Form 67 (Rule 3-1 (1) )

No. 264776
Vancouver Registry

*In the Supreme Court of British Columbia*

BETWEEN

ROYAL BANK OF CANADA

PETITIONER

AND:

WEST HORIZON CONTRACTING INC.

RESPONDENT

**RESPONSE TO PETITION**

**Filed by:** West Horizon Contracting Inc. (the "**Petition Respondent**")

THIS IS A RESPONSE TO the Petition filed June 24, 2026.

The Petition Respondent estimates that the application will take 1 day.

## PART 1: ORDERS CONSENTED TO

The Petition Respondent consents to the granting of NONE of the orders set out in Part 1 of the Petition.

## PART 2: ORDERS OPPOSED

The Petition Respondent opposes the granting of ALL of the orders set out in Part 1 of the Petition.

## PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Petition Respondent takes no position on the granting of NIL of the orders set out in Part 1 of the Petition.

## PART 4: FACTUAL BASIS

### A. Chronology of Events

#### *1. Relationship Between WHC and RBC*

1. Prior to the events leading to this petition in the spring of 2026, RBC and WHC had a strong relationship. As recently as October 9, 2025, RBC has recommended WHC as a stable long-term client who has paid all credit obligations.

*2.* *No Evidence of Initial Default*

2. As set out at paragraph 12 of Affidavit #1 of M. Daerendinger filed June 24, 2026 (the "**RBC Affidavit**"), RBC had extended the following credit facilities to WHC:

    a. A revolving demand facility up to $3,000,000 ("**Facility 1**" or the "**Operating Line of Credit**")

    b. A revolving term facility up to $500,000 ("**Facility 2**")

    c. A revolving lease line of credit up to $330,987.56 ("**Facility 3**"); and

    d. A credit card facility up to $200,000 (the "**Credit Card Facility**" and, together with Facility 1, Facility 2 and Facility 3, the "**Credit Facilities**").

3. The total of Facility 1, Facility 2, Facility 3 and the Credit Card Facility is **$4,030,987.56.**

4. With respect to Facility #1, the Credit Agreement included the following material terms (the "**Margin Requirement**"):

    > Borrowings outstanding under this facility must not exceed at any time the aggregate of the following, less Potential Prior-Ranking Claims (the "Borrowing Limit"):
    >
    > a. 75% of Good Canadian/US Accounts Receivable;
    >
    > b. To a maximum of $100,000.00, 50% of the lesser of cost or net realizable value of Finished Goods Inventory.

5. As of on April 30, 2026 the Margin Requirement was $1,530,465.86 in excess of the $3,000,000 provided for in Facility #1:

    a. WHC's Good Canadian/US Accounts Receivable were $6,748,973.63, 75% of which is $5,061,730.22;

    b. WHC's Finished Goods Inventory was $725,518.40 entitling WHC to the full $100,000 increase relating to Finished Goods Inventory;

    c. Potential Prior-Ranking Claims totaled $631,264.36; and

    d. $5,061,730.22 + $100,000 - $631,264.36 = $**4,530,465.86.**

6. The RBC Affidavit contains no evidence of WHC's alleged default on the credit agreement. The only evidence in the RBC Affidavit *relating* to WHC's alleged default is set out at paragraph 41:

    > On May 7, 2026, as a result of WHC's failure to comply with financial covenants included in the Credit Agreement, RBC's legal counsel issued to WHC, Jared, and Gail demand letters and

Notices of Intention to Enforce Security in accordance with section 244(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985 c B-3 (collectively, the "**Demand Letters**").

7. The Demand Letters themselves, all sent on May 7, 2026, are not evidence of how WHC was in default of the credit agreement.:

    a. RBC's counsel makes the following tautological statement at exhibit W: "Be advised that the Borrower is in default of their covenants under the Loan Agreements. Details of such defaults are well known to you, but for the purposes of the record, the Borrower is in breach of its covenants, including but not limited to, failing to comply with financial covenants (collectively, the "Defaults")"; and

    b. RBC's counsel makes the same following statement in the demand letters at exhibits X and Y, "Be advised that the Borrower is in default of the terms of the Loan Agreement. As of May 7, 2026, the Borrower is indebted to RBC in the amount of $3,342,160.26…".

8. As set out above, the total of WHC's credit facilities provide borrowing capacity of up to $4,530,465.86**.** Accordingly, without particularizing under which facility or facilities the total indebtedness to RBC of $3,342,160.26 had accrued, it is not evidence that WHC was in default of the Credit Agreement.

### *3. The Forbearance Agreement*

9. On May 8, 2026, WHC was provided with the Forbearance Letter Agreement. The Forbearance Letter Agreement was a short fuse offer that expired the same day on May 8, 2026 at 12:00 p.m. At that time, WHC did not have legal counsel as all the firms WHC sought to retain had conflicts with RBC.

10. The Forbearance Letter Agreement granted additional security to RBC including a term that a mortgage would be executed over the property referred to in the letter as the Tatlow Property. WHC informed counsel for RBC that Jared McCreery, the director of WHC, did not have the authority to enter into a mortgage over the Tatlow Property on behalf of the owner on title to the Tatlow Property, 1356833 B.C. Ltd. ("**135 Co**").

11. Counsel for RBC threatened to proceed with enforcement of the RBC security if Mr. McCreery did not sign the Forbearance Letter Agreement as-is, including on behalf of 135 Co. Mr. McCreery therefore did sign the Forbearance Letter Agreement, including, without authorization, on behalf of 135 Co., without the advice of counsel.

12. At the time the Forbearance Letter Agreement was executed, RBC had frozen WHC's Operating Line of Credit. Notwithstanding RBC freezing WHC's operating line of credit WHC has always made payroll to employees. WHC opened an account with the National Bank of Canada ("**NBC**") for the purpose of obtaining refinancing to

repay the indebtedness to RBC, as allowed for in the Forbearance Letter Agreement. WHC has been able to continue making payroll via the NBC account.

## B. WHC's Operations

### *1. Current Operations*

13. WHC is a civil construction company engaged in the business of infrastructure construction including road building, bridge building and maintenance.

14. WHC's client base includes large private developers, towns and municipalities, indigenous groups and frequently, the Ministry of Transportation and Infrastructure of British Columbia ("**MoTI**").

15. WHC frequently enters into Major Works Contracts with MoTI. The Major Works Contract includes the following material terms:

    a. An Event of Default occurs when a receiver or receiver manager is appointed for WHC (GC 62.01(d));

    b. The Ministry may retain any payment due to WHC upon an Event of Default and set off against WHC (GC. 62.02(b) and (d)); and

    c. If the Event of Default is not cured, the Ministry may keep the retained payment (GC 62.03(b)).

16. WHC is currently fully operational and has five contracts ongoing with MOTI, one with the City of Smithers which include the same or similar default provisions as identified in the Major Works Contract and one project with the Tahltan Nation Development Corporation (the "**Ongoing Projects**").

17. In accordance with the *Builder Lien Act*, there are holdbacks in place for the Ongoing Projects which exceed $1.4M (the "**Outstanding Holdbacks**").

18. Notwithstanding RBC's actions, WHC is fully operation and currently progressing the work on the Ongoing Projects.

19. In addition to the Ongoing Projects, WHC reached total completion on a MoTI Project referred to as the Fisher Creek Bridge Project on June 30, 2026. WHC and MoTI are in active negotiations aimed at quantifying WHC's claims for recoverable increased costs on the project. WHC has valued those recoverable increased costs in excess of $3M and anticipates WHC and MoTI will be able to come to an agreement on how much of WHC's increased costs are recoverable by the end of this calendar year (the "**Fisher Creek Claim**").

20. As is the nature of large civil construction projects, WHC currently has outstanding accounts receivable ("**AR**") and work in progress ("**WIP**") on the Ongoing Projects.

21. If WHC is forced into receivership, WHC will be in breach of the default provisions of the Ongoing Projects and unable to collect on its AR, WIP or the Fisher Creek Claim.

2. *Business Partners and Contracts*

22. WHC has signed an exclusive partnership agreement with the Tahltan Nation Development Corporation ("**TNDC**") making WHC the only civil construction company partnered with the TNDC.

23. As of July 8, 2026, the WHC Projects had an active contract value of $31,760,000.00. and $30,160,000.00 of that work has performance, labour and material payments bonds.

24. The Insurance Company of Prince Edward Island ("**ICPEI**") has issued bonds valuing $25,440,000.00 and Intact Insurance ("**Intact Insurance**") has issued bonds valuing $4,720,000.00.

25. The receivership order being sought would cause ICPEI and Intact Insurance to be responsible for the claims of unpaid subcontractors under the respective bonds and to the owners of the various projects for their increased costs to complete resulting from WHC's termination.

3. *Financial Position and Assets*

26. As set out in WHC's year end financial statements at April 30, 2026, WHC's financial position is strong:

    a. WHC's assets total $13,344,850, with a book value for WHC's property, plant and equipment ("**PP&E**") set at $1,932.714. However, a June 16th, 2026 appraisal of WHC's heavy equipment, the majority of WHC's PP&E, indicates:

        i. An orderly liquidation value of $9,153,700; and

        ii. A fair market value of $10,999,600.

    b. WHC's liabilities total $8,909,594.

27. Even before accounting the delta between the book value of PP&E and the liquidation or fair market value of WHC's PP&E, there is sufficient equity in WHC, $4,435,256, to repay the entirety of WHC's indebtedness to RBC.

### C. Bonding

28. WHC is working with ICPEI, a Surety that has bonded 4 of WHC's contracts with MoTI, with a total bonded contract value of $25,436,067, to ensure those contracts are brought to completion in an orderly manner. In particular, ICPEI has explored or

considered retaining a consultant to assist in the review and administration of project invoices should circumstances require such involvement.

29. One of the potential recommendations being considered by WHC and ICPEI is the possibility of transferring the one contract which WHC does not expect to complete within the calendar year, the Fan & Revision Creek Bridges Project, a $10,766,487, project that is 19.1% complete, leaving $8,715,032 remaining to be billed, with a completion date is three years away. Given the stage of this contract, it may be possible to economically transfer it to another contractor if necessary, allowing WHC to focus its forces on finishing the remaining projects bonded by ICPEI by the end of calendar year 2026.

### D. WHC's Refinancing Efforts

30. After receiving the Demand letters, WHC engaged in discussions with National Bank of Canada ("**NBC**") to complete refinancing for WHC that would have RBC fully paid out and had been offered a term sheet from NBC. WHC subsequently provided RBC with confirmation that that NBC had provided WHC with a term sheet on May 15, 2026.

31. While still in discussions with NBC, RBC filed and served the within petition. NBC subsequently advised would not complete the refinancing with an active receivership petition.

32. WHC is in discussions with a private lender, Provida Financial Corporation, to obtain refinancing that would result in RBC being fully paid out. Provida has indicated a willingness to rush the due diligence in an effort to have a term sheet signed in August and funds advanced by the end of August to pay out RBC.

### E. Prejudice to WHC and Others

33. There will be significant prejudice to WHC, MoTI and the people of British Columbia, Tahltan Nation Development Corporation, ICPEI, Intact Insurance, WHC's subtrades, WHC's employees, and WHC's other creditors should RBC be entitled to appoint a receiver and assign WHC into bankruptcy.

## PART 5: LEGAL BASIS

### A. Applicable Law - Receivership

34. First and foremost, the onus rests on the petitioner to discharge the burden of establishing that the balance of convenience favours the appointment of a receiver.

*Textron Financial Canada Limited v. Chetwynd Motels Ltd.*, 2010 BCSC 477 [*Textron*] at paras 54 and 55.

35. The Respondent agrees that the factors to consider when assessing the balance of convenience are set out in paragraphs 2 to 4 of Part 3: Legal Basis of the Petition (the "**Maple Trade Factors**"). The fact that a creditor has a right to appoint a receiver under the documentation provided for a loan is only one consideration among many of the Maple Trade Factors to be considered.

36. When considering a receivership order, the court must consider the interests of other persons who have been described as "social stakeholders" which includes employees, directors, shareholders, creditors and other parties doing business with the alleged insolvent company.

*Vancouver Coastal Health Authority v. Seymour Health Centre Inc*., 2023 BCSC 1158 at para 68 ("**VCH**").

37. In relation to the just and convenient considerations: justice and convenience can only be established by considering and balancing the position of both parties. The onus is on the petitioner. The respondent does not have to prove any special hardship, much less "undue hardship" to resist such an application. The effect of the mere granting of the receivership order must always be considered, and if possible a remedy short of receivership should be used.

*Textron* at para 53 citing *BG International Ltd v Canadian Superior Energy Inc*., 2009 ABCA 127 at para 17.

38. A desire for an orderly and cost-effective way of managing the process through a court appointed receiver is <u>not</u> sufficient to overcome the stigma and prejudice suffered when a receiver is appointed.

*Southern Cone Capital Ltd. v. EmVest Food Products (Mauritius) Ltd*., 2017 BCSC 2385 at para 44.

39. A receivership order is extraordinary relief which should be granted cautiously and sparingly. If the court can fashion a remedy that avoids receivership, it should be considered.

*Cameron Stephens Mortgage Capital Ltd. v. Square Nine King George Development Ltd*., 2025 BCSC 2404 at paras 26 to 27.

### B. Application of Law to the Facts - Receivership

40. The petitioner has not adduced evidence capable of discharging its burden of establishing that the balance of convenience favours the appointment of a receiver, an extraordinary remedy which should be granted cautiously and sparingly:

a. RBC has not adduced evidence in support of its assertion that WHC's defaults under the WHC Credit Agreement pose a material risk to RBC's Security. In fact, RBC's Security significantly exceeds what it is owed by WHC;

b. RBC has not adduced evidence that WHC is unable to continue operating its business on a going-concern basis. WHC, on the other hand, has adduced evidence that it is fully operational, progressing its current projects;

c. RBC's has not adduced evidence that WHC is unable to make payroll, only suspicions, and WHC has adduced evidence that this suspicion is unfounded;

d. RBC asserts, without evidence, that the appointment of a Receiver will benefit all stakeholders of WHC by saving the costs and inefficiency of a piecemeal sale of WHC's Property; and

e. The cost of a receiver, along with the significant decrease in near-term revenue, would significantly decrease the amount available to creditors.

41. WHC has adduced evidence that the appointment of a Receiver would be to the detriment of several significant stakeholders of WHC:

a. Appointing a receiver would result in the termination of the Contracts, under which $17,715,000 remains to be billed and collected by WHC;

b. Even if that were not the case, the sale of WHC's equipment would make it unable to progress the Contracts;

c. The termination of the Contracts would inevitably delay the completion of the following projects, all expected to complete within the year:

i. Kersley Dale Washout;

ii. Phase 3, Cycle 16;

iii. Quesnel Hydraulic Road; and

iv. Hanna Creek North Bridge (together, the "**2026 Projects**").

d. Delay in the completion of the above-noted projects would prejudice MoTI, the people of British Columbia and the First Nations of Quesnel.

e. The cost of the delay, and the increased cost of engaging a new contractor to complete the above-noted projects would be claimable against WHC's sureties, ICPEI and Intact, to their significant prejudice.

f. The costs to ICPEI and Intact incurred in relation to its bonds are indemnified by WHC and its principals, increasing WHC's overall liability to creditors and decreasing every creditor's share of WHC's assets;

g. The termination of the Contracts would entitle the Province to withhold approved but unpaid amounts owing to WHC. In particular, the Province would be entitled to withhold the holdbacks and any payments owing under the Fisher Creek Project which WHC valued in excess of $3M.

h. The termination of the Contracts would result in significant litigation between WHC's subtrades, WHC and MoTI, causing those stakeholders significant prejudice.

42. On the contrary, giving WHC at least until the end of 2026 to finish the 2026 Projects, in coordination with its sureties and potentially consultants would allow WHC to realize a significant amount of revenue and profit, would give WHC the potential to obtain refinancing and even give WHC the possibility to pay out RBC with monies obtained.

43. RBC is entitled to a just and convenient remedy, not its preferred remedy. It ought not to be able to jeopardize the position of WHC's stakeholders as a mere preference, particularly where it is over-secured and has not established any risk to its security should a receiver not be appointed.

44. For the same reasons that RBC has not established that the appointment of a receiver is just and convenient, RBC has not established that it is necessary or appropriate to assign WHC into bankruptcy in the circumstances.

**PART 6: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of J. McCreery, made on July 22, 2026.

Date: July 22, 2026

Alexander J. Spraggs
Counsel for the Petition Respondent

Petition respondent's address for service:

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