



S-235306

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

NATIONAL BANK OF CANADA

PETITIONER

AND

1239583 B.C. LTD.

RESPONDENT

PETITION TO THE COURT

ON NOTICE TO:

1239583 B.C. Ltd.
Town Center Tower
7-32330 South Fraser Way
Abbotsford, B.C., V2T 1X1

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

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: 800 Smithe Street Vancouver, BC V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the Petitioner is: Blake, Cassels & Graydon LLP Barristers & Solicitors Suite 2600, Three Bentall Centre 595 Burrard Street, PO Box 49314 Vancouver, BC V7X 1L3 Attention: Peter L. Rubin and Danny Urquhart
	E-mail address for service of the Petitioner: vancouver.service@blakes.com; and peter.rubin@blakes.com; and danny.urquhart@blakes.com (delivery to all three email addresses is required for service)
(3)	The name and office address of the Petitioner's lawyer is: Blake, Cassels & Graydon LLP Barristers & Solicitors Suite 2600, Three Bentall Centre 595 Burrard Street, PO Box 49314 Vancouver, BC V7X 1L3 Attention: Peter L. Rubin and Danny Urquhart

CLAIM OF THE PETITIONER

Part 1: ORDER SOUGHT

1. An order (the "Receivership Order") substantially in the form attached as **Schedule "A"** appointing FTI Consulting Canada Inc. ("FTI") as receiver of the property, assets, and undertakings of 1239583 B.C. Ltd. ("**123 Co.**"), including the assets of its predecessor by amalgamation 1134759 B.C. Ltd. ("**113 Co.**", together with 123 Co., the "**Respondent**").

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

Part 2: FACTUAL BASIS

Introduction

3. The Petitioner, National Bank of Canada (the “**Bank**”), is a Canadian Schedule I Bank under the *Bank Act*, SC 1991, c 46.
4. The respondent 123 Co. is a debtor to the Bank with the municipal address of Town Center Tower, 7-32330 South Fraser Way, Abbotsford British Columbia, V2T 1X1.
5. 113 Co. was a corporation with a registered office of 32916 12th Avenue, Mission, British Columbia, V2V 2M8 prior to its amalgamation with 123 Co..
6. On or about May 20, 2022, 113 Co. amalgamated into 123 Co.
7. 113 Co. and Jaswant Bath are guarantors of the financings between 123 Co. and the Bank.
8. The Bank provided 123 Co. with, among with other loans and credit facilities, a term loan in the amount of \$5,440,000 pursuant to the terms of an Offer of Financing dated February 2, 2022 (the “**Offer of Financing**”) to provide financing for 123 Co.’s acquisition of a farm property (the “**Farm**”). The Bank also provided 123 Co. a second term loan in the amount of \$233,000 pursuant to an Offer of Financing dated May 25, 2022 (the “**Motorhome Offer of Financing**”) for the purpose of financing a motorhome.
9. The Bank is the primary secured lender to 123 Co. and holds a first ranking charge over 123 Co. and 113 Co.’s property, assets, and undertakings including the lands and buildings utilized in the operation of the Farm (together, the “**Farm Properties**”).
10. 123 Co. has been in default of its payment obligations under the Offer of Financing and Motorhome Offer of Financing for over six (6) months (the “**Payment Defaults**”). No payments have been made to the Bank on any of the outstanding credit facilities during 2023.
11. The Bank has provided the Respondent with ample opportunity to remedy the Payment Defaults, find a solution to financial problems or restructure their financial affairs in a manner that would allow them to meet their obligations to the Bank.

12. Notwithstanding the lengthy grace period provided to them by the Bank, the Respondent remains indebted to the Bank under the Offer of Financing for \$5,977,355.84 (excluding accruing fees, costs including legal and financial advisor fees, and interest).

13. In addition to their long-standing Payment Defaults, 123 Co. has not been fully forthcoming in providing the Bank with routine financial information required for the Bank to assess whether its security may be at risk, nor in acting diligently to sell the Farm Properties to cover their debts to the Bank, in breach of its contractual commitments to the Bank.

14. Having refrained from the exercise of its contractual rights (including under the Mortgage and GSAs as defined below) to enforce its rights, including its contractual right to appoint a receiver, for six (6) months, the Bank has determined to take enforcement steps including through the appointment of a receiver.

The Farm

15. The Farm is operated by 123 Co. and located on a parcel of land near Port Alberni, B.C. with a Parcel Identifier of 008-620-741, a legal Description of District Lot 72, Alberni District and an address of 9250 Somers Rd, Port Alberni, B.C.

16. Improvements on the Farms consist of various structures including a large interconnected barn facility and some smaller buildings including a machine/tool shed.

17. The Farm is ostensibly an operating business, but limited information has been made available to the Bank about its operations. The information that has been provided has changed over time. Prior to its acquisition, the Farm had been operated as a dairy farm. 123 Co. has indicated an intention to plant and harvest vegetables on the Farm. No material income appears to have been generated from the Farm during growing season in 2022 despite efforts to grow and harvest hay. A small volume of lumber may have been sold in 2022. 123 Co. has also indicated an intention to harvest gravel from the property, but these plans appear to have been abandoned. During 2023, 123 Co. expressed an intention to grow field crops, create a cedar tree nursery, and raise goats.

18. As of the date of this petition, virtually no information has been provided by 123 Co. to the Petitioner about its plans and progress for the 2023 planting season.

The Credit Facilities

19. The following credit facilities (the “**Credit Facilities**”) were made available by the Bank to 123 Co. pursuant to the Offer of Financing and Motorhome Offer of Financing:

Credit Number	Purpose of Facility	Description	Authorized Amount
Offer of Financing			
1	Finance the acquisition of all shares in 113 Co. (which owned the Farm)	Term loan	\$5,440,000
2	To permit interest rate hedging	Global Net Risk Line for Derivatives	Max. \$825,000
3	Finance day-to-day operations	Operating credit	\$100,000
4	Facilitate the payment of day-to-day ancillary expenses	Mastercard business credit card	\$50,000
Motorhome Offer of Financing			
5	Finance the purchase of a used motorhome (a 2011 Newmar Mountain Aire 4314)	Term loan	\$233,000

Security for the Credit Facilities

20. 113 Co. and Jaswant Bath have each granted unlimited guarantees with respect to 123 Co.’s obligations to the Bank under the Offer of Financing (the “**Guarantees**”). Jaswant Bath’s unlimited guarantee was also relied on by the Bank in respect of 123 Co.’s obligations to the Bank under the Motorhome Offer of Financing.

21. To secure their obligations under the Commitment Letter and Guarantees, the Respondent also granted the Bank security (the “**Security**”) over their assets, undertakings, and property.

22. The Security includes, among other things, a first-ranking collateral mortgage on the Farm (the “**Mortgage**”).

23. 123 Co. and 113 Co. have further granted general security agreements (the “GSAs”) to secure their obligations to the Bank under the Offer of Financing and the Guarantees. 123 Co.’s general security agreement also secured its obligations to the Bank under the Motorhome Offer of Financing.

24. 123 Co. has also granted the Bank certain other security, including designating the Bank as beneficiary under insurance policies covering the Farm, an environmental indemnity agreement and a power of attorney for 123 Co.’s banker’s acceptances, each as outlined in the Offer of Financing and Motorhome Offer of Financing.

The Respondent’s Defaults

25. 123 Co. has been in default of its payment obligations under the Offer of Financing and Motorhome Offer of Financing since the occurrence of the payment default on January 17, 2023, when 123 Co. failed to cover overdrafts which were used to pay amounts owing on the term loan (Credit Facility 1), among other things.

26. During the period from October 2022 to the present, the Bank has made efforts in an attempt to work with 123 Co. to remedy their payment difficulties, including the Payment Defaults, and to obtain further information from 123 Co. that would allow the Bank to assess whether its security is in jeopardy.

27. On December 23, 2022, the Bank advised 123 Co. that due to defaults on its accounts, it was being transferred to the Bank’s special loans department. 123 Co. advised that it would cover its outstanding payments and overdrafts by January 17, 2022. 123 Co. did not do so.

28. On February 16, 2023, the Bank advised 123 Co. of multiple events of default under the Offer of Financing and related credit documents and that it expected all events of default to be remedied by March 1, 2023. At that time, 123 Co. had outstanding payment defaults as well as defaults in relation to reporting that it was required to provide to the Bank on its business and operations.

29. On February 21, 2023, 123 Co. advised that it intended to correct reporting defaults by March 30, correct payment defaults by “Mid April” and provided an incomplete copy of its

insurance policy on the Farm. 123 Co. did not ultimately correct the defaults by these dates or at all.

30. On March 17, 2023, the Bank through counsel delivered a letter to 123 Co. and its guarantors, 113 Co. and Jaswant Bath, which among other things:

- (a) notified 123 Co. of further and continuing reporting defaults;
- (b) demanded payment of the outstanding amounts under each of the Credit Facilities inclusive of accrued interest, fees, indemnities, legal fees and other amounts payable which at that time amounted to \$5,821,765.84; and
- (c) reserved all rights and remedies including under the Mortgage and GSAs.

31. On April 4, 2023, the Bank delivered a letter providing notices pursuant to section 244 of the *Bankruptcy and Insolvency Act* and pursuant to section 21 of the *Farm Debt Mediation Act*.

32. Notwithstanding demands for payment, 123 Co. failed to pay the outstanding obligations to the Bank.

33. In addition to the long-standing Payment Defaults, 123 Co. has also not been fully forthcoming in providing the Bank with required documentation and information about the status of their business and financial affairs, or acted diligently to sell the Farm Properties. Specifically, the Respondent's conduct in, among other things:

- (d) not making any payments on the Credit Facilities for over six months;
- (e) providing changing, inconsistent or non-verifiable information about farm and business operations;
- (f) not remedying numerous information defaults despite ample opportunity;
- (g) not complying with various reporting obligations in respect of financial statements, listing of accounts receivable and accounts payable; and

- (h) not diligently pursuing commercially reasonable sale opportunities for the Farm Properties,

have led the Bank to lose all confidence in the Respondent's willingness to work diligently, transparently, and in good faith to satisfy its obligations to the Bank.

34. In the circumstances, the Bank has determined that the appointment of the Receiver is necessary to (a) gain access to 123 Co.'s business and financial information to assess the Bank's security, (b) obtain an accurate picture of 123 Co.'s business and operations, and (c) pursue and implement a transparent, orderly, and timely sale process for the business or the Farm Properties under the supervision of this Court.

35. The Bank has delivered to the Respondent notices of intention to enforce security dated March 22, 2021 as required by section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "BIA") and pursuant to section 21 of the *Farm Debt Mediation Act*, (S.C. 1997, c. 21).

Part 3: LEGAL BASIS

Jurisdiction to Grant the Requested Relief

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

The Test for Appointing a Receiver

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

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

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

(c) take any other action that the court considers advisable.

39. This Court has held that:

A mortgagee is entitled to the appointment of a Receiver or Receiver Manager as a matter of course when the mortgage is in default. The Court should only exercise its discretion not to make such an appointment in those rare occasions where a mortgagor or subsequent charge holder can show compelling commercial or other reason why such an order ought not to be made. The onus will always be on the mortgagor or subsequent charge holder in that regard.

***United Savings Credit Union v. F & R Brokers Inc.*, 2003 BCSC 640 at para. 17. See also *Canadian Imperial Bank of Commerce v. Can-Pacific Farms Inc.* 2012 BCSC 437 at para. 16.**

40. While this Court has held that a mortgagee is entitled to the appointment of a receiver as a matter of course when the mortgage is in default, it also has exercised the jurisdiction to consider an application to appoint a receiver holistically to decide whether on the whole of the circumstances it is, in fact, just or convenient to appoint a receiver.

***Bank of Montreal v. Gian's Business Centre Inc.*, 2016 BCSC 2348 at paras. 22 - 23.**

41. In *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, this Court identified several factors that may inform a holistic determination of whether it is "just and convenient" to appoint a receiver, including:

- (a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
- (b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
- (c) the nature of the property;
- (d) the apprehended or actual waste of the debtor's assets;
- (e) the preservation and protection of the property pending judicial resolution;

- (f) the balance of convenience to the parties;
- (g) the fact that the creditor has the right to appoint a receiver under the documentation provided for 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;
- (p) the goal of facilitating the duties of the receiver.

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

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

Maple Trade Finance Inc. v. CY Oriental Holdings Ltd., 2009 BCSC 1527 at para. 26.

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

43. In the present case, the Bank should be entitled to the appointment of a receiver over the property, assets, and undertakings of 123 Co. as a matter of course. The Mortgage and GSAs have been in default for over six (6) months. 123 Co. has provided an express covenant agreeing to the appointment of a receiver in the event of default. This Court has held that it should not ordinarily interfere with a contract between the parties. There are no compelling commercial or other reason why the Receivership Order ought not to be made.

44. In addition, it is just and convenient in the present circumstances to appoint a receiver over 123 Co. and 113 Co's assets, undertakings, and property on the terms sought by the Bank for, among others, the following reasons:

- (a) the Respondent is indebted to the Bank for approximately \$5,977,355.84 and has defaulted on its obligations to the Bank under the Offer of Financing, Motorhome Offer of Financing, Guarantees, Mortgage, the GSAs, and other related agreements;
- (b) the Bank has given the Respondent six (6) months to restructure its financial affairs in a manner that would allow it to meet its obligations to the Bank;
- (c) the Bank has lost confidence in the Respondent's willingness to work diligently, transparently, and in good faith to satisfy its obligations to the Bank;
- (d) The Bank has virtually no transparency into the operations, assets or affairs of 123 Co. and limited ability to verify the diminution of its security;
- (e) the Mortgage and the GSA grant the Bank the contractual right to appoint a receiver with the powers sought in the Receivership Order;
- (f) the nature of 123 Co.'s business, and the nature of the Farm Properties, which include the potential of gravel excavation and deforestation requires the Receiver to be appointed over 123 Co.'s assets, undertakings, and properties (over which the Bank has security) to ensure that the status quo of 123 Co.'s business is preserved during the enforcement and sale process;
- (g) it is necessary and expedient that the business or Farm Properties be sold and that any marketing and sale process with respect to the Farm Properties be transparent, orderly, timely, and undertaken under the supervision of this Court;
- (h) the appointment of the Receiver with the powers to require access to 123 Co.'s business and financial information is necessary to obtain an accurate picture of 123 Co.'s business, to protect the Bank's security interest, limit its losses, and prevent further dissipation of 123 Co.'s assets;
- (i) the appointment of a receiver will protect the interests of all stakeholders; and

(j) the balance of convenience favours the appointment of a receiver in these circumstances.

45. For the above reasons, the Bank submits that it is just and convenient that this Court appoint FTI as receiver of all 123 Co.'s assets, undertakings, and property on the terms set out in the proposed Receivership Order.

46. The Bank further relies on Rules 10-2 (Receivers) and 13-5 (Sales by Court) of the *Supreme Court Civil Rules*, BC Reg 168/2009 as well as section 282 of the *Business Corporations Act*, [SBC 2002] C. 57.

Part 4: MATERIALS TO BE RELIED ON


49. Affidavit #1 of Erin Welte, made on July 24, 2023;

50. Affidavit #1 of Donna Barnes, made on July 18, 2023; and

51. Such other materials as counsel may advise and this Court allows.

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

Date: July 26, 2023



Signature of Danny Urquhart
Lawyer for Petitioner

To be completed by the court only:	
Order made	
<input type="checkbox"/> in the terms requested in paragraphs of Part 1 of this petition	
<input type="checkbox"/> with the following variations and additional terms:	
.....	
.....	
.....	
Date:[dd/mmm/yyyy].....
	Signature of [] Judge [] Master

Schedule "A"

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

NATIONAL BANK OF CANADA

PETITIONER

AND

1239583 B.C. LTD.

RESPONDENT

ORDER MADE AFTER APPLICATION

(APPOINTMENT OF RECEIVER)

BEFORE THE HONOURABLE)
)
) , 2023
)

ON THE APPLICATION of the Petitioner for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "LEA") appointing FTI Consulting Canada Inc. ("FTI") as Receiver (in such capacity, the "Receiver") without security, of all of the assets, undertakings and property of 1239583 B.C. Ltd. ("123 Co.") including its predecessor prior to amalgamation, 1134759 B.C. Ltd. ("113 Co.", and together with 123 Co., the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, coming on for hearing this day at 800 Smithe Street, Vancouver, British Columbia.

AND ON READING Affidavit #1 of Erin Welte made July 24, 2023 and Affidavit #1 of Donna Barnes, made July 18, 2023, and the consent of FTI to act as the Receiver; AND ON HEARING Danny Urquhart, counsel for National Bank of Canada; Lance Williams, counsel for FTI, and no one else appearing.

THIS COURT ORDERS AND DECLARES that:

APPOINTMENT

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

RECEIVER'S POWERS

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

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

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
 - (i) without the approval of this Court in respect of a single transaction for consideration up to \$500,000 provided that the aggregate consideration for all such transactions does not exceed \$1,000,000, and
 - (ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

3. Each of (i) the Debtor; (ii) all of the Debtor's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, "Persons" and each a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
4. All Persons, other than governmental authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "Records") in that Person's possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
5. 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.
6. 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

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of the Proceeding except for service of the initiating documentation on the Debtor and the Receiver.

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

12. 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

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

PERSONAL INFORMATION

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. 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.

16. 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.
17. 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.
18. 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

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

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

RECEIVER'S ACCOUNTS

20. 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.

21. 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.
22. 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

23. 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.
24. 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.
25. The Receiver is authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
26. 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

27. 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

28. The Receiver shall establish and maintain a website in respect of these proceedings at: <http://cfcanada.fticonsulting.com/123> (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.
29. Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for each of the Receiver and the Applicant a demand for notice in the form attached as Schedule B (the “**Demand for Notice**”). The Receiver and the Applicant need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed Demand for Notice releases the Receiver and the Applicant from any requirement to provide further notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice.
30. 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.
31. 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.
32. 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.
33. The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to the Debtor’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of any legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*.

GENERAL

34. 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.

35. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
36. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
37. 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.
38. 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.
39. The Petitioner shall have its costs of this petition, up to and including entry and service of this Order, as provided for by the terms of the Petitioner's security or, if not so provided by the Petitioner's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor' estate with such priority and at such time as this Court may determine.
40. Endorsement of this Order by counsel appearing on this application other than the Petitioner is dispensed with.

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

APPROVED BY:

Signature of Danny Urquhart, lawyer for the
Petitioner

BY THE COURT

DISTRICT REGISTRAR

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT

\$ _____

1. THIS IS TO CERTIFY that FTI Consulting Canada Inc., the Receiver (the "Receiver") of all of the assets, undertakings and properties of 1239583 B.C. Ltd. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Supreme Court of British Columbia (the "Court") dated the _____ day of _____, 2023 (the "Order") made in SCBC Action No. _____, Vancouver Registry 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 _____, 2023.

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

Per:
Name:
Title:

SCHEDULE "B"

Demand for Notice

TO: National Bank of Canada
c/o Blake, Cassels & Graydon LLP
Attention: Peter Rubin/Danny Urquhart
Email: peter.rubin@blakes.com/danny.urquhart@blakes.com

AND TO: FTI Consulting Canada Inc.
c/o McCarthy Tétrault LLP
Attention: Lance Williams/Sue Danielisz
Email: l.williams@mccarthy.ca/sdanielisz@mccarthy.ca

Re: In the matter of the Receivership of 1239583 B.C. LTD.

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

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

OR

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

OR

3. By mail, at the following address:

Name of Creditor: _____

Name of Counsel (if any): _____

Creditor's Contact Address: _____

Creditor's Contact Phone Number: _____

Action No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

NATIONAL BANK OF CANADA Petitioner

- and -

Respondent

1239583 B.C. LTD.

RECEIVERSHIP ORDER

BLAKE, CASSELS & GRAYDON LLP

Barristers & Solicitors
2600, 595 Burrard Street
Vancouver, BC V7X 1L3
1.604.631.3300
Agent: Dye & Durham

Counsel: Danny Urquhart
Matter No. 00030237.000377