



NO. S-246124  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

NATIONAL BANK OF CANADA

PETITIONER

AND:

BY THE BAY HOME DEVELOPMENT LTD.

RESPONDENT

**NOTICE OF APPLICATION**

**Name of applicant:** FTI Consulting Canada Inc. ("FTI") in its capacity as court-appointed receiver (the "**Receiver**") without security, of all of the assets, undertakings and property of By The Bay Home Development Ltd. (the "**Debtor**"), including all proceeds (the "**Property**").

TO: The attached Service List (**Schedule "A"**)

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia on **Tuesday, the 10<sup>th</sup> day of February, 2026 at 9:45 a.m.** for the order set out in Part 1 below.

The applicant estimates that the application will take 20 minutes.

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

**PART 1: ORDER SOUGHT**

1. An order substantially in the form attached hereto as **Schedule "B"** (the "**Order**"), among other things:
  - (a) authorizing the Proposed Distribution (as defined below) to the National Bank of Canada (the "**Bank**");

- (b) approving the activities and conduct of the Receiver, as described in the First Report of the Receiver, dated November 4, 2025 (the “**First Receiver’s Report**”) and the Second Report of the Receiver, dated January 27, 2026 (the “**Second Receiver’s Report**”, and together with the First Receiver’s Report, the “**Receiver’s Reports**”), and declaring that the Receiver has satisfied all of its (i) duties and obligations as Receiver; and (ii) obligations under and pursuant to the terms of the orders granted in these receivership proceedings (the “**Receivership Proceedings**”);
  - (c) approving the fees and disbursements of the Receiver (the “**Receiver’s Fees**”) and the Receiver’s Counsel (as defined below) (the “**Receiver’s Counsel’s Fees**”), and the estimated fees and disbursements of the Receiver and Receiver’s Counsel until discharge (the “**Estimated Completion Fees**”), as detailed in the Affidavit #1 of H. Lance Williams, made January 27, 2026 (the “**Williams Affidavit**”), the Affidavit #1 of Tom Powell, made January 27, 2026 (the “**Powell Affidavit**” and together with the Williams Affidavit, the “**Fee Affidavits**”);
  - (d) ordering and declaring that, immediately upon the Receiver filing a certificate with the Court, substantially in the form attached as Schedule “B” to the Order (the “**Discharge Certificate**”), confirming that the Proposed Distribution (as defined below) has been completed:
    - (i) the Receiver shall be discharged, and, notwithstanding the discharge of the Receiver, the Receiver remains empowered with residual jurisdiction to take such steps and actions as it deems necessary to address any ancillary or incidental matters, as required in connection with its capacity as Receiver following the termination of the Receivership Proceedings, and that FTI shall continue to have the benefit of all orders made in these Receivership Proceedings in relation to its capacity as Receiver; and
    - (ii) FTI shall be released and discharged from any and all liability that FTI now has or may hereafter have by reason of, or in any way arising out of, the actions or omissions of FTI while acting in its capacity as Receiver herein, and without limiting the generality of the foregoing, FTI shall be forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in these Receivership Proceedings.
2. Such further and other relief as this Court may deem just.

## PART 2: FACTUAL BASIS

### Background

1. The background of these Receivership Proceedings is more fully set out in Affidavit #1 of Erin Welte, made August 27, 2024.
2. The Debtor is a property development company with a municipal address of 610-1155 West Pender Street, Vancouver British Columbia.
3. The Debtor's primary secured lender is the National Bank of Canada (the "Bank"). The indebtedness owing by the Debtor to the Bank was \$7,472,019.99 as at August 21, 2024, plus interest—increasing at \$1,478.69 per day with \$547,007.40 outstanding and accrued as of August 21, 2024—together with fees and other amounts accruing under the various agreements between the Debtor and the Bank (the "Indebtedness"). The Debtor has not made any interest payments on the Indebtedness since September 2023 and has made numerous defaults on its agreements with the Bank. The Debtor could not repay the Bank, and accordingly, the Bank sought the appointment of the Receiver.

Affidavit #1 of Erin Welte, made August 27, 2024  
[Welte Affidavit] at paras. 6, 30-31 and Exhibit "A"

4. The second-ranking lender—Genesis Mortgage Investment Corp. ("Genesis")—is secured by a second-ranking mortgage over the Lands (defined below), among other security. As at the Receiver's appointment, the Debtor owed approximately \$3.8 million to Genesis.

Welte Affidavit at paras. 28-29

Second Report of the Receiver, dated January 27, 2026  
[Second Report] at para. 5

5. On October 3, 2024 (the "Appointment Date"), this Court granted an order (the "Receivership Order"), which among other things, appointed FTI as the Receiver of the Property pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA") and section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253 (the "LEA") and granted the Receiver the authority to list, market, and sell the Property.

Order Made After Application (Receivership) pronounced  
October 3, 2024 [Receivership Order] at paras. 1, 2(k)-(m)

6. The Debtor's primary asset was certain lands and premises at the municipal address of 1289 Nicola Street, Vancouver British Columbia ("**1289 Nicola**").

Second Report at paras. 3-4

7. On November 24, 2025, this Court,

- (a) approved the sale of 1289 Nicola (the "**Transaction**"), as contemplated by the contract of purchase and sale dated October 15, 2025 between the Receiver, as vendor, and 1561466 B.C. Ltd. (the "**Purchaser**"), as permitted assignee of Epix Developments Ltd., as purchaser; and
- (b) ordered that 1289 Nicola be vested in the Purchaser effective upon the Receiver filing a certificate with the Court (the "**Sale Certificate**").

Order Made After Application (Approval and Vesting)  
pronounced November 24, 2025

8. The Transaction subsequently completed on December 8, 2025 and the Receiver filed the Sale Certificate with the Court on December 9, 2025.

Second Report at para. 8

9. The Receiver's total receipts from the Transaction, including interest on asset realization proceeds, was \$3,492,298.04. After payment of all necessary disbursements, the Receiver still holds \$3,542,927.56 million in the estate bank accounts.

Second Report at paras. 17-19

10. In the course of the receivership, the Receiver borrowed \$250,000 from NBC under a Receiver's Certificate, which is secured by the Receiver's Borrowing Charge, both as defined in the Receivership Order.

Second Report at para. 18

### **Proposed Distribution**

11. The Receiver seeks authority to distribute the funds of the Debtor's estate to the Bank as follows:

- (a) repayment of the \$250,000 borrowed from NBC and secured by the Receiver's Borrowing Charge; and
- (b) distribution of the remaining funds, net of payment of outstanding professional fees and the costs to complete the administration of the Receivership Proceedings, totalling approximately \$3.2 million (the "**Proposed Distribution**").

Second Report, at para. 28

12. Given the Indebtedness owing to the Bank exceeds \$7 million, as described above, the Bank is expected to suffer a material shortfall even after the Proposed Distribution. As such, no other creditors will receive any recovery.

Second Report, at para. 30

13. The Receiver obtained an independent security review from McCarthy Tétrault LLP ("**Receiver's Counsel**"), confirming that, subject to standard assumptions and qualifies, the security in favour of the Bank has been registered and is valid and enforceable.

Second Receiver's Report, at paras. 26-27

14. The following statutory priority claims have already been paid or confirmed to have no material debt owing (the "**Statutory Priority Claims**"):

- (a) The Receiver has confirmed no amounts are owing related to wages or unremitted payroll withholdings, as the Debtor has no employees.
- (b) The Receiver has not received any assertion from the Canada Revenue Agency or British Columbia Ministry of Finance for a statutory priority claim for unpaid GST, HST, or PST under applicable tax legislation, nor any similar super priority claim from any other potential creditors of the Debtor.

Second Receiver's Report, at para. 27

### **Activities of the Receiver**

15. The activities and conduct of the Receiver since the Appointment Date (the "**Receiver's Activities**") are set out and described in further detail in the Receiver's Reports.

16. The Receiver's Activities included, among other things:
- (a) advising the Debtor's director of the Receivership Order and obtaining from him information regarding the Property and the Debtor;
  - (b) taking possession of the available books and records of the Debtor and performing a backup of the Company's electronic records;
  - (c) freezing all of the Debtor's bank accounts and establishing estate bank accounts;
  - (d) conducting periodic visits to 1289 Nicola to observe and secure the property;
  - (e) retaining Receiver's Counsel to act as independent legal counsel to the Receiver;
  - (f) notifying the CRA of the Receiver's appointment and requesting the opening of new remittance accounts for goods and services tax obligations arising subsequent to the Appointment Date;
  - (g) attending to various statutory notices and other duties of the Receiver pursuant to the Receivership Order, the BIA, and other applicable statutes;
  - (h) addressing insurance matters, including adding the Receiver as named insured on the Debtor's insurance policies;
  - (i) contacting the City of Vancouver regarding the receivership, property taxes, and utilities payments;
  - (j) engaging various contractors for fencing services and site cleanup, among other things;
  - (k) soliciting competitive brokerage proposals and selecting Colliers Macaulay Nicolls Inc. ("Colliers") as the exclusive broker for 1289 Nicola;
  - (l) instructing Colliers to undertake a marketing campaign for 1289 Nicola;
  - (m) evaluating the offers received for 1289 Nicola;
  - (n) providing periodic updates to the Bank in its capacity as fulcrum secured lender to the Debtor;

- (o) arranging for the issuance of a Receiver's Certificate in respect of borrowings provided by the Bank;
- (p) attending to the closing of and court approval for the Transaction;
- (q) preparing the Receiver's Reports; and
- (r) maintaining and updating the Service List and the Receiver's website for the Receivership Proceedings at <https://cfcanada.fticonsulting.com/BytheBay/>.

First Report of the Receiver, dated October 22, 2025 at para. 13

Second Report, at para. 16

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

17. Pursuant to the Receivership Order, the Receiver and the Receiver's Counsel are to be paid their reasonable fees and disbursements, in each case, at their standard rates and charges. The Receivership Order further provides that the Receiver and 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 Court and may be heard on a summary basis.

Receivership Order, at paras. 21-22

18. The Receiver seeks approval for its own fees and those of its counsel as outlined in the Receiver's Reports and the Fee Affidavits.

First Report at paras. 27-28

Second Report at paras. 20-24

Affidavit of Tom Powell, made January 27, 2025  
[**Powell Affidavit**] at paras. 3-5

Affidavit #1 of H. Lance Williams, made January 27, 2026  
[**Williams Affidavit**] at paras. 3-5

19. Up to January 5, 2026, the Receiver has billed approximately 100.20 hours in connection with these Receivership Proceedings. The total fees and disbursements incurred by the Receiver at its standard rates and charges during the relevant period was \$90,487.52, plus GST in the amount of \$4,524.39, for a total amount of \$95,011.91.

Powell Affidavit, at paras. 4-5

20. Up to December 31, 2025, Receiver's Counsel has billed approximately 38.70 hours at its standard rates and charges in connection with these Receivership Proceedings.

Williams Affidavit at paras. 4-5

21. The table below summarizes Receiver's Counsel's invoices, which are broken down as follows, (i) \$32,074.00 in respect of invoiced fees; (ii) \$549.82 in respect of invoiced disbursements; and (iii) \$3,875.34 in respect of invoiced taxes:

<b>Invoice Number</b>	<b>Invoice Date</b>	<b>Amount</b>
8588937	November 27, 2024	\$1,429.12
8591642	December 31, 2024	\$136.09
8592771	February 25, 2025	\$2,736.16
8595479	April 23, 2025	\$2,448.82
8598400	June 23, 2025	\$721.85
8604137	October 17, 2025	\$192.64
8605331	November 17, 2025	\$9,838.31
8606876	December 18, 2025	\$10,495.22
8608662	December 31, 2025	\$8,500.95
	<b>TOTAL:</b>	<b>\$36,499.16</b>

Williams Affidavit, at paras 3-4

22. The Receiver has affirmed that the services performed by Receiver's Counsel were at the Receiver's request and necessary. The Receiver believes that the fees and rates charged by Receiver's Counsel in those invoices are consistent with those charged by other law firms for work of a similar nature and complexity in British Columbia.

Powell Affidavit, at paras. 10-11

Second Report at para. 23

23. The Estimated Completion Fees are \$50,000. The Receiver's anticipated professional fees and final operating expenses incurred between January 6, 2026 and discharge are \$42,500. Receiver's Counsel anticipates final professional fees of \$7,500 between January 1, 2026 and discharge.

Second Report at para. 24  
Williams Affidavit at para. 10

24. The Bank has been provided an overview of the fees of the Receiver, Receiver's Counsel and the Estimated Completion Fees, and does not oppose the Court's approval.

Second Report at para. 25

### **Discharge**

25. The Receiver confirmed that all matters pertaining to the administration of the receivership have been substantially finalized, with the exception of the following:
- (a) repaying the \$250,000 borrowed from NBC and secured by the Receiver's Borrowing Charge, making final distributions of remaining funds, preparing the final bank reconciliations and closing the Receiver's bank account;
  - (b) preparing and issuing the Receiver's final report pursuant to subsection 246(3) of the BIA; and
  - (c) any other matters incidental to the wind up of the administration of the receivership.

Second Report at para. 31

26. Upon completion of these matters, the administration of the receivership will be complete and a discharge of the Receiver is appropriate.

### **PART 3: LEGAL BASIS**

#### **Approval of Proposed Distribution**

27. The Receiver requests the Court's approval to make the Proposed Distribution, which is to be distributed to the Bank in partial satisfaction of the Indebtedness owing to it by the Debtor.

28. The Court of Appeal has confirmed that this Court's power to authorize a receiver to make a distribution to creditors is implicit in the BIA. This power is "incorporated in the order appointing the Receiver, which is expressly made pursuant to the *BIA* and the *LEA*".

*Forjay Management Ltd. v. 625536 B.C. Ltd.*, 2019 BCCA 368 at para. 31

29. The Receivership Order provided that funds collected by the Receiver would be "held by the Receiver to be paid in accordance with the terms of this Order or any further Orders of the Court." The Receivership Order further authorized the Receiver to apply to the court for advice and directions in the discharge of its powers and duties.

Receivership Order at paras. 13 and 36

30. The Statutory Priority Claims have been satisfied. The Bank is the secured creditor sitting in first priority, as confirmed by the security review conducted by Receiver's Counsel. The proceeds available for distribution from the Transaction result in a significant shortfall to the Bank. Given that the Receiver has confirmed the Bank's priority position, it is appropriate to distribute the remaining proceeds of the Transactions to the Bank.

#### **Approval of the Receiver's Activities and Conduct**

31. This Court has inherent jurisdiction to review the activities of a court-appointed receiver and, if satisfied that the receiver has acted reasonably, prudently, and not arbitrarily, to approve the activities set out in the applicable receiver's report(s). This assessment is made on an objective basis.

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

*Lang Michener v American Bullion Minerals Ltd.*, 2005 BCSC 684 at para. 21

32. The Receiver's Activities are detailed in the Receiver's Reports, pursuant to which the Receiver has reported to this Court and all other interested parties and stakeholders throughout these Receivership Proceedings. The Receiver acted reasonably to preserve and maximize the value of the Property, to the benefit of all stakeholders. All of the

Receiver's activities to date were necessary or appropriate and were conducted in accordance with its powers under the Receivership Order.

Powell Affidavit, at paras. 8-9

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

Powell Affidavit, at para. 8

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

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

Receivership Order at para. 22

35. Courts have provided direction as to the exercise a supervising court should undertake to approve receivers' fees and activities: it is not necessary to go through the supporting documentation for the fees, line by line, to determine what the appropriate fees are for a receivership. And the supervising court's analysis should not involve second guessing the time spent by a receiver unless it is clearly excessive or overreaching.

*Bank of Nova Scotia v Diemer*, 2014 ONSC 365 at para. 19

36. The guiding principle is that receiver's fees must be "fair and reasonable, moderate and not generous, but sufficient to induce competent people to act as receivers".

*Vantreight v Vantreight*, 2007 BCSC 1345 at para. 43

37. On application to approve a receiver's accounts and the accounts of its legal counsel:
- (a) the accounts should be verified by affidavit;
  - (b) the accounts should contain sufficient evidence to permit a court to conclude that what was incurred for services rendered was at the standard rate of charges of the receiver and of the receiver's counsel; and

- (c) the accounts should provide a sufficient description of the services rendered to permit a court to determine whether the liability for fees was properly made or incurred.

*Redcorp Ventures Ltd. (Re)*, 2016 BCSC 188 at paras. 26 and 32

38. The Receiver's accounts and those of its counsel have been verified by the Fee Affidavits. The Fee Affidavits filed in support of this application, and the invoices appended thereto, contain sufficiently detailed descriptions to, without waiving privilege, provide this Court with sufficient evidence to conclude that the fees incurred were at standard rates for the Receiver and the Receiver's Counsel. Further, the Fee Affidavits and the invoices provide sufficient evidence for this Court to assess the Receiver's Fees and the Receiver's Counsel's Fees in relation to the factors for consideration identified in applicable case law, as set out in more detail below.

Second Report at paras. 21-22

Powell Affidavit at paras. 3-5

Williams Affidavit at paras. 3-6

39. Courts will consider the following non-exhaustive factors considerations in determining whether a receiver's compensation is fair and reasonable:

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

*0409725 B.C. Ltd. (Bankruptcy of)*, 2019 BCSC 451 at para. 21  
citing *Bank of Montreal v Nican Trading Co.*, 1990 CanLII 454 (BCCA) at pp. 9-10;

*HSBC Bank Canada v Maple Leaf Loading Ltd.*, 2014 BCSC 2245  
[**Maple Leaf Loading**] at para. 11

40. Similar factors are considered with respect to the accounts of legal counsel to a receiver, including:
- (a) the time expended;
  - (b) the complexity of the receivership;
  - (c) the degree of responsibility assumed by the lawyers;
  - (d) the amount of money involved, including reference to the debt, amount of proceeds after realization, payments to the creditors;
  - (e) the degree and skill of the lawyers involved;
  - (f) the results achieved; and
  - (g) the client's expectations as to the fee.

*Maple Leaf Loading* at para. 12

41. The Receiver submits that the Receiver's Fees, and the Receiver's Counsel's Fees are reasonable and appropriate given the activities carried out by such persons in these Receivership Proceedings.

Powell Affidavit at paras. 9-10 and 12

42. The Receiver submits its fees are fair and reasonable, because:
- (a) the fees were properly and necessarily incurred, and are fair and reasonable in the circumstances;
  - (b) the work completed by the Receiver was appropriately delegated to professionals with the appropriate seniority and hourly rates;
  - (c) the Receiver's fees in this matter are consistent with fees charged by other firms of a similar size for work of a similar nature and complexity in British Columbia;

- (d) all of the Receiver's invoices have been provided to the Petitioners herein on a monthly basis, as the parties with the primary economic interest; and
- (e) the Receiver's services were performed in a prudent and economical manner.

Powell Affidavit at para. 8

43. The Receiver submits that Receiver's Counsel's fees are fair and reasonable, because:

- (a) Receiver's Counsel has assisted the Receiver with all activities, including reviewing agreements associated with the Transactions;
- (b) Receiver's Counsel has assumed significant responsibility throughout these proceedings and has worked closely with the Receiver throughout;
- (c) Receiver's Counsel has staffed its legal team with experienced insolvency lawyers and properly delegated legal tasks to members of the legal team that had the skills to complete each activity in a cost-effective manner;
- (d) in working with the Receiver, Receiver's Counsel has helped the Receiver progress towards Transactions that would see creditors paid; and
- (e) Receiver's Counsel has been transparent regarding its fees and the Receiver believes that Receiver's Counsel's fees are reasonable in the circumstances.

Powell Affidavit at para. 11

44. The Receiver also seeks approval of the Estimated Completion Fees and submits that the Estimated Completion Fees are reasonable in the circumstances and in light of the remaining matters to be completed in connection with issuing the Proposed Distribution, the administration of the Debtor's Property, and remaining ancillary matters.

Second Report at para. 24

Williams Affidavit at para. 10

45. The Bank, as the fulcrum creditor and out of whose recovery the fees come, does not oppose the approval of the Receiver's Fees, the Receiver's Counsel's Fees, or the Estimated Completion Fees.

Second Report at para. 25

## **Receiver's Discharge**

46. Upon completion of its mandate, including the sale of all realizable assets, a court-appointed receiver will typically seek a discharge order from the court.

*Ed Mirvish Enterprises Limited v Stinson Hospitality Inc.*,  
2009 CanLII 55113 (ON SC) at paras. 8-9

47. The Receiver submits that upon filing a certificate certifying that it has completed the remaining outstanding activities described in the Receiver's Second Report. The administration of the receivership will be substantially complete as the Debtor will have no remaining assets. It is reasonable, appropriate, prudent, and economical to address the discharge of the Receiver at the same hearing, to minimize the costs borne by the Debtor with respect to professional fees. the Receiver will have fulfilled its mandate as set out in the Receivership Order. Accordingly, the Receiver seeks a discharge order from this Court.

Second Report at para. 31

## **PART 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Jennifer Alambre, made August 26, 2024;
2. Affidavit #1 of Erin Welte, made August 27, 2024;
3. Order Made After Application (Receivership) pronounced October 3, 2024;
4. First Report of the Receiver, dated November 4, 2025;
5. Order Made After Application (Approval and Vesting) pronounced November 24, 2025;
6. Second Report of the Receiver, dated January 27, 2026;
7. Affidavit #1 of Tom Powell, made January 27, 2026;
8. Affidavit #1 of H. Lance Williams, made January 27, 2026; and
9. Such further and other materials as counsel may advise and this Honourable Court may permit.

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

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

DATE: January 27, 2026



\_\_\_\_\_  
Lawyer for FTI Consulting Canada Inc.  
McCarthy Tétrault LLP  
(Ashley Bowron and Nico Rullmann)

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

Order made

- in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this notice of application
- with the following variations and additional terms:

DATE: \_\_\_\_\_

Signature of  Judge  
 Associate Judge

## APPENDIX

### THIS APPLICATION INVOLVES THE FOLLOWING:

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

**SCHEDULE "A"**

No. S-246124  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN

**NATIONAL BANK OF CANADA**

PETITIONER

AND

**BY THE BAY HOME DEVELOPMENT LTD.**

RESPONDENT

**SERVICE LIST**

(updated January 2, 2025)

<p><b>Blake, Cassels &amp; Graydon LLP</b> 1133 Melville Street Suite 3500, The Stack Vancouver, BC V6E 4E5</p> <p><b>Peter Rubin</b> email: <a href="mailto:peter.rubin@blakes.com">peter.rubin@blakes.com</a></p> <p><b>Claire Hildebrand</b> email: <a href="mailto:claire.hildebrand@blakes.com">claire.hildebrand@blakes.com</a></p> <p><i>Counsel for the Petitioner</i></p>	<p><b>By the Bay Home Development</b> 2388 – 4720 Kingsway Burnaby, BC V5H 4N2</p> <p><b>Sundhir (Sunny) Dhillon</b> email: <a href="mailto:sunny@dimexgroup.com">sunny@dimexgroup.com</a></p> <p><i>Respondent</i></p>
<p><b>FTI Consulting Canada Inc.</b> 701 West Georgia Street Vancouver, BC V7Y 1G5</p> <p><b>Tom Powell</b> email: <a href="mailto:tom.powell@fticonsulting.com">tom.powell@fticonsulting.com</a></p> <p><b>Hailey Liu</b> email: <a href="mailto:hailey.liu@fticonsulting.com">hailey.liu@fticonsulting.com</a></p> <p><i>Receiver</i></p>	<p><b>McCarthy Tétrault LLP</b> 745 Thurlow Street, Suite 2400 Vancouver, BC V6E 0C5</p> <p><b>H. Lance Williams</b> email: <a href="mailto:lwilliams@mccarthy.ca">lwilliams@mccarthy.ca</a></p> <p><b>Ashley Bowron</b> email: <a href="mailto:abowron@mccarthy.ca">abowron@mccarthy.ca</a></p> <p><i>Counsel for the Receiver</i></p>

<p><b>Owen Bird Law Corporation</b> P.O. Box 1 Vancouver Centre II 2900-733 Seymour Street Vancouver, BC V6B 0S6</p> <p><b>Alan A. Frydenlund, K.C.</b> email: <a href="mailto:afrydenlund@owenbird.com">afrydenlund@owenbird.com</a> <a href="mailto:aliquori@owenbird.com">aliquori@owenbird.com</a></p> <p><i>Counsel for Genesis Mortgage Investment Corp.</i></p>	<p><b>City of Vancouver</b> 453 West 12<sup>th</sup> Avenue Vancouver, BC V5Y 1V4</p> <p><b>Jeffrey Greenberg</b> email: <a href="mailto:law.bankruptcy@vancouver.ca">law.bankruptcy@vancouver.ca</a></p> <p><i>City of Vancouver</i></p>
--	---

**Email Distribution List**

[sunny@dimexgroup.com](mailto:sunny@dimexgroup.com); [tom.powell@fticonsulting.com](mailto:tom.powell@fticonsulting.com); [hailey.liu@fticonsulting.com](mailto:hailey.liu@fticonsulting.com);  
[afrydenlund@owenbird.com](mailto:afrydenlund@owenbird.com); [aliquori@owenbird.com](mailto:aliquori@owenbird.com); [peter.rubin@blakes.com](mailto:peter.rubin@blakes.com);  
[claire.hildebrand@blakes.com](mailto:claire.hildebrand@blakes.com); [lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca); [abowron@mccarthy.ca](mailto:abowron@mccarthy.ca);  
[sdanielisz@mccarthy.ca](mailto:sdanielisz@mccarthy.ca); [law.bankruptcy@vancouver.ca](mailto:law.bankruptcy@vancouver.ca)

**SCHEDULE "B"**

NO. S-246124  
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**

**(DISTRIBUTION, FEES AND ACTIVITIES, AND DISCHARGE ORDER)**

BEFORE THE HONOURABLE )  
JUSTICE \_\_\_\_\_ ) TUESDAY, THE 10<sup>TH</sup> DAY  
 ) OF FEBRUARY, 2026

ON THE APPLICATION of FTI Consulting Canada Inc. ("FTI") , in its capacity as the court-appointed receiver and receiver-manager (the "**Receiver**") of the assets, properties, and undertakings (the "**Property**") of By The Bay Home Development Ltd. (the "**Debtor**"), coming on for hearing at Vancouver, British Columbia, on the 10<sup>th</sup> day of February, 2026; AND ON HEARING Ashley Bowron and Nico Rullmann, counsel for the Receiver, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the First Report of the Receiver, dated November 4, 2025 (the "**First Receiver's Report**"), the Second Report of the Receiver, dated January 27, 2026 (the "**Second Receiver's Report**", and together with the First Receiver's Report, the "**Receiver's Reports**"), the Affidavit #1 of H. Lance Williams, made January 27, 2026 (the "**Williams Affidavit**"), the Affidavit #1 of Tom Powell, made January 27, 2026 (the "**Powell Affidavit**" and together with the Williams Affidavit, the "**Fee Affidavits**");

THIS COURT ORDERS AND DECLARES THAT:

**APPROVAL OF ACTIVITIES AND FEES**

1. The activities of the Receiver, as set out in the Receiver's Reports, are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.
2. The fees and disbursements of the Receiver and McCarthy Tétrault LLP ("**Receiver's Counsel**") as set out in the Fee Affidavits and Receiver's Reports, including the estimate of fees to conclude matters, be and are hereby approved, without the necessity of a formal passing of accounts in respect of any such fees incurred or charged after the date of this Order.

**DISTRIBUTION**

3. The Receiver is authorized to distribute the net remaining proceeds received by the Receiver from the transaction as described in the Second Receiver's Report (the "**Distribution**").
4. The Receiver is authorized to take all necessary steps and actions to effect the Distribution in accordance with the provisions of this Order and shall not incur any liability as result of making the Distribution.
5. Notwithstanding:
  - (a) the pendency of these proceedings under the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "**LEA**");
  - (b) any application for a bankruptcy or receivership order now or hereafter issued pursuant to any applicable legislation in respect of the Debtor and any bankruptcy or receivership order issued pursuant to any such applications;
  - (c) any assignment in bankruptcy made in respect of the Debtor; and
  - (d) and any provisions of any federal or provincial legislation,

the Distribution shall be made free and clear of all encumbrances and shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Debtor and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under any applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

6. The Receiver and/or the Debtor shall be entitled to deduct and withhold from any Distribution such amounts as may be required to be deducted or withheld with respect to such Distribution under any applicable tax legislation and to remit such amounts to the appropriate governmental authority or other person entitled thereto. To the extent that amounts are so withheld or deducted and remitted to the appropriate governmental authority or other person, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order to such person as the remainder of the Distribution in respect of which such withholding or deduction was made.
  
7. Any payments, distributions and disbursements made under this Order shall not constitute a "distribution" by any person and the Receiver shall not constitute a "legal representative" or "representative" for the purposes of section 159 of the *Income Tax Act (Canada)*, section 270 of the *Excise Tax Act (Canada)*, section 23 of the *Canada Pension Plan Act (Canada)*, section 86 of the *Employment Insurance Act (Canada)*, and section 97.39 of the *Customs Act (Canada)*, or any other similar federal, provincial or territorial tax legislation (collectively, the "Tax Statutes"), and the Receiver, in making any such distributions, disbursements or payments, as applicable, is merely a disbursing agent under this Order, and is not exercising any discretion in making such distributions, disbursements, or payments under this Order and no person is "distributing", nor shall be considered to "distribute" nor have "distributed", such funds for the purpose of the Tax Statutes. Further, the Receiver shall not incur any liability under the Tax Statutes in respect of its making any payments, distributions or disbursements ordered or permitted under this Order, and are hereby forever released and discharged from any claims against it, him or her under or pursuant to the Tax Statutes or otherwise at law, arising in respect of any such payments, distributions or disbursements made under this Order and any claims of this nature are hereby forever barred.

**DISCHARGE AND RELEASE OF RECEIVER**

8. Effective immediately upon the Receiver filing with this Court a certificate substantially in the form attached as **Schedule "B"** hereto (the "**Discharge Certificate**"), confirming that the Distribution has been completed:
- (a) the Receiver shall be discharged, and declaring that, notwithstanding the discharge of the Receiver, the Receiver remains empowered with residual jurisdiction to take such steps and actions as it deems necessary to address any ancillary or incidental matters, as required in connection with its capacity as Receiver following the termination of the Receivership Proceedings, and that FTI shall continue to have the benefit of all orders made in these Receivership Proceedings in relation to its capacity as Receiver; and
  - (b) FTI shall be released and discharged from any and all liability that FTI now has or may hereafter have by reason of, or in any way arising out of, the actions or omissions of FTI while acting in its capacity as Receiver herein, and without limiting the generality of the foregoing, FTI shall be forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in these Receivership Proceedings.
9. Notwithstanding any provision herein, this Order shall not affect any person to whom notice of these proceedings was not delivered as required by the LEA and regulations thereto, any other applicable enactment or any other Order of this Court.
10. Endorsement of this Order by counsel appearing on this application, other than counsel for the Receiver, is hereby dispensed with.

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

---

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

BY THE COURT

---

REGISTRAR

**SCHEDULE "A"**

**LIST OF COUNSEL**

<b>Name of Counsel</b>	<b>Party Represented</b>

**SCHEDULE "B"**

NO. S-246124  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

NATIONAL BANK OF CANADA

PETITIONER

AND:

BY THE BAY HOME DEVELOPMENT LTD.

RESPONDENT

**RECEIVER'S DISCHARGE CERTIFICATE**

- A. All capitalized terms used in this Receiver's Certificate and not otherwise defined shall have the meaning ascribed to them in the Order Made After Application (Distribution, Fees and Activities Approval, and Discharge) pronounced by the Honourable Justice \_\_\_\_\_ of the Supreme Court of British Columbia (the "**Court**"), in the within proceedings, on February 10, 2026 (the "**Discharge Order**").
- B. Pursuant to the Discharge Order, the Court provided for, among other things, the discharge of the Receiver, upon the filing of this certificate by the Receiver, confirming that the Distribution has been completed.

**THE RECEIVER HEREBY CONFIRMS AND CERTIFIES THE FOLLOWING:**

1. The Distribution has been completed.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2026.

**FTI Consulting Canada Inc.**, in its capacity as the court-appointed receiver and manager of the assets, properties, and undertakings of By The Bay Home Development Ltd., and not in its personal capacity.

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