



S E 2 4 6 1 2 4

No. \_\_\_\_\_  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

**NATIONAL BANK OF CANADA**

PETITIONER

AND

**BY THE BAY HOME DEVELOPMENT LTD.**

RESPONDENT

**PETITION TO THE COURT**

**ON NOTICE TO:**

**By The Bay Home Development Ltd.**  
2388 – 4720 Kingsway  
Burnaby, BC V5H 4N2

The address of the registry is: 800 Smithe Street, Vancouver, British Columbia

The Petitioner estimates that the hearing of the Petition will take 1 hour.

This matter is not an application for judicial review.

**This proceeding is brought for the relief set out in Part 1 below by National Bank of Canada.**

If you intend to respond to this petition, you or your lawyer must

- (a) file a Response to Petition in Form 67 in the above-named Registry of this Court within the time for Response to Petition described below, and
- (b) serve on the Petitioner
  - (i) 2 copies of the filed Response to Petition, and
  - (ii) 2 copies of each filed Affidavit on which you intend to rely at the hearing

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.**

**Time for Response To Petition**

A Response to Petition must be filed and served on the Petitioner,

- (a) if you were served with the Petition anywhere in Canada, within 21 days after service,
- (b) if you were served with the Petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The ADDRESS FOR SERVICE of the Petitioner is: Blake, Cassels & Graydon LLP Barristers & Solicitors 3500 - 1133 Melville Street Vancouver, BC V6E 4E5 Attention: Peter L. Rubin and Claire Hildebrand
	E-mail address for service of the Petitioner: vancouver.service@blakes.com; peter.rubin@blakes.com; and claire.hildebrand@blakes.com (delivery to all three email addresses is required for service)
(2)	The name and office address of the Petitioner’s lawyer is: Blake, Cassels & Graydon LLP Barristers & Solicitors 3500 - 1133 Melville Street Vancouver, BC V6E 4E5 Attention: Peter L. Rubin and Claire Hildebrand

**CLAIM OF THE PETITIONER**

**Part 1: ORDERS SOUGHT**

1. An order (the “**Receivership Order**”) substantially in the form attached as Schedule “A” appointing FTI Consulting Canada Inc. (“**FTI**”) as receiver of the property, assets, and undertakings of By The Bay Home Development Ltd. (“**By the Bay**” or the “**Debtor**”).
2. An order (the “**Sealing Order**”) sealing Confidential Affidavit #2 of Erin Welte made August 27, 2024 (the “**Confidential Affidavit**”).
3. Such further and other relief as counsel may advise and this Court deems to be just and convenient in the circumstances.

## Part 2: FACTUAL BASIS

### *Introduction*

4. By the Bay owns development lands located at 1289 Nicola Street in Vancouver, a planned residential development of six homes in Vancouver's West End (the "**Project**").

5. National Bank of Canada (the "**Bank**") is the primary secured lender to By the Bay and holds a first ranking charge over By the Bay's property, assets, and undertakings including the real property on which the Project was to be constructed.

6. In connection with the development of the Project, the Bank provided By the Bay with the following loan facilities: an interim construction loan in the amount of \$15,500,000 (the "**Construction Loan**"), an overdraft loan in the amount of \$500,000 (the "**Overdraft Loan**"), a letter of credit of up to \$1,000,000 (the "**Letter of Credit**"), and a demand corporate MasterCard in the amount of \$50,000 (the "**MasterCard Credit**" and, together with the Construction Loan, the Overdraft Loan, and the Letter of Credit, the "**Loan**") pursuant to a Loan Agreement dated October 2, 2019 (as amended, the "**Loan Agreement**").

7. The purpose of the Loan was, among other things, to provide construction financing for the Project. The Bank advanced funds to By the Bay under the Loan Agreement and as at August 21, 2024, the amount owing to the Bank under the Loan was \$7,472,019.99 (not including all fees, expenses and other obligations owing or continuing to accrue under the Loan Agreement and related documents) (the "**Indebtedness**").

8. As is described in greater detail below, to secure payment of its obligations to the Bank, By the Bay has provided a comprehensive security package (collectively, the "**Security**") to the Bank. The Security underlying the Loan includes a mortgage on the Project in the amount of \$16,550,000 (the "**Mortgage**") and a general security agreement in favour of the Bank (the "**GSA**").

9. By the Bay has been in default of its obligations under the Loan Agreement since at least September 2023. Among other defaults, By the Bay has failed to make the required interest payments owing on the Loan since September 2023, has allowed the Project to become subject to foreclosure proceedings by a subordinate mortgage holder, Genesis Mortgage Investment Corp. ("**Genesis**"), and has allowed two claims of lien to be filed against the Project.

10. Despite being in default of the Loan since at least September 2023, By the Bay has not taken any steps to meet its commitments to the Bank or repay the Loan.

11. Further to its contractual entitlement, and with By the Bay having consented to the immediate enforcement by the Bank of its security, the Bank seeks the immediate appointment of FTI as receiver over the assets, undertakings, and property of By the Bay to protect the Bank's secured position, prevent against the potential impairment of value of By the Bay's property, and assume conduct of the sale of the Project in the interests of all affected stakeholders.

### ***The Project***

12. The Project, which is By the Bay's primary asset, is a proposed development of a building containing six homes in Vancouver's West End. It is located at 1289 Nicola Street, PID 031-425-909.
13. By the Bay is owned by the Dimex Properties Group (the "**Dimex Group**"), a property development company founded by Sundhir Dhillon.
14. While various permits have been issued for the Project, no significant construction work has been done. The Project is currently bare land.
15. The Bank understands that the Dimex Group currently views the proposed development for the Project, for which the Dimex Group has existing planning permission, as no longer viable.

### ***The Bank Loan and Security***

#### **(A) The Loan**

16. Pursuant to the Loan Agreement (as amended), the Bank has provided By the Bay with the following facilities:
  - (a) Construction Loan: A Construction Loan in the amount of \$15,550,000 for the purpose of financing construction of the Project;
  - (b) Overdraft Loan: A sub-loan to the Construction Loan in the amount of \$500,000 to assist with Project-related expenses pending a draw on the Construction Loan;
  - (c) Letter of Credit: A letter of credit issued by the Bank to allow for the issuances of letters of credit to the City of Vancouver or other beneficiaries in connection with performance related requirements of the Project; and
  - (d) MasterCard Credit: A demand corporate MasterCard in the amount of \$50,000.
17. With respect to all facilities under the Loan, the total Indebtedness owing by By the Bay under the Loan Agreement as of August 21, 2024, is approximately \$7.47 million (not including all fees, expenses and other obligations owing or continuing to accrue under the Loan Agreement and related documents).

#### **(B) Security for the Loan**

18. To secure its obligations under the Loan Agreement, By the Bay granted the Bank Security over its assets, undertakings, and property. This Security includes a first-ranking collateral Mortgage and assignment of rents on the Project pursuant to the Mortgage registered December 19, 2019, in the amount of \$16,550,000.

19. By the Bay has also executed the GSA with respect to all of By the Bay's property located on, or used in connection with, the Project.

20. The Loan is guaranteed by Dimex Properties Inc. ("**DPI**"), Dimex Developments Inc. ("**DDI**") and Mr. Dhillon (collectively, the "**Guarantors**"). The Guarantors have each granted a guarantee of By the Bay's obligations to the Bank under the Loan Agreement in the amount of \$16,550,000 (the "**Guarantees**").

### ***Second Ranking Lender***

21. By the Bay is also party to a loan agreement made with Genesis and dated May 27, 2022. This second-ranking loan is secured by, among other security, a mortgage over the Project.

22. Genesis commenced foreclosure proceedings against By the Bay in November 2023 (the "**Foreclosure Proceedings**"). On January 11, 2024, this Court ordered, among other things, that the last date for redemption in that proceeding would be January 12, 2024 (a one-day redemption period). The Court also ordered that the Project would be offered by private sale and that Genesis would have exclusive conduct of the sale, subject to any further order of the Court. The Bank understands that there has not been a sale of the Project in the past nine months, notwithstanding the January 11, 2024 order.

23. In the Receivership Order the Bank seeks to grant exclusive conduct of sale of the Property to FTI in its capacity as receiver, subject to further order of this Court.

### ***By The Bay's Defaults***

24. By the Bay has not made any interest payments on the Loan since September 2023. The amount of outstanding and accrued interest payable on the Loan as of August 21, 2024, was \$547,007.40, with interest increasing at \$1,478.69 per day.

25. In addition to failing to make the required payments of interest under the Loan, other defaults of By the Bay known to the Bank include the following:

- (a) By the Bay has allowed the Foreclosure Proceedings to be commenced by Genesis in this Court (Vancouver Registry No. H-230883), in which proceedings an Order Nisi and an Order for Conduct of Sale have been made. A certificate of pending litigation has also been registered by Genesis against the Project.
- (b) By the Bay has also allowed two claims of lien to be filed against the Project; and
- (c) By the Bay has failed to pay 2024 property taxes on the Property, with an amount of \$21,776.42 outstanding.

26. On February 28, 2024, the Bank wrote to By the Bay and the Guarantors to provide notice of certain of the above-noted defaults.

27. On August 2, 2024, counsel to Bank delivered a letter to By the Bay and the Guarantors demanding payment of all outstanding indebtedness and providing notices pursuant to section 244 of the *Bankruptcy and Insolvency Act*.

28. On August 8, 2024, By the Bay, via email, provided counsel to the Bank with an executed Consent to Immediate Enforcement of the Bank's Security.

### ***Appraisal of the Project***

29. The Bank has procured an independent appraisal of the market value of the fee simple interest of the Project (the "**Appraisal**"). The Appraisal was conducted by Garnett Wilson Realty Advisors Ltd. ("**Garnett Wilson**") and provided to the Bank on July 3, 2024. Based on the contents of the Appraisal, the Bank has concerns that its security is in jeopardy.

## **Part 3: LEGAL BASIS**

### ***Jurisdiction to Grant the Requested Relief***

30. The jurisdiction of this Court to grant the Receivership Order is found in subsection 39(1) of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 and section 243 of the BIA, among other statutes.

### ***The Test for Appointing a Receiver***

31. Subsection 39(1) of the *Law and Equity Act* allows for the appointment of a receiver where it is "just or convenient" to do so.

32. Section 243 of the BIA provides that this Court may appoint a receiver to do any or all of the following if it considers it to be "just or convenient" to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

33. In *Maple Trade Finance Inv. v. CY Oriental Holdings Ltd.*, this Court identified several factors that may inform a determination of whether it is "just and convenient" in all of the circumstances to appoint a receiver, including:

- (a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not

appointed, particularly where the appointment of a receiver is authorized by the security documentation;

- (b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
- (c) the nature of the property;
- (d) the apprehended or actual waste of the debtor's assets;
- (e) the preservation and protection of the property pending judicial resolution;
- (f) the balance of convenience to the parties;
- (g) the fact that the creditor has the right to appoint a receiver under the documentation provided for in the loan;
- (h) the enforcement of rights under a security instrument where the security holder encounters or expects to encounter difficulty with the debtor and others;
- (i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- (j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;
- (k) the effect of the order upon the parties;
- (l) the conduct of the parties;
- (m) the length of time that a receiver may be in place;
- (n) the cost to the parties;
- (o) the likelihood of maximizing return to the parties; and,
- (p) the goal of facilitating the duties of the receiver.

***Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.,  
2009 BCSC 1527 ["Maple Trade"] at para. 25***

34. In applying these factors, this Court has held that the contractual right of a secured creditor to apply for a receiver under a security agreement is a 'strong factor' in support of the imposition of a receiver and that 'considerable weight' can be placed on that contractual right.

***Maple Trade* at para. 26; see also *Canadian Imperial Bank of Commerce v. Can-Pacific Farms Inc.*, 2012 BCSC 437 at para. 16; *Bank of Montreal v. Gian's Business Centre Inc.*, 2016 BCSC 2348 at paras. 22-23; and *Ward Western Holdings Corp. v. Brosseuk*, 2022 BCCA 32 at paras. 65-66**

35. In *Bank of Montreal v. Haro-Thurlow Street Project Limited Partnership*, this Court confirmed that a secured creditor who holds security over real estate assets is entitled to elect the means by which its security will be enforced, including by way of foreclosure or the appointment of a receiver.

***Bank of Montreal v. Haro-Thurlow Street Project Limited Partnership*, 2024 BCSC 47 at paras. 95, 98**

***It is Just and Convenient to Appoint a Receiver in the Circumstances***

36. It is just and convenient to appoint a receiver over By the Bay's assets, undertakings, and property on the terms sought by the Bank for, among others, the following reasons:

- (a) By the Bay has failed to repay the amounts owing to the Bank under the Loan, despite demand from the Bank to do so, and, as of August 21, 2024, is indebted to the Bank for approximately \$7.47 million;
- (b) By the Bay has not made any interest payments on the Loan since September 2023, which is in arrears and continues to accrue;
- (c) in addition to these financial defaults, By the Bay has failed to prevent the commencement of the Foreclosure Proceedings, allowed the Liens to be filed against the Project, and failed to pay property taxes for the Project;
- (d) pursuant to the Loan Agreement (among other agreements), the Bank has a contractual right to appoint a receiver in these circumstances;
- (e) notwithstanding the almost year-long grace period granted by the Bank since By the Bay began defaulting on interest payments, By the Bay has not found a solution to its financial problems;
- (f) the Bank does not have confidence that By the Bay will be able to reduce or pay back the Indebtedness;
- (g) By the Bay has executed Consent to Immediate Enforcement in favour of the Bank, allowing the Bank to immediately enforce its Security;



- (h) the Bank has procured an appraisal of the Project indicating that the Bank's security may be in jeopardy;
- (i) it is necessary and expedient that a receiver be immediately appointed to protect the Bank's security and realize value for all stakeholders; and
- (j) the balance of convenience favours the appointment of a receiver in these circumstances.

37. For the above reasons, the Bank submits that it is just and convenient that this Court appoint FTI as receiver of all By the Bay's assets, undertakings, and property on the terms set out in the proposed Receivership Order.

38. The Bank further relies on Rules 10-2 (Receivers) and 13-5 (Sales by Court) of the *Supreme Court Civil Rules*, BC Reg 168/2009.

***The Sealing Order Should be Granted***

39. This Court may exercise its discretion to grant a sealing order where:

- (a) court openness poses a serious risk to an important public interest, including a commercial interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

***Sherman Estates v. Donovan, 2021 SCC 25 at paras. 38 and 43; Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41 at para. 53***

40. This Court has granted sealing orders with respect to appraisals in insolvency proceedings on the basis that the disclosure of this type of information may raise a "serious commercial risk", in particular where a party intends to undertake a sales process for the appraised assets.

***Alderbridge Way GP Ltd. (Re), 2022 BCSC 1436, at para. 26***


41. The Appraisal attached to the Confidential Affidavit contains confidential and sensitive information with respect to the value of the Project, the disclosure of which could adversely affect any future sales process. This information could also, if disclosed, adversely affect net recoveries

to stakeholders, efforts to complete any sales, or otherwise prejudice By the Bay's stakeholders. There is no prejudice to By the Bay's stakeholders if this information is sealed.

**Part 4: MATERIALS TO BE RELIED ON**

- 42. Affidavit #1 of Jennifer Alambre, made August 26, 2024;
- 43. Affidavit #1 of Erin Welte, made August 27, 2024;
- 44. Confidential Affidavit #2 of Erin Welte, made August 27, 2024; and
- 45. such other materials as counsel may advise and this Court allows.

Date: September 4, 2024

  
 Signature of lawyer for National Bank of  
 Canada  
 Claire Hildebrand

**To be completed by the court only:**

Order made

in the terms requested in paragraphs ..... of Part 1 of this petition

with the following variations and additional terms:

.....

.....

.....

Date: ....[dd/mmm/yyyy].....

Signature of  Judge  Associate Judge

Schedule "A"

No. \_\_\_\_\_  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

NATIONAL BANK OF CANADA

PETITIONER

AND

BY THE BAY HOME DEVELOPMENT LTD.

RESPONDENT

ORDER MADE AFTER APPLICATION

(APPOINTMENT OF RECEIVER)

BEFORE THE HONOURABLE )  
JUSTICE \_\_\_\_\_ )  
 ) \_\_\_\_\_, 2024  
 )

ON THE APPLICATION of the Petitioner for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "**LEA**") appointing FTI Consulting Canada Inc. ("**FTI**") as Receiver (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and property of By The Bay Home Development Ltd. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, coming on for hearing this day at 800 Smithe Street, Vancouver, British Columbia.

AND ON READING the Affidavit #1 of Erin Welte made August 27, 2024, Confidential Affidavit #2 of Erin Welte made August 27, 2024, and Affidavit #1 of Jennifer Alambre made August 26, 2024, and the consent of FTI to act as the Receiver; AND ON HEARING Claire Hildebrand, Counsel for National Bank of Canada and other counsel as listed on Schedule "A" hereto, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that:

### **APPOINTMENT**

1. Pursuant to Section 243(1) of the BIA and Section 39 of the LEA, FTI is appointed Receiver, without security, of all of the assets, undertakings and property of the Debtor, including all proceeds (the "**Property**").

### **RECEIVER'S POWERS**

2. The Receiver is 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 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 receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing insurance coverage;
  - (c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
  - (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
  - (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting these amounts, including, without limitation, enforcement of any security held by the Debtor;
  - (g) to settle, extend or compromise any indebtedness owing to the Debtor;
  - (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
  - (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
  - (j) to initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of the

Debtor, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
  - (i) without the approval of this Court in respect of a single transaction for consideration up to \$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 individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,

and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (s) to bankrupt the Debtor, if and when the Receiver deems appropriate; 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 (as defined below), including the Debtor, and without interference from any other Person.

3. Notwithstanding the Order of Associate Judge Robertson made January 11, 2024, and subject to further Court order, the Receiver's powers to market and sell the Property shall be exclusive, and no further rights with respect to the conduct of sale of the Property shall be granted to any other party, including Genesis Mortgage Investment Corp.

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

4. Each of (i) the Debtor; (ii) all of the Debtor's 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 (collectively, "**Persons**" and each 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, other than governmental authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "**Records**") in that Person's possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
6. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 5, 6 or 7 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 solicitor client privilege or statutory provisions prohibiting such disclosure.
7. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an 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 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 require including, without limitation, 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**

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

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

9. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall 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 provided that no further step shall be taken in respect of the Proceeding except for service of the initiating documentation on the Debtor and the Receiver.

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

10. All rights and remedies (including, without limitation, set-off rights) against the Debtor, the Receiver, or affecting the Property, are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. This stay and suspension shall not apply in respect of any "eligible financial contract" as defined in the BIA.

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

11. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.

### **CONTINUATION OF SERVICES**

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

of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### RECEIVER TO HOLD FUNDS

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 the employees' right to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the Debtor, including any successor employer liabilities as referred to in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay or in respect of obligations imposed specifically on receivers by applicable legislation, including sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.

### PERSONAL INFORMATION

15. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### LIMITATION ON ENVIRONMENTAL LIABILITIES

16. Nothing in this Order shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the



Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial or other law relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination (collectively "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.

17. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless the Receiver is actually in possession.
18. Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:
  - (a) before the Receiver's appointment; or,
  - (b) 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.
19. Notwithstanding anything in federal or provincial law, but subject to paragraph 18 of this Order, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the 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.

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

20. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except:
  - (a) any gross negligence or wilful misconduct on its part; or
  - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

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

21. The Receiver and its legal counsel, if any, are granted a charge (the "**Receiver's Charge**") on the Property as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order. The Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or

otherwise, in favour of any Person, but subject to Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
23. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

24. The Receiver is authorized and empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver 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 charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
25. 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.
26. The Receiver is 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.
27. 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.

#### **ALLOCATION**

28. 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 Property.

## SERVICE AND NOTICE OF MATERIALS

29. The Receiver shall establish and maintain a website in respect of these proceedings at: [WEB ADDRESS] (the “**Website**”) and shall post there as soon as practicable:
  - (a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the *Supreme Court Civil Rules*; and,
  - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
30. Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for each of the Receiver and the Applicant a demand for notice in the form attached as Schedule B (the “**Demand for Notice**”). The Receiver and the Applicant need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed Demand for Notice releases the Receiver and the Applicant from any requirement to provide further notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice.
31. The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the “**Service List**”). The Receiver shall post and maintain an up-to-date form of the Service List on the Website.
32. Any interested party, including the Receiver, may serve any court materials in these proceedings by facsimile or by emailing a PDF or other electronic copy of such materials to the numbers or addresses, as applicable, set out on the Service List. Any interested party, including the Receiver, may serve any court materials in these proceedings by mail to any party on the Service List that has not provided a facsimile number or email address, and materials delivered by mail shall be deemed received five (5) days after mailing.
33. Notwithstanding paragraph 32 of this Order, service of the Petition and any affidavits filed in support shall be made on the Federal and British Columbia Crown in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c.C-50 and its regulations for the Federal Crown and the *Crown Proceedings Act*, R.S.B.C. 1996 c.89 in respect of the British Columbia Crown.
34. The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to the Debtor’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of any legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*.

**GENERAL**

35. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Service List and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.
36. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
37. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
38. This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, 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 such courts, tribunals and regulatory and administrative bodies are 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.
39. The Receiver is authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and 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.
40. The Petitioner shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the Petitioner's security or, if not so provided by the Petitioner's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
41. Endorsement of this Order by counsel appearing on this application other than the Petitioner is 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:

APPROVED BY:

\_\_\_\_\_  
Signature of Claire Hildebrand, lawyer for the  
Petitioner

BY THE COURT

DISTRICT REGISTRAR

**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

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

AMOUNT

\$ \_\_\_\_\_

1. THIS IS TO CERTIFY that FTI Consulting Inc., the Receiver (the "**Receiver**") of all of the assets, undertakings and properties of By the Bay Home Development Ltd. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (In Bankruptcy and Insolvency) (the "**Court**") dated the \_\_\_\_\_ day of \_\_\_\_\_, 2024 (the "**Order**") made in SCBC Action No. \_\_\_\_\_ and/or SCBC Action No. \_\_\_\_\_/Estate No. \_\_\_\_\_ has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly] not in advance on the \_\_\_\_\_ day of each month after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of the 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 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 under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

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

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

**SCHEDULE "B"**

**DEMAND FOR NOTICE**

**TO: National Bank of Canada**  
c/o Blake, Cassels & Graydon LLP  
Attention: Claire Hildebrand  
Email: claire.hildebrand@blakes.com

**AND TO: FTI Consulting Canada Inc.**  
c/o Blake, Cassels & Graydon LLP  
Attention: Claire Hildebrand  
Email: claire.hildebrand@blakes.com

**Re: In the matter of the Receivership of By The Bay Home Development Ltd.**

I hereby request that notice of all further proceedings in the above Receivership be sent to me in the following manner:

1. By email, at the following address (or addresses):

\_\_\_\_\_

OR

2. By facsimile, at the following facsimile number (or numbers):

\_\_\_\_\_

OR

3. By mail, at the following address:

\_\_\_\_\_

Name of Creditor: \_\_\_\_\_

Name of Counsel (if any): \_\_\_\_\_

Creditor's Contact Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Creditor's Contact Phone Number: \_\_\_\_\_