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

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

BANK OF MONTREAL

PETITIONER

AND:

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

RESPONDENTS

**PETITION TO THE COURT**

**ON NOTICE TO:** **Unifab Industries Ltd.**  
c/o Pushor Mitchell LLP  
301 - 1665 Ellis Street  
Kelowna, BC V1Y 2B3

**Sekwod Enterprises (2012) Ltd.**  
c/o Pushor Mitchell LLP  
301 - 1665 Ellis Street  
Kelowna, BC V1Y 2B3

**This proceeding has been started by the Petitioner for the relief set out in Part 1 below.**

If you intend to respond to this Petition, you or your lawyer must

- (a) file a Response to Petition in Form 67 in the above-named registry of this court within the time for Response to Petition described below, and
- (b) serve on the Petitioner
  - (i) 2 copies of the filed Response to Petition, and
  - (ii) 2 copies of each filed Affidavit on which you intend to rely at the hearing

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.**

**TIME FOR RESPONSE TO PETITION**

A Response to Petition must be filed and served on the Petitioner,

- (a) if you were served with the Petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1) **The address of the registry is:**

The Law Courts  
800 Smithe Street  
Vancouver, BC V6Z 2E1

(2) **The ADDRESS FOR SERVICE of the Petitioner is:**

McCarthy Tétrault LLP  
Barristers & Solicitors  
Suite 2400, 745 Thurlow Street  
Vancouver, BC V6E 0C5

**Attention: H. Lance Williams  
Jenna Clark  
Sue Danielisz**

Email address for service: [lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)  
[jkrclark@mccarthy.ca](mailto:jkrclark@mccarthy.ca)  
[sdanielisz@mccarthy.ca](mailto:sdanielisz@mccarthy.ca)

(3) **Name and office address of the Petitioner's lawyer:**

(same as above)

## CLAIM OF THE PETITIONER

### PART 1 ORDER SOUGHT

1. An order (the “**Receivership Order**”) substantially in the form attached as **Schedule “A”**:
  - (a) appointing MNP Ltd. (“**MNP**”) as receiver and manager (the “**Receiver**”) over all present and after-acquired assets, undertakings, and property, including all proceeds (collectively, the “**Property**”), of the Respondents, Unifab Industries Ltd. (“**Unifab**”) and Sekwod Enterprises (2012) Ltd. (“**Sekwod**”, and collectively with Unifab, the “**Debtors**”);
  - (b) granting a first-ranking charge (the “**Receiver’s Charge**”) on the Property, in favour of the Receiver and its legal counsel, 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 the Receivership Order;
  - (c) authorizing and empowering the Receiver to borrow such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize), and granting a second-ranking charge (the “**Receiver’s Borrowings Charge**”) over all of the Property, as security for the payment of the monies borrowed, together with interest and charges thereon;
  - (d) declaring that the Receiver’s Charge and the Receiver’s Borrowings Charge (collectively, the “**Charges**”) rank in priority to all existing security interests, trusts, liens, charges and encumbrances, in favour of any person, against the Property; and
  - (e) 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 Court deems to be just and appropriate in the circumstances.

## PART 2      FACTUAL BASIS

### Capitalized Terms

1.      The facts in support of this Petition are more fully set out in the Affidavit #1 of Michelle Madrigga, sworn on July 11, 2023 (the “**First Madrigga Affidavit**”) and Affidavit #1 of Susan Danielisz, sworn on July 12, 2023 (the “**First Danielisz Affidavit**”). Capitalized terms used but not otherwise defined in this Petition have the same meaning as ascribed to them in the First Madrigga Affidavit.

### Introduction

2.      The Petitioner, Bank of Montreal (the “**Lender**”), extended certain Credit Facilities (as defined below) to the Debtors, pursuant to:

- (a)      the letter of agreement, dated October 22, 2019, between Unifab and the Lender, as amended and restated on December 13, 2019, July 30, 2020 and August 31, 2022 (as amended and restated, the “**Unifab Loan Agreement**”);
  - (b)      the letter of agreement, dated December 13, 2019 (the “**Sekwod Loan Agreement**”), between Sekwod and the Lender; and,
  - (c)      the commercial card agreement onboarding documentation Canadian program credit authorization forms, Bank of Montreal card pre-authorized debit agreement, and commercial card agreement, each dated December 16, 2019, between Unifab and the Lender,
- (collectively, the “**Loan Agreements**”).

First Madrigga Affidavit at para. 4;

First Danielisz Affidavit at Exhibits “A”, “N”, “O”, “P”, “Z”, and “KK”.

3.      The Debtors committed certain defaults (collectively, the “**Original Defaults**”) under the Loan Agreements.

First Madrigga Affidavit at para. 5.

4.      In connection with the Original Defaults, the Lender, the Debtors, Stacy-Ann Schwab (“**Schwab**”) and Kevin Dowkes (“**Dowkes**”, and collectively with Schwab, the “**Personal Guarantors**”), entered into a Forbearance Agreement dated October 8, 2021 (the “**Original**”).

**Forbearance Agreement**"). The Original Forbearance Agreement was subsequently amended and extended pursuant to the Forbearance Agreement Amendments dated March 7, 2022, September 9, 2022, and January 31, 2023 (collectively, the "**Forbearance Amending Agreements**", and collectively with the Original Forbearance Agreement, as so amended, the "**Forbearance Agreement**").

First Madrigga Affidavit at para. 6;  
First Danielisz Affidavit at Exhibits "GG", "HH", "II", and "JJ".

5. Pursuant to the Forbearance Agreement, among other things, the Debtors agreed to adhere to certain covenants and take certain actions, and the Lender agreed to forbear in the exercise of its rights and remedies against the Debtors and the Personal Guarantors (collectively, the "**Credit Parties**") under the Loan Documents (as defined in the Forbearance Agreement), until the earlier to occur of: (i) July 31, 2023; and, (ii) the date that any "**Forbearance Default**" (as defined in the Forbearance Agreement) occurs.

First Madrigga Affidavit at para. 7.

6. The Debtors have committed certain ongoing Forbearance Defaults under the Forbearance Agreement, as described in further detail below, including that:

- (a) the Debtors have failed to keep their Statutory Obligations (as defined in the Forbearance Agreement) current, including as: (i) Sekwod has failed to pay property taxes in respect of its real property; and, (ii) Unifab has failed to make remittances for payroll deductions, GST, and employer health tax, which constitutes a Forbearance Default under Sections 7.05 and 11.01(1) of the Forbearance Agreement;
- (b) two (2) Garnishing Orders Before Judgment were issued to the Lender with respect to Unifab, and Unifab failed to give the Lender notice of such Adverse Claims (as defined in the Forbearance Agreement), which constitutes a Forbearance Default under Sections 7.06, 11.01(1) and 11.01(7) of the Forbearance Agreement;
- (c) Unifab has failed to accurately report, to the Lender, its accounts receivable that are eligible for margining, in accordance with the Debtors' reporting obligations under the Loan Agreements, including by: (i) overstating its eligible accounts

receivable by including amounts in respect of which no invoice was issued, no goods and services were provided, and/or no agreement was entered into between Unifab and the corresponding counterparty; and (ii) failing to properly identify and deduct disputed accounts receivable as required by the Loan Agreements, which constitutes a Forbearance Default under Section 11.01(2) of the Forbearance Agreement;

- (d) based upon the cash flow forecasts and other financial information delivered by the Debtors to the Lender, the Debtors are generally unable to pay their debts as they become due, which constitutes a Forbearance Default under Section 11.01(4)(ii) of the Forbearance Agreement; and,
- (e) in light of the foregoing, the Lender reasonably believes in good faith that the Credit Parties have taken actions, and events and conditions exist, which are likely to impair the prospect of the Credit Parties' payment and performance of their obligations under the Forbearance Agreement and the Loan Documents (as defined in the Forbearance Agreement), which constitutes a Forbearance Default under Section 11.01(9) of the Forbearance Agreement,

(collectively, the "**Existing Forbearance Defaults**").

First Madrigga Affidavit at para. 8.

7. There is a significant degree of urgency in addressing the Existing Forbearance Defaults. The Debtors are currently operating as a going concern, but are unable to satisfy their obligations as they generally come due; including certain critical payment obligations with respect to payroll obligations, which are anticipated to come due on July 21, 2023 and which must be made in order to preserve the Debtors' Property and ongoing business for the benefit of all stakeholders. Accordingly, the Lender is concerned that its security is at risk, as: (i) there are multiple significant, ongoing defaults under the Forbearance Agreement; (ii) the Debtors cannot meet their obligations; and, (iii) the Debtors have not acted transparently with the Lender with respect to their reporting obligations under the Loan Agreements.

First Madrigga Affidavit at para. 9.

8. The Debtors have no further availability under the Credit Facilities (as defined below). The Lender has lost faith in the Debtors' management, and is unwilling to provide further

financing except as a receiver's borrowings secured by a corresponding charge. Furthermore, the nature of the Debtors' Property (which includes the Lands, as defined below, as well as an ongoing business) necessitates a comprehensive, court-supervised sales process and the involvement of a receiver to oversee such sales process.

First Madrigga Affidavit paras. 10, 37, and 40.

### **Credit Facilities**

9. Pursuant to the Loan Agreements, as described in further detail in the First Madrigga Affidavit, the Lender made available:

- (a) to Unifab, certain credit facilities in the aggregate maximum amount of \$3,078,653.23 (collectively, the "**Unifab Credit Facilities**"), including, among others, a BMO Corporate MasterCard with a maximum authorized limit of \$50,000 (the "**MasterCard Facility**"); and,
- (b) to Sekwod, a non-revolving real estate financing term facility in the maximum authorized amount of \$1,000,000.00 (the "**Sekwod Credit Facility**", and collectively with the Unifab Credit Facilities, the "**Credit Facilities**").

First Madrigga Affidavit at para. 12.

### **Guarantees**

10. The Credit Facilities and all other obligations of the Debtors to the Lender are guaranteed by the Personal Guarantors, pursuant to certain guarantees (collectively, the "**Personal Guarantees**"), as described in the First Madrigga Affidavit.

First Madrigga Affidavit at para. 13;  
First Danielisz Affidavit at Exhibits "B", "Q", "T" and "AA".

11. Furthermore, the Unifab Credit Facilities are guaranteed by Sekwod, and the Sekwod Credit Facilities are guaranteed by Unifab, pursuant to certain guarantees (collectively, the "**Corporate Guarantees**", and collectively with the Personal Guarantees, the "**Guarantees**"), as described in the First Madrigga Affidavit.

First Madrigga Affidavit at para. 14;  
First Danielisz Affidavit at Exhibits "R", "S", and "BB".

## **Security**

12. As collateral security for its obligations to the Lender, Sekwod granted, to and in favour of the Lender, a Form B Mortgage (the "**Mortgage and Assignment of Rents**") in the principal amount of \$1,750,000.00, registered with the British Columbia Land Title Office on December 20, 2019 as instrument numbers CA7946272 and CA7946273 with respect to certain real property in British Columbia (referred to in the First Madrigga Affidavit as the Lands), as described in the First Madrigga Affidavit. The Mortgage and Assignment of Rents incorporates the Lender's Standard Mortgage Terms, No. MT190023 (the "**Standard Mortgage Terms**").

First Madrigga Affidavit at paras. 15 and 16;  
First Danielisz Affidavit at Exhibits "W" and "X".

13. In addition to the Mortgage and Assignment of Rents, as security for their respective obligations to the Lender, the Credit Parties granted various security agreements to and in favour of the Lender (referred to in the First Madrigga Affidavit, collectively, as the Security Agreements), including:

- (a) a General Security Agreement with Floating Charge, dated October 25, 2019, granted by Unifab, to and in favour of the Lender (the "**Unifab General Security Agreement**");
- (b) a General Security Agreement with Floating Charge, dated December 19, 2019, granted by Sekwod, to and in favour of the Lender (the "**Sekwod General Security Agreement**", and collectively with the Unifab General Security Agreement, the "**General Security Agreements**"); and
- (c) Security Under Section 427 of the Bank Act (continuing security on all property of specified kinds), dated October 29, 2019, granted by Unifab, to and in favour of the Lender.

First Madrigga Affidavit at para. 18;  
First Danielisz Affidavit at Exhibits "D", "I", and "U".

14. Business Development Bank of Canada ("**BDC**"), the Lender, and Unifab are parties to a Priority Agreement, dated October 28, 2019 (the "**Priority Agreement**"), concerning Unifab.



Pursuant to the Priority Agreement, among other things, BDC granted the Lender's security interest in Unifab's assets priority over BDC's security interests in Unifab's assets.

First Madrigga Affidavit at para. 20;  
First Danielisz Affidavit at Exhibit "H".

**Public Registry Registrations**

15. The Mortgage has been registered against the Certificate of Title to the Lands.

First Danielisz Affidavit at Exhibit "OO".

16. The Security Agreements have been registered in the British Columbia Personal Property Registry and the *Bank Act* (Canada) registry of British Columbia, as applicable.

First Danielisz Affidavit at Exhibits "MM", "NN", "SS", and "TT".

17. As at as at July 7, 2023:

- (a) the Mortgage and Assignment of Rents is the only registered financial encumbrance against the Lands. Two (2) statutory rights of way, in favour of FortisBC Inc., have also been registered against the Lands, as instrument numbers CA8583425 and CA8583426, respectively;
- (b) the sole *Bank Act* (Canada) registration against either of Unifab or Sekwod is the Lender's registration against Unifab under registration number 01325147, registered on October 29, 2019;
- (c) various financing statements have been registered against Unifab in the BC PPR. The Lender registered a financing statement against Unifab, on October 25, 2019, under Base Registration Number 851409L; and
- (d) the sole financing statement registered against Sekwod in the BC PPR is a financing statement in favour of the Lender, registered on December 20, 2019, under Base Registration Number 966328L.

First Danielisz Affidavit at para. 4.

**Relevant Terms of the Forbearance Agreement, Mortgage, and Security Agreements**

***Mortgage and Assignment of Rents***

18. The Lender is permitted to appoint a receiver and manager over the Lands under Article K of the Standard Mortgage Terms upon the occurrence of an event of default.

First Madrigga Affidavit at para. 17;  
First Danielisz Affidavit at Exhibit "X" (Standard Mortgage Terms at Article "K").

***General Security Agreements***

19. The Lender is permitted to appoint a receiver and manager under Section 12.1(a) of the General Security Agreements upon the occurrence of an event of default.

First Madrigga Affidavit at para. 19;  
First Danielisz Affidavit at Exhibits "D" and "U"  
(General Security Agreements at Section 12.1(a)).

***Forbearance Agreement***

20. Pursuant to the Forbearance Agreement, among other covenants:

- (a) pursuant to Section 1.01 of the Forbearance Agreement, the Credit Parties acknowledged and agreed that they have defaulted under the Loan Documents (as defined in the Forbearance Agreement to include, among other things, the Loan Agreements, the Security Agreements, the Guarantees, and the Mortgage and Assignment of Rents);
- (b) pursuant to Section 7.05 of the Forbearance Agreement, the Debtors agreed to pay, discharge, or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all Statutory Obligations (as defined in the Forbearance Agreement to include, among other things, any income, sales or other taxes, charges, fees or withholdings (including, without limitation, employment withholdings));
- (c) pursuant to Section 7.06 of the Forbearance Agreement, the Debtors agreed to provide the Lender with prompt notice of any Adverse Claims (as defined in the

Forbearance Agreement to include, among other things, any garnishment or similar process); and,

- (d) pursuant to Section 4 of the third Forbearance Amending Agreement, the Debtors agreed to provide the Financial Consultant (as defined below) and the Lender, on a monthly basis, certain specific financial reporting, including: (i) an updated monthly cash flow projection on a continuous 13-week rolling basis; (ii) a comparison of budget and actual cash flow of the Debtors for the month to which the reporting relates; and, (iii) detailed inventory reporting including a monthly margin report, prepared on the same basis as the financial statements of the Debtors.

First Madrigga Affidavit at para. 27;

First Danielisz Affidavit at Exhibit "GG" (Original Forbearance Agreement at Sections 1.01, 7.05, and 7.06); and Exhibit "JJ" (Third Forbearance Amending Agreement at Section 4).

21. Pursuant to the Forbearance Agreement, a Forbearance Default includes when, among other things:

- (a) any Obligor (as defined in the Forbearance Agreement, being any Credit Party) shall fail to abide by or observe any term, condition, covenant or other provision in the Forbearance Agreement or any document related to or executed in connection with the Forbearance Agreement;
- (b) a default or event of default shall occur under any Loan Document (as defined in the Forbearance Agreement to include, among other things, the Loan Agreements, the Security Agreements, the Guarantees, and the Mortgage and Assignment of Rents) or any document related to or executed in connection with the Forbearance Agreement (other than the Original Defaults, defined in the Forbearance Agreement as the "Existing Defaults");
- (c) any Obligor (as defined in the Forbearance Agreement) is generally not, or is unable to, or admits in writing its inability to, pay its debts as they become due;
- (d) any other creditor of any Obligor (as defined in the Forbearance Agreement) commences an action against such Obligor seeking to collect any debt, obligation or liability; or

- (e) any Obligor (as defined in the Forbearance Agreement) takes an action, or any event or condition occurs or exists, which the Lender reasonably believes in good faith is inconsistent in any material respect with any provision of the Forbearance Agreement, or impairs, or is likely to impair, the prospect of payment or performance by such Obligor of its obligations under the Forbearance Agreement or any of the Loan Documents (as defined in the Forbearance Agreement).

First Danielisz Affidavit at Exhibit "GG" (Original Forbearance Agreement at Sections 11.01(1), 11.01(2), 11.01(4)(ii), 11.01(7), and 11.01(9)).

22. Immediately upon the occurrence of a Forbearance Default, among other things: (i) the Forbearance Period (as defined in the Forbearance Agreement, being the period ending on the earlier to occur of July 31, 2023 and the date of any Forbearance Default) shall automatically cease, without notice to, or action by, any party; (ii) the Lender shall be entitled to exercise any or all of its rights and remedies; and, (iii) the Lender's obligation, if any, to make loans or otherwise extend credit to any Obligor (as defined in the Forbearance Agreement) shall immediately and automatically terminate, without notice to, or action by, any party.

First Danielisz Affidavit at Exhibit "GG" (Original Forbearance Agreement at Section 12.01).

### **Indebtedness**

23. As at July 10, 2023, the Credit Parties were indebted to the Lender in the amounts of: (i) \$951,297.19 in respect of the Sekwod Credit Facility; and, (ii) \$2,839,182.39 in respect of the Unifab Credit Facilities, plus all accruing interest, fees (including, without limitation, solicitor's fees as between a solicitor and their own client), costs, and expenses, pursuant to and in accordance with the terms of the relevant agreements between the Lender and the Credit Parties (collectively, the "**Indebtedness**").

First Madrigga Affidavit at para. 21 and Exhibit "A".

### **Demand and Forbearance Agreement**

24. On July 8, 2021, the Lender, through its counsel, delivered four (4) demand letters to the Credit Parties with respect to the Original Defaults (collectively, the "**Demand Letters**"). The Demand Letters demanded repayment of the Indebtedness, in full, and enclosed Notices of Intention to Enforce Security with respect to the Debtors, pursuant to Section 244(2) of the BIA.

First Madrigga Affidavit at para. 22;  
First Danielisz Affidavit at Exhibits "CC", "DD", "EE", and "FF.

25. The Debtors failed to repay the outstanding Indebtedness upon demand.

First Madrigga Affidavit at para. 23.

26. Following the delivery of the Demand Letters: (i) the Credit Parties and the Lender entered into the Original Forbearance Agreement, on October 8, 2021; and, (ii) the Original Forbearance Agreement has been amended and extended on three (3) occasions, pursuant to the Forbearance Amending Agreements.

First Madrigga Affidavit at paras. 6 and 24.

27. Pursuant to the Forbearance Agreement, the Debtors have, among other things: (i) engaged MNP as a financial consultant (in such capacity, the "**Financial Consultant**"), as required by the first Forbearance Amending Agreement; and, (ii) hired a part-time chief financial officer, as required by the second Forbearance Amending Agreement.

First Madrigga Affidavit at para. 25.

28. Since entering into the Original Forbearance Agreement, the Debtors have from time to time failed to remain within the credit limits applicable to the Credit Facilities. While such failures would constitute Forbearance Defaults, the Lender has, on occasion and on a case-by-case basis, agreed to permit the Debtors to make payments beyond the applicable Credit Facility limits to meet specified critical payments.

First Madrigga Affidavit at para. 26.

### **Forbearance Defaults**

29. During the week commencing June 26, 2023, Unifab provided a cash flow forecast to the Financial Consultant, which reflected payables of approximately \$542,000 during the period of June to August, 2023 and indicated that all Indebtedness in excess of the applicable Credit Facility limits (the "**Excess Indebtedness**") would be repaid in August 2023.

First Madrigga Affidavit at para. 28.

30. On or around July 4, 2023, Unifab provided an updated cash flow forecast directly to the Lender, which now reflected payables of approximately \$1,970,000 during the period of June to August, 2023.

First Madrigga Affidavit at para. 29.

31. On July 5, 2023, following certain inquiries by the Financial Consultant, Unifab provided a further-revised cash flow forecast to the Financial Consultant, which now indicated that the Excess Indebtedness would not be repaid until the end of October 2023.

First Madrigga Affidavit at para. 30 and Exhibit "B".

32. The financial information provided to the Lender confirmed that the Debtors are not current in respect of statutory obligations. Specifically: (i) Sekwod has failed to pay property taxes in respect of the Lands; and, (ii) Unifab has failed to make remittances for payroll deductions, GST, and employer health tax.

First Madrigga Affidavit at para. 31.

33. On or around July 6, 2023, the Lender received two (2) Garnishing Orders Before Judgment, issued by Drop Sprockets Inc. ("**Drop Sprockets**") against the Lender, in respect of Unifab (the "**Garnishing Orders**"). The Debtors did not advise the Lender of Drop Sprockets' claims or the issuance of the Garnishing Orders prior to their receipt by the Lender.

First Madrigga Affidavit at para. 32.

34. On July 7, 2023, the Debtors confirmed that they were unable to satisfy their employee payroll obligations, absent the provision of further financing by the Lender. Upon obtaining written confirmation that Drop Sprockets' counsel had: (i) signed a consent order which contemplated the lifting of the Garnishing Orders; and (ii) delivered a letter addressed to the Lender confirming Drop Sprockets' consent to the Lender releasing to Unifab any funds attached to the Garnishing Orders, the Lender agreed to authorize certain specified payments beyond the applicable Credit Facility limits in order to enable the Debtors' employee payroll obligations to be satisfied. The payroll obligations authorized to be paid on July 7, 2023 were in the aggregate amount of \$67,900.77.

First Madrigga Affidavit at para. 33 and Exhibit "C".

35. Based upon the Debtors' cash flow projections and the other financial information provided to the Lender, the Debtors' financial condition is deteriorating and the Debtors will not

be able to satisfy their obligations to their employees in connection with the next payroll date, which is scheduled to be paid on July 21, 2023.

First Madrigga Affidavit at para. 34.

36. In addition, after review of correspondence received from the Financial Consultant and upon review of the monthly margin reports provided by the Debtors to the Lender, the Lender has determined that Unifab has overstated certain accounts receivable in connection with the calculation of the Unifab Credit Facilities' borrowing base. The specific issues identified by the Lender to date include that: (i) Unifab has overstated its accounts receivable which are eligible to be included in the borrowing base calculation by including amounts in respect of which no invoice was issued, no goods and services were provided, and/or no agreement was entered into between Unifab and the corresponding counterparty, and on some occasions, unilaterally charging deposits to customers who had not agreed to pay deposits and then including such deposits in the borrowing base calculation; and, (ii) Unifab has failed to properly identify and deduct disputed accounts receivable as required by the Loan Agreements, including in respect of certain accounts receivable which the Debtors have since specifically confirmed are actively being disputed.

First Madrigga Affidavit at para. 35.

37. In light of the Existing Forbearance Defaults (as set out and described in paragraph 6, above), on July 7, 2023, a representative of the Lender advised the Debtors by e-mail that: (i) the Lender would fund the payroll obligations due on July 7, 2023; (ii) such payment is not a waiver of any defaults under the Forbearance Agreement and/or any other lending agreements and related documents; (iii) the Forbearance Agreement has been terminated; (iv) the MasterCard Facility has been terminated; and, (v) the Lender will be proceeding with enforcement.

First Madrigga Affidavit at para. 36 and Exhibit "D".

### **Necessity of Appointing the Receiver**

38. The Debtors do not currently have access to any further availability under the Credit Facilities or the Loan Documents. As such, the Debtors lack the liquidity necessary to pay their obligations as they come due, including certain critical payments required to maintain the Debtors' Property, such as the employee payroll obligations which will come due on July 21, 2023. The Lender is not prepared to extend any further credit to the Debtors or to fund go-

forward critical payment obligations, other than as a receiver's borrowings secured by a corresponding charge.

First Madrigga Affidavit at para. 37.

39. The Lender has lost all confidence in the Debtors' management. Specifically, the Lender has no confidence in the Debtors' ability to work diligently, transparently, and in good faith to satisfy their obligations, or to pursue a commercially reasonable and transparent sale of the Property. Among other reasons: (i) the Debtors have been subject to an extended forbearance period commencing in late 2021, for the purpose of permitting them to restructure their obligations, and have failed to do so; (ii) the Debtors have not presented any viable plan to obtain refinancing or otherwise alleviate their financial situation and their financial condition is now deteriorating; and, (iii) as described above, the Debtors have misstated their accounts receivable and failed to advise the Lender of Drop Sprockets' claims, and accordingly appear not to be acting in a transparent manner in their dealings with the Lender.

First Madrigga Affidavit at para. 40.

40. The nature of the Debtors' operations and Property necessitates a more comprehensive sale, marketing, and realization process, which, in addition to requiring additional funding, is best achieved through the appointment of a receiver and manager over the Debtors and their Property. Absent the provision of funding by the Lender, there are likely not sufficient resources to undertake any necessary marketing and sales process, and, ultimately, the sale of the Debtors' Property.

First Madrigga Affidavit at para. 38.

41. The Debtors also: (i) have certain employees and are engaged in an active business; and, (ii) appear to have certain outstanding obligations in respect of taxes and other statutory obligations. The appointment of the Receiver will assist in addressing such issues in an orderly manner.

First Madrigga Affidavit at paras. 8(a), 31, 33, and 39.

### **PART 3      LEGAL BASIS**

#### **Jurisdiction to Appoint a Receiver**

1. This Honourable Court has jurisdiction to appoint a receiver over the Property of the Debtors, pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3,



as amended (the “**BIA**”) and Section 39(1) of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 (the “**LEA**”).

2. Subsections 243(1) and 243(1.1) of the BIA state:

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or

(c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

(a) the insolvent person consents to an earlier enforcement under subsection 244(2); or

(b) the court considers it appropriate to appoint a receiver before then.

*BIA* at ss. 243(1) - (1.1).

3. Subsection 39(1) of the LEA states:

Injunction or mandamus may be granted or receiver appointed by interlocutory order

39 (1) An injunction or an order in the nature of mandamus may be granted or a receiver or receiver manager appointed by an interlocutory order of the court in all cases in which it appears to the court to be just or convenient that the order should be made.

*LEA* at s. 39(1).

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

4. The *BIA* and *LEA* both provide for the appointment of a receiver where it is “just” and “convenient” to do so.

*BIA* at s. 243(1); *LEA* at s. 39(1).

5. In *Maple Trade Financing Inc. v CY Oriental Holdings Ltd.*, Justice Masuhara adopted the following list of factors concerning whether it is just and convenient to appoint a receiver:

“There are a number of factors that figure in the determination of whether it is appropriate to appoint a receiver. In *Bennett on Receivership*, 2d ed. (Toronto: Carswell, 1999), at p. 130, a list of such factors is set out as follows:

- a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
- b) the risk to the security holder taking into consideration the size of the debtor’s equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
- c) the nature of the property;
- d) the apprehended or actual waste of the debtor’s assets;
- e) the preservation and protection of the property pending judicial resolution;
- f) the balance of convenience to the parties;
- g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
- i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its’ duties more efficiently;
- k) the effect of the order upon the parties;
- l) the conduct of the parties;
- m) the length of time that a receiver may be in place;
- n) the cost to the parties;

- o) the likelihood of maximizing return to the parties;
- p) the goal of facilitating the duties of the receiver.”

*Maple Trade Financing Inc. v CY Oriental Holdings Ltd.*,  
2009 BCSC 1527 (“**Maple Trade**”) at para. 25.

See also, *Textron Financial Canada Limited v Chetwind Motels Ltd.*,  
2010 BCSC 477 (“**Textron**”) at para. 50, citing *Maple Trade*; *Vancouver Coastal Health Authority v Seymour Health Centre Inc.*, 2023 BCSC 1158  
 (“**Vancouver Coastal**”) at paras. 47 - 64, citing *Maple Trade* and *Textron*.

Similar or identical tests have also been adopted by superior courts in other provinces. For instance, see *Paragon Capital Corporation Ltd. v Merchants & Traders Assurance Co.*, 2002 ABQB 430 at para. 27 (“**Paragon**”); *Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited*, 2022 ONSC 6186 at para. 25, citing *Maple Trade*.

6. The factors set out above are “not a checklist”, but should be assessed holistically in light of all of the circumstances.

*Vancouver Coastal* at para. 53; *Pandion Mine Finance Fund LP v Otso Gold Corp.*,  
2022 BCSC 136 at para. 14; *Royal Bank of Canada v Canwest Aerospace Inc.*,  
2023 BCSC 514 at para. 9.

7. In applying these factors, this Court has held that the right of a secured creditor to apply for a receiver under a security agreement holds considerable weight, and is a “strong factor in support” of the appointment.

*Maple Trade* at para. 26.

8. Furthermore, the appointment of a receiver over mortgaged lands is not an “extraordinary remedy” where there has been a default under a mortgage; and in cases where the security documentation provides for the appointment of a receiver, the “extraordinary nature” of the remedy sought is less essential to the inquiry.

*Paragon* at para. 28, citing *Bank of Nova Scotia v Freure Village on Clair Creek*, [1996] O.J. No. 5088 at para. 12; *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc.*, 2020 ONSC 1953 at paras. 43 - 44.

### **It is Just and Appropriate to Appoint the Receiver**

9. It is just and appropriate to appoint the Receiver over the Property in the present circumstances, including as:

- (a) the Lender is likely to suffer irreparable harm if no order is made, particularly in light of the clear and significant risk to the Lender's security. The Debtors are unable to fund their operations, absent further financing from the Lender, including critical payments such as the payroll obligations coming due on July 21, 2023. Failure to satisfy such obligations risks the deterioration of the Debtors' business and the Lender's collateral, to the direct prejudice of the Lender and other stakeholders;

First Madrigga Affidavit at paras. 33, 34, and 37.

- (b) the nature of the Property and the Debtors' operations includes: (i) a going concern business with multiple employees; (ii) real estate subject to the Mortgage, which is in default; and, (iii) equipment, inventory and other assets subject to various registered security interests. This supports the appointment of the Receiver in order to ensure an orderly, comprehensive, and transparent sale, marketing, and realization process can be conducted, which provides the best opportunity to maximize returns, to the benefit of the Lender and all other creditors of the Debtors. Furthermore, the appointment of the Receiver will protect the interests of all stakeholders;

First Madrigga Affidavit at paras. 38 and 39.

- (c) the Mortgage and the General Security Agreements each specifically provide the Lender with the right to appoint a receiver and manager over the applicable Property upon the applicable Debtor's default;

First Madrigga Affidavit at paras. 17 and 19;  
First Danielisz Affidavit at Exhibits "D", "U", and "W".

- (d) the Debtors are indebted to the Lender in the aggregate amount of \$3,790,479.58, as at July 10, 2023, and their financial condition is deteriorating. Absent additional financing, the Debtors lack the liquidity necessary to pay their obligations as they come due, including the critical payments required to maintain the Property. At present, Debtors will not be able to pay their employees in the ordinary course, let alone repay the Indebtedness to the Lender;

First Madrigga Affidavit at paras. 8(d), 21, 37, 40, and Exhibit "A".

- (e) the Debtors have committed multiple Forbearance Defaults. Despite being subject to an extended forbearance period commencing in late 2021, the Debtors have failed to successfully restructure their obligations. Nor have the Debtors presented any viable plan to obtain refinancing or otherwise alleviate their deteriorating financial situation;

First Madrigga Affidavit at paras. 8 and 40.

- (f) with respect to the conduct of the parties, as described in the First Madrigga Affidavit, the Debtors have misstated their accounts receivable and failed to advise the Lender of certain adverse claims as required under the Forbearance Agreement and the Loan Agreements, and accordingly appear not to be acting in a transparent manner in their dealings with the Lender;

First Madrigga Affidavit at paras. 8(c), 35, and 40.

- (g) given the number of potentially interested stakeholders, the Debtors' failure to satisfy their statutory obligations in respect of taxes and related matters, and the fact that the Debtors will be unable to continue operations absent further funding (which the Lender is only prepared to advance as a receiver's borrowings secured by a priority charge), a court appointment is necessary in the circumstances, in order to facilitate the Receiver's duties and permit the Receiver to carry out its duties more efficiently;

See First Madrigga Affidavit at paras. 8(a), 10, 31, and 37.

- (h) the Lender has lost confidence in the Debtors' management and the Debtors' ability to work diligently, transparently, and in good faith to satisfy their obligations, or to pursue a commercially reasonable and transparent sale of the property; and,

First Madrigga Affidavit at para. 40.

- (i) in light of the above-noted factors, the balance of convenience favours the appointment of the Receiver.

10. The Lender submits that it is just and convenient, in the circumstances as a whole, to appoint MNP as Receiver over all of the Debtors' Property.

11. The Lender further pleads and relies upon Rule 10-2 and Rule 13-5 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009.

**Jurisdiction to Grant the Charges**

12. This Honourable Court has jurisdiction to grant the Charges in priority to all existing security interests, trusts, liens, charges and encumbrances, against the Property, pursuant to subsection 243(6) of the BIA.

13. Subsection 243(6) of the BIA states:

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

*BIA* at s. 243(6).

**It is Appropriate to Grant the Charges**

14. All secured creditors of the Debtors have been, or prior to the hearing of this Petition will be, served and provided with sufficient notice of the hearing of this Petition.

15. The proposed Receiver, MNP, has provided input regarding the proposed quantum of the Charges. In the Lender's submission, the proposed quantum is fair and reasonable, having regard to the value of the Debtors' Property and the nature of the obligations to be secured.

16. The Receiver's Charge and Receiver's Borrowing Charge sought by the Lender are in the template form provided for in the British Columbia Model Receivership Order.

17. In *Edmonton (City) v Alvarez & Marsal Canada Inc.*, the Alberta Court of Appeal considered an appeal with respect to the provisions of the Alberta Template Receivership Order concerning priority charges, which mirror those under the British Columbia Model Receivership Order. In reversing the decision at first instance, which had granted certain claims by the City of

Edmonton priority over the “super-priority” receiver’s charge and receiver’ borrowings charge, the Court stated:

[9] [...] This appeal concerns the discretion granted the court by s 243(6), which governs the making of orders respecting the payment of the receiver’s fees and disbursements and, in particular, gives the court the discretion to grant a super priority to a receiver’s claim for fees and disbursements.

[...] [14] The chambers judge exercised his discretion to grant the Receiver’s Charge priority over the claims of both the mortgagee and builders’ lien claimant. Relevant to his consideration was the decision in *Robert F Kowal Investments Ltd v Deeder Electric Ltd* (1975), 59 DLR (3d) 492, 9 OR (2d) 84 (CA) [Kowal], applied in *Royal Bank v Vulcan Machinery & Equipment Ltd*, [1992] 6 WWR 307, 13 CBR 69 (ABQB). *Kowal* refers to a general rule that secured creditors may not be subject to the charges and expenses of a receivership. This is so because, “the general purpose of a general receivership is to preserve and realize the property for the benefit of creditors in general. No receivership may be necessary to protect or realize the interests of lienholders”: *Kowal*, quoting Ralph Ewing Clark, *Clark On Receivers*, 3rd ed, vol 1, s 22, p 25. There are, however, exceptions to that general rule, three of which were enumerated in *Kowal*:

1. if a receiver has been appointed at the request or with the consent or approval of the holders of security, the receiver will be given priority over the security holders;
2. if a receiver has been appointed to preserve and realize assets for the benefit of all interested parties, including secured creditors, the receiver will be given priority over the secured creditors for charges and expenses properly incurred; or
3. if the receiver has expended money for the necessary preservation or improvement of the property, the receiver may be given priority for those expenditures over secured creditors.

[15] These principles are well accepted and proper considerations for a court in exercising its discretion under s 243(6). [...]

[16] In his discussion of the applications by ICI and Standard General, the chambers judge made several pertinent observations with respect to the policy considerations relevant to the prioritization of the fees and disbursements of receivers (*Decision* at paras 136-137):

[136] The difficulty with making a determination at the outset of a receivership (even a liquidating receivership) is that the nature and extent of the work necessary to preserve, protect, maintain, and eventually liquidate a particular asset is unknown. I do not see that claimants with a proprietary claim are entitled to a free ride in a receivership, such that they should be responsible for payment of the costs of the receivership as they relate to the claimants’ claims and the cost of monetizing the claim. Those

costs may include a part of the Receiver's general costs as well as those that can be specifically tied to the specific assets in question.

[137] Up front, it is appropriate to have the Receiver's charges rank ahead of claimants who will benefit from the Receivership, to the extent that they have benefitted from the Receivership. That means that for creditors who may benefit from the Receivership, the super priority is generally appropriate for the Receiver's fees and disbursements, on the expectation that these fees and disbursements will ultimately be fairly apportioned.

[17] In making these observations, the chambers judge rightly recognized the modern commercial realities that affect receiverships. The super priority is necessary to protect receivers; without security for their fees and disbursements they would be understandably concerned about taking on receiverships. This is in keeping with the decision in *CCM Master Qualified Fund v blutip PowerTechnologies*, 2012 ONSC 1750, where it was noted that in CCAA proceedings, "professional services are provided ... in reliance on super priorities contained in initial orders".[1] We agree with the observation of Brown J at para 22 that:

... comments regarding the need for certainty about the priority of charges for professional fees or borrowings apply, with equal force, to priority charges sought by a receiver pursuant to section 243(6) of the *BIA*. Certainty regarding the priority of administrative and borrowing charges is required as much in a receivership as in proceedings under the *CCAA*...

[18] The chambers judge also noted that the creditor who brings the application for the receivership should not be left to bear the entire financial burden of the process. Rather, those costs should be shared equitably amongst all the creditors. [...]

[23] The policy behind receiverships is that collective action is preferable to unilateral action. The receiver maximizes the returns for the benefit of all creditors and streamlines the process of liquidation. As was noted recently in *Royal Bank v Delta Logistics*, 2017 ONSC 368 at para 26:

The whole point of a court-appointed receivership is that one person ... is appointed to deal with all of the assets of an insolvent debtor, realize upon them, and then distribute the proceeds of that realization to the creditors.

[...] [26] Although the court has discretion under s 243(6) with respect to the priority to be given to receiver's charges, the exercise of discretion must be on a principled basis. For the foregoing reasons, we have concluded that the appeal with respect to Edmonton's application for priority must be allowed. The Receiver has a super priority for its fees and disbursements in accordance with the original receivership order. As was noted by the chambers judge, the amount of those costs to be paid by Edmonton, and the other secured creditors, will ultimately be the subject of an apportionment exercise.

*Edmonton (City) v Alvarez & Marsal Canada Inc*, 2019 ABCA 109 at paras. 9, 14-18, 23, and 26 ("*Edmonton v A&M*").



18. In the circumstances, the appointment of the Receiver falls squarely within the second exception set out in the *Kowal* case, and the policy rationale described in *Edmonton v A&M*: to preserve and realize the Property for the benefit of all interested parties, including secured creditors.

19. Courts have recognized that, unless professional advisor fees are protected with the benefit of a charge over the assets of a debtor company, the objectives of the receivership regime (including collective action, to the benefit of all interested stakeholders) would be frustrated, as professionals would be unlikely to risk offering their services without any assurance of ultimately being paid.

*Edmonton v A&M* at para. 17, citing *CCM Master Qualified Fund v blutip PowerTechnologies*, 2012 ONSC 1750 at para. 22.

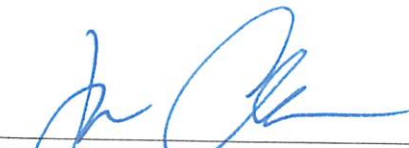
20. As the statutory prerequisite of providing notice to all secured creditors likely to be affected by the Charges has been met, and as the appointment of the Receiver is not only just and convenient but necessary to preserve and realize upon the Property, the Lender respectfully submits that the Charges should be granted, with the priority set out in the draft Receivership Order.

#### **PART 4 MATERIALS TO BE RELIED ON**

1. Affidavit #1 of Michelle Madrigga, made July 11, 2023;
2. Affidavit #1 of Susan Danielisz, made July 12, 2023;
3. Consent to Act as Receiver of MNP Ltd.; and
4. Such further and other materials as counsel may advise and this Court may allow.

The Petitioner estimates that the hearing of the Petition will take thirty (30) minutes.

DATED: July 12, 2023

  
\_\_\_\_\_  
Counsel for the Petitioner  
McCarthy Tétrault LLP  
(H. Lance Williams and Jenna Clark)

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

Order Made

in the terms requested in paragraphs ..... of  
Part 1 of this Petition

with the following variations and additional terms:

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DATED: \_\_\_\_\_  
Signature of  Judge  
 Master

**SCHEDULE "A"**

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

**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**

BEFORE THE HONOURABLE ) \_\_\_\_\_ DAY, THE \_\_\_\_ DAY  
JUSTICE \_\_\_\_\_ )  
 ) OF JULY, 2023  
 )

ON THE APPLICATION of 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**") and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "**LEA**") appointing MNP Ltd. as Receiver and Manager (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and property of Respondents, Unifab Industries Ltd. and Sekwod Enterprises (2012) 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 Affidavit #1 of Michelle Madrigga sworn July 11, 2023 (the "**First Madrigga Affidavit**"), Affidavit #1 of Sue Danielisz sworn July 12, 2023 (the "**First Danielisz Affidavit**"), and the consent of MNP Ltd. to act as the Receiver; AND ON HEARING H. Lance Williams, counsel for Bank of Montreal, and other counsel as listed on **Schedule "A"** hereto and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that:

1. The time for service of the Petition dated July 12, 2023 (the "**Petition**"), is abridged such that it is properly returnable today and service of the Petition, the First Madrigga Affidavit, and the First Danielisz Affidavit, is hereby deemed good and sufficient.

## APPOINTMENT

2. Pursuant to Section 243(1) of the BIA and Section 39 of the LEA, MNP Ltd. 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 Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
  - (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
  - (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting these amounts, including, without limitation, enforcement of any security held by the Debtors;
  - (g) to settle, extend or compromise any indebtedness owing to the Debtors;
  - (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
  - (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
  - (j) to initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of the

Debtors, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
  - (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
    - (i) without the approval of this Court in respect of a single transaction for consideration up to \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
    - (ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,
- and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;
  - (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;
  - (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
  - (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the Debtors;
  - (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
  - (r) to cause either or both of the Debtors to make a voluntary assignment for the benefit of their creditors pursuant to section 49 of the BIA;
  - (s) to act as trustee in bankruptcy of either or both of the Debtors, in accordance with the provisions of the BIA;
  - (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and

- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the 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 their instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, "**Persons**" and each a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
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 in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

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

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 Debtors and the Receiver.

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

10. All rights and remedies (including, without limitation, set-off rights) against the Debtors, the Receiver, or affecting the Property, are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors 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 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 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 Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the Debtors, including any successor employer liabilities as referred to in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay or in respect of obligations imposed specifically on receivers by applicable legislation, including sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.

### PERSONAL INFORMATION

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 \$250,000 (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 "B"** 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.

#### **ALLOCATION**

28. 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**

29. The Receiver shall establish and maintain a website in respect of these proceedings at: \_\_\_\_\_ (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.
30. Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for each of the Receiver and the Applicant a demand for notice in the form attached as **Schedule "C"** (the "**Demand for Notice**"). The Receiver and the Applicant need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed Demand for Notice releases the Receiver and the Applicant from any requirement to provide further notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice.
31. 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.
32. 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.
33. Notwithstanding paragraph 31 of this Order, service of the Petition 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.
34. The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of any legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*.

## GENERAL

35. 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.

36. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
37. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.
38. 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.
39. 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.
40. 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 Debtors' estate with such priority and at such time as this Court may determine.
41. Endorsement of this Order by counsel appearing on this application other than the Petitioner is dispensed with.

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

APPROVED BY:

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Lawyer for the Petitioner  
McCarthy Tétrault LLP  
(H. Lance Williams)

BY THE COURT

DISTRICT REGISTRAR

SCHEDULE "A"

LIST OF COUNSEL

<b>Name of Counsel</b>	<b>Party Represented</b>

**SCHEDULE "B"**

**RECEIVER CERTIFICATE**

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

AMOUNT

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

1. THIS IS TO CERTIFY that MNP Ltd., the Receiver and Manager (the "**Receiver**") of all of the assets, undertakings and properties of Unifab Industries Ltd. and Sekwod Enterprises (2012) Ltd., including all proceeds thereof (collectively, the "**Property**") 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. \_\_\_\_\_ has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly] not in advance on the \_\_\_\_\_ day of each month after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of \_\_\_\_\_ 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 \_\_\_\_\_ day of \_\_\_\_\_, 2023.

MNP LTD., solely in its capacity as Receiver  
of the Property, and not in its personal  
capacity

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE "C"**

**DEMAND FOR NOTICE**

**TO:**           **Bank of Montreal**  
                  c/o McCarthy Tétrault LLP  
                  Attention: Sue Danielisz  
                  Email:     sdanielisz@mccarthy.ca

**AND TO:**    **MNP Ltd.**  
                  c/o [Name of Counsel to the Receiver]  
                  Attention:  
                  Email:

**Re:   In the matter of the Receivership of Unifab Industries Ltd. and Sekwod Enterprises (2012) 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: \_\_\_\_\_