

COURT FILE NUMBER 2101-00811

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFFS/APPLICANTS CANTECH OILFIELD EQUIPMENT LTD., CELINA CAI XING LUO, HUI YANG XU, CHRISTINE YIN HUI, FANG YANG, KING CHI HUNG, CHUNG YIN SIU, BAO JING MA, SING LIM YEO, YEE KEN YEO, HON HING CHOI CHAN, JOY LING CHAN, QIN LU, DAOJING FINANCIAL CONSULTING LTD., MAGGIE TING HON, ROYAL GREENLAND COMMUNITY LTD., KA FAI PUI, NYUK JIN HUI, KAI WAH HUI, and BENJAMIN JOSHUA HUI

DEFENDANT/RESPONDENT ROXDALE GARDENS LTD.

DEFENDANTS ROHIT SETHI also known as ROY SETHI, ROHIT SETHI by and through his trustee MELANIE J. LEIGH, YUVRAJ VERMA, YUVRAJ VERMA by and through his trustee MELANIE J. LEIGH, VIKAS KWATRA, and VIKAS KWATRA by and through his trustee MELANIE J. LEIGH

DOCUMENT **APPLICATION**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

**Fasken Martineau DuMoulin LLP**  
 Barristers and Solicitors  
 3400 First Canadian Centre  
 350 – 7<sup>th</sup> Avenue SW  
 Calgary, Alberta T2P 3N9

**Lawyer: Darren Reed/Jo Colledge-Miller**  
 Phone Number: 403-261-6152/403-261-5356  
 Email: dreed@fasken.com/  
 jcolledgemiller@fasken.com  
 File Number: 325601.00001

**NOTICE TO RESPONDENT: ROXDALE GARDENS LTD.**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date	June 10, 2021 – to be heard via WebEx
Time	3:00 p.m.
Where	Calgary Court Centre, 601 - 5 Street SW, Calgary, Alberta, T2P 5P7
Before Whom	The Honorable Justice C.M. Jones, Commercial List

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:**

1. The Applicants, Cantech Oilfield Equipment Ltd. and King Chi Hung, Cantech Oilfield Equipment Ltd., Celina Cai Xing Luo, Hui Yang Xu, Christine Yin Hui, Fang Yang, King Chi Hung, Chung Yin Siu, Bao Jing Ma, Sing Lim Yeo, Yee Ken Yeo, Hon Hing Choi Chan, Joy Ling Chan, Qin Lu, Daojing Financial Consulting Ltd., Maggie Ting Ting Hon, Royal Greenland Community Ltd., Ka Fai Pui, Nyuk Jin Hui, Kai Wah Hui, and Benjamin Joshua Hui (collectively, the “**Preferred Shareholders**”), seek an interim Receivership Order in substantially the form attached hereto as **Schedule “A”** appointing FTI Consulting Canada Inc. as receiver-manager over the assets of the Defendant, Roxdale Gardens Ltd. (“**Roxdale**”).

**Grounds for making this application:**

*Overview*

2. The Preferred Shareholders have been oppressed through the actions of the Defendants, or any othem. Without intervention by this Honourable Court to appoint an interim receiver-manager over Roxdale, Roxdale is a “rudderless ship”. There is no other legal ability for the Preferred Shareholders to preserve and protect the value of their investment which is contractually secured for their benefit through a mortgage held over certain property (which is in default) that was funded with the monies invested by the Preferred Shareholders in Roxdale.

***Preferred Shareholders Inducement to Invest in Roxdale***

3. The Preferred Shareholders were induced to invest in Roxdale based upon certain representations made by the Defendants, including, *inter alia*, that:

- (a) Pursuant to the terms and conditions each Preferred Shareholder executed in subscribing for either their Class C and/or Class D shares in Roxdale (the “**Subscription Agreements**”), the Preferred Shareholders were to be paid a guaranteed dividend amount (based upon the applicable class of preferred share) on an annual basis;
- (b) A percentage of the funds invested by the Preferred Shareholders would be sequestered in a trust account with Roxdale’s counsel (the “**Escrow Funds**”) that would be used solely for the payment of dividends to the Preferred Shareholders;
- (c) The funds invested in Roxdale by the Preferred Shareholders (in the amount of \$3,390,000) would be collateralized by way of a \$10 Million mortgage, dated July 9, 2020 (the “**Mortgage**”), registered against two adjacent parcels of land owned by Cancom Roxdale Inc. (“**Cancom**”) and located in Leduc County, Alberta, legally described as:

PLAN 1821856  
BLOCK 1  
LOT 3  
EXCEPTING THEREOUT ALL MINES AND MINERALS  
AREA: 6.76 HECTARES (16.7 ACRES) MORE OR LESS

and

PLAN 1821856  
BLOCK 1  
LOT 4  
EXCEPTING THEREOUT ALL MINES AND MINERALS  
AREA: 2.79 HECTARES (6.89 ACRES) MORE OR LESS

(Collectively referred to as the “**Lands**”); and

- (d) The Lands, that were represented to the Preferred Shareholders as having a value of between \$7 million and \$7.25 million, were to be the site of a residential real

estate development scheme, colloquially referred to as the Roxdale Gardens Project (the “**Project**”), which was to be financed through the funds invested by the Preferred Shareholders and collateralized through the Mortgage.

4. In total, the various investors who purchased preferred shares in Roxdale, including but not limited to the Preferred Shareholders, invested a gross total of \$7,940,000 in Roxdale (the “**Investment**”). In contrast, the Defendants, Rohit Sethi, Yuvraj Verma and Vikas Kwatra (collectively, the “**Former Directors**”) purchased their Class A voting shares in Roxdale for only \$100 each, for a combined total of \$300.

***Bankruptcy of All the Roxdale Directors***

5. The Former Directors were at all material times the sole Directors and Class A common shareholders of both Roxdale and Cancom (and a number of other corporations not directly related to this Application) until each of the Former Directors filed for personal bankruptcy on or about February 18, 2021.
6. As a result and by operation of law, there are no Directors for either Roxdale or Cancom and the Former Directors’ Class A voting shares in both companies are held by their trustee in bankruptcy, Melanie J. Leigh (the “**Trustee**”).
7. The Trustee has taken the position that she will not be conducting any business of behalf of Roxdale and Cancom as holder of the Class A voting shares by virtue of the Former Directors’ bankruptcy.

***Roxdale’s Primary Asset, the Mortgage, is in Default***

8. The terms of the Mortgage provided, *inter alia*, that:
  - (a) Interest would be charged at a rate of fifteen percent (15%) per annum, calculated yearly;
  - (b) Interest only payments would be due and payable in equal, consecutive annual payments, commencing November 15, 2020;

- (c) The full balance of the principal sum and interest thereon would be due and payable on August 1, 2022; and
  - (d) In the event of a default under the Mortgage, Roxdale could initiate legal proceedings to take possession of the Lands or dispose of the Lands to repay the debt owing.
9. In a subsequent Amending Agreement and Notice, with attached Amending Agreement, dated December 17, 2020 (the “**Amending Agreement**”), Cancom and Roxdale amended the terms of the Mortgage to provide that, in the event Cancom defaulted under the Mortgage, title to the Lands would be transferred to Roxdale.
10. The Mortgage is Roxdale’s primary asset and only asset of tangible value and is held by Roxdale for the benefit of the Preferred Shareholders.
11. There are two interests registered against the Lands, being the Mortgage and a Builders’ Lien, registered on April 17, 2020 in the amount of \$197,605.
12. Cancom failed to make the Mortgage interest payment on November 15, 2020 to Roxdale, such that the Mortgage is currently in default. Without a receiver manager, the Amending Agreement cannot be enforced, nor can the Mortgage be foreclosed upon to protect the Preferred Shareholders’ investments.

***Oppression of the Preferred Shareholders***

13. The Preferred Shareholders are being oppressed by the actions of the Former Directors as holders of the voting shares, the inaction of the Trustee and the actions of Roxdale, through the Former Directors, by, *inter alia*:
- (a) Withholding dividend payments rightfully due and owing to the Preferred Shareholders;
  - (b) Failing to retain an amount equal to the total expected dividends to be paid to Preferred Shareholders in an escrow account with counsel for Roxdale as required by the Subscription Agreements;

- (c) Failing to use funds raised through the sale of preferred shares to develop the Lands or to otherwise benefit Roxdale;
- (d) Failing to demand payment of the Mortgage by Cancom;
- (e) Failing to direct Cancom to transfer title to the Lands to Roxdale upon Cancom's default under the Mortgage; and
- (f) Failing to provide the Preferred Shareholders a proper accounting and reconciliation of funds invested into the Project.

***Appointment of a Receiver is Necessary, Just, and Convenient***

- 14. The Preferred Shareholders and other investors in Roxdale have invested \$7.94 Million in the company. In the absence of a controlling mind for Roxdale, this Investment is at risk as no steps can currently be taken to preserve and protect the Investment for the benefit of the Preferred Shareholders and other investors in Roxdale.
- 15. Roxdale's only tangible asset is the Mortgage and its Amending Agreement, neither of which, in the absence of a controlling mind for Roxdale, can be enforced.
- 16. The appointment of a receiver-manager is required to commence legal proceedings against Cancom to enforce the terms of the Amendment Agreement and/or the Mortgage in order to effect the transfer of title to the Lands into Roxdale's name in order to preserve and protect the value of the Investment for the benefit of the Preferred Shareholders and other investors in Roxdale.
- 17. The appointment of a receiver-manager is also required to review Roxdale's finances to:
  - (a) Provide the Preferred Shareholders and other investors with a proper accounting and reconciliation of funds invested in to the Project;
  - (b) Identify why no dividends were paid to any of the Preferred Shareholders or other investors in accordance with the Subscription Agreements;
  - (c) Identify why no Escrow Funds are held in trust by Roxdale's counsel; and

- (d) To the extent possible, to trace the funds provided by the Preferred Shareholders and the other investors in Roxdale.
18. These steps are required to secure the Investment for the benefit of the Preferred Shareholders and other investors in Roxdale.
  19. Once title to the Lands is transferred to Roxdale and the above review, accounting and tracing is completed, the receiver-manager can wind-up Roxdale and distribute its assets to its shareholders in accordance with the requirements of the *Business Corporations Act*.
  20. The appointment of a receiver-manager is just and convenient in the circumstances.
  21. Appointing a receiver-manager over the assets of Roxdale, and no other remedy, will permit the enforcement of the Mortgage and/or the Amending Agreement to permit Roxdale to then realize the value of the Lands for distribution to the shareholders.
  22. FTI Consulting Canada Inc. has consented to act as the receiver of Roxdale.
  23. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**Material or evidence to be relied on:**

24. The Affidavit of Guoqiang (George) Hu, sworn April 26, 2021;
25. The Affidavit of King Chi Hung, sworn April 26, 2021;
26. The Consent to Act as Receiver-Manager, dated April 25, 2021;
27. The pleadings and proceedings taken in this action; and
28. Such further and other materials as Counsel may advise and this Honourable Court permits.

**Applicable rules:**

29. Rule 6.2 of the *Alberta Rules of Court*, Alta. Reg. 124/2010.

30. Any such further and other applicable Rules pursuant to the *Alberta Rules of Court*, Alta. Reg. 124/2010 as Counsel may advise and this Honourable Court permits.

**Applicable Acts and Regulations:**

31. Part 8 and section 242 of the *Business Corporations Act*, RSA 200, c B-9;
32. Sections 8 and 13(2) of the *Judicature Act*, RSA 2000, c J-2; and
33. Such further and other Acts and Regulations as Counsel may advise and this Honourable Court permits.

**How the application is proposed to be heard or considered:**

34. The Applicant proposes that this application be heard via WebEx with all or some of the parties present (upon presentation of affidavits of service as required).

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.



**Schedule "A"**

COURT FILE NUMBER

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFFS/APPLICANTS

CANTECH OILFIELD EQUIPMENT LTD.,  
CELINA CAI XING LUO, HUI YANG XU,  
CHRISTINE YIN HUI, FANG YANG, KING CHI  
HUNG, CHUNG YIN SIU, BAO JING MA, SING  
LIM YEO, YEE KEN YEO, HON HING CHOI  
CHAN, JOY LING CHAN, QIN LU, DAOJING  
FINANCIAL CONSULTING LTD., MAGGIE TING  
HON, ROYAL GREENLAND COMMUNITY LTD.,  
KA FAI PUI, NYUK JIN HUI, KAI WAH HUI, and  
BENJAMIN JOSHUA HUI

DEFENDANT/RESPONDENT

ROXDALE GARDENS LTD.

DEFENDANTS

ROHIT SETHI also known as ROY SETHI, ROHIT  
SETHI by and through his trustee MELANIE J.  
LEIGH, YUVRAJ VERMA, YUVRAJ VERMA by  
and through his trustee MELANIE J. LEIGH, VIKAS  
KWATRA, and VIKAS KWATRA by and through  
his trustee MELANIE J. LEIGH

DOCUMENT

**RECEIVERSHIP ORDER**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**Fasken Martineau DuMoulin LLP**

Barristers and Solicitors  
3400 First Canadian Centre  
350 – 7<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 3N9

**Lawyer: Darren Reed/Jo Colledge-Miller**

Phone Number: 403-261-6152/403-261-5356

Email: [dreed@fasken.com](mailto:dreed@fasken.com)/

[jcolledgemiller@fasken.com](mailto:jcolledgemiller@fasken.com)

File Number: 325601.00001

**DATE ON WHICH ORDER WAS PRONOUNCED:** \_\_\_\_\_

**NAME OF JUDGE WHO MADE THIS ORDER:** \_\_\_\_\_

**LOCATION OF HEARING:** \_\_\_\_\_

**UPON** the application of Cantech Oilfield Equipment Ltd. and King Chi Hung in respect of Roxdale Gardens Ltd. (the “**Receivership Respondent**”); **AND UPON** having read the Application, the Affidavit of George Hu, the Affidavit of King Chi Hung and the Affidavit of Service, filed; **AND UPON** reading the consent of **FTI Consulting Canada Inc.** to act as receiver-manager (the “**Receiver**”) of the Receivership Respondent, filed; **AND UPON** hearing counsel for the Plaintiffs and any other counsel or other interested parties present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

### **SERVICE**

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

### **APPOINTMENT**

2. Pursuant to sections 99(a) and 242 of the *Business Corporations Act*, RSA 2000, c. B-9 and section 13(2) of the *Judicature Act*, R.S.A. 2000, c.J-2 and 30, **FTI Consulting Canada Inc.** is hereby appointed Receiver, without security, of all of the Receivership Respondent’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. 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, which shall include the Receiver’s ability to abandon, dispose of or otherwise release any interest in any of the Receivership Respondents’ real property, or any right in any immovable, in respect of such interest in real property or immovable,

- (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 Receivership Respondent, 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 Receivership Respondent;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Receivership Respondent or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Receivership Respondent and to exercise all remedies of the Receivership Respondent in collecting such monies, including, without limitation, to enforce any security held by the Receivership Respondent;
- (g) to settle, extend or compromise any indebtedness owing to or by the Receivership Respondent;
- (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 Receivership Respondent, for any purpose pursuant to this Order;
- (i) to undertake any steps necessary to foreclose on the mortgage held by the Receivership Respondent, dated July 9, 2020 and registered against title to the land legally described as Plan 1821856, Block 1, Lot 3, excepting thereout all

mines and minerals area: 6.76 Hectares (16.7 Acres) more or less and Plan 1821856, Block 1, Lot 4, excepting thereout all mines and minerals area: 2.79 Hectares (6.89 Acres) more or less, (the “**Mortgage**”) and to undertake any steps necessary to enforce the terms of the December 17, 2020 Amending Agreement and Notice, with attached Amending Agreement that amended the terms of the Mortgage (the “**Amending Agreement**”). Any proceeds that arise from either the foreclosure of the Mortgage or the enforcement of the Amending Agreement are to be held in trust by the Receiver until further order of this Court;

- (j) to undertake environmental or workers' health and safety assessments of the Property and operations of the Receivership Respondent;
- (k) 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 Receivership Respondent, 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, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;
- (l) to market any or all 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;
- (m) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
  - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, R.S.A. 2000, c. P-7 or any other similar legislation in any other province or territory shall not be required.

- (n) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing 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;
- (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate 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;
- (p) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c. L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Receivership Respondent and not in its personal capacity;
- (q) 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 Receivership Respondent;
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Receivership Respondent, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Receivership Respondent;

- (s) to exercise any shareholder, partnership, joint venture or other rights which the Receivership Respondent may have; and
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

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

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

4. (i) The Receivership Respondent, (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 (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
5. 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 Receivership Respondent, 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 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 documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

6. 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. 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 RECEIVERSHIP RESPONDENT OR THE PROPERTY**

8. No Proceeding against or in respect of the Receivership Respondent 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 Receivership Respondent or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i)



prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph; and (ii) affect a Regulatory Body's investigation in respect of the Receivership Respondent or an action, suit or proceeding that is taken in respect of the Receivership Respondent by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

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

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Receivership Respondent or the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided, however, that nothing in this Order shall:
  - (a) empower the Receivership Respondent to carry on any business that the Receivership Respondent is not lawfully entitled to carry on;
  - (b) prevent the filing of any registration to preserve or perfect a security interest;
  - (c) prevent the registration of a claim for lien; or
  - (d) exempt the Receivership Respondent from compliance with statutory or regulatory provisions relating to health, safety or the environment.
  
10. Nothing in this Order shall prevent any party from taking an action against the Applicant where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

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

11. No Person shall accelerate, suspend, 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 Receivership Respondent, except with the written consent of the Receivership Respondent and the Receiver, or leave of this Court.

### **CONTINUATION OF SERVICES**

12. All persons having:
  - (a) statutory or regulatory mandates for the supply of goods and/or services; or
  - (b) oral or written agreements or arrangements with the Receivership Respondent, 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 Receivership Respondentare hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Receivership Respondent or exercising any other remedy provided under such agreements or arrangements. The Receivership Respondent shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Receivership Respondent in accordance with the payment practices of the Receivership Respondent, or such other practices as may be agreed upon by the supplier or service provider and each of the Receivership Respondent and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

13. 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**

14. Subject to employees’ rights to terminate their employment, all employees of the Receivership Respondent shall remain the employees of the Receivership Respondent until such time as the Receiver, on the Receivership Respondent's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”) or under the *Wage Earner Protection Program Act*, SC 2005, c 47 (“**WEPPA**”).
15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, 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 Receivership Respondent, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## LIMITATION ON ENVIRONMENTAL LIABILITIES

16. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
- (i) before the Receiver's appointment; or
  - (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
- (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
    - A. complies with the order, or
    - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
  - (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within

10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,

- A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
  - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
- (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the BIA.

#### **RECEIVER'S ACCOUNTS**

18. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, which charge shall not exceed an aggregate amount of \$150,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) and 88 of the BIA.

19. The Receiver and its legal counsel shall pass their accounts from time to time.
20. 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 the 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**

21. 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 (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, deemed 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 set out in sections 14.06(7), 81.4(4) and 81.6(2) and 88 of the BIA.
22. 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.
23. 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. 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.
25. The Receiver shall be allowed to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

### **ALLOCATION**

26. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

### **GENERAL**

27. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
28. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
29. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Receivership Respondent.
30. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction 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, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

31. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
32. The Plaintiff shall have its costs of this application, 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, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Receivership Respondent's estate with such priority and at such time as this Court may determine.
33. Any interested party may apply to this Court to vary or amend this Order on not less than 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.

#### **FILING**

34. This Order is issued and shall be filed in Court of Queen's Bench Action No. \_\_\_\_\_.
35. The Receiver shall establish and maintain a website in respect of these proceedings at: <http://cfcanada.fticonsulting.com/> (the "**Receiver's Website**") and shall post there as soon as practicable:
  - (a) all materials prescribed by statute or regulation to be made publicly available; and
  - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such



materials as are confidential and the subject of a sealing order or pending application for a sealing order.

36. The E-Service Guide of the Alberta Court of Queen's Bench Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide shall be valid and effective service. Subject to Rules 11.25 and 11.26, this Order shall constitute an order for substituted service pursuant to Rule 11.28 of the *Alberta Rules of Court*. Subject to paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. A Case Website shall be established in accordance with the Guide.
37. Service of this Order shall be deemed good and sufficient by:
- (a) serving the same on:
    - (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
    - (ii) any other person served with notice of the application for this Order;
    - (iii) any other parties attending or represented at the application for this Order;  
and
  - (b) posting a copy of this Order on the Receiver's Website
- and service on any other person is hereby dispensed with.
38. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that **FTI Consulting Canada Inc.**, the interim receiver and receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of **Roxdale Gardens Ltd.** appointed by Order of the Court of Queen's Bench of Alberta and Court of Queen's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "Court") dated the [day] day of [month], 2021 the "**Order**") made in action numbers [●], 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 [\$] that 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 *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 [●].
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 \_\_\_\_\_, 2021.

**FTI Consulting Canada Inc.**, solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

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