No. VLC-S-S-207422
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

AND:

2073944 ALBERTA LTD.

DEFENDANT

NOTICE OF APPLICATION

Names of applicant: Grant Thornton Limited, in its capacity as receiver of all of the current and future assets, undertakings and properties of 2073944 Alberta Ltd. (in such capacity, the "**Receiver**")

On Notice to:
Royal Bank of Canada
Satinder Pal Singh
Nirmaljit Saini
Her Majesty the Queen in Right of the Province of British Columbia (Ministry of Finance)
Canada Revenue Agency

TAKE NOTICE that an application will be made by the Receiver to the presiding Judge at the courthouse at Vancouver, British Columbia on **October 6, 2020, at 9:45 a.m.**, to be heard via telephone conference, for the orders set out in Part 1 below.

PART 1: ORDERS SOUGHT

1. An order (the "**Approval and Vesting Order**") substantially in the form attached hereto as **Schedule "A"**.

2. An order (the "**Sealing Order**") substantially in the form attached hereto as **Schedule "B"**.

3. An order (the "**Assignment Order**") substantially in the form attached hereto as **Schedule "B"**.

4. Such further and other orders, declarations, and directions as counsel may request and this Honourable Court deems to be just and convenient in the circumstances.

PART 2: FACTUAL BASIS

A. General Information

Background on Debtor

5. 2073944 Alberta Ltd. (the "**Debtor**") is a corporation existing under the laws of the Province of Alberta. The Debtor was in the business of owning and operating a licensed pub and liquor store known as the "Grapevine Pub and Bistro and Liquor Store" in Burns Lake, British Columbia (the "**Grapevine Pub**"), which the Receiver sold on April 27, 2020 with the approval of the Court. The Debtor still owns certain real property with civic address 907 Trans Canada Frontage Road, Sicamous, British Columbia and legally described as follows:

> PID: 030-378-541
> PARCEL B (BEING A CONSOLIDATION OF LOTS 1 AND 2, SEE CA6644139) SECTION 31 TOWNSHIP 21 RANGE 7
> WEST OF THE 6TH MERIDIAN KAMLOOPS DIVISION YALE DISTRICT
> PLAN 30190
>
> (the "**Sicamous Lands**").

6. The Sicamous Lands comprise a 0.781-acre commercial property consisting primarily of bare land, with two older buildings of minimal value, located adjacent to the Trans-Canada Highway in Sicamous, British Columbia. The District of Sicamous is a resort community located on the shores of Shuswap Lake, 30 kilometres east of Salmon Arm, British Columbia, with a population of approximately 2,400 people.

Creditors of the Debtor

7. Royal Bank of Canada ("**RBC**") is the sole secured creditor to the Debtor. Its security includes, among other things, a general security agreement from the Debtor in respect of all of its present and after-acquired personal property, for which a financing statement was registered in the Personal Property Registry of British Columbia (the "**PPR**"). RBC also has a guarantee and postponement of claim

from Nirmaljit Saini and Satinder Pal Singh, the two principals of the Debtor, that guarantees all debts and liabilities of the Debtor to RBC.

8. In addition to RBC, the Debtor is indebted to Her Majesty the Queen in Right of the Province of British Columbia in respect of unpaid provincial sales tax for which a crown charge financing statement was filed against the Debtor in the PPR.

Insolvency of Debtor and Receivership Order

9. On or about September 30, 2019, the Debtor ceased carrying on business as a result of having insufficient liquidity to fund ongoing operations. By an order made on December 16, 2019 (the "**Receivership Order**"), the Receiver was appointed as the receiver of the assets, undertakings and property of the Debtor (including the Sicamous Lands) with authority to, among other things:

(a) market any or all of the Property (as defined in the Receivership Order, and which for greater certainty, includes the Sicamous Lands);

(b) sell the Property outside the ordinary course of business with approval of the Court; and

(c) apply for a vesting order or such other orders as necessary to convey the Property to a purchaser(s) free and clear of any liens or encumbrances.

B. Sale of Sicamous Lands

Appraisal of Sicamous Lands

10. The Receiver engaged Kent-Macpherson, a real estate appraisal firm, to conduct an independent appraisal of the Sicamous Lands to determine both its market value and forced sale or liquidation value. Kent-Macpherson analyzed the Sicamous Lands and rendered an appraisal report dated February 11, 2020 (the "**Sicamous Appraisal**").

11. The Sicamous Appraisal contains commercially-sensitive information regarding the estimated market value of the Sicamous Lands. To preserve the integrity of any sale process that may result from competing bids for the Sicamous Lands, the Receiver is of the view that the Sicamous Appraisal must remain confidential until a sale transaction for the Sicamous Lands is completed. However, to ensure the

information is available to the Court on this application, the Receiver has included it in a Confidential Supplement to the Receiver's Second Report to Court dated September 22, 2020 (the "**Confidential Supplement**"), which also includes certain other Confidential Information (as defined below in paragraph 26).

Marketing of the Sicamous Lands

12. The Receiver sought and obtained marketing proposals from two commercial real estate brokers in or around the Sicamous area. On or about March 2, 2020, the Receiver engaged one of those real estate brokers – Jim Grieve of Homelife Salmon Arm Realty – to act as its listing agent (in such capacity, the "**Listing Agent**") in respect of the marketing and sale of the Sicamous Lands. The Listing Agent was selected because, among other reasons, he projected a higher sale price than the other commercial real estate broker with whom the Receiver consulted. The Receiver, in consultation with both the Listing Agent and RBC, set the initial listing price for the Sicamous Lands at $325,000.

13. To ensure consistency of offers, the Receiver provided the Listing Agent with a form of Contract of Purchase and Sale, including the Receiver's required terms and conditions as Schedule "A" thereto, to provide to all interested parties.

14. The Listing Agent performed several activities to market the Sicamous Lands to a broad range of potential buyers (the "**Sale Process**"), including without limitation:

(a) on or about March 4, 2020, publishing a listing for the Sicamous Lands on the Multiple Listing Service under MLS#10200713, with additional advertisements posted on REALTOR.ca, the Listing Agent's website (www.homelifesalmonarm.ca), Trade and Invest BC, as well as twelve other real estate sales website;

(b) the Listing Agent promoted the Sicamous Land through a Facebook posting and a broadcast sent via the Canadian Commercial Counsel of Realtors Commercial Broadcast Service on March 10, 2020;

(c) the Listing Agent captured a 360 degree promotional video of the Sicamous Lands, and published the promotional video on www.youtube.com at the following link: https://www.youtube.com/watch?v=b0xJ9BFNzuQ; and

(d) the Listing Agent prepared an information package which was distributed to all interested parties and subsequently updated on or about May 30, 2020 (copies of both the original and updated information packages are attached to the Monitor's Second Report).

20. On May 28, 2020, the Listing Agent received and forwarded to the Receiver an offer for the Sicamous Lands. However, the Receiver decided not to accept this offer because it lacked details with respect to the true identity of the buyer (who was listed as a "nominee" for an undisclosed beneficial purchaser). The Receiver instructed the Listing agent to ask this buyer to resubmit an offer with full particulars about the buyer as well as, among other requests, a higher deposit of at least ten percent.

Acceptable Offer for the Sicamous Lands

15. On June 1, 2020, the Listing Agent delivered the requested revised offer to the Receiver in the form of an offer from 1093657 B.C. Ltd. (the "**Purchaser**") dated May 28, 2020 and which was signed by the same person who had signed the rejected initial offer. The revised offer included a purchase price of $250,000 and provided for a $25,000 deposit (the "**Deposit**") to be paid within 48 hours of offer acceptance. The Receiver engaged with the Purchaser seeking to obtain a higher price; however, the Purchaser's final offer price was $250,000.

16. The Receiver was initially concerned about the Purchaser's ability to satisfy certain conditions included in the Purchaser's Offer (such conditions referred to herein as the "**Purchaser's Conditions**") on or before the proposed June 23, 2020 subject removal date. In particular, the Receiver was concerned regarding the Purchaser: (i) completing and being satisfied with a Phase 1 Environmental Assessment for the Sicamous Lands; and (ii) obtaining approval from the corporate body of the "Dairy Queen" restaurant franchise to open a new franchise location on the Sicamous Lands. However, given the Purchaser's Offer was the only, and therefore the best, offer the Receiver had received in respect of the Sicamous Lands, and

the Listing Agent's confirmation that there were no parties known to be considering an offer at that time, the Receiver determined it was appropriate to work with the Purchaser. In the Receiver's view, it was in the best interest of all stakeholders to attempt completion of a sale of the Sicamous Lands in a timely manner, as opposed to wait for an indeterminate period of time for a superior offer to be tendered.

17. For the above reasons, and in consultation with RBC, the Receiver accepted the Purchaser's Offer on June 8, 2020.

18. As anticipated by the Receiver, the Purchaser took significantly longer than the initial June 23, 2020 subject removal date to satisfy or waive all of the Purchaser's Conditions. In that regard, the Purchaser requested, and the Receiver granted, four (4) extensions to the subject removal deadline, one of which resulted in a reduction in the Purchase Price from $250,000 to $240,000 (the "**Purchase Price**"). In deciding to agree to these additional concessions, the Receiver considered that the Purchaser appeared to be serious and had expended time and resources on its due diligence activities regarding the Sicamous Lands. The Receiver also took into consideration that there were still no other interested parties known to be considering submitting an offer at that time, despite the Listing Agent's continuing activities to market the Sicamous Lands.

19. On or about July 15, 2020, the Receiver, in consultation with the Listing Agent and RBC, reduced the listing price for the Sicamous Lands from $325,000 to $289,000 in an effort to stimulate greater market interest in the Sicamous Lands in the event that the Purchaser did not satisfy or waive the Purchaser's Conditions.

20. On August 20, 2020, the Purchaser satisfied or waived all of the Purchaser's Conditions, and paid the $25,000 Deposit to Borden Ladner Gervais LLP (solicitors for the Receiver) in trust pending the completion of the resulting sale transaction (the "**Sale Transaction**").

21. RBC, the senior secured creditor of the Debtor, has expressed to the Receiver its support for the proposed sale of the Sicamous Lands to the Purchaser pursuant to the Purchaser's Offer and this application.

22. The Receiver is of the view that this Honourable Court should grant the requested Approval and Vesting Order in respect of the Sicamous Lands. Among other reasons:

(a) The Purchaser is a credible party, operating a number of existing Dairy Queen restaurant franchises;

(b) The Purchaser's Offer represents fair and reasonable consideration, consistent with what is set out in the Sicamous Appraisal;

(c) The Purchaser's Offer is, as of the date of the Second Report, condition-free and does not require financing;

(d) The Sicamous Lands were marketed by a commercial real estate broker, and the sale process was robust. The Sicamous Lands were exposed to the market for more than five (5) months, during which time the Listing Agent received inquires from approximately fifteen (15) potential buyers by email, and the Listing Agent's online advertisements were viewed approximately 1,600 times; and

(e) No other offers have been received by the Receiver in respect of the Sicamous Lands, thereby making the Purchaser's Offer the highest and best offer for consideration.

Potential Competing Offers

23. Since the Purchaser satisfied or waived the remaining Purchaser's Conditions on August 20, 2020, the Listing Agent has informed the Receiver that it has received inquiries from certain additional parties expressing an interest in acquiring the Sicamous Lands (such parties referred to herein as "**Potential Bidders**"). The Receiver understands that such Potential Bidders may submit competing bids to purchase the Sicamous Lands at the hearing of this application.

24. To ensure the hearing of this application proceeds in an efficient manner, the Receiver has asked the Listing Agent to provide any Potential Bidder with a copy of the Receiver's form of Contract of Purchase and Sale, together with written instructions prepared by the Receiver's solicitors to complete and submit any offer to acquire the Sicamous Lands in accordance with COVID-19 Notice No. 31 dated June

30, 2020 (*Resumption of Further Court Operations – Sealed Bid Procedures for Foreclosures and Other Matters Involving Sales of Land*) (referred to herein as the "**COVID-19 Bidding Procedure**").

25. To the extent that the Receiver receives any competing offers to acquire the Sicamous Lands from Potential Bidders, it will confidentially submit those competing offers for the Court's review and consideration in accordance with the prescribed COVID-19 Bidding Procedure.

C. Sealing Order regarding Confidential Supplement

26. The Receiver has prepared the Confidential Supplement (as defined in paragraph 11) containing a copy of the Sicamous Appraisal and other commercially-sensitive or confidential information in respect of the Sicamous Lands (collectively, the "**Confidential Information**"). To protect the integrity of any sale process resulting from a Potential Bidder submitting a competing bid for the Court's review and consideration, the Receiver will be seeking a sealing order in respect of the Confidential Supplement.

D. Proposed Bankruptcy Assignment

27. Following the sale of the Sicamous Lands, the primary remaining activity of the Receiver will be to deal with and finalize the claims that are potentially in priority to RBC. These claims included expected claims by Canada Revenue Agency ("**CRA**") with respect to both unremitted source deductions and unremitted Goods and Services Tax ("**GST**"), as well as unremitted British Columbia provincial sales taxes, and workers' compensation premiums that are owing to WorkSafe BC.

28. Despite the Receiver sending the requisite reporting to CRA on February 10, 2020 in respect of source deductions, and on March 19, 2020 in respect of GST liabilities of the Debtor, the Receiver has so far not received a claim (trust or otherwise) from CRA in respect of unremitted source deductions or GST liabilities.

29. It is unclear to the Receiver when the two expected CRA claims will be finalized or submitted. Though CRA has verbally informed the Receiver that it intends to conduct trust examinations on the GST and payroll accounts, the Receiver has not received any formal notice of such trust examinations to date. Further, the Receiver understands that CRA has ceased conducting trust examinations several months ago

on account of the COVID-19 pandemic. When CRA does resume conducting trust examinations, it would be reasonable to expect there to considerable backlog and further delay.

30. The Receiver believes that, once the sale of the Sicamous Lands is completed, any further delays in finalizing the CRA claims will prolong the time and cost of the receivership, and thus prevent the Receiver from being able to make final distributions to RBC (as secured creditor) in a timely manner. The Receiver is further of the view that it would be more efficient, both in terms of time and cost, to deal with finalizing the CRA claims, as well as the claims of unsecured creditors, in a bankruptcy proceeding.

31. The Receiver anticipates there would be sufficient surplus in the receivership estate to fund the costs of administering a bankruptcy, including payment of the estimated source deductions deemed trust claim and a distribution to unsecured creditors, after repayment of: (i) a $50,000 advance made by RBC in January 2020 pursuant to Receiver's Certificate to fund these receivership proceedings (the "**RBC Advance**"), plus accrued interest thereon; and (ii) RBC's secured claim in-full, which RBC estimates to be approximately $715,000.

32. Accordingly, the Receiver recommends that this Honourable Court grant the Receiver authority to file an assignment in bankruptcy on behalf of the Debtor, as well as pay a retainer of $10,000 from the receivership estate to the trustee-in-bankruptcy as security for the trustee's costs of administering that estate. The Receiver is of the view that it would be most efficient for Grant Thornton Limited to act as the trustee-in-bankruptcy of the Debtor, given that Grant Thornton Limited (in its capacity as Receiver) has intimate knowledge of the financial affairs of the Debtor.

33. For these reasons, the Receiver requests the Assignment Order:

(a) authorizing, but not obligating, the Receiver to assign the Debtor into bankruptcy following the sale of the Sicamous Lands, in order to engage and implement the scheme of creditor priorities provided in the *Bankruptcy and Insolvency Act* (Canada);

(b) directing the Receiver to pay a retainer of $10,000 from the receivership estate to the trustee-in-bankruptcy; and

(c) authorizing the Receiver to immediately repay the RBC Advance from the receivership estate.

34. Following such assignment into bankruptcy, the Receiver intends to forthwith file an application with the Honourable Court seeking an order discharging the Receiver and approving, among other things, the Receiver's activities, its fees and disbursements and those of its legal counsel, and a final distribution payment to RBC (as secured creditor).

PART 3: LEGAL BASIS

A. <u>General Powers and Obligations of the Receiver</u>

35. The Court may appoint a receiver to take possession of an insolvent person's property, exercise any control that the court considers advisable over that property, and to take any other action that the court considers advisable.

Bankruptcy and Insolvency Act, R.S.C. 1985, c.B-3 (the "**BIA**") s. 243.

36. A receiver has the obligation to act honestly and in good faith, and to deal with the property of an insolvent person in a commercially reasonable manner.

BIA s. 247.

B. <u>Approval of Sale Transaction</u>

37. In considering a proposed sale transaction regarding the property of an insolvent person, the Court considers:

(a) whether the receiver made a sufficient effort to obtain the best price and has not acted improvidently;

(b) the interests of all parties;

(c) the efficacy and integrity of the process by which offers have been obtained; and

(d) whether there has been unfairness in working out of the process.

Royal Bank v. Soundair Corp., (1991), 7 C.B.R. (3d) 1 (Ont. C.A.) at Para 16.

38. The Receiver submits that it has made sufficient effort to obtain the best price and that it has not acted improvidently. The Receiver is of the view that the Sale Process in respect of the Sicamous Lands was fair and reasonable in the circumstances given, among other reasons, the following:

(a) a professional real estate listing agent was engaged to conduct the Sale Process and market the Sicamous Lands for sale to a broad set of potential third party purchasers for value;

(b) all potential buyers had access to the same information regarding the Sicamous Lands;

(c) the nature of the Sicamous Lands as, effectively, bare land;

(d) the Receiver's view that a longer period of active receivership and a longer sales process are inappropriate in the circumstances, given the Purchaser does not require acquisition financing, and is otherwise ready, willing and able to close the Sale Transaction and purchase the Sicamous Lands in accordance with the Purchaser's Offer; and

(e) the risk associated with a prolonged sales process in light of the on-going public health crisis caused by the COVID-19 pandemic.

39. In reviewing, assessing, and selecting the Purchaser's Offer for the Sicamous Lands, the Receiver has confirmed (among other things):

(a) the Purchaser's ability to close the Sale Transaction within a short period of time, which reduces the ongoing administrative costs of the receivership, and minimizes the closing risk;

(b) that the Sale Process in respect of the Sicamous Lands was efficacious and conducted with integrity in all respects; and

(c) the support of RBC, the only secured creditor of the Debtor.

40. Based on the above considerations, the Receiver seeks the Approval and Vesting Order approving the: (i) Sale Transaction contemplated by the Purchaser's Offer, (ii) the acceptance, execution and entering into of the Purchaser's Offer by the Receiver, and (iii) vesting of clear title in and to the Sicamous Lands to the Purchaser in accordance with the terms of the Purchaser's Offer (as amended).

C. <u>Sealing Order</u>

41. The Receiver requires the Sealing Order authorizing it to file, under seal, the Confidential Supplement to the Receiver's Second Report to Court for the purpose of, among other things, protecting

the commercially sensitive and/or confidential nature of the Confidential Information with respect to the value of the Sicamous Lands as set out in the Sicamous Appraisal.

42. The Court has jurisdiction to order that certain materials filed with the Court be sealed on the Court file. The Supreme Court of Canada has stated that such order can be granted where:

(a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and

(b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

Sierra Club of Canada (Minister of Finance), 2002 SCC 41 ("***Sierra Club***"), at para 53.

43. The materials sought to be sealed fit squarely within the test established by *Sierra Club*. The Confidential Supplement contains a copy of the Sicamous Appraisal, which contains information that should remain confidential to preserve the integrity of the Sale Process in the event another party submits a competing bid for the Court's consideration.

44. The Receiver submits that the salutary effects of sealing the Confidential Supplement outweigh any possible deleterious effects, and that such possible effects will be mitigated to the extent practicable. In particular, details on the non-confidential aspects of the Sale Process regarding Sicamous Lands are contained in the Receiver's Second Report to the Court, which will be made publicly available by the Receiver through the website that it maintains for these proceedings.

45. The Receiver will follow the procedures of *BC Supreme Court Practice Directive* PD-58, Practice Direction - Sealing Orders in Civil and Family Proceedings, February 10, 2020, modified as necessary in light of:

(a) the Court Notices to the Profession pertaining to modifications of court operations in response to the COVID-19 pandemic;

(b) further direction by the Vancouver Court Registry regarding filing procedures for sealing orders in light of the Court Notices; and

(c) such further direction as may be provided by this Honourable Court.

D. Proposed Bankruptcy Assignment

46. Courts in Canada have specifically held that the Court has jurisdiction to authorize and direct a court-appointed receiver or liquidator to put a debtor company into bankruptcy.

Royal Bank of Canada v. Sun Squeeze Juices Inc. and Beit-Kirur Ltd. 1994 CarswellOnt 266, [1994] O.J. No. 567, 24 C.B.R. (3d) 302, at para 10.

RBC v. Gustin, 2019 CarswellOnt 14764, 2019 ONSC 5370, 310 A.C.W.S. (3d) 19, 73 C.B.R. (6th) 289, at para 15.

47. Assigning the Debtor into bankruptcy would serve as an orderly and cost-effective means to wind-down the Debtor, and distribute its remaining assets to stakeholders.

E. General

48. In addition to the foregoing, the Receiver will rely on:

(a) the applicable *Supreme Court Civil Rules*;

(b) Sections 49 and 243 of the *Bankruptcy and Insolvency Act* (Canada); and

(c) the inherent jurisdiction of this Honourable Court.

PART 4: MATERIALS TO BE RELIED ON

49. The Applicant relies on:

(a) the Receiver's Second Report to the Court dated September 22, 2020;

(b) the Receiver's Confidential Supplement to the Second Report dated September 22, 2020 *(to be filed subject to the Sealing Order)*; and

(c) such other materials as counsel may advise and this Honourable Court may permit.

The Applicant estimates that the application will take 20 minutes.

☐ This matter is within the jurisdiction of a master.

☑ This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

(a) file an application response in Form 33,

(b) file the original of every affidavit, and of every other document, that

(i) you intend to refer to at the hearing of this application, and

(ii) has not already been filed in the proceeding, and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

(i) a copy of the filed application response;

(ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

(iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: September / 22 / 2020

RMLaity

Signature of Ryan Laity
☐ applicant ☑ lawyer for Applicant

Borden Ladner Gervais LLP
1200 Waterfront Centre
200 Burrard Street, P.O. Box 48600
Vancouver, BC V7X 1T2
Ryan Laity
Tel: 604.632.3544
Email : rlaity@blg.com

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs ________________ of Part 1 of this notice of application

☐ with the following variations and additional terms:

____

____

____

Date: _______________ ______________________________

Signature of ☐ Judge ☐ Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matters concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☑ other

Schedule “A”

FORM OF APPROVAL AND VESTING ORDER

Please see attached.

No. VLC-S-S-207422
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

AND:

2073944 ALBERTA LTD.

DEFENDENT

ORDER MADE AFTER APPLICATION

(APPROVAL AND VESTING ORDER)

BEFORE THE HONOURABLE	)	
_______________________________	)	OCTOBER/6/2020
	)	

THE APPLICATION of Grant Thornton Limited, in its capacity as Court-appointed Receiver (in such capacity, the "**Receiver**") of the assets, undertakings and properties of the 2073944 Alberta Ltd. (the "**Debtor**"), coming on for hearing at Vancouver, British Columbia, on the 6th day of October, 2020; AND ON HEARING Ryan Laity, counsel for the Receiver, and those other counsel listed on **Schedule "A"** hereto, and no one appearing for the Debtor or otherwise although duly served; AND UPON READING the material filed, including the Receiver's Second Report to Court dated September 22, 2020 (the "**Report**");

THIS COURT ORDERS AND DECLARES THAT:

1. The sale transaction (the "**Transaction**") contemplated by the Contract of Purchase and Sale dated May 28, 2020, as amended (collectively, the "**Sale Agreement**") between the Receiver and 1093657 B.C. Ltd. (the "**Purchaser**"), a copy of which is attached as **Schedule "B"** hereto, is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the real property and assets described in the Sale Agreement (the "**Purchased Assets**").

2. Upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as Schedule "C" hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule "D"** hereto shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary

claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court dated December 16, 2019; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (iii) those Claims listed on **Schedule "E"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "F"** hereto), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. Upon presentation for registration in the Land Title Office for the Land Title District of Kamloops of a certified copy of this Order, together with a letter from Borden Ladner Gervais LLP solicitors for the Receiver, authorizing registration of this Order, the British Columbia Registrar of Land Titles (the "**BC Registrar**") is hereby directed to:

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

   (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Lands all of the registered Encumbrances except for those listed in **Schedule "F".**

4. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.

5. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.

6. Subject to the terms of the Sale Agreement, vacant possession of the Purchased Assets, including any real property, shall be delivered by the Receiver to the Purchaser at 12:00 noon on the Closing Date (as defined in the Sale Agreement), subject to the permitted encumbrances as set out in the Sale Agreement and listed on **Schedule "F"**.

7. The Receiver, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.

8. Notwithstanding:

   (a) these proceedings;

(b) any applications for a bankruptcy order in respect of the Debtor now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made by or in respect of the Debtor,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

10. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

11. The time for service of the Notice of Application and supporting materials be and is hereby abridged such that this application is properly returnable today.

12. Endorsement of this Order by counsel appearing on this application, other than counsel for the Receiver, is hereby dispensed with.

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

____

Signature of Ryan Laity
☐ Party ☑ Lawyer for the Receiver

BY THE COURT:

____

REGISTRAR

<u>Schedule "A" – Counsel</u>

Counsel	Party Represented
Ryan Laity	The Receiver

Schedule "B" – Sale Agreement

Please see attached.

<u>Schedule "C" – Form of Receiver's Certificate</u>

No. VLC-S-S-207422
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

Plaintiff

AND:

2073944 ALBERTA LTD.

Defendent

<u>RECEIVER'S CLOSING CERTIFICATE</u>

All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Approval and Vesting Order, as pronounced by the Honourable **[Mr./Madam]** Justice ______________ in these proceedings on the ______ day of ________________, 2020 (the "**Sale Approval Order**").

Pursuant to paragraph 2 of the Sale Approval Order, Grant Thornton Limited, in its capacity as Receiver of the assets, properties and undertakings of 2073944 Alberta Ltd., hereby delivers and files with the Court this Certificate and hereby certifies that the Transaction contemplated in the Sale Agreement has closed and is complete in all respects.

DATED the ______ day of ______________, 2020

GRANT THORNTON LIMITED, in its capacity as Receiver of the properties, assets, and undertakings of 2073944 Alberta Ltd., and not in its personal capacity:

Per: ____
Name:
Title:

<u>Schedule "D" – Purchased Assets</u>

All right, title and interest of 2073944 Alberta Ltd. in and to:

(a) the Lands (as defined in **Schedule "F"** hereto); and

(b) all personal property that is situated on, affixed to, or used by 2073944 Alberta Ltd. in connection with, the Lands.

Schedule "E" – Claims to be deleted/expunged from title to Real Property

Legal Parcel	Claims to be deleted/expunged from title
PID: 030-378-541 PARCEL B (BEING A CONSOLIDATION OF LOTS 1 AND 2, SEE CA6644139) SECTION 31 TOWNSHIP 21 RANGE 7 WEST OF THE 6TH MERIDIAN KAMLOOPS DIVISION YALE DISTRICT PLAN 30190	▪ Judgment CA7999320 registered on January 24, 2020 in favour of Royal Bank of Canada

Schedule "F" – Permitted Encumbrances, Easements and Restrictive Covenants related to Real Property

1. The reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown;

2. A legal notation filed under Plan Number PLAN M11420 pursuant to the *Agricultural Land Commission Act*;

3. A legal notation filed under Registration Number WX2077759 in respect of a permit under Part 14 of the *Local Government Act*, R.S.B.C. 2015, Ch. 1; and

4. A restrictive covenant filed on August 22, 1979 under Registration Number P48889.

Schedule "G" – The Lands

The real property with civic address 907 Trans Canada Frontage Road, Sicamous, British Columbia, and legally described as follows:

> PID: 030-378-541
> PARCEL B (BEING A CONSOLIDATION OF LOTS 1 AND 2, SEE CA6644139)
> SECTION 31 TOWNSHIP 21 RANGE 7 WEST OF THE 6TH MERIDIAN
> KAMLOOPS DIVISION YALE DISTRICT PLAN 30190

NO. VLC-S-S-207422

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

Plaintiff

- and -

2073944 ALBERTA LTD.

Defendant

ORDER MADE AFTER APPLICATION

(APPROVAL AND VESTING ORDER)

BORDEN LADNER GERVAIS LLP
1200 Waterfront Centre
200 Burrard Street, P.O. Box 48600
Vancouver, BC V7X 1T2
Ryan Laity
Tel: 604.632.3544
Email : rlaity@blg.com

Schedule "B"

FORM OF SEALING ORDER

Please see attached.

No. VLC-S-S-207422
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

AND:

2073944 ALBERTA LTD.

DEFENDANT

ORDER MADE AFTER APPLICATION

(SEALING ORDER)

BEFORE THE HONOURABLE ______________________)) OCTOBER / 6 / 2020)

THE APPLICATION of Grant Thornton Limited, in its capacity as Court-appointed Receiver (in such capacity, the "**Receiver**") of the assets, undertakings and properties of the 2073944 Alberta Ltd. (the "**Debtor**"), coming on for hearing at Vancouver, British Columbia, on the 6th day of October, 2020; AND ON HEARING Ryan Laity, counsel for the Receiver, and those other counsel listed on **Schedule "A"** hereto, and no one appearing for the Debtor or otherwise although duly served; AND UPON READING the material filed, including the Receiver's Second Report to Court dated September 22, 2020 (the "**Report**");

THIS COURT ORDERS AND DECLARES THAT:

1. **Access to Sealed Items permitted by:**

[__] Counsel of Record
[__] Parties on Record
[__] Further Court Order
[**X**] Others: **Counsel to the Receiver**

2. **Items to be sealed**

Document Name	**Date filed:** *(Date on Court Stamp)*	**Number of copies filed, including any extra copies for the judge**	**Duration of sealing order:** *(to specific date or until further order)*	**Sought:**	**Granted**	
					YES	NO
(1) Entire File	N/A	N/A	N/A	☐	☐	☐

(2) <u>Specific Document</u> **Confidential Supplement to the Receiver's Second Report to Court dated September 22, 2020**	**_______________, 2020**	**1**	**Until further order**	☑	☑	☐
(3) <u>Clerk's Notes</u>	N/A	N/A	N/A	☐	☐	☐
(4) <u>Order</u>	N/A	N/A	N/A	☐	☐	☐

3. Endorsement of this Order by counsel appearing on this application, other than counsel for the Receiver, is hereby dispensed with.

4. The time for service of the Notice of Application and supporting materials be and is hereby abridged such that this application is properly returnable today.

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

____
Signature of Ryan Laity
☐ Party ☑ Lawyer for the Receiver

BY THE COURT

____
REGISTRAR

Schedule "A"

LIST OF COUNSEL

Name of Counsel	Party Represented
Ryan Laity	The Receiver

No. VLC-S-S-207422
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

- and -

2073944 ALBERTA LTD.

DEFENDANT

ORDER AFTER APPLICATION

(SEALING ORDER)

BORDEN LADNER GERVAIS LLP
1200 Waterfront Centre
200 Burrard Street, P.O. Box 48600
Vancouver, BC V7X 1T2
Ryan Laity
Tel: 604.632.3544
Email : rlaity@blg.com

Schedule "C"

FORM OF ASSIGNMENT ORDER

Please see attached.

No. VLC-S-S-207422
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

AND:

2073944 ALBERTA LTD.

DEFENDENT

ORDER MADE AFTER APPLICATION

(BANKRUPTCY ASSIGNMENT)

BEFORE THE HONOURABLE	)	
________________________________	)	OCTOBER/6/2020
	)	

THE APPLICATION of Grant Thornton Limited, in its capacity as Court-appointed Receiver (in such capacity, the "**Receiver**") of the assets, undertakings and properties of the 2073944 Alberta Ltd. (the "**Debtor**"), coming on for hearing at Vancouver, British Columbia, on the 6th day of October, 2020; AND ON HEARING Ryan Laity, counsel for the Receiver, and those other counsel listed on **Schedule "A"** hereto, and no one appearing for the Debtor or otherwise although duly served; AND UPON READING the material filed, including the Receiver's Second Report to Court dated September 22, 2020 (the "**Report**");

THIS COURT ORDERS AND DECLARES THAT:

1. The Receiver be and is hereby authorized, but not obligated, to file an assignment into bankruptcy under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") on behalf of the Debtor at any time following the delivery of the Receiver's Certificate (as defined in the Order Made After Application (Approval and Vesting Order) dated as of today's date, and that Grant Thornton Limited is authorized, but not obligated, to act as trustee in bankruptcy of the Debtor in respect of any such bankruptcy proceedings.

2. Should the Receiver file an assignment into bankruptcy under the BIA on behalf of the Debtor pursuant to paragraph 1 above, the Receiver shall be permitted to pay the corresponding trustee-in-bankruptcy a retainer in the amount of $10,000 for the administration of the estate of the Debtor.

3. The Receiver is hereby permitted to repay the RBC Advance (as defined in the Receiver's Second Report to Court) in the principal amount of $50,000, plus accrued interest thereon up to the date of payment.

4. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

5. The time for service of the Notice of Application and supporting materials be and is hereby abridged such that this application is properly returnable today.

6. Endorsement of this Order by counsel appearing on this application, other than counsel for the Receiver, is hereby dispensed with.

7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

____
Signature of Ryan Laity
☐ Party ☑ Lawyer for the Receiver

BY THE COURT:

____
REGISTRAR

<u>Schedule "A" – Counsel</u>

Counsel	Party Represented
Ryan Laity	The Receiver

NO. VLC-S-S-207422

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

Plaintiff

- and -

2073944 ALBERTA LTD.

Defendant

ORDER MADE AFTER APPLICATION

(BANKRUPTCY ASSIGNMENT)

BORDEN LADNER GERVAIS LLP
1200 Waterfront Centre
200 Burrard Street, P.O. Box 48600
Vancouver, BC V7X 1T2
Ryan Laity
Tel: 604.632.3544
Email : rlaity@blg.com

No. VLC-S-S-207422
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

AND:

2073944 ALBERTA LTD.

DEFENDANT

NOTICE OF APPLICATION
(APPROVAL AND VESTING ORDER)

BORDEN LADNER GERVAIS LLP
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200 Burrard Street, P.O. Box 48600
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