



Court File No. **VLC-S-S-235348**

No. \_\_\_\_\_  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**MCEOWN AND ASSOCIATES LTD. in its capacity as  
RECEIVER OF 8655 GRANVILLE LIMITED PARTNERSHIP**

**Petitioner**

**AND:**

**RED BUFFALO 8655 HOLDINGS LTD.**

**Respondent**

**PETITION TO THE COURT**

**ON NOTICE TO: The Respondent, Red Buffalo 8655 Holdings Ltd.**

**AND TO: Canadian Western Bank  
114506 B.C. Ltd.  
Sunshine Treasurehunt Development Ltd.**

**This proceeding has been started by the petitioner(s) 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(s)**
  - (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(s),

- (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: 800 Smithe Street Vancouver, B.C.
(2)	The ADDRESS FOR SERVICE of the petitioner(s) is:  Attn: Jeremy D. West/Thomas Hanson Watson Goepel LLP 1200 – 1075 West Georgia St. Vancouver, BC V6E 3C9  Fax number address for service (if any) of the petitioner(s): (604) 688-8193  E-mail address for service (if any) of the petitioner(s): n/a
(3)	The name and office address of the petitioner's lawyer is: Same as above.

## CLAIM OF THE PETITIONER

### Part 1: ORDERS SOUGHT

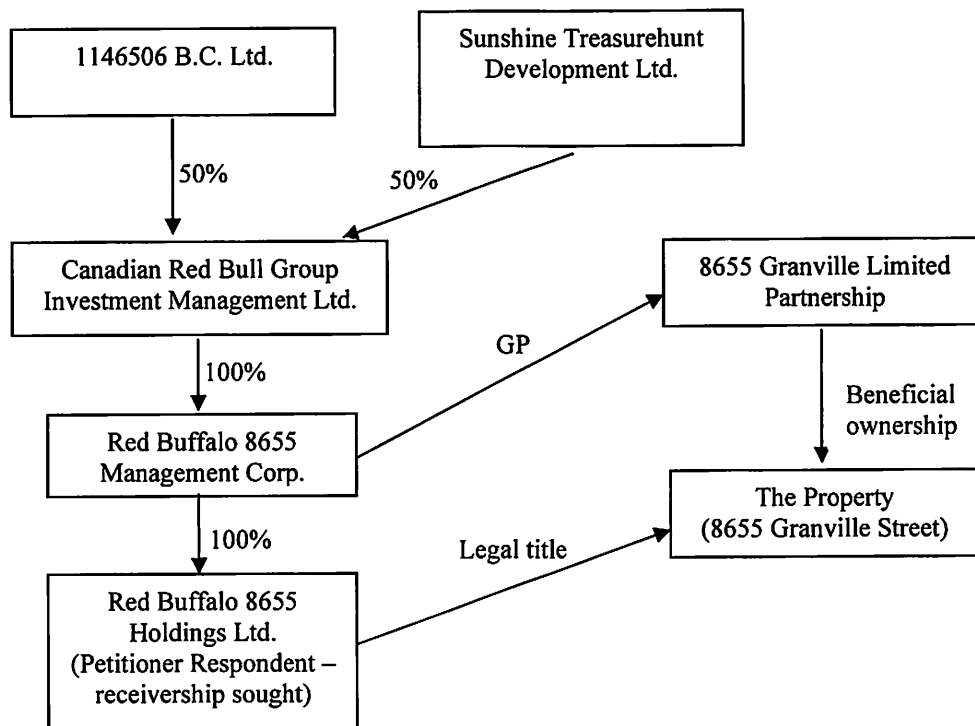
1. An order (the “**Receivership Order**”) appointing the Petitioner, McEown and Associates Ltd., in its capacity as receiver of 8655 Granville Limited Partnership (“**McEown**”) as receiver, without security, of all assets, undertakings and properties of Red Buffalo 8655 Holdings Ltd. (“**8655 Holdings**”), including all proceeds thereof, substantially in the form attached hereto as **Schedule “A”**, being a blacklined copy of the Model Receivership Order.
2. The costs of and in connection with these proceedings be awarded to McEown.
3. Such further and other relief as counsel may advise and this Court deems to be just and convenient the circumstances.

### Part 2: FACTUAL BASIS

#### Parties and the Property

4. McEown is a licensed insolvency trustee incorporated pursuant to the laws of British Columbia, with an address for service in these proceedings of 1200 – 1075 West Georgia Street, Vancouver, BC, V6E 3C9.
5. 8655 Granville Limited Partnership (the “**Limited Partnership**”) is a limited partnership governed by a Limited Partnership Agreement dated February 21, 2018 (the “**LP Agreement**”).
6. The Limited Partnership’s principal asset is a vacant development property located at 8655 Granville Street, Vancouver, BC, and legally described as:  
  
PID: 009-430-105  
Lot D Block F District Lot 318 Plan 21521  
  
(the “**Property**”).
7. Red Buffalo 8655 Management Corp. (“**8655 Management**”) is the general partner of the LP and in that capacity, is the:
  - a. registered and the beneficial owner of the shares of 8655 Holdings; and
  - b. principal and beneficial owner of the Property.

8. 8655 Holdings is the registered owner of the Property and holds legal title to the Property as bare trustee, for the sole benefit of 8655 Management in its capacity as general partner of the Limited Partnership pursuant to the terms of a Bare Trust and Agency Agreement dated February 28, 2018 (the “**Bare Trust Agreement**”).
9. 8655 Management is a wholly owned subsidiary of Canadian Red Bull Group Investment Management Ltd. (“**Red Bull Investment.**”).
10. The shares in Red Bull Investment are owned equally (50% each) by:
  - a. 114506 B.C. Ltd.; and
  - b. Sunshine Treasurehunt Development Ltd. (“**Sunshine**”).
11. The relationship between the Limited Partnership and related companies is as follows (in part):



**Voluntary Winding Up of the Limited Partnership**

12. Pursuant to Section 1.1(x) of the LP Agreement, an “Extraordinary Resolution” includes a written resolution in one or more counterparts signed by limited partners holding in aggregate more than 75% of the aggregate number of outstanding units in the Limited Partnership.

13. By Extraordinary Resolution dated April 18, 2023 (the “**Winding Up Resolution**”), certain limited partners holding in aggregate more than 75% of the aggregate number of outstanding units in the Limited Partnership resolved to wind up and dissolve the Limited Partnership, pursuant to Sections 10.14(b) and 12.1 of the LP Agreement.
14. The Winding Up Resolution provides, among other things, that:
  - a. McEown be appointed as Receiver of the Limited Partnership pursuant to Sections 12.3 and 12.4 of the LP Agreement;
  - b. McEown is authorized and directed to wind up the Limited Partnership in accordance with the procedure described at Sections 12.5 and 12.6 of the LP Agreement; and
  - c. McEown is authorized and directed, on behalf of the Limited Partnership, to execute and deliver all documents, instruments and other writings and to do all acts and things as McEown considers necessary or desirable in connection with the winding up and dissolution of the Limited Partnership, and the liquidation of the property of the Limited Partnership and the distribution of the proceeds thereof, pursuant to the terms of the LP Agreement.
15. Pursuant to Section 12.5 of the LP Agreement, McEown is charged with, among other things:
  - a. winding up the affairs of the Limited Partnership and liquidating its property in an orderly manner; and
  - b. managing and operating the property of the Limited Partnership (unless then sold) and exercising all powers and authority of the General Partner, 8655 Management, under the LP Agreement.

### **Foreclosure Proceedings**

16. Canadian Western Bank (“**CWB**”) holds a mortgage and assignment of rents registered on title to the Property under registration numbers CA6653043 and CA6653044 (the “**CWB Mortgage**”).
17. CWB commenced foreclosure proceedings with respect to the Property on May 17, 2023, in the Supreme Court of British Columbia, Vancouver Registry Action No. H230378.

18. The materials filed by CWB in the foreclosure proceedings indicate that the respondents (including the Limited Partnership) have defaulted in payments due under the CWB Mortgage.
19. On June 22, 2023, CWB obtained an Order Nisi of Foreclosure, with a redemption amount of \$10,271,511.26 as of April 26, 2023, together with daily interest of \$2,292.21, and a last day for redemption of December 22, 2023.

### **Equity in the Property**

20. The Property has an assessed value of \$20,336,000 as of 2023. Notwithstanding the judgment in favour of the CWB, there is significant equity in the Property.

### **Anticipated Sale of Property**

21. Pursuant to its duties as receiver under the Winding Up Resolution, McEown entered into a listing agreement with Cushman & Wakefield ULC and CAH Realty Inc. (the “**Realtors**”) to market and sell the Property. However, while the Limited Partnership is the beneficial owner of the Properties, title to the Property is registered in the name of 8655 Holdings.
22. Based on advice received from the Realtors McEown has determined that a sale of the Property by way of the sale of the shares of 8655 Holdings (“**Share Sale**”) may be more advantageous than a sale of legal title to the Property.
23. McEown is of the view that a Share Sale will likely increase the proceeds available for distribution to the limited partners of the Limited Partnership who are entitled to the balance of the proceeds after payment of the debts and liabilities of the Limited Partnership.
24. Accordingly, McEown, in its capacity as receiver of the Limited Partnership, seeks an appointment as receiver of 8655 Holdings Ltd. to permit it to complete a sale of the Property, either by transfer of legal title or a Share Sale.

### **Part 3: LEGAL BASIS**

25. McEown relies on:
  - a. the *Law and Equity Act*, R.S.B.C. 1997, c. 224, as amended (the “**LEA**”), and in particular s. 39 thereof;
  - b. the *Business Corporations Act*, S.C.B. 2002, c. 57, as amended (the “**BCA**”), and in particular ss. 124, 227, and 324 thereof;

- c. the *Supreme Court Civil Rules*, 168/2009, as amended, and in particular, Rules 2-1, 8-1, 8-5, 10-2, 16-1, 22-1, and 22-4 thereof; and
  - d. the inherent jurisdiction of this Honourable Court.
26. Section 39(1) of the *LEA* authorizes the appointment of a receiver where it appears to the Court to be just and convenient to do so.
27. Section 324(1)(b) of the *BCA* confers a broad discretion to order that a company be liquidated and dissolved if the Court considers it just and equitable to do so. If the test for a liquidation order is satisfied, s. 324(3)(b) authorizes the making of any other order available under s. 227(3) of the *BCA*.
28. Section 227(3) of the *BCA* confers a broad discretion to order whatever remedy is appropriate in the circumstances, including the appointment of a receiver.
29. Determining whether it is appropriate to appoint a receiver requires a “holistic” review of all of the circumstances, “and a robust review” of those circumstances to determine whether it is just and convenient to appoint a receiver.

***Bank of Montréal v. Gian’s Business Centre Inc.***  
**2016 BCSC 2348, at paras. 23 & 24**

30. The non-exhaustive factors to be considered in deciding whether the appointment of a receiver is justified were set out in *Bennett on Receiverships*, 2nd ed. (Toronto: Carswell, 1999), at p. 130. These factors have been endorsed and applied by the Supreme Court of British Columbia:
- 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 Finance Inc. v. CY Oriental Holdings Ltd.,***  
**2009 BCSC 1527 at para. 25**

***Vancouver Coastal Health Authority v Seymour Health Centre Inc.,***  
**2023 BCSC 1158 at para. 52**

31. Those factors are not a checklist, but are to be viewed holistically in assessing as to whether, in all the circumstances, the appointment of the receiver is just or convenient.

***Pandion Mine Finance Fund LP v. Otso Gold Corp.,***  
**2022 BCSC 136 at para. 54**

***Royal Bank of Canada v. Canwest Aerospace Inc.,***  
**2023 BCSC 514 at para. 9**

32. McEown submits that its appointment as receiver of 8655 Holdings is appropriate in the circumstances, which include:



- a. McEown has been appointed receiver of the Limited Partnership by the limited partners, and in that capacity McEown is charged with liquidating the property of the Limited Partnership in an orderly manner;
- b. in its capacity as receiver of the Limited Partnership, McEown has all the powers and authority of the General Partner under the LP Agreement;
- c. 8655 Holdings is a wholly-owned subsidiary of the General Partner, 8655 Management;
- d. 8655 Holdings holds legal title to the Property in trust for 8655 Management in its capacity as general partner of the Limited Partnership;
- e. the Property is subject to foreclosure proceedings commenced by the CWB. It will be in the best interests of the Limited Partnership for the sale of the Property, or a Share Sale, to be conducted by the proposed receiver rather than as a distressed asset sale in the foreclosure proceedings; and
- f. the proposed appointment of a receiver will benefit the stakeholders and in particular, the limited partners.

### **Model Receivership Order**

33. The proposed form of order, attached as Schedule "A" to this petition, is a blacklined copy of the Model Receivership Order with the proposed changes marked up. The substantive changes to the model order:
  - a. broaden the definition of the 8655 Holdings' "property" to specifically include its shares to allow the proposed receiver to enter into a Share Sale if it determines that is appropriate (paragraph 2);
  - b. expressly grant the proposed receiver McEown the power to sell, transfer, issue, or cancel 8655 Holdings' shares (paragraph 3(b));
  - c. provides that the stay of proceedings does not operate with respect to foreclosure proceedings commenced by CWB (paragraph 9(a));
  - d. makes the Receiver's Charge (as defined in the model order) a second charge against the 8655 Holdings' property, with priority to CWB's security interests (paragraph 21);

- e. authorizes and empowers the proposed receiver to borrow funds not exceeding \$200,000 (or such greater amount as the court may further order) for the purposes of funding the receivership (paragraph 24); and
- f. expressly permits CWB to apply for the appointment of a different receiver pursuant to its security agreements (paragraph 38).

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

- 1. Affidavit #1 of John McEown, made on July 27, 2023.
- 2. Such further materials as counsel shall advise.

The Petitioner estimates that the application will take 30 minutes.

Dated: July 27, 2023.

*For* \_\_\_\_\_  
Signature of Jeremy D. West  
Counsel for the Petitioner

*To be completed by the court only:*

Order made

in the terms requested in paragraphs *[specify]* of Part 1 of this notice of application

with the following variations and additional terms:  
*[specify]*

Dated: *[month, day, year]*.

\_\_\_\_\_  
Signature of  
 Judge  Master

Schedule "A"

No. \_\_\_\_\_  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MCEOWN AND ASSOCIATES LTD. in its capacity as RECEIVER OF  
8655 GRANVILLE LIMITED PARTNERSHIP

PETITIONER

AND:

RED BUFFALO 8655 HOLDINGS LTD.

RESPONDENT

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE )  
 )  
 )     /July/2023      
 )

ON THE APPLICATION of the Petitioner for an Order pursuant to Section 324 of the *Business Corporations Act*, S.B.C. 2002, c. 57, as amended (the "BCA") and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "LEA") appointing McEown and Associates Ltd. as Receiver-Manager (in such capacity, the "Receiver") without security, of all of the assets, undertakings and property of Red Buffalo 8655 Holdings Ltd. (the "Company") acquired for, or used in relation to a business carried on by the Company, coming on for hearing this day at 800 Smithe Street, Vancouver, British Columbia.

AND ON READING the Affidavit #1 of John McEown sworn **[DATE]** and the consent of McEown and Associates Ltd. to act as the Receiver; AND ON HEARING Jeremy D. West, Counsel for the Petitioner 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, any Response to Petition, the Affidavits therein, and all related materials is abridged, if necessary, and any further service of the above documents is dispensed with.

## APPOINTMENT

2. Pursuant to Section 324 of the BCA and Section 39 of the LEA, McEown and Associates Ltd. is appointed Receiver, without security, of all of the assets, undertakings and property of the Company of every kind and nature whatsoever, including, but not limited to, the sale or transfer of any of the Company's share capital, and 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;
  - ~~(a)~~(b) to sell, transfer, issue or cancel any of the Company's share capital;
  - ~~(b)~~(c) 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;
  - ~~(e)~~(d) to manage, operate and carry on the business of the Company, 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 Company;
  - ~~(d)~~(e) 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)~~(f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Company or any part or parts thereof;
  - ~~(f)~~(g) to receive and collect all monies and accounts now owed or hereafter owing to the Company and to exercise all remedies of the Company in collecting these amounts, including, without limitation, enforcement of any security held by the Company;
  - ~~(g)~~(h) to settle, extend or compromise any indebtedness owing to the Company;
  - ~~(h)~~(i) 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 Company, for any purpose pursuant to this Order;

~~(i)~~(j) to undertake environmental or workers' health and safety assessments of the Property and operations of the Company;

~~(j)~~(k) to initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of the Company, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;

~~(k)~~(l) 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)~~(m) 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 \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$200,000.00; 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)~~(n) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;

~~(n)~~(o) 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)~~(p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

~~(p)~~(q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the Company;

~~(q)~~(r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Company, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Company;

~~(r)~~(s) to exercise any shareholder, partnership, joint venture or other rights which the Company may have; and

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

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

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

4. Each of (i) the Company; (ii) all of the Company's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, "**Persons**" and each a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
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 Company, 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~~ 5, 6 or 7 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 COMPANY OR THE PROPERTY**

9. No Proceeding against or in respect of the Company 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 Company or the Property are stayed and suspended pending further Order of this Court (the “**Stay of Proceedings**”); 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 Company and the Receiver.

~~(a)~~ The Stay of Proceedings shall not operate with respect to foreclosure proceedings commenced by petition filed by Canadian Western Bank on May 17, 2023, BCSC Vancouver Registry No. H-230378.

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

10. All rights and remedies (including, without limitation, set-off rights) against the Company, 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 Company to carry on any business which the Company is not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. This stay and suspension shall not apply in respect of any “eligible financial contract” as defined in the BIA.

## **NO INTERFERENCE WITH THE RECEIVER**

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 Company, 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 Company 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 Company 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 Company's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Company 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 Company shall remain the employees of the Company until such time as the Receiver, on the Company's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the Company, 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 Company, 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~~ second charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, (each a "Security Interest"), in favour of any Person, but subject to Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and subject to any Security Interest in favour of the Canadian Western Bank ("CWB") granted before the making of this Order, which shall remain a first charge on the Property (the "CWB Charge") in priority to the Receiver's Charge.
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 \$200,000.00 (or such greater amount as this Court may by further Order authorize) at any time, ~~at such rate or rates of interest as the Receiver deems advisable~~ at a rate not greater than the Prime Rate plus two (2%) percent per annum, 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, the CWB Charge, and the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

- (a) "Prime Rate" as used herein, means the variable annual interest rate quoted by the main branch of Royal Bank of Canada, Vancouver, British Columbia, from time to

time as the rate of interest used by it as a reference rate for setting rates of interest on Canadian dollar loans in Canada repayable on demand and commonly referred to by such bank as its “prime rate”.

~~24.~~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.

~~25.~~26. The Receiver is authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.

~~26.~~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**

~~27.~~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**

~~28.~~29. The Receiver shall establish and maintain a website in respect of these proceedings at: <https://www.mceownassociates.com/> (the “**Website**”) and shall post there as soon as practicable:

- (a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the *Supreme Court Civil Rules*; and,
- (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

~~29.~~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 B (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.<sup>+</sup>

~~30.~~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.

~~31.~~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.

~~32.~~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.

~~33.~~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 Company’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of any legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*.

## **GENERAL**

~~34.~~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.

~~35.~~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.

~~36.~~37. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Company.

~~37.~~38. Nothing in this Order shall prevent CWB from applying to appoint a different receiver of the Company pursuant to any security agreement which grants CWB the right to apply for such appointment.

~~38.~~39. 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.

~~39.40.~~ 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.

40.41. The Petitioner shall have its costs of this motion, up to and including entry and service of this Order on a substantial indemnity basis to be paid by the Receiver from the Company's estate with such priority and at such time as this Court may determine.

41.42. 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:

\_\_\_\_\_  
Jeremy D. West

Counsel for the Petitioner

BY THE COURT

DISTRICT REGISTRAR

**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

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

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that McEown and Associates Ltd., the ~~Receiver-Manager~~ (the "**Receiver**") of all of the assets, undertakings and properties of Red Buffalo 8655 Holdings Ltd. (the "**Company**") acquired for, or used in relation to a business carried on by the Company, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Supreme Court of British Columbia (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 [REDACTED] day of [REDACTED], 202[REDACTED].

McEown and Associates Ltd., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per:  
Name:  
Title:

**Schedule "B"**

**Demand for Notice**

**TO:** McEown and Associates LLP  
c/o Watson Goepel LLP  
Attention: Jeremy D. West  
Email: jwest@watsongoepel.com / jm@mceownassociates.ca

**Re: In the matter of the Receivership of Red Buffalo 8655 Holdings Ltd.**

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

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

\_\_\_\_\_

OR

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

\_\_\_\_\_

OR

3. By mail, at the following address:

\_\_\_\_\_

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

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

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

\_\_\_\_\_

\_\_\_\_\_

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



Action No.

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IN THE SUPREME COURT OF BRITISH  
COLUMBIA

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BETWEEN:

MCEOWN AND ASSOCIATES LTD. in its capacity as  
RECEIVER OF  
8655 GRANVILLE LIMITED PARTNERSHIP

PETITIONER

AND:

RED BUFFALO 8655 HOLDINGS LTD.

RESPONDENT

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