



FORCE FILED

No. S-229607  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN

**MITSUBISHI HC CAPITAL CANADA INC.**

Petitioner

- and -

**VIC VAN ISLE CONSTRUCTION LTD., VVI CONSTRUCTION LTD., AND  
LORTAP ENTERPRISES LTD.**

Respondents

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE RECEIVERSHIP OF  
VIC VAN ISLE CONSTRUCTION LTD., VVI CONSTRUCTION LTD., AND  
LORTAP ENTERPRISES LTD.**

**NOTICE OF APPLICATION**

**Names of applicant:** Mitsubishi HC Capital Canada Inc.

**To:** The Service List at Schedule "A"

**TAKE NOTICE** that an application will be made by the Petitioner, on consent of the Respondents, among others, to the presiding judge at the courthouse at 800 Smithe Street in Vancouver, British Columbia on Tuesday, April 11, 2023 at 9:45 am for the order set out in Part 1 below.

## PART 1 – ORDERS SOUGHT

1. The Petitioner seeks an Order (the “**Receivership Order**”), substantially in the form attached as Schedule “**B**”, among other things:
  - (a) discharging the limited receivership order granted December 2, 2022 in this action and replacing it in its entirety with the Receivership Order;
  - (b) appointing BDO Canada Limited as court-appointed receiver, without security, over all of the property, assets and undertaking of Vic Van Isle Construction Ltd. (“**Vic**”), VVI Construction Ltd. (“**VVI Construction**”), and Lortap Enterprises Ltd. (“**Lortap**” and together with Vic and VVI, collectively, the “**Debtors**”) pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”); and
  - (c) abridging the period for notice pursuant to Rule 22-4 of the *Supreme Court Civil Rules*.
2. Such further and other relief as counsel may advise and this Honourable Court deems to be just and appropriate in the circumstances.

## PART 2 – FACTUAL BASIS

### The Parties

3. The Petitioner, Mitsubishi Capital Canada Inc. (“**Mitsubishi**”), is a financial institution providing financing solutions to Canadian businesses.
4. The Debtors, Vic and VVI Construction, were general contractors and design builders.
5. Pursuant to a corporate reorganization effective April 1, 2021 (the “**Reorganization**”), Five Star Management Ltd., Vic Can Isle Construction Ltd., Wood-Nor Construction Ltd., Glacier Building Supplies (1986) Ltd., and Glacial Building Supplied Ltd. (collectively, the “**Amalgamation Predecessors**”) amalgamated under the laws of the Province of British Columbia to form Vic, as amalgamation successor.
6. The Debtor, Lortap, manufactures custom millwork for hospitals, schools, banks, retailers, corporate offices, casino’s, universities, ski resorts, and high-end residential homes.

7. Each of the Debtors are incorporated pursuant to the laws of the Province of British Columbia and have their respective head offices in Revelstoke, BC.

### **The Credit Agreement and Security Agreements**

8. The Debtors are each borrowers under a Secured Revolving Credit Agreement dated April 21, 2020 (the "**Credit Agreement**"), with Mitsubishi, formerly Hitachi Capital Canada Corp. ("**HCC**"), as lender.
9. Pursuant to the Credit Agreement, Mitsubishi, through HCC, extended to the Debtors a secured demand revolving credit facility.
10. As security for the payment and performance of the Debtors' obligations under the Credit Agreement, each of the Debtors (or in the case of Vic, its Amalgamation Predecessors), among others, granted a security interest in all of their respective real and personal property pursuant to the terms of general security agreements (collectively, the "**Security Agreements**").
11. Following the Reorganization, each of the Debtors executed a Confirmation and Acknowledgment dated April 1, 2021 (the "**Confirmation and Acknowledgement**"), whereby the Debtors acknowledged and confirmed their respective obligations to HCC (now Mitsubishi) under the Credit Agreement.
12. Pursuant to the Confirmation and Acknowledgement, the Debtors also acknowledged and confirmed the validity and enforceability of, among other things, the Security Agreements as against it.
13. As at March 31, 2023, the amount owing to Mitsubishi by the Debtors under the Credit Agreement is \$1,493,255.22 (the "**Indebtedness**"), plus costs and interest in accordance with the Credit Agreement.

### **The PPR Searches**

14. HCC registered the security interests granted to it by the Debtors pursuant to the Security Agreements in the British Columbia Personal Property Register in accordance with the *Personal Property Security Act* (British Columbia).
15. The registrations have been updated to reflect Mitsubishi as the secured party against the Debtors in accordance with the *Personal Property Security Act* (British Columbia).

16. The Personal Property Registry Search Results for each of the Debtors reveals that Mitsubishi has a first in time registration over all present and after acquired personal property of the Debtors, as well as serial numbered goods registrations over various pieces of the Debtors equipment.

#### **Demands and Notices of Intention to Enforce Security**

17. On February 28, 2022, in accordance with the Credit Agreement, Mitsubishi demanded from the Debtors repayment in full of the Indebtedness, as it then was.
18. In conjunction with the demands for payment, Mitsubishi served the Debtors with a Notice of Intention to Enforce Security under Section 244 of the BIA.
19. Each of the Debtors waived the 10-day waiting period and consented to early enforcement by Mitsubishi of its security.

#### **The Forbearance Agreement**

20. On March 9, 2022, Mitsubishi and, among others, the Debtors, entered into a forbearance agreement (the “**Forbearance Agreement**”).
21. Pursuant to the terms of the Forbearance Agreement, among other things:
  - (a) the Debtors acknowledged: (i) the validity and enforceability of the Indebtedness and security granted under the Security Agreements; (ii) that the Debtors have no defenses to Mitsubishi’s enforcement of its security, including the appointment of a receiver, (iii) the Debtors are in default of their respective obligations to Mitsubishi, and (iv) Mitsubishi has demanded repayment of the Indebtedness and may enforce its rights and remedies against the Debtors;
  - (b) the Debtors acknowledged that all of the security held by Mitsubishi is valid, binding and enforceable in accordance with its terms; and
  - (c) Mitsubishi agreed to forbear from enforcing its rights against, among others, the Debtors, until the earlier of: (i) the occurrence of a “Forbearance Terminating Event” (as defined in the Forbearance Agreement), or (ii) June 30, 2022 (the “**Forbearance Deadline**”).

22. In addition to the foregoing, the Forbearance Agreement required the Debtors to find new financing on or before April 30, 2022, in an amount sufficient to repay Mitsubishi in full. This was not achieved and the Indebtedness remains due and owing.
23. Upon the occurrence of the Forbearance Deadline, the Debtors irrevocably consented to the appointment of a receiver by Mitsubishi over their respective assets, property and undertaking.

#### **Partial Assignment of Debt and Security**

24. In March 2022, the Debtors expressed to Mitsubishi their financial difficulties and requested certain accommodations, which gave rise to the Forbearance Agreement. In particular, the principal of each of the Debtors advised that he had arranged with his former brother-in-law's company, 2427324 Alberta Ltd. (the "**Landlord**"), to provide liquidity to repay the Indebtedness.
25. The proposed transaction with the Landlord faced numerous delays and ultimately did not occur.
26. As a result, the transaction structure with the Landlord changed to focus on the Landlord purchasing one of the Amalgamation Predecessor's real property assets (the "**Real Property**") instead of refinancing the Indebtedness.
27. The sale transaction of the Real Property resulted in Mitsubishi receiving \$1.65 million as a partial pay down of the Indebtedness then owing from the transaction, and in exchange, Mitsubishi discharged its mortgage and other registrations against the Real Property.
28. On July 4, 2022, following the transaction for the Real Property, the Debtor Vic, as tenant, and the Landlord, as landlord, among others, entered into a lease agreement for Vic's continued use of the premises.

#### **The Landlord Distress Notice**

29. On November 22, 2022, Mitsubishi received a letter from Accurate Effective Bailiffs Ltd. (the "**Bailiff**").

30. The letter from the Bailiff advised that it had seized certain serial numbered goods assets of Vic pursuant to the *Rent Distress Act* (British Columbia) (collectively, the “**Seized Equipment**”).
31. The Seized Equipment is subject to Mitsubishi’s security pursuant to the Security Agreements and Mitsubishi has serial numbered goods registrations against the Seized Equipment at the Personal Property Security Registry (British Columbia).
32. The Bailiff was appointed by the Landlord.

### **The Limited Receivership Order**

33. As a result of the seizure of the Seized Equipment, on December 2, 2022, Mitsubishi brought an *ex parte* application for an order appointing BDO Canada Limited as limited receiver over the Seized Equipment and staying proceedings as against Vic (the “**Limited Receivership Order**”).
34. On December 13, 2022, the Landlord filed an application to overturn the Limited Receivership Order.
35. To provide time for the Debtors to continue negotiations with the potential third party financier, on December 15, 2022, Mitsubishi, the Landlord, Vic, and BDO Canada Limited, the receiver over the Seized Assets, entered into a settlement agreement (the “**Settlement Agreement**”).
36. Pursuant to the Settlement Agreement, the Landlord adjourned its application *sine die*.
37. The purpose of the Settlement Agreement was to provide the Debtors with time to seek a refinancing with a third party, or to wind up the Debtors and liquidate its assets in an orderly manner.

### **The Proposed Third Party Financing**

38. Upon receipt of the funds from the sale of the Real Property as a partial reduction of the Indebtedness, Mitsubishi focused its efforts on working with the Debtors to obtain repayment of the balance of the Indebtedness. The Debtors advised that they were in the process of obtaining refinancing from a reputable third party financial institution that would be sufficient to repay the remainder of the Indebtedness in full.

39. From July 2022, through to March 2023, Mitsubishi continued to work with the Debtors to complete the proposed refinancing.
40. Despite the substantial time granted to the Debtors by Mitsubishi, the third party refinancing has not occurred. Further, the Debtors have not taken steps to voluntarily wind up operations and liquidate their assets in accordance with the Settlement Agreement.
41. Mitsubishi has lost confidence in the Debtors and its management to obtain third party refinancing and to repay the Indebtedness.
42. Mitsubishi is concerned its security position will continue to deteriorate without the appointment of a receiver to liquidate the collateral.

### **PART 3 – LEGAL BASIS**

43. Mitsubishi applies for the appointment of BDO Canada Limited, licensed insolvency trustee, as a receiver over all of the assets, property and undertakings of the Debtors pursuant to section 243 of the BIA.
44. Mitsubishi is the senior secured creditor of the Debtors pursuant to the Security Agreements.
45. Mitsubishi has perfected its security interests over the assets and property of the Debtors.
46. Mitsubishi has demanded payment of the Indebtedness and issued a Notices of Intention to Enforce Security under Section 244 of the BIA.
47. The Debtors have consented to early enforcement of Mitsubishi's security interests.
48. The Debtors and the Landlord have consented to the appointment of a receiver by Mitsubishi.
49. Mitsubishi first sought the Limited Receivership Order to try and preserve the *status quo* and preserve the prospects of a potential refinancing for the benefit of all stakeholders, but the refinancing was not possible.

50. Section 243 of the BIA grants this Court broad authority, on application by a secured creditor, to appoint a receiver on any terms the court considers appropriate where it is just and convenient to do so.
51. A receivership order may authorize a receiver to take any action that the Court considers advisable, including taking possession of property, completing an investigation, and reporting to the Court and stakeholders.
52. BDO Canada Limited has consented to act as receiver.
53. It is just and convenient to appoint BDO Canada Limited as receiver in the circumstances.

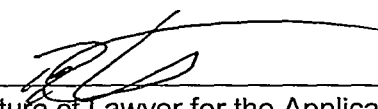
**PART 4 – MATERIAL TO BE RELIED ON**

54. Affidavit #1 of Philippe Frenette dated December 2, 2022.
55. Affidavit #2 of Philippe Frenette dated March 31, 2023.
56. Notice of Application of the Landlord dated December 12, 2022.
57. Requisition to Adjourn the Landlord's application filed December 15, 2022.
58. Any other materials filed herein.

The Petitioner estimates that the hearing of the Petition will take 20 minutes.

This matter is not within the jurisdiction of a master.

Date: 5 / April / 2023

  
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Signature of Lawyer for the Applicant

*for* James Reid



**Schedule "A"**  
**Service List**

Court No. S-229607

Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN

**MITSUBISHI HC CAPITAL CANADA INC.**

Petitioner

- and -

**VIC VAN ISLE CONSTRUCTION LTD., VVI CONSTRUCTION LTD., AND LORTAP  
ENTERPRISES LTD.**

Respondents

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE RECEIVERSHIP OF  
VIC VAN ISLE CONSTRUCTION LTD., VVI CONSTRUCTION LTD., AND  
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**SERVICE LIST**

PARTY	CONTACT INFORMATION	ROLE
<p>BDO Canada Limited</p> <p>Unit 1100 Royal Centre</p> <p>1055 West Georgia Street, P.O.Box 11101</p> <p>Vancouver, BC V6E 3P3</p>	<p>Jervis Rodrigues</p> <p><a href="mailto:JRodrigues@bdo.ca">JRodrigues@bdo.ca</a></p> <p>Chris Bowra</p> <p><a href="mailto:cbowra@bdo.com">cbowra@bdo.com</a></p>	<p>Receiver</p>
<p>Miller Thomson LLP</p> <p>700 W Georgia St Suite 2200, Vancouver, BC V7Y 1K8</p>	<p>Bryan Hicks</p> <p><a href="mailto:bjhicks@millertomson.com">bjhicks@millertomson.com</a></p> <p>James W. Reid</p> <p><a href="mailto:jwreid@millertomson.com">jwreid@millertomson.com</a></p> <p>Asim Iqbal</p> <p><a href="mailto:aiqbal@millertomson.com">aiqbal@millertomson.com</a></p>	<p>Counsel to Mitsubishi HC Capital Canada Inc.</p>
<p>mitsubishi hc capital canada inc.</p> <p>40 KING STREET SCOTIA PLAZA 2100 TORONTO ON M5H 3C2 Canada</p>		<p>Secured Creditor</p>
<p>Dentons LLP</p> <p>250 Howe St 20<sup>th</sup> Floor, Vancouver, BC V6C 3R8</p>	<p>Jordan Schultz</p> <p><a href="mailto:jordan.schultz@dentons.com">jordan.schultz@dentons.com</a></p> <p>Lisa Low</p> <p><a href="mailto:Lisa.low@dentons.com">Lisa.low@dentons.com</a></p>	<p>Council to 2427324 Alberta Ltd.</p>
<p>VIC VAN ISLE CONSTRUCTION LTD</p> <p>PO BOX 2490 119 Campbell Avenue Revelstoke BC V0E 2S0 CANADA</p>	<p>Jamie Hampton</p> <p><a href="mailto:lewis@vicvanislegroup.com">lewis@vicvanislegroup.com</a></p>	<p>Debtor/Respondent</p>

VVI CONSTRUCTION LTD  119 Campbell Avenue P.O. Box 2490 Revelstoke BC V0E 2S0 CANADA	Jamie Hampton  <a href="mailto:lewis@vicvanislegroup.com">lewis@vicvanislegroup.com</a>	Debtor/Respondent
LORTAP ENTERPRISES LTD  119 Campbell Avenue P.O. Box 2490 Revelstoke BC V0E 2S0 CANADA	Jamie Hampton  <a href="mailto:lewis@vicvanislegroup.com">lewis@vicvanislegroup.com</a>	Debtor/Respondent
OCEAN PARK FORD SALES LTD  3050 King George Hwy, Surrey BC V4P 1A2 Canada		PPR Creditor
BANK OF MONTREAL/BANQUE DE MONTREAL  250 YONGE STREET, 9TH FLOOR TORONTO ON M5B 2L7 Canada		PPR Creditor
WESTERN SURETY COMPANY  2100-1881 SCARTH STREET REGINA SK S4P 4K9 Canada		PPR Creditor
HENDRICKSON, KENNETH LEWIS  1593 Nichol Rd Revelstoke BC V0E 2S1 Canada		PPR Creditor

RECEIVABLES MANAGEMENT  OFFICE –  1) ALANA LOWERY  2) LAURA CRUZ  1802 DOUGLAS STREET, 6TH FLOOR VICTORIA BC V8T 4K6 Canada		PPR Creditor
MERIDIAN ONECAP CREDIT CORP.  SUITE 1500, 4710 KINGSWAY BURNABY BC V5H 4M2 Canada		PPR Creditor
COUNTRY LUMBER LTD.  22538 Fraser Highway Langley BC V2Z 2T8 Canada		PPR Creditor
CANADIAN WESTERN BANK  3rd Floor, 750 Cambie Street Vancouver BC V6B OA2 Canada		PPR Creditor
CANADA REVENUE AGENCY SURREY NATIONAL VERIFICATION AND COLLECTION CENTRE  Insolvency Intake Centre Collections Directorate  9755 King George Blvd  Surrey, BC V3T 5E1		Creditor

<p>ACCURATE BAILIFF GROUP</p> <p>6139 Trapp Ave, Burnaby, BC V3N 2V3</p>	<p>Peter Powers</p> <p><a href="mailto:peter.powers@aebailiffs.com">peter.powers@aebailiffs.com</a></p>	<p>Bailiff</p>
<p>BRANDT TRACTOR - CONSTRUCTION AND FORESTRY DIVISION</p> <p>TANNEA HEINEMANN</p> <p>29 Tower Road Regina SK S4P 3R8</p> <p>PO Box 32063 Victoria Square Regina SK S4N 7L2 (306) 347-4559 tel (306) 791-5945 fax</p>	<p>Tannea Heinemann</p> <p><a href="mailto:THeinemann@brandt.ca">THeinemann@brandt.ca</a></p>	<p>PPR Creditor</p>
<p>DAWSON INTERNATIONAL TRUCK CENTRES LTD.</p> <p>1495 Iron Mask Rd Kamloops BC V1S1C8</p>	<p><a href="mailto:hkwiatkowski@dawsontruckcentres.com">hkwiatkowski@dawsontruckcentres.com</a></p> <p>And/or</p> <p><a href="mailto:credit@dawsontruckcentres.com">credit@dawsontruckcentres.com</a></p>	<p>PPR Creditor</p>
<p>THE BRITISH COLUMBIA MINISTRY OF ATTORNEY GENERAL</p>	<p>Ira Tee</p> <p><a href="mailto:ira.tee@gov.bc.ca">ira.tee@gov.bc.ca</a></p>	<p>Creditor</p>
<p>NAPA REVELSTOKE 3725</p> <p>Box 3048 -288 Big Bend Hwy Revelstoke, BC V0E 2S0</p>	<p>Cheryl Peever</p> <p>Fax : 250-837-2100</p>	<p>Creditor</p>

**Schedule "B"**  
**Form of Receivership Order**

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

MITSUBISHI HC CAPITAL CANADA INC.

Petitioner

- and -

VIC VAN ISLE CONSTRUCTION LTD., VVI CONSTRUCTION LTD., AND  
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ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

JUSTICE

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\_\_\_\_\_/APRIL/2023

ON THE APPLICATION of Mitsubishi HC Capital Canada Inc. (formerly Hitachi Capital Canada Corp.) (the "**Petitioner**") 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 BDO Canada Limited ("**BDO**") as Receiver (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and property of Vic Van Isle Construction Ltd., VVI Construction Ltd., and Lortap Enterprises Ltd. (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Affidavit #1 of Philippe Frenette affirmed December 2, 2022, and Affidavit #2 of Philippe Frenette affirmed March 31, 2023, and noting the consent of BDO to act as the Receiver;

AND ON HEARING James Reid of Miller Thomson LLP, counsel for the Petitioner;



AND UPON NOTING the consent of the Respondents and counsel to 2427324 Alberta Ltd. endorsed hereon.

THIS COURT ORDERS AND DECLARES that:

**REPLACEMENT OF LIMITED RECEIVERSHIP ORDER**

1. The Order granted December 2, 2022, in this action for the appointment of BDO as limited receiver over certain property of the Debtor Vic Van Isle Construction Ltd. is hereby discharged and replaced in its entirety by this Order.

**APPOINTMENT**

2. Pursuant to Section 243(1) of the BIA, BDO is appointed Receiver, without security, of all of the assets, undertakings and property of the Debtors, including all proceeds (the "Property").

**RECEIVER'S POWERS**

3. 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 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 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 businesses 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 \$10,000, provided that the aggregate consideration for all such transactions does not exceed \$50,000; 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 the Lender and other 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 Debtor may have;
- (s) to assign the Debtors into bankruptcy; and
- (t) 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**

4. 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, and possession of, the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.
5. 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.
6. 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.
7. 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**

8. No proceeding or enforcement process whatsoever, including but not limited to any distraint proceeding, or any proceeding 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**

9. 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 respective Debtor and the Receiver.

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

10. All rights and remedies (including, without limitation, landlord distress rights and 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 are 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**

11. 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 any of 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**

12. All Persons having oral or written agreements with any of the Debtors 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

13. 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

14. Subject to the employees' right to terminate their employment, all employees of the Debtors shall remain the employees of the respective Debtor until such time as the Receiver, on the respective Debtor's 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

15. 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

16. 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.
17. 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.
18. 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.
19. 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

20. 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

21. 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 subject to Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. 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.
23. 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. 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 \$100,000 (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 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. 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. The Receiver is 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. 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.

#### **RETENTION OF LAWYERS**

28. The Receiver may retain solicitors to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation, those conferred by this Order. The Receiver is specifically authorized and permitted to use Miller

Thomson LLP, solicitors for the Petitioner herein, as its own counsel in respect of any matter where there is no conflict of interest.

29. In respect of any legal advice or issue where a conflict may exist or arise in respect of the Petitioner and the Receiver or a third party, the Receiver shall utilize independent counsel.

#### ALLOCATION

30. 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

31. The Receiver shall establish and maintain a website in respect of these proceedings at: <https://www.bdo.ca/en-ca/services/advisory/debt-and-financial-recovery-services/corporate-restructuring/> (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.
32. 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 Petitioner a demand for notice in the form attached as **Schedule "B"** (the "**Demand for Notice**"). The Receiver and the Petitioner 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 Petitioner from any requirement to provide further notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice.
33. 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.
34. 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.
35. Notwithstanding paragraph 34 of this Order, service of the Application 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.

36. 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 Debtor's 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**

37. 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.
38. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
39. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
40. 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.
41. 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.
42. The Petitioner 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 Petitioner's security or, if not so provided by the Petitioner's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
43. Endorsement of this Order by counsel appearing on this application other than the Petitioner is dispensed with.

**SERVICE**

44. Time for service of the application for this Order is hereby abridged and service thereof is deemed good and sufficient and this application is properly returnable today.

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:

\_\_\_\_\_  
Signature of James Reid  
lawyer for Mitsubishi HC Capital Canada Inc.

\_\_\_\_\_  
BY THE COURT  
DISTRICT REGISTRAR

\_\_\_\_\_  
Signature of Jordan Schultz  
lawyer for 2427324 Alberta Ltd.

\_\_\_\_\_  
Signature of Jamie Hampton  
Director of Vic Van Isle Construction Ltd.

\_\_\_\_\_  
Signature of Jamie Hampton  
Director of VVI Construction Ltd.

\_\_\_\_\_  
Signature of Jamie Hampton  
Director of Lortap Enterprises Ltd..

SCHEDULE "A"

RECEIVER CERTIFICATE

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

AMOUNT

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

1. THIS IS TO CERTIFY that **BDO Canada Limited**, the Receiver (the "Receiver") of certain assets, undertakings and properties of **Vic Van Isle Construction Ltd** appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (In Bankruptcy and Insolvency) (the "Court") dated the \_\_\_\_\_ day of \_\_\_\_\_, 2023 (the "Order") made in SCBC Action No. 229607 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. Unless otherwise stated herein, capitalized terms used but not otherwise defined are given the meaning ascribed to such terms in 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 \_\_\_\_\_ 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 \_\_\_\_\_.
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 12 day of February, 2021.

**BDO Canada Limited**, solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per:  
Name:  
Title:

**Schedule "B"**

**Demand for Notice**

**TO: MITSUBISHI HC CAPITAL CANADA INC.**  
c/o Miller Thomson LLP  
Attention: James Reid  
Email: jwreid@millerthomson.com

**AND TO: BDO Canada Limited**  
c/o [Name of Counsel to the Receiver]  
Attention:  
Email:

**Re: In the matter of the Receivership of VIC VAN ISLE CONSTRUCTION LTD., VVI CONSTRUCTION LTD., AND LORTAP ENTERPRISES LTD.**

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. 11-01-00000-0000

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IN THE SUPREME COURT OF BRITISH COLUMBIA

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BETWEEN:

**MITSUBISHI HC CAPITAL CANADA INC.**

Petitioner

- and -

**VIC VAN ISLE CONSTRUCTION LTD., VVI  
CONSTRUCTION LTD., AND LORTAP  
ENTERPRISES LTD.**

Respondent

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE RECEIVERSHIP OF  
VIC VAN ISLE CONSTRUCTION LTD., VVI  
CONSTRUCTION LTD., LORTAP ENTERPRISES LTD.

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