(n)~~ to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (n) ~~(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~~Debtors;
- (o) ~~(p)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of the ~~Debtor~~Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the ~~Debtor~~Debtors;
- (p) ~~(q)~~ to exercise any shareholder, partnership, joint venture or other rights which the ~~Debtor~~Debtors may have; and

⁵~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

(q) ~~(r)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

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

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

7. ~~8.~~ **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~~DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

10. ~~11.~~ **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~~Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

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

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

RECEIVER TO HOLD FUNDS

12. ~~13.~~ **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. ~~14.~~ **THIS COURT ORDERS** that all employees of the ~~Debtor~~Debtors shall remain the employees of the ~~Debtor~~Debtors until such time as the Receiver, on the ~~Debtor's~~Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. ~~15.~~ **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~~ Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. ~~16.~~ **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. ~~17.~~ **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections

81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. ~~18.~~ **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.⁶

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

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

~~FUNDING OF THE RECEIVERSHIP~~

DISTRIBUTIONS ON BEHALF OF GEEP

20. ~~21.~~ **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~~

⁶Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".

~~consider necessary or desirable, provided that the outstanding principal amount does not exceed \$ _____ (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.~~ AUTHORIZES AND DIRECTS the Receiver to distribute the monies held by the Receiver on behalf of GEEP after the date of the deemed bankruptcy of GEEP, net of any monies the Receiver determines are required for the administration of the receivership of GEEP and to pay any other obligations of GEEP that rank ahead of the Assigned Indebtedness (as defined in the McBride Affidavit), and the GEEP Enterprise Indebtedness (as defined in the McBride Affidavit) (collectively, the "Priority Claims"), in order of priority as follows:

- (a) first to pay any amounts owing to the beneficiaries under the Administration Charge (as defined in the Administration Order dated March 7, 2019 (the "Administration Order"));
- (b) second to pay any amounts owing to the beneficiaries of the KERA Charge (as defined in the Administration Order);
- (c) third to pay any amounts owing by GEEP for source deductions, which are subject to the super priority deemed trust, if any;
- (d) fourth to repay an amount to the Secured Creditors in respect of the secured indebtedness assigned by Royal Bank of Canada, which when combined with the amount repaid by the Receiver from the monies held by GESL to the Secured Creditors in respect of the Assigned Indebtedness results in the Assigned Indebtedness being repaid in full; and

- (e) fifth to repay amounts to the Secured Creditors on a *pro rata* basis until \$734,798 owing by GEEP is repaid in full to McBride Enterprises and \$734,867 owing by GEEP is repaid in full to Beckstette Enterprises.

DISTRIBUTIONS ON BEHALF OF GESL

21. THIS COURT AUTHORIZES AND DIRECTS the Receiver to distribute the monies held by the Receiver on behalf of GESL after the date of the deemed bankruptcy of GESL, net of any monies the Receiver determines are required for the administration of the receivership of GESL, and to pay any other obligations of GESL that rank ahead of the Assigned Indebtedness, and the GESL Enterprises Indebtedness (as defined in the McBride Affidavit), including any Priority Claims, in order of priority as follows:

- (a) first to pay any amounts owing to the beneficiaries of the Administration Charge;
- (b) second to pay any amounts owing to the beneficiaries of the KERA Charge;
- (c) third to pay any amounts owing by GESL for source deductions, which are subject to the super priority deemed trust, if any;
- (d) fourth to repay the Assigned Indebtedness less the amount available to be paid by monies held by the Receiver from GEEP which results in the Assigned Indebtedness being repaid in full to the Secured Creditors; and
- (e) fifth to repay amounts owing to the Secured Creditors on a *pro rata* basis until \$2,424,777 owing by GESL is repaid in full to McBride Enterprises and \$2,411,077 owing by GESL is repaid in full to Beckstette Enterprises.

22. **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.~~ **THAT** notwithstanding any other provision of this Order and without in any way limiting the protections for the Receiver set forth in this Order or the BIA, the Receiver shall have no obligation to distribute any monies to any party unless the Receiver is holding sufficient funds adequate to effect any such distribution.

~~23.— 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.~~

~~24.— THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.~~

SERVICE AND NOTICE

23. ~~25.~~ **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: ~~@~~ <https://crowesoverman.com/insolvency/engagements/green-earth-stores-ltd-green-earth-environmental-products>.

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

be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

25. ~~27.~~ **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.

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

27. ~~29.~~ **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.

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

~~31. — 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. ~~32.~~ **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.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. ~~THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of _____, 20__ (the "Order") made in an action having Court file number __ CL _____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.~~

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

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

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

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

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

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

DATED the _____ day of _____, 20__.

~~[RECEIVER'S NAME], solely in its capacity
as Receiver of the Property, and not in its
personal capacity~~

Per:

Name:

Title:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
GREEN EARTH ENVIRONMENTAL PRODUCTS AND GREEN EARTH STORE LTD

Estate/Court File No. 31-2481648

Estate/Court File No. 31-2481649

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER
(Appointing Receiver and Distribution of Monies)
(Returnable June 13, 2019)

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800

Document comparison by Workshare 9.5 on Friday, June 7, 2019 4:54:30 PM

Input:	
Document 1 ID	interwovenSite://MTDMS.MILLERTHOMSON.CORP/Legal/39993621/1
Description	#39993621v1<Legal> - Model Receivership Order
Document 2 ID	interwovenSite://MTDMS.MILLERTHOMSON.CORP/Legal/40020770/1
Description	#40020770v1<Legal> - Green Earth Appointment and Distribution Order (Final - As Served)
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
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Moved deletion	
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Moved cell	
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Padding cell	

Statistics:	
	Count
Insertions	180
Deletions	183
Moved from	0
Moved to	0

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
GREEN EARTH STORES LTD AND GREEN EARTH ENVIRONMENTAL PRODUCTS**

Estate/Court File No.: 31-2481648

Estate/Court File No.: 31-2481649

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

Proceeding commenced at Toronto

**MOTION RECORD
(RETURNABLE JUNE 13, 2019)**

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