

Court File No. VLC-S-H-220132
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE RECEIVERSHIP OF
THE ASSETS, UNDERTAKINGS AND PROPERTIES OF
0876242 B.C. LTD. AND
GATEWAY DEVELOPMENT LIMITED PARTNERSHIP
PURSUANT TO SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED
AND
SECTION 39 OF THE
LAW AND EQUITY ACT, R.S.B.C. 1996 c. 253 AS AMENDED

RECEIVER'S FIRST REPORT TO COURT

June 9, 2022

**IN THE MATTER OF THE RECEIVERSHIP OF
0876242 B.C. LTD. AND
GATEWAY DEVELOPMENT LIMITED PARTNERSHIP**

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I. BACKGROUND AND PURPOSE OF REPORT

Introduction and Background

1. 0876242 B.C. Ltd. and Gateway Development Limited Partnership (the “**Companies**”) own a mixed commercial and industrial strata development located at 3333 Bridgeway Street, Vancouver, British Columbia (the “**Development Property**”).
2. 0876242 B.C. Ltd. is the registered owner of the Development Property and Gateway Development Property Limited Partnership is the beneficial owner.
3. The Development Property is a six-storey building with approximately 110,000 square feet.

Purpose of the Report

4. The purpose of this report is to provide the Court with:
 - Summary of Receiver’s activities to date;
 - Summary of the agreement with Prism Construction Ltd. (“**Prism**”);
 - A request to discharge the Certificate of Pending Litigation filed by Seeb Capital Ltd. (“**Seeb**”);
 - Cash flow forecast for estimated costs to complete the Development Property;
 - A request that the Court authorize an increase in the Receiver’s borrowings from \$900,000 to \$1.6 million;
 - Preliminary estimated recovery; and
 - Receiver’s recommendations.

Background

5. The Development Property is complete except for:
 - i. the deficiencies identified by the architect;
 - ii. final occupancy approval by the City of Vancouver; and
 - iii. completion and filing of the Strata Plan with the Land Title Office.
6. There are pre-sale contracts on 16 of the 20 proposed strata lots.

7. The Development Property was scheduled to complete in Spring 2020. Completion was delayed for over two years due to cost overruns, construction delays, and disputes between the Companies and the general contractor, Prism.
8. On March 15, 2022, Stuart Howard Architects Inc. (the “**Architect**”) issued Certificate of Substantial Performance on the project and Certificate of Payment of \$214,125 (the “**March 15 Amount**”) to be paid to Prism. The March 15 Amount was not paid by the Companies to Prism and remains unpaid as at the date of this report.
9. The Companies and Prism continued to have disputes despite the Certificate of Substantial Performance being issued for the Development Property due to, among other things:
 - i. disagreement in the amount owing to Prism for work completed, various unapproved change orders, and potential settlements of amounts owing; and
 - ii. Prism’s refusal to release occupancy documents required by the architect (the “**Occupancy Documents**”) to request an occupancy inspection from the City of Vancouver.
10. Prism issued a Notice of Suspension to stop work on the project on April 14, 2022 due to the non-payment of the March 15 Amount.
11. The following certificate of pending litigation (“**CPL**”) and builders’ liens are currently filed on the Development Property:

Creditor	Description	Amounts Owed (\$000's)
Seeb Capital Ltd.	Certificate of Pending Litigation	4,445
DNA Electric Ltd.	Claims of Builders Lien	118
Prism Construction Ltd.	Claims of Builders Lien	3,076
Summit Cladding Systems Inc.	Claims of Builders Lien	251
Ikonic Enterprises Ltd.	Claims of Builders Lien	128
	Total	8,018

Secured Creditor

12. The secured creditor, Institutional Mortgage Capital Canada Inc. (“IMC”) provided a construction financing loan in the amount of \$26.2 million in February 2018 secured by a first mortgage on the Development Property.
13. In August 2020, IMC became concerned with the disputes between the Companies and Prism, and the builders’ liens filed by Prism and various sub-trades on the Development Property totalling \$4.7 million. In September 2020, the Companies and Prism were able to resolve their disputes, but the Companies required additional funding to complete the Development Project and to discharge the liens.
14. In September 2020, IMC increased the amount available under the construction financing loan and first mortgage to \$29.8 million and provided a cost overrun facility secured by a second mortgage on the Development Property for \$4 million.
15. The Companies were not able to complete the Development Property despite the additional funding and the disputes between the Companies and Prism continued. Further Builders’ liens were filed against the Development Property in 2021 and 2022.
16. In addition, CPL’s were filed by Seeb on April 29, 2021 for amounts owing of approximately \$4.4 million, and by Mark Vanry for amounts owing of approximately \$250,000 to Mark Vanry and approximately \$1 million to Rannoch Capital Limited Partnership on June 29, 2021. The CPL filed by Mark Vanry has been discharged as at the date of this report.
17. IMC lost confidence in the Companies’ ability to complete the Development due to the construction delays, multiple disputes with Prism, cost overruns and various builders’ liens and CPL’s filed against the Development Property. IMC issued a Notice of Intention to Enforce Security on March 3, 2022.
18. As at the date of this report IMC is owed approximately \$35.5 million.
19. On application by IMC, The Bowra Group Inc. was appointed the Receiver and Manager of the assets, undertakings and property of the Companies on May 10, 2022 pursuant to an Order of the Supreme Court of British Columbia.
20. A copy of the Receivership Order dated May 10, 2022 is attached as **Appendix A**.

II. RECEIVER'S ACTIVITIES TO DATE

21. The Receiver has performed the following work with respect to the Development Property:
- i. Attended the Development Property and performed a walkthrough with Reza Norozy, General Manager of Prism;
 - ii. Negotiated with Prism and their legal counsel on amounts owing to Prism, amount required to complete the Development Property and the path forward if any;
 - iii. Finalized an agreement with Prism further discussed in Section III below;
 - iv. Met with Gavin McLeod, Development Manager of the Companies, and held numerous discussions regarding the Development Property;
 - v. Held numerous discussions with:
 - a. the Companies' insurance broker to extend insurance policy to June 15, 2022;
 - b. Hub International for options to extend the insurance policy past June 15, 2022 as the existing insurers were not willing to extend past June 15, 2022;
 - c. the Architect on all matters;
 - d. IMC and IMC's legal counsel;
 - e. the Companies' legal counsel;
 - f. Cushman & Wakefield ("**Cushman**");
 - g. BMO Bank of Montreal to remove the Companies' signatory and add the Receiver as signatory on the joint holdback bank account;
 - h. creditors and pre-sale purchasers; and
 - i. the holders of CPL's;
 - vi. Reviewed various documents received from the Companies, Architect, MKT Development Group, Cushman and IMC;
 - vii. Attempted to negotiate an agreement with Seeb for removal of their CPL without success, resulting in the need for application to this Court (as discussed in Section IV); and;
 - viii. Prepared statutory documents for the receivership.

III. AGREEMENT WITH PRISM

22. The Receiver has been involved in detailed negotiations with Prism and their legal counsel to confirm the amount currently owing to Prism, amounts required to complete deficiencies and to find a resolution whereby Prism would complete the Development Property and obtain final occupancy versus a disclaimer of Prism's contract and a new general contractor taking over the project.
23. On June 2, 2022, the Receiver executed an agreement (the "**Prism Agreement**") with Prism to complete the project. A copy of the Prism Agreement is attached as **Appendix B**.
24. A summary of the Prism Agreement is as follows:
 - i. Prism will agree to:
 - a. Immediately release the documents required to request for an occupancy inspection;
 - b. Re-start work promptly and rectify the deficiencies within 30 days of receiving payment for amounts per ii(a) and ii(c) below; and,
 - c. Release or cause to be released all liens from title except for Prism's lien over the four remaining unsold units in the Development Property.
 - ii. The Receiver will:
 - a. Release \$214,125 to Prism for amounts certified by the Architect on March 15, 2022 to be due to Prism;
 - b. Post \$337,460 in a separate account which funds will be disbursed to Prism when all the deficiencies are completed (the "**Deficiency Funds**"); and,
 - c. Take steps to release the holdback funds of \$1.77 million held in the joint account (the "**Holdback Funds**") to Prism.
 - iii. The Holdback Funds and March 15 Amount will be released on the later of:
 - a. Five business days of the date of the executed Prism Agreement;
 - b. Written confirmation from Prism, that is satisfactory to the Receiver, that all amounts due and owing to its subcontractors will be paid to the

- subcontractors upon receipt of the Holdback Funds and March 15 Amount;
- c. Written confirmation from Prism's legal counsel that all liens will be removed from title upon receipt of the Holdback Funds and March 15 Amount except for Prism's lien over four remaining unsold units in the Development Property; and
 - d. Receipt of the Occupancy Documents from Prism.
- iv. The Deficiency Funds will be paid to Prism in two tranches over a 30 day period as deficiencies are completed and certified as complete by the Architect. If Prism does not complete the deficiencies within 30 days, the Receiver may engage other contractors to complete the deficiencies and use the Deficiency Funds.
- v. Prism and the Companies reserve their respective rights to claims against each other under the construction contract. Prism agrees it has no claims against the Receiver.
25. The Receiver believes that engaging Prism to complete the Development Property will result in a greater net recovery as the alternative would result in additional costs such as:
- i. Additional holding costs due to delays,
 - ii. Increased costs to directly engage existing or new trades; and
 - iii. Increased professional fees due in part to litigation costs.

IV. SEEB CPL

26. Seeb filed a Notice of Civil Claim (the “**NOCC**”) dated April 19, 2021 as against 0876242 B.C. Ltd. (“**087**”), Port Capital Development (Gate) Inc., the general partner of Gateway Development Limited Partnership (“**Gateway LP**”) and Port Capital Development Inc. (“**Port Capital**”). Attached as **Appendix C** is Seeb’s NOCC.
27. Seeb registered a Certificate of Pending Litigation (the “**Seeb CPL**”) on April 29, 2021 as against the Development Property.
28. Seeb, alleges in the NOCC that it is a holder of limited partnership units it purchased from Gateway LP and as a result has an interest in the Gateway lands supporting the Seeb CPL registration.
29. The Receiver has advised Seeb that the Receiver requires and is empowered to urgently proceed with completing the Development Property. This includes the subdivision and stratification of the Development Property. The Receiver advised Seeb that it requires the Seeb CPL to be discharged forthwith for the following reasons:
 - i. Seeb does not have an interest in the Development Property and its refusal to remove the Seeb CPL is blocking the subdivision and progress on the Development Property;
 - ii. Removal of the Seeb CPL will mitigate claims being made against Seeb for improperly holding up the subdivision of the project due to an invalid CPL;
 - iii. Seeb’s claim appears to be an equity claim, and even if that claim was determined valid, Seeb’s claim would be paid after:
 - a. all borrowings to complete the Development Property and professional fees,
 - b. the secured debt due to IMC, and
 - c. claims of all unsecured creditors,were all fully paid and based on the Receiver’s estimated recovery schedule set out in Section VI that is unlikely;

- iv. The costs of addressing the Seeb CPL will reduce the recovery to creditors and thus the parties should try to avoid unnecessary applications to Court;
 - v. The Receiver would agree that the Seeb CPL discharge would not affect the rights of:
 - a. Seeb's claim in the NOCC or any other claims it may have as against Gateway LP, 087 or Port Capital for breach of an alleged settlement agreement (the "**Seeb Claims**"), but for clarity Seeb agrees it has no claim against the Receiver;
 - b. Port Capital, Gateway LP, and 087 (or the Receiver as the case may be for the latter two parties) with respect to any claims they may have against Seeb (the "**Gateway Claims**"), or
 - c. all parties defence of the Gateway Claims or Seeb Claims (collectively the "**Reservation of Rights**").
 - vi. If for some reason Seeb cannot agree to the Seeb CPL discharge the Receiver will seek costs against Seeb for having to bring an application to remove it.
30. Seeb has refused to discharge the Seeb CPL on the above terms or at all.
31. Accordingly, the Receiver requests that the Court grant an Order that:
- i. The Seeb CPL be discharged immediately on the basis of the Reservation of Rights set out above; and
 - ii. Costs be awarded against Seeb in favour of the Receiver payable forthwith for this unnecessary application.

V. CASH FLOW FORECAST

32. We have prepared a detailed cash flow forecast for the period June 6, 2022 to September 4, 2022 (the “**Cash Flow Forecast**”) which is attached as **Appendix D**. The Cash Flow Forecast is summarized in the table below:

Cash Flow Forecast for the Period June 6 to September 4, 2022 (\$'s)	
RECEIPTS	
Receiver's Borrowings	1,530,000
TOTAL RECEIPTS	1,530,000
 DISBURSEMENTS	
Payment to Prism - March 15 Amount	214,125
Payment to Prism - Deficiency Holdback	337,460
Tenant Improvement Work	150,000
Property taxes	206,779
Insurance	165,500
Strata Fees	60,029
Architect	35,768
Consultants	20,000
Utilities	10,000
Professional Fees	225,000
Contingency	90,000
TOTAL DISBURSEMENTS	1,514,661
 ENDING CASH BALANCE	15,339

33. Based on the Cash Flow Forecast, the Receiver estimates that it will require total borrowings of \$1.53 million. The Receiver’s borrowings are currently limited to \$900,000 (the “**Receiver’s Borrowings**”). Accordingly, the Receiver will require increased borrowing powers to pay the following costs which include, but are not limited to:

- Payment to Prism of \$214,125 for the Architect approved March 15, 2022 draw;
- The Receiver to hold \$337,460 in its trust account to be released to Prism once all deficiencies are complete;

- Estimated tenant improvement work of \$150,000 which relate to work committed by the Companies to pre-sale purchasers;
 - Property taxes for 2022 of \$207,000 due July 4, 2022;
 - Insurance costs of \$166,000 for a six month policy with a minimum retained of four months. The current insurer advised it was not willing to extend insurance coverage past June 15, 2022, and the Receiver obtained a quote from Hub International;
 - Strata fees of \$60,000 which include a 5% contingency reserve required to be paid by a developer on initiation of the strata and estimated monthly strata fees; and,
 - Estimated professional fees of \$225,000 for the Receiver and its legal counsel.
34. Based on the Cash Flow Forecast, the Receiver is requesting the Court authorize an increase to the Receiver's Borrowings from \$900,000 to \$1.6 million to fund the estimated disbursements included in the Cash Flow Forecast.
- VI. PRELIMINARY ESTIMATED RECOVERY**
35. We have prepared a preliminary estimated recovery based on estimated net proceeds, estimated Receiver's Borrowings as per the Cash Flow Forecast and estimated amounts owing to IMC as at September 4, 2022. The estimated recovery assumes that all pre-sales will complete by the end of August 2022.
36. The estimated recovery schedule is summarized in the table on the following page:

	Low Estimate	High Estimate
	in \$000's	
Estimated Net Cash Proceeds¹		
Pre-Sale Contracts	30,337	30,337
Unsold Strata Lots	5,501	6,287
	<u>35,838</u>	<u>36,624</u>
Estimated Secured Debt as at September 4, 2022		
Receiver's Borrowings ²	1,555	1,555
IMC - First Mortgage ³	31,471	31,471
IMC - Second Mortgage ⁴	4,816	4,816
Total Estimated Secured Debt	<u>37,842</u>	<u>37,842</u>
Estimated Cash Shortfall	<u>(2,004)</u>	<u>(1,218)</u>
Estimated Value of Shares to be Paid in Lieu of Cash⁵	1,900	1,900
Estimated Total Surplus / (Shortfall)	<u>(104)</u>	<u>682</u>

Notes:

- 1 The estimated net cash proceeds are based on gross sales prices for pre-sale contracts and estimated sales prices of between \$700 and \$800 per square foot for the unsold strata lots 17 to 20, less commissions and any non-cash consideration.
We also note that the Receiver currently does not have powers to sell the unsold strata lots.
- 2 Estimated total Receiver's Borrowings of \$1.53 million plus estimated interest accruing monthly at a rate of 7% per annum.
- 3 Estimated balance of IMC's first mortgage as at September 4, 2022 with interest accruing monthly at a rate of 7% per annum.
- 4 Estimated balance of IMC's second mortgage as at September 4, 2022 with interest accruing monthly at a rate of 15% per annum.
- 5 The pre-sale purchaser for strata lots 6 to 11 offered shares of a limited partnership to be formed for the proposed self storage facility located on the Development Property. A portion of the purchase price will be paid with these shares in lieu of cash consideration of \$1.9 million.

37. As per the estimated recovery schedule, approximately \$1.9 million of the sales proceeds are expected to be paid with shares in lieu of cash. As there is an anticipated shortfall to IMC before consideration of the share payment, the Receiver will be requiring the share payment to be converted to cash.

VII. CONCLUSION AND RECOMMENDATIONS

Conclusion

38. The Receiver has signed an agreement with Prism to complete the Development Property dated June 2, 2022.
39. Based on its initial assessment, the Receiver estimates it will require an increase in Receiver's Borrowings from \$900,000 to \$1.6 million.

Recommendation

40. The Receiver respectfully request that the Court:
 - i. Authorize the increase in Receiver's Borrowings from \$900,000 to \$1.6 million to complete the Development Property;
 - ii. Order that the Seeb CPL be discharged immediately;
 - iii. Costs be awarded against Seeb in favour of the Receiver payable forthwith; and
 - iv. Approve the Receiver's activities to date as set out in this Receiver's First Report to Court.

All of which is respectfully submitted to this Honourable Court this 9th day of June 2022.

The Bowra Group Inc., LIT

in its capacity as Receiver of 0876242 B.C. Ltd. and
Gateway Development Limited Partnership

Per:

Mario Mainella, CPA, CA, CIRP



Appendix A

Receivership Order Dated May 10, 2022



BETWEEN:

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) TUESDAY THE 10TH DAY OF
MR. JUSTICE WILSON) MAY, 2022

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 on the 6th day of May, 2022, at Vancouver, British Columbia.

AND ON READING the Affidavit #1 of Darren Schmidt sworn April 8, 2022, the Affidavit #2 of Darren Schmidt sworn April 20, 2022, the Affidavit #1 of Linda Alexander sworn April 26, 2022, and the Affidavit #2 of Linda Alexander sworn May 4, 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; AND ON JUDGMENT BEING RESERVED TO THIS DATE;

THIS COURT ORDERS AND DECLARES that:

APPOINTMENT

- 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 complete existing pre-sale purchase contracts in accordance with their terms and to apply for any vesting order in relation to same free and clear of any liens or encumbrances, 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;
- (m) 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;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) 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;
- (p) 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;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (r) 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-Receiptership Accounts**”) and the monies standing to the credit of such Post-Receiptership 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.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 “**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.

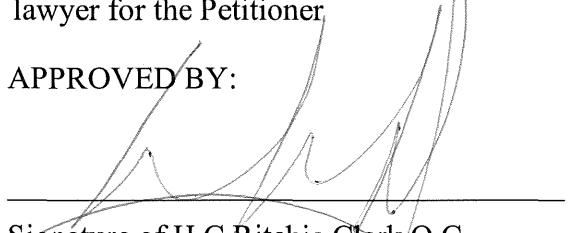
THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

APPROVED BY:



Signature of Bryan C. Gibbons
lawyer for the Petitioner

APPROVED BY:


Signature of H.C. Ritchie Clark Q.C.
lawyer for the Respondents, 0876242 B.C. Ltd.
and Gateway Development Limited Partnership

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”

Counsel / Party	Name
Counsel for the Petitioner, Institutional Mortgage Capital Canada Inc., as General Partner of IMC Limited Partnership, Applicant	Bryan C. Gibbons & Noor Mann Lawson Lundell LLP 1600 – 925 West Georgia Street Vancouver, BC V6C 3L2 Telephone: 604-631-9152 E-mail: bgibbons@lawsonlundell.com
Counsel for the Respondents, 0876242 B.C. Ltd. and Gateway Development Limited Partnership Application Respondents	H.C. Ritchie Clark, Q.C., Bridgehouse Law LLP, 9th Floor – 900 West Hastings St., Vancouver, B.C. V6C 1E5 Tel: (604) 684-2550 Email: rclark@bridgehouselaw.ca

Appendix B

**Copy of Agreement with
Prism Construction Ltd. Dated June 2, 2022**

PROJECT COMPLETION AGREEMENT

THIS AGREEMENT dated June 2, 2022 is between:

PRISM CONSTRUCTION LTD.

(“**Prism**”)

AND

THE BOWRA GROUP INC. in its capacity as Court appointed Receiver and Manager of 0876242 B.C. Ltd. and Gateway Development Limited Partnership and not in its personal or any other capacity

(the “**Receiver**”)

BACKGROUND

A. 0876242 B.C. Ltd. (“**087**”) holds registered ownership of lands cívically known as 3333 Bridgeway Street, Vancouver, BC and legally described as PID: 011-154-551, Block K, Except Part on Reference Plan 8675, Now Lane Town of Hastings Plan 5461 (the “**Project Lands**”) in trust as nominee and bare trustee for Gateway Development Limited Partnership (“**Gateway LP**”).

B. Pursuant to a CCDC 2 construction contract dated June 29, 2018, as amended, between Gateway LP and Prism (the “**Construction Contract**”), Prism was engaged by Gateway LP to act as the general contractor with respect to the construction of a six storey mixed use commercial and industrial strata development on the Project Lands (the “**Project**”).

C. On or about March 14, 2022, Stuart Howard Architects Inc. (the “**Architect**”), the architect for the Project, sent the letter attached hereto as Schedule A to Prism under which the Architect advised Prism that it had determined that the approximate cost to complete the outstanding deficiencies (the “**Deficiencies**”) in the Project, set out in the list (the “**List of Deficiencies**”) attached to the said letter, to be \$214,260.00 (exclusive of GST) and that as per the applicable terms of the Construction Contract, the Architect had authorized a holdback equal to 1.5 times the foregoing amount for a total deficiency holdback of \$337,459.50 (inclusive of GST) (the “**Deficiencies Holdback**”).

D. On or about March 15, 2022, the Architect issued a certificate of substantial performance for the Project, a copy of which is attached hereto as Schedule B, confirming that substantial completion of the Project had been achieved on March 9, 2022.

E. Also on or about March 15, 2022, the Architect issued an architect’s certificate of payment, a copy of which is attached hereto as Schedule C, certifying that the amount of \$214,125.40 (inclusive of GST) (the “**March 15 Amount**”) is payable to Prism pursuant to the terms of the Construction Contract.

F. On April 14, 2022, Prism suspended work on the Project on account of Gateway LP’s failure to pay the March 15 Amount to Prism.

G. On May 10, 2022, the Receiver was appointed the receiver and manager of 087 and Gateway LP pursuant to a receivership order granted by the Supreme Court of British Columbia under court registry no. VLC-S-H220132.

H. As of the date of this Agreement:

- (a) the Deficiencies remain outstanding;



- (b) the payment of the March 15 Amount to Prism remains outstanding;
- (c) the scheduling of an inspection by the City of Vancouver (the "City") needed in order to obtain an occupancy permit for the Project is not possible because Prism has not released certain documents to the Receiver that are required in order to schedule the City's inspection, including but not limited to:
 - (i) the Mechanical C-B letter; and
 - (ii) the elevator inspection certificate,(collectively, the "**Key Occupancy Documents**");
- (d) builders lien holdback monies in the amount of \$1,769,880.95 (inclusive of GST) (the "**BL Holdback Funds**") continue to be held in a joint account between Prism and Gateway LP; and
- (e) Prism has filed a claim of builders lien against the Project Lands under reg. no. CA9867388 (the "**Prism Lien**") and its subcontractors have filed the following claims of builders lien against the Project Lands:
 - (i) Claim of Builders Lien reg. no. CA9865311 in favour of DNA Electric Ltd.;
 - (ii) Claim of Builders Lien reg. no. BB5001200 in favour of Summit Cladding Systems Inc.; and
 - (iii) Claim of Builders Lien reg. no. CA9930714 in favour of Ikonic Enterprises Ltd.,(collectively, the "**Subcontractor Liens**").

I. Prism and the Receiver have agreed to enter into this Agreement to set out the terms under which:

- (a) Prism will complete the work necessary to rectify the Deficiencies and the Deficiencies Holdback will be paid out;
- (b) the March 15 Amount and BL Holdback Funds will be paid to Prism (or its subcontractors as directed by Prism) and the Prism Lien and the Subcontractor Liens will be discharged from title to the Project Lands; and
- (c) the Key Occupancy Documents will be provided to the Receiver.

AGREEMENTS

For good and valuable consideration, the receipt and sufficiency of which each party acknowledges, the parties agree as follows:

1. **Effective Date.** The date upon which this Agreement is executed and delivered by the parties is referred to herein as the "**Effective Date**".
2. **Deficiencies.**
 - (a) The Receiver shall within five (5) business days of the Effective Date deposit in a separate account an amount equal to the Deficiencies Holdback.

- (b) Prism shall promptly following receipt of the March 15 Amount and the BL Holdback Funds (the "Funds Receipt Date") commence work to rectify the Deficiencies and shall rectify the Deficiencies within thirty (30) days after the Funds Receipt Date (the "Deficiencies Completion Date").
- (c) Prior to the 15th day and the 30th day after the Funds Receipt Date, Prism shall provide the Receiver and the Architect with written confirmation of what deficiencies forming part of the Deficiencies have been rectified and the Receiver will request that: (i) the Architect complete a review of the same on the 15th and 30th day after the Funds Receipt Date; and (ii) following each review provide the Receiver with a list certifying each deficiency forming part of the Deficiencies that has been 100% rectified (each a "Deficiency Completion List").
- (d) The Receiver shall, within five (5) business days of the Receiver's receipt of a Deficiency Completion List, release to Prism from the Deficiencies Holdback, an amount equal to the aggregate of the amounts corresponding to each applicable deficiency, as set out in the List of Deficiencies, that has been 100% rectified and included in the applicable Deficiency Completion List.
- (e) In the event that the rectification of all of the Deficiencies is not completed, as certified by the Architect, by the Deficiencies Completion Date, the Receiver shall be entitled to, but not obligated to, engage another contractor or contractors (the "Other Contractor(s)") to complete any outstanding Deficiencies, as confirmed by the Architect, and use funds from the Deficiencies Holdback to pay for the same. If applicable, upon completion of any outstanding Deficiencies by the Other Contractor(s), as certified by the Architect, after payment to the Other Contractor(s) from the funds in the Deficiencies Holdback, the remaining funds in the Deficiencies Holdback shall be released to Prism within five (5) business days of the Receiver's receipt of the Architect's certification that all of the Deficiencies have been 100% rectified.
- (f) In the event that Prism does not complete the rectification of all of the Deficiencies prior to the Deficiencies Completion Date and the Receiver doesn't exercise its right to engage Other Contractor(s) to complete any outstanding Deficiencies in accordance with subsection (e) above, the remaining funds in the Deficiencies Holdback shall be released to Prism within five (5) business days of the Receiver's receipt of the Architect's certification that all of the Deficiencies have been 100% rectified.

3. **March 15 Amount and BL Holdback Funds.** The Receiver shall upon the later of:

- (a) five (5) business days after the Effective Date;
- (b) receipt by the Receiver of written confirmation, satisfactory to the Receiver acting reasonably, from Prism of all amounts due and owing to its subcontractors in respect of the Project and confirmation that all amounts due and owing to the subcontractors will be paid to the subcontractors by Prism upon receipt of the March 15 Amount and the BL Holdback Funds;
- (c) receipt by the Receiver of written confirmation from Prism's legal counsel that:
 - (i) discharges of the Subcontractor Liens have been filed in the Land Title Office including filed copies of the same;
 - (ii) Prism holds registrable forms of discharges of the Subcontractor Liens and will proceed with the filing of the same in the Land Title Office promptly following receipt of the March 15 Amount and the BL Holdback Funds; or

- (iii) Prism holds a section 24 of the *Builders Lien Act* consent order permitting it to discharge the Subcontractor Liens and will proceed with filing the discharge in the Land Title Office promptly following receipt of the March 15 Amount and the BL Holdback Funds; and
 - (d) satisfaction of Prism's obligations under Section 5 of this Agreement,
- pay to or cause to be paid to Prism (or to a subcontractor as directed by Prism) the March 15 Amount and the BL Holdback Funds. Prism shall promptly provide any documentation required to allow for the release of the BL Holdback Funds.
4. **Prism Lien.** Following payment of the March 15 Amount and the BL Holdback Funds by the Receiver to Prism and in connection with the subdivision of the Project Lands by strata plan (the "Strata Plan"), Prism shall within two (2) business days of receipt of a written request by the Receiver file in the Land Title Office discharges of the Prism Lien as against those portions of the Project Lands which following subdivision by the Strata Plan will comprise the common property and strata lots 1 through 16 inclusive within the Strata Plan such that the Prism Lien will only remain registered against strata lots 17 through 20 inclusive within the Strata Plan until otherwise dealt with by the parties hereto, Gateway LP or by way of Court order. Following the filing of the aforementioned discharges Prism shall provide the Receiver with filed copies of the discharges.
 5. **Key Occupancy Documents.** Prism shall immediately following the Effective Date, provide the Receiver with the Key Occupancy Documents and will promptly provide the Receiver with any other documentation in their possession that may be required in connection with obtaining an occupancy permit for the Project.
 6. **Reservation of Rights.** Prism and the Receiver acknowledge and agree that the entering into of this Agreement does not in any way affect the rights of:
 - (a) Prism to claim that additional monies, above and beyond the amounts contemplated in this Agreement, are due and owing to Prism from Gateway LP under the terms of the Construction Contract, but for clarity Prism agrees it has no claim against the Receiver as at the Effective Date; or
 - (b) Gateway LP, or the Receiver as the case may be, to claim damages against Prism for the breach by Prism of any terms of Construction Contract,all of which rights are reserved by the applicable party.
 7. **Further Assurances.** The parties will execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary, to give full effect to this Agreement and to make this Agreement legally effective, binding, and enforceable as between them and as against third parties.
 8. **Binding Agreement.** This Agreement will bind and benefit each of the parties including their respective successors and permitted assigns.
 9. **Expenses.** Each party will pay any expense it incurs in authorizing, executing, and performing this Agreement and any transaction contemplated by it.
 10. **Assignment.** Neither party may assign this Agreement without the prior consent of the other party.

11. **Counterparts.** This Agreement may be signed by original or by facsimile and executed in any number of counterparts, and each executed counterpart will be considered to be an original. All executed counterparts taken together will constitute one agreement.
12. **Electronic Execution and Delivery.** This Agreement may be executed by the parties using electronic signatures and transmitted by fax or other electronic means and if so executed and transmitted this Agreement will be for all purposes as effective as if the parties had delivered an executed original Agreement.
13. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein and there are no representations or warranties, express or implied, statutory or otherwise and no agreements collateral to this Agreement other than as expressly set out or referred to in this Agreement.
14. **Severability.** If any term of this Agreement is determined to be invalid or unenforceable, in whole or in part, the invalidity or unenforceability will attach only to that term or part term, and the remaining part of the term and all other terms of this Agreement will continue in full force and effect. The parties will negotiate in good faith to agree to a substitute term that will be as close as possible to the intention of any invalid or unenforceable term while being valid and enforceable. The invalidity or unenforceability of any term in any particular jurisdiction will not affect its validity or enforceability in any other jurisdiction where it is valid or enforceable.
15. **Governing Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with British Columbia law and applicable Canadian law and will be treated in all respects as a British Columbia contract.
16. **Time.** Time will be of the essence.

[EXECUTION PAGE FOLLOWS]

TO EVIDENCE THEIR AGREEMENT each of the parties has executed this Agreement on the date appearing below.

PRISM CONSTRUCTION LTD.

By:



Authorized Signatory

Dated: June 2, 2022

THE BOWRA GROUP INC. in its capacity as Court appointed Receiver and Manager of 0876242 B.C. Ltd. and Gateway Development Limited Partnership and not in its personal or any other capacity

By:



Authorized Signatory

Dated: June 2, 2022

SCHEDULE A
Architect's March 14, 2022 Letter



*Stuart Howard Architect AIBC FRAIC AIA Principal
W. Neil Robertson Architect AIBC MRAIC AIA Principal*

March 14, 2022

Dear Reza,

RE: 3333 Bridgeway – Prism Letter ‘Substantial Performance of the Work’

We are writing in response to your letter dated February 23, 2022 regarding the Contractor's determination that the Work is Substantially Performed. We have received the valuation determined by Prism and note there is no backup provided for the cost per deficiency as requested by the Consultant. However, as per the Deficiency walkthrough with the Owner and Contractor on March 9, 2022 we have reviewed the outstanding deficiencies and revised and issued the Deficiency List Revision 005 dated March 10, 2022.

Based on the walkthrough and revised Deficiency List, with the help of the Owner, we have updated our original valuation included in our letter to the Contractor dated February 17, 2022. As such we have determined the approximate value of cost to complete the outstanding deficiencies to be \$214,260.00.

We remind the Contractor that as per CCDC 2 GC 5.4.2 and the Builders Lien Act it is the Consultant's role and responsibility to determine when Substantial Performance is achieved and not the Contractor's. As per the calculation to determine Substantial Performance or “3,2,1” the amount in the Contract must be less than \$214,771.40 before Substantial Performance is declared. As such, we have determined that as of the March 9th walkthrough the Project has been substantially performed. Please see the certificate of Substantial Performance dated March 9, 2022.

As per CCDC 2 – Supplementary Condition GC 5.4.2 after the approval of Substantial Performance the “deficiencies and incomplete Work will be valued by the Consultant in conjunction with the Contractor at a rate of 1.5 times normal construction value. The Owner shall be entitled to retain a holdback, in addition to any other holdbacks, which holdback will be held by the Owner until all deficiencies and incomplete work has been completed to the satisfaction of the Consultant and the Owner.” Therefore, we have held back 1.5 times the amount to complete the outstanding deficiencies for a total of \$321,390.00, please refer to Certificate of Payment 518 dated March 14, 2022.

A reminder we are awaiting the following items related to Occupancy as requested in our letter dated February 17, 2022:

1. Release any and all documentation related to Occupancy as requested by the Consultant team and as discussed with the Contractor in the March 11, 2022 meeting

405 • 375 WEST FIFTH AVENUE • VANCOUVER B.C. • V5Y 1J6
Telephone 604-688-5585 Facsimile: 604-688-7486

RW

March 14, 2022
Page 2

2. Provide a reasonable date for Occupancy walkthrough with the City so the CP can schedule accordingly
3. Ensure all Consultant Occupancy related Deficiency items as noted in field reports be completed within a timely manner, following Consultant review and approval prior to release of Consultant schedules and subsequent City walkthrough

Sincerely,

STUART HOWARD ARCHITECTS INC.



W. Neil Robertson Architect AIBC, MRAIC, AIA
PRINCIPAL



Corrective 03.15.2022
Work Items

Total Cost of Corrective Work	Value to finish, correct deficiencies	\$ 214,260
-------------------------------	---------------------------------------	------------

1.0 Contractor to correct below deflcencies prior to Occupancy:

PARKADE

- | | |
|--|------------------|
| 1. Louvres to be installed on mechanical room doors – ref. DEVIATION 52.2.2. | Cost to Complete |
| 2. Evidence of water ingress at mechanical room and general water ingress at parkade. Ensure below | TBD |
| | \$32,960 |

LEVEL 1

- | | |
|---|---------|
| 16. All door hardware inclusive of closers, wired glass, thresholds to be installed | TBD |
| 20. W101 vestibule walls at Units 120 and 130 complete with doors to be installed (Figure 10) Walls | TBD |
| 22. Firespray touch ups at steel beams (Figure 12) Contractor to confirm complete | TBD |
| 24. All pipe floor penetrations to be firecaulk sealed. Insulation to be cut back to ensure proper seal. (Figure 14, 15) Areas of Pipe penetrations to be firecaulked (Figure 66) | TBD |
| 26. All gaps at top of Unit fire separations to be fire caulk sealed Contractor to confirm complete | TBD |
| 27. Penetrations above dropped ceiling in janitor room to be fire caulk sealed Contractor to confirm | \$1,000 |
| 30. Intercom to be installed | |

LEVEL 2

- | | |
|--|---------|
| 41. All pipe floor penetrations to be firecaulk sealed. Insulation to be cut back to ensure proper seal (Figure 16) Contractor to confirm complete | \$1,500 |
| 44. Low headroom at 5'-0" opening in concrete wall east of passenger elevator to have warning stripes applied on both sides of concrete beam. | \$250 |
| 49. Exposed insulation behind steel beam to be covered with drywall. To be completed (Figure 67) | \$250 |

LEVEL 4

- | | |
|--|-------|
| 55. Vapour barrier paint to be provided behind ducts (Figure 29) – ref. DEVIATION 49.2.2. Contractor to seal at base of elevator walls. Item does not appear to be completed. Contractor to confirm complete | \$200 |
|--|-------|

LEVEL 5

- | | |
|---|---------|
| 61. Vapour barrier paint to be provided behind ducts – ref. DEVIATION 49.2.2. Contractor to seal at base of elevator walls. Item does not appear to be completed. Contractor to | \$200 |
| 68. Holes in fire caulking at base of columns to be touched up (Figure 37) Contractor to confirm complete | \$200 |
| 71. Finish caulking where drywall meets ceiling at all fire separations (Figure 41) Contractor to confirm complete | \$5,000 |

LEVEL 3-S

- | | |
|---|-------|
| 73. No exit sign provided at end of south-east storage corridor, sign to be provided on all floors typ. directing path of travel to Exit Stair #5 (Figure 43) | \$500 |
| 75. Exit sign view obstructed by duct south of Exit Stair #4 (Figure 45). Additional exit sign to be installed on east side of duct for visibility typ. | \$500 |

LEVEL 6

- | | |
|--|---------|
| 76. Scupper drain to be installed at Exit Stair #3 roof – ref. GENERAL 46.3.3 Scupper drain installed, gasket to be provided as per Field Report | \$1,500 |
|--|---------|

ROOF

- | | |
|--|-------|
| 86. Scupper drain to be installed at elevator shaft roof. Scupper drain installed, gasket to be provided as per Field Report | \$200 |
|--|-------|

GENERAL - STAIRS

- | | |
|--|---------|
| 90. Contrasting colour nosing and tactile warning at top of landings to be provided at all stairs. Tactile nosing and warnings missing from Exit Stair #3 and Exit Stair #1. Contrasting colour missing from all stairs. Contrasting nosing provided. Tactile pads missing from Exit Stair 3 | \$1,000 |
| 93. Guard to be provided at Exit Stair #5 window where gap is larger than 4" (Figure 53) – ref. DEVIATION 41.2.1 | \$5,000 |
| 94. Contractor to confirm min. 3'-8" clear provided at all landings after deficiency corrected – ref. DEVIATION 41.2.1 | TBD |

GENERAL - BUILDING ITEMS

- | | |
|---|-------|
| 97. All waterproofing membrane application, and all air and vapour barrier installed (all envelope items) | TBD |
| 98. All door hardware, closers, thresholds, etc. | TBD |
| 100. Caulk seal locations where steel stud wall extends past concrete drip edge at south elevation – ref. DEVIATION 45.2.1. Contractor to confirm complete. | \$300 |
| 101. Cladding cap to be provided at South east wall edge – ref. GENERAL 38.3.2 | TBD |
| 102. Parkade water ingress issues related to below grade drainage system – ref. DEVIATION 47.2.1 Parked 2. | INCL. |

R2

103. Waterproofing touchups where hydro-lift was attached to concrete – ref. GENERAL 56.3.1. Contractor to confirm co	\$10,000
104. All roofing completed. All Envelope Consultant deficiencies addressed	TBD
The following additional deficiencies prior to Occupancy as Identified at site walkthrough with CP 2022.01.13:	
111. All guard heights and handrail heights to be confirmed	TBD
113. Contractor to ensure all ducts to be min. 7'-0" A.F.F. (Figure 61)	TBD
 The following additional deficiencies prior to Occupancy as Identified at site walkthrough 2022.02.11:	
118. Hole at drywall to be patched. Firecaulk seal electrical penetrations at entry curtain wall (Figure 68)	\$150
 The following additional deficiencies prior to Occupancy as Identified at site walkthrough 2022.03.09:	
119. Hole at exit stair #2 at parkade to be filled with concrete (Figure 74)	\$200
120. General fire caulked to be complete, ensure pipes are firecaulked at penetration (Figure 75)	\$250
121. Level 6 firecaulking to be completed at floor gaps at elevator core (Figure 76)	\$100
122. Structural bolts missing at top of exit stair #5 (Figure 77)	\$300
123. Louvre penetrations through lobby wall to be fire caulk sealed (Figure 78)	\$100
124. Penetrations through rated stair slabs to be fire caulked typ. (Figure 79)	\$100
125. Contractor to provide submittal for review of alternate fire stopping product (Figure 80)	tbd
126. Contractor to confirm Level 6 bolts at guard stainless steel, if bolts are not stainless to be painted	tbd

1.0 Contractor to correct below deficiencies prior to Project Completion:

1. Top of Exit Stair #3 grating at level 6 to be completed – ref. GENERAL 54.3.10	\$2,000
2. Drywall finishing, inclusive of sealing gaps at base of walls (Figure 54)	\$5,000
3. Walls to be painted as per Wall Assemblies marked "Interior Finish"	\$5,000
4. Floor cracks to be filled and floor sealer to be applied	\$5,000
5. General concrete floor flattening (Figure 55) - Levels 3,4,5 General and Crane opening (1/4" per 10' tolerance)	\$15,000
6. Concrete cleaning on all Interior walls	\$15,000
7. Level 4 exit stair walls concrete to be patched and smooth finish (Figure 56)	\$3,000
8. Level 3 damaged concrete at exit door to be repaired (Figure 57)	\$3,000
9. Concrete to be cleaned at loading and parkade ramp (Figure 58)	\$3,000
10. All door paint touched-up	\$3,000
11. All handrails/guards painted and touched-up	\$3,000
12. Flashing cap to be provided at Exit Stair #3 concrete wall – ref. GENERAL 28.3.1	\$2,500
13. Metal grating cover to be installed over gas meter enclosure – ref. 41.3.4	\$500
14. Metal grating bowing out along Level 1 South elevation (Figure 62)	TBD
15. Gas line at loading dock HVAC units to turn back towards face of cladding and not extend out into loading area typ. (Figure 63)	TBD
16. Door GG01 and GG03 to be installed	\$1,500
17. Gas meter room gate GG02	\$1,500
18. Gum lip flashing to be installed to cover SBS wall applications at Level 6 amenity deck typ. (Figure 65)	\$2,500
19. Door 001 and 002 areas where Concrete Infill splatter on doors to be cleaned (Figure 69)	\$2,000
20. Metal breakshape to cover electrical wiring at Lobby entry (Figure 68)	\$200
21. Contractor to ensure East Wall cladding movement joints accounted for as per Summit Cladding letter regarding oil canning	TBD

The following additional deficiencies prior to Project Completion as Identified at by Owner/Owner Rep:

23. Lobby Interior Concrete Work to be sac finished as per arch spec	\$10,000
24. Concrete Walls and Floors in Parkade Cleaned and/or Sac Finished as per Arch Spec	\$0
25. Exterior Concrete Walls and Surfaces Cleaned and/or Sac Finished as per Arch Spec	\$30,000
26. Concrete Stairwell Walls and Floors Cleaned and/or Sac Finish to Arch Spec	\$30,000
27. Interior Finishing in Lobby Including baseboards and curb at Entry	\$2,500
28. General Cleanup - All CRUs	\$4,000
29. Exposed Steel Beams painted in L6 CRUs	\$2,500

22

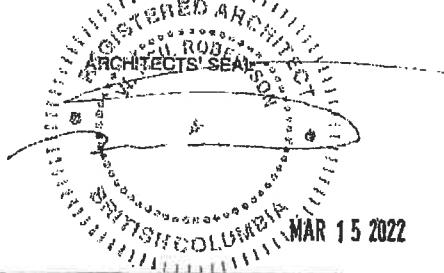
SCHEDULE B
Certificate of Substantial Performance

CERTIFICATE OF SUBSTANTIAL PERFORMANCE

PROJECT NAME 3333 Bridgeway
PROJECT ADDRESS 3333 Bridgeway St. Vancouver, BC
IN ACCORDANCE WITH THE CONTRACT & AMENDMENTS DATED 29-June-2018 CA 001 - 09-Oct-2019 +
CA 002 10-Sept-2020 +
CA 003 12 November 2021
BETWEEN (OWNER) Gateway Development Limited Partnership
AND (CONTRACTOR) PRISM CONSTRUCTION LTD.
THIS IS TO CERTIFY THAT PART OF THE WORK DESCRIBED THEREIN HAS BEEN SUBSTANTIALLY
PERFORMED ON (DATE) March 9, 2022

PORTION SUBSTANTIALLY COMPLETE WORK SUBSTANTIALLY COMPLETE ON PROJECT THROUGH
03/09/2022
FOR ALL PURPOSES UNDER THE CONTRACT, WHEREIN THE RIGHTS, DUTIES, AND OBLIGATIONS
OF ALL PARTIES CONCERNED ARE DESCRIBED, AND FOR ALL PURPOSES UNDER THE LIEN
LEGISLATION APPLICABLE TO THE PLACE OF WORK, PARTIAL SUBSTANTIAL PERFORMANCE SHALL BE
REGARDED AS EQUIVALENT TO "PARTIALLY COMPLETED" AS DESCRIBED THEREUNDER

ARCHITECT: STUART HOWARD ARCHITECTS
405-375 West 5th Ave
VANCOUVER, BC, CANADA V5Y 1J6



ARCHITECT'S SIGNATURE _____

GENERAL NOTES:

- 1 CERTIFICATE DESCRIBING WORK NOT YET PERFORMED AT THE DATE OF SUBSTANTIAL PERFORMANCE IS NOT ATTACHED
- 2 THE LIEN PERIOD DURATION UNDER STATUTE IS 45 DAYS.
END OF LIEN PERIOD: 23-Apr-22
- 3 RELEASE OF TRUST HOLDBACK FUNDS IS DUE 55 DAYS AFTER THE DATE OF SUBSTANTIAL PERFORMANCE SUBJECT TO TITLE SEARCH AND CLEARANCE OF ANY LIENS AGAINST TITLE(S).
DATE OF RELEASE 3-May-22

rw

SCHEDULE C

March 15, 2022 Payment Certificate

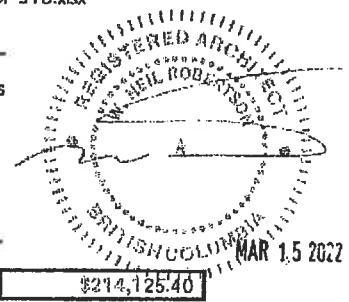
2022.03.15 3333 Bridgeway COP 518.xlsx

ARCHITECT'S CERTIFICATE OF PAYMENT

In accordance with the Contract Documents, based on site observations and the data comprising the contractors application, the Architect certifies to the owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED

STUART HOWARD ARCHITECTS INC.

AMOUNT CERTIFIED



ARCHITECT: W. NEIL ROBERTSON ARCHITECT AIBC MRAIC AIA
BY: DATE:

15-Mar-22

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this contract.

CONTRACT SUM PER 2ND AMENDMENT INCL. CONSTRUCTION MANAGEMENT FEE	\$16,015,425.02 INCL. ABOVE
BUDGET CHANGE	\$3,450,341.41
BUDGET CHANGE POST 2ND AMENDMENT	\$261,373.70
BUDGET CHANGE 3RD AMENDMENT	\$250,000.00
CONSTRUCTION FEE ON EXTRAS/CREDITS	
RE-ALLOCATION OF AMOUNT TO BONUS	INCL. ABOVE
CONTRACT SUM TO DATE	\$19,977,140.13
PREVIOUS APPROVED CLAIMS (UP TO DECEMBER 2021)	\$19,429,162.40
APPROVED CLAIMS	\$547,977.73
DEFICIENCY HOLDBACK (VALUED AT 1.5x)	\$321,390.00
TOTAL CLAIMS TO DATE INCLUDING CONSTRUCTION FEE	\$19,655,750.13
PREVIOUS HOLDBACK AMOUNT	\$1,942,916.24
HOLD BACK AMOUNT TO DATE	\$1,965,575.01
HOLD BACK AMOUNT RELEASED	\$243,005.80
TOTAL EARNED LESS HOLDBACK	\$17,933,181.02
LESS PREVIOUS CERTIFICATES	\$17,729,252.06
CURRENT PAYMENT DUE	\$203,928.96
GST ON THIS CERTIFICATE (@5%)	\$10,196.45
TOTAL CERTIFICATE	\$214,125.40
PREPAYMENTS	
NET DRAW	\$214,125.40

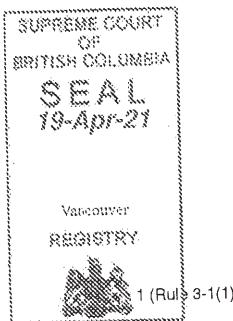
OWNER DIRECT PAID EXCLUDED FROM CONTRACT

JOB: 3333 BRIDGEWAY
CONTRACTOR: PRISM CONSTRUCTION
CERTIFICATE NUMBER: 214.04/518
PERIOD TO :
DATE OF INSPECTION

518.0
31-Jan-22
9-Mar-22

Appendix C

**Notice of Civil Claim Filed by
Seeb Capital Ltd. Dated April 19, 2021**



Court File No. VLC-S-S-214245

No.

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SEEB CAPITAL LTD.

PLAINTIFF

AND:

PORT CAPITAL DEVELOPMENT INC., PORT CAPITAL
DEVELOPMENT (GATE) INC. and 0876242 B.C. LTD.

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

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

- (a) file a Response to Civil Claim in Form 2 in the above-named Registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a Counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

- 2 -

Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the Plaintiff,

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

Claim of the Plaintiff

PART 1: STATEMENT OF FACTS

Background

1. The Plaintiff, Seeb Capital Ltd. ("**Seeb**") is a company incorporated pursuant to the laws of the Province of British Columbia and has an address at #1020 - 1166 Alberni Street, Vancouver, BC, V6E 3Z3.

2. The Defendant, Port Capital Development Inc. ("**Port**") is a company incorporated pursuant to the laws of the Province of British Columbia, with a registered address at 20th floor, 250 Howe Street, Vancouver, BC, V6C 3R8.

3. The Defendant, Port Capital Development (Gate) Inc. ("**Gate**") is a company incorporated pursuant to the laws of the Province of British Columbia, with a registered address at 20th floor, 250 Howe Street, Vancouver, BC, V6C 3R8.

4. 0876242 B.C. Ltd. ("**087 Ltd.**") is company incorporated pursuant to the laws of the Province of British Columbia, with a registered address at 20th floor, 250 Howe Street, Vancouver, BC, V6C 3R8.

5. Port is a company involved in the development of residential and commercial real estate projects in BC and other jurisdictions in Canada.

6. Macario Teodoro Reyes is the director and operating mind of Gate, Port, and 087 Ltd.

7. Gate is the general partner of the Gateway Development Limited Partnership (the "**Gateway LP**").

8. Gate was formerly the registered owner and the Gateway LP is the beneficial owner of lands which are being developed as a mixed use real-estate

- 3 -

development project (the “**Gateway Development**”) located on Bridgeway Street, Vancouver, BC and legally described as:

PID: 011-154-551
Block K, except part on Reference Plan 8675, now Lane Town of Hastings Plan 5461

9. Port is a limited partner of and owns 7,751,488 units in the Gateway LP, and has an interest in the Gateway Development.

10. In connection with a sale of certain strata units in the Gateway Development, Port pledged its units in the Gateway LP to secure a \$4,763,691 loan from a third party (the “**Third Party Loan**”).

11. Pursuant to the Gateway Development Limited Partnership Agreement between Gate and the limited partners of the Gateway LP dated June 30, 2014, as amended (the “**LP Agreement**”), the limited partners of the Gateway LP are entitled to:

- (a) a return on their respective capital contributions, calculated at 7% per annum, not compounded, from the date of filing of a certificate filed and recorded in respect of the *Partnership Act*, as amended from time to time, to the later of the date:
 - (i) that the City of Vancouver issues an unconditional development permit for the Gateway Development; or
 - (ii) of the return of the limited partner’s capital contribution to the limited partner
 - (b) (the “**Preferred Return**”); and
- (b) 50% of the net profit of the Gateway LP (the “**Net Profit to the Limited Partners**”);

12. Gate, as general partner of the Gateway LP, is entitled to the other 50% of the net profit (the “**Net Profit to the General Partner**”).

13. Pursuant to a limited partnership purchase agreement dated January 10, 2020 between Port as vendor, Gate as general partner, and Seeb as purchaser (the “**LP Purchase Agreement**”) Port agreed to sell and Seeb agreed to purchase Port’s right to receive any and all:

- (a) Preferred Return;
- (b) allocations of distributable Net Profit to the Limited Partners; and
- (c) distributable cash and sale or refinancing proceeds

- 4 -

that Port receives or is entitled to receive in connection with its ownership of 3.5 million units in the Gateway LP

(the “**3.5M PCD Unit Return**”)

14. As consideration for the 3.5M PCD Unit Return, Seeb paid \$3.5 million to Port on or around the date of the LP Purchase Agreement (the “**Investment Amount**”).

15. In addition, Port agreed to pay a \$35,000 placement fee (the “**Placement Fee**”).

16. Pursuant to the LP Purchase Agreement, Port agreed to hold whatever amount of the 3.5M PCD Unit Return it may receive or be entitled to receive from Gate or the Gateway LP in trust for Seeb, and to pay any and all of the 3.5M PCD Unit Return to Seeb when received by Port.

17. To induce Seeb to enter the LP Purchase Agreement:

(a) Port made the following representations and warranties in the LP Purchase Agreement:

- (i) Port was not in default of the Third Party Loan; and
- (ii) Port was not aware of any reason why it would become in default of the Third Party Loan in a way that would entitle the third party lender to Port’s units in the Gateway LP or to any Preferred Return, Net Profit to the Limited Partners, or other cash, sale or refinancing proceeds in respect of those units; and

(b) Gate made the following representations and warranties in the LP Purchase Agreement:

- (i) Gate entered into a binding letter of intent for the sale of all the strata titled units located on the second to fifth floors of the Gateway Development (the “**LOI**”) and was in the process of negotiating a purchase and sale agreement;
- (ii) Gate was not aware of any reason why the proposed sale described in the LOI would not proceed; and
- (iii) Gate entered into a binding purchase and sale agreement for three of the five strata units on the ground floor of the Gateway Development for an average sale price of \$512.90 per square foot.

(the “**Representations and Warranties**”)

18. Had Port and Gate not made the Representations and Warranties, Seeb would not have entered the LP Purchase Agreement.

- 5 -

19. Pursuant to the LP Purchase Agreement, Port agreed that Seeb would receive a minimum return of no less than 127% of the Investment Amount exclusive of the Placement Fee and interest (the "**Minimum Return**"), and agreed that should Seeb fail to receive the Minimum Return, Port would pay Seeb the Minimum Return.

20. Pursuant to the LP Purchase Agreement, if Seeb did not receive payment of at least the amount of the Minimum Return by October 31, 2020, Port agreed to pay 10% interest on the unpaid amount of the Minimum Return, with payments to be made monthly commencing November 30, 2020.

21. Pursuant to the LP Purchase Agreement, if Seeb did not receive the Minimum Return together with accrued interest by the time that Gate became entitled to receive the Net Profit to the General Partner, then Gate agreed to assign any such profit it receives to Seeb up to the full amount of the Minimum Return plus accrued interest.

Port Defaults and Seizes Funds

22. To date, Seeb has not been paid any of the Minimum Return.

23. On November 30, 2020, Port did not pay the 10% interest payment required by the LP Purchase Agreement, and has since failed to pay any subsequent monthly interest payments.

24. To date, construction is nearly complete on the Gateway Development and some strata units have already been sold as presales.

25. If the Gateway LP has yielded or will yield profits from these and future sales, Gate must assign the Net Profit to the General Partner to Seeb.

26. Following execution of the LP Purchase Agreement, Seeb discovered that none of the Representations and Warranties were true.

27. To avoid having its creditors from claiming any interest in the Gateway Development on account of its debts, Gate transferred title to the Gateway Development lands to 087 Ltd., another company of which Mr. Reyes is the director and operating mind.

28. The Defendants have failed to perform and have breached the LP Purchase Agreement and Seeb has suffered damage as a result.

29. The Defendants continue to benefit from receipt of the Investment Amount.

30. Port has transferred all or part of the Investment Amount and 3.5M PCD Unit Return to Gate and 087 B.C. Ltd. among other persons and into various properties held in trust by Gate and 082 Ltd. for the Gateway LP, including the Gateway Development.

- 6 -

PART 2: RELIEF SOUGHT

1. Judgment against the Defendants in the amount of \$4,445,000, being the Minimum Return, or the 3.5M PCD Unit Return to which Seeb is entitled, whichever is greater;
2. In the alternative, rescission for misrepresentation;
3. Interest calculated in respect of the above amount at the contractual rate specified in the LP Purchase Agreement, calculated to the date of judgment herein;
4. In the alternative, interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
5. A declaration that 087 Ltd., Port, and Gate or each of them hold the amounts owing to Seeb in constructive trust for Seeb;
6. A declaration that Seeb has an interest in the Gateway Development and 087 Ltd., Port, and Gate or each of them hold such interest in said properties in constructive trust for Seeb;
7. An order for tracing and that all traceable property of the Defendants be disgorged and returned to Seeb;
8. In the alternative, restitution for unjust enrichment;
9. A certificate of pending litigation against each of the parcels comprising the Gateway Development;
10. Costs of these proceedings, and
11. Such other relief as this Honourable Court may deem just.

PART 3: LEGAL BASIS

Breach of Contract

1. In breach of the LP Purchase Agreement, Port has failed to:
 - (a) pay Seeb any of the 3.5M PCD Unit Return despite holding amounts of the 3.5M PCD Unit Return in trust for Seeb and agreeing to transfer any such amounts to Seeb when received by Port;
 - (b) pay Seeb any of the Minimum Return; and
 - (c) pay any of the monthly interest payments due and owing to Seeb as of November 30, 2020 and payable monthly thereafter.

- 7 -

2. If the Gateway LP has yielded or will yield profits from the Gateway Development, Gate must assign the Net Profit to the General Partner to Seeb.

3. Up to now, Gate has failed to assign any of the Net Profit to the General Partner to Seeb.

4. As a result of all of the above, Seeb has suffered and continues to suffer expense, loss, and damage.

Misrepresentation

5. Port and Gate made the Representations and Warranties to Seeb fraudulently or negligently.

6. Had Gate not made the Representations and Warranties to Seeb, Seeb would not have entered the LP Purchase Agreement.

7. The Representations and Warranties are false.

Unjust Enrichment

8. As a result of the Investment Amount paid to Port and upon Port and Gate failing to repay the 3.5M PCD Unit Return or Minimum Return together with accrued interest:

- (a) The Defendants have been enriched;
- (b) Seeb has suffered a corresponding deprivation; and
- (c) there is no juristic reason for the Defendants' enrichment.

9. Port has transferred the amounts owing to Seeb into the hands of various parties, including Gate and 082 Ltd., and into various properties held in trust by Gate and 082 Ltd. for the Gateway LP, including the Gateway Development. The Investment Amount is traceable into the hands of these parties and properties.

10. As the amounts owing to Seeb have been depleted through transfer into the Gateway Development and other properties, a monetary award would be inadequate, insufficient, and inappropriate in the circumstances.

11. The Defendants hold the amounts owing to Seeb pursuant to a constructive trust.

12. The Defendants have used the amounts owing to Seeb to purchase, service, and maintain the Gateway Development and other properties, a result of which is that Seeb is entitled to a constructive trust over these properties.

- 8 -

Plaintiff's address for service:

Christopher J. Ramsay /
Nicholas J. Carlson
Clark Wilson LLP
900 – 885 West Georgia Street
Vancouver, BC V6C 3H1
(Direct Number: 604.643.3176 /
604.891.7797)

Fax number address for service (if any): 604.687.6314

E-mail address for service (if any): N/A

Place of trial: VANCOUVER, British Columbia

The address of the registry is: 800 Smithe Street
Vancouver, BC, V6Z 2E1

Date: 19/Apr/2021

Signature of Lawyers for Plaintiff
Lawyer: Christopher J. Ramsay and
Nicholas J. Carlson

This NOTICE OF CIVIL CLAIM is prepared by Nicholas J. Carlson of the firm of **Clark Wilson LLP** whose place of business and address for delivery is 900 – 885 West Georgia Street, Vancouver, British Columbia, V6C 3H1 (Direct #: 604.891.7797, Fax #: 604.687.6314, Email: ncarlson@cwilson.com) (File #: 50132-0001).

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

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

PART 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Claim for damages arising from breach of the lease.

PART 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case]

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods and services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

PART 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws

- 2 -

none of the above

do not know

PART 4:

[If an enactment is being relied on, specify. Do not list more than 3 enactments]

1. *Court Order Interest Act*, R.S.B.C. 1996, c. 79.

Appendix D

Cash Flow Forecast

For the Period June 6 to September 4, 2022

In the Matter of the Receivership of Gateway Development Limited Partnership and 0876242 B.C. Ltd. (the "Companies")

13-Week Cash Flow Forecast

For the Period June 6 to September 4, 2022

(Unaudited, in \$CAD)

Prepared June 9, 2022

	Week #	1	2	3	4	5	6	7	8	9	10	11	12	13	Total
	Week Ending	12-Jun-22	19-Jun-22	26-Jun-22	03-Jul-22	10-Jul-22	17-Jul-22	24-Jul-22	31-Jul-22	07-Aug-22	14-Aug-22	21-Aug-22	28-Aug-22	04-Sep-22	
RECEIPTS															
Receiver's Borrowings ¹		850,000	-	480,000	-	-	-	-	-	120,000	-	-	-	-	80,000
TOTAL RECEIPTS		850,000	-	480,000	-	-	-	-	-	120,000	-	-	-	-	80,000
DISBURSEMENTS															
Payment to Prism - March 15 Amount ²		214,125	-	-	-	-	-	-	-	-	-	-	-	-	214,125
Payment to Prism - Deficiency Holdback ²		337,460	-	-	-	-	-	-	-	-	-	-	-	-	337,460
Tenant Improvement Work ³		-	-	-	-	-	150,000	-	-	-	-	-	-	-	150,000
Property taxes ⁴		-	-	-	206,779	-	-	-	-	-	-	-	-	-	206,779
Insurance ⁵		5,500	160,000	-	-	-	-	-	-	-	-	-	-	-	165,500
Strata Fees ⁶		-	-	-	-	-	-	-	-	13,853	23,088	-	-	-	23,088
Architect ⁷		19,768	-	4,000	-	4,000	-	-	-	4,000	-	-	-	-	4,000
Consultants ⁸		20,000	-	-	-	-	-	-	-	-	-	-	-	-	20,000
Utilities ⁹		2,500	-	-	-	2,500	-	-	-	2,500	-	-	-	-	2,500
Professional Fees ¹⁰		50,000	-	-	-	75,000	-	-	-	-	50,000	-	-	-	50,000
Contingency		10,000	10,000	10,000	10,000	10,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	90,000
TOTAL DISBURSEMENTS¹¹		659,353	170,000	14,000	216,779	91,500	155,000	5,000	5,000	25,353	78,088	5,000	5,000	84,588	1,514,661
Net change in cash flow		190,647	(170,000)	466,000	(216,779)	(91,500)	(155,000)	(5,000)	(5,000)	94,647	(78,088)	(5,000)	(5,000)	(4,588)	15,339
OPENING CASH BALANCE		-	190,647	20,647	486,647	269,868	178,368	23,368	18,368	13,368	108,015	29,927	24,927	19,927	-
ENDING CASH BALANCE		190,647	20,647	486,647	269,868	178,368	23,368	18,368	13,368	108,015	29,927	24,927	19,927	15,339	15,339

Notes:

General note: The cash flow forecast statement is based on probable and hypothetical assumptions from discussions with management and various consultants involved with the project. The cash flow forecast assumes that the Receiver proceeds with Prism Construction Ltd. ("Prism") to complete the development . The forecast has been prepared solely for the purposes of this receivership proceeding. Readers are cautioned that since forecasts are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from projections, even if the assumptions materialize, and the variations could be significant. The information contained in the cash flow forecast is not intended to be relied upon by any parties in any transaction with the Companies.

1 Estimated Receiver's Borrowings to fund the receivership. The Receiver's Borrowings is currently limited to \$900,000 and the Receiver will require increase in borrowings to complete the project.

2 Payments to Prism relate to:

- i. Certificate of Payment of \$214,125 approved by the Architect on March 15, 2022 (the "**March 15 Amount**"). This amount is required to be paid within five days of the executed agreement with Prism (the "**Agreement**") ; and,
- ii. Deficiency Holdback of \$337,460. This amount is required to be paid within five days of the executed Agreement to a separate account and only disbursed to Prism once all deficiencies are completed and certified by the architect.

3 Tenant Improvement Work is a placeholder for work committed by the Companies to the pre-sale purchasers. We have requested but have not received yet an estimated cost to complete from the Companies.

4 Property Taxes relate to City of Vancouver property taxes for 2022 due July 4, 2022 of \$206,779. A portion of the 2022 property taxes will be recoverable when sales complete.

5 Insurance consists of estimated fees to date of \$5,500 and estimated costs to obtain insurance for the development property past June 15, 2022 of \$160,000. The current insurer advised that it will not be extending the insurance policy past June 15, 2022 under any circumstances. We obtained a quote of \$160,000 from Hub Insurance for a six month policy with four months minimum retained. Accordingly, two months of premiums may be recoverable.

6 Strata Fees relate to a 5% contingency reserve fund to be paid by developer (Receiver) at the time of completion of the first sale and monthly strata fees of \$23,088 per month per the interim budget prepared by the Companies.

7 Architect relates to arrears of \$19,768 to be paid to Stuart Howard Architects for pre-receivership amounts to re-start work plus estimated fees and costs to conduct deficiency walkthroughs, coordinate consultants and issue certificate of payments.

8 Consultants relate to amounts that may be required to be paid to engineers and consultants for arrears and remaining work to sign-off on the project. This is an estimate only.

9 Utilities relate to estimated monthly utility costs.

10 Professional Fees consist of estimated fees of the Receiver and its legal counsel.

11 The cash flow forecast does not include interest accruing on the existing secured loan and the estimated Receiver's borrowings.