



SE246877
NO. _____
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

NATIONAL BANK OF CANADA

PETITIONER

AND:

MANNA INDUSTRIAL FUND (VALUE-ADD) LIMITED PARTNERSHIP,
MANNA INDUSTRIAL FUND (VALUE-ADD) GP CORP., 8826 JIM BAILEY LTD.,
375 POTTERTON LTD., GENESIS MANNA HOLDINGS LTD. AND
ALLION HOLDINGS LTD.

RESPONDENTS

PETITION TO THE COURT

ON NOTICE TO: Those parties listed in Schedule "A" hereto

The address of the registry is:

The Law Courts
800 Smithe Street
Vancouver, BC V6Z 2E1

The petitioner estimates that the hearing of the petition will take 1.5 hours.

- ☐ This matter is an application for judicial review.
- ☒ This matter is not an application for judicial review.

This proceeding is brought for the relief set out in Part 1 below by

- ☒ The person named as petitioner in the style of proceeding above
- ☐ Name(s) (the Petitioner)

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 that 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 of the registry is:

The Law Courts
800 Smithe Street
Vancouver, BC V6Z 2E1

(2) The ADDRESS FOR SERVICE of the Petitioner is:

McCarthy Tétrault LLP
Barristers & Solicitors
Suite 2400, 745 Thurlow Street
Vancouver, BC V6E 0C5

**Attention: H. Lance Williams
Ashley Bowron**

Email address for service of the Petitioner: lwilliams@mccarthy.ca
abowron@mccarthy.ca
sdanielisz@mccarthy.ca

(3) Name and office address of the Petitioner's lawyer:

(same as above)

CLAIM OF THE PETITIONER

PART 1 ORDER SOUGHT

1. An order substantially in the form attached as **Schedule “B”** (the “**Receivership Order**”):

(a) appointing FTI Consulting Canada Inc. (“**FTI**”) as receiver and manager (in such capacity, the “**Receiver**”) over (collectively, the “**Property**”):

(i) the real property legally described as:

PID: 024-666-947

Lot 6 Section 2 Township 20 Osoyoos Division Yale District Plan
KAP65805

including all rents and leases relating thereto, (the “**Jim Bailey Property**”);

(ii) the real property legally described as:

PID: 023-839-171

Lot D Section 2 Township 20 Osoyoos Division Yale District Plan
KAP59703

including all rents and leases relating thereto, (the “**Potterton Property**”
and, together with the Jim Bailey Property, the “**Real Property**”);

(iii) all present and after-acquired personal property of Manna Industrial Fund (Value-Add) Limited Partnership, Manna Industrial Fund (Value-Add) GP Corp., Genesis Manna Holdings Ltd., and Allion Holdings Ltd.
(collectively, the “**Limited Receivership Entities**”) located on, derived from, arising from, or used in relation to the Real Property;

(iv) all property, assets, and undertakings of 8826 Jim Bailey Ltd. (the “**Jim Bailey Nominee**”) and 375 Potterton Ltd. (the “**Potterton Nominee**”, together with the Jim Bailey Nominee and the Limited Receivership Entities, the “**Debtors**”);

- (v) all shares in the capital stock of the Jim Bailey Nominee and the Potterton Nominee; and
- (vi) any other assets, undertakings, or property of the Debtors located on or relating to the Real Property

pursuant to s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("**BIA**") and s. 39(1) of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 ("**LEA**");

- (b) granting a first-ranking charge (the "**Receiver's Charge**") on the Property, in favour of the Receiver and its legal counsel, 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 the Receivership Order;
- (c) authorizing and empowering the Receiver to borrow 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), and granting a second-ranking charge (the "**Receiver's Borrowings Charge**") over all of the Property, as security for the payment of the monies borrowed, together with interest and charges thereon; and
- (d) declaring that the Receiver's Charge and the Receiver's Borrowings Charge (collectively, the "**Charges**") rank in priority to all existing security interests, trusts, liens, charges, and encumbrances, in favour of any person, against the Property.

2. Such further and other relief as counsel may advise and this Court deems to be just and appropriate in the circumstances.

PART 2 FACTUAL BASIS

Capitalized Terms

1. The facts in support of this Petition are more fully set out in Affidavit #1 of John Karkoutlian, made on September 25, 2024 (the "**First Karkoutlian Affidavit**"). Capitalized

terms used but not otherwise defined in this Petition have the same meaning as ascribed to them in the First Karkoutlian Affidavit.

Background

2. The Respondents are a real estate fund that specialize in the acquisition and management of commercial and industrial properties in British Columbia.

First Karkoutlian Affidavit at para 3

3. Pursuant to the loan agreement dated February 17, 2022 (the "**Loan Agreement**"), among Manna Industrial Fund (Value-Add) Limited Partnership (the "**Manna LP**"), by its general partner, Manna Industrial Fund (Value-Add) GP Corp. ("**Manna GP**" and, together with Manna LP, the "**Borrower**"), as borrower, and National Bank of Canada (the "**Lender**"), as lender, the Lender agreed to extend a \$28,700,000 term facility to the Borrower (the "**Loan Facility**").

First Karkoutlian Affidavit at para 4 and Exhibit "A"

4. The Loan Facility was advanced to support the purchase of the Real Property.

First Karkoutlian Affidavit at para 5

Guarantees

5. The Loan Agreement is guaranteed by the Jim Bailey Nominee, the Potterton Nominee, Genesis Manna Holdings Ltd. ("**Genesis**"), Allion Holdings Ltd. ("**Allion**"), Michael Chiang, and Nancy Wei (collectively, the "**Guarantors**").

First Karkoutlian Affidavit at para 6

Security

6. To secure the Borrower's obligations under the Loan Agreement, the Borrower and its affiliates granted a comprehensive security package that includes, among other things, the granting of:

- (a) A first ranking mortgage in the principal amount of \$28,700,000 granted by the Jim Bailey Nominee with respect to the Jim Bailey Property and the Potterton Nominee with respect to the Potterton Property, dated March 3, 2022, creating a first ranking charge on the Real Property (the "**Mortgage**").

- (b) A direction and beneficial charge agreement from the Borrower, as the beneficial owner of the Jim Bailey Property, dated March 3, 2022 (the “**Jim Bailey Direction and Beneficial Charge Agreement**”).
- (c) A direction and beneficial charge agreement from the Borrower, as the beneficial owner of the Potterton Property, dated March 3, 2022 (the “**Potterton Direction and Beneficial Charge Agreement**”).
- (d) A general assignment of rents and leases granted by the Jim Bailey Nominee with respect to the Jim Bailey Property, dated March 3, 2022 (the “**Jim Bailey Assignment of Rents and Leases**”).
- (e) A general assignment of rents and leases granted by the Potterton Nominee with respect to the Potterton Property, dated March 3, 2022 (the “**Potterton Assignment of Rents and Leases**”).
- (f) A site-specific general security agreement creating a first ranking charge over all present and after-acquired personal property of the Borrower located on or used in connection with the Real Property, dated March 3, 2022 (the “**Borrower GSA**”).
- (g) A site-specific general security agreement creating a first ranking charge over all present and after-acquired personal property of the Jim Bailey Nominee and the Potterton Nominee located on or used in connection with the Real Property, dated March 3, 2022 (the “**Nominees GSA**”).
- (h) A site-specific general security agreement creating a first ranking charge over all present and after-acquired personal property of Allion and Genesis located on or used in connection with the Real Property, dated March 3, 2022 (the “**Guarantors GSA**” and, together with the Borrower GSA and the Nominees GSA, the “**General Security Agreements**”).
- (i) An assignment of insurance proceeds with loss payable to the Lender in first position, dated March 3, 2022 (the “**Assignment of Insurance Proceeds**”).
- (j) A joint and several unlimited guarantee granted by the Jim Bailey Nominee and the Potterton Nominee, dated March 3, 2022 (the “**Nominees Guarantee**”).

- (k) A joint and several corporate guarantee granted by Allion and Genesis for 100% of the Loan Facility, dated March 3, 2022 (the “**Corporate Guarantors Guarantee**”).
- (l) A joint and several personal guarantee granted by Michael Chiang and Nancy Wei for 100% of the Loan Facility, dated March 3, 2022 (the “**Personal Guarantors Guarantee**”).
- (m) An assignment of security deposit accounts granted by the Borrower and Manna GP, dated March 3, 2022 (the “**Assignment of Security Deposit Accounts**”).
- (n) An environmental indemnity granted by the Borrower and the Guarantors, dated March 3, 2022 (the “**Environmental Indemnity**”).

First Karkoutlian Affidavit at para 7 and Exhibits “B” – “O”

7. The Lender also has a priority and standstill agreement from IMC Limited Partnership (“**IMC**”), who holds a second-ranking mortgage and assignment of rents over the Real Property (the “**IMC Priority Agreement**”).

First Karkoutlian Affidavit at para 8 and Exhibit “P”

8. The Lender is permitted to appoint a receiver and manager under section 9(f) of the General Security Agreements and under section 12 of the Lender’s Standard Mortgage Terms MT140002, prescribed by the Mortgage, upon the occurrence of an event of default.

First Karkoutlian Affidavit at para 9 and Exhibit “Q”

Defaults

9. The Borrower has committed multiple ongoing defaults under the Loan Facility, including:
- (a) the Borrower breached s. 6 of the Loan Agreement by failing to make the monthly payments due on July 1, 2024, August 1, 2024, and September 1, 2024, amounting to approximately \$430,000 in arrears (the “**Financial Defaults**”);
 - (b) the Borrower breached s. 16(4) of the Loan Agreement by failing to provide Notice to Reader financial statements within 120 days of the end of the 2023 fiscal year;

- (c) the Borrower breached s. 16(5) of the Loan Agreement by failing to provide proof of payment of property taxes within 120 days of the end of the 2023 fiscal year;
- (d) the Borrower breached s. 16(6) of the Loan Agreement by failing to provide personal net worth statements for Ms Wei on December 31, 2023;
- (e) the Borrower breached s. 16(10) of the Loan Agreement by failing to provide the DSCR calculation as at December 31, 2023;
- (f) the Borrower and the Nominees have failed to pay 2024 property taxes on the Real Property.

(collectively, the “**Defaults**”).

First Karkoutlian Affidavit at para 10 and Exhibit “R”

Indebtedness

10. As of September 26, 2024, CA\$27,383,056.13 remained outstanding on the Loan Facility, with interest, fees, and charges continuing to accrue.

First Karkoutlian Affidavit at para 12

Communication with the Debtors

11. On or about July 15, 2024, the Lender issued demand letters (the “**Demand Letters**”) to the Debtors. The Demand Letters notified the Debtors that they were in default of their obligations to the Lender and required the Debtors to remedy such defaults immediately and demanding the immediate repayment of all outstanding Indebtedness. The Demand Letters enclosed notices of intention to enforce security with respect to the Debtors and the Guarantors, as applicable, pursuant to s. 244(2) of the BIA.

First Karkoutlian Affidavit at para 13 and Exhibits “S” – “Y”

12. The notice period under the BIA lapsed on or about July 26, 2024. The Indebtedness nonetheless remains outstanding, and despite multiple discussions with the Debtor, they have failed to may payments.

First Karkoutlian Affidavit at para 14

Necessity for the Receiver

13. The Borrower has committed multiple, ongoing defaults. Despite the Demand Letters and the expiry of the BIA notice, the Indebtedness remains outstanding, with interest, fees, costs, expenses, and other amounts continuing to accrue. The Lender has given the Borrower ample time to correct these defaults. Moreover, the Borrower failed to make the monthly payments due on July 1, 2024, August 1, 2024, and September 1, 2024 which has accumulated in approximately \$430,000 in arrears. Property taxes owing for 2024 on the Real Property have also not been paid.

First Karkoutlian Affidavit at para 15 and Exhibit "R"

14. These missed payments are concerning to the Lender because, based on the latest information contained in the Lender's records, the Real Property is fully tenanted. Therefore, the Borrower receives rent payments at the beginning of each month from those tenants. However, no amounts have been applied to remedy the Financial Defaults.

First Karkoutlian Affidavit at para 16

15. The fact the Financial Defaults remain outstanding and date back to July 2024 suggest the Borrower has been diverting rent payments rather than repaying the Indebtedness, notwithstanding the Lender's first-charge security. In these circumstances, the Lender has lost faith in the Borrower's management and the oversight of a court-officer is necessary to ensure funds are not further diverted.

First Karkoutlian Affidavit at para 17

16. Apart from the above, a British Columbia Securities Act Charge, dated August 19, 2024, under registration no. CB1536802 (the "**Securities Act Charge**") has been registered on title to the Real Property.

First Karkoutlian Affidavit at para 18 and Exhibit "Z"

17. Furthermore, the Lender was informed that IMC has likewise not been paid and their credit facility has expired. The Borrower is clearly insolvent.

First Karkoutlian Affidavit at para 19

18. The Borrower does not currently have access to any further availability under the Loan Facility. The Debtors have not presented any viable plan to maintain the assets, obtain

refinancing, or otherwise alleviate its financial situation. The Lender is unwilling to advance further funding other than funding a court-appointed receiver.

First Karkoutlian Affidavit at para 20

19. To address these urgent concerns as indicated above, the Lender seeks to appoint the Receiver over the Property. The Lender is willing to fund the Receiver pursuant to a receiver's borrowing charge so it can proceed oversee, protect, and facilitate a sale of the Property.

First Karkoutlian Affidavit at para 21

20. Given the financial circumstances and behaviour of the Debtors described above, the appointment of the Receiver is just and convenient in the circumstances.

First Karkoutlian Affidavit at para 22

PART 3 LEGAL BASIS

This Court has Jurisdiction to Appoint the Receiver

45. This Court has jurisdiction to appoint a receiver over the Property of the Debtor pursuant to s. 243(1) of the BIA and s. 39(1) of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 (the "LEA").

46. Subsections 243(1) and 243(1.1) of the BIA state:

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a 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.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

(a) the insolvent person consents to an earlier enforcement under subsection 244(2); or

(b) the court considers it appropriate to appoint a receiver before then.

BIA, ss. 243(1) - (1.1)

47. Subsection 39(1) of the LEA states:

Injunction or mandamus may be granted or receiver appointed by interlocutory order

39 (1) An injunction or an order in the nature of mandamus may be granted or a receiver or receiver manager appointed by an interlocutory order of the court in all cases in which it appears to the court to be just or convenient that the order should be made.

LEA, s. 39(1)

The Test for Appointing a Receiver

48. The BIA and LEA both provide for the appointment of a receiver where it is “just or convenient” to do so.

BIA, s. 243(1); LEA, s. 39(1)

49. In *Maple Trade Financing Inc. v CY Oriental Holdings Ltd.*, Justice Masuhara adopted the following list of factors to consider when assessing whether it is just and convenient to appoint a receiver:

- (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 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 Financing Inc. v CY Oriental Holdings Ltd.,
2009 BCSC 1527 [**Maple Trade**] at para 25

Textron Financial Canada Limited v Chetwind Motels Ltd.,
2010 BCSC 477 [**Textron**] at para 50

Vancouver Coastal Health Authority v Seymour Health Centre Inc.,
2023 BCSC 1158 [**Vancouver Coastal**] at paras 47 - 64

Paragon Capital Corporation Ltd. v Merchants & Traders Assurance Co.,
2002 ABQB 430 [**Paragon**] at para 27

Ward Western Holdings Corp. v Brosseuk,
2022 BCCA 32 at paras 49 and 65-66

50. The factors set out above are “not a checklist”, but should be assessed holistically in light of all of the circumstances.

Vancouver Coastal at para 53

Bank of Montreal v Haro-Thurlow Street Project Limited Partnership,
2024 BCSC 47 at paras 73-75 [***Bank of Montreal***]

Pandion Mine Finance Fund LP v Otso Gold Corp., 2022 BCSC 136 at para 14

Royal Bank of Canada v Canwest Aerospace Inc., 2023 BCSC 514 at para 9

51. In applying these factors, this Court has held that the right of a secured creditor to apply for a receiver under a security agreement holds considerable weight, and is a “strong factor in support” of the appointment.

Maple Trade at para 26

52. Furthermore, the appointment of a receiver over mortgaged lands is not an “extraordinary remedy” where there has been a default under a mortgage; and in cases where the security documentation provides for the appointment of a receiver, the “extraordinary nature” of the remedy sought is less essential to the inquiry.

Paragon at para 28

BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc.,
2020 ONSC 1953 at paras 43-44

It is Just and Appropriate to Appoint the Receiver

53. It is just and appropriate to appoint the Receiver in the present circumstances for the present following reasons:

- (a) the Debtors are indebted to the Lender in the aggregate amount of CA\$27,383,056.13, as at September 26, 2024, plus all accruing interest, fees, costs, and expenses, and their financial condition is continuing to deteriorate.

First Karkoutlian Affidavit at para 12

- (b) the Borrower has committed multiple, material defaults, including failure to make payments on the Loan Facility;

First Karkoutlian Affidavit at para 10

- (c) despite having notice of these Defaults, and the Lender demanding repayment, the Borrower has failed to successfully repay its obligations. Nor have the Debtors been successful with any plan to obtain refinancing or otherwise alleviate its deteriorating financial situation;

First Karkoutlian Affidavit at para 20

- (d) the fact that the Financial Defaults remain outstanding and date back to July 2024 suggest that the Borrower has been diverting rent payments rather than repaying the Indebtedness;

First Karkoutlian Affidavit at para 17

- (e) property taxes owing for 2024 on the Real Property have not been paid;

First Karkoutlian Affidavit at para 15

- (f) the Borrower is being investigated by the British Columbia Securities Commission pursuant to the Securities Act Charge, so the corporate governance of the Debtor appears to have been broken down;

First Karkoutlian Affidavit at para 18

- (g) the Lender has lost confidence in the Debtors' management;

First Karkoutlian Affidavit at para 17

- (h) the Debtors lack the liquidity necessary to pay their obligations as they come due and the Lender is unwilling to advance additional financing without the protection of a receivership; and

First Karkoutlian Affidavit at para 20

- (i) the Standard Mortgage Terms and the General Security Agreements each specifically provide the Lender with the right to appoint a receiver and manager over the applicable Property upon the applicable Debtors' default;

First Karkoutlian Affidavit at para 9 and Exhibits "G" - "I" and "Q"

54. The Lender submits that it is just and convenient, in the circumstances as a whole, to appoint FTI as Receiver over the Property.

55. The Lender further pleads and relies upon Rule 10-2 and Rule 13-5 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009.

This Court has Jurisdiction to Grant the Charges

56. This Court has jurisdiction to grant the Charges in priority to all existing security interests, trusts, liens, charges, and encumbrances, against the Property, pursuant to subsection 243(6) of the BIA.

57. Subsection 243(6) of the BIA states:

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

BIA, s. 243(6)

It is Appropriate to Grant the Charges

58. The Lender has a first-ranking Mortgage on the Real Property and is a senior secured creditor of the Debtors.

First Karkoutlian Affidavit at para 7(a)

Affidavit #1 of Susan Danielisz at Exhibits "S" and "T"

59. The proposed Receiver, FTI, has provided input regarding the proposed quantum of the Receiver's Borrowing Charge. In the Lender's submission, the proposed quantum is fair and reasonable, having regard to the value of the Property and the nature of the obligations to be secured.

60. The Receiver's Charge and Receiver's Borrowing Charge sought by the Lender are in the template form provided for in the British Columbia Model Receivership Order.

61. In *Edmonton (City) v Alvarez & Marsal Canada Inc.*, the Alberta Court of Appeal considered an appeal with respect to the provisions of the Alberta Template Receivership Order concerning priority charges, which mirror those under the British Columbia Model Receivership Order. In reversing the decision at first instance, which had granted certain claims by the City of Edmonton priority over the "super-priority" receiver's charge and receiver's borrowings charge, the Court stated:

[9] [...] This appeal concerns the discretion granted the court by s 243(6), which governs the making of orders respecting the payment of the receiver's fees and disbursements and, in particular, gives the court the discretion to grant a super priority to a receiver's claim for fees and disbursements.

[...] [14] The chambers judge exercised his discretion to grant the Receiver's Charge priority over the claims of both the mortgagee and builders' lien claimant. Relevant to his consideration was the decision in *Robert F Kowal Investments Ltd v Deeder Electric Ltd* (1975), 59 DLR (3d) 492, 9 OR (2d) 84 (CA) [Kowal], applied in *Royal Bank v Vulcan Machinery & Equipment Ltd*, [1992] 6 WWR 307, 13 CBR 69 (ABQB). *Kowal* refers to a general rule that secured creditors may not be subject to the charges and expenses of a receivership. This is so because, "the general purpose of a general receivership is to preserve and realize the property for the benefit of creditors in general. No receivership may be necessary to protect or realize the interests of lienholders": *Kowal*, quoting Ralph Ewing Clark, *Clark On Receivers*, 3rd ed, vol 1, s 22, p 25. There are, however, exceptions to that general rule, three of which were enumerated in *Kowal*:

1. if a receiver has been appointed at the request or with the consent or approval of the holders of security, the receiver will be given priority over the security holders;
2. if a receiver has been appointed to preserve and realize assets for the benefit of all interested parties, including secured creditors, the receiver will be given priority over the secured creditors for charges and expenses properly incurred; or
3. if the receiver has expended money for the necessary preservation or improvement of the property, the receiver may be given priority for those expenditures over secured creditors.

[15] These principles are well accepted and proper considerations for a court in exercising its discretion under s 243(6). [...]

[16] In his discussion of the applications by ICI and Standard General, the chambers judge made several pertinent observations with respect to the policy considerations relevant to the prioritization of the fees and disbursements of receivers (*Decision* at paras 136-137):

[136] The difficulty with making a determination at the outset of a receivership (even a liquidating receivership) is that the nature and extent of the work necessary to preserve, protect, maintain, and eventually liquidate a particular asset is unknown. I do not see that claimants with a proprietary claim are entitled to a free ride in a receivership, such that they should be responsible for payment of the costs of the receivership as they relate to the claimants' claims and the cost of monetizing the claim. Those costs may include a part of the Receiver's general costs as well as those that can be specifically tied to the specific assets in question.

[137] Up front, it is appropriate to have the Receiver's charges rank ahead of claimants who will benefit from the Receivership, to the extent that they have benefitted from the Receivership. That means that for creditors who may benefit from the Receivership, the super priority is generally appropriate for the Receiver's fees and disbursements, on the expectation that these fees and disbursements will ultimately be fairly apportioned.

[17] In making these observations, the chambers judge rightly recognized the modern commercial realities that affect receiverships. The super priority is necessary to protect receivers; without security for their fees and disbursements they would be understandably concerned about taking on receiverships. This is in keeping with the decision in *CCM Master Qualified Fund v blutip PowerTechnologies*, 2012 ONSC 1750, where it was noted that in CCAA proceedings, "professional services are provided ... in reliance on super priorities contained in initial orders".[1] We agree with the observation of Brown J at para 22 that:

... comments regarding the need for certainty about the priority of charges for professional fees or borrowings apply, with equal force, to priority charges sought by a receiver pursuant to section 243(6) of the *BIA*. Certainty regarding the priority of administrative and borrowing charges is required as much in a receivership as in proceedings under the CCAA...

[18] The chambers judge also noted that the creditor who brings the application for the receivership should not be left to bear the entire financial burden of the process. Rather, those costs should be shared equitably amongst all the creditors. [...]

[23] The policy behind receiverships is that collective action is preferable to unilateral action. The receiver maximizes the returns for the benefit of all creditors and streamlines the process of liquidation.

As was noted recently in *Royal Bank v Delta Logistics*, 2017 ONSC 368 at para 26:

The whole point of a court-appointed receivership is that one person ... is appointed to deal with all of the assets of an insolvent debtor, realize upon them, and then distribute the proceeds of that realization to the creditors.

[...] [26] Although the court has discretion under s 243(6) with respect to the priority to be given to receiver's charges, the exercise of discretion must be on a principled basis. For the foregoing reasons, we have concluded that the appeal with respect to Edmonton's application for priority must be allowed. The Receiver has a super priority for its fees and disbursements in accordance with the original receivership order. As was noted by the chambers judge, the amount of those costs to be paid by Edmonton, and the other secured creditors, will ultimately be the subject of an apportionment exercise.

Edmonton (City) v Alvarez & Marsal Canada Inc, 2019 ABCA 109 at paras 9, 14-18, 23 and 26 [***Edmonton v A&M***]

62. In the circumstances, the appointment of the Receiver falls squarely within the first and second exception set out in the *Kowal* case, and the policy rationale described in *Edmonton v A&M*: to preserve and realize the Property for the benefit of all interested parties, including secured creditors.

63. Courts have recognized that, unless professional advisor fees are protected with the benefit of a charge over the assets of a debtor company, the objectives of the receivership regime (including collective action, to the benefit of all interested stakeholders) would be frustrated, as professionals would be unlikely to risk offering their services without any assurance of ultimately being paid.


Edmonton v A&M at para 17, citing *CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750 at para 22

64. As the statutory prerequisite of providing notice to all secured creditors likely to be affected by the Charges has been met, and as the appointment of the Receiver is not only just and convenient, but necessary to preserve and realize upon the Property, the Lender respectfully submits that the Charges should be granted, with the priority set out in the draft Receivership Order.

PART 4 MATERIAL TO BE RELIED ON

1. Affidavit #1 of John Karkoutlian, made September 26, 2024;
2. Affidavit #1 of Susan Danielisz, made October 3, 2024; and
3. Such further and other materials as counsel may advise and this Court may allow.

DATE: October 7, 2024



Counsel for the Petitioner
McCarthy Tétrault LLP
(H. Lance Williams and Ashley Bowron)

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: _____

Signature of _____

☐ Judge

☐ Associate Judge

SCHEDULE "A"

DEBTORS	
Manna Industrial Fund (Value-Add) Limited Partnership Manna Industrial Fund (Value-Add) GP Corp. 8826 Jim Bailey Ltd. 375 Potterton Ltd. Registered Office 19 th Floor, 885 West Georgia Street Vancouver, BC V6C 3H4	Genesis Manna Holdings Ltd. Registered Office 25 – 7288 Heather Street Richmond, BC V6Y 4L4 Allion Holdings Ltd. Registered Office 26 th Floor, Bentall 6 PO Box 308 1090 West Pender Street Vancouver, BC VE 0E3

PARTIES WITH REGISTERED SECURITY INTEREST	
13531953 Canada Inc. 108 – 7181 Woodbine Avenue Markham, ON L3R 1A3	Institutional Mortgage Capital Canada Inc. 199 Bay Street, Suite 1900 Commerce Court West, PO Box 271 Toronto, ON M5L 1E9
National Bank of Canada 2900 – 475 Howe Street Vancouver, BC V6C 2B3	Lin Li 5988 Marguerite Street Vancouver, BC V6M 3L1
Baomei Gao 6907 Angus Drive Vancouver, BC V6P 5J4	

GOVERNMENT AGENCIES	
The Government of British Columbia Deputy Attorney General Ministry of Attorney General PO Box 9290 Stn Prov Govt Victoria, BC V8W 9J7	Department of Justice Canada British Columbia Regional Office 900 – 840 Howe Street Vancouver, BC V6Z 2S9
Pacific Insolvency Intake Centre Surrey National Verification and Collection Centre Canada Revenue Agency 9755 King George Boulevard Surrey, BC V3T 5E1	City of Kelowna Property Tax Department 1435 Water Street Kelowna, BC V1Y 1J4
BC Securities Commission 9 th Floor, 701 West Georgia Street Vancouver, BC V7Y 1L2	

SCHEDULE "B"

NO. _____
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

NATIONAL BANK OF CANADA

PETITIONER

AND:

MANNA INDUSTRIAL FUND (VALUE-ADD) LIMITED PARTNERSHIP,
MANNA INDUSTRIAL FUND (VALUE-ADD) GP CORP, 8826 JIM BAILEY LTD.,
375 POTTERTON LTD., GENESIS MANNA HOLDINGS LTD. AND
ALLION HOLDINGS LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION (RECEIVERSHIP ORDER)

BEFORE THE HONOURABLE)	FRIDAY, THE 11 TH DAY
)	
JUSTICE FITZPATRICK)	OF OCTOBER, 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 and Manager (in such capacity, the "**Receiver**") without security, of the Property (defined below) coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Affidavit #1 of John Karkoutlian sworn September 25, 2024 (the "**First Karkoutlian Affidavit**") and Affidavit #1 of Susan Danielisz, made October 3, 2024 (the "**First Danielisz Affidavit**"), and the consent of FTI to act as the Receiver; AND ON HEARING H. Lance Williams, 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. The time for service of the Petition dated October 7, 2024, is abridged such that it is properly returnable today and service of the Petition, the First Karkoutlian Affidavit, and the First Danielisz Affidavit is hereby deemed good and sufficient.

2. Pursuant to Section 243(1) of the BIA and Section 39 of the LEA, FTI is appointed Receiver, without security, over:

- (a) the real property legally described as:

PID: 024-666-947

Lot 6 Section 2 Township 20 Osoyoos Division Yale District Plan KAP65805 including all rents and leases relating thereto, (the "**Jim Bailey Property**");

- (b) the real property legally described as:

PID: 023-839-171

Lot D Section 2 Township 20 Osoyoos Division Yale District Plan KAP59703 including all rents and leases relating thereto, (the "**Potterton Property**", together with the Jim Bailey Property, the "**Real Property**");

- (c) all present and after-acquired personal property of Manna Industrial Fund (Value-Add) Limited Partnership, Manna Industrial Fund (Value-Add) GP Corp., Genesis Manna Holdings Ltd., and Allion Holdings Ltd. (collectively, the "**Limited Receivership Entities**") located on, derived from, arising from, or used in relation to the Real Property;

- (d) all property, assets, and undertakings of 8826 Jim Bailey Ltd. (the "**Jim Bailey Nominee**") and 375 Potterton Ltd. (the "**Potterton Nominee**", together with the Jim Bailey Nominee and the Limited Receivership Entities, the "**Debtors**");

- (e) all shares in the capital stock of the Jim Bailey Nominee and the Potterton Nominee, and

- (f) any other assets, undertakings, or property of the Debtors located on or relating to the Real Property

(collectively, the "**Property**").

RECEIVER'S POWERS

3. 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 Debtors relating to the Property (the "**Business**"), including the powers to enter into any agreements,

incur any obligations in the ordinary course of business, cease to carry on all or any part of the Business, or cease to perform any contracts of the Debtors relating to the Business;

- (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 or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors relating to the Property, including all rents payable from and after the date of this Order by any tenant or occupant of the Real Property or any portion thereof (the "**Rents**"), which Rents shall, for greater certainty, be immediately remitted to the Receiver if collected by or paid to any of the Debtors or any other Person (as defined herein), and to exercise all remedies of the Debtors in collecting these amounts, including, without limitation, enforcement of any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors relating to the Property;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
- (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 Business, 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 \$150,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the 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 relating to the Property and/or the Business 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 Debtors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have relating to the Business and/or the Property; and
- (s) 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 Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

- 4. Each of (i) the Debtors; (ii) all of the Debtors' 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, the Property, or affairs of the Debtors relating thereto, 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 4, 5 or 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to 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 BUSINESS OR THE PROPERTY

9. No Proceeding against or in respect of the Business 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 Business 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 Debtors and the Receiver.

NO EXERCISE OF RIGHTS OR REMEDIES

10. All rights and remedies (including, without limitation, set-off rights) against the Receiver, or affecting the Property and/or Business, 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 Debtors to carry on any business which the Debtors 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 Debtors in relation to the Property and/or the Business, 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 Debtors or statutory or regulatory mandates for the supply of goods and/or services relating to the Property and/or the Business, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors, are 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 Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

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 Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees if their employment relates solely to the Business and/or the Property. The Receiver shall not be liable for any employee-related liabilities of the Debtors, 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 Debtors, 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 17 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.
21. 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

22. 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.
23. 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.
24. 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

25. 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.

26. 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.
27. The Receiver is authorized to issue certificates substantially in the form annexed as **Schedule "B"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
28. 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

29. 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

30. The Receiver shall establish and maintain a website in respect of these proceedings at: <http://cfcanada.fticonsulting.com/manna/> (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.
31. 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 hereto as **Schedule "C"** (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.
32. 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.

33. 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.
34. Notwithstanding paragraph 31 of this Order, service of the Petition and any affidavits filed in support shall be made on the Federal and British Columbia Crowns 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.
35. 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 Debtors' 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

36. The Receiver shall not be required to send the information or notices contemplated by ss. 245 or 246 of the BIA with respect to the Limited Receivership Entities.
37. 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.
38. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
39. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.
40. 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.
41. 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 Debtors' estate with such priority and at such time as this Court may determine.
42. Endorsement of this Order by counsel appearing on this application other than the Petitioner is dispensed with.

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.

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:

Lawyer for the Petitioner
McCarthy Tétrault LLP
(H. Lance Williams and Ashley Bowron)

BY THE COURT

DISTRICT REGISTRAR

SCHEDULE "A"

LIST OF COUNSEL

Name of Counsel	Party Represented

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT

\$ _____

1. THIS IS TO CERTIFY that FTI Consulting Canada Inc., the Receiver and Manager (the "**Receiver**") of all of the Property (as defined in the Order) appointed by order of the Supreme Court of British Columbia (the "**Court**") dated the ____ day of ●, 2024 (the "**Order**") made in SCBC Action 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 _____, 2024.

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

Per: _____
Name: _____
Title: _____

SCHEDULE "C"

DEMAND FOR NOTICE

TO: National Bank of Canada
c/o McCarthy Tétrault LLP
Attention: H. Lance Williams / Ashley Bowron
Email: lwilliams@mccarthy.ca / abowron@mccarthy.ca

AND TO: FTI Consulting Canada Inc.
c/o Blakes, Cassels & Graydon LLP
Attention: Peter Bychawski / Claire Hildebrand
Email: peter.bychawski@blakes.com / claire.hildebrand@blakes.com

Re: In the matter of the Receivership of Manna Industrial Fund (Value-Add) Limited Partnership, et al

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: _____

NO. VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

NATIONAL BANK OF CANADA

PETITIONER

AND:

MANNA INDUSTRIAL FUND (VALUE-ADD)
LIMITED PARTNERSHIP, MANNA INDUSTRIAL
FUND (VALUE-ADD) GP CORP, 8826 JIM BAILEY
LTD., 375 POTTERTON LTD., GENESIS MANNA
HOLDINGS LTD. AND ALLION HOLDINGS LTD.

RESPONDENTS

**ORDER MADE AFTER APPLICATION
(RECEIVERSHIP ORDER)**

McCarthy Tétrault LLP

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Attention: H. Lance Williams / Ashley Bowron