

COURT FILE NUMBER H-140807
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

REVELSTOKE CREDIT UNION

PETITIONER

AND

POWDER SPRINGS INN INC., NEIL JASON ROE, JAMES BRYDON
ROE, CLYDE DAVID NEWSOME, DONNA LOUISE NEWSOME,
JENNY LEANNE NEWSOME, NEWSOME FAMILY TRUST, THE
CROWN IN RIGHT OF CANADA and CANADIAN IMPERIAL BANK
OF COMMERCE

RESPONDENTS

**THIRD REPORT OF FTI CONSULTING CANADA INC., IN ITS
CAPACITY AS COURT-APPOINTED RECEIVER AND
MANAGER OF POWDER SPRINGS INN INC.**

September 25, 2014

INTRODUCTION

1. On February 25, 2014, FTI Consulting Canada Inc. was appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Powder Springs Inn Inc. (“**Powder**” or the “**Company**”) pursuant to the order (the “**Receivership Order**”) of this Honourable Court.
2. The Receivership Order authorized and empowered the Receiver to, *inter alia*:
 - (a) take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - (b) manage, operate or carry on the business of Powder;
 - (c) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons to assist the Receiver;
 - (d) receive and collect all monies and accounts now owed or hereafter owing to Powder;
 - (e) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property;
 - (f) market any or all of the Property, including advertising and soliciting offers in respect of the Property;
 - (g) sell, convey, transfer, lease, assign or otherwise dispose of the Property;
 - (h) apply for any vesting order or other orders necessary to convey the Property;
 - (i) report to, meet with and discuss with such affected Persons as the Receiver deems appropriate on all matters relating to the Property;
 - (j) apply for any permits, licenses, approvals or permissions and any renewals thereof as may be required by any governmental authority; and

- (k) take any steps reasonably incidental to the exercise of these powers.
3. The Receiver's reports and other information in respect of these proceedings are posted on the Receiver's website at <http://cfcanada.fticonsulting.com/powdersprings/>.
4. On May 28, 2014, the Receiver filed its first report (the "**First Report**"), which informed the Court on the following:
- (a) The status of various aspects of the Receivership proceedings;
 - (b) The Receiver's receipts and disbursements for the period of February 25, 2014 to April 30, 2014;
 - (c) The details of the charges registered against title of the real property owned by the Company; and
 - (d) To request the granting of an Order authorizing the Receiver to conduct a sale process.
5. On June 9, 2014, this Honourable Court provided an Order authorizing the Receiver to conduct a sale process for the real property owned by Powder (the "**Lands**").
6. On September 2, 2014, the Receiver filed its second report (the "**Second Report**"), which informed the Court on the following:
- (a) The result of the sale process for the Lands conducted by the Receiver and its realtor;
 - (b) The Receiver's receipts and disbursements for the period of February 25, 2014 to July 31, 2014; and

- (c) To request the granting of an Order authorizing the Receiver to close the transaction contemplated in the Asset Purchase Agreement dated July 17, 2014 between the Receiver and 1006881 B.C. Ltd (“**100**”) in the form attached as Appendix A to the Receiver’s Second Report.
- 7. On September 8, 2014, an Order approving the sale of the Lands to 100 was granted by this Honourable Court.
- 8. The purpose of this report, the third report of the Receiver (the “**Third Report**”) is to inform the Court on the following:
 - (a) The status of the sale of the Lands by the Receiver to 100; and
 - (b) To request the granting of an Order approving an amendment to the Asset Purchase Agreement dated July 17, 2014 between the Receiver and 100.

TERMS OF REFERENCE

- 9. In preparing this report, the Receiver has relied upon unaudited financial information, other information available to the Receiver and, where appropriate, Powder’s books and records and discussions with various parties (collectively, the “**Information**”).
- 10. Except as described in this Report:
 - (a) The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and

- (b) The Receiver has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.
11. Future oriented financial information reported or relied on in preparing this report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.
12. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein are as defined in the Receivership Order, other Order's granted in the Receivership proceedings or in the Receiver's previous reports.

SALE PROCESS

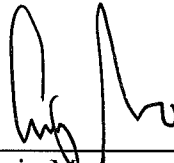
13. Upon receipt of the Order of this Honourable Court dated September 8, 2014 approving the Asset Purchase Agreement between the Receiver and 100, the Receiver contacted the representative of 100 and agreed on a target closing date of September 19, 2014.
14. The Receiver contacted its legal counsel and instructed it to prepare a statement of adjustments in preparation of the closing.
15. The statement of adjustments reflected a \$16,952 adjustment relating to property taxes prepaid by the Receiver for the balance of calendar 2014, a \$826 adjustment relating to prepaid utilities that would now be for the benefit of the purchaser and a \$34,912 adjustment relating to prepaid insurance for the balance of calendar 2014.
16. On September 17, 2014 the statement of adjustments was forwarded to the representative of 100 and its legal counsel for their review.
17. On September 17, 2014 the representative of 100 contacted the Receiver indicating that after reviewing the statement of adjustments, 100 had underestimated the financing required to close the transaction and were concerned about its ability to close.
18. The representative of 100 further indicated that it had misunderstood that the property transfer taxes were to be funded by the purchaser, which further extended its funding shortfall.
19. The Receiver suggested that the representative would have to go back to his investors and seek further funding to close the transaction.

20. On September 18, 2014, the representative of 100 contacted the Receiver to request a 30 to 60 day extension to allow it time to secure replacement financing as the current investors were not prepared to provide the additional financing necessary to close the transaction. In the alternative, the representative of 100 asked the Receiver to consider agreeing to a reduction in the purchase price of \$100,000.
21. The Receiver consulted with its legal counsel and the representative of the first mortgage lender. The Receiver was informed by its legal counsel that the closing date pursuant to the approval Order dated September 8, 2014 could only be extended until October 7, 2014 without further Order of the Court.
22. After consulting with its legal counsel and considering all options and remedies available to the Receiver, the Receiver concluded that although an extension of the closing date might provide 100 with the time needed to secure replacement financing, the additional costs associated with a delay from increased professional fees, interest costs and operating expenses, together with the very real risk that 100 would not be able to secure the replacement financing within the extension period, could reasonably be expected to result in a loss far in excess of the requested purchase price reduction.
23. Accordingly, the Receiver is now seeking an Order of this Honourable Court authorizing the Receiver to enter into an Amending Agreement in the form attached as Appendix A, the effect of which would be to reduce the purchase price from \$3.9 million to \$3.8 million, with a revised closing date of September 30, 2014.
24. The main secured creditor, Revelstoke Credit Union, supports the amendments to the Asset Purchase Agreement.

25. On September 19, 2014, the Receiver and 100 signed an amendment to the Asset Purchase Agreement extending the closing date from September 19, 2014 to October 6, 2014 or such earlier date as agreed to between the parties (a copy of which is attached as Appendix B). The amendment was entered into in order to allow the Receiver sufficient time to seek this Honourable Court's approval to amend the Asset Purchase Agreement.
26. It is the Receiver's opinion that the reduced purchase price represents fair value for the assets of the Debtor, following the completion of a court sanctioned sales process, and taking into consideration all of the circumstances recommends that the Court approve the proposed amendments to the Asset Purchase Agreement.

All of which is respectfully submitted this 25th day of September, 2014.

FTI Consulting Canada Inc.,
in its capacity as receiver and manager of
the assets, property and undertaking of
Powder Springs Inn Inc.



Name: Craig Munro
Title: Managing Director,
FTI Consulting Canada Inc.

APPENDIX A

AMENDMENT TO ASSET PURCHASE AGREEMENT

This Amending Agreement made as of the 24 day of September, 2014.

BETWEEN:

1006881 B.C. Ltd.
119 Campbell Avenue
P.O. Box 2490
Revelstoke, BC V0E 2S0

(the "Buyer")

AND:

FTI Consulting Canada Inc., in its capacity as the Court-appointed Receiver of the assets, undertaking and properties of Powder Springs Inn Inc., and not in its Personal Capacity

(the "Seller")

WHEREAS:

- A. The Seller is the Court-appointed Receiver of the assets, undertaking and properties of Powder Springs Inn Inc., pursuant to an Order pronounced on February 25, 2014, by the Supreme Court of British Columbia (the "Court");
- B. Pursuant to an Asset Purchase Agreement dated July 17, 2014 (the "Purchase Agreement"), the Seller agreed to sell or otherwise transfer to the Buyer, and the Buyer agreed to purchase from the Seller, the right, title and interest of the Seller, if any, in the Transferred Assets (as defined in the Purchase Agreement);
- C. By an Order pronounced on September 8, 2014 (the "Approval and Vesting Order"), the Court approved the Purchase Agreement;
- D. The Buyer has requested that the Seller agree to an amendment of the Purchase Agreement; and
- E. The Seller has agreed to apply to the Court for authorization to amend the Purchase Agreement and the Approval and Vesting Order, upon the terms and conditions set forth herein,

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties intending to be legally bound agree as follows:

1. DEFINITIONS

Except as otherwise defined herein, capitalized words shall have the meaning ascribed to them in the Purchase Agreement.

2. AMENDMENTS

The Purchase Agreement is amended as follows:

- (a) by reducing the Purchase Price of "\$3,900,000.00" in Section 2.2(a) of the Purchase Agreement to \$3,800,000.00 and the transaction will be closed on the Closing Date in accordance with the Vendor's Statement of Adjustments attached as Schedule A; and
- (b) by amending the Closing Date to September 30, 2014.

3. NO OTHER MODIFICATIONS

Except as modified by this Amending Agreement, the Purchase Agreement otherwise remains in full force and effect.

4. BINDING EFFECT

This Amending Agreement shall only become effective upon execution and delivery of this Amending Agreement by the Buyer and the Seller, and upon the pronouncement of an Order of the Court authorizing the Seller to enter into this Amending Agreement and modifying the Approval and Vesting Order accordingly. For clarity, the preparation and execution of this Amending Agreement and its presentation to Court by the Seller for authorization and approval does not constitute a binding agreement.

5. COUNTERPARTS AND ELECTRONIC DELIVERY

This Agreement may be executed in counterparts, and by different parties hereto on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Execution and delivery of this Agreement may be made and evidenced by facsimile or other electronic means of transmission.

IN WITNESS WHEREOF, the Buyer and the Seller have executed this Amending Agreement as of the 27 day of September, 2014.

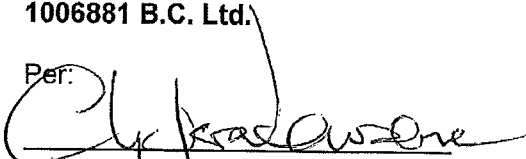
FTI Consulting Canada Inc., in its capacity as
Court-appointed Receiver of Powder Springs Inn
Inc., and not in its personal capacity

Per:

Name: Craig Munro
Title: Managing Director

1006881 B.C. Ltd.

Per:



Name: Clyde David Newsome
Title: Director

ROBERT A. LUNDBERG

Barrister and Solicitor

P.O. Box 2490
119 Campbell Avenue
Revelstoke, BC V0E 2S0
Phone (250)837-5196
Fax (250)837-4746

VENDORS: FTI CONSULTING CANADA INC. in its capacity as court-appointed Receiver and Manager of Powder Springs Inn Inc.

PURCHASER: 1006881 B.C. LTD.

LEGAL DESCRIPTION: Lot 1, Sec 34, Twp 23, Rg 2, W6M, Koot. Dist., Plan 12745

COMPLETION DATE: September 30, 2014

VENDORS STATEMENT OF ADJUSTMENTS

YOU ARE CREDITED WITH OR WILL RECEIVE	DEBITS	CREDITS
Sale Price		\$3,800,000.00
Deposit held by Bull, Housser & Tupper LLP	\$100,000.00	
Tax Adjustment based on 2014 Number of days you are credited with 93		\$14,837.06
2014 Gross taxes \$58,231.48 \$58,231.48 x 93/365		
Insurance Adjustment on premium in the amount of 471,590.00 for the period of March 16, 2014 to March 15, 2015 paid by the Vendor. Credit Vendor for September 30, 2014 to March 15, 2015. \$71,590.00 x 167/365		\$32,754.88
Powder Springs Inn Inc. - payout of mortgage to Newsome Family Trust	\$1,200,000.00	
YOU ARE DEBITED WITH OR ARE REQUIRED TO PAY		
Balance due to Bull, Housser & Tupper LLP upon completion	\$2,547,591.94	
E. & O.E.	\$3,847,591.94	\$3,847,591.94

See next page attached hereto and forming a part of the Statement of Adjustments

Initials _____

APPENDIX B



CONTRACT OF PURCHASE AND SALE AMENDMENT
Multiple Listing Service® Page 1 of 1 pages

MLS® No. 10084301 DATE: September 19, 2014

RE: ADDRESS 200 West Third Street, Revelstoke, BC V0E 2S0

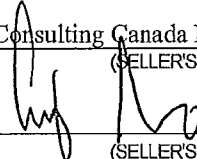
FURTHER TO THE CONTRACT OF PURCHASE AND SALE DATED July 17, 2014

MADE BETWEEN FTI Consulting Canada Inc. (Receiver) AS SELLER, AND
1006881 B. C. Ltd. AS BUYER AND COVERING
THE ABOVE MENTIONED PROPERTY, THE UNDERSIGNED HEREBY AGREE AS FOLLOWS:

"FOR GOOD AND VALUABLE CONSIDERATION"

"Amend the Closing Date from September 19, 2014 to October 6, 2014 at 4 pm, subject to any agreement as between the parties in writing on a different Closing Date."

ALL OTHER TERMS AND CONDITIONS CONTAINED IN THE SAID AGREEMENT REMAIN THE SAME AND IN FULL FORCE AND EFFECT. TIME SHALL REMAIN OF THE ESSENCE.

_____	<u>FTI Consulting Canada Inc. (Receiver)</u>
(WITNESS TO SELLER'S SIGNATURE)	(SELLER'S SIGNATURE)
_____	
(WITNESS TO SELLER'S SIGNATURE)	(SELLER'S SIGNATURE)
_____	<u>1006881 B. C. Ltd.</u>
(WITNESS TO BUYER'S SIGNATURE)	(BUYER'S SIGNATURE)
_____	_____
(WITNESS TO BUYER'S SIGNATURE)	(BUYER'S SIGNATURE)

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CONTRACT OF PURCHASE AND SALE AMENDMENT
Multiple Listing Service® Page ____ of ____ pages

MLS® No. 10084301 DATE: September 19, 2014

RE: ADDRESS <u>200 West Third Street, Revelstoke, BC</u>	VOE 2S0
FURTHER TO THE CONTRACT OF PURCHASE AND SALE DATED <u>July 17, 2014</u>	
MADE BETWEEN <u>FTI Consulting Canada Inc. (Receiver)</u>	AS SELLER, AND
<u>1006881 B. C. Ltd.</u>	AS BUYER AND COVERING
THE ABOVE MENTIONED PROPERTY, THE UNDERSIGNED HEREBY AGREE AS FOLLOWS:	
'FOR GOOD AND VALUABLE CONSIDERATION'	
"Amend the Closing Date from September 19, 2014 to October 6, 2014 at 4 pm, subject to any agreement as between the parties in writing on a different Closing Date."	
ALL OTHER TERMS AND CONDITIONS CONTAINED IN THE SAID AGREEMENT REMAIN THE SAME AND IN FULL FORCE AND EFFECT. TIME SHALL REMAIN OF THE ESSENCE.	
_____ (WITNESS TO SELLER'S SIGNATURE)	<u>FTI Consulting Canada Inc. (Receiver)</u> (SELLER'S SIGNATURE)
_____ (WITNESS TO SELLER'S SIGNATURE)	_____ (SELLER'S SIGNATURE)
_____ (WITNESS TO BUYER'S SIGNATURE)	<u>1006881 B. C. Ltd.</u> (BUYER'S SIGNATURE)
_____ (WITNESS TO BUYER'S SIGNATURE)	DocuSigned by: <u>[Signature]</u> DocuSign Inc. (BUYER'S SIGNATURE)

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