



NO. S 230764  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

AND:

CANWEST AEROSPACE INC.  
CAN WEST GLOBAL AIRPARTS INC.  
THOMAS GEORGE JACKSON

DEFENDANTS

**NOTICE OF APPLICATION**

**Name of applicant: Royal Bank of Canada (“RBC” or the “Applicant”)**

To: Canwest Aerospace Inc.

And To: Can West Global Airparts Inc.

And To: Business Development Bank of Canada.

And To: TDF Group Inc.

And To: Ministry of Finance, Receivable Management Office.

And To: Coast Capital Equipment Leasing Ltd.

TAKE NOTICE that an application will be made by the Applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia on 14/FEB/2023 at 9:45AM for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. An order (the “**Receivership Order**”) substantially in the form attached hereto as **Schedule “A”** appointing KPMG Inc. (“**KPMG**”) as receiver, without security, of all assets, undertakings, and property of Canwest Aerospace Inc. (“**CW Aerospace**”) and Can West

Global Airparts Inc. ("**CW Airparts**", and collectively with CW Aerospace, "**Canwest**" or the "**Debtors**"), including all proceeds thereof (the "**Property**").

2. The assessed costs of and in connection with this application be awarded to RBC.
3. Such further and other relief as counsel may advise and this Court deems to be just and convenient in the circumstances.

## **Part 2: FACTUAL BASIS**

### **Parties**

4. RBC is a chartered bank of Canada with an address for service in this action only at 20<sup>th</sup> Floor, 250 Howe Street, Vancouver, British Columbia.
5. CW Aerospace is a company incorporated pursuant to the laws of the Province of British Columbia, with a registered and records office located at 1130 – 400 Burrard Street, Vancouver, BC, V6C 3A6.
6. CW Airparts is a company incorporated pursuant to the laws of the Province of British Columbia, with a registered and records office located at 1130 – 400 Burrard Street, Vancouver, BC, V6C 3A6.

### **Loan Documents**

#### ***Aerospace Credit Agreement, Security and Default***

#### ***Aerospace Facilities***

7. Pursuant to a loan agreement dated November 2, 2021, as amended (the "**Aerospace Credit Agreement**"), among CW Aerospace, as borrower, and RBC, as lenders, which amended and restated without novation an existing agreement among the parties, RBC agreed to extend the following facilities (collectively, the "**Aerospace Facilities**") to CW Aerospace:
  - (a) \$1,000,000.00 revolving demand facility by way of a combination of Canadian Dollar ("**CAD**") loans, US Dollar ("**USD**") loans and/or letters of guarantee ("**LG**") in CAD or USD ("**Facility #1**");
  - (b) \$750,000.00 revolving demand facility by way of LGs in CAD or USD ("**Facility #2**");
  - (c) \$1,050,000.00 revolving demand facility by way of a combination of CAD loans, USD loans and/or LGs in CAD ("**Facility #3**");

- (d) \$2,850,000.00 revolving term loan by way of USD loans (“**Facility #4**”); and
- (e) credit card to a maximum amount of \$50,000.00 available in CAD or USD (the “**Other Facility**”).

8. The draws under the Aerospace Facilities, as at January 10, 2023, totaled approximately CA\$1,135,087.36 and US\$1,811,771.93, plus interest from and after January 10, 2023, and costs, which is made up of the following by facility:

<b>Facility</b>	<b>Interest Rate</b>	<b>Total Amount Outstanding</b>
<b><i>CAD Amounts as at January 10, 2023</i></b>		
Facility #1	Royal Bank Prime Rate (“ <b>RPB</b> ”) plus 1.25%	\$1,074,471.28
Facility #3	RPB plus 0.5%	\$2,039.43
Other Facility (first account)	19.99%	\$28,630.80
Other Facility (second account)	19.99%	\$29,945.85
<b>TOTAL CAD:</b>		<b>\$1,135,087.36</b>
<b><i>USD Amounts as at January 10, 2023</i></b>		
Facility #2	N/A	\$136,489.00
Facility #3	Royal Bank US Base Rate (“ <b>RBUSBR</b> ”) plus 0.5%	\$302,030.73
Facility #4	RBUSBR plus 2.95%	\$1,373,252.20
<b>TOTAL USD:</b>		<b>\$1,811,771.93</b>

- 9. Facility #1, Facility #2 and Facility #3 are payable on demand.
- 10. The Other Facility is payable on termination of the agreement that governs this facility. RBC’s right to terminate the Other Facility arose on the occurrence of an event of default.
- 11. By amending agreement dated December 30, 2022, CW Aerospace and RBC agreed to amend the maturity date of Facility #4 under the Aerospace Credit Agreement to January 31, 2023, from September 30, 2022. However, on an event of default RBC had the right to cancel Facility #4 and demand immediate repayment in full of any amount outstanding under this facility.

### Aerospace Security

12. To secure CW Aerospace's obligations under the Aerospace Credit Agreement, CW Aerospace provided the following in favour of RBC (collectively, the "**Security**"), among other security:
  - (a) general security agreement (the "**Aerospace GSA**") dated July 11, 2014;
  - (b) security agreement dated July 5, 2017, with respect to all inventory of CW Aerospace relating to or arising out of an export contract for which RBC has provided financing under the Export Development Canada Export Guarantee Program.
  - (c) security agreement dated July 5, 2017, with respect to all accounts receivable of CW Aerospace relating to or arising out of an export contract for which RBC has provided financing under the Export Development Canada Export Guarantee Program.
  - (d) security agreement dated November 17, 2021, with respect to all inventory of Canwest relating to or arising out of a DGDP of Bangladesh export contract for which RBC has provided financing under the Export Development Canada Export Guarantee Program.
  - (e) security agreement dated November 17, 2021, with respect to all accounts receivable of Canwest relating to or arising out of a DGDP of Bangladesh export contract for which RBC has provided financing under the Export Development Canada Export Guarantee Program.
13. Financing statements were properly registered in respect of the Security with the BC personal property registry (the "**BC PPR**"), including a first rank registration with respect to all of CW Aerospace's present and after-acquired personal property as granted by the Aerospace GSA.

### Aerospace Demand

14. With respect to the Aerospace Facilities, by letter dated January 17, 2023, demand was made upon CW Aerospace but, in breach of the Aerospace Credit Agreement, CW Aerospace failed to pay.
15. The failure to repay the Aerospace Facilities on demand constitutes events of default under the Aerospace Credit Agreement, and the Security, which gives RBC the right to take steps to enforce against CW Aerospace's property.

## ***Airparts Credit Agreement, Security and Default***

### **Airparts Facilities**

16. Pursuant to a loan agreement dated July 9, 2018 (the "**Airparts Credit Agreement**"), among CW Airparts, as borrower, and RBC, as lenders, RBC agreed to extend a \$200,000.00 revolving demand facility by way of a combination of CAD loans, USD loans, letters of credit and/or LGs (the "**Airparts Facility**") to CW Airparts.
17. The draws under the Airparts Facility, as at January 10, 2023, totaled approximately CA\$203,623.86, plus interest from and after January 10, 2023, and costs.
18. The interest rate on the Airparts Facility is RBP plus 2.00%.
19. The Airparts Facility is payable on demand.

### **Airparts Security**

20. To secure CW Airparts' obligations under the Airparts Credit Agreement, CW Airparts provided a general security agreement (the "**Airparts GSA**") dated July 10, 2018, in favour of RBC, among other security.
21. A financing statement was properly registered in respect of the Airparts GSA with the BC PPR, which is a first rank registration with respect to all of CW Airparts' present and after-acquired personal property as granted by the Airparts GSA.

### **Airparts Demand**

22. With respect to the Airparts Facility, by letter dated January 17, 2023, demand was made upon CW Airparts but, in breach of the Airparts Credit Agreement, CW Airparts failed to pay.
23. The failure to repay the Airparts Facility on demand constitutes an event of default under the Airparts Credit Agreement, and the Airparts GSA, which gives RBC the right to take steps to enforce against CW Airparts' property.

## **Part 3: LEGAL BASIS**

24. The Applicant relies on:
  - (a) *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**"), in particular s. 243;
  - (b) *Law and Equity Act*, R.S.B.C., 1996, c. 253 (the "**LEA**"), in particular s. 39;

- (c) *Personal Property Security Act*, RSBC 1996, c 359 (the "**PPSA**"), in particular s. 66;
- (d) *Supreme Court Civil Rules*, B.C. Reg. 168/2009 (the "**Rules**"); and
- (e) Such further and other legal bases and authorities as counsel may advise and this Court may permit.

### **The Legal Test for Appointing a Receiver**

25. Section 243(1) of the *BIA* provides that, on application by a secured creditor, a court may appoint a receiver to do any or all of the following "if it considers it to be just and convenient" to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

***BIA, s. 243(1).***

26. Similarly, s. 39 of the *LEA* permit a court to appoint a receiver by interlocutory order if it "appears to the court to be just or convenient that the order should be made."

***LEA, s. 39.***

27. Section 66(1)(a) of the *PPSA* also authorizes the appointment of a receiver on the application of an interested person.

***PPSA, s. 66(1)(a).***

28. In *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, this Court identified several factors that may inform a holistic determination of whether it is "just and convenient" to appoint a receiver, including:

- (a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;

- (b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
- (c) the nature of the property;
- (d) the apprehended or actual waste of the debtor's assets;
- (e) the preservation and protection of the property pending judicial resolution;
- (f) the balance of convenience to the parties;
- (g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- (h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
- (i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- (j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;
- (k) the effect of the order upon the parties;
- (l) the conduct of the parties;
- (m) the length of time that a receiver may be in place;
- (n) the cost to the parties;
- (o) the likelihood of maximizing return to the parties; and
- (p) the goal of facilitating the duties of the receiver.

***Maple Trade Finance Inc v. CY Oriental Holdings Ltd., 2009 BCSC 1527 at para. 25.***

29. In applying these factors, this Court has held that the right of a secured creditor to appoint a receiver under a security agreement between the parties holds considerable weight and is a "strong factor" in support of granting a receivership order.

***Maple Trade at para. 26***

**It is Just and Convenient to Appoint a Receiver in the Circumstances**

30. It is just and convenient in the present circumstances to appoint a receiver over the Property on the terms sought by the Applicant for the following reasons:
- (a) The Applicant has a general and continuing security interest in all of the Debtors' property by virtue of the Aerospace GSA and the Airparts GSA.
  - (b) The Debtors have defaulted under the Aerospace Credit Agreement, the Airparts Credit Agreement, the Aerospace GSA and the Airparts GSA, among others, and these defaults entitle the Applicant to enforce its security.
  - (c) The appointment of a receiver will protect the Applicant's interest by preservation and protection of the Property.
  - (d) The appointment of a receiver will maximize return to the Applicant, which in turn will preserve any potential equity for other creditors.
  - (e) The balance of convenience favours the appointment of a receiver in these circumstances.
31. For the above reasons, the Applicant submit that it is just and convenient that this Court appoint KPMG as receiver of the Property on the terms set out in the proposed Receivership Order.

**PART 4: MATERIAL TO BE RELIED ON**

- 1. Affidavit #1 of Mark Kemp-Gee, made 31/JAN/2023;
- 2. Affidavit #1 of Chelsea Denton, made 31/JAN/2023; and
- 3. Such further and other materials as counsel may advise and this Court may permit.

The Applicant estimates that the application will take 15 minutes.

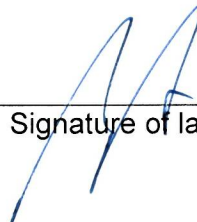
- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.



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 of 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: 31/JAN/2023

  
\_\_\_\_\_  
Signature of lawyer for filing party  
Jordan Schultz

To be completed by the court only:	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs _____ of Part 1 of this Notice of Application
<input type="checkbox"/>	with the following variations and additional terms:
_____	
_____	
_____	
Date:	_____
Signature of <input type="checkbox"/> Judge <input type="checkbox"/> 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 matter 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

SCHEDULE "A"

NO. \_\_\_\_\_  
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

AND:

CANWEST AEROSPACE INC.  
CAN WEST GLOBAL AIRPARTS INC.  
THOMAS GEORGE JACKSON

DEFENDANTS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE )  
JUSTICE ) [ ]/FEB/2023  
)  
)

ON THE APPLICATION of Royal Bank of Canada (the "Applicant") for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, as amended (the "LEA") appointing KPMG Inc. as Receiver and Receiver and Manager (in such capacity, the "Receiver") without security, of all of the assets, undertakings and property of Canwest Aerospace Inc. and Can West Global Airparts Inc. (the "Debtors") acquired for, or used in relation to a business carried on by the Debtor, coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Affidavit #1 of Mark Kemp-Gee, made January 31, 2023, the Affidavit #1 of Chelsea Denton, made January 31, 2023, and the consent of KPMG Inc. to act as the Receiver; AND ON HEARING Jordan Schultz and Eamonn Watson, counsel for Royal Bank of Canada, and other counsel as listed on Schedule "A" hereto, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that:

## APPOINTMENT

1. Pursuant to Section 243(1) of the BIA and Section 39 of the LEA, KPMG Inc. is appointed Receiver, without security, of all of the assets, undertakings and property of the Debtors, including all proceeds (the "**Property**").

## RECEIVER'S POWERS

2. The Receiver is empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing insurance coverage;
  - (c) to manage, operate and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
  - (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
  - (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting these amounts, including, without limitation, enforcement of any security held by the Debtors;
  - (g) to settle, extend or compromise any indebtedness owing to the Debtors;
  - (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
  - (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
  - (j) to initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of the Debtors, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
  - (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
    - (i) without the approval of this Court in respect of a single transaction for consideration up to \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; and
    - (ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,
- and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;
  - (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;
  - (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
  - (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the Debtors;
  - (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
  - (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
  - (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

3. Each of (i) the Debtors; (ii) all of the Debtors' current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, "**Persons**" and each a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
4. All Persons, other than governmental authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "**Records**") in that Person's possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
5. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 4, 5 or 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to solicitor client privilege or statutory provisions prohibiting such disclosure.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may require including, without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. No proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

## **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

8. No Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of the Proceeding except for service of the initiating documentation on the Debtors and the Receiver.

## **NO EXERCISE OF RIGHTS OR REMEDIES**

9. All rights and remedies (including, without limitation, set-off rights) against the Debtors, the Receiver, or affecting the Property, are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. This stay and suspension shall not apply in respect of any "eligible financial contract" as defined in the BIA.

## **NO INTERFERENCE WITH THE RECEIVER**

10. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.

## **CONTINUATION OF SERVICES**

11. All Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

## RECEIVER TO HOLD FUNDS

12. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable, in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post-Receivership Accounts**") and the monies standing to the credit of such Post-Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

## EMPLOYEES

13. Subject to the employees' right to terminate their employment, all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the Debtors, including any successor employer liabilities as referred to in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay or in respect of obligations imposed specifically on receivers by applicable legislation, including sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.

## PERSONAL INFORMATION

14. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## LIMITATION ON ENVIRONMENTAL LIABILITIES

15. Nothing in this Order shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial or other law relating to the protection,



conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination (collectively "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.

16. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless the Receiver is actually in possession.
17. Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:
  - (a) before the Receiver's appointment; or,
  - (b) after the Receiver's appointment, unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
18. Notwithstanding anything in federal or provincial law, but subject to paragraph 17 of this Order, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the failure to comply with the order and is not personally liable for any costs that are or would be incurred by any Person in carrying out the terms of the order.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

19. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except:
  - (a) any gross negligence or wilful misconduct on its part; or
  - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

20. The Receiver and its legal counsel, if any, are granted a charge (the "**Receiver's Charge**") on the Property as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order. The Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate to the charges, if any, created pursuant to Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
22. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

23. The Receiver is authorized and empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$150,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to (i) the Receiver's Charge and (ii) the charges, if any, created pursuant to Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
24. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
25. The Receiver is authorized to issue certificates substantially in the form annexed as **Schedule "B"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
26. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **ALLOCATION**

27. Any interested party may apply to this Court on notice to any other party likely to be affected for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the Property.

#### **SERVICE AND NOTICE OF MATERIALS**

28. The Receiver shall establish and maintain a website in respect of these proceedings at: **[WEB ADDRESS]** (the "**Website**") and shall post there as soon as practicable:

- (a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the *Supreme Court Civil Rules*; and,
  - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
29. Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for each of the Receiver and the Applicant a demand for notice in the form attached as **Schedule "C"** (the "**Demand for Notice**"). The Receiver and the Applicant need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed Demand for Notice releases the Receiver and the Applicant from any requirement to provide further notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice.
30. The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the "**Service List**"). The Receiver shall post and maintain an up-to-date form of the Service List on the Website.
31. Any interested party, including the Receiver, may serve any court materials in these proceedings by facsimile or by emailing a PDF or other electronic copy of such materials to the numbers or addresses, as applicable, set out on the Service List. Any interested party, including the Receiver, may serve any court materials in these proceedings by mail to any party on the Service List that has not provided a facsimile number or email address, and materials delivered by mail shall be deemed received five (5) days after mailing.
32. Notwithstanding paragraph 31 of this Order, service of the Notice of Application filed January 31, 2023, and any affidavits filed in support shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 and its regulations for the Federal Crown and the *Crown Proceedings Act*, R.S.B.C. 1996 c. 89 in respect of the British Columbia Crown.
33. The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of any legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*.

## GENERAL

34. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Service List and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.

35. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
36. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.
37. This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, 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 such courts, tribunals and regulatory and administrative bodies are 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.
38. The Receiver is authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
39. The Applicant shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.
40. Endorsement of this Order by counsel appearing on this application other than the Applicant is dispensed with.

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

APPROVED BY:

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Signature of Jordan Schultz  
lawyer for the Applicant

BY THE COURT

DISTRICT REGISTRAR

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT

\$ \_\_\_\_\_

1. THIS IS TO CERTIFY that KPMG Inc., the Receiver and Receiver and Manager (the "Receiver") of all of the assets, undertakings and properties of Canwest Aerospace Inc. and Can West Global Airparts Inc. (the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Supreme Court of British Columbia (the "Court") dated the 14<sup>th</sup> day of February, 2023 (the "Order") made in SCBC Action No. [REDACTED] has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ [REDACTED], being part of the total principal sum of \$ [REDACTED] which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly] not in advance on the [REDACTED] day of each month after the date hereof at a notional rate per annum equal to the rate of [REDACTED] per cent above the prime commercial lending rate of [REDACTED] from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of the Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at [REDACTED].
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the [REDACTED] day of [REDACTED], 2023.

**KPMG INC.**, solely in its capacity as Receiver  
of the Property, and not in its personal  
capacity

Per:  
Name:  
Title:

**Schedule "C"**

**Demand for Notice**

**TO: Royal Bank of Canada**  
c/o Dentons Canada LLP  
Attention: Jordan Schultz and Eamonn Watson  
Email: [Jordan.schultz@dentons.com](mailto:Jordan.schultz@dentons.com) and [eamonn.watson@dentons.com](mailto:eamonn.watson@dentons.com)

**AND TO: KPMG Inc.**  
Attention: Huey Lee and Joe Sithole  
Email: [hueylee@kpmg.ca](mailto:hueylee@kpmg.ca) and [jsithole@kpmg.ca](mailto:jsithole@kpmg.ca) and [kjackson@fasken.com](mailto:kjackson@fasken.com)

**AND TO: Fasken Martineau DuMoulin LLP**  
Attention: Kibben Jackson  
Email: [kjackson@fasken.com](mailto:kjackson@fasken.com)

**Re: In the matter of the Receivership of Canwest Aerospace Inc. and Can West Global Airparts Inc.**

I hereby request that notice of all further proceedings in the above Receivership be sent to me in the following manner:

1. By email, at the following address (or addresses):

\_\_\_\_\_

OR

2. By facsimile, at the following facsimile number (or numbers):

\_\_\_\_\_

OR

3. By mail, at the following address:

\_\_\_\_\_

Name of Creditor: \_\_\_\_\_

Name of Counsel (if any): \_\_\_\_\_

Creditor's Contact Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Creditor's Contact Phone Number: \_\_\_\_\_





Action No.

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IN THE SUPREME COURT OF BRITISH COLUMBIA

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BETWEEN:

ROYAL BANK OF CANADA  
PLAINTIFF

AND

CANWEST AEROSPACE INC.  
CAN WEST GLOBAL AIRPARTS INC.  
THOMAS GEORGE JACKSON  
DEFENDANTS

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RECEIVERSHIP ORDER

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IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

AND:

CANWEST AEROSPACE INC.  
CAN WEST GLOBAL AIRPARTS INC.  
THOMAS GEORGE JACKSON

DEFENDANTS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

JUSTICE

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[ ]/FEB/2023

ON THE APPLICATION of Royal Bank of Canada (the "**Applicant**") for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, as amended (the "**LEA**") appointing KPMG Inc. as Receiver and Receiver and Manager (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and property of Canwest Aerospace Inc. and Can West Global Airparts Inc. (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtor, coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Affidavit #1 of Mark Kemp-Gee, made January 31, 2023, the Affidavit #1 of Chelsea Denton, made January 31, 2023, and the consent of KPMG Inc. to act as the Receiver; AND ON HEARING Jordan Schultz and Eamonn Watson, counsel for Royal Bank of Canada, and other counsel as listed on Schedule "A" hereto, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that:

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

AND:

CANWEST AEROSPACE INC.  
CAN WEST GLOBAL AIRPARTS INC.  
THOMAS GEORGE JACKSON

DEFENDANTS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE )  
JUSTICE ) [ ]/FEB/2023  
)  
)  
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AND ON READING the Affidavit #1 of Mark Kemp-Gee, made January 31, 2023, the Affidavit #1 of Chelsea Denton, made January 31, 2023, and the consent of KPMG Inc. to act as the Receiver; AND ON HEARING Jordan Schultz and Eamonn Watson, counsel for Royal Bank of Canada, and other counsel as listed on Schedule "A" hereto, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that: