

Clerk's Stamp

COURT FILE NUMBER 2101-00811

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFFS CANTECH OILFIELD EQUIPMENT LTD.,  
CELINA CAI XING LUO, HUI YANG XU,  
CHRISTINE YIN HUI, FANG YANG, KING CHI  
HUNG, CHUNG YIN SIU, BAO JING MA, SING  
LIM YEO, YEE KEN YEO, HON HING CHOI  
CHAN, JOY LING CHAN, QIN LU, DAOJING  
FINANCIAL CONSULTING LTD., MAGGIE TING TING  
HON, ROYAL GREENLAND COMMUNITY LTD.,  
KA FAI PUI, NYUK JIN HUI, KAI WAH HUI,  
BENJAMIN JOSHUA HUI, SARA FAROUK EL-QUTUB,  
MAHER FAREED SHAMLAWI, NECEIB MOUSSA, SALLY  
FARHAT, GANESHA INVESTMENTS LTD., JENIFER  
SHABAN ALI, JAFFAR ALI, ZAHIDA REHANA KHAN,  
SAHEED MOHAMMAD TAKI, MOHAMED HASSAN  
KHATTAB, 2027498 ALBERTA LTD. and HARILEELA  
INVESTMENTS LTD.

DEFENDANTS ROXDALE GARDENS LTD., ROHIT SETHI also known as  
ROY SETHI, ROHIT SETHI by and through his trustee  
MELANIE J. LEIGH, YUVRAJ VERMA, YUVRAJ VERMA by  
and through his trustee MELANIE J. LEIGH, VIKAS KWATRA,  
and VIKAS KWATRA by and through his trustee MELANIE J.  
LEIGH

APPLICANT FTI CONSULTING CANADA INC., in its capacity as Court-  
appointed Receiver and Manager of the assets, undertakings and  
properties of ROXDALE GARDENS LTD.

RESPONDENT CANCOM ROXDALE INC.

DOCUMENT **FIRST REPORT OF FTI CONSULTING CANADA INC., in  
its capacity as Receiver of ROXDALE GARDENS LTD.**

**June 6, 2022**

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# FIRST REPORT OF THE RECEIVER

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**Appendix A** – Shareholder Report

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## INTRODUCTION

1. On June 24, 2021 (the “**Appointment Date**”), pursuant to an application brought under the Alberta Business Corporation Act by the plaintiffs in this action, FTI Consulting Canada Inc. was appointed as receiver and manager (the “**Receiver**”) of all the assets, undertakings and properties (the “**Property**”) of Roxdale Gardens Ltd., (“**Roxdale**” or the “**Company**”), pursuant to an Order of the Honourable Justice M.H. Hollins (the “**Receivership Order**”).
2. The Property subject to the Receivership Order includes all of the Company’s current and future assets, undertakings and properties, including all proceeds thereof. The Company’s only asset, based on the records in the Receiver’s possession, was the mortgage dated July 8, 2020 (the “**Mortgage**”) and the December 17, 2020, amending agreement and notice (the “**Amending Agreement**”) and collectively with the Mortgage, the “**Mortgage Documents**”) which amended the terms of the mortgage registered against lands being legally described as Plan 1821856, Block 1, Lots 3 and 4 excepting thereout all mines and minerals (the “**Lands**”) owned by Cancom Roxdale Inc. (“**Cancom**”).
3. The Receivership Order authorized the Receiver, among other things, to take possession of and exercise control over the Property and any proceeds, receipts and disbursements arising out or of from Property and directed the Receiver to review the books and records of Roxdale including the Mortgage and provide a report (the “**Shareholder Report**”) regarding the same to counsel of record for the Plaintiffs in these proceedings (the “**Preferred Shareholders**”) and the Plaintiffs in Court of Queen’s Bench Action No. 2103-05948 represented by Oviatt Law (the “**Oviatt Plaintiffs**”). A copy of the Shareholder Report has been attached hereto in Appendix A.

4. On February 17, 2022, this Honourable Court granted an order (the “**Redemption Order**”) authorizing the Receiver to list the Lands for sale with a licensed real estate agent.
5. This report (the “**First Report**”) and other publicly available information in respect of these proceedings (the “**Receivership Proceedings**”) are posted on the Receiver’s website at <http://cfcanada.fticonsulting.com/roxdalegardens/> (the “**Receiver’s Website**”).
6. Concurrent with this First Report, the Receiver filed an Application returnable on June 14, 2022, requesting the following relief from this Honourable Court:
  - a. an order (the “**Order Confirming Sale & Vesting Title**”), *inter alia*, authorizing the Receiver to sell the Lands pursuant to the terms of a purchaser offer dated May 17, 2022, (the “**Sale Agreement**”) between the Receiver and Malhans Holdings Inc. and/or its Nominee (the “**Purchaser**”); and
  - b. an order approving the discharge of the Receiver upon the filing of a Discharge Affidavit with the Clerk of the Court.
7. The purpose of this First Report is to provide this Honourable Court with information with respect to the following:
  - a. the status of the Receivership Proceedings, including the Receiver’s activities since the Appointment Date;
  - b. a summary of the process undertaken by the Receiver and the Realtor (as defined below) to market and sell the Lands (the “**Commercial Listing**”);

- c. the Receiver's recommendations with respect to the sale of the Lands pursuant to the Sale Agreement;
- d. a summary of the Receiver's statement of cash receipts and disbursements ("R&D") since the Appointment Date to May 31, 2022;
- e. a summary of the remaining estate funds to be paid into Court; and
- f. the Receiver's recommendations.

## TERMS OF REFERENCE

- 8. In preparing this First Report, the Receiver has relied upon unaudited financial information, other information available to the Receiver and, where appropriate, the Company's books and records and discussions with various parties (collectively, the "**Information**").
- 9. Except as described in this First 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 Chartered Professional Accountants of Canada 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 Chartered Professional Accountants of Canada Handbook.

10. Future oriented financial information reported or relied on in preparing this First Report is based on assumptions regarding future events. Actual results may vary from forecast and such variations may be material.
11. The Receiver has prepared this First Report in connection with its Application to be heard on June 14, 2022, and it should not be relied upon for any other purposes.
12. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars. Capitalized terms not otherwise defined are as defined in the Receivership Order.

## **BACKGROUND**

13. Roxdale was incorporated on February 7, 2019, with a business plan to seek investments from the public with the intended purpose of participating in real estate development investments. In exchange for their investment, Roxdale issued preferred shares to the investing individuals.
14. Subsequent to its incorporation, Roxdale began to solicit investments to fund an investment opportunity in the Lands.
15. Investors participated in the development project by providing the funding to Roxdale, which funds were advanced to Cancom (the “**Roxdale Loan**”), who was to use the funds to develop the Lands into residential housing. The Roxdale Loan was secured by the Mortgage Documents.

16. The face value of the Mortgage is \$10 million these funds were to be paid by Roxdale to Cancom. As collateral for the Mortgage, Roxdale registered the Mortgage over the Lands. As described in the Shareholder Report, the Receiver identified that at least \$6.5 million was transferred from Roxdale to Cancom as consideration for the Mortgage.
17. On or around February 18, 2021, the three former directors of Roxdale, namely, Rohit Sethi, Vikas Kwatra and Yuvraj Verma, all filed for personal bankruptcy and were no longer able to act in their respective capacities as directors of the Company.
18. The Receiver was subsequently appointed pursuant to an application brought by the Preferred Shareholders to realize on the Mortgage.

## **RECEIVER'S ACTIVITIES**

19. Since the Appointment Date, the Receiver has, *inter alia*:
  - a. completed various activities as part of its required statutory administrative tasks as Receiver including but not limited to:
    - i. the Receiver attended to various statutory notices required pursuant to the Receivership Order including mailing a Notice and Statement of Receiver to creditors identified in the application materials filed as part of these Receivership Proceedings, and posting a copy of the notice to the Receiver's Website;
    - ii. notifying the Office of the Superintendent of Bankruptcy of the Receivership Proceedings and obtaining an estate identification number; and

- iii. on July 21, 2021, pursuant to paragraph 3(r) of the Receivership Order, the Receiver registered a copy of the Receivership Order against the title of the Lands with the Registrar of Land Titles of Alberta;
  
- b. issued the Shareholder Report on August 4, 2021 and provided copies to counsel for the Preferred Shareholders and counsel for the Oviatt Plaintiffs;
  - i. pursuant to paragraph 3(i) of the Receivership Order, the Receiver completed an investigation to gather further information with respect to the Lands and the Mortgage Documents;
  - ii. as part of its investigation into the Mortgage Documents, the Receiver engaged a commercial real estate expert to provide a current appraisal of the Lands (the “**Appraisal**”);
  - iii. the Shareholder Report concluded that in the view of the Receiver the Mortgage Documents appeared to be valid and enforceable;
  - iv. Further the Receiver concluded, there appeared to be a default under the Mortgage relating to an interest payment which was due on November 15, 2020 and which there was no recorded of receipt in the Roxdale accounts;
  - v. with consideration for the value the Appraisal attributed to the Lands, it was the Receiver’s recommendation to proceed with foreclosing on the Lands pursuant to the remedies described in the Mortgage Documents;



- vi. pursuant to paragraph 3(j) of the Receivership Order, counsel to the Oviatt Plaintiffs were given sixty days following the issuance of the Shareholder Report to apply for advice and direction from this Honourable Court in relation to the Receivership Order and the Receiver's tasks as described therein; and
  - vii. no application was brought forth within the given timeframe and the Receiver proceeded to take the steps necessary to foreclose on the Lands including obtaining filing he necessary materials to obtain the Redemption Order;
  - c. sought proposals from commercial real estate agents and based on the proposals received engaged Avison Young Commercial Real Estate Services, LP (the "**Realtor**" or "**Avison Young**"); and
  - d. negotiated and executed the Sale Agreement subject to approval from this Court.
20. As set forth below, the Receiver's legal counsel, Torys LLP (the "**Receiver's Counsel**"), assisted with the foreclosure process – reviewing materials related to the Mortgage, contacting various parties who may have an interest in the Lands or sale proceeds should the Lands be sold, and engaging in various discussions with such parties, attending a hearing involving the Lands (commenced by a party (Amrik Land Developments Corp. ) claiming an interest in the Lands or sale proceeds related thereto), drafting the Court materials related to the Redemption Order (including a Statement of Claim, Affidavit of Default and Value, the Application, etc), attending Court to obtain the Redemption Order related matters, and preparing and updating the Service List, among other things.

## MARKETING PROCESS AND SALE AGREEMENT

21. The Receivership Order authorizes the Receiver to, among other things, take any steps necessary to foreclose upon and enforce the Mortgage and Amending Agreement and to market any or all the Lands and negotiating such terms and conditions of sale.
22. Subsequent to the granting of the Redemption Order, the Receiver proceeded to take the necessary steps to enforce the Mortgage Documents and foreclose upon the Mortgage.
23. The Receiver sought proposals from three real estate agents who could provide expertise through their business contacts and network to market the Lands to be sold. The real estate agents who provided the Receiver with listing proposals were as follows:
  - a. Avison Young Commercial Real Estate Services LP;
  - b. Colliers International; and
  - c. Lizotte and Associates Real Estate Inc.

The real estate agents provided proposals which described their commercial real estate expertise, estimated marketing timeline, listing commission and recommended list price.

24. After reviewing the proposal submitted on or around March 23, 2022, the Receiver engaged Avison Young by way of a commercial real estate listing agreement (the “**Listing Agreement**”) to market the Lands based on their recent market experience with similar listings, marketing plan and proposed sale timeline.
25. The Commercial Listing went live on or around April 4, 2022. The Commercial Listing included an asking price of \$3.42 million for the Lands.
26. A summary of the key elements of the Commercial Listing included the following:
- a. the Realtor notified the market that the Commercial Listing had launched through the following means:
    - i. the Realtor sent an email containing a brochure describing the Commercial Listing by email to approximately 3,330 individuals. The email was read by 906 unique email addresses with 192 unique individuals opening the brochure within the email;
    - ii. uploaded the Commercial Listing to Avison Young’s website which includes all commercial properties currently for sale;
    - iii. posted the Commercial Listing on LinkedIn; and
    - iv. placed a “For Sale” sign at the physical location of the Lands as well as on a nearby major thoroughfare; and

- b. there were 11 parties who showed sustained interest in the Lands. Of those parties, 4 were identified as having significant interest in both parcels and another 2 parties showed interest in the parcels individually, but not the Lands as a whole.
27. By or about May 3, 2022, the Realtor was of the opinion that the Lands had be sufficiently marketed considering the number of parties who had expressed interested in the Lands. Having reached this opinion, the Realtor announced a bid deadline, calling for offers to be submitted on or before May 12, 2022 at 5PM, Calgary time (the “**Bid Deadline**”). Notice of the Bid Deadline was sent to all parties determined to have sustained interest as well as delivered electronically by email to all parties who had received an initial email regarding the Commercial Listing.
28. The Receiver, in consultation with the Realtor, reviewed the results of the Commercial Listing process following the Bid Deadline and determined it was in the best interest of the receivership estate to proceed to negotiate the offer submitted by the Purchaser, Malhans Holdings Inc. (the “**Malhans Offer**”), for the following reasons:
- a. the offer price exceeded the asking price listed in the Commercial Listing;
  - b. there are no due diligence conditions;
  - c. there are no financing conditions;
  - d. the Purchaser had the ability to fund and post a material cash deposit;  
and
  - e. the Purchaser had the ability to close a transaction.

29. Based on the above, the Receiver proceeded to negotiate the Malhans Offer with the Purchaser to settle on a definitive Sale Agreement which includes the following key terms:

- a. purchase price of \$3,625,000 (the “**Purchase Price**”);
- b. cash deposit, in the amount of \$181,250.00, paid into the Receiver’s trust account by the Purchaser equal to 5% of the Purchase Price (the “**Deposit**”). The Deposit is non-refundable except in the case Court approval for the Sale Agreement is not obtained;
- c. closing date to be on or before 60 days after the date of the approval of the subject sale by this Honourable Court;
- d. the Purchase Price is not subject to any adjustments and all benefits and obligations of every kind and nature accruing, payable or paid and received or receivable in respect of the Lands have been taken into account in the calculation of the Purchase Price; and
- e. the Malhans Offer is not subject to any conditions other than being subject to approval by this Honourable Court.

30. On May 17, 2022, the Receiver and Purchaser entered into the Sale Agreement. The Sale Agreement has been duly executed and is a definitive agreement for the purchase of the Lands. An executed copy of the Sale Agreement is attached as Appendix A.

## RECEIVER'S ANALYSIS OF THE SALE AGREEMENT

31. The Receiver is of the view that the Sale Agreement represents the highest and best realization in respect of the Lands and was commercially reasonable in the circumstances based on the following:
- a. the Lands have been adequately exposed to the market through the Commercial Listing; and
  - b. the Preferred Shareholders who brought the application appointing the Receiver, and who have asserted a claim to the proceeds of the Commercial Listing in addition to holding default judgement, support the Receiver closing the Sale Agreement.

## SUMMARY STATEMENT OF RECEIPTS AND DISBURSEMENTS

32. The Receiver's cash receipts and disbursements in respect of the Property from the Appointment Date to May 31, 2022 are summarized as follows:

<b>Schedule of Receipts and Disbursements</b>	
As of May 31, 2022	
Receipts	
Receiver's Certificate	\$ 4,000
<b>Total - Receipts</b>	<b>4,000</b>
Disbursements	
Appraisal Fees	(3,653)
Bank Fees	38
Other Disbursements	(73)
<b>Total - Disbursements</b>	<b>(3,688)</b>
<b>Net Cash on Hand</b>	<b>\$ 312</b>

- a. Receiver’s Certificate – advanced by Cantech Engineering & Consulting Ltd. (“**Cantech**”), one of the Preferred Shareholders, under the terms of the Receivership Order;
- b. Appraisal Fees – paid to Colliers International to complete to complete an appraisal of the Lands;
- c. Bank Fees and Interest – estate bank accounts and interest paid on the Receiver Borrowings; and
- d. Other Disbursements – filing fees paid to the Official Receiver;

33. As at May 31, 2022, the Receiver holds approximately \$312 of cash on hand.

**SUMMARY OF PROFESSIONAL FEES**

34. The professional fees and disbursements of the Receiver and Receiver’s Counsel for the period of June 24, 2021 to May 31, 2022 are set out in the table below:

<b>Summary of Receiver and Receiver's Counsel's Fees</b>				
<i>For the period of June 24, 2022 to May 31, 2022</i>				
<b>Firm</b>	<b>Fees</b>	<b>Disbursements</b>	<b>GST</b>	<b>Total</b>
Receiver	\$ 46,583	\$ 612	\$ 2,360	<b>\$ 49,555</b>
Receiver's Counsel	30,651	111	1,533	<b>32,294</b>
<b>Total</b>	<b>\$ 77,234</b>	<b>\$ 723</b>	<b>\$ 3,892</b>	<b>\$ 81,848</b>

35. The above amounts have been billed but have yet to be paid as the Receiver does not hold sufficient cash on hand to make these disbursements.

36. The Receiver and Receiver's Counsel anticipate having additional fees and disbursements of \$5,000 and \$8,000, respectively, to complete the administration of the Receivership Proceedings.

37. Statements of account for the services rendered will be made available upon request.

#### **PAYMENT OF FUNDS INTO COURT**

38. As set out in the R&D, the Receiver is holding a small cash balance of approximately \$312 as at May 31, 2022.

39. The nature of these Receivership proceeds are such that there have been minimal cash requirements other than professional fees. Accordingly, the Receiver has minimized the draws against the Receiver's Charge (as defined in the Receivership Order) and intends to use a portion of the proceeds from the Sale Agreement to pay accrued professional fees and Realtor fees. A summary of these estimated disbursements are as follows:



<b>Estimated Payment into Court</b>	
<b>Receiver's cash on hand</b>	<b>\$ 312</b>
<b>Purchase Price</b>	<b>3,625,000</b>
Closing expenses	
Repayment of Receiver's Certificate	(4,000)
Receiver	(54,555)
Receiver's Counsel	(40,294)
Realtor	(108,750)
<b>Total - Closing expenses</b>	<b>(207,598)</b>
<b>Estimated cash for distribution</b>	<b>3,417,402</b>
<b>Payment into Court</b>	<b>\$3,417,714</b>

- a. repayment of Receiver's Certificate – repayment of the amount drawn by the Receiver under the Receiver's Charge to Cantech pursuant to the first priority charge as granted by paragraph 18 of the Receivership Order;
- b. Receiver's Fees – fees and disbursements incurred by the Receiver and additional fees estimated to be incurred to complete the administration of the Receivership Proceedings;
- c. Receiver's Counsel's Fees – fees and disbursements incurred by the Receiver's Counsel and additional fees estimated to be incurred to complete the administration of the Receivership Proceedings; and
- d. Realtor Commissions – commission due to the Realtor pursuant to the Listing Agreement upon closing of the sale of the Lands.

40. Subsequent to the completion of the above disbursements, the Receiver is estimated to be holding approximately \$3.4 million (the “**Remaining Funds**”).
41. As at the date of this First Report, the Receiver is aware of, among others, the following parties who have asserted a priority or secured claims against the proceeds from the sale of the Lands:
- a. Builders’ lien filed by Scheffer Andrew Ltd. in the amount of \$197,605 and assumed by Amrik Land Developments Corp. who subsequently received a summary judgement in the sum of \$178,323.43;
  - b. the preferred shareholders of Roxdale through the security provided by the Mortgage Documents, which includes but is not solely limited to the Preferred Shareholders and some of the Oviatt Plaintiffs;
  - c. Notably, there are a number of writs / *certificates of lis pendens* / other encumbrances and instruments registered against the Lands and other parties who may also be claiming a priority or secured claim against the sale proceeds.
42. As part of its duties as described in the Receivership Order, the Receiver was not tasked with conducting a claims process or priority review of claims with respect to Roxdale or the Lands owned by Cancom. Accordingly, the Receiver has not completed any review of the claims listed above.

43. The Receiver understands that the various stakeholders intend to bring forward applications with respect to how the Remaining Funds should be distributed. Accordingly, the Receiver is proposing to pay the Remaining Funds into Court to allow the stakeholders to make applications with respect to entitlement to the Remaining Funds through an orderly court process that sees all claims made by a certain date, which is proposed to be no later than September 30, 2022.

#### **TERMINATION OF THE RECEIVERSHIP PROCEEDINGS**

44. Subject to the approval of the Sale Agreement by this Honourable Court, closing the Sale Agreement and paying the Remaining Funds into Court, the Receiver will have substantially completed the administration of the Receivership Proceedings. Following the completion of the above noted tasks the Receiver recommends terminating the Receivership Proceedings and discharging the Receiver conditional upon the Receiver filing a Discharge Affidavit confirming that it has completed its remaining administrative tasks and paid all of the Remaining Funds into Court.

#### **RECEIVER'S RECOMMENDATIONS**

45. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court grant the following relief:

- a. approval of the Receiver's activities since the Appointment Date;
- b. approval of the Receiver's fees and disbursements, including the fees and disbursements of the Receiver's Counsel;
- c. granting of the Order Confirming Sale & Vesting Title, approving the Sale Agreement;

- d. granting an order directing the Receiver to pay the Remaining Funds into Court; and
- e. granting of an order discharging the Receiver and terminating these Receivership Proceedings upon the filing of a Discharge Affidavit.

\*\*\*\*\*

All of which is respectfully submitted this 6<sup>th</sup> day of June 2022.

**FTI Consulting Canada Inc.**  
**in its capacity as Court-appointed**  
**Receiver and Manager**  
**of Roxdale Gardens Ltd. and not in**  
**its personal capacity**



Dustin Olver, CA, CPA, CIRP, LIT  
Senior Managing Director

**APPENDIX A**  
**SHAREHOLDER REPORT**

COURT FILE NUMBER	2101 00811
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFFS	CANTECH OILFIELD EQUIPMENT LTD., CELINA CAI XING LUO, HUI YANG XU, CHRISTINE YIN HUI, FANG YANG, KING CHI HUNG, CHUNG YIN SIU, BAO JING MA, SING LIM YEO, YEE KEN YEO, HON HING CHOI CHAN, JOY LING CHAN, QIN LU, DAOJING FINANCIAL CONSULTING LTD., MAGGIE TING HON, ROYAL GREENLAND COMMUNITY LTD., KA FAI PUI, NYUK JIN HUI, KAI WAH HUI, and BENJAMIN JOSHUA HUI
DEFENDANT	ROXDALE GARDENS LTD.
DOCUMENT	REPORT TO COUNSEL TO THE PLAINTIFFS AND TO THE PLAINTIFFS IN ACTION 2103-05948  FTI CONSULTING CANADA INC., IN ITS CAPACITY AS COURT APPOINTED RECEIVER AND MANAGER OF ROXDALE GARDENS LTD.

**August 4, 2021**

# REPORT TO THE SHAREHOLDERS

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## INTRODUCTION

1. On June 24, 2021 (the “**Appointment Date**”), FTI Consulting Canada Inc. was appointed as receiver and manager (the “**Receiver**”) of all the assets, undertakings and properties (the “**Property**”) of Roxdale Gardens Ltd., referred to as the “**Roxdale**” or the “**Company**”, pursuant to an Order of the Honourable M.H. Hollins (the “**Receivership Order**”).

## PURPOSE

2. The purpose of this Report is to:
  - a. Provide a summary of the Receiver’s findings with respect to the Property to Fasken Martineau DuMoulin LLP and Oviatt Law who are counsel to two groups of Roxdale preferred shareholders as required by paragraph 3 (i) of the Receivership Order. The two preferred shareholder groups are hereafter collectively, referred to as the “**Preferred Shareholders**”; and
  - b. Summarize the Receiver’s review of the Property specifically related to the mortgage dated July 9, 2020, held by Roxdale (the “**Mortgage**”) registered against land owned by Cancom Roxdale Inc. (the “**Cancom**”) and the December 17, 2020, Amending Agreement and Notice that amended the terms of the Mortgage (the “**Amending Agreement**”). Hereafter collectively referred to as the “**Mortgage Documents**”).
3. All publicly available information in respect of these proceedings (the “**Receivership Proceedings**”) are posted on the Receiver’s website at <http://cfcanada.fticonsulting.com/roxdalegardens/> (the “**Receiver’s Website**”).



## TERMS OF REFERENCE

4. In preparing this Report, the Receiver has relied upon unaudited financial information, other information available to the Receiver and, where appropriate, the Company's books and records and discussions with various parties (collectively, the "**Information**").
5. 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 Chartered Professional Accountants of Canada 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 Chartered Professional Accountants of Canada Handbook.
6. 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.
7. The Receiver has prepared this Report for counsel to the Preferred Shareholders to assist in determining next steps with respect to the Mortgage Documents and it should not be relied upon for any other purposes.
8. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars. Capitalized terms not otherwise defined are as defined in the Receivership Order.

## BACKGROUND

9. Roxdale was incorporated on February 7, 2019, with a business plan to seek investments from the public with the intended purpose of participating in real estate development investments. In exchange for their investment, Roxdale issued preferred shares to the investing individuals.
10. Subsequent to its incorporation, Roxdale began to solicit investments to fund an investment opportunity in a residential land development project located in Leduc County, Alberta. The residential land development was planned to be complete on two parcels of land legally described as Plan 1821856, Block 1, Lot 3, excepting thereout all mines and minerals area: 6.76 Hectares (16.7 Acres) more or less and Plan 1821856, Block 1, Lot 4, excepting thereout all mines and minerals area: 2.79 Hectares (6.89 Acres) more or less (collectively, the “Land”). The Land is owned by Cancom.
11. Preferred Shareholders would participate in the development project by providing the funding to Roxdale which then advanced the funds to Cancom (“**Roxdale Loan**”) who was meant to use the funds to develop the Lands into residential housing. The Roxdale Loan was secured by the Mortgage.
12. The face value of the Mortgage was \$10 million and the funds which would be paid by Roxdale to Cancom As collateral for the Mortgage, Roxdale registered the Mortgage over the Lands.
13. On or around February 18, 2021, the three former directors of Roxdale Rohit Sethi, Vikas Kwatra and Yuvraj Verma (collectively, the “**Former Directors**”) all filed for personal bankruptcy and were no longer able to act in their capacity as directors of the Company.
14. It is the Receiver’s understanding that the Lands were never developed into residential properties.

## **RECEIVER'S ACTIVITIES**

15. Since the Appointment Date, the Receiver has:
- a. Completed various activities as part of its required statutory administrative tasks as Receiver; and
  - b. Undertook an investigation to gather further information with respect to the Property and the Mortgage.

## **STATUTORY REQUIREMENTS & ADMINISTRATIVE**

16. The Receiver attended to various statutory notices required pursuant to the Receivership Order including mailing a Notice and Statement of Receiver to creditors identified in the application materials filed as part of these Receivership Proceedings and posting a copy of the notice to the Receiver's Website.
17. Notifying the Office of the Superintendent of Bankruptcy of the Receivership Proceedings and obtaining an estate identification number.
18. On July 21, 2021, pursuant to paragraph 3 (r) of the Receivership, the Receiver registered a copy of the Receivership Order against the title of the Lands with the Registrar of Land Titles of Alberta.

## **ESTATE INVESTIGATION**

19. The Receiver contacted individuals and firms known to be connected to the Company to ascertain the current location of the Company's books and records and to assist the Receiver in gaining access to the Company's corporate bank accounts.
20. The following is a list of individuals/firms the Receiver has been in contact with and a summary of the Receiver's findings.

- a. Olympia Trust Company (“**Olympia Trust**”) - July 13, 2021: an investment trustee who facilitated the investment of funds from a number of individuals in Roxdale.
  - i. The Receiver requested any records of investments it facilitated in Roxdale.
  - ii. Olympia Trust provided the Receiver with the wire instructions for the Roxdale account where investments were wired. This summary also included a listing of all payments sent to Roxdale by Olympia Trust.
  
- b. Ms. Melanie Leigh - July 15, 2021: personal bankruptcy trustee for the Former Directors:
  - i. Receiver requested any information collected as part of Ms. Leigh’s investigations for the personal bankruptcies which would be of use to the Receiver. The Receiver was informed that the Former Director’s quoted in their personal bankruptcy filing materials that Roxdale had zero assets and zero liabilities;
  - ii. Ms. Leigh also advised that the Former Directors were involved with a total of 43 corporations and prior to filing for personal bankruptcy, they sought advice for bankrupting the corporations. Ultimately, the decision was made to declare personal bankruptcy due to the cost of completing corporate bankruptcies for all 43 companies; and
  - iii. Based on Ms. Leigh’s review to date, specifically with reference to the sworn affidavits, it was her view that the personal shares held by the Former Directors in Roxdale did not hold any value.

c. Mr. Peter Yates of EnerNext Partners - July 21, 2021: previously acted as corporate counsel for Roxdale (“**EnerNext**”):

i. During his conversation with the Receiver, Mr. Yates provided the following documents with respect to Roxdale:

1. a copy of the Mortgage;
2. Company corporate documents including directors’ resolutions to issue share certificates;
3. a summary of transactions in a trust account whereby EnerNext collected investment funds from individuals and forward the invested funds to Roxdale’s bank account;
4. Roxdale’s incorporation documents;
5. Roxdale’s bylaws; and
6. Contact information for the Former Directors.

ii. During the conversation, Mr. Yates advised the Receiver of the following:

1. his engagement with Roxdale consisted of preparing and maintaining corporate documents, preparing share certificates, collecting investment funds from Preferred Shareholders and forwarding the funds to Roxdale;
2. his involvement did not extend to any real estate transactions;

3. Mr. Yates did not prepare the Mortgage; however he did complete the registration of the Mortgage on the Lands at the request of the Former Directors;
4. Mr. Yates advised that prior to their filing for personal bankruptcy, the Former Directors had requested that Mr. Yates prepare documentation to change to the registration of the Mortgage from the name of Roxdale Gardens Ltd. to be on behalf of the preferred shareholders of Roxdale. In Mr. Yates view the change was not required as the existing registration already secured the interests for the benefit of the Preferred Shareholders. Therefore, these steps were not completed prior to the personal bankruptcy filings.

d. TD Canada Trust - July 21, 2021: the banking institution for Roxdale (“**TD**”):

- i. By tracing the recipient account of trust funds forwarded from EnerNext to Roxdale the Receiver was able to determine that Roxdale had a bank account at TD;
- ii. The Receiver contacted TD to notify them of the Receivership, place an account freeze on any bank accounts in the name of Roxdale and requested bank statements for any Roxdale accounts;  
and

iii. TD identified one bank account in the name of Roxdale bank account number 5233780 (“**Roxdale TD Account**”). TD provided the Receiver with a summary of all bank transactions for the Roxdale TD Account since the date it was opened in April 2019. The Receiver reviewed and investigated the transactions identified on the bank statements, a summary of this review and the flow of funds is provided below.

## FLOW OF FUNDS

21. The Receiver has prepared the below summary of the transactions from the Roxdale TD Account. This summary includes all account transactions since being opened in April 2019 to June 30, 2021:

<b>Summary of Transactions for Roxdale Bank Account</b>	
	<b>Amount</b>
	<i>(CAD)</i>
<b>Credits</b>	
Transfers from EnerNext Counsel	\$ 5,320,000
Transfers from Olympia Trust	1,220,000
<b>Total Traceable Investments from Preferred Shareholders</b>	<b>\$ 6,540,000</b>
Less Bank Fees on wires from Olympia Trust	(175)
Transfers from Related Party Accounts	
From Cancom	373,700
From Live Better	330,000
From Other related party	81,000
Other Misc. Deposits	359,847
<b>Total Account Credits</b>	<b>\$ 7,684,372</b>
<b>Debits</b>	
Transfers to Related Party Accounts	
To Cancom	\$ (6,899,800)
To Live Better	(37,000)
To Other related party	(10,000)
Cheques	(381,043) <sup>1</sup>
Wire Transfers	(350,000)
E- Transfers	(6,003)
Bank Charges	(413)
<b>Total Account Debits</b>	<b>\$ (7,684,259)</b>
<b>Remaining Account Balance</b>	<b>\$ 112.61</b>

22. The Receiver has obtained the following details with respect to the major line items shown in the above table:
- a. Transfers from EnerNext Counsel: amounts received by Roxdale bank which match transfers sent from EnerNext trust account;
  - b. Transfers from Olympia Trust: amounts received by Roxdale which match transfers sent from Olympia Trust account;
  - c. Transfers from Related Party Accounts: amounts received from accounts which were determined to have similar ownership to Roxdale. Amounts from the Cancom Account appear to be for the purpose of maintaining positive cash balances, while transfers from other two accounts appear to be forwarded to Cancom's account shortly after being received;
  - d. Other Misc. Deposits: the Receiver has no information with respect to the source of these deposits, however some may relate to transfers directly from investors;
  - e. Transfers to Related Party Accounts: amounts transferred to Cancom appear to be the forwarding of funds under the terms of the Mortgage. The Receiver has no information with respect to the amounts transferred to other related party accounts; and
  - f. Cheques, Wire Transfers and E-Transfers: the Receiver has no information with respect to where these funds were sent or for what purpose.
23. As of July 21, 2021, the Roxdale bank account balance is \$112.61. The Receiver has frozen all account activity.



## REVIEW OF MORTGAGE

### SUMMARY OF KEY TERMS

24. As part of the review of the Mortgage, the Receiver identified the following key terms:

- a. Cancom is the Mortgagor;
- b. Roxdale is the Mortgagee;
- c. face value of the Mortgage was \$10 million (the “**Principal Sum**”);
- d. security posted by Cancom as collateral for the forwarding of the Principal Sum and to secure Roxdale’s investment is the registration of the Mortgage in Roxdale’s name against the Land;
- e. repayment terms were as follows:
  - i. the Principal Sum would be become due on August 1, 2022;
  - ii. interest of 15% per annum was to be calculated annually any amounts from the Principal Sum which were advanced;
  - iii. for the period of November 19, 2019 to November 15, 2020, interest would be accrued to the on the balance owed;
  - iv. commencing on November 15, 2020, annual interest only payments would be made to Roxdale;
  - v. annual interest payments would be applied in the following priority:
    1. in payment of outstanding interest;

2. in payment of all other charges due under the Mortgage; and
  3. in reduction of the Principal Sum.
- f. the Mortgage could be renewed or extended, from time to time, at the sole option of Cancom; and
  - g. all interest arrears would accrue to the Principal Sum on the date the interest becomes due.

#### **DEFAULT PROVISIONS**

25. The Receiver has not obtained an independent legal opinion but has identified the following as important clauses under the Mortgage with respect to default provisions:

- a. paragraph 5 (e) states that “on default the Mortgagee shall have quiet possession of the said lands free from all encumbrances”;
- b. paragraph 11 describes an acceleration clause which would appear to define the mechanism which accelerates the re-payment of the Principal Sum following non-payment of interest or principal payment as required by the Mortgage;
- c. the first repayment of interest was due on November 15, 2020 (the “**First Interest Repayment Date**”). As defined in the repayment terms of the Mortgage, this repayment would be calculated as follows:
  - i. 15% interest being due on the advanced portion of the Principal Sum;
  - ii. as at November 15, 2020, Roxdale had advanced approximately \$6.9 million;

- iii. this advanced balance would equate to interest of approximately \$1.0 million being due to Roxdale at the First Interest Repayment Date;
- iv. in the period from the opening of the Roxdale TD Account to the First Interest Repayment Date, there was a total of \$373,700 transferred from the Cancom account to the Roxdale TD Account, therefore it does not appear that Cancom satisfied the required interest payment on the First Interest Repayment Date;
- v. subsequent to the First Interest Repayment Date there were no funds transferred to the Roxdale TD Account from the Cancom account, therefore it does not appear that Cancom cured the interest payment default subsequent to the First Interest Repayment Date.

26. Based on the Receiver's review of the Roxdale TD Account and the Mortgage it would appear there is a default under the Mortgage relating to the interest payment due on the First Interest Repayment Date and that this would trigger the acceleration clause in paragraph 11 of the Mortgage.

#### **ADDITIONAL ANALYSIS ON VALIDITY AND ENFORCEABILITY OF THE MORTGAGE**

27. The Receiver has not obtained an independent legal opinion on the validity and enforceability of the Mortgage; however, the Receiver has completed additional investigation and analysis of the facts with respect to the Mortgage. Below is a summary of these findings:

## CONSIDERATION

28. As shown in flow of funds section of this Report, the Roxdale account received substantial investment dollars through Olympia Trust and EnerNext. From its review of the Roxdale account the Receiver is also able to confirm a substantial amount of the funds received by Roxdale were then forwarded Cancom (presumably as consideration for the Mortgage). Below is a description of the flow of funds based on documentation the Receiver has obtained:

- a. the Receiver can identify payments made by individuals listed in Roxdale preferred shareholder listing into trust accounts held by Olympia Trust and EnerNext;
- b. Olympia Trust and EnerNext have confirmed the transfers out of their respective trust accounts were sent to the Roxdale TD Account and the wire instructions utilized to transfer these funds matches the Roxdale TD Account;
- c. in reviewing the Roxdale bank account transactions the Receiver has identified 21 transfers totaling \$6.54 million received from the Olympia Trust and EnerNext accounts; and
- d. the Roxdale bank transactions show a transfer of \$6.9 million to an account owned by Cancom. The majority of these transfers occurred shortly following a deposit of the same amount from either Olympia Trust or EnerNext.

## CONSENT

29. Paragraph 4 of the Mortgage defines the security to be provided to Roxdale by Cancom under the Mortgage to be Cancom's interest in the Lands.

30. The Receiver has completed a corporate registry search for Cancom and has confirmed that the directors of Cancom are the same individuals as the Former Directors. Accordingly, it is the Receiver's opinion that by executing the Mortgage on behalf of both Roxdale and Cancom, the directors of Cancom have consented to Roxdale registering its security under the Mortgage against the Lands.
31. Lastly, Mr. Yates advised the Receiver that the Former Directors requested that he register the Mortgage with land titles in order to secure the Land as collateral for the Mortgage for the benefit of the Preferred Shareholders.

#### **CHARGE**

32. The Receiver has reviewed the land titles searches which were included as part of the application materials for these Receivership Proceedings and has confirmed that Roxdale and the Mortgage is registered on title for both parcels of land which make up the Land. Mr. Yates also confirmed that he completed these registrations for Roxdale. These registrations are listed on the land titles search as having been registered on August 4, 2020.
33. The Receiver also noted the registration of a builder's lien on both parcels of land by Scheffer Andrew Ltd. in the amount of \$197,605. Mr. Yates advised that it is his understanding that these amounts related to engineering work as preparation for development of the Land and that the Former Directors were disputing these amounts. The registration of the builder's liens was prior to the registration of the Roxdale Mortgage having been registered on April 17, 2020.

#### **INFORMATION GATHERED**

34. All information gathered in respect of the Receiver's activities listed above has been compiled on an FTP site. In accordance with paragraph 3(i) of the Receivership Order, the Receiver can grant access to Counsel for the Plaintiffs and Counsel to the Plaintiffs under action 2013-05948 at their request.

## **LAND APPRAISAL**

35. The Receiver contacted three commercial real estate firms to seek land appraisal quotes. Of the three quotes, the Receiver has identified the quote from Colliers to be the best option to provide an independent third-party valuation of the Land. The Receiver will require funding to commission the appraisal should the Preferred Shareholders wish to proceed.

## **RECEIVER'S RECOMMENDATIONS**

36. Based on the foregoing,
- a. The Receiver recommends proceeding with obtaining a current appraisal of the Land; and
  - b. Assuming the appraisal identifies materially positive value in the Land the Receiver recommends engaging independent legal counsel and proceeding with foreclosure proceedings on the Land.

**FTI Consulting Canada Inc.**  
**in its capacity as receiver and manager of**  
**Roxdale Gardens Ltd.**  
**and not in its personal capacity**



Dustin Olver  
Senior Managing Director

**APPENDIX B**  
**SALE AGREEMENT**

## OFFER TO PURCHASE

This Offer is dated for reference the 17<sup>th</sup> day of May, 2022.

TO: **FTI Consulting Canada Inc.** in its capacity as receiver of Roxdale Gardens Ltd.  
(the "**Debtor**") and not in its personal capacity  
  
(the "**Receiver**")

FROM: Malhans Holdings Inc. and/or Nominee (the "**Purchaser**")

### 1. PURCHASE

- 1.1. Purchase Offer – The Purchaser hereby offers to purchase from the Receiver all of the Receiver's rights, title and interest in and to the Lands described in Schedule A hereto, free and clear of all encumbrances save and except those set out in Schedule B hereto (the "**Permitted Encumbrances**"), subject to the terms and conditions herein and in Schedule C.
- 1.2. Acceptance by Receiver - The acceptance of this Offer by the Receiver shall convert this Offer into an irrevocable binding agreement for the sale and purchase of the Lands in accordance with the terms and conditions contained herein, subject to Court approval.

### 2. PRICE, PAYMENT AND DEPOSIT

- 2.1. Purchase Price - The purchase price payable by the Purchaser to the Receiver for the Lands shall be:

\$3,625,000 (the "**Purchase Price**") plus applicable GST, PST and any other governmental taxes, duties and fees.

- 2.2. Payment of Purchase Price - The Purchaser shall pay the Purchase Price, as follows:

- (a) \$181,250.00 by way of bank draft, certified cheque or wire transfer to "FTI Consulting Canada Inc., in trust", within 5 Business Days (as defined in Section 9.14) of Acceptance of this Offer by the Receiver; and
- (b) the balance of the Purchase Price shall be paid by the Purchaser to the Receiver on the Closing Date, as defined in Section 6.1.

- 2.3. Deposit - The Receiver and the Purchaser agree that the Deposit will be paid as follows:

- (a) to the Receiver:

- (i) on account of the Purchase Price contemporaneously with the completion of the sale and purchase contemplated by this Offer; or
-



- (ii) if the purchase and sale contemplated by this Offer is not completed by reason of the Purchaser's default, as liquidated damages to the Receiver which the Receiver agrees shall be the Receiver's only remedy for such default;
- (b) to the Purchaser:
- (i) if the purchase and sale contemplated by this Offer is not completed by reason of the Receiver's default; or
  - (ii) if the sale and purchase contemplated by this Offer is not completed by reason of the Receiver failing to obtain the Court Order as set forth in Section 3, or the Receiver elects to declare this Offer null and void pursuant to Section 4 (unless due to the misrepresentation or default of the Purchaser).

### 3. COURT APPROVAL

- 3.1. The obligation of the Purchaser and the Receiver to complete the transaction contemplated herein is subject, among other things, to the Receiver obtaining an Order of the Alberta Court of Queen's Bench (the "**Court Order**") Court File No. 2101-00811, Calgary Judicial Centre:
- (a) approving the sale of the Lands to the Purchaser in accordance with the terms of this Offer, Schedule C to this Offer (which the Purchaser shall enter into with the Court of Queen's Bench of Alberta, and an executed copy of the same shall be provided together with an executed copy of this Offer, to the Receiver), and vesting title to the Lands in the name of the Purchaser free and clear of all encumbrances, except the Permitted Encumbrances; and
  - (b) authorizing the Receiver to execute such other documents and take such action as may be necessary to assign, convey and transfer title to the other Lands and the Leases to the Purchaser in accordance with the terms of this Offer.

The Court Order is to be obtained on or before 5:00 pm on or before the 60<sup>th</sup> Day after the Acceptance of the Offer by the Receiver, or such later date as the parties may mutually agree (the "**Court Approval Date**"). If the Court Order is not obtained by the Court Approval Date, then failing further written agreement between the parties hereto this Offer shall become null and void and neither party shall have any further obligations to the other in respect of this Offer and the Deposit shall be returned to the Purchaser forthwith.

- 3.2. The Purchaser will provide all co-operation reasonably requested by the Receiver, but at the expense of the Purchaser, to facilitate the Receiver's application for the Court Order.

### 4. RECEIVER'S CONDITIONS

- 4.1. In addition to the requirement of the Court Order set out in Section 3.1, the obligation of the Receiver to complete the purchase and sale of the Lands is subject to the acceptance and confirmation of the terms and conditions and entry into the agreement set forth in Schedule C, and confirmation of, among other things, the following statements / representations being true on the Closing Date:

- (a) all representations and warranties of the Purchaser contained in this Offer and Schedule C shall be true and correct in all material respects as at the time of closing with the same force and effect as if made at and as of such time;
- (b) the Purchaser has complied with and performed in all material respects all of its covenants and obligations contained in this Offer and Schedule C;
- (c) the Purchaser shall have paid to the Receiver at or prior to the time of closing all amounts required to be paid by it under this Offer in the form stipulated in this Offer;
- (d) no action or proceeding at law or in equity shall be pending or threatened by any person, governmental authority, regulatory body or agency to enjoin, restrict or prohibit the purchase and sale of the Lands;
- (e) no governmental authority shall have enacted, issued or promulgated any final or non-appealable order or applicable law which has the effect of: (i) making any of the transactions contemplated by this Offer illegal; or (ii) otherwise prohibiting, preventing or restraining the Receiver from the sale of the Lands;
- (f) all waivers, consents and/or approvals from any governmental authority, as the Parties reasonably determine are required in connection with the consummation of the transaction, shall have been obtained;
- (g) on the Closing Date, the Closing is not otherwise prohibited by applicable law;
- (h) no Party comprising the Receiver has lost its ability to convey the Lands or any of them due to an order of the Court or otherwise pursuant to the Receivership Proceedings; and
- (i) no person having a legal right to do so shall have taken any action to redeem any of the Lands.

If any of the statements described above are untrue on the Closing Date, then at the option of the Receiver, this Offer shall become null and void and neither party shall have any further obligation to the other in respect of this Offer, and the Deposit shall be returned to the Purchaser forthwith (unless due to the misrepresentation or default of the Purchaser).

## 5. PURCHASER'S DUE DILIGENCE

- 5.1. Due Diligence – The Purchaser acknowledges and agrees that (i) it was solely responsible to perform any inspections it deemed pertinent to the purchase of the Lands and to be satisfied as to the condition of the Lands prior to making this Offer, and (ii) notwithstanding the fact that it was permitted to review any diligence materials and disclosures provided by the Receiver, the Receiver assumes no liability for errors or omissions in such diligence materials and disclosure or any other property listings or advertising, promotional or publicity statements and materials, and makes no representations or warranties in respect thereof.

The Purchaser shall assume, at its cost, complete responsibility for compliance with all municipal, provincial and federal laws applicable to the Lands and the use thereof by the Purchaser. It shall be the Purchaser's sole responsibility to obtain, and pay for the cost of obtaining, any consents, permits, licenses, releases or other authorizations

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necessary or desirable for the transfer to the Purchaser of the right, title and interest, if any, of the Debtor and the Receiver in and to the Lands. The Purchaser and its consultants have been provided with reasonable access to the Lands for the purpose of carrying out such due diligence and upon acceptance of this Offer, the Purchaser hereby acknowledges that there are no conditions to Closing in favour of the Purchaser (including, for certainty, without limitation, there is no condition to conduct further due diligence and a financing condition).

- 5.2. Indemnity – The Purchaser has carried out such investigations in a professional and good and workman like manner. The Purchaser shall be responsible for and shall indemnify the Receiver and its affiliates, subsidiaries and associates against any and all liabilities, damages, liens, expenses, losses, costs and actions caused by the access to the Lands by the Purchaser or its advisors prior to the Closing Date. The Purchaser covenants to repair any damage to the Lands arising from such access and investigations on the Lands to the extent reasonably practicable. This covenant of indemnity and repair shall survive any termination of this Offer.
- 5.3. Reliance – The Purchaser confirms, understands and agrees that any information or documentation provided to the Purchaser by the Receiver, whether as part of the Disclosure Documents or otherwise, is subject to change or error and that the Purchaser has, as part of its due diligence process, verified any such information or documentation and that the Purchaser shall not rely on information or documentation received from the Receiver in any manner whatsoever.
- 5.4. As Is/Where Is - The Purchaser confirms, understands and agrees that notwithstanding any other provision contained in this Offer:
- (a) the Receiver makes no representations or warranties of any kind or nature whatsoever with respect to the Lands;
  - (b) the Purchaser is purchasing the Lands "as is, where is" as of the Closing Date;
  - (c) it is the Purchaser's responsibility to satisfy itself with respect to all matters relating to or affecting the Lands, including, without limitation, its state of repair, size, zoning, municipal or other governmental by-laws or restrictions, outstanding work orders or other notices or infractions, servicing, fitness for the Purchaser's intended use, environmental condition of the Lands and the geotechnical soils condition at the Lands; and
  - (d) no property condition statement concerning the Lands has been provided as part of this Offer nor will one be provided.

- 5.5. **Environmental** - The Purchaser specifically acknowledges, covenants and agrees with the Receiver that the Receiver shall have no liability whatsoever to the Purchaser with respect to any loss, liabilities, costs, expenses and outlays incurred by the Purchaser with respect to or as a result of the presence of any Hazardous Material on or under the Lands or the discharge, emission, spill or disposal of any Hazardous Material from the Lands into or upon any other lands or the atmosphere, or any watercourse, body of water or wet land. For the purposes of this Offer, "**Hazardous Material**" means any contaminant or pollutant or any substance that when released into the natural environment is likely to cause at some immediate or future time, material harm or degradation to the natural environment or material risk to human health and, without restricting the foregoing, includes hazardous waste or dangerous goods as defined by applicable federal, provincial or municipal laws for the protection of the natural environment or human health.

6. **CLOSING DATE AND PROCEDURE**

- 6.1. **Closing Date** – Subject to Sections 3 and 4 the closing of the sale and purchase of the Lands as herein contemplated shall take place electronically at 10:00 a.m. on or before the 60 Days after the Court Approval Date (the "**Closing Date**").
- 6.2. **Receiver's Closing Documents** – At least three Business Days prior to the Closing Date, the Receiver shall deliver to the Purchaser's solicitors, properly executed and in registrable form where applicable, all documents reasonably required by the Purchaser's solicitors (which shall be prepared by the Purchaser's solicitors unless otherwise stated (including, without limitation, documents required for registration with the Land Titles Office)), and shall be in form and substance approved by the Purchaser's solicitors and by the Receiver's solicitors, each acting reasonably, in order to complete this transaction in accordance with its terms, including, without limitation:
- (a) the Court Order obtained by the Receiver pursuant to Section 3.1;
  - (b) an assignment of the Receiver's interest in the Plans, Contracts and Permits, if and to the extent assignable by the Receiver; and
  - (c) such other documents as the Purchaser may reasonably require (and that the Receiver is able to deliver) to complete this transaction.
- 6.3. **Purchaser's Closing Documents** - On or before the Closing Date, the Purchaser shall deliver to the Purchaser's solicitors the following:
- (a) a certified cheque, bank draft or wire transfer to "FTI Consulting Canada Inc." for the balance of the Purchase Price, plus applicable tax, except for any mortgage funds being obtained by the Purchaser to complete the transaction which funds shall be paid to the Receiver; and
  - (b) such other documents as the Receiver may reasonably require to document this transaction.
- 6.4. **Financial Wherewithal** – The Purchaser hereby represents and warrants to and in favour of the Receiver that it does have the financial resources necessary to pay, as
-

and when due from the Purchaser, an amount equal to the Purchase Price and any other cash amounts payable by the Purchaser pursuant hereto.

- 6.5. Closing Procedure – Provided that on the Closing Date all documents and the Purchase Price have been delivered as herein provided, the Purchaser's solicitors shall distribute the subject funds to the Receiver.

The Purchaser shall cause its solicitors to return the Court Order to the Receiver in unregistered form, upon demand, in the event that the balance of the Purchase Price, is not paid on the Closing Date to the Receiver's solicitors.

- 6.6. Completion of Closing – Submission for registration of all the requisite documents by the Purchaser in all appropriate offices of public record and all matters of payment and delivery of documents by each party to the other shall be deemed to be concurrent requirements of closing so that the closing shall not be completed hereunder until everything has been paid, delivered and submitted for registration.

## 7. COSTS AND TAXES

- 7.1. Registration Fees - The fees for registration of the Court Order in the Land Titles Office in respect of the transfer of the Lands to the Purchaser shall be paid by the Purchaser.
- 7.2. Cost to Clear Title - The cost of obtaining the Court Order shall be borne by the Receiver and the cost of registering any documents (including the Court Order) required to clear title to the Lands of any encumbrances not vacated by the Court Order shall be borne by the Purchaser.

## 8. POSSESSION, NO ADJUSTMENTS AND RISK

- 8.1. Vacant Possession - Following payment of the balance of the Purchase Price on the Closing Date), the Purchaser shall be entitled to have vacant possession of the Lands.
- 8.2. No Adjustments - All benefits and obligations of every kind and nature accruing, payable or paid and received or receivable in respect of the Lands have been taken into account in the calculation of the Purchase Price and the Parties acknowledge that there will be no adjustments to the Purchase Price.
- 8.3. Risk - The Lands shall be at the risk of the Receiver until the completion of the closing of the sale and purchase herein contemplated and thereafter at the risk of the Purchaser.
- 8.4. Real Estate Commission – The Receiver shall be solely responsible for any commission payable in connection with this Offer.

## 9. MISCELLANEOUS

- 9.1. Residency – The Receiver is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).
- 9.2. Currency - All dollar amounts referred to in this Offer are Canadian dollars.

- 9.3. **Tender** - Any tender of documents or money may be made upon the party being tendered or upon its solicitors and money may be tendered by certified cheque, solicitor's trust cheque or bank draft.
- 9.4. **Time of Essence** - Time is of the essence of this Offer, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Receiver and the Purchaser or by their respective solicitors who are hereby expressly appointed in this regard.
- 9.5. **Construction** - The division of this Offer into articles and sections and the insertion of headings are for convenience of reference only and are not to affect the construction or interpretation of this Offer.
- 9.6. **Notices** - Any notice to be given under this Offer shall be in writing and shall be validly given if delivered, telecopied or sent via email to the parties as follows:

To the Purchaser at:

Odishaw Guido Heil  
 11436 Kingsway NW, Edmonton, AB T5G 0X4  
**Attention:** Ben A. Guido  
 Email: bguido@oghlaw.com

To the Receiver at:

FTI Consulting Canada Inc., in its capacity as  
 Receiver of Roxdale Gardens Ltd.  
 520 - 5th Ave SW, Suite 1610  
 Calgary, AB T2P 3R7  
 Attention: Robert Kleebaum  
 Email: robert.kleebaum@fticonsulting.com

or to such other address as a party may advise the other by written notice hereunder. Any notice addressed and provided as aforesaid shall be deemed to have been given on the day of delivery or electronic transmission if a Business Day and if not a Business Day, then on the next Business Day.

- 9.7. **Entire Agreement** - This Offer, and the schedules attached hereto, constitutes the entire agreement between the parties pertaining to the sale and purchase of the Lands and supersedes all prior agreements, negotiations and discussions, whether oral or written, of the Receiver and the Purchaser.
- 9.8. **Survival** - All representations, warranties, covenants and agreements of the Purchaser and of the Receiver, if any, contained in this Offer shall survive the completion of the sale of the Lands. There are no representations, warranties, guarantees, premises, covenants or agreements made by the parties other than those set out herein.
- 9.9. **Assignment** - At any time prior to the Purchaser's Subject Removal Date the Purchaser shall have the right, with the consent of the Receiver, such consent not to be unreasonably withheld, to assign this Offer, provided that the Purchaser shall not be released from its obligations hereunder notwithstanding any such assignment(s).

- 9.10. Costs and Expenses - Each of the parties shall bear their own costs and expenses incurred or to be incurred in negotiating and preparing this Offer and in the closing of the transaction contemplated herein.
- 9.11. Severability - If any term or condition of this Offer or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of this Offer and the application of that term or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and condition of this Offer shall be valid and enforced to the fullest extent permitted by law.
- 9.12. Further Assurances - Each of the parties shall at all times hereafter execute and deliver, at the request of another party, all such further documents and instruments and shall do and perform all such further acts as may be reasonably required by that other party to give full effect to the intent and meaning of this Offer.
- 9.13. References - Wherever the singular or masculine is used in this Offer, the same shall be deemed to include references to the plural, feminine or body corporate or politic, as the context may require.
- 9.14. Business Days - In this Offer, "Business Day" means Monday to Friday inclusive of each week, excluding days that are statutory holidays in Alberta.
- 9.15. Governing Law - This Offer shall be governed by and construed in accordance with the laws of Alberta and the laws of Canada applicable therein. The Receiver and the Purchaser agree to irrevocably attorn to the jurisdiction and the courts of Alberta, Judicial Center of Calgary, with respect to any dispute relating to this Offer or the purchase and sale transaction contemplated herein.
- 9.16. Binding Effect - This Offer shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.
- 9.17. Execution by Counterpart - This Offer may be executed by the parties in any number of counterparts, each of which, when delivered, either in original or email, shall be deemed to be an original and all of which together shall constitute one and the same instrument.
- 9.18. No Contra Proferentum Provision - This Offer has been negotiated and approved by counsel on behalf of each of the Purchaser and the Receiver, notwithstanding any rule or maxim of construction to the contrary, any ambiguity or uncertainty shall not be construed against either the Purchaser or the Receiver by reason of the authorship of any of the provisions hereof.
- 9.19. Joint and Several - If a party to this Offer is comprised of more than one person, all covenants, obligations and liabilities of those persons shall be joint and several covenants, obligations and liabilities.
- 9.20. Goods and Service Tax - The Purchase Price does not include GST and on the Closing Date, the Purchaser will pay to the Receiver the amount of GST payable in respect of the transaction contemplated hereby, as agreed upon by both the Receiver and the Purchaser, acting reasonably, and the Receiver shall remit such amount

directly to the Canada Revenue Agency or; if the Purchaser is registered for GST purposes on the Closing Date and provides the Receiver with a certificate, prepared by the Receiver's solicitors, signed by an officer of the Purchaser confirming its GST registration number and its covenant to remit the amount of GST, as agreed upon by both the Receiver and the Purchaser, acting reasonably, directly to Canada Revenue Agency.

10. ACCEPTANCE

This Offer is open for acceptance by the Receiver in the manner described below until 5:00 p.m., Calgary, Alberta time, on May 18<sup>th</sup>, 2022, and if not accepted on or before such time, shall be null and void. This Offer may only be accepted by the Receiver signing and delivering the same to the Purchaser on or before the above-specified time for acceptance to the Purchaser's address as set out in Section 9.6.

IN WITNESS WHEREOF the Purchaser has executed this Offer on the 17<sup>th</sup> day of May, 2022.

Malhans Holdings Inc. and/or Nominee  
by its authorized signatory



\_\_\_\_\_  
Name: Pawandeep Malhans




**ACCEPTANCE OF OFFER**

For and in consideration of the covenants and agreements of the Purchaser contained in this Offer and other good and valuable consideration, the receipt and sufficiency of which the Receiver hereby acknowledges, the Receiver hereby irrevocably accepts this Offer and agrees to sell the Lands to the Purchaser on the terms and conditions set forth herein (subject to Court approval and Schedule C attached to the Offer).

IN WITNESS WHEREOF the Receiver has executed this Acceptance of Offer on the 17 day of May 2022.

**FTI CONSULTING CANADA INC.**, in its capacity as  
Receiver of Roxdale Gardens Ltd., and not in its personal capacity

  
\_\_\_\_\_  
Per. Dustin Olver

## SCHEDULE A

### FURTHER DEFINITIONS

**"Lands"** means the lands and premises in Leduc County, in the Province of Alberta, legally described as

PLAN 1821856  
BLOCK 1  
LOT 3  
EXCEPTING THEREOUT ALL MINES AND MINERALS  
AREA: 6.76 HECTARES (16.7 ACRES) MORE OR LESS

PLAN 1821856  
BLOCK 1  
LOT 4  
EXCEPTING THEREOUT ALL MINES AND MINERALS  
AREA: 2.79 HECTARES (6.89 ACRES) MORE OR LESS

including all rights, easements and other real property rights appurtenant thereto.

**"Plans, Contracts and Permits"** means all documentation in the possession of the Receiver's or the manager of the Lands relevant to servicing the Lands (as applicable).

## SCHEDULE B

### PERMITTED ENCUMBRANCES (Title No. 182 154 459 +3)

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ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
3300ED	25/01/1930	UTILITY RIGHT OF WAY GRANTEE - ALTALINK MANAGEMENT LTD. 2611 - 3 AVE SE CALGARY ALBERTA T2A7W7 AS TO PORTION OR PLAN:1866EO "DATA UPDATED BY: TRANSFER OF UTRW 5888 GH" (DATA UPDATED BY: TRANSFER OF UTILITY RIGHT OF WAY 022196930) (DATA UPDATED BY: CHANGE OF ADDRESS 092057662)
752 174 711	01/12/1975	UTILITY RIGHT OF WAY GRANTEE - ALTALINK MANAGEMENT LTD. 2611 - 3 AVE SE CALGARY ALBERTA T2A7W7 AS TO PORTION OR PLAN:1974EO "UTRW NO. CORRECTED BY 922385996 DEC. 10, 1992" (DATA UPDATED BY: TRANSFER OF UTILITY RIGHT OF WAY 022180173) (DATA UPDATED BY: CHANGE OF ADDRESS 092058467)
842 114 570	24/05/1984	UTILITY RIGHT OF WAY GRANTEE - CAPITAL REGION SEWAGE COMMISSION. AS TO PORTION OR PLAN:8420134 "TAKES PRIORITY DATE OF CAVEAT 822212996 DATA UPDATED BY: TRANSFER OF UTRW 862159882"
892 119 736	24/05/1989	CAVEAT RE : AMENDING AGREEMENT CAVEATOR - ALTALINK MANAGEMENT LTD. 2611 - 3 AVE SE CALGARY ALBERTA T2A7W7 (DATA UPDATED BY: TRANSFER OF CAVEAT 022180023) (DATA UPDATED BY: CHANGE OF ADDRESS 092056394)
942 026 829	28/01/1994	CAVEAT RE : RIGHT OF WAY AGREEMENT CAVEATOR - PLAINS MIDSTREAM CANADA ULC. 1400, 607 8 AVE SW CALGARY ALBERTA T2A0A7 (DATA UPDATED BY: TRANSFER OF CAVEAT 942231047) (DATA UPDATED BY: TRANSFER OF CAVEAT 042313172) (DATA UPDATED BY: TRANSFER OF CAVEAT 082096070)

182 154 462 25/06/2018 CAVEAT  
RE : DEFERRED RESERVE  
CAVEATOR - LEDUC COUNTY.  
SUITE 101,1101-5 TH STREET  
NISKU  
ALBERTA T9E2X3

-----  
ENCUMBRANCES, LIENS & INTERESTS

PAGE 3

# 182 154 459 +3

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
182 154 465	25/06/2018	EASEMENT OVER AND FOR BENEFIT OF: SEE INSTRUMENT
182 154 466	25/06/2018	EASEMENT OVER AND FOR BENEFIT OF: SEE INSTRUMENT
202 136 178	02/07/2020	CAVEAT RE : UTILITY RIGHT OF WAY CAVEATOR - BATTLE RIVER COOPERATIVE REA LTD. BOX 1420 CAMROSE ALBERTA T4V1X3

All reservations, provisos, exceptions and conditions expressed in the original grant thereof from the Crown.

## SCHEDULE B

### PERMITTED ENCUMBRANCES (TITLE NO. 182 154 459 +4)

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ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
892 119 736	24/05/1989	CAVEAT RE : AMENDING AGREEMENT CAVEATOR - ALTALINK MANAGEMENT LTD. 2611 - 3 AVE SE CALGARY ALBERTA T2A7W7 (DATA UPDATED BY: TRANSFER OF CAVEAT 022180023) (DATA UPDATED BY: CHANGE OF ADDRESS 092056394)
942 026 829	28/01/1994	CAVEAT RE : RIGHT OF WAY AGREEMENT CAVEATOR - PLAINS MIDSTREAM CANADA ULC. 1400, 607 8 AVE SW CALGARY ALBERTA T2A0A7 (DATA UPDATED BY: TRANSFER OF CAVEAT 942231047) (DATA UPDATED BY: TRANSFER OF CAVEAT 042313172) (DATA UPDATED BY: TRANSFER OF CAVEAT 082096070)
182 154 466	25/06/2018	EASEMENT OVER AND FOR BENEFIT OF: SEE INSTRUMENT

All reservations, provisos, exceptions and conditions expressed in the original grant thereof from the Crown.

## SCHEDULE C

***[Note to potential Purchaser: An executed copy of this Schedule shall be provided together with an executed copy of this Offer to the Receiver.]***

Entered into between THE COURT OF QUEEN'S BENCH OF ALBERTA (the "Seller")

And

Malhans Holdings Inc. and/or Nominee (the "Buyer")

**The terms of this schedule replace, modify or add to the terms of the agreement of purchase and sale or Offer (the "Real Estate Purchase Contract") to which this schedule is attached. Where there is any inconsistency between the terms of this Schedule and the Real Estate Purchase Contract, the provisions of this Schedule shall prevail.**

### **As is – Where is**

1. The Buyer acknowledges and agrees to purchase the mortgaged lands, all buildings and improvements located on the mortgaged lands (the "**Property**"), and any and all fixtures ("**Attached Goods**") (if any) and chattels ("**Unattached Goods**") included in the Real Estate Purchase Contract or included in the sale of the property, "as is" and agrees with the Seller that neither the Seller, nor its agents or representatives have made any representations or warranties with respect to the Property or any Attached Goods or Unattached Goods included in the sale of the Property. Without limiting the generality of the foregoing, the Buyer agrees that neither the Seller nor its agents have made any representations or warranties with respect to:
    - (a) the condition of any buildings or improvements located on the Property;
    - (b) the condition of any Attached Goods or Unattached Goods included in the Real Estate Purchase Contract or otherwise sold with the Property;
    - (c) whether the Property complies with any existing land use or zoning bylaws or regulations, or municipal development agreements or plans;
    - (d) the location of any buildings and other improvements on the Property and whether such location complies with any applicable municipal bylaws or regulations;
    - (e) whether or not any buildings or improvements located on the Property encroach onto any neighbouring lands or any easements or rights of way;
    - (f) whether or not any buildings or improvements located on any neighbouring lands encroach onto the Property;
    - (g) the size and dimensions of the Property or any building or improvements located thereon;
-

- (h) whether or not the Property is contaminated with any hazardous substance; and
- (i) whether or not any of the buildings or other improvements located on the Property have been insulated with urea formaldehyde insulation.

### **Ownership of Unattached Goods**

- 2. The Buyer agrees that the Seller is selling only such interest as it may have in any Attached goods or Unattached Goods referred to in the Real Estate Purchase Contract, or which may be located on the Property, and the Seller does not warrant that it has title to such Attached Goods or Unattached Goods. Further, the Buyer agrees that the Seller will not be liable for the removal of any chattels found on the Property prior to or on the date of closing. On closing, the Buyer may have possession of the Attached Goods and Unattached Goods which are then on or about the Property on an "as is" basis, and the Seller will not provide a Bill of Sale, Warranty, or other title document to the Buyer. Further, there will be no adjustment or abatement of any kind to the Purchase Price with respect to any Attached Goods or Unattached Goods.

### **Real Property Report & Compliance**

- 3. The Seller is not required to provide the Buyer with a real property report or compliance certificate. Should the Seller provide the Buyer with a copy of a survey or real property report, the Buyer agrees that any use of or reliance upon such document shall be at the Buyer's own risk. The Buyer must satisfy itself that the survey or real property report which the Seller might provide accurately reflects the Property and the buildings and improvements located thereon as they currently exist and the Seller shall not be responsible for any errors or omissions which might exist on such document. The Seller does not represent or warrant the accuracy or validity of the said survey or real property report or compliance certificate.

### **Condominium**

- 4. If the Property is a condominium:
  - (a) the Seller is not required to provide any condominium documentation to the Buyer and the Buyer shall be solely responsible to obtain any condominium documentation he may require. Without limiting the generality of the foregoing, the Buyer may obtain on his own and at his sole costs and expenses any estoppel certificate, copy of the condominium bylaws and financial statement for the Condominium Corporation that he may require;
  - (b) the Buyer must satisfy himself with the condition of the condominium unit, the common property, and the financial condition of the condominium corporation and agrees that neither the Seller nor its agents, have made any representations or warranties pertaining to same including, without limiting the generality of the foregoing, the adequacy of any reserve fund the condominium corporation might have, any potential special assessments which might be levied by the condominium corporation or the existence of any legal actions pending against the condominium corporation;
  - (c) the Seller shall be responsible for amounts payable up to the closing date on account of any condominium fees and special assessments levied by the condominium corporation.

**Goods and Services Tax (GST)**

- 5. In addition to the purchase price payable thereunder, the Buyer shall pay to the Seller and indemnify the Seller against all Goods and Services Tax ("GST") payable on the purchase price as required by the *Excise Tax Act*. The Seller will not provide to the Buyer a Certificate of Exempt Supply, or any other certificate certifying that this purchase and sale transaction is not subject to the Goods and Services Tax. Should the Seller fail to collect GST from the Buyer, it shall not be construed by the Buyer as a certification by the Seller that no GST is payable by the Buyer hereunder, and the Buyer shall remain liable for any GST which might be payable with respect to this transaction.

**Acceptance by Facsimile**

- 6. The Seller and Buyer agree that this contract may be signed in counterpart, and the acceptance of this offer communicated or confirmed by facsimile transmission shall be binding upon the parties. The Buyer agrees to promptly deliver an executed original Real Estate Purchase Contract to the Seller.

**Foreclosure Proceeding**

- 7. This offer is being made pursuant to or in a Court of Queen's Bench foreclosure proceeding and, as such, the Offer may be accepted only by Order of said Court and is subject to the terms of that Order. Any agreement arising out of the Seller's acceptance of this Offer is conditional upon the approval thereof by the said Court.



*pm*

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Buyer's Initial (Malhans Holdings Inc. and/or Nominee)

*Click to select date*

17th May 2022

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Date