

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**ROYAL BANK OF CANADA**

Applicant

and

**H & H HOLDING INC., KHAIRA MOTOR FREIGHT INC. operating as  
KHAIRA FREIGHT, SUKHJINDER GILL and HARVINDER SINGH also  
known as HARWINDER SINGH**

Respondents

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

**FACTUM OF THE APPLICANT,  
ROYAL BANK OF CANADA**  
(Returnable October 8, 2024)

October 2, 2024

**FOGLER, RUBINOFF LLP**

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Lawyers for the Applicant, Royal Bank of  
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**SERVICE LIST**

	<b>NAME</b>	<b>METHOD OF SERVICE</b>
TO:	<b>H &amp; H HOLDING INC.</b> 39 Chamberlin Drive Cambridge, ON N1T 1L8	<b>BY REGULAR MAIL</b>
AND TO:	<b>KHAIRA MOTOR FREIGHT INC. o/a KHAIRA FREIGHT</b> 1339 Industrial Road Cambridge, ON N3H 4W3	<b>BY REGULAR MAIL</b>
AND TO:	<b>HARVINDER SINGH also known as HARWINDER SINGH</b> 83 Canning Crescent Cambridge, ON N1R 1V8 Email: <a href="mailto:harvykhaira@gmail.com">harvykhaira@gmail.com</a>	<b>BY EMAIL TO:</b> <a href="mailto:harvykhaira@gmail.com">harvykhaira@gmail.com</a>
AND TO:	<b>SUKHJINDER GILL</b> 39 Chamberlin Drive Cambridge, ON N1T 1L8 Email: <a href="mailto:gillheera25@yahoo.com">gillheera25@yahoo.com</a>	<b>BY EMAIL TO:</b> <a href="mailto:gillheera25@yahoo.com">gillheera25@yahoo.com</a>
AND TO:	<b>JAP JI LAWYERS P.C.</b> 21 – 7001 Steeles Ave W Toronto, ON M9W 0A2  <b>Jagdish Singh Bedi</b> Email: <a href="mailto:jbedi@japjilaw.com">jbedi@japjilaw.com</a> Tel: 416-679-8300  Counsel for H & H Holding Inc.	<b>BY EMAIL TO:</b> <a href="mailto:jbedi@japjilaw.com">jbedi@japjilaw.com</a>
AND TO:	<b>RESTORATION RANCH</b> 2020 Safari Road Flamborough, ON N1R 5S2	<b>BY REGULAR MAIL</b>
AND TO:	<b>CITY OF HAMILTON</b> Tax Billings and Collections Administrator 71 Main Street West Hamilton, ON L8P 4Y5  <b>Attention: Rob Divinski</b> Email: <a href="mailto:rob.divinski@hamilton.ca">rob.divinski@hamilton.ca</a>	<b>BY EMAIL TO:</b> <a href="mailto:rob.divinski@hamilton.ca">rob.divinski@hamilton.ca</a>

AND TO:	<b>AGRICULTURE AND AGRI-FOOD CANADA</b> <b>Farm Debt Mediation Service</b> 2560 Hochelaga Boulevard Quebec, QC G1V 2J3 Email: <a href="mailto:aafc.fdms-smmea.aac.agr.gc.ca">aafc.fdms-smmea.aac.agr.gc.ca</a>	<b>BY EMAIL TO:</b> <a href="mailto:aafc.fdms-smmea.aac.agr.gc.ca">aafc.fdms-smmea.aac.agr.gc.ca</a>
AND TO:	<b>MSI SPERGEL INC.</b> 200 Yorkland Blvd., Suite 1100 Toronto, ON M2J 5C1  <b>Mukul Manchanda</b> Email: <a href="mailto:mmanchanda@spergel.ca">mmanchanda@spergel.ca</a> Tel: 416-489-4314  Proposed Receiver	<b>BY EMAIL TO:</b> <a href="mailto:mmanchanda@spergel.ca">mmanchanda@spergel.ca</a>
AND TO:	<b>HARRISON PENZA LLP</b> 130 Dufferin Avenue, Suite 1101 London, ON N6A 5R2  <b>Melinda Vine</b> Email: <a href="mailto:mvine@harrisonpensa.com">mvine@harrisonpensa.com</a> Tel: 519-661-6705  Counsel for the Proposed Receiver, msi Spergel inc.	<b>BY EMAIL TO:</b> <a href="mailto:mvine@harrisonpensa.com">mvine@harrisonpensa.com</a>
AND TO:	<b>CANADA REVENUE AGENCY</b> <b>c/o Department of Justice</b> Ontario Regional Office 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1 Email: <a href="mailto:AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca">AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca</a>	<b>BY EMAIL TO:</b> <a href="mailto:AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca">AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca</a>
AND TO:	<b>HIS MAJESTY THE KING IN RIGHT OF ONTARIO, as represented by the Ministry of Finance</b> Legal Services Branch 33 King Street, 6 <sup>th</sup> Floor Oshawa, ON L1H 8H5  <b>Attention: Steven Groeneveld</b> Email: <a href="mailto:steven.groeneveld@ontario.ca">steven.groeneveld@ontario.ca</a> Tel: 905-440-2470  Senior Counsel, Ministry of Finance	<b>BY EMAIL TO:</b> <a href="mailto:steven.groeneveld@ontario.ca">steven.groeneveld@ontario.ca</a>
AND TO:	<b>INSOLVENCY UNIT</b> Province of Ontario Email: <a href="mailto:insolvency.unit@ontario.ca">insolvency.unit@ontario.ca</a>	<b>BY EMAIL TO:</b> <a href="mailto:insolvency.unit@ontario.ca">insolvency.unit@ontario.ca</a>

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Respondents

**FACTUM OF THE APPLICANT,  
ROYAL BANK OF CANADA**

**PART I - INTRODUCTION**

1. The Applicant, Royal Bank of Canada ("**RBC**"), is seeking an order appointing msi Spergel inc. as receiver of the assets, undertakings and properties of the respondents, H & H Holding Inc. ("**H&H**") and Khaira Motor Freight Inc. operating as Khaira Freight ("**Khaira**") (collectively, the "**Debtors**"), including the real property municipally known as 2020 Safari Road, Flamborough, Ontario (PIN No. 17538-0091 (LT)) (the "**Property**"), pursuant to Section 243 of the *Bankruptcy and Insolvency Act* (the "**BIA**") and Section 101 of the *Courts of Justice Act* (the "**CJA**").

2. RBC is also seeking judgment against the respondents, Harvinder Singh and Sukhjinder Gill (collectively, the "**Guarantors**") for payment of all amounts owing to RBC in connection with their personal guarantees given for the debts, liabilities and obligations of H&H.

3. RBC's position is that the appointment of a receiver is just and appropriate based on:

- RBC is a secured creditor of the Debtors pursuant to the GSA and Mortgage Security;
- The Debtors are in default under the terms of the Credit Agreements and Security;
- RBC advised the Debtors on January 4, 2024 that it would be terminating the banking relationship effective April 3, 2024;
- RBC advised H&H that it would not renew the Mortgage Loan on maturity, being February 1, 2024 – now more than 8 months matured;
- H&H has failed to pay realty taxes in connection with the Property and a Municipal Tax Arrears Certificate is registered against title to the Property by the City of Hamilton;
- On January 12, 2024, RBC received from the City a Notice of Registration of Tax Arrears Certificate advising that it would sell the Property by public sale if the arrears remained unpaid by December 12, 2024 (the "**Tax Notice**");
- On March 22, 2024 and April 5, 2023, RBC issued payment demands and notice of intent by secured creditor pursuant to section 21 of the Farm Debt Mediation

Act, which have expired (more than 5 months ago) (collectively the "**Payment Demands**");

- In the face of the expired Payment Demands, the Debtors are insolvent. No further terms of credit or forbearance is available to the Debtors from RBC. It is necessary for the protection of the Debtors' estate that a receiver be appointed;
- RBC's Security provides it with the right to appoint a receiver over all property of the Debtors, as a result of the defaults; and
- A receiver will also be required to preserve the property of the Debtors and complete the orderly sale of same, and to ensure that the proceeds of any such sale are applied to the Debtors' obligations. In relation to any such sale, the appointment of a receiver is also necessary to deal with any subsequent claims to the proceeds.

## **PART II - SUMMARY OF FACTS**

### **The Parties**

4. H&H owns the Property and a business known as "Restoration Ranch" appears to operate from the Property.<sup>1</sup>

5. The Property is municipally known as 2020 Safari Road, Flamborough, Ontario.<sup>2</sup>

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<sup>1</sup> Affidavit of Sharon D'Costa, sworn September 12, 2024, at para. 9 (the "**D'Costa Affidavit**").

<sup>2</sup> D'Costa Affidavit, at para. 8 and Exhibit "O".

6. Mr. Singh and Mr. Gill personally guaranteed the obligations owing by H&H to RBC (collectively the "**Guarantees**"). The indebtedness of H&H and Kharia are cross-guaranteed.<sup>3</sup>

### **Credit Facilities and Security**

7. As at September 5, 2024, the Debtors are indebted to RBC in the amount of \$1,038,829 plus accruing interest and RBC's continuing costs of enforcement including legal and professional costs.<sup>4</sup>

8. H&H is indebted to RBC, as principal debtor, in connection with a mortgage term loan in the principal amount of \$1,100,000.00 (the "**Mortgage Loan**"), pursuant to a Royfarm Mortgage Loan Agreement dated December 29, 2020, and accepted by H&H on December 31, 2020.<sup>5</sup>

9. Khaira is indebted to RBC, as principal debtor, in connection with a visa facility pursuant to a RBC Royal Bank Visa Business Card Agreement dated February 20, 2029.<sup>6</sup>

10. The credit facilities are secured by, among other things, the following:

- (i) H&H General Security Agreement dated December 31, 2020;

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<sup>3</sup> D'Costa Affidavit, at para. 11 and Exhibits "E", "G", "H", "I", "J" and "L".

<sup>4</sup> D'Costa Affidavit, at para. 53.

<sup>5</sup> D'Costa Affidavit, at para. 12 and Exhibit "D".

<sup>6</sup> D'Costa Affidavit, at para. 24 and Exhibit "K".

- (ii) Charge/Mortgage to RBC registered on title to the Property as Instrument No. WE1484018 on January 18, 2021 in the amount of \$1,100,000 (the "**Mortgage**"), including RBC Standard Charge Terms 20015 ("**SCT 20015**") and Notice of Assignment of Rents;
  - (iii) Khaira General Security Agreement dated December 29, 2020;
  - (iv) Khaira Guarantee for the obligations of H&H limited to \$1,100,000 dated December 31, 2020;
  - (v) Mr. Singh's Guarantee for the obligations of H&H limited to \$550,000 dated December 31, 2020;
  - (vi) Mr. Gill's Guarantee for the obligations of H&H limited to \$550,000 dated December 31, 2020;
  - (vii) H&H Guarantee for the obligations of Khaira limited to \$25,000 dated December 29, 2020
- (collectively the "**Security**").<sup>7</sup>

11. The GSA secures all personal property of the Debtors. RBC has registered financing statements against the Debtors pursuant to the provisions of the Personal

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<sup>7</sup> D'Costa Affidavit, at paras. 15-26 and Exhibits "E", "F", "G", "H", "I", "J" and "L".  
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Property Security Act (Ontario) to perfect its security interest in the personal property of the Debtors secured under the GSA.<sup>8</sup>

12. RBC's interest in the Property is secured by the Mortgage, which constitutes a first charge on the Property, as governed by the SCT 20015.<sup>9</sup>

### **Defaults and Demands**

13. The Debtors are insolvent and have defaulted under the Credit Agreements and Security, as set out above.

14. RBC advised the Debtors on January 4, 2024 that it would terminate the banking relationship effective April 3, 2024.<sup>10</sup>

15. RBC advised H&H that it would not renew the Mortgage Loan on maturity, being February 1, 2024.<sup>11</sup>

16. RBC advised Khaira that effective April 3, 2024 it would not advance any further credit under the visa facility.<sup>12</sup>

17. RBC received the Tax Notice on or about January 12, 2024.<sup>13</sup>

18. On February 1, 2024, the Mortgage Loan matured and was not repaid in full.<sup>14</sup>

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<sup>8</sup> D'Costa Affidavit, at paras. 27 and 28 and Exhibits "M" and "N".

<sup>9</sup> D'Costa Affidavit, at para. 29.

<sup>10</sup> D'Costa Affidavit, at para. 32.

<sup>11</sup> D'Costa Affidavit, at para. 33.

<sup>12</sup> D'Costa Affidavit, at para. 34.

<sup>13</sup> D'Costa Affidavit, at para. 35.

<sup>14</sup> D'Costa Affidavit, at para. 36.

19. The accounts of the Debtors were transferred to RBC's Special Loans & Advisory Services Group in February, 2024.<sup>15</sup>

20. RBC had a video conference with the Debtors, Mr. Singh and Mr. Gill on March 13, 2024 and was advised that H&H would repay the indebtedness from financing to be advanced by Scotiabank or another lender in late April, 2024.<sup>16</sup>

21. In March and April 2024, RBC issued the Payment Demands, which have expired and the indebtedness remains outstanding.<sup>17</sup>

22. Following expiry of the Payment Demands, RBC requested that the Debtors provide certain financial information (the "**Information Request**"), including, but not limited to, a status update on H&H's efforts to secure new financing; evidence that H&H's remittance obligations with CRA are up-to-date.<sup>18</sup>

23. Despite repeated requests, RBC and/or its lawyers have not received a response to the Information Request and the indebtedness remains outstanding.<sup>19</sup>

24. The obligations due pursuant to the Payment Demands have not been paid. The statutory periods have expired. The Debtors are in default of their obligations under the Credit Agreement. RBC is in a position to appoint a receiver over the assets and property of the Debtors as secured by RBC's Security, pursuant to 243 of the BIA.

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<sup>15</sup> D'Costa Affidavit, at para. 37.

<sup>16</sup> D'Costa Affidavit, at para. 41.

<sup>17</sup> D'Costa Affidavit, at paras. 43 – 45 and Exhibits "U", "V" and "W".

<sup>18</sup> D'Costa Affidavit, at para. 48.

<sup>19</sup> D'Costa Affidavit, at paras. 50 – 52.

25. The GSA grants RBC the right to appoint a receiver over all personal property of the Debtors, as a result of the defaults of the Debtors under the Credit Agreement.<sup>20</sup>

26. The Mortgage Security grants RBC the power to appoint a receiver over the Property as a result of the defaults.<sup>21</sup>

27. msi Spergel inc. consents to act as receiver, should this Honourable Court so appoint it.<sup>22</sup>

28. The terms of the Guarantees entitle RBC to judgment against Mr. Singh and Mr. Gill.

### **PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES**

29. The issues before this Court, and addressed below are:

(a) Does this Court have jurisdiction to appoint the receiver"

(b) Should this Court appoint the receiver?

(c) If this Court decides to appoint the receiver, then are the terms of the receivership order appropriate in the circumstances of this receivership?

(d) Should this Court grant judgment against the Guarantors in accordance with the terms of the Guarantees?

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<sup>20</sup> D'Costa Affidavit, at paras. 15, 16, 20 and 21 and Exhibits "E" and "H".

<sup>21</sup> D'Costa Affidavit, at paras. 14, 17 and 18 and Exhibit "F".

<sup>22</sup> D'Costa Affidavit, at para. 62.

**(a) This Court has jurisdiction to appoint the Receiver**

30. Subsection 243(5) of the BIA provides that an application under subsection 243(1) of the BIA is to be filed in a court having jurisdiction in the judicial district of the "locality of the debtor", which is defined in section 2 of the BIA.

31. The Debtors are Ontario corporations. The businesses carried on by the Debtors that are subject to the proposed receivership includes premises located in Ontario. The locality of the Debtors is, therefore, Ontario, and this application is properly brought before the Ontario Superior Court of Justice.

32. Subsection 243(4) of the BIA provides that only a trustee, as defined in section 2 of the BIA, may be appointed under subsection 234(1) of the BIA.

33. msi Spergel inc. is a trustee as defined in the BIA, and therefore, satisfies the requirements for appointment pursuant to the BIA.

**(b) This Court should appoint the Receiver**

34. Section 244(1) requires that a secured creditor provide an insolvent person with the requisite advance notice of its intention to enforce security.

35. RBC issued Payment Demands together with its Notice of Intention to Enforce Security pursuant to section 244 of the BIA (the '**BIA Notices**'). Payment Demands and the BIA Notices have all expired.

36. Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended (the "**CJA**") provides for the appointment of a receiver by this Court where it is "just and

convenient”. Section 243(1) of the BIA also provides that, on an application by a secured creditor, this Court may appoint a receiver if it considers it to be just and convenient to do so to: (a) take possession over the assets of an insolvent person; (b) exercise any control that the Court considers advisable over the property and business; or (c) take any other action that the Court considers advisable.

37. Where the credit agreement and related security documents contemplate the appointment of a receiver, this Court may have regard to the principles summarized by Justice Newbould in *RMB Australia Holdings Limited v. Seafield Resources Ltd.*

28 In determining whether it is “just or convenient” to appoint a receiver under either the BIA or CJA, Blair J., as he then was, in *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274 (Ont. Gen. Div. [Commercial List]) stated that in deciding whether the appointment of a receiver was just or convenient, the court must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto, which includes the rights of the secured creditor under its security. He also referred to the relief being less extraordinary if a security instrument provided for the appointment of a receiver:

While I accept the general notion that the appointment of a receiver is an extraordinary remedy, it seems to me that where the security instrument permits the appointment of a private receiver — and even contemplates, as this one does, the secured creditor seeking a court appointed receiver — and where the circumstances of default justify the appointment of a private receiver, the “extraordinary” nature of the remedy sought is less essential to the inquiry. Rather, the “just or convenient” question becomes one of the Court determining, in the exercise of its discretion, whether it is more in the interests of all concerned to have the receiver appointed by the Court or not.

29 See also *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 (Ont. S.C.J. [Commercial List]), in which Morawetz J., as he then was, stated:

...while the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties. See *Textron Financial Canada Ltd. v. Chetwynd Motels Ltd.*, 2010 BCSC 477, [2010] B.C.J. No. 635 at paras. 50 and 75 (B.C. S.C. [In Chambers]); *Freure Village, supra*, at para. 12; *Canadian Tire Corp. v. Healy*, 2011 ONSC 4616, [2011] O.J. No. 3498 at para. 18 (S.C.J. [Commercial List]); *Bank of Montreal v. Carnival National Leasing Limited and Carnival Automobiles Limited*, 2011 ONSC 1007, [2011] O.J. No. 671 at para. 27 (S.C.J. [Commercial List]).<sup>23</sup>

38. The existence of a contractual right to appoint a receiver in the credit agreement and related security documents is key. Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties.<sup>24</sup>

39. This relief that is granted more as a matter of course, becomes even less extraordinary when dealing with a default under a mortgage. That is the case here where the Mortgage Loan has matured and remains unpaid.<sup>25</sup>

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<sup>23</sup> [RMB Australia Holdings Limited v. Seafield Resources Ltd.](#), 2014 ONSC 5205 (CanLII), paras. 28-29.

<sup>24</sup> [Elleway Acquisitions Limited v. The Cruise Professionals Limited](#), 2013 ONSC 6866 (CanLII) at para 27.

<sup>25</sup> [BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.](#), 2020 ONSC 1953 (CanLII) at paragraph 44.

40. This even further lowered burden in cases in which there has been a default by a mortgagor is described by Justice Farley in *Confederation Life Insurance Co. v. Double Y Holdings Inc.*:

"20 I must also note that there appears to be a major distinction between those case where the borrower is in default and those where it is not (or a receiver is being asked for in say a shareholder dispute - e.g. *Goldtex Mines Ltd. v. Nevill* (1974), 7 O.R. (2d) 216 (Ont. C.A.)). See *Receiverships*, Bennet (1985), at p.91 referring to: "In many cases, a security holder whose instrument charges all or substantially all of the debtor's property will request a court - appointed receivership if the debtor is in default". (In this case the plaintiffs have a very strong case - not only are the loans in default, they have matured). See also *Kerr on Receiverships* (1983), 16th ed. at p.5:

There are two main classes of cases in which appointment is made: (1) to enable persons who possess rights over property to obtain the benefit of those rights and to preserve the property, pending realization, where ordinary legal remedies are defective and (2) to preserve property from some danger which threatens it.

### **Appointment to Enforce Rights**

In the first class of cases are included those in which the court appoints a receiver at the instance of a mortgagee whose principal is immediately payable or whose interest is in arrear. ... In such cases the appointment is made as a matter of course as soon as the applicant's right is established and it is unnecessary to allege any danger to the property.<sup>26</sup>"

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<sup>26</sup> *Confederation Life Insurance Co. v. Double Y Holdings Inc.*, 1991 CarswellOnt 1511 (Ont. S.C.J. (Commercial List)) ["Confederation Life"], para. 20  
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41. In the present case, H&H is in default under the Credit Agreement and Mortgage Security and the Mortgage Loan has matured and is immediately payable, meaning that this is the first class of cases referred in *Confederation Life*.

42. With this lower burden, the following additional “just or convenient” factors identified by Justice Farley in *Confederation Life* may be considered:

- a) The lenders’ security is at risk of deteriorating;
- b) There is need to stabilize and preserve the debtor’s business;
- c) Loss of confidence in the debtor’s management; and,
- d) Positions and interests of other creditors.

43. It is not essential that the moving party/secured creditor establish that it will suffer irreparable harm if a receiver/manager is not appointed.

44. When the above *Confederation Life* factors are applied to this case, RBC submits that the burden to appoint a receiver has been met and that such appointment is just and convenient in the circumstances:

**a) *The Debtors contractually agreed to the appointment of a receiver.*** The Credit Agreement and the Security documents expressly entitles RBC to appoint a receiver upon default.

**b) *The Credit Agreement is in default.*** As set out above, events of default have occurred and are continuing under the Credit Agreement and the Security documents.



RBC has demanded on the obligations. RBC has provided the Debtors with the BIA Notices, and the applicable notice periods have elapsed.

**c) *The lenders' security is at risk of deteriorating.*** RBC is concerned that the Debtors do not have the working capital needed to maintain the Property. H&H is not paying realty taxes and the Property is at risk of being sold by the City under a public sale.

**d) *The Applicant has lost confidence in the Debtor's management.*** RBC has justifiably lost confidence in the management of the Debtors due to the events described in the D'Costa Affidavit, including the defaults and promises of financing from Scotiabank and/or another lender and failing to complete a sale or refinancing despite being granted significant time in which to do so.

**(c) The Terms of the Receivership Order are Appropriate**

45. The terms of the proposed Receivership Order are substantially the same as the terms of the Commercial List's model receivership order, and the modifications to same are indicated in the blacklined copy provided.

## **Judgment against the Guarantors**

46. The Debtors are obligated to repay all indebtedness to RBC under the Credit Agreement.

47. Mr. Singh and Mr. Gill have not responded to this Application. RBC's standard form Guarantee provides as follows:

(2) This guarantee shall be a continuing guarantee and shall cover all the Liabilities, and it shall apply to and secure any ultimate balance due or remaining unpaid to the Bank.

(3) The Bank shall not be bound to exhaust its recourse against the Customer or others or any securities it may at any time hold before being entitled to payment from the undersigned of the Liabilities. The undersigned renounce(s) to all benefits of discussion and division.

...

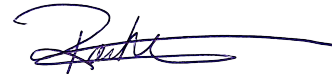
(12) No suit based on this guarantee shall be instituted until demand for payment has been made, and demand for payment shall be deemed to have been effectually made upon any guarantor if and when an envelope containing such demand, addressed to such guarantor at the address of such guarantor last known to the Bank, is posted, postage prepaid, in the post office, and in the event of death of any guarantor demand for payment addressed to any of such guarantor's heirs, executors, administrators or legal representatives at the address of the addressee last known to the Bank and posted as aforesaid shall be deemed to have been effectually made upon all of them. Moreover, when demand for payment has been made, the undersigned shall also be liable to the Bank for all legal costs (on a solicitor and own client basis) incurred by or on behalf of the Bank resulting from any action instituted on the basis of this guarantee. All payments hereunder shall be made to the Bank at a branch or agency of the Bank.

**PART IV - ORDER REQUESTED**

48. For the reasons set forth herein and in the Application Record, it is respectfully submitted that the appointment of a receiver is just and convenient and is necessary for the protection of the estates of the Debtor and the interests of RBC and other stakeholders.

49. RBC seeks an Order appointing MSI Spergel Inc. as Receiver and Judgment on the Guarantees.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 2<sup>nd</sup> day of October, 2024.



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**Rachel Moses**

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Lawyers for the Applicant, Royal Bank of  
Canada

## SCHEDULE "A"

### LIST OF AUTHORITIES

1. [\*RMB Australia Holdings Limited v. Seafield Resources Ltd.\*, 2014 ONSC 5205 \(CanLII\)](#)
2. [\*Elleway Acquisitions Limited v. The Cruise Professionals Limited\*, 2013 ONSC 6866 \(CanLII\)](#)
3. [\*BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.\*, 2020 ONSC 1953 \(CanLII\)](#)
4. *Confederation Life Insurance Co. v. Double Y Holdings Inc.*, 1991 CarswellOnt 1511 (Ont. S.C.J. (Commercial List))

## SCHEDULE "B"

### TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. [Section 243\(4\) of the \*Bankruptcy and Insolvency Act\*, R.S.C., 1985, c. B-3](#)

#### **Trustee to be appointed**

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

2. [Section 243\(5\) of the \*Bankruptcy and Insolvency Act\*, R.S.C., 1985, c. B-3](#)

#### **Place of filing**

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

3. [Section 244\(1\) of the \*Bankruptcy and Insolvency Act\*, R.S.C., 1985, c. B-3](#)

#### **Advance notice**

- **244 (1)** A secured creditor who intends to enforce a security on all or substantially all of
  - **(a)** the inventory,
  - **(b)** the accounts receivable, or
  - **(c)** the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

4. [Section 101 of the \*Courts of Justice Act\*, R.S.O. 1990, c. C-43](#)

#### **Injunctions and receivers**

**101 (1)** In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

**Terms**

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

**ROYAL BANK OF CANADA**  
Applicant

-and- **H & H HOLDING INC. et al.**  
Respondents

Court File No. CV-24-00087045-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
HAMILTON

**FACTUM OF THE APPLICANT,**  
**ROYAL BANK OF CANADA**

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