



NO. S-235306
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

NATIONAL BANK OF CANADA

PETITIONER

AND:

1239583 B.C. LTD.

RESPONDENT

NOTICE OF APPLICATION

Name of applicant: FTI Consulting Canada, Inc. (“FTI”) in its capacity as court-appointed receiver and receiver-manager (the “**Receiver**”) without security, of the assets, property and undertakings (the “**Property**”) of 1239583 B.C. Ltd., including its predecessor prior to amalgamation, 1134759 B.C. Ltd. (the “**Debtor**”).

TO: The attached Service List (**Schedule “A”**)

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on Wednesday, the 12th day of November, 2024 at 9:45 a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take 40 minutes.

- This matter is within the jurisdiction of an associate judge.
- This matter is not within the jurisdiction of an associate judge.

PART 1: ORDER(S) SOUGHT

1. An order substantially in the form attached hereto as **Schedule “B”** (the “**Approval and Vesting Order**”), among other things:

- (a) approving the completion and consummation of the sale transaction (the “**Transaction**”) of the land legally known as PID 008-620-741 and municipally known as 9250 Somers Road, Port Alberni, British Columbia (the “**Farm**”) contemplated by the contract of purchase and sale dated October 4, 2024 (collectively, the “**Purchase Agreement**”) between the Receiver, as vendor, and Erik John Waldriff and Sarah Brooke Waldriff (the “**Purchasers**”) as purchasers; and
 - (b) effective upon the Receiver filing a certificate with the Court, substantially in the form attached as **Schedule “B”** to the Approval and Vesting Order, vesting the purchased assets described in the Purchase Agreement (the “**Purchased Assets**”), in the Purchasers free and clear of all claims and encumbrances; and
2. An Order substantially in the form attached as **Schedule “C”** (the “**Approval and Discharge Order**”) among other things:
- (a) approving the activities and conduct of the Receiver, as described in the First Receiver’s Report, dated October 10, 2023 (the “**First Report**”), the Second Receiver’s Report, dated September 10, 2024 (the “**Second Report**”), and the Third Receiver’s Report, dated October 23, 2024 (the “**Third Report**”, and collectively with the First Report and the Second Report, the “**Receiver’s Reports**”);
 - (b) declaring that, as of the date of the Receiver’s Reports and based on the evidence that is currently before the Court, the Receiver has satisfied (i) all of its duties and obligations as Receiver; and (ii) its obligations under and pursuant to the terms of the Orders granted in the within proceedings up to and including the date thereof;
 - (c) approving the Receiver’s interim statement of receipts and disbursements with respect to the Debtor and the Property, for the period ending September 5, 2024, as set out in paragraphs 21 and 22 of the Second Report;
 - (d) approving the fees and disbursements of the Receiver (the “**Receiver’s Fees**”) and the Receiver’s external counsel, McCarthy Tétrault LLP (the “**Receiver’s Counsel**” and the “**Receiver’s Counsel’s Fees**”), for the period from the

commencement of the Receiver's mandate, along with the estimated fees of the Receiver and the Receiver's counsel up to the closing and completion of the Transaction (the "**Estimated Completion Fees**"), as set out in the Affidavit of H. Lance Williams, sworn on September 10, 2024 (the "**Receiver's Counsel's Fee Affidavit**") and the Affidavit of Tom Powell, sworn on September 10, 2024 (the "**Receiver's Fee Affidavit**" and collectively with the Receiver's Counsel's Fee Affidavit, the "**Fee Affidavits**"), and paragraphs 26 – 9 of the Second Report; and

- (e) ordering and declaring that, immediately upon the Receiver filing a certificate with the Court, substantially in the form attached as **Schedule "B"** to the Approval and Discharge order (the "**Discharge Certificate**"), confirming that (i) the Transaction has been completed to the satisfaction of the Receiver; and (ii) all outstanding amounts secured by the Receiver's Charge (as defined in the Receivership Order (defined below)) have been satisfied:
 - (i) the Receiver shall be discharged, and declaring that, notwithstanding the discharge of the Receiver, the Receiver remains empowered with residual jurisdiction to take such steps and actions as it deems necessary to address any ancillary or incidental matters, as required in connection with its capacity as Receiver following the termination of the within proceedings, and that FTI shall continue to have the benefit of all orders made in these proceedings in relation to its capacity as Receiver; and
 - (ii) FTI shall be released and discharged from any and all liability that FTI now has or may hereafter have by reason of, or in any way arising out of, the actions or omissions of FTI while acting in its capacity as Receiver herein, and without limiting the generality of the foregoing, FTI shall be 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;
 - (f) authorizing the distribution of the net proceeds of sale received by the Receiver from the Transaction to National Bank of Canada (the "**Bank**") on account of the amount owing to the Bank by the Debtor.
3. Such further and other relief as this Court may deem just.

PART 2: FACTUAL BASIS

Background

1. The Debtor owned and operated the Farm located in Port Alberni, British Columbia. The Debtor's municipal address is Town Center Tower, 7 – 32330 South Fraser Way, Abbotsford, British Columbia, V2T 1X1.
2. 1132759 B.C. Ltd. ("**113 Co.**") is a predecessor company to the Debtor by amalgamation and is also indebted to the Bank.
3. The Bank extended various secured credit facilities to the Debtor and is the primary secured lender to the Debtor. The indebtedness owing by the Debtor to the Bank was \$5,977,355.84 as at July 19, 2023, plus fees, interest, and other amounts accruing under the various agreements between the Debtor and the Bank (the "**Indebtedness**"), and there have been no payments on account of the Indebtedness since that date. The Debtor cannot repay the Bank, and accordingly, the Bank sought the appointment of the Receiver.

Affidavit #1 of Erin Welte, made July 24, 2023
(the "**First Welte Affidavit**") at Exhibit "A"

4. On September 8, 2023 (the "**Appointment Date**"), the Supreme Court of British Columbia (the "**Court**") granted an order (the "**Receivership Order**"), which among other things, appointed FTI as the Receiver of the Property pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") and section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253 (the "**LEA**") and granted the Receiver the authority to list, market, and sell the Property.

Receivership Order at para 1

Second Report at para 1

5. On October 24, 2023, the Court granted an order authorizing and directing the Receiver to file an assignment in bankruptcy on behalf of the Debtor, pursuant to section 49 of the BIA (the "**Bankruptcy Order**"). The Receiver made an assignment in bankruptcy on behalf of the Debtor on November 21, 2023.

Bankruptcy Order at para 1
Second Report at para 3

6. Pursuant to the Bankruptcy Order, FTI was authorized to act as trustee in bankruptcy of the Debtor in accordance with the provisions of the BIA.

Bankruptcy Order at para 2

The Property

7. The Debtor is the registered owner of the Farm and the Bank has a first-ranking mortgage and assignment of rents registered against the Farm under instrument nos. CA9759425 and CA9759426, respectively.

Affidavit #1 of Donna Barnes made July 18, 2023
(the "**First Barnes Affidavit**") at Exhibit "C"

8. In addition to the land, the Farm consists of two houses, a large interconnected barn, and some smaller buildings, including a shed.

First Welte Affidavit at para 21

9. At the time of the First Report, the property of the Debtor consisted of the Farm, and various farm machinery and equipment. The Debtor's principal business was the planting and growing of vegetable crops, including broccoli, cauliflower, and pumpkins.

First Report at para 2

10. Once the Receiver took control of the Property, it became clear that the Farm operations were not sustainable and the Receiver sought to close down the operations. Given the state of the Farm operations, the Receiver determined that the appropriate course of action was to stop all operations and seek to liquidate the land and assets.

First Report at para 13
Second Report at para 12(c)

11. The Receiver also discovered that a number of workers were living on the Farm. The workers were employed by 1366328 B.C. Ltd. ("**136 Co.**"), a related company to the Debtor. 136 Co. asserted that it had a lease over the Farm (the "**Lease**"). Between

October 12, 2023 and April 18, 2024, the Receiver facilitated the relocation of the workers. The Receiver also had to defend a notice of dispute brought by 136 Co. pursuant to the *Residential Tenancy Act*, SBC 2002, c 78 (the “**RTA**”) in which 136 Co. produced the Lease and claimed to be a tenant under the RTA. On April 18, 2024, Arbitrator Buchan with the Residential Tenancy Branch dismissed 136 Co.’s application to cancel the one month notice to end the tenancy issued by the Receiver on behalf of the Debtor.

Second Report at para 12(e) and (f) and Appendix “D”
Decision: 910135775 (Residential Tenancy Branch)
of Arbitrator Buchan pronounced April 18, 2024

Sales Process

12. Under the Receivership Order, the Receiver has the power to take and maintain possession and control of the Property, manage, operate, and carry on the business of the Debtor, and market and sell the Property (subject to Court approval if any one transaction exceeds \$500,000 or if the aggregate of transactions exceeds \$1,000,000).

Receivership Order at para 2

13. The Receivership Order also allows the Receiver to apply for any vesting order necessary to convey the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances.

Receivership Order at para 2(m)

14. Pursuant to its mandate to maximize recovery for the Debtor’s secured lenders, the Receiver commenced sale efforts with respect to the Debtor’s assets.

15. The Receiver solicited competing proposals from three real estate agents to act as listing agent for the Farm. The Receiver, in consultation with the Bank, reviewed the proposals and selected Landquest Realty Corp. (“**Landquest**”) to act as the exclusive listing agent.

Second Report at para 13

16. The decision to engage Landquest was supported by:
- (a) Landquest's extensive experience with properties located in rural Western Canada and specifically on Vancouver Island, where their proposed marketing strategy would target the wide range of interested parties that would be likely to transact the Farm;
 - (b) Landquest's commission structure was competitive with the other proposals received; and
 - (c) Landquest's proposed listing price.
- Second Report at para 14
17. On or around February 20, 2024, Landquest listed the Farm for sale. The original list price was \$2.8 million and the price was revised twice during the listing period to \$2.49 million on April 16, 2024 and \$2.19 million on June 24, 2024, respectively.
- Second Report at para 15
18. The marketing campaign for the Farm (the "**Marketing Process**") undertaken by Landquest included the following efforts:
- (a) website listings on Realtor.ca and Landquest.com;
 - (b) social media posts on Facebook, YouTube, and Instagram;
 - (c) placing advertisements in the National Post, BC Outdoors Magazine, and Beef in BC Magazine; and
 - (d) distributing physical mailout flyers to approximately 1,750 addresses in the areas immediately surrounding the Farm.
- Second Report at para 16
19. Over the course of the Marketing Process, the following interest was shown in the Farm:
- (a) the website listing received over 10,000 views;
 - (b) social media posts reached over 20,000 individuals;

- (c) print media advertisements were run approximately once a month;
- (d) 30 parties called or messaged Landquest to inquire about the Farm; and
- (e) three offers were received.

Second Report at para 17

July Purchase Agreement and Original Court Approval

20. On July 18, 2024, Brian William Dielissen and Lisa Marie Dielissen (the “**July Purchasers**”) presented an offer (the “**July Offer**”) to purchase the Farm on the terms set out in the proposed purchase agreement (the “**July Purchase Agreement**”).

Second Report at para 18 and Appendix “A”

21. The key terms of the July Purchase Agreement are summarized as follows:

- (a) a purchase price of \$1.75 million;
- (b) a deposit of \$100,000 held by the Purchasers’ real estate agent in trust and form part of the purchase price;
- (c) it was conditional upon financing, which was satisfied on August 16, 2024;
- (d) it was conditional upon the approval of this Court; and
- (e) closing to occur no later than 30 days after the July Purchase Agreement was approved by this Court.

Second Report at para 19

22. The Receiver also negotiated a backup bid with Danielle Watson and Russell Barnes (the “**July Backup Party**”). On August 8, 2024, the July Backup Party made an offer of \$1.6 million. The Receiver communicated to the July Backup Party that another offer had already been accepted, but proposed a counteroffer of \$1.75 million and a \$100,000 deposit on the basis of it being considered as a backup bid if the July Purchasers could not satisfy their outstanding conditions.

Third Report at para 17]

23. On August 16, 2024, the July Purchasers cleared their conditions and the July Backup Party was informed that the Receiver would be proceeding with the July Purchase Agreement.
24. The Receiver applied to this Court for approval of the July Purchase Agreement on September 25, 2024. At that hearing, another bidder presented an alternative offer, with the key terms as follows (the "**July Alternative Offer**"):
 - (a) a purchase price of \$1.85 million;
 - (b) a deposit of \$20,000;
 - (c) it was conditional upon the approval of this Court; and
 - (d) closing to occur no later than 30 days after approval from this Court.

Affidavit #1 of Danielle Louise Watson, dated September 20, 2024 at Exhibit "I"

25. In accordance with the Receivership Order, the Receiver accepted the July Purchase Agreement and presented it to the Court for approval on September 25, 2024.

Notice of Application of the Petitioners, dated September 11, 2024

26. At that hearing, the Court required the Receiver to reopen the sales process and take additional steps the Receiver considered appropriate in its business judgement in order to obtain the highest possible price for the Property. This was because the July Backup Party appeared at the hearing with the higher July Alternative Offer and that the Receiver had not previously shared the purchase price of the accepted July Purchaser Agreement. The Court gave the Receiver discretion in how to conduct that final sales process to maximize value.

Third Report at para 19

Final Offers Procedure

27. On October 2, 2024, the Receiver sent a letter to all parties (the "**Notice for Final Offers**") who previously expressed in interest in the Property and called for final and best offers by October 4, 2024 at 4:00pm PST (the "**Final Offer Deadline**"). In the

Notice for Final Offers, the Receiver shared the purchase price and deposit amount of the July Purchase Agreement and the July Alternative Offer.

Third Report at para 20 and Appendix A

28. In the Notice for Final Offers, the Receiver was also clear that:

- (a) the best offer would be selected on a holistic basis, considering factors like the deposit amount and the closing date, and not just select the highest purchase price; and
- (b) these would be the final offers considered by the Receiver, there would be no opportunity to improve their offer in the future, and therefore each party had to present their highest and best offer.

Third Report at para 22 and Appendix A

29. The Receiver received four bids by the Final Offer Deadline (the “**Final Offers**”):

Offer	Price	Deposit	Deposit Timing	Completion Date
1	\$1.89m	\$200,000	within 2 days of acceptance	15 days after court approval
2	\$1.9m	\$38,000	within 30 days of court approval	30 days after court approval
3	\$1.9m	\$50,000	within 1 day of court approval	30 days after court approval
4	\$1.75m	\$200,000	within 24 hours of acceptance	14 days after court approval

Third Report at para 23

30. The Receiver evaluated the Final Offers holistically and selected Offer 1 listed in the chart above (the “**Selected Offer**”). In the Receiver’s business judgment, the Selected Offer is the best offer for the following reasons:

- (a) the purchase prices of three of the four Final Offers are very close in value, suggesting the Final Offers procedure effectively elicited the true market value of the Property;
- (b) the deposit in the Selected Offer is four times the deposit amounts of Offers 2 and 3—the Final Offers with a similar purchase price. The quantum and timing of the deposit in the Selected Offer provide the Receiver with substantially more certainty and comfort with respect to the Purchaser's willingness and ability to close the Purchase Agreement. The deposit being posted prior to the approval of this Court reduces the risk that the Receiver would incur significant costs associated with preparing application materials for the approval of the transaction without successfully concluding a transaction;
- (c) the timing for payment of the deposit in the Selected Offer was tied to acceptance of the offer, not court approval, and the deposit has already been received by the real estate agent of the offering party and is being held in trust;
- (d) the closing date for the Selected Offer is half the time of the Offers 2 and 3;
- (e) the purchase price in the Selected Offer is only \$10,000 less than Offers 2 and 3, while offering all of the benefits addressed above, and is \$140,000 greater than Offer 4.

Third Report at para 26

31. The Receiver was clear in the Notice for Final Offers that the Final Offer Deadline would be the final opportunity to make offers and that there would be no opportunity to present a better offer. This encouraged parties to present their best and highest offers by the Final Offer Deadline. It would be unfair for the Receiver to retreat from that position and seek an additional round of offers.

Third Report at para 26

Court Approval of the Selected Offer

32. The sales process and manner in which offers have been received has been fair, with the interests of all parties being considered.

Second Report at para 20(a)

33. The sale of the Farm is just, appropriate, and in the best interest of the administration of the Debtor's estate.

Second Report at para 20(e)

34. The Farm has been listed and exposed to the market since February 2024. Attempting to hold and list the Farm for a longer period of time would incur substantial holding costs related to preserving the Farm, and administering the Receivership.

Second Report at para 20(b) and (c)

35. The Bank, as the senior secured creditor of the Debtor, is the only party with a financial interest in the sale. The Bank supports the proposed sale to the Purchasers.

Second Report at para 20(d)

36. The Receiver is satisfied that the Purchase Agreement represents market value and provides the best all-round offer in the Receiver's business judgement. Based on the information that is currently available to it, the Receiver is of the view that the Purchase Agreement is the best available offer and asks the Court to grant the Approval and Vesting Order.

Second Report at paras 20 and 35

Proposed Distribution

37. In connection with the approval of the Purchase Agreement and Transaction, the Receiver also seeks an Order permitting it to distribute the net proceeds of the Transaction as follows:

- (a) a repayment of the Receiver's borrowings of \$400,000; and
- (b) distribution of the remaining funds, net of costs to complete the administration of the Receivership proceedings to the Bank.

Second Report at para 26

38. The estimated net proceeds available for distribution to the Bank are \$1,396,000. Even after such distribution, the Bank is expected to continue to suffer a material shortfall as it is owed over \$6 million.

Second Report at para 27 and 28

39. The Receiver obtained an independent security review from the Receiver's Counsel, confirming that, subject to standard assumptions and qualifies, the security in favour of the Bank has been registered and is valid and enforceable, and as a result, the Bank has a valid first charge mortgage on the Farm.

Third Report at para 28

40. Following the closing of the Purchase Agreement, there will be no further recoveries to the estate.

Second Report at para 29

Activities of the Receiver

41. The activities and conduct of the Receiver are set out and described in further detail in the Receiver's Reports.
42. The Receiver's activities since the Appointment Date include, but are not limited to, the following:
- (a) corresponding with the family members of Jaswant Bath, a director of the Debtor, to advise them of the Receivership and obtain information in respect of the Property;
 - (b) visiting the Farm on two occasions to observe the Property and meet with the manager of the Farm;
 - (c) engaging Accurate Effective Bailiffs Ltd. to assist the Receiver with identifying and documenting machinery and equipment located at the Farm and reviewing the value of Farm equipment;
 - (d) engaging and reviewing the opinion of an agricultural consultant to provide the Receiver with a preliminary assessment of the standing crops at the Farm and identifying any constraints to the harvesting and marketing of the crops;
 - (e) winding down all farming operations other than certain limited activities to protect and preserve the value of the Farm;

- (f) engaging a security guard to secure and preserve the value of the Farm;
- (g) locating certain of the Debtor's Farm equipment (the "**Kubota Equipment**"), removed from the Farm by a bailiff on the instructions of an equipment financier, namely Kubota Canada Ltd. ("**Kubota**"), and notifying Kubota of the Receivership Order and the Receiver's interest in the Kubota Equipment;
- (h) engaging a bailiff to seek to locate a 2011 Newmar motorhome which was removed from the Farm subsequent to the Appointment Date;
- (i) arranging payment for food and supplies required for the wellbeing of contract agricultural workers living in a bunkhouse on the Farm;
- (j) delivering Residential Tenancy Act Notices to End Tenancy to individuals living at the Farm and responding to a Notice of Dispute Resolution brought by 136 Co.;
- (k) retaining McCarthy Tétrault LLP to act as independent legal counsel to the Receiver;
- (l) attending to insurance matters including correspondence with BFL Canada Risk and Insurance Service Inc. regarding property and liability insurance coverage for the Farm;
- (m) providing periodic updates to the Bank in its capacity as senior secured lender to the Debtor as well as the Bank's legal counsel;
- (n) arranging for the issuance of a Discharge Certificate in respect of receiver borrowings provided by the Bank;
- (o) attending to various statutory notices and other duties of the Receiver pursuant to the Receivership Order, the BIA, and other applicable statutes;
- (p) corresponding with the RCMP with respect to certain matters involving the conduct of the principal of the Debtor;
- (q) assigning the Debtor into bankruptcy pursuant to the Bankruptcy Order;

- (r) engaging Landquest to act as listing agent to market the Farm for sale and responding to various offers and inquiries in respect of the marketing efforts;
- (s) soliciting and reviewing all final highest and best offers in respect of the Property from all parties known to be interested in purchasing the Property;
- (t) evaluating the highest and best offers and entering into the Purchase Agreement; and
- (u) preparing the Receiver's Reports.

First Report at para 9 (a) – (l)

Second Report at para 12 (a) – (n)

Third Report at para 15(a) – (d)]

Fees and Disbursements of the Receiver and the Receiver's Counsel

43. Pursuant to paragraphs 21 and 22 of the Receivership Order, the Receiver and the Receiver's Counsel are to be paid their reasonable fees and disbursements, in each case, at their standard rates and charges. The Receivership Order further provides that the Receiver and Receiver's Counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and the Receiver's Counsel are referred to a judge of the Court and may be heard on a summary basis.

Receivership Order at paras 21 and 22

44. A summary of the fees and disbursements of the Receiver and the Receiver's Counsel, incurred at their ordinary hourly rates, is included at paragraphs 30 - 32 and Appendices "B" and "C" to the Second Report. Further details with respect to such fees and disbursements are set out in the Fee Affidavits.

45. The table below summarizes the Receiver's Fees, which are broken down as follows: (i) \$143,616.92 in respect of fees and disbursements; and (ii) GST in the amount of \$7,180.87:

Invoice Number	Invoice Date	Amount
102900000599	September 30, 2023	\$46,713.04

102900000667	October 31, 2023	\$49,342.14
102900000739	November 30, 2023	\$25,107.08
102900000820	December 31, 2023	\$1,449.53
102900000923	February 6, 2024	\$7,101.99
102900001007	March 6, 2024	\$6,074.78
102900001095	March 31, 2024	\$1,906.80
102900001205	May 7, 2024	\$6,706.88
102900001325	June 7, 2023	\$1,932.00
102900001411	July 11, 2024	\$4,463.55
	TOTAL:	\$150,797.79

Second Report at para 30 and Appendix "B"
Receiver's Fee Affidavit at paras 3 and 4 and Exhibits "A" – "J"

46. The table below summarizes the Receiver's Counsel's Fees, which are broken down as follows: (i) \$66,902.00 in respect of invoiced fees; (ii) \$560.50 in respect of invoiced disbursements; and (iii) \$8,053.52 in respect of invoiced taxes:

Invoice Number	Invoice Date	Amount
8567372	August 25, 2023	\$1,230.88
8568459	September 18, 2023	\$572.32
8570110	October 26, 2023	\$15,480.61
8572152	November 30, 2023	\$20,613.23
8573109	December 20, 2023	\$10,909.08
8574358	December 31, 2023	\$1,022.78
8575683	February 20, 2024	\$20,000.88
8577094	March 21, 2024	\$406.56
8578641	April 16, 2024	\$135.52
8579614	May 8, 2024	\$1,355.20
8584420	August 26, 2024	\$802.49
8585302	August 31, 2024	\$2,986.48

Invoice Number	Invoice Date	Amount
	TOTAL:	\$75,516.02

Second Report at paras 30 and Appendix "C"
Receiver's Counsel's Fee Affidavit at paras 3 and 4 and Exhibits "A" – "L"

47. The Receiver has reviewed the Receiver Counsel's invoices in respect of the above and has determined that they were reasonably necessary and appropriate in the circumstances, that all services described in the invoices were rendered to the Receiver, and that all charges are fair and reasonable in the circumstances.

Second Report at para 33
Receiver's Fee Affidavit at para 10

48. The Second Report includes a summary of the Estimated Completion Fees, subject to certain assumptions as detailed therein, and assumes the Estimated Completion Fees to be \$40,000. The Estimated Completion Fees are largely comprised of accrued professional fees of the Receiver and the Receiver's Counsel as well as for final operating expenses to be incurred between the Second Report and the closing of the Purchase Agreement.

Second Report at paras 27 and 28

49. The Receiver and its legal counsel anticipate having additional fees and disbursements of approximately \$50,000 to complete the administration of the Receivership proceedings, including accrued and unpaid amounts.

Second Report at para 34

PART 3: LEGAL BASIS

Approval of the Purchase Agreement

50. Paragraph 2(k) of the Receivership Order granted the Receiver the power to, among other things:

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 the sale as the Receiver considers appropriate.

Receivership Order at para 2(k)

51. Both subsection 243(1) of the BIA and section 39 of the LEA provide the Court with jurisdiction to grant a receiver the authority to take any action that the Court considers advisable and where the Court determines that it is just and convenient to do so.

BIA, s. 243(1)

LEA, s. 39

52. The factors considered by a court when determining whether to approve a sale in receivership proceedings include:

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers are obtained; and
- (d) whether there has been unfairness in the working out of the process.

Royal Bank v. Soundair Corp. 1991 CanLII 2727 (ONCA) [**Soundair**];

See also, e.g.:

Kruger v. Wild Goose Vintners Inc., 2021 BCSC 1406 at para 26;

Farm Credit Canada v. Gidda, 2015 BCSC 2188, at paras 17 - 19; and

Cox v. Seymour Village Management Inc., 2015 BCSC 275 at paras 13 - 14.

53. A commercially reasonable, efficacious, and fair marketing campaign of the Farm was conducted by the Receiver in the Marketing Process.

54. Specifically, among other things, as described in further detail in the Receiver's Reports:

- (a) the Marketing Process undertaken by Landquest produced a fair, transparent, and reasonable sales process which sufficiently solicited parties interested in the Farm;

- (b) the Receiver made sufficient efforts to market the Property over the months of February 2024 to present;
- (c) the Farm was widely exposed to the market, as well as potentially interested parties known to the Receiver, for a sufficient length of time;
- (d) the Receiver followed the direction of this Court and solicited further bids to ensure the sales process captured the fair market value of the Property;
- (e) the Notice for Final Offers was a fair, transparent, and commercially reasonable process to solicit final highest offers; and
- (f) the similarity of the purchase price included in three of the four the Final Offers supports the conclusion that the purchase price in the Selected Offer represents fair market value for the Property.

Second Report at paras 13 – 19

Third Report at paras 26

55. The Receiver is of the opinion that the Purchase Agreement is reasonable and ought to be approved.

Second Report at para 20(e)

Third Report at paras 26 and 32

56. The Purchase Agreement, as proposed, is in the best interests of the estate of the Debtor and the stakeholders of the Debtor, as the Selected Offer is the best offer that was received in the business judgment of the Receiver. The Receiver made sufficient efforts through its marketing to obtain the best price for the Property.

Second Report at para 20

Third Report at parass 26 and 32

57. Substantial deference should be given to the business judgment and recommendation of a Court-appointed receiver as an officer of the Court with expertise and insolvency proceedings. Courts will rely upon the business expertise of their appointed receivers, and should not second-guess the considered business decisions made by the receiver in arriving at its recommendations. The Court will assume that the receiver is acting properly unless the contrary is clearly shown.

KEB Hana Bank v. Mizrahi Commercial (The One) LP et al., 2024 ONSC 3739,
at para 63 [*KEB Hana*],
Marchant Realty Partners Inc v. 2407553 Ontario Inc., 2021 ONCA 375
at paras 10, 15 and 19
Ontario Securities Commission v. Bridging Finance Inc., 2022 ONSC 1857
at para 43.

58. While it is the duty of the Court to ensure the integrity of the process, it is not appropriate for the Court to go into the minutia of that process. The Court's role in reviewing the sale process in receiverships is not to second guess the receiver's business decisions, but rather to critically examine the procedural fairness in negotiations and bidding so as to ensure that the integrity of the process is maintained. The Court should not intervene in the decision of the receiver except in an exceptional case.

Royal Bank of Canada v. Keller & Sons, 2016 MBCA 46 at para 11

59. This is particularly true where the recommendations of the Receiver are supported by the fulcrum creditor.

KEB Hana at para 64

60. In this case, the Bank was owed the Indebtedness pursuant to various credit facilities. The Bank holds various registered and first ranking security over the Property, including a collateral mortgage dated February 2, 2022, general security agreements dated February 2, 2022, and personal guarantees from 113 Co. and Jaswant Bath. The Bank is the party with the primary economic interest, and will suffer a material shortfall. Accordingly, the support of the Bank should be a material consideration for the Court.

First Barnes Affidavit at Exhibits "C" and "F" – "I"

61. The Bank supports the Receiver's acceptance of the Purchase Agreement.

Second Report at para 20(d)

62. In light of the above-noted considerations, the Receiver submits that the Purchase Agreement should be approved.

Approval of the Receiver's Activities and Conduct

63. The Receiver's Reports outline specific activities taken by the Receiver to date, for which the Receiver is seeking approval by this Court.
64. The Court has the inherent jurisdiction to review the activities of a Court-appointed receiver and, if satisfied that the receiver has acted reasonably, prudently, and not arbitrarily, to approve the activities set out in the applicable receiver's report(s). This assessment is made on an objective basis.

Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.,
2014 BCSC 1855, at para 54

65. There are good policy reasons for the Court to provide a level of protection to a receiver by approving its activities, provided that the benefit of approval is limited to the receiver itself.

Hanfeng Evergreen Inc. (Re), 2017 ONSC 7161 at para 17

66. The activities of the Receiver are detailed in the Receiver's Reports, pursuant to which the Receiver has reported to the Court and all other interested parties and stakeholders throughout these proceedings. The Receiver carried out a transparent, timely, and efficient sale process with respect to the Property, and acted reasonably to preserve and maximize the value of the Property, to the benefit of all of the Debtor's stakeholders. All of the Receiver's activities to date were necessary or appropriate and were conducted in accordance with its powers under the Receivership Order.

Receiver's Fee Affidavit at paras 8-9

67. The Receiver respectfully submits that its activities, as described in the Receiver's Reports, have been carried out in a reasonable, prudent, and not arbitrary manner, and accordingly, the Receiver seeks approval of same.

Receiver's Fee Affidavit at paras 8-9

Approval of the Receiver's Fees and the Receiver's Counsel's Fees

68. The Receivership Order expressly provides that the accounts of the Receiver and the Receiver's Counsel be referred to a judge of this Court and that the passage of those accounts be heard on a summary basis.

Receivership Order at para 21

69. In assessing whether the fees of insolvency professionals and their counsel ought to be approved, the Court considers whether those fees and disbursements are fair and reasonable, on the basis of affidavit evidence. It is necessary to review some description of the nature of services rendered and the standard rates and charges of professionals and counsel, but a line by line review of the documentation for the fees is not required.

Redcorp Ventures Ltd. (Re), 2016 BCSC 188 at para. 22 [**Redcorp**]

Winalta Inc. (Re), 2011 ABQB 399 at para 30

Confectionately Yours Inc., Re, [2002] O.J. No. 3569 (ONCA) at paras 37-41

[**Confectionately Yours**]

70. There is no fixed rate or scale for determining a receiver's compensation. The governing principles is that a receiver's compensation should be measured by the fair and reasonable value of its services.

Confectionately Yours at para 44 citing

Belyea v. Federal Business Development Bank, [1983] N.B.J. No. 41 (NBCA)

71. The British Columbia Court of Appeal listed the following relevant considerations in determining whether a receiver's compensation is fair and reasonable:

- (a) the value of the assets;
- (b) complications and difficulties encountered by the Receiver;
- (c) degree of assistance provided by [the debtor company];
- (d) time spent by the Receiver;
- (e) Receiver's knowledge, experience and skill;
- (f) diligence and thoroughness;
- (g) responsibilities assumed;
- (h) results; and
- (i) cost of comparable services.

Redcorp at para 23
0409725 B.C. Ltd. (Bankruptcy of), 2019 BCSC 451 at para 21 citing
Bank of Montreal v. Nican Trading Co., 1990 CanLII 454,
[1990] B.C.J. No. 340 (BCCA) at pp 9 - 10.

72. Similar factors are considered with respect to the accounts of legal counsel to a receiver:

The court must scrutinize the accounts carefully to assure that the appropriate lawyers are performing services to the receiver on the same basis and factors as the receivers. Where legal accounts have no relevance to the receivership, the court will reduce the fees. Similar factors are considered on the taxation or assessment of the legal accounts, namely:

- (1) the time expended;
- (2) the complexity of the receivership;
- (3) the degree of responsibility assumed by the lawyers;
- (4) the amount of money involved, including reference to the debt, amount of proceeds after realization, payments to the creditors;
- (5) the degree and skill of the lawyers involved;
- (6) the results achieved;
- (7) the ability of the client to pay; and
- (8) the client's expectations as to the fee.

Redcorp at para 33,
citing F. Bennett, *Bennett on Receiverships*, 2nd ed. (Scarborough: Carswell, 1999).

73. The Receiver respectfully submits that the Receiver's Fees, and the Receiver's Counsel's Fees, are reasonable and appropriate given the activities carried out by such persons in these proceedings. All services undertaken by the Receiver's Counsel were completed at the request of the Receiver and were necessary for the administration of the Debtor's estate.

Receiver's Fee Affidavit at paras 8-11
Receiver's Counsel Fee Affidavit at para 9

74. Specifically, in respect of the Receiver's Fees, the Receiver submits that:

- (a) the fees were properly and necessarily incurred, and commensurate with fees charged by other firms of similar size and experience for work of a similar nature and complexity, in British Columbia;
- (b) the work completed by the Receiver was appropriately delegated to professionals with the appropriate seniority and hourly rates;
- (c) the results of the Receiver's efforts to date are reasonable and to the benefit of the Debtor's estates and stakeholders;
- (d) the Receiver's activities, as set out in the Receiver's Reports, have been performed diligently and with an appropriate degree of thoroughness;
- (e) the Receiver's Fees are reasonable in light of the value of the Property; and,
- (f) the Receiver's services were performed in a prudent and economical manner.

Receiver's Fee Affidavit at paras 8-9

75. In respect of the Receiver's Counsel's Fees, the Receiver submits that:

- (a) the fees were properly and necessarily incurred, and commensurate with fees charged by other firms of similar size and experience for work of a similar nature and complexity, in British Columbia;
- (b) the work completed by the Receiver's Counsel was appropriately delegated to professionals with the appropriate seniority and hourly rates;
- (c) the Receiver's Counsel's services were performed in a prudent and economical manner; and
- (d) the Receiver's Counsel's invoices were provided, to the Receiver, when issued. The Receiver has reviewed the invoices and confirmed that it approves the same.

Receiver's Fee Affidavit at paras 10-11
Receiver's Counsel Fee Affidavit at para 9

76. The Receiver also seeks approval of the Estimated Completion Fees and submits that the Estimated Completion Fees are reasonable in the circumstances and in light of the remaining matters to be completed in connection with the completion of the Transaction, the administration of the Debtor's estates, and remaining ancillary matters.
77. The Bank, as the only party with an economic interest and out of whose recovery the fees come, does not oppose the approval of the Receiver's Fees, the Receiver's Counsel's Fees, or the Estimated Completion Fees.

Receiver's Discharge

78. Upon the completion of the Transaction and the payment of all amounts outstanding under the Receiver's Charge, the administration of the Debtor's estates will be substantially complete. It is reasonable, appropriate, prudent, and economical to address the discharge of the Receiver at the same hearing, to minimize the costs borne by the Debtor's estates with respect to professional fees.


PART 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Erin Welte, made July 24, 2023;
2. Affidavit #1 of Donna Barnes made July 18, 2023;
3. Affidavit #1 of Tom Powell, made September 10, 2024;
4. Affidavit #1 of H. Lance Williams, made September 10, 2024;
5. Notice of Application of the Petitioners, dated September 11, 2024;
6. First Report of the Receiver, dated October 10, 2024;
7. Second Report of the Receiver, dated September 10, 2024;
8. Third Report of the Receiver, dated October 23, 2024; and
9. Such further and other materials as counsel may advise and this Court may permit.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

DATE: October 29, 2024



Signature of Lawyer for the Applicant
McCarthy Tétrault LLP
(H. Lance Williams, Ashley Bowron and
Angelica Kovac)

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this notice of application

with the following variations and additional terms:

DATE: _____

Signature of Judge
 Associate Judge

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

SCHEDULE "A"

NO. S-235306
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

NATIONAL BANK OF CANADA

PETITIONER

AND:

1239583 B.C. LTD.

RESPONDENT

SERVICE LIST

<p>Blake, Cassels & Graydon LLP Suite 2600, Three Bentall Centre 595 Burrard Street, PO Box 49314 Vancouver, BC V7X 1L3</p> <p>Attention: Peter L. Rubin</p> <p>Email: peter.rubin@blakes.com</p> <p><i>Counsel to the Petitioner, National Bank of Canada</i></p>	<p>FTI Consulting Canada Inc. Suite 1450, P.O. Box 10089 701 West Georgia Street Vancouver, BC V7Y 1B6</p> <p>Attention: Tom Powell Huw Parks Robert Kleebaum</p> <p>Email: tom.powell@fticonsulting.com huw.parks@fticonsulting.com robert.kleebaum@fticonsulting.com</p> <p><i>Receiver</i></p>
<p>McCarthy Tétrault LLP Suite 2400, 745 Thurlow Street Vancouver, BC V6E 0C5</p> <p>Attention: H. Lance Williams Ashley Bowron</p> <p>Email: lwilliams@mccarthy.ca abowron@mccarthy.ca sdanielisz@mccarthy.ca</p> <p><i>Counsel to the Receiver</i></p>	<p>Kubota Canada Ltd. 1155 Kubota Drive Pickering, ON L1X 0H4</p> <p>Attention: Sharon Novalski Legal Credit and Recovery Specialist</p> <p>Email: sharon.novalski@kubota.com</p>

<p>Deol Lawyers Suite 200 – 8338 120th Street Surrey, BC V3W 3N4</p> <p>Attention: Rajdeep Singh Deol</p> <p>Email: litigation@deollawyers.ca</p> <p><i>Counsel to the Respondent, 1239583 B.C. Ltd.</i></p>	<p>Resolutions Law Corporation 320 – 4370 Dominion Street Burnaby, BC V5G 4L7</p> <p>Attention: Andrew Rebane</p> <p>Email: andrew@resolutionslawcorp.com service@resolutionslawcorp.com</p> <p><i>Counsel to Danielle Watson and Russell Barnes</i></p>
---	--

E-Mail Distribution List

peter.rubin@blakes.com; tom.powell@fticonsulting.com; huw.parks@fticonsulting.com;
robert.kleebaum@fticonsulting.com; lwilliams@mccarthy.ca; abowron@mccarthy.ca;
sdanielisz@mccarthy.ca; akovac@mccarthy.ca; sharon.novalski@kubota.com;
litigation@deollawyers.ca; andrew@resolutionslawcorp.com; service@resolutionslawcorp.com

SCHEDULE "B"

NO. S-235306
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

NATIONAL BANK OF CANADA

PETITIONER

AND:

1239583 B.C. LTD.

RESPONDENT

**ORDER MADE AFTER APPLICATION
(APPROVAL AND VESTING ORDER)**

BEFORE THE HONOURABLE)
JUSTICE _____) WEDNESDAY, THE 12TH DAY
OF NOVEMBER, 2024

ON THE APPLICATION of FTI Consulting Canada Inc. ("**FTI**"), in its capacity as the court-appointed receiver and receiver-manager (the "**Receiver**") of the assets, properties and undertakings of 1239583 B.C. Ltd. (the "**Debtor**"), coming on for hearing at Vancouver, British Columbia, on the 12th day of November, 2024; AND ON HEARING Ashley Bowron, counsel for the Receiver, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the First Receiver's Report, dated October 11, 2023 (the "**First Report**"), the Second Receiver's Report, dated September 10, 2024 (the "**Second Report**"), and the Third Receiver's Report, dated October 23, 2024 (the "**Third Report**");

THIS COURT ORDERS AND DECLARES THAT:

1. The sale transaction (the "**Transaction**") contemplated by the contract of purchase and sale dated October 4, 2024 (collectively, the "**Purchase Agreement**") between the Receiver, and Erik John Waldriff and Sarah Brooke Waldriff (the "**Purchasers**"), a copy of which is attached as Appendix "B" to the Third Report is hereby approved, and the

Purchase Agreement is commercially reasonable. The execution of the Purchase Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchasers of the assets described in the Purchase Agreement (the “**Purchased Assets**”).

2. Upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as **Schedule “B”** hereto (the “**Receiver’s Certificate**”), all of the Debtor’s right, title and interest in and to the Purchased Assets described in the Purchase Agreement and listed on **Schedule “C”** hereto shall vest absolutely in the Purchasers in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court dated September 8, 2023; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 of British Columbia or any other personal property registry system; and (iii) those Claims listed on **Schedule “D”** hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule “E”** hereto), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
3. Upon presentation for registration in the Land Title Office for the Land Title District of Victoria of a certified copy of this Order, together with a letter from McCarthy Tétrault LLP, solicitors for the Receiver, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:
 - (a) enter the Purchasers, Erik John Waldriff, Farmer, and Sarah Brooke Waldriff, as the owners of the Lands identified in **Schedule “B”** hereto, as joint tenants,

together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Lands, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Purchasers in and to the Lands is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchasers as aforesaid; and

- (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Lands all of the registered Encumbrances except for those listed in **Schedule "E"**.
4. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
 5. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.
 6. Subject to the terms of the Purchase Agreement, vacant possession of the Purchased Assets, including any real property, shall be delivered by the Receiver to the Purchasers at 12:00 noon on the Closing Date (as defined in the Purchase Agreement), subject to the permitted encumbrances as set out in the Sale Agreement and listed on **Schedule "E"**.
 7. The Receiver, with the consent of the Purchasers, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.

8. The Receiver, with the consent of the Purchasers, shall be at liberty to make amendments or modifications to the Purchase Agreement that would not be materially prejudicial to the interest of the Debtor's stakeholders and to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.
9. Notwithstanding:
 - (a) these proceedings;
 - (b) any applications for a bankruptcy order in respect of the Debtor now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made by or in respect of the Debtor,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.
10. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.
11. Endorsement of this Order by counsel appearing on this application, other than counsel for the Receiver, is hereby dispensed with.

THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, 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.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Lawyer for FTI Consulting Canada Inc.
McCarthy Tétrault LLP
(Ashley Bowron)

BY THE COURT

REGISTRAR

SCHEDULE "A"

LIST OF COUNSEL

Name of Counsel	Party Represented

SCHEDULE “B”

NO. S-235306
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

NATIONAL BANK OF CANADA

PETITIONER

AND:

1239583 B.C. LTD.

RESPONDENT

RECEIVER’S CERTIFICATE

1. Pursuant to an Order of Justice Francis of the Supreme Court of British Columbia (the “**Court**”) dated September 8, 2023, FTI Consulting Canada Inc. was appointed as the receiver and manager (the “**Receiver**”) of the property, assets and undertakings of 1239583 B.C. Ltd., including the land legally described as PID: 008-620-741 District Lot 72, Alberni District, and buildings thereon (the “**Lands**”).
2. Pursuant to the Approval and Vesting and Order of the Court dated October [●], 2024, the Court, among other things, approved the contract of purchase and sale dated October [●], 2024 between the Receiver, and Erik John Waldriff and Sarah Brooke Waldriff (the “**Purchasers**”), and the transactions contemplated thereby, and providing for the occurrence of certain events in the specified sequence upon delivery by the Receiver to the Purchasers of a certificate confirming (i) payment by the Purchasers of the Purchase Price; (ii) that the conditions to completion as set out in Article 3 of the Purchase Agreement have been satisfied or waived by the Receiver and the Purchasers; and (iii) the Transaction has been completed to the satisfaction of the Receiver.
3. Unless otherwise indicated herein, the capitalized terms have the meanings set out in the Purchase Agreement.

THE RECEIVER HEREBY CONFIRMS AND CERTIFIES THE FOLLOWING:

4. The Purchasers have paid and the Receiver has received the Purchase Price payable on the Completion Date pursuant to the Purchase Agreement;
5. The conditions to closing set out in Article 3 of the Purchase Agreement have been satisfied or waived by the Receiver and the Purchasers; and
6. The Transaction has been completed, to the satisfaction of the Receiver.

DATE THIS ____ DAY OF _____, 2024

FTI Consulting Canada Inc., in its capacity as the court-appointed receiver and manager of the assets, properties, and undertakings of 1239583 B.C. Ltd., and not in its personal capacity.

Per: _____
Name:
Title:

SCHEDULE “C”

Purchased Assets

1. Those lands in the Province of British Columbia legally described as:

Parcel Identifier 008-620-741
District Lot 72 Alberni District

and all buildings, structures, and improvements thereon.

SCHEDULE “D”

Encumbrances to be Discharged against Purchased Assets

Land Title Office

1. Mortgage in favour of National Bank of Canada registered on March 3, 2022, under instrument number CA9759425
2. Assignment of Rents in favour of National Bank of Canada registered on March 3, 2022, under instrument number CA9759426

Personal Property Registry of British Columbia

3. Base Registration Number 572887N in favour of National Bank of Canada

SCHEDULE "E"

PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS RELATED TO REAL PROPERTY

Exceptions and Reservations in favour of Esquimalt and Nanaimo Railway Company registered under instrument number M76300.

SCHEDULE "C"

NO. S-235306
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

NATIONAL BANK OF CANADA

PETITIONER

AND:

1239583 B.C. LTD.

RESPONDENT

ORDER MADE AFTER APPLICATION
(FEE APPROVAL AND DISCHARGE ORDER)

BEFORE THE HONOURABLE)
JUSTICE _____) WEDNESDAY, THE 12TH DAY
) OF NOVEMBER, 2024
)

ON THE APPLICATION of FTI Consulting Canada Inc. ("**FTI**"), in its capacity as the court-appointed receiver and receiver-manager (the "**Receiver**") of the assets, properties and undertakings (the "**Property**") of 1239583 B.C. Ltd. (the "**Debtor**"), coming on for hearing at Vancouver, British Columbia, on the 12th day of November, 2024; AND ON HEARING Ashley Bowron, counsel for the Receiver, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the First Receiver's Report, dated October 11, 2023 (the "**First Report**"), the Second Receiver's Report, dated September 10, 2024 (the "**Second Report**"), and the Third Receiver's Report, dated October 23, 2024 (the "**Third Report**", and collectively with the First Report and the Second Report, the "**Receiver's Reports**") and the affidavit of H. Lance Williams, sworn on September 10, 2024 and the affidavit of Tom Powell, sworn on September 10, 2024 (collectively, the "**Fee Affidavits**");

THIS COURT ORDERS AND DECLARES THAT:

APPROVAL OF ACTIVITIES AND FEES

1. The activities of the Receiver, as set out in the Receiver's Reports, are hereby approved.

2. The fees and disbursements of the Receiver and its counsel, as set out in the Fee Affidavits and Receiver's Reports, including the estimate of fees to conclude matters, be and are hereby approved, without the necessity of a formal passing of accounts in respect of any such fees incurred or charged after the date of this Order.
3. After payment of the fees and disbursements of the Receiver as herein approved, the Receiver shall pay all funds remaining in its hands to National Bank of Canada.

DISCHARGE AND RELEASE OF RECEIVER

4. Effective immediately upon the Receiver filing with this Court a certificate substantially in the form attached as **Schedule "B"** hereto (the "**Receiver's Discharge Certificate**"), confirming that (i) the Transaction (as defined in the Approval and Vesting Order pronounced by the Honourable Justice _____ on November 12, 2024 (the "**Approval and Vesting Order**")) has been completed to the satisfaction of the Receiver, and (ii) all outstanding amounts secured by the Receiver's Charge (as defined in the Order of Justice Francis made September 8, 2023 (the "**Receivership Order**")) have been satisfied:
 - (a) FTI, in its capacity as Receiver, is hereby discharged as receiver and receiver-manager of the Property; and
 - (b) notwithstanding the discharge of the Receiver, the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of FTI in its capacity as Receiver.
5. Notwithstanding any provision herein, this Order shall not affect any person to whom notice of these proceedings was not delivered as required by the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and regulations thereto, any other applicable enactment or any other Order of this Court.
6. Endorsement of this Order by counsel appearing on this application, other than counsel for the Receiver, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Lawyer for FTI Consulting Canada Inc.
McCarthy Tétrault LLP
(Ashley Bowron)

BY THE COURT

REGISTRAR

SCHEDULE "A"

LIST OF COUNSEL

Name of Counsel	Party Represented

SCHEDULE "B"

NO. S-235306
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

NATIONAL BANK OF CANADA

PETITIONER

AND:

1239583 B.C. LTD.

RESPONDENT

RECEIVER'S DISCHARGE CERTIFICATE

- A. All capitalized terms used in this Receiver's Certificate and not otherwise defined shall have the meaning ascribed to them in the Order Made After Application (Fee Approval and Discharge) pronounced by the Honourable Justice ● of the Supreme Court of British Columbia (the "**Court**"), in the within proceedings, on October ●, 2024 (the "**Fee Approval and Discharge Order**").
- B. Pursuant to the Fee Approval and Discharge Order, the Court provided for the discharge of the Receiver, upon the filing of this certificate by the Receiver, confirming that: (i) the Transaction (as defined in the Approval and Vesting Order) has been completed, to the satisfaction of the Receiver; and (ii) all outstanding amounts secured by the Receiver's Charge (as defined in the Receivership Order) have been satisfied.

THE RECEIVER HEREBY CONFIRMS AND CERTIFIES THE FOLLOWING:

1. The Transaction has been completed, to the satisfaction of the Receiver.
2. All outstanding amounts secured by the Receiver's Charge have been satisfied.

DATE THIS ____ DAY OF _____, 2024

FTI CONSULTING CANADA INC., in its capacity as the court-appointed receiver and manager of the assets, properties, and undertakings of 1239583 B.C. Ltd., and not in its personal capacity.

Per: _____
Name:
Title: