Form 33 (Rule 8-1(10)

NO. S-256472
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

NATIONAL BANK OF CANADA

PETITIONER

AND:

CARVOLTH 86TH AVENUE LANDS LTD. MASKEEN (CARVOLTH) GP INC.
AND MASKEEN (CARVOLTH) LIMITED PARTNERSHIP

RESPONDENTS

APPLICATION RESPONSE

Filed by: Carvolth 86th Avenue Lands Ltd., Maskeen (Carvolth) GP Inc. and Maskeen (Carvolth) Limited Partnership (collectively, the "Application Respondents", the "Debtors", or "Maskeen")

To: The Service List, attached to the Receiver's Notice of Application, filed on August 14, 2026.

THIS IS A RESPONSE TO the Notice of Application of FTI Consulting Canada Inc., in its capacity as court-appointed receivers and manager of the Debtors, filed August 18, 2026.

The Application Respondents estimate that the application will take **1 day**.

Part 1: ORDERS CONSENTED TO

The Application Respondents consent to the granting of the Orders set out in the following paragraphs of Part 1 of the Notice of Application: **NONE**

Part 2: ORDERS OPPOSED

The Application Respondents opposes the granting of the Orders set out in the following paragraphs of Part 1 of the Notice of Application: **ALL**

> The Debtors oppose approval of the Receiver's proposed sale transaction and reverse vesting order if, or to the extent that, such approval would impair, defeat, or extinguish the Debtors' equitable right to redeem.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Application Respondents take no position on the granting of the Orders set out in the following paragraphs of Part 1 of the Notice of Application: **NONE**

Part 4: FACTUAL BASIS

1. Capitalized terms used but not otherwise defined in this Application Response have the meanings given to them in the Receiver's Notice of Application, filed August 18, 2026, and in the First Report of the Receiver, dated August 18, 2026.

2. The Receiver was appointed over the assets, undertakings and property of the Debtors by Order of this Court made January 8, 2026.

3. The Debtors are part of the Maskeen real estate development group, and their principal business is real estate development.

4. The Debtors' principal asset is the undeveloped real property located at 20120 86th Avenue, Langley, British Columbia, legally described as PID: 002-331-471, Lot 56 except: the Easterly portion; Section 26 Township 8 New Westminster District Plan 62363 (the "Property"). As of the receivership date, the Property remained undeveloped and was being used by Tannin Developments Ltd. as a staging area for construction of its adjacent project for a monthly payment of $6,000, plus taxes.

5. The Property is vacant development property. Its value is expected to increase as a result of anticipated increases in permitted density arising from the updating of the Willoughby Community Plan and its designation within a Frequent Transit Development Area.

6. In furtherance of that development potential, the Debtors submitted an application to amend the Carvolth Neighbourhood Plan to increase the density designations to facilitate development of a 39-storey mixed-use tower with 331 apartment units and 4,529 m² (48,750 ft²) of commercial space, together with a 6-storey apartment building with 133 apartment units and daycare space, on approximately 0.9 ha (2.3 ac) of land located at 20120 86 Avenue, in the Township of Langley, BC (the "Amendment Application").

7. If granted, the Amendment Application would increase the permitted density by 23,653 m² (254,607 ft²) of floorspace, in keeping with the expected updated Willoughby Community Plan, given that the Property falls within a designated Frequent Transit Development Area.

8. The Amendment Application notes that the applicant has elected to advance a voluntary contribution of $5,104,000.00 towards Community Amenity Contributions ("CACs"). That amount was arrived at through discussions and negotiations with the Township of Langley (the "Township") following the decision in *Lorval Developments Ltd. v. Langley (Township)*, 2025 BCSC 1148, where the Township's mandatory CAC policy was found to be invalid. Those discussions and negotiations resulted in a reduction in the overall CAC payment by $5,120,610.00.

9. The Township's previous CAC policy, including its position that CACs were mandatory, together with the discussions and negotiations following the *Lorval* decision, resulted in first, second, and third reading of the Debtors' application being put off from July 15, 2025 to September 15, 2025, through no fault of the Debtors and despite the Debtors' diligent efforts. That delay ultimately resulted in significant cost savings for the project.

10. In a Report to Mayor and Council dated September 15, 2025, the Community Development Division at the Township outlined the background for the project and provided two options for

consideration: (a) defer consideration of the application until Council consideration of an updated Willoughby Community Plan and refer the applicant to staff to address the items outlined in the report; or (b) direct staff to advance the bylaws associated with the application. Council elected to defer consideration of the application.

11. The Property has an estimated land value range of $20.3 million to $23.2 million without the amendment, and an estimated land value range of $22 million to $26 million with the amendment, indicating an increase of $1.7 million to $5.7 million depending on the value range.

12. The Township has raised no issues with respect to outstanding property taxes for the Property, and the Debtors are in the process of making arrangements for payment of same.

13. The Bank is the Debtors' senior secured creditor in respect of the Property. The Receiver reports that the Bank was owed approximately $11.0 million as of August 19, 2025, with interest continuing to accrue, and that the Receiver has also borrowed $250,000 from the Bank under Receiver's Certificates.

14. The Receiver now seeks approval of a Purchase Agreement dated July 16, 2026 between the Receiver, as vendor, and 1489190 BC Ltd., as purchaser, for the sale of the Property for $6,400,000, with a $640,000 deposit held by the purchaser's solicitor.

15. The Purchase Agreement is conditional on Court approval. It provides that the purchaser may terminate the transaction if Court approval is not obtained within 45 days of the date of the Purchase Agreement, and that the sale is to complete within 30 days after Court approval.

16. The Receiver's proposed Approval and Vesting Order would vest the Property in the purchaser free and clear of claims and encumbrances, including the Bank's mortgage and assignment of rents and Cedar Ridge Investments Ltd.'s mortgage and assignment of rents, subject only to the permitted encumbrances identified in the proposed Sale Approval and Vesting Order.

17. On the Receiver's evidence, the Property was listed for sale on or about April 24, 2026 at a listing price of $7,000,000. The marketing process included a LinkedIn post, preview phone call campaign, listing on AY's website, an official launch email sent to 1,362 local developers and investors, follow-up phone calls, offer solicitation calls, and advertisements in the June and July editions of the Western Investor.

18. The Receiver reports that 13 parties executed confidentiality agreements and obtained access to the data room, two parties expressed interest at $3 million and $5.5 million but did not proceed with a formal offer, and one formal offer was received.

19. The Receiver also reports that the purchaser initially made an offer on June 17, 2026, later proposed a reduced price before subject removal, and that the Receiver then negotiated a revised offer which led to the July 16, 2026 Purchase Agreement.

20. Notwithstanding the Receiver's sale process, no order approving a sale has yet been made and no sale has completed. The Debtors' equity of redemption therefore remains available and should be preserved before the proposed sale and vesting relief is granted.

21. The Debtors have remained responsive to the Petitioner, both directly and through counsel, and have continued to engage in good-faith discussions regarding development of the Property and paydown and refinancing of the Petitioner's loan.

22. The Debtors intend to redeem the Property by paying, or arranging for payment of, the amounts properly required to satisfy the Bank's senior secured debt, together with any amounts the Court directs as conditions of redemption, including any proper Receiver's borrowings, charges, and costs.

23. The Receiver's own materials recognize that the Company and a third-party lender had been corresponding with the Receiver concerning refinancing efforts, and that the Receiver held discussions with that third-party lender.

24. The Purchase Agreement itself contemplates redemption before Court approval. Schedule "A" to the Purchase Agreement provides that acceptance of the offer, and any obligation of the Receiver to put the offer before the Court, may be terminated at any time before the Court makes the Vesting Order approving the sale if the debts secured against the Property are redeemed.

25. The Receiver seeks approval to distribute the remaining net proceeds to the Bank. The Receiver estimates net proceeds from the Property sale of approximately $6.155 million and estimated net cash available for distribution to the Bank of approximately $5.858 million, after repayment of Receiver's borrowings, estimated professional fees to complete, and a contingency.

26. The Receiver reports that, given the Bank's indebtedness is approximately $11 million, the Bank is expected to suffer a material shortfall and no other creditors will receive any recovery if the proposed sale and distribution proceed.

27. The Debtors deny that the anticipated shortfall to the Bank justifies extinguishing the Debtors' equitable right to redeem before the redemption proposal is tested. If redemption completes, the Bank can be paid in full, the Receiver's borrowings and proper charges can be addressed, and the proposed sale and distribution would be unnecessary.

28. The Debtors seek to have their redemption application heard before, or at the same time as and prior to determination of, the Receiver's Application because approval of the proposed sale transaction and related distribution and discharge relief may impair, or effectively extinguish, the Debtors' practical ability to redeem the Bank's mortgage and preserve the Property.

Part 5: LEGAL BASIS

A. The Equitable Right of Redemption

1. There is perhaps no area of the law where the contribution of equity is so complete as the law with respect to the enforcement of mortgages.

2. In *355498 B.C. Ltd. v. Namu Properties*, 1999 BCCA 138 [*Namu Properties*], at para. 12, Southin J.A. affirmed the oft-cited judgment of Jessel M.R. in *Campbell v. Holyland* (1877), 7 Ch. 166, that although a mortgage may be absolute in form when the condition is broken,

equity treats it as security for a debt and gives relief by way of redemption. Even after an order absolute of foreclosure, the mortgagee remains subject to the Court's equitable discretion, and the mortgagor may still be permitted to redeem.

3. The equity of redemption arises from the relationship between mortgagor and mortgagee. That fundamental relationship was confirmed in *North Vancouver v. Carlisle*, 1922 CanLII 726 (BCCA). In BC, notwithstanding later changes to the *Land Title Act*, R.S.B.C. 1996, c. 250, a mortgage continues to operate as if it were a conveyance with a right of defeasance. The right of defeasance, or equity of redemption, does not arise because foreclosure proceedings are commenced. This is because, as noted in *CIBC v. Burnham*, 1986 CanLII 1032 at para. 11, proceedings for redemption were invented prior to proceedings for foreclosure.

4. The concept of defeasance, or equity of redemption, is the long-standing equitable "golden thread" that runs throughout the mortgage relationship. It informs and constrains enforcement steps taken under a mortgage, including the appointment of a receiver and any subsequent application to approve a sale of the mortgaged property. That principle is particularly important here because the Property is not simply a static asset: it is vacant development property with identified density upside, an active Amendment Application, and an estimated value materially higher than the proposed sale price if its planning potential is preserved.

5. It is well established that the Court will not permit the right of redemption to be fettered. A term that constitutes a clog on the equity of redemption is unenforceable: *Namu Properties* at paras. 13 and 15.

6. The prohibition against clogs on the equity of redemption protects the inviolability of the mortgagor's right to redeem. The mortgagor is entitled, upon payment of the secured debt, to recover the mortgaged property completely and unimpaired by the terms of the mortgage. The doctrine exists to protect necessitous landowners from oppressive agreements and from lenders who might take advantage of the mortgagor's vulnerability. Subject only to the mortgagee's power of sale and the Court's foreclosure jurisdiction, a mortgagor cannot be deprived of the property except through a process that tests value and preserves the mortgagor's inviolable right to redeem: *Dical Investments Ltd. v. Morrison* (C.A.), 1990 CanLII 6606 at p. 8; see also *Dhillon v. Jhutee*, 1998 CanLII 5414 (BCSC) at paras. 15–19.

7. The equity of redemption is a concept that equity imposed upon the parties to a mortgage, despite the wording of any agreement to the contrary, as an "inviolable and sacrosanct principle of equity". In other words, no provision in a mortgage can be construed so as to be inconsistent with the right of redemption - period: *Bank of Montreal v. Beilstein*, 1998 CanLII 6982 (NWTSC) at paras. 11, 15, 17 and 21; *Imor Capital Corp. v. Bullet Enterprises Ltd.*, 2012 BCSC 899 at paras. 12–14.

B. Redemption Remains Available Before Final Sale

8. The equitable right of redemption is a fundamental incident of a mortgage. It permits a mortgagor, or those standing in the mortgagor's position, to recover the charged property by paying the secured debt before the right has been finally foreclosed or displaced by a completed court-approved sale.

9. In *Bank of Montreal v. Hester Creek Estate Winery Ltd.*, 2004 BCSC 724, the Court permitted redemption in a receivership/sale context, set aside a court-approved sale, and adjourned the sale application to permit the bankrupt estate's trustee to redeem by paying the secured creditors in full, stating at para. 27: "Whenever there is a court-ordered sale process, it is always implicit that the conduct of sale is subject to the debtor being able to pay of the secured creditor before a sale is approved by the court." The case supports the proposition that redemption remains available before final sale approval, absent truly extraordinary circumstances.

10. In *League Assets Corp. (Re)*, 2015 BCSC 619, the Court confirmed that before registration of an order absolute, the mortgagor could pay the mortgage debt and require delivery of discharges. Although decided in the foreclosure context, the principle reinforces that the right to redeem should be preserved until the relevant property interest has been finally and effectively transferred.

11. In *Bank of Montreal v. Haro-Thurlow Street Project Limited Partnership*, 2024 BCSC 47, the Court granted a receivership, but expressly preserved the borrowers' opportunity to redeem by restricting the receiver's sales efforts and sale approval application for a defined period. At paragraphs 91-93, the Court clarified that it is not the granting of conduct of sale that extinguishes the right of redemption, stating: "a redemption can take place at any time prior to a sale being approved by the Court on an application by any receiver."

12. That is the present case. No order approving the Receiver's proposed transaction has been made, no sale has completed, and the Purchase Agreement itself recognizes the possibility of redemption before Court approval by permitting termination if the debts secured against the Property are redeemed before the Court makes the Vesting Order. The Receiver's own sale agreement therefore reflects the legal reality that the Debtors' redemption right remains alive unless and until the Court approves and implements a sale that displaces it.

13. In *Evanton Limited v. American Bullion Minerals Ltd.*, 2003 BCSC 1958, the Court recognized that a debtor in receivership retained a statutory right to redeem collateral before disposition. The Court declined to order redemption on the facts because no concrete redemption plan had been advanced. Here, unlike in *Evanton*, the Debtors have remained engaged with the Petitioner and the Receiver, have pursued refinancing discussions, and the Receiver's own materials acknowledge correspondence with a third-party lender and discussions with that lender concerning refinancing efforts.

14. In *Namu Properties*, the Court reopened an order absolute and ordered reconveyance to the mortgagor on specified terms, holding that equitable relief remained available before a bona fide purchaser obtained certificate of title. The case reflects the Court's broad equitable jurisdiction to prevent the loss of property where redemption can be effected without unfair prejudice up to the very date when title is transferred.

15. The authorities distinguish cases where a sale has been completed or vested in a purchaser. In *Montreal Trust Company v. Brown*, 1974 CanLII 1108 (BC CA), redemption was refused after the judicial sale had been completed by payment of the purchase money into court and vesting in the purchaser. That concern does not arise here because the Receiver's proposed transaction has not yet been approved or completed, and because

the purchaser contracted on terms that expressly contemplated redemption before any Vesting Order.

C. Extension of the Redemption Period

16. The Court also has discretion to extend the redemption period in appropriate circumstances, and that discretion may be exercised either before or after expiry of the redemption period: *1103969 B.C. Ltd. v. 1069185 B.C. Ltd.*, 2019 BCCA 73 at paras. 25–28. The governing inquiry is whether the mortgagor has shown that the property provides sufficient value as security for the amount outstanding and that there is a reasonable prospect of repayment within the extended redemption period: *Canada Permanent Mortgage Corp. v. Dan-Al Construction Co. Ltd.*, [1982] B.C.J. No. 239.

17. Both requirements are met here, or at minimum are sufficiently engaged to justify an adjournment or short extension on strict terms. The Property has an estimated land value range of $20.3 million to $23.2 million without the amendment, and $22 million to $26 million with the amendment, against the Bank's reported indebtedness of approximately $11 million plus interest and the Receiver's reported borrowings. The Property therefore provides substantial apparent value as security, particularly when compared to the proposed sale price of $6.4 million and the Receiver's estimated net cash available for distribution of approximately $5.858 million.

18. The reasonable prospect of repayment is also supported by the facts. The Debtors have remained responsive to the Petitioner and have continued good-faith discussions concerning paydown and refinancing. The Receiver's own materials recognize that the Company and a third-party lender had been corresponding with the Receiver concerning refinancing efforts, and that the Receiver held discussions with that lender. The law requires a reasonable prospect of repayment, not certainty of repayment, particularly where a short extension may permit full payment of the secured debt and avoid an unnecessary forced sale.

19. In *Bancorp Growth Mortgage Fund II Ltd. v. Rouleur (Woodland) Limited Partnership*, 2021 BCSC 898, the Court adjourned an application for conduct of sale and granted a three-month extension of the redemption period where the respondents had obtained an offer to purchase the properties for an amount exceeding the amount required to redeem. The offer remained subject to conditions precedent in favour of the purchaser, but the Court held that the test was a reasonable prospect of repayment, not commercial certainty, and granted the extension notwithstanding the risk that the purchaser might not remove subjects.

20. Similarly, in *Mission Creek Mortgage Ltd. v. Angleland Holdings Inc.*, 2010 BCSC 1593, the Court granted a six-month extension of the redemption period after the respondents obtained a letter of intent to finance, concluding that refinancing was a reasonable prospect if pursued with vigour and focus: at paras. 15, 30, 31 and 35.

21. A short extension or adjournment is therefore in the best interests of all parties if it permits a refinancing and payout in full. The Bank would receive payment of the senior secured debt, the Receiver's borrowings and proper charges can be addressed as conditions of redemption, and the Debtors' equity of redemption would be preserved without impairing the Receiver's ability to return for sale approval if redemption does not complete within the

time fixed by the Court. By contrast, the proposed sale would leave an estimated material shortfall to the Bank and no recovery for any other creditors.

D. The Court Should Preserve Redemption

22. The Court should therefore preserve and give effect to the Debtors' right of redemption. If the Bank is paid in full, the purpose of the receivership as against the senior secured mortgage debt will be satisfied, there will be no unfair prejudice to the Bank, and the extraordinary relief associated with an RVO will be unnecessary or should at least be adjourned pending completion of redemption.

23. No order approving a sale has been made. Until the Court approves and implements a final sale, and perhaps even until title has passed, the Debtors' equity of redemption remains available. It should be preserved where the Bank can be paid in full, the Receiver's borrowings and proper charges can be addressed by strict terms, and any prejudice can be managed by a defined redemption timetable.

24. Preserving redemption is also consistent with the commercial reality of the Property. The Debtors' evidence is that the Property has meaningful development upside arising from its anticipated density increase, its location within a Frequent Transit Development Area, the Amendment Application, the negotiated reduction in voluntary CAC payments following *Lorval*, and the potential increase in land value if the amendment is granted. Approval of the proposed sale now would transfer that upside for $6.4 million before the Debtors' redemption proposal is tested.

25. The Court should therefore make the orders in the manner that best preserves redemption while protecting the integrity of the sale process. The Receiver's sale approval application should be adjourned, dismissed, or refused to the extent necessary to permit redemption to complete because approval of the proposed RVO before the redemption proposal is tested would risk defeating the Debtors' equity of redemption. In the alternative, if the Court is not prepared to dismiss or refuse the sale approval application outright, it should adjourn that application and preserve the Debtors' right to redeem for a defined period on strict terms fixed by the Court. If the Court is otherwise minded to approve the Receiver's application, any approval should be expressly subject to a redemption order permitting the Debtors to complete redemption within the time directed by the Court, with the Receiver directed to cooperate by providing payout information, reasonable closing deliverables, and any consents or directions reasonably required for completion.

E. Sale Approval Principles include Preserving Redemption

26. The governing sale approval framework is the four-part test from *Royal Bank of Canada v. Soundair Corp.*, as applied in British Columbia in authorities including *Farm Credit Canada v. Gidda* and *Kruger v. Wild Goose Vintners Inc.*: whether the Receiver made sufficient efforts to obtain the best price and acted providently; whether the sale is in the interests of all parties; the efficacy and integrity of the process; and whether the process was unfair. The Receiver bears the burden of satisfying the Court that those factors support approval.

27. The Court's role is not limited to deferring to the Receiver's commercial preference. Although the Court gives appropriate weight to a receiver's business judgment, it retains

an independent gatekeeping role and may refuse or adjourn approval where the proposed transaction is unnecessary, unfair, or fails to properly account for affected stakeholders. *QRD (Willoughby) Holdings Inc. v. MCAP Financial Corporation*, 2024 BCCA 318 confirms that sale approval requires a fair balancing of the *Soundair* factors and that a receiver owes duties to all affected parties, including the debtor and different classes of creditors.

28. On the present application, the central question is not whether the Receiver has found a commercially acceptable purchaser; it is whether sale approval should be granted when the Debtors seek to redeem before any sale has been approved or completed. *Kruger* recognizes that redemption rights must be balanced against purchaser interests and the integrity of the sale process, and distinguishes *Bank of Montreal v. Hester Creek Estate Winery Ltd.*, where redemption prevented sale approval because the secured debt could be paid in full.

29. That balance favours preserving redemption here. The proposed sale price is $6.4 million, while the Receiver estimates net cash available for distribution to the Bank of approximately $5.858 million against indebtedness of approximately $11 million, leaving a material shortfall and no expected recovery for other creditors. The Debtors' redemption proposal, if completed, would instead pay the Bank in full and address the Receiver's proper borrowings, charges, and costs. It would also preserve the Debtors' ability to capture the Property's development value, including the potential value associated with the Amendment Application and the anticipated increase in density.

30. The sale process facts do not displace that conclusion. The Receiver marketed the Property, obtained confidentiality agreements from 13 parties, received only one formal offer, and negotiated the revised Purchase Agreement after the purchaser attempted to reduce its price before subject removal. Those facts may explain how the Purchase Agreement came about, but they do not answer the equitable question of whether the Court should approve a transaction that may extinguish redemption when the Property's estimated value and development upside materially exceed the proposed sale price and when redemption has not yet been tested.

31. This case falls on the *Hester Creek* side of the balance if the Debtors demonstrate a concrete ability to pay the Bank and satisfy the conditions imposed by the Court. The Bank can be protected by payment in full together with interest, costs, Receiver's charges, and any further terms the Court considers necessary. By contrast, approval of the proposed RVO may make redemption practically impossible and may irreversibly transfer the Property before the Debtors' redemption proposal is tested.

32. The Court should therefore make the orders in the manner that best preserves redemption while protecting the integrity of the sale process. The Receiver's sale approval application should be dismissed, refused, or adjourned to the extent necessary to permit the Debtors' redemption proposal to be tested because the sale approval analysis cannot be divorced from the Debtors' outstanding equity of redemption.

33. At minimum, the application should be adjourned on strict terms that require the Debtors to establish and complete payment within the time fixed by the Court, while preserving the Receiver's ability to return for sale approval if redemption does not complete. If the Court is otherwise prepared to approve the Receiver's proposed transaction, approval should

be expressly subject to a redemption order so that the RVO does not operate to defeat a right that remains available before final sale approval and completion.

Part 6: MATERIAL TO BE RELIED ON

1. The pleadings had and filed in the within proceedings;
2. The Receivership Order, pronounced January 8, 2026;
3. The First Report of the Receiver, dated August 18, 2026;
4. Affidavit #1 of A. Cheema, filed September 30, 2025;
5. Affidavit #1 of S. Martin, filed October 6, 2025;
6. Affidavit #2 of S. Martin, filed January 7, 2026;
7. Affidavit of A. Cheema, to be filed;
8. Such further and other material as counsel may advise and this Honourable Court may permit.

☒ The Application Respondents have filed in this proceeding a document that contains an address for service.

Date: August 24, 2026.

DAN A.T. MOSELEY
Signature of ☒ lawyer for the Application Respondents, Carvolth 86th Avenue Lands Ltd., Maskeen (Carvolth) GP Inc. and Maskeen (Carvolth) Limited Partnership, Jagdip Singh Sivia and Jatinderpal Singh Gill