

FORCE FILED



No. S-234961  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANK OF MONTREAL

PETITIONER

AND:

UNIFAB INDUSTRIES LTD. AND SEKWOD ENTERPRISES  
(2012) LTD.

RESPONDENTS

**NOTICE OF APPLICATION**

**Name of applicant:** MNP Ltd., in its capacity as court-appointed Receiver and Manager (the “**Receiver**” or “**MNP**”) of the assets, undertakings and properties of Unifab Industries Ltd. (“**Unifab**”) and Sekwod Enterprises (2012) Ltd. (“**Sekwod**”, and together with Unifab, the “**Debtor**”)

To: The Service List maintained pursuant to the Receivership Order made July 17, 2023

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, BC on October 27, 2023 at 9:45 a.m. for the orders set out in Part 1 below.

**Part 1 ORDERS SOUGHT**

1. An order abridging the time for service of this Notice of Application such that this application is properly returnable today.
2. An order, in substantially the form attached hereto as Schedule "A" (the “**Sale Approval Order**”) approving the sale transaction (the “**Sale Transaction**”) contemplated by the Asset Purchase Agreement dated October 17, 2023 (the “**Sale Agreement**”) between the

Receiver and 1444715 B.C. Ltd. (the “**Purchaser**”) for the sale of the property located at 6050 2<sup>nd</sup> Street, Grand Forks, BC (the “**Property**”) with a legal description as set out in the Sale Agreement and related relief to conclude the transaction;

3. An order, in substantially the form attached hereto as Schedule "B" (the “**Auction Approval Order**”) approving and accepting the Auction and Liquidation Services Agreement dated October 3, 2023 (the “**Auction Agreement**”) between the Receiver and Maynards Industries Canada II Ltd. (“**Maynards**”) for the sale of the Assets described in Schedule A of the Auction Agreement at auction (the “**Auction**”) and related relief to conclude the transaction;
4. An order approving the activities of the Receiver as set out in the Receiver’s First Report to Court dated October 18, 2023 (the “**First Report**”);
5. An order, in substantially the form attached hereto as Schedule "C" (the “**Sealing Order**”) sealing the Confidential Supplement to the First Report (the “**Confidential Report**”); and
6. Such further and other relief as counsel may advise and this Honourable Court deems appropriate.

## **Part 2 FACTUAL BASIS**

1. Capitalized terms not otherwise defined have the meanings ascribed to them in the First Report.

### **Background**

2. By Order of Justice Gibb-Carsley dated July 17, 2023 (the “**Receivership Order**”), made on the application of the Bank of Montreal, the Receiver was appointed as receiver and manager without security, of the assets, property and undertakings of the Debtor, and all proceeds arising therefrom.<sup>1</sup>

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<sup>1</sup> First Report, at para. 1; Receivership Order, at para. 2.

3. Prior to the Receivership, Unifab was in the business of providing engineering, fabrication, welding, machining, sandblasting and coating services, primarily in the mining and forestry sectors.<sup>2</sup>
4. Sekwod shared a Director with Unifab and owned the land and facility that Unifab operated from in Grand Forks, BC.<sup>3</sup>
5. In addition to the Property, the Debtor's personal property included machinery, equipment, steel inventory and accounts receivable (subject to potential collection challenges related to those receivables).
6. The Petitioner, the Bank of Montreal, is the senior secured creditor of the Debtor and is owed in excess of \$3.75 million under certain credit facilities, excluding legal fees and the Receiver's fees.

#### **Receiver's Activities to Date**

7. On July 18, 2023, the Receiver travelled to Grand Forks to: (i) take possession of the Property; (ii) undertake various conservatory and protective measures; and (iii) prepare an inventory of the Debtor's personal property.<sup>4</sup>
8. Since that time, the Receiver has focused on preserving and marketing the Property and the Assets, attending to various statutory duties and terminating the Debtor's employees. A detailed description of the Receiver's activities is outlined in the First Report, including the following significant activities:
  - (a) concluding the sale of a redundant asset within the limits permitted in the Receivership Order;<sup>5</sup>
  - (b) complying with statutory notices and requirements pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "BIA"), including distribution to all known

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<sup>2</sup> First Report, at para. 2.

<sup>3</sup> First Report, at paras. 3-4.

<sup>4</sup> First Report, at para. 7.

<sup>5</sup> First Report, at para. 8(f).

creditors of the Debtor and attending to filing requirements pursuant to the *Wage Earner Protection Program Act*, SC 2005, c 47, s 1;<sup>6</sup>

- (c) collecting accounts receivable, where possible;<sup>7</sup>
- (d) terminating employees and attending to records required for former employees;<sup>8</sup> and
- (e) conducting a sales process for the Assets and the Property as further described below.<sup>9</sup>

### **The Sales Process**

9. On August 23, 2023, the Receiver initiated a tender process for the Assets and the Property by releasing a Notice of Invitation for Offers to Purchase (the “**Invitation for Offers**”).<sup>10</sup> Within the tender process, the Receiver allowed offers for *en bloc* or separate lot purchases to accurately assess the market value of the Debtor’s assets and ensure the best offers were received.<sup>11</sup>
10. The deadline for offers was September 18, 2023, and between the two dates the Receiver carried out various marketing and advertising strategies including, among other things:
  - a. posting details of the sales process and the Invitation for Offers on MNP’s national website;
  - b. advertising the sales process in a national weekly insolvency newsletter;
  - c. advertising the sales process on LinkedIn for a two-week period;
  - d. researching other steel fabricators in British Columbia, Alberta, Montana, USA and Washington, USA to identify prospective purchasers; and
  - e. sending the Invitation for Offers directly to 62 parties, including realtors, companies in the steel fabrication industry and other parties identified as potential interested parties.<sup>12</sup>

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<sup>6</sup> First Report, at para. 9.

<sup>7</sup> First Report, at paras. 31-33.

<sup>8</sup> First Report, at paras. 10-12.

<sup>9</sup> First Report, at paras. 14-29.

<sup>10</sup> First Report, at para. 14.

<sup>11</sup> First Report, at para. 14.

<sup>12</sup> First Report, at paras. 15(a)-(f).

11. The Receiver created a virtual data room for the Property. Seven interested parties executed non-disclosure agreements and were given access to the virtual data room.<sup>13</sup>
12. Finally, the Receiver communicated with interested parties, including to assist with their due diligence, and facilitated discussions between these parties and the former equipment foreman in respect of the Assets.<sup>14</sup>

### **Results of the Sales Process**

13. The Receiver received eight offers to purchase and auction proposals by the bid deadline.<sup>15</sup> After review, the Receiver determined that an auction of the Assets and a separate sale of the Property would result in the highest and best realization.<sup>16</sup>
14. The Receiver accepted the Auction Agreement for the Assets from Maynards and the Sale Agreement from the Purchaser for the Property (collectively, the “**Transactions**”), both subject to Court approval, details of which can be found in the respective agreements.
15. The Purchaser has paid a deposit to the Receiver and the only condition precedent to the Sale Agreement is court approval.<sup>17</sup> The transaction for the Property will be concluded after the Auction is concluded and the premises are vacated.<sup>18</sup>
16. Maynards will conduct the Auction for the Assets, with a net minimum guaranteed payment to the Receiver.<sup>19</sup>
17. The Receiver has assessed information regarding the value of the Assets and the Property, including the results of the sales process, and determined that the Transactions represent

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<sup>13</sup> First Report, at paras. 16-17.

<sup>14</sup> First Report, at para. 18.

<sup>15</sup> First Report, at para. 19.

<sup>16</sup> First Report, at para. 20.

<sup>17</sup> First Report, at paras. 25-26.

<sup>18</sup> First Report, at para. 26(b)

<sup>19</sup> First Report, at paras. 21-23.

the best realization available, and that extending the sales process would not result in a better recovery for stakeholders.<sup>20</sup> for

### **Part 3 LEGAL BASIS**

18. The Receiver relies on:

- (a) the *Law and Equity Act*, R.S.B.C. 1996, c. 250, including ss. 37 and 64 thereof;
- (b) the *BIA*, including Part XI thereof;
- (c) the *Supreme Court Civil Rules*, BC Reg 168/2009, Rules 8-1 and 13-1;
- (d) the Receivership Order;
- (e) the inherent jurisdiction of this Court; and
- (f) such further and other grounds as counsel may advise and this Honourable Court may permit.

### **The Transactions should be approved**

19. When determining whether or not to approve a sale of assets in a receivership, there are a number of considerations that guide the court in its analysis, including:

- (a) whether the party conducting the sale made sufficient efforts to obtain the best price and did not act improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers were obtained; and,
- (d) whether there has been any unfairness in the sales process.

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<sup>20</sup> First Report, at paras. 27-28.

*Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (Ont. C.A.) (“*Soundair*”) at para. 6, *Quest University Canada (Re)*, 2020 BCSC 1883 at para. 176.

20. More generally, in analyzing whether a transaction should be approved, a court is to consider the transaction as a whole and decide whether or not the sale is appropriate, fair and reasonable.

*Veris Gold Corp. (Re)*, 2015 BCSC 1204 at para. 23.

21. The Receiver submits the above factors favour the approval of the Transactions. Specifically:

- (a) the Receiver marketed the Assets and the Property broadly, including cross-border, based on parties that were likely to be interested in the Assets;
- (b) the Receiver relied on a mix of direct and indirect marketing to reach the broadest number of potential purchasers;
- (c) the Receiver marketed the Assets and the Property for a sufficient period of time to elicit offers and interest in the Assets and the Property (demonstrated by the Receiver receiving multiple offers);
- (d) the Receiver provided interested parties with ample time to provide offers or proposals;
- (e) the Receiver created a data room and facilitated discussion between interested parties and the former equipment foreman to maximize information sharing and to ensure that all parties had access to the same information regarding the opportunity; and
- (f) the Receiver accepted offers for parcels, or *en bloc*, and ultimately accepted separate offers for the Assets and the Property to achieve the highest aggregate price.

22. The Receiver has concluded, based on all information available to it, including the sales process results and opinions regarding the Property, that the purchase price for the Property is commercially reasonable and will not prejudice any creditors or stakeholders.
23. The Receiver has also concluded, based on all information available to it, including the sales process results, that the Auction Agreement is commercially reasonable and will not prejudice any creditors or stakeholders.
24. The Receiver submits that the Sale Agreement and the Auction Agreement are appropriate, fair and reasonable in the circumstances. The Receiver is satisfied that the value achieved represents the best transactions available and that further marketing of the Assets and the Property would not result in a better offer or value for stakeholders.
25. For all of the foregoing reasons, the Receiver respectfully requests that the Orders regarding the Transactions be granted as sought.

**The Sealing Order should be approved**

26. The Confidential Report includes information and documents that are confidential and commercially sensitive, including opinions as to value and particulars of other offers received in the sales process.
27. The test for a sealing order is set out in the Supreme Court of Canada decision in *Sherman Estate v. Donovan*, which reframed the two-step inquiry in the *Sierra Club* test into a three-steps, requiring an applicant for a sealing order to establish that:
  - (a) Court openness poses a serious risk to an important public interest;
  - (b) The order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
  - (c) As a matter of proportionality, the benefits of the order outweigh its negative effects.

*Sherman Estate v. Donovan, 2021 SCC 25, at para 38.*

28. In restructuring and liquidation proceedings under Canadian insolvency statutes, courts regularly grant time-limited sealing orders over pricing and related information contained



in conjunction with sale approval orders, in order to avoid jeopardizing any subsequent sales process that might occur if the approved sale does not close.

29. The Ontario Superior Court of Justice also recently confirmed that protection of a sales process and the maximization of recovery in such a process is an important public interest that justifies granting a limited sealing order.

*Rose-Isli Corp. v. Frame Tech Structures Ltd., 2023 ONSC 832, at paras 137-141.*

30. The sealing of the Confidential Report is appropriate in the circumstances. The interest of the Debtor and their creditors in protecting the integrity of the sales process for the Debtor's assets is an important public interest.
31. In each case, the documents sought to be sealed contain commercially sensitive information about the value and pricing of the Assets and Property marketed for sale by the Receiver. This information could be used in the context of a subsequent sales process should the current Transactions not complete. This in turn may result in reduced recoveries and consequential negative impact on creditors.
32. The Sealing Order sought is limited in time and scope and is proportional to the interests of all parties. The limited nature of the Order means interference with the court openness principle is also limited. There is no reasonable alternative to the limited Sealing Order sought. It is therefore appropriate to grant the proposed Sealing Order over the Confidential Report.

#### **Approval of the Receiver's Activities**

33. The Receiver seeks the approval of the Court with respect to its activities set out in the First Report. The activities of the Receiver have all been necessary and conducted in accordance with the Receiver's powers as granted in the Receivership Order and, as such, the Receiver seeks approval of its activities thus far.
34. The Court has inherent jurisdiction to review and approve the activities of a court-appointed receiver. If the Receiver has met the objective test of demonstrating that it has

acted reasonably, prudently and not arbitrarily, the Court may approve the activities of the Receiver as set out in Part 2 herein and further detailed in the First Report.

*Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, 2014 BCSC 1855  
at para. 54.

**Part 3 MATERIAL TO BE RELIED ON**

1. Receivership Order, dated July 17, 2023;
2. First Report of the Receiver, filed October 18, 2023; and
3. Such further and other materials as counsel may advise and this Honourable Court may permit.

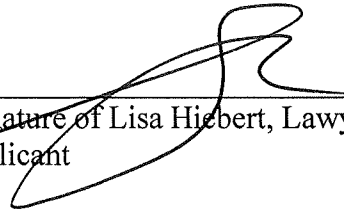
The applicant estimates that the application will take 15 minutes.

This matter is not within the jurisdiction of a master.

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

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed Application Response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: 19-Oct-2023

  
Signature of Lisa Hiebert, Lawyer for the Applicant

***To be completed by the court only:***

Order made

in the terms requested in paragraphs ..... of Part 1 of this Notice of Application

with the following variations and additional terms:  
 .....  
 .....  
 .....

Date: .....

Signature of  Judge  Master

The Solicitors for MNP Ltd. are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232 E-mail: lhiebert@fasken.com (Reference: Lisa Hiebert/278733.00019)

**Schedule "A"**

**Sale Approval Order – Real Property**

Attached

for

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANK OF MONTREAL

PETITIONER

AND:

UNIFAB INDUSTRIES LTD. AND SEKWOD ENTERPRISES (2012) LTD.

RESPONDENTS

**ORDER MADE AFTER APPLICATION**

**APPROVAL AND VESTING ORDER  
(SALE APPROVAL)**

BEFORE THE HONOURABLE

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OCTOBER 27, 2023

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THE APPLICATION of MNP Ltd., in its capacity as Court-appointed Receiver and Manager (the “**Receiver**”) of the assets, undertakings and properties of Unifab Industries Ltd. and Sekwod Enterprises (2012) Ltd. (collectively, the “**Debtor**”) coming on for hearing at Vancouver, British Columbia, on the 27<sup>th</sup> day of October, 2023; AND ON HEARING Lisa Hiebert, counsel for the Receiver, and those other counsel listed on Schedule “A” hereto, and no one else appearing although duly served; AND UPON READING the material filed, including the First Report of the Receiver dated October 18, 2023 (the “**First Report**”);

THIS COURT ORDERS AND DECLARES THAT:

**Service and Definitions**

1. The time for service of the Notice of Application for this order and the supporting materials is hereby abridged and this application is properly returnable today and hereby dispenses with further service thereof.
2. Capitalized terms used but not otherwise defined in this Order have the meaning given to them in the Asset Purchase Agreement dated October 17, 2023 (the “**Sale Agreement**”) between the Receiver and 1444715 B.C. Ltd. (the “**Purchaser**”), a copy of which is attached as Schedule “B” hereto.
3. In this Order, the following terms shall bear the meanings given to them below:
  - (a) “**Claims**” means any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise;
  - (b) “**Closing Date**” has the meaning given to it in the Sale Agreement;
  - (c) “**Encumbrances**” means the Claims, and any encumbrances or charges created by the Order of this Court dated July 17, 2023; all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and those Claims listed on Schedule “C” hereto, and for certainty, excludes the Permitted Encumbrances;
  - (d) “**Permitted Encumbrances**” means the encumbrances, easements and restrictive covenants listed on Schedule “D” hereto;

- (e) **“Property”** means the real property located at 6050 2nd Street, Grand Forks, BC with a legal description as set out on Schedule “E” hereto;

#### **Approval of Sale Agreement**

4. The sale transaction (the **“Transaction”**) contemplated by the Sale Agreement is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the Property.

#### **Vesting of Assets and Liabilities**

5. Upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as Schedule “F” hereto (the **“Receiver’s Certificate”**), all of the Debtor’s right, title and interest in and to the Property shall vest absolutely in the Purchaser in fee simple, free and clear of and from the Encumbrances, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Property are hereby expunged and discharged as against the Property.
6. Upon presentation for registration in the Land Title Office for the Land Title District of Kamloops of a certified copy of this Order, together with a letter from Fasken Martineau DuMoulin LLP, solicitors for the Receiver, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:
- (a) enter the Purchaser as the owner of the Property, as identified on Schedule “E” hereto, together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in

respect of the Property, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Purchaser in and to the Property is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser as aforesaid; and

- (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Property all of the registered Encumbrances except for those listed on Schedule "D".
7. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Property shall stand in the place and stead of the Property, and from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Property with the same priority as they had with respect to the Property immediately prior to the sale, as if the Property had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.

#### **General**

8. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.
9. Subject to the terms of the Sale Agreement, vacant possession of the Property shall be delivered by the Receiver to the Purchaser at 12:00 noon on the Closing Date, subject to the Permitted Encumbrances.
10. The Receiver, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.



## 11. Notwithstanding:

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

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

- 12. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
- 13. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

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

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

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Signature of Lisa Hiebert  
Lawyer for the Receiver, MNP Ltd.

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BY THE COURT

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REGISTRAR

**Schedule A – Appearance List**

| Counsel | Party |
|---------|-------|
|         |       |
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**Schedule B – Sale Agreement**

for

[Intentionally omitted]

**Schedule C – Claims to be deleted/expunged from title to the Property**

1. Mortgage, Registration No. CA7946272, registered December 20, 2019 in favour of Bank of Montreal.
2. Assignment of Rents, Registration No. CA7946273, registered December 20, 2019 in favour of Bank of Montreal.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Property**

1. The reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown.
2. Statutory Right of Way, Registration No. CA8583425, registered November 20, 2020 in favour of FortisBC Inc.
3. Statutory Right of Way, Registration No. CA8583426, registered November 20, 2020 in favour of FortisBC Inc.

**Schedule E – Property**

PARCEL IDENTIFIER: 007-377-878

THAT PART OF AMENDED LOT 3 (H365) DISTRICT LOT 534 SIMILKAMEEN DIVISION YALE DISTRICT PLAN 21622 MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A POINT BEING THE SOUTH WEST CORNER OF AMENDED LOT 3 (H365) THENCE HEADING EASTERLY ON THE SOUTHERLY BOUNDARY OF SAID AMENDED LOT 3 FOR A DISTANCE OF 715 FEET THENCE NORTHERLY FOR A DISTANCE OF 404.35 FEET TO A POINT ON THE NORTHERLY BOUNDARY OF SAID AMENDED LOT 3 FOR A DISTANCE OF 715 FEET TO A POINT BEING THE NORTH WESTERLY MOST CORNER OF SAID AMENDED LOT 3 THENCE SOUTHERLY ON THE WESTERLY BOUNDARY OF SAID AMENDED LOT 3 FOR A DISTANCE OF 404.35 FEET TO A POINT BEING THE POINT OF COMMENCEMENT

**Schedule F – Receiver’s Certificate**



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANK OF MONTREAL

PETITIONER

AND:

UNIFAB INDUSTRIES LTD. AND SEKWOD ENTERPRISES (2012) LTD.

RESPONDENTS

**RECEIVER'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Supreme Court of British Columbia (the "**Court**") dated July 17, 2023, MNP Ltd. was appointed the receiver and manager (in such capacity, the "**Receiver**") of the undertaking, property and assets of each of Unifab Industries Ltd. and Sekwod Enterprises (2012) Ltd.

B. Pursuant to an Order of the Court dated October 27, 2023, the Court approved the agreement of purchase and sale made as of October 17, 2023 (the "**Sale Agreement**") between the Receiver and 1444715 B.C. Ltd. (the "**Purchaser**") and provided for the vesting in the Purchaser of all right, title and interest in and to the Property, which vesting is to be effective with respect to the Property upon the delivery by the Receiver to the Purchaser of a certificate confirming (a) the payment by the Purchaser of the Purchase Price for the Property in accordance with the Sale Agreement; (b) that the conditions to Closing as set out in paragraphs 12 to 14 of the Sale Agreement have been satisfied or waived by the Receiver and/or the Purchaser, as applicable; and (c) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, capitalized terms have the meanings given to them in the Sale Agreement.

**THE RECEIVER CERTIFIES** the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Property payable on the Closing Date in accordance with the Sale Agreement;
2. The conditions to Closing as set out in paragraphs 12 to 14 of the Sale Agreement have been satisfied or waived by the Receiver and/or the Purchaser, as applicable; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [Time] on \_\_\_\_\_, 2023.

**MNP Ltd., in its capacity as receiver and manager of the undertakings, property and assets of Unifab Industries Ltd. and Sekwod Enterprises (2012) Ltd., and not in any other capacity**

Per: \_\_\_\_\_

Name: Julie Kennedy, CIRP, LIT

Title: Vice President

No. S-234961  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANK OF MONTREAL

PETITIONER

AND:

UNIFAB INDUSTRIES LTD. AND SEKWOD  
ENTERPRISES (2012) LTD.

RESPONDENTS

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**APPROVAL AND VESTING ORDER**

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**FASKEN MARTINEAU DuMOULIN LLP**

Barristers and Solicitors  
550 Burrard Street, Suite 2900  
Vancouver, BC, V6C 0A3  
+1 604 631 3131

Counsel: Lisa Hiebert  
E-mail: [lhiebert@fasken.com](mailto:lhiebert@fasken.com)  
Matter No: 278733.00019

**Schedule "B"**

**Sale Approval Order - Auction**

Attached

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANK OF MONTREAL

PETITIONER

AND:

UNIFAB INDUSTRIES LTD. AND SEKWOD ENTERPRISES (2012) LTD.

RESPONDENTS

**ORDER MADE AFTER APPLICATION**

**APPROVAL AND VESTING ORDER  
(AUCTION APPROVAL)**

BEFORE THE HONOURABLE

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OCTOBER 27, 2023

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THE APPLICATION of MNP Ltd., in its capacity as Court-appointed Receiver and Manager (the “**Receiver**”) of the assets, undertakings and properties of Unifab Industries Ltd. and Sekwod Enterprises (2012) Ltd. (collectively, the “**Debtor**”) coming on for hearing at Vancouver, British Columbia, on the 27<sup>th</sup> day of October, 2023; AND ON HEARING Lisa Hiebert, counsel for the Receiver, and those other counsel listed on Schedule “A” hereto, and no one else appearing although duly served, AND UPON READING the material filed, including the First Report of the Receiver dated October 18, 2023 (the “**First Report**”);

THIS COURT ORDERS AND DECLARES THAT:

**Service and Definitions**

1. The time for service of the Notice of Application for this order and the supporting materials is hereby abridged and this application is properly returnable today and hereby dispenses with further service thereof.
2. Capitalized terms used but not otherwise defined in this Order have the meaning given to them in the Auction and Liquidation Services Agreement dated October 3, 2023 (the “**Auction Agreement**”) between the Receiver and Maynards Industries Canada II Ltd. (“**Maynards**”), a copy of which is attached as Schedule “B” hereto.
3. In this Order, the following terms shall bear the meanings given to them below:
  - (a) “**Assets**” means the assets located at 6050 2<sup>nd</sup> Street, Grand Forks BC and described in Schedule A of the Auction Agreement.
  - (b) “**Claims**” means any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise;
  - (c) “**Encumbrances**” means any encumbrances or charges created by the Order of this Court dated July 17, 2023, and any and all charges, security interests or claims evidenced by registrations pursuant to the PPSA or any other personal property registry system.

**Approval of Auction Agreement**

4. The sale of the Assets is hereby approved and the Auction Agreement is commercially reasonable. The execution of the Auction Agreement by the Receiver is hereby authorized and approved, and the Receiver and Maynards are hereby authorized and directed to execute and deliver such additional, related and ancillary documents and assurances

governing or giving effect to the transactions contemplated in the Auction Agreement as the Receiver and Maynards deem reasonably necessary or advisable to conclude the transactions effected by the auction. Without restricting the scope of the foregoing the Receiver is authorized to deliver to Maynards one or more general conveyances and/or specific conveyances signed by the Receiver.

5. This Court orders that any requirement of the Receiver or Maynards to issue notices under Section 59 of the Personal Property Security Act, RSBC 1996, c 359 (the "PPSA") is hereby dispensed with.
6. Maynards is authorized to market and sell the Assets in accordance with the terms of the Auction Agreement.
7. Upon Maynards receiving the proceeds of sale from the Assets which are to be paid to the Receiver in accordance with the Auction Agreement (the "**Net Sale Proceeds**"), all such proceeds shall immediately be impressed with a charge in favour of the Receiver and shall be held in trust for the benefit of the Receiver until such time as the Net Sale Proceeds are received by the Receiver. While held by Maynards, the Net Sale Proceeds shall be held in a separate trust account for the benefit of the Receiver.

### **Vesting of Property**

Upon Maynards paying to the Receiver the Net Sale Proceeds together with an accounting for same and delivery by the Receiver to Maynards of a certificate substantially in the form attached as Schedule "C" hereto (the "**Receiver's Certificate**"), the Assets and all right, title and interest in and to the Assets shall vest absolutely in the person or persons acquiring same including Maynards itself with respect to those remaining Assets not sold by auction (collectively, the "**Purchasers**") free and clear of and from any and all Claims including, without limiting the generality of the foregoing, all Encumbrances and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Assets are expunged and discharged as against the Assets upon payment of the Net Sale Proceeds by Maynards to the Receiver and delivery by the Receiver of the Receiver's Certificate to Maynards.

8. From and after the completion of the auction (including the payment of the Net Sale Proceeds by Maynards to the Receiver), the Receiver is authorized to discharge from the British Columbia Personal Property Registry (the "PPR") any claim registered against any of the Assets being auctioned and/or sold by Maynards, to the extent the security interest is registered against the interest of the Debtor or against any serial number of the Assets.
9. The Registrar of the PPR (the "**PPR Registrar**") shall and is hereby directed upon the request of the Receiver to forthwith cancel and discharge any registrations in the PPR (whether made before or after the date of this Order) claiming security interests in the Debtor or in any of the Assets.
10. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Assets is required for the due execution, delivery and performance by the Receiver of the Auction Agreement.
11. For the purposes of determining the nature and priority of Claims, the Net Sale Proceeds shall stand in the place and stead of the Assets, and from and after the delivery of the Receiver's Certificate all Claims shall attach to the Net Sale Proceeds with the same priority as they had with respect to the Assets immediately prior to the sale, as if the Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
12. Upon the completion of the transactions contemplated by this Order and the Auction Agreement, the Debtor and all persons who claim by, through or under the Debtor in respect of the Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Assets shall stand absolutely and forever barred, estopped, foreclosed from and permanently enjoined from pursuing, asserting, or claiming any right, title, interest or other Claims whatsoever in respect of or to the Assets and to the extent that any such persons or entities remain in possession or control of any of the Assets, certificates, instruments, or other indicia or title representing or evidencing any right, title or interest in and to the Assets, they shall forthwith deliver possession thereof to the Purchasers (or their nominee) or to Maynards.



13. The Purchasers shall, by virtue of the completion of the transactions contemplated by this Order and the Auction Agreement, have no liability of any kind whatsoever in respect of any Claims against the Debtor.
14. The Purchasers (or their nominee) shall be entitled to enter into and upon, hold and enjoy the Assets for their own use and benefit without any interference of or by the Debtor or any person claiming by through or against the Debtor.

**General**

15. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.
16. Notwithstanding:
  - (a) these proceedings;
  - (b) any applications for a bankruptcy order in respect of the Debtor now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made by or in respect of the Debtor,

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

17. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make

such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

18. The Receiver, Maynards or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.
19. Endorsement of this Order by counsel appearing on this application other than counsel for the Receiver is hereby dispensed with.

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

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Signature of Lisa Hiebert  
Lawyer for the Receiver, MNP Ltd.

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BY THE COURT

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REGISTRAR

**Schedule A – Appearance List**

| Counsel | Party |
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**Schedule B – Auction Agreement**

[Intentionally omitted]

No. S-234961  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANK OF MONTREAL

PETITIONER

AND:

UNIFAB INDUSTRIES LTD. AND SEKWOD  
ENTERPRISES (2012) LTD.

RESPONDENTS

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**APPROVAL AND VESTING ORDER**

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**FASKEN MARTINEAU DuMOULIN LLP**

Barristers and Solicitors  
550 Burrard Street, Suite 2900  
Vancouver, BC, V6C 0A3  
+1 604 631 3131

Counsel: Lisa Hiebert  
E-mail: [lhiebert@fasken.com](mailto:lhiebert@fasken.com)  
Matter No: 278733.00019

**Schedule "C"**

**Sealing Order**

Attached

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANK OF MONTREAL

PETITIONER

AND:

UNIFAB INDUSTRIES LTD. AND SEKWOD ENTERPRISES (2012) LTD.

RESPONDENTS

**SEALING ORDER**

BEFORE THE HONOURABLE

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OCTOBER 27, 2023

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THE APPLICATION of MNP Ltd., in its capacity as Court-appointed Receiver and Manager (the “**Receiver**”) of the assets, undertakings and properties of Unifab Industries Ltd. and Sekwod Enterprises (2012) Ltd. (collectively, the “**Debtor**”) coming on for hearing at Vancouver, British Columbia, on the 27<sup>th</sup> day of October, 2023; AND ON HEARING Lisa Hiebert, counsel for the Receiver, and those other counsel listed on Schedule “A” hereto, and no one else appearing although duly served; AND UPON READING the material filed, including the First Report of the Receiver dated October 18, 2023 (the “**First Report**”);

THIS COURT ORDERS AND DECLARES THAT:

Access to Sealed Items permitted by:

- Counsel of Record
- Parties on Record
- Further Court Order
- Others .....

Items to be sealed

| Document Name:   | Date filed:<br><i>(Date on Court Stamp)</i> | Number of copies filed, including any extra copies for the judge. | Duration of sealing order:<br><i>(to specific date or until further order)</i>  | Sought                   | Granted                  |                          |
|--|---|---|---|--------------------------|--------------------------|--------------------------|
|  |   |   |   |                          | YES                      | NO                       |
| 1) Entire File   |   |   |   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2) Specific Documents<br><br><b>Confidential Supplement to the First Report of MNP Ltd. in its capacity as receiver and manager of Unifab Industries Ltd. and Sekwod Enterprises (2012) Ltd.</b> | To be filed.                                | One copy to be sealed.  | Until completion of (i) the APA as defined in the First Report of the Receiver and approved by Order of the Court made October 27, 2023 (the “ <b>Sale Approval Order</b> ”); and (ii) the Auction Agreement as defined in the First Report of the Receiver and approved by Order of the Court made October 27, 2023 (the “ <b>Auction Approval Order</b> ”), as evidenced by the Receiver filing the Receiver’s Certificates, attached as Schedule “F” to the Sale Approval Order and Schedule “C” to the Auction Approval Order respectively, with the Court. |                          |                          |                          |
| 3) Clerk’s Notes   |   |   |   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4) Order   |   |   |   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |



1. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.
2. Endorsement of this Order by counsel appearing on this application other than counsel for the Receiver is hereby dispensed with.

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

---

Signature of Lisa Hiebert  
Lawyer for the Receiver, MNP Ltd.

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BY THE COURT

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REGISTRAR

**Schedule A – Appearance List**

| Counsel | Party |
|---------|-------|
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|         |       |
|         |       |

No. S-234961  
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IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

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PETITIONER

AND:

UNIFAB INDUSTRIES LTD. AND SEKWOD  
ENTERPRISES (2012) LTD.

RESPONDENTS

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**APPROVAL AND VESTING ORDER**

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**FASKEN MARTINEAU DuMOULIN LLP**

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+1 604 631 3131

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Matter No: 278733-00019