

THE KING'S BENCH
Winnipeg Centre

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT
TO SECTION 243 OF THE *BANKRUPTCY AND*
INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS
AMENDED AND SECTION 55 OF THE KING'S
BENCH ACT, C.C.S.M. c. C280

BETWEEN:

BANK OF MONTREAL,

Applicant,

- and -

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT

Respondent.

NOTICE OF APPLICATION
HEARING DATE: THURSDAY, MAY 25th, 2023 AT 10:00 A.M.
BEFORE THE HONOURABLE MR. JUSTICE EDMOND

MLT AIKINS LLP
Barristers and Solicitors
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File No. 0076354.01105

Box No. 3

**THE KING'S BENCH
Winnipeg Centre**

IN THE MATTER OF:

THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED AND SECTION 55 OF THE KING'S BENCH ACT, C.C.S.M. c. C280

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Respondent.

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a Judge, on Thursday, May 25, 2023 at 10:00 A.M., or so soon thereafter as the Application can be heard, at The Law Courts Complex, 408 York Avenue, in the City of Winnipeg, in Manitoba.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or a Manitoba Lawyer acting for you must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON- THIS APPLICATION, you or your lawyer must serve a copy of the evidence on the Applicant's lawyer or, where the applicant does not have a lawyer, serve it on the

Applicant, and file it, with proof of service, in the court Office where the Application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

May ____, 2023

Issued by _____
DEPUTY REGISTRAR

TO: ATTACHED SERVICE LIST

APPLICATION

THE APPLICATION IS FOR:

1. An Order abridging the time for service and filing of this notice of application and the evidence in support thereof or, in the alternative, dispensing with and/or validating service of same;
2. An Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985 c.B-3 as amended (the "**BIA**") and section 55 of *The Court of King's Bench Act*, C.C.S.M. c.C280 as amended (the "**King's Bench Act**"), appointing Deloitte Restructuring Inc. ("**Deloitte**") as receiver and manager ("**Receiver**"), without security, of all the assets, undertakings and properties of the Respondent, 3816410 Manitoba Ltd. o/a Berg's Trailers & Prep and Paint with the authority to act as more particularly set out in the draft form of order attached to this Notice of Application as **Schedule "A"**; and
3. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

1. The Applicant is a Canadian chartered bank.
2. The Respondent, 3816410 Manitoba Ltd. o/a Berg's Trailers & Prep and Paint (the "**Debtor**") is a corporation incorporated pursuant to the laws of Manitoba with its registered office address located in the City of Winkler.

3. At the request of the Debtor and for valuable consideration, the Applicant agreed to make and made credit facilities and loans (the “**Credit Facilities**”) available to the Debtor secured by, *inter alia*, the following security:
 - a. A registered first-ranking All Indebtedness Mortgage in favour of the Bank in the amount of \$1,600,000.00 registered over Lot 1 & 2 Block 2 Plan 37465 MLTO in S 1/2 3-3-4 WPM Excepting - Drain Plan 40578 MLTO with the municipal address of 1-550 George Avenue, Winkler, MB, R6W 0J4 (the “**Mortgaged Property**”) together with the Bank’s Standard Mortgage Terms 4697386/1 (together, the “**Mortgage**”); and
 - b. A Security Agreement (the “**GSA**”) executed by the Debtor on January 10, 2020,

(together, the “**Security**”).
4. The Applicant is in default of its obligations to the Bank with respect to the Credit Facilities and Security.
5. The terms of the Security included, *inter alia*, the following:
 - a. Upon default by the Debtor under the GSA, the Applicant may appoint a receiver in respect of the person property of the Debtor; and
 - b. Upon default by the Debtor under the Mortgage, the Applicant may appoint a receiver in respect of the Mortgaged Land and may apply to any court of competent jurisdiction for the appointment of a receiver.

6. On or about March 1, 2023, the Debtor executed a Consent to Receivership Order consenting to an Order by this Honourable Court appointing a receiver over the Property.
7. The Debtor is in default of its obligations under the Credit Facilities and the Security.
8. On September 29, 2022, the Applicant demanded from the Debtor payment of all amounts owing to the Bank pursuant to the Credit Facilities;
9. A Notice of Intention to Enforce Security under subsection 244(1) of the BIA was served concurrently with the Demand on September 29, 2022, the ten day prescribed notice period has expired and the Applicant is entitled to enforce its security.
10. As at May 16, 2023, the total indebtedness of the Debtor to the Applicant was \$2,044,646.42 CAD and \$79,570.66 USD plus legal fees, costs and expenses (the "**Total Indebtedness**"), upon which interest and costs continue to accrue.
11. The Applicant wishes to appoint Deloitte as Receiver of the Debtor and Deloitte has consented to act in that capacity.
12. The Applicant is substantially indebted to the Bank, a secured creditor.
13. The Debtor has failed to make super-priority payments owing to Canada Revenue Agency.

14. Court appointment is necessary to enable the receiver to carry out its duties more efficiently.
15. The Applicant has lost confidence in the Debtor and its ability to make satisfactory arrangements to address the indebtedness owing to the Bank.
16. The appointment of a receiver is necessary to adequately protect the interests of the Applicant and other stakeholders.
17. The appointment of a receiver will increase the likelihood of maximizing the return for the benefit of all stakeholders.
18. A balancing of the interests of the Debtor and the Applicant favours the Applicant and the appointment of a receiver.
19. The Applicant has acted in good faith toward the Debtor at all times.
20. The appointment of a receiver is just and convenient.
21. Sections 2, 47, 243, and 244 of the BIA and section 55 of the King's Bench Act.
22. Sections 2.03, 3.02, 14.05(2), 16.04, 16.08, 38, and 41 of the *Court of King's Bench Rules* M.R. 553/88.
23. *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368, Rule 3.
24. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Application:

1. The Affidavit of Mathan Kumar sworn May 18, 2023;
2. The Consent of Deloitte dated May 19, 2023; and
3. Such further and other evidence as counsel may advise and this Honourable Court may permit.

May 19, 2023

MLT AIKINS LLP
Solicitors for the Applicant
30th Floor - 360 Main Street
Winnipeg, Manitoba R3C 4G1
J.J. Burnell / Anjali Sandhu

SCHEDULE "A"

File No. CI 23-01-

THE KING'S BENCH
Winnipeg Centre

IN THE MATTER OF:

THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED AND SECTION 55 OF THE KING'S BENCH ACT, C.C.S.M. c. C280

BETWEEN:

BANK OF MONTREAL,

Applicant,

- and -

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT,

Respondent.

ORDER
(Appointing Receiver)

MLT AIKINS LLP
Barristers & Solicitors
30th Floor – 360 Main Street
Winnipeg, Manitoba, R3C 4G1

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IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED AND SECTION 55 OF THE KING'S BENCH ACT, C.C.S.M. c. C280

THE HONOURABLE MR.) THURSDAY, THE 25th DAY OF MAY,
)
JUSTICE EDMOND) 2023

BETWEEN:

BANK OF MONTREAL,

Respondent,

- and -

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT,

Applicant.

ORDER
(appointing Receiver)

THIS APPLICATION made by 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**") appointing Deloitte Restructuring Inc. ("**Deloitte**") as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of 3816410 Manitoba Ltd. o/a Berg's Trailers & Prep and Paint (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the affidavit of Mathan Kumar sworn May 18, 2023 and on hearing the submissions of counsel for the Applicant, no one appearing for any other party although duly served as appears from the affidavit of service of Kari Klassen sworn and on reading the consent of Deloitte to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA, Deloitte Restructuring Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby 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 hereby 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 proceeds, 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, the changing of locks and security codes, the relocating of Property to safeguard it, the

engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, 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 Debtor;
- (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 Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (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 Debtor, for any purpose pursuant to this Order;

- (i) to undertake environmental or workplace safety and health assessments of the Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (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 in its discretion may deem 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 any transaction not exceeding \$100,000.00, provided that the aggregate consideration for all such transactions does not exceed \$500,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 59(10) of *The Personal Property Security Act* (Manitoba), [or section 134(1) of *The Real Property Act* (Manitoba), as the case may be,] shall not be required.

- (m) notwithstanding paragraph 3(l) above, to sell (the “**Sale Transaction**”) any of the equipment or inventory comprising the Property (the “**Purchased Assets**”) by way of public auction or auctions (the “**Auction**”) to a purchaser or purchasers (the “**Purchaser**”) on the terms and conditions set out below in paragraph 4;
- (n) 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 thereof, free and clear of any liens or encumbrances affecting such Property;
- (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (q) 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 thought desirable by the Receiver, in the name of the Debtor;
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;

- (t) to voluntarily assign the Debtor into Bankruptcy; and
- (u) 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 Debtor, and without interference from any other Person.

VESTING IN PURCHASER

4. THIS COURT ORDERS AND DECLARES that upon filing a certificate with this Honourable Court substantially in the form annexed as **Schedule “B”** (the “**Receiver’s Auction Certificates**”) hereto all of the Debtor’s right, title and interest in and to the Purchased Assets described therein shall vest absolutely in the respective Purchaser, 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 have been perfected, registered or filed and whether secured, unsecured or otherwise, (the “**Claims**”) including, without limiting the generality of the foregoing: (i) all Charges created by this Order; (ii) all charges, security interests or claims evidenced by registrations pursuant to *The Personal Property Security Act* (Manitoba) or any other personal property registry system.

5. THIS COURT ORDERS that 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 Sale Transaction and for the conveyance of the Purchased Assets to the Purchaser.

6. THIS COURT ORDERS that 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 that from and after the filing of the Receiver's Auction Certificates 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 Transaction, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the Sale Transaction.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

7. THIS COURT ORDERS that (i) the Debtor, (ii) all of its 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 (all of the foregoing, collectively, being "**Persons**" and each being 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 to the Receiver upon the Receiver's request.

8. THIS COURT ORDERS that all Persons 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 Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 7 or in paragraph 8 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 the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

9. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by 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 onto paper 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 in its discretion require including 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.

10. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

11. THIS COURT ORDERS that 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 DEBTOR OR THE PROPERTY

12. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor 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 Debtor or the Property are hereby stayed and suspended pending further Order of this Court provided; however, that nothing in this Order shall

affect a Regulatory Body's investigation in respect of the Debtor or an action, suit or proceeding that is taken in respect of the Debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body of the Court. **"Regulatory Body"** means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province.

NO EXERCISE OF RIGHTS OR REMEDIES

13. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

14. THIS COURT ORDERS that 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 Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

15. THIS COURT ORDERS that 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 Debtor are hereby 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 that the Receiver shall be entitled to the continued use of the Debtor's 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 Debtor 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

16. THIS COURT ORDERS that 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

17. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

18. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall 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 Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

19. THIS COURT ORDERS that nothing herein contained 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 respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, *The Environment Act* (Manitoba), *The Water Resources Conservation Act* (Manitoba), *The Contaminated Sites Remediation Act* (Manitoba), *The Dangerous Goods Handling and Transportation Act* (Manitoba), *The Public Health Act* (Manitoba) or *The Workplace Safety and Health Act* (Manitoba), and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. 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 it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

20. THIS COURT ORDERS that 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 for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. 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

21. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that 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 subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of this Court, but nothing herein shall fetter this Court's discretion to refer such matters to a Master of this Honourable Court.

23. THIS COURT ORDERS that 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

24. THIS COURT ORDERS that the Receiver be at liberty and it is hereby 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 \$300,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it 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 hereby 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 the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

25. THIS COURT ORDERS that 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.

26. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

27. THIS COURT ORDERS that 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.

SERVICE AND NOTICE

28. THIS COURT ORDERS that the Applicant and the Receiver be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or electronic transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

29. THIS COURT ORDERS that counsel for the Receiver shall prepare and keep current a service list ("**Service List**") containing the name and contact information (which may include the address, telephone number and facsimile number or email address) for service to: the Applicant; the Receiver; and each creditor or other interested Person who has sent a request, in writing, to counsel for the Receiver to be added to the Service List. The Service List shall indicate whether each Person on the Service List has elected to be served by email or facsimile, and failing such election the Service List shall indicate service by email. The Service List shall be posted on the website of the Receiver at the address indicated in paragraph 30 herein. **For greater certainty, creditors and other interested Persons who have received notice of this Order and who do not send a request, in writing, to counsel for the Receiver to be added to the Service List, shall not be required to be further served in these proceedings.**

30. THIS COURT ORDERS that the Applicant, the Receiver, and any party on the Service List may serve any court materials in these proceedings by facsimile or by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Receiver may post a copy of any or all such materials on its website at www.insolvencies.deloitte.ca/en-ca/BergsTrailers. Service shall be deemed valid and sufficient if sent in this manner.

GENERAL

31. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

32. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

33. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States 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.

34. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that 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.

35. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a solicitor-client basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

36. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

May 25, 2023

Edmond, J.

I, _____ OF THE FIRM OF _____ HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES: _____ AS DIRECTED BY THE HONOURABLE _____.

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Deloitte Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties 3816410 Manitoba Ltd. o/a Berg's Trailers & Prep and Paint (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of The King's Bench, Winnipeg Centre (the "**Court**") dated the ___ day of _____, 2023 (the "**Order**") made in an action having Court file number _____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ 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 _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ 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 such 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 ***, ***.

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 so as 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 in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

Deloitte Restructuring Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per:

Name:

Title:

SCHEDULE “B”
RECEIVER’S AUCTION CERTIFICATE

RECITALS

1. Pursuant to an Order (the “**Receivership Order**”) of the Honourable Mr. Justice Edmond of the Manitoba Court of King’s Bench (the “**Court**”) dated May 25, 2023 Deloitte Restructuring Inc. was appointed the Receiver (the “**Receiver**”) of the undertakings, properties and assets of 3816410 Manitoba Ltd. o/a Berg’s Trailers & Prep and Paint (the “**Debtor**”).

2. Pursuant to the Receivership Order, the Court authorized the Receiver to enter into the sale (the “**Sale Transaction**”) any of the equipment or inventory comprising the Property (the “**Purchased Assets**”) by way of public auction or auctions (the “**Auction**”) to a purchaser or purchasers (the “**Purchaser**”) and ordered that upon filing a certificate with this Honourable Court all of the Debtor’s right, title and interest in and to the Purchased Assets described therein shall vest absolutely in the respective Purchaser, 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 have been perfected, registered or filed and whether secured, unsecured or otherwise, (the “**Claims**”) including, without limiting the generality of the foregoing: (i) all Charges created by this Order; (ii) all charges, security interests or

claims evidenced by registrations pursuant to *The Personal Property Security Act* (Manitoba) or any other personal property registry system.

THE RECEIVER CERTIFIES the following:

1. The Sale Transaction with respect to the Purchased Assets listed below was completed by Auction on [DATE];

[LIST PURCHASED ASSETS]

2. The Receiver has received the full amount owing under the Sale Transaction.

DATED the ____ day of _____, 20__.

Deloitte Restructuring Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

THE KING'S BENCH
Winnipeg Centre

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT
TO SECTION 243 OF THE *BANKRUPTCY AND*
INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS
AMENDED AND SECTION 55 OF THE KING'S
BENCH ACT, C.C.S.M. c. C280

BETWEEN:

BANK OF MONTREAL,

Plaintiff,

- and -

**3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT, PETER
BERGEN and ELIZABETH BERGEN**

Defendants.

SERVICE LIST
AS AT MAY 19, 2023

MLT AIKINS LLP
Barristers and Solicitors
30th Floor – 360 Main Street
Winnipeg, MB R3G 4G1

J.J. BURNELL / ANJALI SANDHU
Telephone: (204) 957-4663 / (204) 957-4760
Facsimile: (204) 957-0840

File No. 0076354.01105

THE KING'S BENCH
Winnipeg Centre

IN THE MATTER OF:

THE APPOINTMENT OF A RECEIVER PURSUANT
TO SECTION 243 OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS
AMENDED AND SECTION 55 OF THE KING'S
BENCH ACT, C.C.S.M. c. C280

BETWEEN:

BANK OF MONTREAL,

Plaintiff,

- and -

**3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT, PETER
BERGEN and ELIZABETH BERGEN**

Defendants.

SERVICE LIST

Party/Counsel	Telephone	Facsimile	Party Represented
BANK OF MONTREAL 201 Portage Avenue – 16 th Floor Winnipeg, MB R3B 3K6 Mathan Kumar Email: mathan.kumar@bmo.com	Tel: 204-985-2432		Plaintiff
MLT AIKINS LLP 360 Main Street, Suite 3000 Winnipeg, MB R3C 4G1 J.J. Burnell Email: jburnell@mltaikins.com Anjali Sandhu Email: asandhu@mltaikins.com	Tel: 204-957-4663 Tel: 204-957-4760	Fax: 204-957-0840	Counsel for the Plaintiff

Party/Counsel	Telephone	Facsimile	Party Represented
3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT 1 880J 15th Street, Box 99 Winkler, Manitoba R6W 4A4 Email: peter@bergtrailers.com	(204)-325-5677		Debtor / Defendant
PETER BERGEN AND ELIZABETH BERGEN 579 Pembina Avenue Winkler, Manitoba R6W 0K1 Email: peter@bergtrailers.com	(204)-362-1570		Defendants
THOMPSON DORFMAN SWEATMAN LLP 1700-242 Hargrave Street Winnipeg, MB R3C 0V1 Art Stacey Email: ajs@tdslaw.com	Tel: 204-956-3532	Fax: 204-957-0227	Counsel for the Debtor
DELOITTE RESTRUCTURING INC. Suite 2300 – 360 Main Street Winnipeg, MB R3C 3Z3 Brent Warga Email: bwarga@deloitte.ca John Fritz Email: jofritz@deloitte.ca	Tel: 204-944-3611 Tel: 204-942-0051	Fax: (204)-947-2689	Proposed Receiver
PITBLADO LLP 2500-360 Main Street Winnipeg, MB R3C 4H6 Catherine Howden Email: howden@pitblado.com	Tel: 204-956-3532	Fax: 204-957-0227	Counsel for the Proposed Receiver
PITBLADO LLP 2500 – 360 Main Street Winnipeg, MB R3C 4H6 Douglas G. Ward, K.C. Email: ward@pitblado.com Joshua Lieberman Email: lieberman@pitblado.com	Tel: 204-956-3534	Fax: (204)-957-0227	Counsel for Innovative Doors (2006) Ltd. and Richard Fehr as the executor of the Estate of John Fehr

Party/Counsel	Telephone	Facsimile	Party Represented
FINISHMASTER CANADA INC. 170 Industriel Boulevard Boucherville, QC J4X 2X3 Jose Fucale Email: jfucale@uniselect.com	Tel: 450-641-2440		Secured Creditor
INTEGRA CASTINGS INC. 1331 Chevrier Boulevard Winnipeg, MB R3T 0Y4 Angela Penner Email: apenner@thectdgroup.com	Tel: (204)-325-7376		Secured Creditor
SURREY NATIONAL VERIFICATION AND COLLECTION CENTRE CANADA REVENUE AGENCY 9755 King George Boulevard Surrey BC V3T 5E1	Tel: 1-866-891-7403	Fax (toll free): 1-866-219-0311	
DEPARTMENT OF JUSTICE (CANADA) 601-400 St. Mary Avenue Winnipeg, MB R3C 4K5 Timothy Doyle Email: timothy.doyle@justice.gc.ca Penny Piper Email: penny.piper@justice.gc.ca	Tel: 431-489-8662 Tel: 431-489-8686	Fax: 204-983-3636	Counsel for His Majesty the King
MANITOBA JUSTICE Civil Legal Services 301-310 Broadway Avenue Winnipeg, MB R3C 3L6 Shelley Haner Email: shelley.haner@gov.mb.ca	(204)-792-6471	(204)-948-2826	Counsel for the Minister of Finance