



NO. VLC-S-H-220132  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

INSTITUTIONAL MORTGAGE CAPITAL CANADA INC., AS  
GENERAL PARTNER OF IMC LIMITED PARTNERSHIP

PETITIONERS

AND:

0876242 B.C. LTD.  
GATEWAY DEVELOPMENT LIMITED PARTNERSHIP  
SEEB CAPITAL LTD.  
MARK VANRY

RESPONDENTS

**NOTICE OF APPLICATION**

**Name of Applicant:** Institutional Mortgage Capital Canada Inc., as General Partner of  
IMC Limited Partnership

To: The Service List

TAKE NOTICE that an application will be made by the Applicant to the presiding judge at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on the 5<sup>th</sup> day of May, 2022 at 9:45am for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. An Order substantially in the form attached hereto as **Schedule "A"**, appointing the Bowra Group as the Receiver over all of the undertakings, property and assets of 0876242 B.C. Ltd. and Gateway Development Limited Partnership, acquired for, or used in relation to the construction of the mixed use commercial and industrial strata development (the "**Project**") located at lands civically and legally described as:

3333 Bridgeway Street, Vancouver, V5K 1H9

PID: 011-154-551  
 BLOCK K, EXCEPT PART ON REFERENCE PLAN 8675, NOW LANE TOWN OF  
 HASTINGS PLAN 5461  
 (the “**Project Lands**”)

## **Part 2: FACTUAL BASIS**

### *The Parties*

2. The Applicant, Institutional Mortgage Capital Canada Inc., as General Partner of IMC Limited Partnership (“**IMC**”) is a corporation with an office at suite 1900, 199 Bay Street, Toronto, Ontario.
3. The Respondent, 0876242 B.C. Ltd. (“**087**”) is a corporation registered pursuant to the laws of the Province of British Columbia, with a registered and records office at 250 Howe Street, 20<sup>th</sup> Floor, Vancouver, B.C. V6C 3R8.
4. The Respondent, Gateway Development Limited Partnership (the “**LP**” and together with 087, “**Gateway**”) is a corporation registered pursuant to the laws of the Province of British Columbia, with a registered and records office at 250 Howe Street, 20<sup>th</sup> Floor, Vancouver, B.C. V6C 3R8.
5. The Respondent, Seeb Capital Ltd. (“**Seeb**”), is a corporation registered pursuant to the laws of the Province of British Columbia, with a registered and records office at 1020 – 1166 Alberni Street, Vancouver, B.C. V6E 3Z3.
6. The Respondent, Mark Vanry (“**Mr. Vanry**”), is an individual with an address for service in these proceedings at 1744 – 1055 Dunsmuir Street, Vancouver, B.C. V7X 1L2.

### *Background*

7. This proceeding concerns the construction of the Project, which was originally scheduled to complete in the Spring of 2020. 087 is the registered owner of the Project Lands as nominee and bare trustee for the LP. Prism Construction Ltd. (“**Prism**”) is the general contractor for the Project.

### *Construction Financing*

8. On February 28, 2018, Gateway, together with Port Capital Development Inc. and Mr. Macario Teodoro Reyes, entered into a commitment letter, as amended March 12, 2018, with IMC, whereby IMC issued a construction financing loan (the “**Construction Loan**”) in the amount of \$26,200,000 to Gateway for the Project with a maturity date of April 1, 2020.

9. As security for the Construction Loan, Gateway granted to IMC, among other things:

- (a) a General Security Agreement dated March 9, 2018 (the “**First GSA**”);
  - (b) a Beneficial Owner Agreement dated March 9, 2018; and
  - (c) a first ranking mortgage (the “**First Mortgage**”) and assignment of rents over the Project Lands in the principal amount of \$26,200,000;
- (collectively, the “**First Security Agreements**”).

10. Section 5.01 of the First GSA provides that upon and following the occurrence of an Event of Default (as defined therein), IMC may, among other things, appoint, by written instrument, a receiver or receiver and manager of the Collateral (as defined therein).

11. Section 7.07 of the First Mortgage provides that upon the occurrence of an Event of Default (as defined therein), IMC may, among other things, in its discretion, with or without entering into possession of the Property (as defined therein) or any part thereof, by instrument in writing, appoint a receiver or receiver and manager of the Property or any part thereof.

12. The Project was originally scheduled to be completed and sold, with the Construction Loan being repaid in full, by its April 1, 2020 maturity date.

***2020 Prism Dispute, Construction Delays and Cost Overruns***

13. In January 2020, the Construction Loan was amended to extend the maturity date from April 1, 2020 to July 1, 2020.

14. In the Spring of 2020, IMC became concerned over construction disputes between Gateway and Prism regarding cost overruns, among other things, which led to Prism registering a builders’ lien on title to the Project Lands in the amount of \$4,082,828.06 on June 30, 2020 (the “**First Prism Lien**”). In August 2020, the following additional builders’ liens, which in addition to the First Prism Lien, constituted default under the Construction Loan and the First Security Agreements, were registered by sub-trades on title to the Project Lands.

- (a) builders’ lien registered August 4, 2020 by Doka Canada Ltd. in the amount of \$38,825.63;
- (b) builders’ lien registered August 5, 2020 by Tango Enterprises Inc. in the amount of \$77,193.90;
- (c) builders’ lien registered August 31, 2020 by Doka Canada Ltd. in the amount of \$407,704.72; and
- (d) builders’ lien registered August 31, 2020 by DNA Electric Ltd. in the amount of \$127,266.60;

(collectively with the First Prism Lien, the “**2020 Builders’ Liens**”).

15. In September 2020, Gateway resolved its dispute with Prism which included IMC agreeing to provide additional financing to Gateway. The Construction Loan was amended to

increase the amount available thereunder to \$29,800,000 and extend the maturity date to April 1, 2021. In addition, IMC made available to Gateway a cost overrun facility (the “**Cost Overrun Facility**”) in the amount of \$3,000,000 with a maturity date of May 1, 2021.

16. A modification to the First Mortgage (the “**First Mortgage Modification**”) was registered on title to the Project Lands to reflect the increased loan amount available under the Construction Loan. In addition, as security for the Cost Overrun Facility, Gateway granted to IMC, among other things:

- (a) a General Security Agreement dated September 15, 2020 (the “**Second GSA**” and together with the First GSA, the “**GSAs**”);
- (b) a Beneficial Owner Agreement dated September 15, 2020;
- (c) a promissory note in the amount of \$3,000,000 dated September 15, 2020; and
- (d) a second ranking mortgage (the “**Second Mortgage**”, and together with the First Mortgage, the “**Mortgages**”) and assignment of rents over the Project Lands in the principal amount of \$4,000,000;

(collectively, the “**Second Security Agreements**” and together with the First Security Agreements, the “**Security Agreements**”).

17. Section 5.01 of the Second GSA provides that upon and following the occurrence of an Event of Default (as defined therein), IMC may, among other things, appoint, by written instrument, a receiver or receiver and manager of the Collateral (as defined therein).

18. Section 7.07 of the Second Mortgage provides that upon the occurrence of an Event of Default (as defined therein), IMC may, among other things, in its discretion, with or without entering into possession of the Property (as defined therein) or any part thereof, by instrument in writing, appoint a receiver or receiver and manager of the Property or any part thereof.

19. As a result of the further IMC financing flowing from the amended Construction Loan and the Cost Overrun Facility, Gateway was able to pay Prism and its sub-trades, and in September 2020, the 2020 Builders’ Liens were discharged.

### ***2021 CPLs and Further Construction Delays***

20. On April 29, 2021, Seeb Capital Ltd. registered a CPL on title to the Project Lands (the “**Seeb CPL**”), pursuant to a Notice of Civil Claim filed by Seeb as Plaintiff.

21. As a result of further construction delays and IMC’s concerns with the Seeb CPL and, in particular, Gateway’s inability to subdivide the Project Lands into strata titles with the Seeb CPL on title, IMC agreed to extend the maturity dates of the Construction Loan and Cost Overrun Facility (the “**Maturity Dates**”) to September 1, 2021, in order to provide a further period of time for Gateway to secure a discharge of the Seeb CPL and complete the Project.

22. On June 29, 2021, Mr. Vanry registered a CPL on title to the Project Lands, pursuant to a Notice of Civil Claim filed by Mr. Vanry and Rannoch Capital Limited Partnership as Plaintiffs.

23. Gateway failed to complete construction, discharge the CPLs from title and repay the Construction Loan and Cost Overrun Facility by September 1, 2021. As a result, IMC agreed to further extend the Maturity Dates to November 1, 2021.

***2021 Prism Dispute and Further Cost Overruns***

24. In the Fall of 2021, a further dispute arose between Prism and Gateway respecting further construction delays and cost overruns that stalled the Project once again. As a result, the following builder's liens were registered on title to the Project Lands:

- (a) builders' lien registered September 17, 2021 by Stone Cutter Construction Inc. in the amount of \$104,469.77;
  - (b) builders' lien registered November 8, 2021 by Frasersview Roofing and Renovations Ltd. in the amount of \$68,611.61; and
  - (c) builders' lien registered November 15, 2021 by Frasersview Roofing Ltd. in the amount of \$68,611.61;
- (the "**2021 Builders' Liens**").

25. In addition to the registration of the 2021 Builders' Liens, Gateway failed to repay the Construction Loan and Cost Overrun Facility by November 1, 2021.

***Forbearance Agreement, Milestones and Subsequent Defaults***

26. On November 8, 2021, IMC and Gateway entered into a forbearance agreement whereby IMC agreed to provide further financing to Gateway under the Cost Overrun Facility (the "**Further Advances**"), along with resuming funding under the Construction Loan, so that Gateway could resolve its dispute with Prism, discharge the 2021 Builders' Liens and achieve substantial completion of the Project.

27. Under the Forbearance Agreement, IMC agreed to forbear from enforcing the Security Agreements until January 1, 2022, and Gateway agreed:

- (a) to secure a \$700,000 cash injection on account of an estimated funding shortfall (the "**Funding Shortfall**") for the Project by December 1, 2021;
- (b) to secure discharges of the CPLs from title to the Project Lands by December 15, 2021; and
- (c) that failure to achieve substantially complete the Project by December 31, 2021 would be an event of default thereunder.

28. To reflect the Further Advances, IMC amended the Cost Overrun Facility to increase the amount available to \$4,000,000 and Gateway granted to IMC a corresponding promissory note in that same amount.

29. As a result of the Further Advances, among other things, Gateway was able to resolve its dispute with Prism, resulting in discharges of the 2021 Builders' Liens. However, Gateway defaulted under the Forbearance Agreement by virtue of its failure to:

- (a) secure a \$700,000 cash injection to address the Funding Shortfall by December 1, 2021;
- (b) attend to discharges of the CPLs by December 15, 2021; and
- (c) substantially complete the Project by December 31, 2021.

***Supplemental Forbearance Agreement, Milestones and Subsequent Default***

30. As a result of Gateway's defaults under the Forbearance Agreement, on January 20, 2022, IMC and Gateway entered into a supplemental forbearance agreement, pursuant to which IMC agreed to further forbear from enforcing the Security Agreements until March 1, 2022 so that the Project could be completed by then, and Gateway agreed to:

- (a) attend to discharges of the CPLs and other builders' liens registered on title of the Project Lands by February 15, 2022;
- (b) provide IMC with written confirmation by February 15, 2022 that the outside closing date for existing purchase agreements (the "Purchase Agreements") had been extended so that such dates coincided with the target date for the Project's completion; and
- (c) secure the Funding Shortfall for injection into the Project, then estimated to be \$800,000.

31. Gateway defaulted under the Supplemental Forbearance Agreement as a result of its failure to:

- (a) secure discharges of the CPLs by February 15, 2022;
- (b) provide written confirmation to IMC that the outside closing dates for the Purchase Agreements had been extended by February 15, 2022; and
- (c) secure the Funding Shortfall by February 22, 2022.

***Demands Issued by IMC***

32. As at March 3, 2022, Gateway had failed to address the Funding Shortfall, attend to discharges of the CPLs, provide firm Purchase Agreements to IMC with extended outside closing dates and complete the Project. As a result, IMC formally demanded repayment of the Construction Loan and Cost Overrun Facility in the aggregate amount of \$34,808,900.93 as at March 1, 2022.

### *Cost to Complete Deficiencies*

33. On or about March 14, 2022, the Architect sent a letter to Prism, stating that the Architect had determined the approximate value of cost to complete outstanding deficiencies in the Project to be \$214,771.40, and that as per the applicable contract conditions, the Architect held back 1.5 times the amount to complete the outstanding deficiencies for a total of \$321,390.00.

### *The 2022 Prism Dispute*

34. On or about March 15, 2022, a Certificate of Substantial Performance was issued by the Project's independent consultant, Stuart Howard Architects Inc. (the "**Architect**"). Also on March 15, 2022, the Architect issued an Architects' Certificate of Payment, certifying that the amount of \$214,125.40 is payable to Prism. This amount has not been paid to Prism.

35. Notwithstanding the substantial completion of the Project, a further dispute arose between Gateway and Prism over Prism's apparent refusal to deliver keys along with certain Project documents required for Gateway to schedule a city inspection needed for an occupancy permit to be issued by the City of Vancouver.

36. On April 14, 2022, Prism issued a Notice of Suspension to Gateway on account of Gateway's failure to pay the amount of \$214,125.40 to Prism and advised Gateway that it was suspending work on the Project as of April 14, 2022, without prejudice to Prism's rights.

37. As a result of this further dispute between Gateway and Prism, or otherwise, the following builder's liens totalling \$3,444,518.50 were registered on title to the Project Lands:

- (a) builders' lien registered April 20, 2022 by Prism in the amount of \$3,075,655.06;
  - (b) builders' lien registered April 20, 2022 by DNA Electric Ltd. in the amount of \$117,702.18; and
  - (c) builders' lien registered April 22, 2022 by Summit Cladding Systems Inc. in the amount of \$251,161.26;
- (the "**2022 Builders' Liens**").

### *Pre-sale Purchaser Concerns*

38. Cushman and Wakefield ULC ("**Cushman**") are the real estate brokers for the Project. On March 30, 2022, Matthew MacLean ("**Mr. MacLean**"), Senior Vice-President, of Cushman advised IMC that:

- (a) pre-sale purchasers have been complaining about project completion delays and sub-division delays and the lack of meaningful communicating from Gateway;

- (b) Cushman has been unable to get formal updates regarding the Project for months to produce to pre-sale purchasers;
- (c) Cushman cannot access the Project Lands for site tours; and
- (d) Pre-sale purchasers are upset with Project delays and that Cushman's professionalism has been challenged as a result.

39. As at April 7, 2022, the CPLs remain on title to the Project Lands. As a result, the Project Lands cannot be sub-divided into individual strata titles.

### *Equity*

40. The estimated gross revenue of the remaining unsold units on the Project's sixth floor is estimated by Cushman to be between \$700 and \$800 per square foot.

41. As at June 1, 2022, IMC will be owed approximately \$35,500,000 (interest accrues at roughly \$225,000/month). Based on net revenue projections, equity in the project is projected as follows:

<u>Price Per Square Foot</u>	<u>Net Proceeds of Remaining Inventory</u>	<u>Approx. Balance due to IMC (as at 06/01/2022)</u>	<u>Approximate Equity</u>
\$700	\$35,584,130	\$35,500,000	\$84,130
\$750	\$35,977,051	\$35,500,000	\$477,051
\$775	\$36,173,511	\$35,500,000	\$673,511
\$800	\$36,369,971	\$35,500,000	\$869,971

42. Accordingly, the equity cushion in the Project is marginal, thereby increasing the risk that IMC will not be paid in full.

### *Loss of Confidence in Gateway and Continued Risk to the Project*

43. IMC has lost confidence in Gateway's ability to complete and sell the Project and repay IMC's debt in full due to, among other things:

- (a) construction delays of two years
- (b) multiple disputes between Gateway and Prism resulting in the registration of the 2020 Builders' Liens, the 2021 Builders' Liens and the 2022 Builders' Liens on title to the Project Lands;
- (c) cost overruns of over \$6 million that have been funded by IMC;
- (d) Gateway's failure to secure discharges of the CPLs in order for the subdivision of the Project Lands into individual strata lots by the Land Title Office;
- (e) Gateway's failure to secure the Funding Shortfall for the Project;
- (f) Gateway's failure to provide satisfactory confirmation that closing dates for all pre-sale purchases have been extended;



- (g) Gateway's lack of transparency and failure to update Cushman and pre-sale purchasers regarding timing of Projection completion and subdivision;
- (h) Gateway's failure to secure key documents from Prism needed for an occupancy permit;
- (i) Gateway losing the confidence of Cushman;
- (j) The likely prospect of IMC suffering a shortfall and not being paid out in full; and
- (k) Interest accruing on the IMC debt at approximately \$225,000/month.

***Gateway's Consent to the Appointment of a Receiver***

44. Each of the Extension Letters and the Forbearance Agreements provide that:

In the event that the Lender commences proceedings to enforce some or all of the Lender's security, either at the expiry of the Extension Period [or Forbearance Period] or after the Extension Period [or Forbearance Period] has been terminated at the Lender's election, the Borrower Entity irrevocably consents to the appointment of a Receiver or Receiver/Manager over any or all of the assets and undertakings of the corporate Borrower Entity charged by the Lender's security, with power of sale in favour of such Receiver or Receiver/Manager. The Borrower Entity further acknowledges and agrees that the Lender may rely upon this Extension Letter [or Agreement] as evidence of the irrevocable consent in any such court application.

45. The Bowra Group Inc. has consented to act as the receiver over the Project.

**Part 3 LEGAL BASIS**

**A. Statutory Basis for Application**

46. IMC brings this application for appointment of a receiver pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 (the "LEA").

47. Section 243 of the BIA provides:

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

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

- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

48. Section 39 of the LEA provides:

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

(2) An order made under subsection (1) may be made either unconditionally or on terms and conditions the court thinks just.

[...]

## **B. Common Law Test for Appointing a Receiver**

### *i. Overview*

49. In British Columbia, there are two competing lines of authority as to the test to be used on an application to appoint a receiver.

50. Under the first line of cases, where a receivership order is sought by a secured creditor and default under the security is proven, appointment of a receiver is granted as a right unless there is some other compelling reason why the order should not be made. Under the second line of cases, there is no presumption in favour of appointing a receiver, and the court must review the matter holistically and decide whether it is just and convenient to appoint a receiver in the circumstances.

51. Regardless of which line of authorities is applied, in all of the circumstances of this case, it is evident that IMC is entitled to the appointment a receiver over the Project.

### *ii. IMC is Entitled to a Receiver as of Right*

52. This Court has held in a number of cases that the appointment of a receiver should be granted as a matter of course where the security agreement is in default, particularly where the debtor has provided an express covenant agreeing to the appointment of a receiver on default, and that the court should only exercise its discretion not to make such an appointment only in those rare occasions where the debtor can show compelling commercial or other reasons why such an order ought not be made.

*United Savings Credit Union v. F&R Brokers Inc. et al,*  
2003 BCSC 640 at paras. 15-17;

*Canadian Imperial Bank of Commerce v. Can-Pacific Farms Inc.,* 2012 BCSC 437 at para 14.

53. Gateway has defaulted in its obligations under the Security Agreements, and has expressly acknowledged such default in writing under the Forbearance Agreement and the Supplemental Forbearance Agreement (collectively, the “**Forbearance Agreements**”). The Mortgages and the General Security Agreements expressly provide that IMC is entitled to appoint a receiver upon Gateway’s default thereunder. Gateway is also in default under the Forbearance Agreements, under which it irrevocably consented to the appointment of a receiver or receiver-manager upon default.

54. The onus is on Gateway to show a compelling commercial or other reason why the order sought should not be granted. On the facts of this case, no compelling reason exists.

55. On these facts, IMC is entitled to the appointment of a receiver as of right.

***iii. It is Just and Convenient that a Receiver Be Appointed***

56. Under the alternate test for the appointment of a receiver, the court is required to review the matter holistically and decide whether, on the whole of the circumstances, it is just and convenient to appoint a receiver.

57. There are a number of factors the court may consider in exercising its discretion to appoint a receiver, including:

- (a) whether irreparable harm might be caused if no order were made;
- (b) the nature of the property;
- (c) the preservation and protection of the property;
- (d) the balance of convenience to the parties;
- (e) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- (f) the effect of the order upon the parties;
- (g) the conduct of the parties;
- (h) the cost to the parties;
- (i) the likelihood of maximizing return to the parties; and
- (j) the goal of facilitating the duties of the receiver.

***Maple Trade Finance Inc. v CY Oriental Holdings Ltd., 2009 BCSC 1527 at para 25.***

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

58. An examination of these factors demonstrates that it is just and convenient to appoint a receiver in all of the circumstances.

59. First, IMC has the right to appoint a receiver under the Security Agreements and Gateway has consented to the appointment of a receiver under the Extension Letters and Forbearance Agreements. Considerable weight ought to be placed on the parties' contractual agreement to the appointment of a receiver in case of default.

***Prospera Credit Union v Portliving Farms (3624 Parkview) Investments Inc.,  
2021 BCSC 2449 at para 24.***

***Bank of Montreal v Gian's Business Centre Inc., 2016 BCSC 2348 at paras 33-36.***

60. Second, pursuant to the Forbearance Agreements, Gateway has acknowledged the validity and enforceability of the Security Agreements, agreed that the Construction Loan and Cost Overrun Facility matured November 1, 2021 and are due and payable in full, and waived any defences to any action brought by IMC to enforce or realize upon the Security Agreements. There can be no dispute about the validity of, or default under, IMC's security. These facts also weigh in favour of appointing a receiver.

61. Third, there is real risk of irreparable harm to IMC if a receiver is not appointed. Gateway's conduct has seriously jeopardized its ability to complete and subdivide the Project. In particular, Gateway has:

- (a) failed to discharge the CPLs, which prevents the subdivision of the Project, which in turn puts its pre-sales contracts at risk of non-completion;
- (b) failed to secure a cash injection to cover the estimated Funding Shortfall, which may result in further builders' liens being filed, which will further disrupt pre-sales contracts;
- (c) failed to provide satisfactory confirmation to IMC that closing dates for all pre-sale purchases have been extended;
- (d) failed to be transparent with and update Cushman and pre-sale purchasers regarding timing of Projection completion and sub-division of the Project, which further jeopardizes its ability to complete pre-sales and attract further sales;
- (e) failed to secure key documents from Prism needed for an occupancy permit; and
- (f) caused Prism to issue a Notice of Suspension of work on the Project.

62. All of this exposes IMC to the risk that pre-sales of strata units in the Project will not complete, and that IMC will not recover its debt in full, particularly in light of the marginal equity and the fact that interest is accruing on IMC's debt at approximately \$225,000 per month.

The equity position and the rate at which interest is accruing are, on their own, factors militating in favour of appointing a receiver.

63. Finally, while a receivership carries with it some added costs, in the circumstances, the added cost is necessary to effectively protect IMC's security, and is further justified by the benefits to Gateway's other stakeholders. The appointment of a receiver will allow Prism and/or its sub trades to be paid, permit the timely completion of the Project, avoid the possibility of further builders' liens being filed, and allow for the completion of pre-sales and the sale of the remaining strata units, which will in turn reduce the accrual of interest on IMC's debt and decrease the likelihood of IMC suffering a shortfall.

64. In light of the foregoing facts, it is evidence that the balance of convenience weighs heavily in favour of IMC, and favours this Court appointing a receiver over the Project.

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

1. The Second Affidavit of Darren Schmidt made April 20 2022.
2. The First Affidavit of Linda Alexander made April 25, 2022.
3. The materials filed herein.

The Applicant estimates that the application will take 1 hour and be heard by Microsoft Teams.

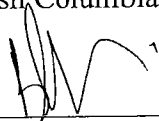
- This matter is within the jurisdiction of a Master.
- This matter is not within the jurisdiction of a Master.

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

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed Application Response;

- (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated at the City of Vancouver, in the Province of British Columbia, this 25 day of April, 2022.

  
\_\_\_\_\_  
Lawson Lundell LLP  
Solicitors for the Applicant

This Notice of Application is filed by Bryan C. Gibbons, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2, e-mail address: bgibbons@lawsonlundell.com; telephone number: 604-685-3456.

*To be completed by the court only:*

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this Notice of Application

with the following variations and additional terms:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date:

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

**APPENDIX**

The following information is provided for data collection purposes only and is of no legal effect.

**THIS APPLICATION INVOLVES THE FOLLOWING:**

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

SCHEDULE "A"

No. VLC-S-H-220132  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INSTITUTIONAL MORTGAGE CAPITAL CANADA INC., IN ITS CAPACITY  
AS GENERAL PARTNER OF IMC LIMITED PARTNERSHIP

PETITIONER

AND

0876242 B.C. LTD.  
GATEWAY DEVELOPMENT LIMITED PARTNERSHIP  
SEEB CAPITAL LTD.  
MARK VANRY

RESPONDENTS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE ) \_\_\_/05/2022  
 )  
\_\_\_\_ JUSTICE \_\_\_\_\_ )

ON THE APPLICATION of the Petitioner for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "LEA") appointing The Bowra Group Inc. as Receiver and Manager without security, of all of the assets, undertakings and property of 0876242 B.C. Ltd. and Gateway Development Limited Partnership (collectively, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors in constructing a mixed commercial and industrial strata development located at 3333 Bridgeway Street, Vancouver, B.C. and legally described as Parcel Identifier 011-154-551 Block K, Except Part on Reference Plan 8675, Now Lane Town of Hastings Plan 5461 coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Affidavit #1 of Darren Schmidt sworn April 8, 2022 and the Affidavit #2 of Darren Schmidt sworn April 20, 2022 and the consent of The Bowra Group Inc. to act as the Receiver; AND ON HEARING Bryan C. Gibbons, Counsel for Petitioner and other counsel as listed on Schedule "C" hereto, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that:

**APPOINTMENT**

1. Pursuant to Section 243(1) of the BIA and Section 39 of the LEA, The Bowra Group Inc. is appointed receiver and manager (in such capacity, the "Receiver"), without security, of all of the assets, undertakings and property of the Debtors, including the real property located at



3333 Bridgeway Street, Vancouver, B.C. and legally described as Parcel Identifier 011-154-551 Block K, Except Part on Reference Plan 8675, Now Lane Town of Hastings Plan 5461 together with all other assets, undertakings and property located on the real property and used by the Debtors in constructing a mixed commercial and industrial strata development, including all proceeds thereof (collectively, the “**Property**”).

## RECEIVER’S POWERS

2. The Receiver is empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing insurance coverage;
  - (c) to manage, operate and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver’s powers and duties, including, without limitation, those conferred by this Order;
  - (e) to take those steps the Receiver deems necessary for the completion of the construction of the buildings on, or improvements to the Property including, without limitation, those steps necessary to obtain an occupancy permit and to sub-divide the Property into individual strata lots.
  - (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
  - (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting these amounts, including, without limitation, enforcement of any security held by the Debtors;
  - (h) to settle, extend or compromise any indebtedness owing to the Debtors;
  - (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 Debtors, for any purpose pursuant to this Order;

- (j) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
- (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 Debtors, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;
- (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;
- (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 \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,

and in each such case, notice under Section 59(1) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359, if applicable, shall not be required;

- (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;
- (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;
- (p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (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 Debtors;
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and

- (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 Debtors, and without interference from any other Person.

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

3. Each of (i) the Debtors; (ii) all of the Debtors' current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on 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.
4. All Persons, other than governmental authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "Records") in that Person's possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
5. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 4, 5 or 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to solicitor client privilege or statutory provisions prohibiting such disclosure.
6. 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**

7. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

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

8. No Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of the Proceeding except for service of the initiating documentation on the Debtors and the Receiver.

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

9. All rights and remedies (including, without limitation, set-off rights) against the Debtors, the Receiver, or affecting the Property, are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors 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**

10. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.

### **CONTINUATION OF SERVICES**

11. All Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and the Receiver shall be entitled to the continued use of the Debtors’ current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such

other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### RECEIVER TO HOLD FUNDS

12. 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

13. Subject to the employees' right to terminate their employment, all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the Debtors, including any successor employer liabilities as referred to in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay or in respect of obligations imposed specifically on receivers by applicable legislation, including Sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.

### PERSONAL INFORMATION

14. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### LIMITATION ON ENVIRONMENTAL LIABILITIES

15. 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.

16. 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.
17. 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.
18. 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**

19. 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**

20. Pursuant to Section 243(6) of the BIA, the Receiver and its legal counsel, if any, are granted a charge on the Property (the "**Receiver's Charge**"), which, subject to further order of this Court, shall not exceed an aggregate amount of \$250,000 (or such greater amount as this Court may by further Order authorize), as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order. The Receiver's Charge shall form a first charge on the

Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, including, without limitation, liens pursuant to the *Builders Lien Act*, S.B.C. 1997, c. 45 (the "BLA"), in favour of any Person, but subject to Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. 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.
22. 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

23. Pursuant to Section 31(1) of the BIA, 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 \$900,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, including, without limitation, liens pursuant to the BLA, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
24. 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. 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. 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. 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. The Receiver shall establish and maintain a website in respect of these proceedings at: [www.bowgroup.com](http://www.bowgroup.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. 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.
30. 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. 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. Notwithstanding paragraph 31 of this Order, service of the Petition or Notice of Application 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. The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to the Debtors’ creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of any legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*.



**GENERAL**

34. 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. 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. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.
37. 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.
38. 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.
39. The Petitioner shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the Petitioner's security.
40. Endorsement of this Order by counsel appearing on this application other than the Petitioner is dispensed with.

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

APPROVED BY:

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Signature of Bryan C. Gibbons  
lawyer for the Petitioner

BY THE COURT

DISTRICT REGISTRAR

SCHEDULE "A"

RECEIVER CERTIFICATE

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

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

1. THIS IS TO CERTIFY that The Bowra Group Inc., the Receiver and Manager (the "Receiver") of all of the assets, undertakings and property of 0876242 B.C. Ltd. and Gateway Development Limited Partnership (collectively, the "Debtors"), including the real property located at 3333 Bridgeway Street, Vancouver, B.C. and legally described as Parcel Identifier 011-154-551 Block K, Except Part on Reference Plan 8675, Now Lane Town of Hastings Plan 5461 together with all other assets, undertakings and property located on the real property and used by the Debtors in constructing a mixed commercial and industrial strata development, including all proceeds thereof (collectively, the "Property") appointed by Order of the Supreme Court of British Columbia (the "Court") dated the \_\_\_\_\_ day of May, 2022 (the "Order") made in SCBC Action No. VLC-S-H-220132 has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded ~~daily~~ monthly not in advance on the \_\_\_\_\_ day of each month after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of the Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at \_\_\_\_\_.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 2022

**The Bowra Group Inc.**, solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per:  
Name:  
Title:

**SCHEDULE "B"**  
**Demand for Notice**

TO: Institutional Mortgage Capital Canada Inc.  
c/o Lawson Lundell LLP  
1600 – 925 West Georgia Street  
Vancouver, BC V6C 3L2  
Attention: Bryan C. Gibbons  
Email: bgibbons@lawsonlundell.com

AND TO: The Bowra Group Inc.  
c/o **[Name of Counsel to the Receiver]**  
Attention:  
Email:

Re: In the matter of the Receivership of 0876242 B.C. Ltd. and Gateway Development Limited Partnership

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: \_\_\_\_\_

**SCHEDULE "C"**

<b>Counsel / Party</b>	<b>Name</b>

**B.C. MODEL RECEIVERSHIP ORDER  
SCHEDULE "A"**

No. [REDACTED] VLC-S-H-220132  
[REDACTED] Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**INSTITUTIONAL MORTGAGE CAPITAL CANADA INC., IN ITS CAPACITY  
AS GENERAL PARTNER OF IMC LIMITED PARTNERSHIP**

**[PLAINTIFF/PETITIONER]<sup>1</sup>**

Plaintiff/Petitioner

-and-

**[DEFENDANT/RESPONDENT]**

Defendant/Respondent

Action No. [REDACTED]

Estate No. [REDACTED]

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE RECEIVERSHIP OF  
[THE DEBTOR]**

**AND**

**0876242 B.C. LTD.  
GATEWAY DEVELOPMENT LIMITED PARTNERSHIP  
SEEB CAPITAL LTD.  
MARK VANRY**

**RESPONDENTS**

**ORDER MADE AFTER APPLICATION<sup>2</sup>**

<sup>1</sup> In British Columbia, unless the order is by consent (BCSC Rule 17-1), a receivership application may be commenced by an "application" (BIA s. 243(1)) brought in proceedings commenced either by Petition or brought by Notice of Application within a proceeding commenced by Notice of Civil Claim. If the proceeding was commenced by Notice of Civil Claim, upon the application being made under section 243 of the BIA, the BCSC Bankruptcy Court jurisdiction should also be invoked by adding the additional style of cause noted above.

<sup>2</sup> This model order is not in any way determinative of the applicant's entitlement to the relief set out in this model order. It is the responsibility of counsel to ensure that the form of order they propose is appropriate in the circumstances and to justify the relief sought, including providing the necessary evidentiary support and judicial authority. The footnotes in this model order identify some, but not all, of the issues that might arise in respect of the relief sought.

BEFORE THE HONOURABLE )  
 )  
 JUSTICE ) DD/MM/YEAR /05/2022  
 )

ON THE APPLICATION of ~~Plaintiff/Applicant~~<sup>3</sup> the Petitioner for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") ~~and/or~~ Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "LEA") appointing ~~RECEIVER'S NAME~~ The Bowra Group Inc. as ~~Receiver and/or Receiver and~~ Manager<sup>4</sup> (in such capacity, the "Receiver") without security, of all of the assets, undertakings and property of ~~DEBTOR'S NAME~~ (0876242 B.C. Ltd. and Gateway Development Limited Partnership (collectively, the "Debtor/Debtors") acquired for, or used in relation to a business carried on by the Debtor/Debtors in constructing a mixed commercial and industrial strata development located at 3333 Bridgeway Street, Vancouver, B.C. and legally described as Parcel Identifier 011-154-551 Block K, Except Part on Reference Plan 8675, Now Lane Town of Hastings Plan 5461 coming on for hearing this day at ~~Vancouver~~ Vancouver, British Columbia.

AND ON READING the Affidavit # ~~1~~<sup>1</sup> of ~~NAME~~ Darren Schmidt sworn ~~DATE~~ April 8, 2022 and the Affidavit #2 of Darren Schmidt sworn April 20, 2022 and the consent of ~~RECEIVER'S NAME~~ The Bowra Group Inc. to act as the Receiver; AND ON HEARING ~~NAME~~ Bryan C. Gibbons, Counsel for ~~NAME~~ Petitioner and other counsel as listed on Schedule "AC" hereto, and no one else appearing, although duly served.<sup>4</sup>

THIS COURT ORDERS AND DECLARES that:

**APPOINTMENT**

1. Pursuant to Section 243(1) of the BIA ~~and/or~~ Section 39 of the LEA ~~RECEIVER'S NAME~~ The Bowra Group Inc. is appointed receiver and manager (in such capacity, the "Receiver"), without security, of all of the assets, undertakings and property of the Debtor,<sup>5</sup> Debtors, including the real property located at 3333 Bridgeway Street, Vancouver, B.C. and legally described as Parcel Identifier 011-154-551 Block K, Except Part on Reference Plan 8675, Now Lane Town of Hastings Plan 5461 together with all other assets, undertakings and property located on the real property and used by the Debtors in constructing a mixed

<sup>3</sup> Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".  
<sup>4</sup> If the application is brought *ex parte*, or service has been brought on short notice, the Order should reflect that. If the application is brought *ex parte*, counsel should also consider whether or not all of the relief sought is appropriate on a without notice basis. Specifically, pursuant to the BIA s.243(6), a charge for the receiver's fees and disbursements (Paragraph 20) can only be made if the Court is satisfied that the secured creditors who would be materially affected were given reasonable notice and an opportunity to make submissions.  
<sup>5</sup> If the Order is made only under section 243(1) of the BIA, the wording "acquired for, or used in relation to a business carried on by the Debtor" should be added at this point in the paragraph to reflect the specific wording of section 243 of the BIA.

commercial and industrial strata development, including all proceeds (thereof collectively, the "Property").<sup>6</sup>

#### RECEIVER'S POWERS<sup>7</sup>

2. The Receiver is empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing insurance coverage;
  - (c) to manage, operate and carry on the business of the ~~Debtor~~Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the ~~Debtor~~Debtors;
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
  - (e) to take those steps the Receiver deems necessary for the completion of the construction of the buildings on or improvements to the Property including, without limitation, those steps necessary to obtain an occupancy permit and to sub-divide the Property into individual strata lots.
  - (f) (e)-to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the ~~Debtor~~Debtors or any part or parts thereof;
  - (g) (f)-to receive and collect all monies and accounts now owed or hereafter owing to the ~~Debtor~~Debtors and to exercise all remedies of the ~~Debtor~~Debtors in collecting these amounts, including, without limitation, enforcement of any security held by the ~~Debtor~~Debtors;

<sup>6</sup> This definition of "Property" is expansive and is intended to include all real and personal property, including anything arising or derived from such property. There may be circumstances where a narrower definition or carve-outs is preferable. Given the expansive definition of Property, counsel should be cognizant of the scope of the appointing creditor's security. In particular, counsel should consider whether the creditor's application is based on their security pursuant to the BIA s.243 or equity pursuant to the LEA s.39, or some combination. Counsel should also bear in mind the differing tests for appointment depending on the nature and extent of the creditor's security.

<sup>7</sup> Counsel should consider whether all of the powers sought in Paragraph 2 are appropriate on an initial basis, particularly if the application is brought without notice. Counsel should also consider whether there is sufficient evidence for granting such powers on an initial basis.



- (h) ~~(g)~~ to settle, extend or compromise any indebtedness owing to the ~~Debtor~~ Debtors;
- (i) ~~(h)~~ to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the ~~Debtor~~ Debtors, for any purpose pursuant to this Order;
- (j) ~~(i)~~ to undertake environmental or workers' health and safety assessments of the Property and operations of the ~~Debtor~~ Debtors;
- (k) ~~(j)~~ to initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of the ~~Debtor~~ Debtors, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;
- (l) ~~(k)~~ to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
- (m) ~~(l)~~ to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:<sup>8</sup>

- (i) without the approval of this Court in respect of a single transaction for consideration up to \$~~100,000~~ 100,000, provided that the aggregate consideration for all such transactions does not exceed \$~~500,000~~ 500,000; and
- (ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,

and in each such case, notice under Section 59(41) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359, if applicable, shall not be required;

- (n) ~~(m)~~ to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;
- (o) ~~(n)~~ to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;
- (p) ~~(o)~~ to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (q) ~~(p)~~ to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if

<sup>8</sup> As noted above, counsel should consider whether there is sufficient basis for granting this power on an initial basis.

considered necessary or appropriate by the Receiver, in the name of the ~~Debtor~~Debtors;

- (r) ~~(q)~~-to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the ~~Debtor~~Debtors;
- (s) ~~(r)~~-to exercise any shareholder, partnership, joint venture or other rights which the ~~Debtor~~Debtors may have; and
- (t) ~~(s)~~-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 ~~Debtor~~Debtors, and without interference from any other Person.

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

3. Each of (i) the ~~Debtor~~Debtors; (ii) all of the ~~Debtor~~Debtors'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.
4. 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 ~~Debtor~~Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "**Records**") in that Person's possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
5. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 4, 5 or 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to solicitor client privilege or statutory provisions prohibiting such disclosure.
6. 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**

7. 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 ~~Debtor~~DEBTORS OR THE PROPERTY**

8. No Proceeding against or in respect of the ~~Debtor~~Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the ~~Debtor~~Debtors or the Property are stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of the Proceeding except for service of the initiating documentation on the ~~Debtor~~Debtors and the Receiver.

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

9. All rights and remedies (including, without limitation, set-off rights) against the ~~Debtor~~Debtors, the Receiver, or affecting the Property, are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the ~~Debtor~~Debtors to carry on any business which the ~~Debtor~~Debtors 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,<sup>9</sup> (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**

10. 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 ~~Debtor~~Debtors, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.

<sup>9</sup>~~Counsel should consider whether, on an initial or subsequent application, they should apply to extend the stay of proceedings to specific regulatory bodies under section 69.6 (3) of the BIA, other applicable statutes or the inherent jurisdiction of the Court.~~

#### CONTINUATION OF SERVICES

11. All Persons having oral or written agreements with the ~~Debtor~~Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the ~~Debtor~~Debtors are restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and the Receiver shall be entitled to the continued use of the ~~Debtor~~Debtors'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 ~~Debtor~~Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### RECEIVER TO HOLD FUNDS

12. 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

13. Subject to the employees' right to terminate their employment, all employees of the ~~Debtor~~Debtors shall remain the employees of the ~~Debtor~~Debtors until such time as the Receiver, on the ~~Debtor~~Debtors's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the ~~Debtor~~Debtors, including any successor employer liabilities as referred to in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay or in respect of obligations imposed specifically on receivers by applicable legislation, including ~~sections~~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

14. 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 ~~Debtor~~ Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### LIMITATION ON ENVIRONMENTAL LIABILITIES

15. 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.
16. 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.
17. 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.
18. 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

19. 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.<sup>40</sup>

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

- 20. ~~The Pursuant to Section 243(6) of the BIA, the~~ Receiver and its legal counsel, if any, are granted a charge on the Property (the "Receiver's Charge") on the Property, which, subject to further order of this Court, shall not exceed an aggregate amount of \$250,000 (or such greater amount as this Court may by further Order authorize), as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order. The Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts,<sup>41</sup> liens, charges and encumbrances, statutory or otherwise, including, without limitation, liens pursuant to the Builders Lien Act, S.B.C. 1997, c. 45 (the "BLA"), in favour of any Person, but subject to Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.<sup>42</sup>
- 21. 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.
- 22. 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.<sup>43</sup>

#### FUNDING OF THE RECEIVERSHIP

- 23. ~~The Pursuant to Section 31(1) of the BIA, 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 ~~\$~~900,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for

<sup>40</sup> ~~For example, and without limitation, Sections 81.4(5) or 81.6(3) of the BIA or under the Wage-Earner Protection Program Act.~~

<sup>41</sup> ~~The reference to "trusts" is to trusts, including statutory trusts, which secure the performance of an obligation.~~

<sup>42</sup> ~~Subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations". Accordingly, counsel should give notice of the application to all secured creditors whose security interests would rank subordinate to the proposed Receivers Charge, including any beneficiaries of statutory trusts.~~

<sup>43</sup> ~~This Order's reference to "standard rates and charges" is not approval of the reasonableness of those fees and charges. The fees and charges of the Receiver and its legal counsel remain subject to Court approval in accordance with paragraph 21. The Court's approval of fees and charges will include an assessment of whether the amounts charged are fair and reasonable in the circumstances.~~

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,<sup>14</sup> liens, charges and encumbrances, statutory or otherwise, including, without limitation, liens pursuant to the BIA, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

24. 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. 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. 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. 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. The Receiver shall establish and maintain a website in respect of these proceedings at: ~~[WEB ADDRESS]~~ www.bowragroup.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. 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

<sup>14</sup> ~~The reference to "trusts" is to trusts, including statutory trusts, which secure the performance of an obligation.~~

"Demand for Notice").<sup>45</sup> 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>46</sup>

30. 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. 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. Notwithstanding paragraph 31 of this Order, service of the Petition ~~FOR the~~ Notice of Application] and any affidavits filed in support shall be made on the Federal and British Columbia Crowns<sup>47</sup> 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.<sup>48</sup>
33. 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 ~~Debtor~~Debtors's creditors or other interested parties and their advisors. For greater

<sup>45</sup> ~~It is important to note that the restriction on notice created by this section only applies to parties that are served with a copy of the Receivership Order.~~

<sup>46</sup> ~~This provision (and paragraph 31 confirming service by email or fax) is intended to simplify and streamline service of applications in receivership proceedings, particularly since many applications may need to be heard on short notice. Although this Order alters the service requirements for future applications in accordance with the Rules of Court, where a party's interests are directly affected by the relief sought on an application, the Committee is of the view that it would be best practice to serve those parties, even if they were served with the Receivership Order and did not deliver a Demand for Notice. In such cases, the Court may require service on those affected parties, notwithstanding this provision.~~

<sup>47</sup> ~~Counsel should consider whether the Debtor has property in any other provinces and, if so, consider whether it is appropriate to include a reference to those Provinces and the relevant legislation in those Provinces with respect to service.~~

<sup>48</sup> ~~The *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, s. 8 provides for service on the British Columbia Crown, as follows:]~~

~~8.—A document to be served on the government[~~

~~(a) — must be served on the Attorney General at the Ministry of the Attorney General in the City of Victoria, and[~~

~~(b) — is sufficiently served if[~~

~~(i) — left there during office hours with a solicitor on the staff of the Attorney General at Victoria, or[~~

~~(ii) — mailed by registered mail to the Deputy Attorney General at Victoria.]~~

~~A similar provision relating to the Federal Crown is found at s. 23(2) of the *Crown Liability and Proceeding Act*, R.S. 1985, c. C-50, which provides for service on the Deputy Attorney General of Canada or the chief executive officer of the agency in whose name the proceedings are taken, as the case may be. The Federal Crown requests that service of documents be by delivery to Department of Justice, 900—840 Howe Street, Vancouver, B.C. V6Z 2S9~~



certainly, 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. 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. 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. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the ~~Debtor~~Debtors.
37. 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.
38. 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.
39. The ~~[Plaintiff/Applicant]~~Petitioner shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the ~~[Plaintiff/Applicant]~~Petitioner's security or, if not so provided by the ~~[Plaintiff/Applicant]'s~~ security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
40. Endorsement of this Order by counsel appearing on this application other than the ~~[Plaintiff/Applicant]~~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:

\_\_\_\_\_  
Signature of ~~[type of print name]~~Bryan C. Gibbons

lawyer for ~~Plaintiff/Applicant~~ the Petitioner

BY THE COURT

DISTRICT REGISTRAR

SCHEDULE "A"

RECEIVER CERTIFICATE

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

AMOUNT

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

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~ The Bowra Group Inc., the ~~[Receiver and/or Receiver and Manager]~~ (the "Receiver") of all of the assets, undertakings and properties ~~property~~ of ~~[DEBTOR'S NAME]~~ acquired for, or used in relation to a business carried on by the Debtor ~~0876242 B.C. Ltd. and Gateway Development Limited Partnership~~ (collectively, the "Debtors"), including the real property located at ~~3333 Bridgeway Street, Vancouver, B.C. and legally described as Parcel Identifier 011-154-551 Block K, Except Part on Reference Plan 8675, Now Lane Town of Hastings Plan 5461~~ together with all other assets, undertakings and property located on the real property and used by the Debtors in constructing a mixed commercial and industrial strata development, including all proceeds thereof (collectively, the "Property") appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (In Bankruptcy and Insolvency) (the "Court") dated the \_\_\_\_\_ day of \_\_\_\_\_ May, 201~~9~~2022 (the "Order") made in SCBC Action No. \_\_\_\_\_ and/or SCBC Action No. \_\_\_\_\_ /Estate No. \_\_\_\_\_ ~~VLC-S-H-220132~~ has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded ~~[daily]~~ ~~[monthly]~~ not in advance on the \_\_\_\_\_ day of each month after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of the Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at \_\_\_\_\_.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 201~~1~~<sup>2</sup>-2022

~~RECEIVER'S NAME~~ **The Bowra Group Inc.**, solely in its capacity as Receiver of the Property, and not in its personal capacity

Per:  
Name:  
Title:

**Schedule "B"**  
**SCHEDULE "B"**  
**Demand for Notice**

TO: \_\_\_\_\_ **[Name of Applicant]**  
\_\_\_\_\_ c/o **[Name of Counsel to the Applicant]**

TO: \_\_\_\_\_ Institutional Mortgage Capital Canada Inc.  
\_\_\_\_\_ c/o Lawson Lundell LLP  
\_\_\_\_\_ 1600 - 925 West Georgia Street  
\_\_\_\_\_ Vancouver, BC V6C 3L2  
Attention: Bryan C. Gibbons  
Email: bgibbons@lawsonlundell.com

AND TO: **[Name of Receiver]** The Bowra Group Inc.  
c/o **[Name of Counsel to the Receiver]**  
Attention:  
Email:

Re: In the matter of the Receivership of **[DEBTOR]** 0876242 B.C. Ltd. and Gateway  
Development Limited Partnership

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: \_\_\_\_\_

**SCHEDULE "C"**

<b>Counsel / Party</b>	<b>Action No. _____ Name</b>
<p align="center">IN THE SUPREME COURT OF BRITISH COLUMBIA</p>	
<p align="center">BETWEEN:</p> <p align="center"><b>[PLAINTIFF/PETITIONER]</b> Plaintiff/Petitioner</p> <p align="center">-and-</p> <p align="center"><b>[DEFENDANT/RESPONDENT]</b> Defendant/Respondent</p> <p>AND:</p> <p align="center">Action No. _____ Estate No. _____</p> <p align="center">IN THE SUPREME COURT OF BRITISH COLUMBIA IN BANKRUPTCY AND INSOLVENCY</p> <p align="center">IN THE MATTER OF THE RECEIVERSHIP OF <b>[THE DEBTOR]</b></p>	
<p><b><u>B.C. MODEL RECEIVERSHIP ORDER</u></b> <b><u>VERSION NO. 3, _____, 2015</u></b></p>	


NO. VLC-S-H-220132  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

INSTITUTIONAL MORTGAGE CAPITAL  
CANADA INC., AS GENERAL PARTNER  
IMC LIMITED PARTNERSHIP

PETITIONERS

AND:

0876242 B.C. LTD.  
GATEWAY DEVELOPMENT  
LIMITED PARTNERSHIP  
SEEB CAPITAL LTD.  
MARK VANRY

RESPONDENTS

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**NOTICE OF APPLICATION**

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Barristers & Solicitors  
1600 Cathedral Place  
925 West Georgia Street  
Vancouver, British Columbia  
V6C 3L2

Phone: (604) 685-3456  
Attention: Bryan C. Gibbons