NO. SML-S-S-1956999
SMITHERS REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

Petitioner

AND:

2073944 ALBERTA LTD.

Respondent

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)

TAKE NOTICE that an application will be made by the Receiver to the presiding Judge at the courthouse at Victoria, on Thursday April 16, 2020, at 11:00 am for the orders set out in Part 1 below.

PART 1: ORDERS SOUGHT

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

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

3. 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

Background on Debtor

4. 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" and situated on the real property with civic address

156 Francois Lake Drive, Burns Lake, British Columbia, V0E 1E0 and with the following legal descriptions:

(a) PID: 008-765-821
LOT 2 BLOCK 8 DISTRICT LOT 6309 RANGE 5 COAST DISTRICT PLAN 1180

(b) PID: 008-765-880
LOT 3 BLOCK 8 DISTRICT LOT 6309 RANGE 5 COAST DISTRICT PLAN 1180

(c) PID: 010-173-897
LOT 14 BLOCK 8 DISTRICT LOT 6309 RANGE 5 COAST DISTRICT PLAN 1180

(d) PID: 008-765-901
LOT 15 BLOCK 8 DISTRICT LOT 6309 RANGE 5 COAST DISTRICT PLAN 1180

(collectively, the "**Lands**").

5. The Debtor also owns real property located in Sicamous, British Columbia. This property has been listed for sale, but there is presently no transaction or offer for that property.

Creditors of the Debtor

6. Royal Bank of Canada ("**RBC**") is the senior secured creditor to the Debtor. Its security includes a general security agreement from the Debtor in respect of all present and after acquired personal property registered in the Personal Property Registry of British Columbia (the "**PPR**") and a mortgage and assignment of rents in respect of the Lands. RBC also has a guarantee and postponement of claim from Nirmaljit Saini and Satinder Pal Singh guaranteeing all debts and liabilities of the Debtor to RBC.

7. Her Majesty the Queen in Right of the Province of British Columbia (the "**BC Crown**") in respect of unpaid provincial sales tax for which a crown charge financing statement was filed in the PPR.

Insolvency of Debtor and Receivership Order

8. 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 Lands) with authority to, among other things:

(a) market any or all of the Property (as defined in the Receivership Order);

(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.

Appraisal of Business Assets

9. The Receiver engaged Kent-Macpherson to conduct an independent appraisal of the Lands and other property (excluding inventory) situated on, affixed to, or used in connection therewith (collectively, the "**Business Assets**") to determine both their market value and forced sale or liquidation value. The Receiver selected Kent-Macpherson in particular because of its experience in valuing private liquor store and pub businesses.

10. Kent Macpherson analyzed the Business Assets and rendered an appraisal report dated February 5, 2020 (the "**Appraisal**"). The Appraisal contains commercially-sensitive information regarding the Business Assets, and the Receiver is of the view that the Appraisal must remain confidential until a sale transaction for the Business Assets 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 First Report to Court dated April 8, 2020 (the "**Confidential Supplement**"), which also includes other Confidential Information (as defined below in paragraph 23).

Marketing of the Property

11. On or about February 6, 2020, the Receiver engaged Larry Berisoff with Re/Max Kelowna (the "**Listing Agent**") to act as its listing agent in respect of the marketing and sale of the Business Assets. In consultation with the Listing Agent and RBC, the Receiver set $995,000 as the initial listing price for the Business Assets.

12. The Listing Agent and Receiver undertook various activities in respect of the sale and marketing process of the Lands and related Business Assets (collectively, the "**Sale Process**"), including:

a. On or about February 10, 2020, publishing a listing for the Business Assets on REALTOR.ca, the Listing Agent's website, www.SyberRealty.com (under the

RE/MAX Commercial brand), the BC Northern Real Estate Board, and www.businessesforsale.com;

b. The Listing Agent prepared and distributed a sales brochure and disseminated notice to a number of potentially interested parties from its database of potential buyers;

c. The Listing Agent published an advertisement in the March 2020 edition of Western Investor;

d. The Receiver, through the Listing Agent, also made certain financial information available to each participant in the Sales Process, including 2018 unaudited financial statements, monthly sales reports and a listing of the Inventory; and

e. The Receiver was contacted directly by a number of additional parties expressing interest in the Business Assets and directed those inquires to the Listing Agent.

13. The Receiver and Listing Agent originally set March 23, 2020 as the deadline to receive initial offers. Based on the market response, the Receiver and Listing Agent modified the deadline for parties to submit offers for the Business Assets to March 13, 2020 (the "**Initial Offer Deadline**"). The Listing Agent took immediate steps to communicate this change to all interested parties with whom he had already been in contact, and updated his website listings accordingly.

14. In these preliminary stages of the Sale Process, the Listing Agent informed the Receiver that, as of the Initial Offer Deadline, it had received inquiries from 24 parties who were potentially interested in acquiring the Business Assets and who requested and were sent sales packages. According to the Listing Agent, the listing for the Business Assets on its website and on www.BusinessForSale.com were viewed 1,072 times and 245 times, respectively.

15. The Receiver and Listing Agent received six (6) offers by the Initial Offer Deadline. The Receiver reviewed and consider all offers, and identified three (3) offers (the "**Shortlisted Offers**") as the strongest offers based on their price, terms and other relevant factors, including closing risk. The Receiver determined that the other three (3) offers had insufficient consideration, untenable structure or unacceptable conditions and, accordingly, were not appropriate to move forward in the process.

16. The Receiver and Listing Agent contacted each of the parties that submitted Shortlisted Offers, asked questions regarding their bids, and requested that the party submit their final, highest and best offer by March 23, 2020 (the "**Final Offer Deadline**").

Successful Offer for the Business Assets

17. The Listing Agent received three (3) competing offers on or before the Final Offer Deadline. In reviewing each of competing offers, the Receiver determined that the offer (the "**Purchaser's Offer**") received from 1243997 B.C. Ltd**.** (the "**Purchaser**") was superior to the other offers received, both on the terms and on the prospect of a maximized recovery for RBC and the Debtor's other creditors. Among other reasons, the Purchaser's Offer includes fair and reasonable consideration, is condition-free, and does not require financing.

18. The Receiver determined that the other two offers (together, the "**Other Offers**") had unacceptable closing risk. In particular, one offer was conditional on completing due diligence, despite the Receiver requesting subject-free offers, and the other bidder did not provide proof of funds, despite the Receiver specifically requesting evidence of that bidder's ability to complete the transaction. The Receiver was particularly concerned regarding bidders' ability to close and access to funds in light of the ongoing public health crisis caused by the COVID-19 pandemic.

19. The Receiver determined that the Purchaser's Offer was the superior offer and preferable to the Other Offers because:

a. the Purchaser is a credible party, operating other businesses of a similar nature;

b. the Purchaser's Offer represented fair and reasonable consideration in light of the Other Offers received and the Appraisal and had, in the Receiver's view, the greatest prospects of a concluded transaction and, accordingly, represented the greatest return to creditors;

c. the Purchaser's Offer contemplates closing on or before April 30, 2020, which will reduce the overall costs of these proceedings and, accordingly, increase the return to creditors;

d. although one of the Other Offers received included a lower commission payable to the Listing Agent as compared to the commission payable on the Purchaser's Offer, the

Receiver determined that this additional commission cost was offset by the increased likelihood of a concluded transaction and the resulting reduction in receivership costs; and

e. based on the Other Offers, the Receiver is of the view that the consideration offered by the Purchaser is fair and reasonable.

20. As a result, the Receiver has accepted the Purchaser's Offer and entered into a corresponding Contract of Purchase and Sale with the Purchaser on March 23, 2020 (the "**Sale Agreement**"), a copy of which is set out in **Appendix D** of the Receiver's First Report to the Court. Pursuant to the Sale Agreement, the Purchaser has agreed to purchase the Business Assets for a total purchase price of $905,000 (the "**Purchase Price**"), and has paid a $100,000 deposit on March 27, 2020 to Borden Ladner Gervais LLP (solicitors for the Receiver) in trust pending the completion of the sale transaction (the "**Transaction**").

21. RBC, the senior secured creditor of the Debtor, has expressed to the Receiver its support for the proposed sale of the Business Assets to the Purchaser pursuant to the Sale Agreement.

22. In assessing the proposed sale of the Business Assets to the Purchaser, the Receiver has considered in consultation with the Listing Agent (among other things):

(a) whether the Purchase Price is fair and reasonable based on the market response and the offers received;

(b) the overall execution and closing risk associated with the bidding parties to complete the Transaction;

(c) the overall fairness of process to effect a sale of the Business Assets; and

(d) the support of RBC for the Transaction.

<u>Sealing Order regarding Confidential Supplement</u>

23. To assist this Honourable Court in understanding the reasons behind the Receiver's decision to accept the Purchaser's Offer instead of the Other Offers, the Receiver has prepared the Confidential Supplement (as defined in paragraph 10). This Confidential Supplement contains, in addition to a copy of the Appraisal, other commercially sensitive or confidential information in respect of the two Other Offers

and the parties who submitted those Other Offers (collectively, the "**Confidential Information**"). Accordingly, the Receiver will be seeking a sealing order in respect of the Confidential Supplement to protect the Confidential Information.

Urgency to Close

24. To maximize recovery for all stakeholders, the Receiver asks that this application be heard at the earliest available date. In particular, approval from this Honourable Court is required for the Receiver to conclude the Transaction, and the Receiver submits that delaying approval, and the conclusion of the Transaction, will increase the receivership costs and reduce the recovery for all stakeholders.

25. The Receiver also notes that the Purchaser's Offer contains a term that the Transaction close on or before April 30, 2020.

26. Accordingly, to facilitate the expeditious closing of the Transaction within the timeline set out in the Purchaser's Offer and to maximize recovery for all stakeholders, the Receiver asks that this application be heard at the earliest available date to facilitate closing of the Transaction on or before April 30, 2020.

Notice

27. The Receiver intends to serve this Application and the First Report by posting a copy to the creditors' information website maintained by the Receiver in this matter and emailing a copy to the service list in these proceedings, along with interested parties (to legal counsel, where represented) that requested notice of this application. The Receiver submits that this method of service will be effective, timely and efficient, in addition to being completed at a lower cost than personal deliveries (which may be hindered given the ongoing public health crisis caused by the COVID-19 pandemic).

28. The Receiver also intends to provide a copy of this application to the BC Crown. The Receiver does not currently have an email address for this communication, although it will try to locate one. If the materials are delivered only in hard copy, it is not clear whether this method of service will be effective in the circumstances, including office closures as a result of the COVID-19 pandemic. However, the Receiver is of the view that the BC Crown is adequately protected as parties with subordinate security interests will

receive notice, and the proposed order includes attachment of any security interests of the proceeds in the same manner as the interest attached to the assets.

<u>Potential application for interim distribution of sale proceeds to RBC</u>

29. The Receiver is not, at this time, seeking an order authorizing a distribution of the proceeds of the Transaction. However, the Receiver notes that, to the extent an interim distribution can be made to RBC, this would maximize the potential recovery available to stakeholders by minimizing interest payable.

30. If this Honourable Court permits, and the affected creditors do not oppose the proposed interim distribution, the Receiver would propose to seek this interim distribution order by submitting written materials. The Receiver submits that this will benefit stakeholders in these proceedings by, as noted above, reducing interest accrual on the debt owed to RBC (thereby increasing the prospect of recovery for subordinate creditors) and, to the extent practicable, reducing the need for subsequent hearings.

PART 3: LEGAL BASIS

<u>Urgency and Notice</u>

31. The Receiver notes the notices from this Honourable Court dated March 18, 2020 and April 2, 2020. The Receiver submits that this is an urgent application warranting a hearing during this time.

32. First, as time passes, costs continue to accrue, particularly with respect to holding costs for the Lands. These costs can be significantly reduced by a concluded transaction. The Receiver is of the view that the costs associated with these proceedings, including seeking a transaction for the Debtor's remaining assets, will be nominal as the largest expenses are associated with the Business Assets, and in particular the Lands.

33. Second, the Purchaser's Offer to be considered by the Court contains a provision that the Transaction conclude on or before April 30, 2020. To facilitate a closing on that timeline, the Receiver seeks a hearing at the earliest available date, and on or before April 20, 2020, to allow sufficient time for the Receiver and Purchaser to conclude the Transaction, should the approval order be made.

34. Pursuant to Rule 8-5 of the *Supreme Court Civil Rules*, this Honourable Court may order that an application be heard on short notice, thereby abridging the time for service of the application. For the

reasons set out above, the Receiver submits that this is an urgent application that would warrant an abridgement of time for service.

35. The Receiver intends to provide unfiled copies of this Application and the First Report to interested parties so that as much notice as practicable can be provided.

36. The Receiver also notes that RBC, the primary secured creditor in these proceedings, has consented to this Application proceeding on an expedited basis.

General Powers and Obligations of the Receiver

37. 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.

38. 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.

Approval of Sale Transaction

39. 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.

40. The Receiver submits that it has made sufficient effort to obtain the best price and that it has not acted improvidently. The efforts of the Receiver and its real estate agent resulted in six (6) offers being received by March 13, 2020, three (3) of which were identified as warranting further discussion and a final opportunity to submit their final, highest and best offer. The Receiver submits that the market response

and number of offers received reflects that the sales process was conducted over an appropriate and sufficient time period.

41. The Receiver is of the view that the sales process in respect of the Business Assets was fair and reasonable given, among other reasons, the following:

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

b. all bidders had the same access to information regarding the Business Assets;

c. all bidders were granted the same amount of time to conduct their due diligence on the Business Assets; and

d. the timeline was fair and reasonable, given:

(i) the nature of the Business Assets as real and personal property required to run a pub and/or liquor store,

(ii) 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 Transaction and purchase the Business Assets in accordance with the Sale Agreement; and

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

42. In reviewing and assessing the Purchaser's Offer, and in selecting the Purchaser's Offer as the preferred offer for the Business Assets, the Receiver has confirmed (among other things):

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

(b) that the sales process in respect of the Business Assets was efficacious and conducted with integrity in all respects; and

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

43. Based on the above considerations, the Receiver has determined that the Purchaser's Offer pursuant to the Sale Agreement represents the best offer for the Business Assets (representing substantially all of the assets, property and undertaking of the Debtor). Accordingly, the Receiver seeks an Order from this Honourable Court approving the Transaction contemplated by the Sale Agreement and the execution and entering into of the Sale Agreement by the Receiver, and the vesting of clear title in and to the Lands and other Business Assets to the Purchaser in accordance with the terms of the Sale Agreement.

Sealing Order

44. The Receiver requires the Sealing Order authorizing it to file, under seal, the Confidential Supplement to the Receiver's First Report to Court for the purpose of, among other things, protecting the: (i) commercially sensitive and/or confidential nature of the Confidential Information with respect to the two (2) Final Offers that were not accepted; (ii) identifies of the parties who submitted those two (2) Final Offers; and (iii) information regarding the value of the Business Assets as set out in the Appraisal.

45. 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.

46. The materials sought to be sealed fit squarely within the test established by *Sierra Club*. The Confidential Supplement contains commercially sensitive or confidential information about the parties who submitted the two (2) Other Offers, for which there is a reasonable expectation of privacy, including their identities and the amount of consideration offered. The Confidential Supplement also contains a copy of the Appraisal, which contains commercial information that should remain confidential to preserve the integrity of the Sale Process. The public disclosure of the Confidential Information contained in the Confidential Supplement could, among other things:

(a) be detrimental to the privacy or commercial interests of the parties who submitted the Other Offers; and

(b) materially harm the integrity of the Sale Process regarding the Property.

47. 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 the Property and other Business Assets are contained in the Receiver's First Report to the Court, which will be made publicly available by the Receiver through the website that it maintains for these proceedings.

48. The Receiver will follow the procedures of *BC Supreme Court Practice Directive* PD-35, Practice Direction, Sealing Orders, in Civil and Family Proceedings, June 1, 2012, modified as necessary in light of:

a. the Court Notices to the Profession dated March 18, 2020 and April 2, 2020 pertaining to modifications of court operations in response to the COVID-19 pandemic;
b. further direction by the Smithers 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.

PART 4: MATERIALS TO BE RELIED ON

49. The Applicant relies on:

(a) the Receiver's First Report to the Court dated April 8, 2020;

(b) the Receiver's Confidential Supplement to the First Report dated April 8, 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 30 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: 9/ April/ 2020

Lisa Hiebert

Signature of Lisa Hiebert
☐ applicant ☑ lawyer for Applicant

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 SALE APPROVAL AND VESTING ORDER

Please see attached.

NO. SML-S-S-1956999
SMITHERS REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

Petitioner

AND:

2073944 ALBERTA LTD.

Respondent

ORDER MADE AFTER APPLICATION

(APPROVAL AND VESTING ORDER)

BEFORE THE HONOURABLE	)	
	)	______/________/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 Respondent, coming on for hearing at ______________, British Columbia, on the ____ day of April, 2020; by telephone pursuant to a Request for Urgent Hearing dated April 9, 2020 and granted on April ___, 2020; AND ON HEARING Lisa Hiebert, counsel for the Receiver, and those other counsel listed on Schedule "A" hereto, and no one appearing for the Respondent or otherwise although duly served; AND UPON READING the material filed, including the Report of the Receiver dated _______________, 2020 (the "**Report**");

THIS COURT ORDERS AND DECLARES THAT:

1. The sale transaction (the "**Transaction**") contemplated by the Contract of Purchase and Sale dated March 23, 2020 (the "**Sale Agreement**") between the Receiver and 1243997 B.C. Ltd. (the "**Purchaser**"), a copy of which is attached as Appendix D to the Report, 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 "B" 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 "C" 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 "D" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "E" hereto), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. Upon presentation for registration in the Land Title Office for the Land Title District of Prince Rupert 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 "F" 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 "E".

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

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

6. Pursuant to Section 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* or Section 18(10)(o) of the *Personal Information Protection Act* of British Columbia, the Receiver is hereby authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

7. 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 “E”.

8. 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.

9. Notwithstanding:

(a) these proceedings;

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

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

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

10. 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.

11. 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.

12. 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
☐ Party ☑ Lawyer for the Receiver

BY THE COURT:

____
REGISTRAR

Schedule "A" – Counsel

Counsel	Party Represented
Lisa Hiebert	The Receiver

Schedule "B" – Form of Receiver's Certificate

NO. SML-S-S-1956999
SMITHERS REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

Petitioner

AND:

2073944 ALBERTA LTD.

Respondent

RECEIVER'S CLOSING CERTIFICATE

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 the Respondent 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 "C" – 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 "D" – Claims to be deleted/expunged from title to Real Property

Legal Parcel	Claims to be deleted/expunged from title
PID: 008-765-901 LOT 15 BLOCK 8 DISTRICT LOT 6309 RANGE 5 COAST DISTRICT PLAN 1180	▪ Mortgage CA6681251 registered on March 15, 2018 in favour of the Lender (the "**RBC Mortgage**"). ▪ Assignment of Rents CA6681252 registered on March 15, 2018 in favour of the Lender (the "**RBC Assignment of Rents**"). ▪ Judgement CA7990042 registered on January 20, 2020 in favour of the Lender (the "**Judgment**").
PID: 008-765-821 LOT 2 BLOCK 8 DISTRICT LOT 6309 RANGE 5 COAST DISTRICT PLAN 1180	▪ The RBC Mortgage. ▪ The RBC Assignment of Rents ▪ The Judgment
PID: 008-765-880 LOT 3 BLOCK 8 DISTRICT LOT 6309 RANGE 5 COAST DISTRICT PLAN 1180	▪ The RBC Mortgage. ▪ The RBC Assignment of Rents ▪ The Judgment
PID: 010-173-897 LOT 14 BLOCK 8 DISTRICT LOT 6309 RANGE 5 COAST DISTRICT PLAN 1180	▪ The RBC Mortgage. ▪ The RBC Assignment of Rents ▪ The Judgment

<u>Schedule "E" – Permitted Encumbrances, Easements and Restrictive Covenants related to Real Property</u>

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

2. A legal notation filed under Registration Number BW348226 in respect of a permit under Part 26 of the *Local Government Act*, R.S.B.C. 2015, Ch. 1.

Schedule "F" – The Lands

The real property with civic address 156 Francois Lake Drive, Burns Lake, British Columbia, V0E 1E0, and legally described as follows:

PID: 008-765-821
LOT 2 BLOCK 8 DISTRICT LOT 6309 RANGE 5 COAST DISTRICT PLAN 1180

PID: 008-765-880
LOT 3 BLOCK 8 DISTRICT LOT 6309 RANGE 5 COAST DISTRICT PLAN 1180

PID: 010-173-897
LOT 14 BLOCK 8 DISTRICT LOT 6309 RANGE 5 COAST DISTRICT PLAN 1180

PID: 008-765-901
LOT 15 BLOCK 8 DISTRICT LOT 6309 RANGE 5 COAST DISTRICT PLAN 1180

(collectively, the "**Lands**").

Schedule "B"

FORM OF SEALING ORDER

Please see attached.

NO. SML-S-S-1956999
SMITHERS REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

Petitioner

AND:

2073944 ALBERTA LTD.

Respondent

ORDER MADE AFTER APPLICATION

(SEALING ORDER)

BEFORE THE HONOURABLE) ______/________/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 Respondent, coming on for hearing at ______________, British Columbia, on the ____ day of April, 2020; by telephone pursuant to a Request for Urgent Hearing dated April 9, 2020 and granted on April ___, 2020; AND ON HEARING Lisa Hiebert, counsel for the Receiver, and those other counsel listed on Schedule "A" hereto, and no one appearing for the Respondent or otherwise although duly served; AND UPON READING the material filed, including the Report of the Receiver dated _______________, 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: **(a) 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	Granted NO
(1) Entire File	N/A	N/A	N/A	☐	☐	☐

(2) <u>Specific Document</u> **Confidential Supplement to the Receiver's First Report to Court dated April ___, 2020**	**_________, 2020**	**2**	**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 Lisa Hiebert
☐ Party ☑ Lawyer for the Receiver

BY THE COURT

____
REGISTRAR

Schedule "A"

LIST OF COUNSEL

Name of Counsel	**Party Represented**
Lisa Hiebert	The Receiver

NO. SML-S-S-1956999
Smithers Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

Petitioner

- and -

2073944 ALBERTA LTD.

Respondent

NOTICE OF APPLICATION

(APPROVAL AND VESTING ORDER)

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