

NO. S-235306  
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  
(APPROVAL AND VESTING ORDER)**

BEFORE THE HONOURABLE

JUSTICE SHARMA

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)  
)  
)

WEDNESDAY, THE 12<sup>TH</sup> DAY

OF NOVEMBER, 2024

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 of 1239583 B.C. Ltd. (the “**Debtor**”), coming on for hearing at Vancouver, British Columbia, on the 12<sup>th</sup> day of November, 2024; AND ON HEARING Ashley Bowron, counsel for the Receiver, and those other counsel listed on **Schedule “A”** hereto; AND UPON READING the material filed, including the First Receiver’s Report, dated October 11, 2023 (the “**First Report**”), the Second Receiver’s Report, dated September 10, 2024 (the “**Second Report**”), and the Third Receiver’s Report, dated October 23, 2024 (the “**Third Report**”);

THIS COURT ORDERS AND DECLARES THAT:

1. The sale transaction (the “**Transaction**”) contemplated by the contract of purchase and sale dated October 4, 2024 (collectively, the “**Purchase Agreement**”) between the Receiver, and Erik John Waldriff and Sarah Brooke Waldriff (the “**Purchasers**”), a copy of which is attached as Appendix “B” to the Third Report is hereby approved, and the

Purchase Agreement is commercially reasonable. The execution of the Purchase Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchasers of the assets described in the Purchase Agreement (the "**Purchased Assets**").

2. Upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as **Schedule "B"** hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Purchase Agreement and listed on **Schedule "C"** hereto shall vest absolutely in the Purchasers in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court dated September 8, 2023; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 of British Columbia or any other personal property registry system; and (iii) those Claims listed on **Schedule "D"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "E"** hereto), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
3. Upon presentation for registration in the Land Title Office for the Land Title District of Victoria of a certified copy of this Order, together with a letter from McCarthy Tétrault LLP, solicitors for the Receiver, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:
  - (a) enter the Purchasers, Erik John Waldriff, Farmer, and Sarah Brooke Waldriff, as the owners of the Lands identified in **Schedule "B"** hereto, as joint tenants,

together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Lands, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Purchasers in and to the Lands is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchasers as aforesaid; and


- (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Lands all of the registered Encumbrances except for those listed in **Schedule "E"**.
4. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
  5. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.
  6. Subject to the terms of the Purchase Agreement, vacant possession of the Purchased Assets, including any real property, shall be delivered by the Receiver to the Purchasers at 12:00 noon on the Closing Date (as defined in the Purchase Agreement), subject to the permitted encumbrances as set out in the Sale Agreement and listed on **Schedule "E"**.
  7. The Receiver, with the consent of the Purchasers, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.

8. The Receiver, with the consent of the Purchasers, shall be at liberty to make amendments or modifications to the Purchase Agreement that would not be materially prejudicial to the interest of the Debtor's stakeholders and to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.
9. Notwithstanding:
  - (a) these proceedings;
  - (b) any applications for a bankruptcy order in respect of the Debtor now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made by or in respect of the Debtor,the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.
10. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.
11. Endorsement of this Order by counsel appearing on this application, other than counsel for the Receiver, is hereby dispensed with.

THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, 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 courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to

give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

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

BY THE COURT



REGISTRAR



**SCHEDULE "A"**

**LIST OF COUNSEL**

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

**SCHEDULE "B"**

NO. S-235306  
VANCOUVER REGISTRY

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RESPONDENT

**RECEIVER'S CERTIFICATE**

1. Pursuant to an Order of Justice Francis of the Supreme Court of British Columbia (the "**Court**") dated September 8, 2023, FTI Consulting Canada Inc. was appointed as the receiver and manager (the "**Receiver**") of the property, assets and undertakings of 1239583 B.C. Ltd., including the land legally described as PID: 008-620-741 District Lot 72, Alberni District, and buildings thereon (the "**Lands**").
2. Pursuant to the Approval and Vesting and Order of the Court dated November 12, 2024, the Court, among other things, approved the contract of purchase and sale dated October 4, 2024 between the Receiver, and Erik John Waldriff and Sarah Brooke Waldriff (the "**Purchasers**"), and the transactions contemplated thereby, and providing for the occurrence of certain events in the specified sequence upon delivery by the Receiver to the Purchasers of a certificate confirming (i) payment by the Purchasers of the Purchase Price; (ii) that the conditions to completion as set out in Article 3 of the Purchase Agreement have been satisfied or waived by the Receiver and the Purchasers; and (iii) the Transaction has been completed to the satisfaction of the Receiver.
3. Unless otherwise indicated herein, the capitalized terms have the meanings set out in the Purchase Agreement.

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

4. The Purchasers have paid and the Receiver has received the Purchase Price payable on the Completion Date pursuant to the Purchase Agreement;
5. The conditions to closing set out in Article 3 of the Purchase Agreement have been satisfied or waived by the Receiver and the Purchasers; and
6. The Transaction has been completed, to the satisfaction of the Receiver.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

**FTI Consulting Canada Inc.**, in its capacity as the court-appointed receiver and manager of the assets, properties, and undertakings of 1239583 B.C. Ltd., and not in its personal capacity.

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



## **SCHEDULE "C"**

### **Purchased Assets**

1. Those lands in the Province of British Columbia legally described as:

Parcel Identifier 008-620-741  
District Lot 72 Alberni District

and all buildings, structures, and improvements thereon.

## SCHEDULE "D"

### Encumbrances to be Discharged against Purchased Assets

#### Land Title Office

1. Mortgage in favour of National Bank of Canada registered on March 3, 2022, under instrument number CA9759425
2. Assignment of Rents in favour of National Bank of Canada registered on March 3, 2022, under instrument number CA9759426

#### Personal Property Registry of British Columbia

3. Base Registration Number 572887N in favour of National Bank of Canada

## **SCHEDULE "E"**

### **PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS RELATED TO REAL PROPERTY**

Exceptions and Reservations in favour of Esquimalt and Nanaimo Railway Company registered under instrument number M76300.