

COURT FILE NUMBER

Clerk's Stamp

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

APPLICANTS TIMBERCREEK MORTGAGE SERVICING INC. and 2292912 ONTARIO INC.

RESPONDENTS SYMPHONY CONDOMINIUM LTD., ROCKWOOD MANAGEMENT LTD. and ALLEN WASNEA

DOCUMENT **APPLICATION TO APPOINT A RECEIVER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY  
Cassels Brock & Blackwell LLP  
Suite 3810, Bankers Hall West  
888 3<sup>rd</sup> Street SW  
Calgary, Alberta, T2P 5C5

FILING THIS DOCUMENT  
Telephone 403-351-2921  
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File No. 45109-101

**Attention: Jeffrey Oliver / Kara N. Davis**

**NOTICE TO RESPONDENT: Symphony Condominium Ltd.**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date: Friday, January 21, 2022

Time: 3:00 PM

Where: Edmonton Law Courts – Via Webex

Before Whom: Honourable Mr. Justice R. Mah – Commercial List

Go to the end of this document to see what you can do and when you must do it.

**Remedy claimed or sought:**

1. An Order, substantially in the form attached hereto as Schedule "A (the "**Receivership Order**"):
  - (a) if necessary, abridging the time for service of this application and supporting materials, to the time actually given and deeming service of notice of this application and supporting materials good and sufficient;

- (b) appointing MNP Ltd. ("**MNP**") as receiver and manager over all of the current and future assets, undertakings and properties of Symphony Condominium Ltd. ("**Symphony**" or the "**Borrower**");
2. An Order substantially in the form attached hereto as Schedule "B" sealing the Confidential Affidavit of Patrick Smith, sworn January 12, 2022.
  3. Such further and other relief, advice and directions as counsel may advise and this Honourable Court may deem just and appropriate.

#### **Grounds for making this application:**

4. Any terms not defined herein shall have the meaning ascribed to them in the Affidavit of Patrick Smith sworn January 12, 2022.

#### **Parties**

5. The Plaintiff Timbercreek Mortgage Servicing Inc. ("**Timbercreek**") is a body corporate incorporated pursuant to the laws of Ontario, and extra-provincially registered in Alberta. Timbercreek carries on business throughout Canada as a mortgage servicer.
6. The Plaintiff 2292912 Ontario Inc. ("**229 Ltd.**" and together with Timbercreek, the "**Lender**"), is a body corporate incorporated pursuant to the laws of Ontario, and extra-provincially registered in Alberta. 229 Inc. is the nominee of Timbercreek Mortgage Investment Fund and assignee of the Security (as defined below).
7. The Defendant Symphony Condominium Ltd. (the "**Symphony**" or the "**Borrower**"), is a body corporate incorporated pursuant to the laws of Alberta with a registered office in Edmonton, Alberta. Symphony is primarily a real estate developer incorporated for the purposes of constructing and selling the Symphony Tower (as that term is defined below) (the "**Symphony Project**").
8. Symphony is the successor by way of amalgamation (the "**Amalgamation**") to the following special purposes entities: Royal Park Apartment Ltd. ("**Royal**"), Lincoln Apartment Ltd. ("**Lincoln**"), Lillian Apartment Ltd. ("**Lillian**"), Broadview Apartment Ltd. ("**Broadview**"), Whitehill Apartment Ltd. ("**Whitehill**"), Malowney Apartment Ltd. ("**Malowney**"), Viewpoint Apartment Ltd. ("**Viewpoint**"), Arcade Apartment Ltd. ("**Arcade**"), Tyrone Manor Ltd. ("**Tyrone**"), Hillside Gardens Ltd. ("**Hillside**" and together with Royal, Lincoln, Lillian, Broadview, Whitehill, Malowney, Viewpoint, Arcade and Tyrone, and Symphony.
9. All references hereinafter to the Borrower include its amalgamation predecessors, as applicable.
10. The Defendant Rockwood Management Ltd. ("**Rockwood**") is a body corporate incorporated pursuant to the laws of Alberta with a registered office in Edmonton, Alberta.
11. The Defendant, Allen Wasnea ("**Wasnea**" and together with Rockwood, the "**Guarantors**" and each a "**Guarantor**"), is an individual residing in or near Edmonton, Alberta.
12. No relief is being sought as against the Guarantors pursuant to their Guarantee (as defined below) in the within application.

#### **The Properties**

##### *Symphony Tower, Parkview Apartment and Foote Residence*

13. Symphony is the developer of a 27-storey condominium building with a municipal address of 9704 106 Street NW in Edmonton, Alberta (the "**Symphony Tower**"), which is comprised of, among other things:

- (a) 143 residential condominium units (the “**Symphony Units**”); and
  - (b) 206 heated underground parking stalls (including 11 visitor stalls).
14. Symphony is also the owner of the following properties which are adjacent to the Symphony Tower:
- (a) a 3-storey multi-residential building comprising 12 rental units with a municipal address of 10612 97 Avenue NW in Edmonton, Alberta (the “**Parkview Apartment**”); and
  - (b) an adjacent single dwelling residence with a municipal address of 9704 106 Street NW in Edmonton Alberta (the “**Foote Residence**”).

### **Loan & Security Documents**

#### *Loan Facility*

15. On May 14, 2019, Symphony and the Guarantors accepted the terms of a commitment letter issued by Timbercreek as amended by an amendment to commitment letter dated June 20, 2019 (collectively, the “**Commitment Letters**”), pursuant to which Timbercreek offered the Borrower a loan facility in the total amount of \$56,380,000 (the “**Loan Facility**”).
16. Pursuant to the Commitment Letters, on July 1, 2019, Timbercreek made an initial advance to Symphony in the amount of \$52,880,000 (the “**Initial Advance**”) for the purpose of providing blanket refinancing, with the balance of the Loan Facility to be withheld by Timbercreek and advanced only upon the Borrower’s satisfaction of the certain conditions as further detailed below in paragraph 13(n).
17. The Commitment Letters contained, *inter alia*, the following terms and conditions:
- (a) the term of the Loan Facility was 24 months;
  - (b) the full amount of the Loan Facility would be joint and severally guaranteed by the Guarantors;
  - (c) on closing, the Commitment Letter was to be assigned to Computershare Trust Company of Canada (“**Computershare**”) as agent, nominee, custodian and bare trustee for and on behalf of the Lender;
  - (d) the Loan Facility and applicable documents would be serviced for and on behalf of the Lender and Computershare by Timbercreek;
  - (e) the Borrower agreed to provide the Lender with security including (among several other items as set out therein):
    - (i) a valid blanket first mortgage charge against the Lands, with the exception of the Lincoln Land and Lillian Lands over which such mortgage would be second in priority (which capitalized terms have the meaning ascribed to them below at paragraph 15(b);
    - (ii) a first priority assignment of rents and leases of the Lands; and
    - (iii) a general security agreement over all personal property relating to the Lands;
  - (f) the interest rate was the Toronto Dominion Bank prime rate (“**Prime Rate**”) plus 2.55% for the first 23 months, increased to the Prime Rate plus 4.55% thereafter (subject to a floor rate of 6.5% per annum, with interest calculated daily, compounded and payable monthly;

- (g) the Loan Facility was subject to an exit fee of 2% payable by the Borrower to Timbercreek at the earlier of maturity or repayment, to be determined and calculated by Timbercreek in accordance with the terms set out therein (the “**Exit Fee**”);
  - (h) interest only payments were payable monthly by the Borrower to Timbercreek (the “**Monthly Interest Payments**”);
  - (i) an interest reserve in the amount of \$5,000,000 (the “**Escrowed Interest Reserve**”) was to be retained by Timbercreek at source from of the Initial Advance ;
  - (j) \$215,000 would be deducted from the Escrowed Interest Reserve each month in partial satisfaction of the Monthly Interest Payments payable by the Borrower to Timbercreek (with the balance of the Monthly Interest Payment to be paid by the Borrower);
  - (k) once the Escrowed Interest Reserve was applied in its entirety to the Monthly Interest Payments, the Borrower was required to fund the Monthly Interest Payments solely from the Borrower’s own resources;
  - (l) the Borrower could repay the Loan Facility in full or in part prior to maturity upon providing Timbercreek with written notice;
  - (m) Timbercreek agreed to provide partial discharges of registration of its security on a unit by unit basis for sales of the 67 Symphony Units, 104 parking stalls, 9 car lifts and 2 storage units (collectively the “**Inventory Units**”) pledged as security by the Borrower to Timbercreek, provided that certain conditions were met; and
  - (n) Timbercreek agreed to advance the remaining balance of the Loan Facility in the approximate amount of \$3,500,000 (the “**Subsequent Advance**”) to the Borrower if, among other conditions, on or before January 31, 2020, the Borrower provided Timbercreek with a discharge statement from First National (defined below) and confirmed that a registration of a mortgage previously granted by the Borrower to First National would be discharged from the Lincoln Land (the “**FN Discharge**”).
18. On or about December 2, 2019, upon being provided with the FN Discharge, Timbercreek made the Subsequent Advance to the Borrower in the exact amount of \$3,209,976.27.
19. As of January 10, 2022, after the sale of 29 of the Inventory Units sold to date (which leaves 38 remaining Inventory Units) and other amounts are accounted for, the total amount advanced that remains due, owing and unpaid by the Borrower to the Lender is \$24,185,265.35, inclusive of interest up to and including January 10, 2022 and the Exit Fee, but exclusive of legal fees and other chargeable fees, costs, expenses and interest continuing to accrue (the “**Indebtedness**”).

## **The Lender’s Security**

### *Security Documents*

20. The Loan Facility is secured by the following security documents and related ancillary and supplemental documents (among others):
- (a) general security agreement granted by the Borrower in favour of Computershare as agent, nominee and bare trustee for and on behalf of Timbercreek (in such capacity, the “**Custodian**”), dated June 25, 2019 (the “**GSA**”), in relation to a security interest in all present and after-acquired personal property of the Borrower that is located in or upon, arising out of or used in connection with the Lands;
  - (b) mortgage in the original principal amount of \$56,380,000.00 granted by the Borrower in favour of the Custodian, dated June 25, 2019 (the “**Mortgage**”), in relation to a security interest in the following lands:

- (i) CONDOMINIUM PLAN 9023153  
UNITS 1-51 INCLUSIVE  
AND ALL UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON  
PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS  
  
(the “**Royal Land**”);
- (ii) DESCRIPTIVE PLAN 0420391  
BLOCK 4  
LOT 27A  
EXCEPTING THEREOUT ALL MINES AND MINERALS  
  
(the “**Lincoln Land**”);
- (iii) PLAN 6417AS  
BLOCK 3  
LOTS 29 AND 30  
EXCEPTING THEREOUT ALL MINES AND MINERALS OUT OF SAID LOT  
TWENTY NINE (29)  
AND EXCEPTING THEREOUT ALL MINES AND MINERALS AND THE RIGHT  
TO WORK THE SAME OUT OF SAID LOT THIRTY (30)  
  
PLAN 6417AS  
BLOCK 3  
LOT 28  
EXCEPTING THEREOUT ALL MINES AND MINERALS  
  
PLAN 6417AS  
BLOCK 3  
LOT 31  
EXCEPTING THEREOUT ALL MINES AND MINERALS  
  
PLAN 6417AS  
BLOCK 3  
LOT 32  
  
(collectively, the “**Lillian Lands**”);
- (iv) PLAN (B)  
BLOCK FIVE (5)  
LOT TWENTY EIGHT (28) AND THE SOUTH TWENTY TWO (22) FEET OF  
LOT TWENTY NINE (29)  
  
(the “**Broadview Land**”);
- (v) PLAN (B)  
BLOCK FOUR (4)  
LOT TWENTY FIVE (25)  
  
(the “**Whitehill Land**”);
- (vi) PLAN B  
BLOCK 4  
LOT 102  
EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "**Malowney Land**");

- (vii) PLAN RN61 (LXI)  
BLOCK 5  
LOT 5  
EXCEPTING THEREOUT ALL MINES AND MINERALS

PLAN RN61 (LXI)  
BLOCK 5  
LOT 6  
EXCEPTING THEREOUT ALL MINES AND MINERALS

(collectively, the "**Viewpoint Lands**");

- (viii) PLAN 6417AS  
BLOCK THREE (3)  
LOT THIRTY SIX (36)  
EXCEPTING THEREOUT : ALL THAT PORTION OF SAID LOT THIRTY SIX (36) WHICH LIES SOUTH OF A LINE DRAWN PARALLEL TO THE SOUTH BOUNDARY OF THE SAID LOT AND FIFTY (50) FEET PERPENDICULARLY DISTANT NORTHERLY THEREFROM EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "**Arcade Land**");

- (ix) PLAN (B)  
BLOCK FIVE (5)  
THE MOST EASTERLY FORTY (40) FEET THROUGHOUT OF THE MOST WESTERLY ONE HUNDRED (100) FEET THROUGHOUT OF LOTS THIRTY NINE (39) AND FORTY (40)  
EXCE THEREOUT ALL MINES AND MINERALS

PLAN (B)  
BLOCK FIVE (5)  
THE MOST EASTERLY FIFTY (50) FEET OF LOTS THIRTY NINE (39) AND FORTY (40)  
EXCEPTING THEREOUT ALL MINES AND MINERALS

PLAN (B)  
BLOCK FIVE (5)  
THE MOST WESTERLY SIXTY (60) FEET THROUGHOUT OF LOTS THIRTY NINE (39) AND FORTY (40)  
EXCEPTING THEREOUT ALL MINES AND MINERALS

(collectively, the "**Tyrone Lands**");

- (x) PLAN (B)  
BLOCK FOUR (4)  
LOT TWENTY EIGHT (28)  
EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "**Hillside Land**")

- (xi) CONDOMINIUM PLAN 1920542  
UNITS 1-7, 10-12, 14-17, 20, 21-25, 28-32, 37-39, 46, 49, 58, 65-67, 69, 72, 81, 93, 95, 102, 105-107, 109, 112, 114-118, 121-124, 126-129, 132-133, 136-138 and 140-143, INCLUSIVE AND ALL THE APPLICABLE UNDIVIDED ONE TEN

THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 1920542

UNITS 145, 146, 152, 156-160, 163, 167-168, 170-173, 181, 183, 186-187, 198-199, 201-204, 206-210, 213-216, 219, 221, 223-227, 229-230, 233-235, 239-245, 249-250, 253, 255-257, 259-262, 265-269, 271-273, 275, 277-278, 280-284, 287, 296, 299-306, 313-314, 316-317, 321-324, 326-327, 331, 335, 338-340, 342 and 344, INCLUSIVE AND ALL THE APPLICABLE UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY EXCEPTING THEREOUT ALL MINES AND MINERALS

(collectively, the “**Symphony Lands**”)

CONDOMINIUM PLAN 1920542

UNIT 346

AND 100 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY EXCEPTING THEREOUT ALL MINES AND MINERALS;

(the “**Parkview Land**” and together with the Royal Land, Lincoln Land, Lillian Lands, Broadview Land, Whitehill Land, Malowney Land, Viewpoint Lands, Arcade Land Tyrone Lands and Hillside Land, the “**Rockwood Lands**”)

(the Symphony Lands and the Rockwood Lands are collectively referred to as the “**Lands**”);

- (c) general assignment of leases and rents granted by the Borrower to the Custodian, dated June 25, 2019 (the “**Assignment of Leases and Rents**”);
- (d) general assignment of the benefit of material agreements granted by the Borrower to the Custodian, dated June 25, 2019 (“**Material Agreements Assignment**”);
- (e) environmental indemnity granted by the Borrower and the Guarantors in favour of the Custodian, dated June 25, 2019 (“**Environmental Indemnity**”);
- (f) indemnity re fraud and misrepresentation granted by the Borrower and the Guarantors in favour of the Custodian, dated June 25, 2019 (“**Fraud Indemnity**”);
- (g) assignment of insurance granted by the Borrower in favour of Timbercreek, dated June 25, 2019 (“**Insurance Assignment**”);
- (h) irrevocable order and direction to pay granted by the Borrower to Computershare and Timbercreek, dated June 25, 2019 (“**Irrevocable Direction**”);
- (i) general assignment of deposits granted by Symphony in favour of the Custodian, dated June 25, 2019 (“**Deposits Assignment**”);
- (j) general assignment of rights under agreements of purchase and sale granted by Symphony in favour of the Custodian, dated June 25, 2019 (“**Rights Assignment**”);
- (k) assignment re letters of credit granted by Symphony to Computershare and Timbercreek, dated June 25, 2019 (“**LOC Assignment**”); and
- (l) acknowledgments of the Custodian’s interest claimed in the Condominium Corporation and the Condominium Plan and associated voting rights granted or exercisable by the Custodian pursuant to the *Condominium Property Act* of Alberta and the bylaws of the Condominium Corporation (the “**Acknowledgments**” and together with the Material

Agreements Assignment, Environmental Indemnity, Fraud Indemnity, Insurance Assignment, Irrevocable Direction, Deposits Assignment, Rights Assignment and LOC Assignment, the **"Related Agreements"** and together with the Mortgage, the GSA and the Assignment of Leases and Rents, the **"Security"**).

21. The Security and in particular, section 6.1 of the Mortgage and article 7.1 of the GSA, specifically enable the Lender to appoint a receiver upon the occurrence of an "Event of Default" (as that term is defined therein).

#### *Guarantee*

22. The Loan Facility is also secured by a guarantee granted by Rockwood and Mr. Wasnea in favour of the Custodian dated June 25, 2019 (the **"Guarantee"**), in the amount of \$56,380,000.00 plus interest, costs, charges and all other monies secured, payable, due or owing or which may become secured, payable, due or owing in connection with the Security.
23. Pursuant to the Guarantee:
- (a) the Custodian is entitled to proceed against the Guarantors without any demand for payment being made to the Guarantors;
  - (b) the Guarantee is a continuing guarantee; and
  - (c) the Custodian is not bound to exhaust its recourse against the Borrower or any other person or the Security before requiring payment from the Guarantors.

#### *Registration of the Security*

24. The security interests granted under the Security and Guarantee (as applicable) were registered as follows:
- (a) a financing statement was registered in the Alberta Personal Property Registry (the **"PPR"**) as registration number 19062613332 on June 26, 2019 against the Borrower and the Guarantors (the **"Timbercreek PPR Registration"**);
  - (b) the Mortgage was registered at Land Titles as instrument number 192 166 289 on July 12, 2019 against the Lands; and
  - (c) the registration of the Assignment of Leases and Rents at Land Titles as instrument number 192 166 290 on July 12, 2019 against the Lands.

#### *Intercreditor Agreements*

25. The Custodian, on behalf of Timbercreek, is also a party to:
- (a) a subordination and standstill agreement dated June 27, 2019 (the **"First National Priority Agreement"**), pursuant to which the Lender's Security held in relation to Lincoln, Lillian and the Guarantors, including against the Lincoln Land, Lillian Land and all present and after-acquired personal property located on or used in connection with the Lincoln Land and Lillian Land (collectively, the **"Lillian & Lincoln Security"**), was postponed to First National's security interest in the Lillian & Lincoln Security;
  - (b) a subordination and standstill agreement dated June 27, 2019 (the **"Canada ICI Priority Agreement"**), pursuant to which Canada ICI's security interest held in relation to the Borrower and the Guarantors, including against the Lands and all present and after-acquired personal property located on or used in connection with the Lands, was postponed to the Security; and



- (c) postponements dated June 26, 2019 (the “**Canada ICI Postponements**”), pursuant to which, Canada ICI agreed to postpone its caveats registered at Land Titles and associated rights in the Lands to Computershare’s Security.
- 26. On July 12, 2019, the Canada ICI Postponements were registered as various instrument numbers against the Lands.
- 27. On November 8, 2019, Canada ICI registered an amendment to a PPR registration dated March 20, 2019 and bearing registration number 19031929727 (the “**Canada ICI PPR Registration**”) to indicate, among other things, that the Canada ICI PPR Registration is postponed to the Timbercreek PPR Registration.

### **Assignment of the Security**

- 28. On October 7, 2021, Computershare, in its own capacity and in its capacity as Custodian, unconditionally assigned all of its rights, obligations and interests under the Commitment Letters, Security and all other documents, instruments and other agreements delivered in connection with the Security, to 229 Inc. pursuant to an assignment agreement (the “**Assignment Agreement**”).

### **Events of Default**

- 29. The Loan Facility matured on July 1, 2021 (the “**Maturity Date**”).
- 30. The Borrower has committed Events of Default under the terms of the Commitment Letter as a result of, among other things, failing to repay the outstanding amount due and owing under the Loan Facility on or before Maturity Date.
- 31. The Escrowed Interest Reserve was exhausted by June 2021 and the Borrower has not paid the Monthly Interest Payments from its own resources since June 2021.

### **Demand Letters and Notice of Intention to Enforce Security**

- 32. In connection with the Events of Default, on October 25, 2021 the Lender, via its counsel, sent the following:
  - (a) demand letters to each of the Borrower and Guarantors (collectively, the “**Demand Letters**”); and
  - (b) notices of intention to enforce security under the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”) to the Borrower (collectively, the “**NOIs**”).
- 33. The 10-day period referenced in section 244(2) of the BIA has since expired.

### **Agreement of Purchase and Sale**

- 34. On November 30, 2021, certain properties of the Borrower referenced in paragraph 15(b) were sold to a purchaser pursuant to an agreement of purchase and sale (the “**APS**”).
- 35. Pursuant to the APS:
  - (a) \$750,434.85 was paid to First National Financial in satisfaction of a prior registered mortgage against certain of the sold properties; and
  - (b) \$18,975,400.68 was paid to Timbercreek, in partial reduction of the then outstanding indebtedness.

### **Appointment of Receiver**

36. The Loan Facility remains in default and has matured. The Debtor and Guarantors have failed to comply with the Demand Letters requiring the immediate repayment of the Indebtedness. As such, the full amount of the Indebtedness remains due, owing and payable immediately.
37. The Applicants seek the appointment of a receiver and manager over all of Symphony's property, assets and undertakings in order to undertake the realization of the collateral that is subject to the Security. A court-appointed receiver is the most efficient and just process available in the circumstances, and is far superior to any other legal process available to the Applicants.
38. The Security provides for the appointment of a receiver.
39. For the foregoing reasons, it is just and convenient to appoint a receiver over the property, assets, undertakings and properties of Symphony.
40. MNP Ltd. has consented to act as receiver and manager of the assets, undertakings and properties of Symphony.

### **Sealing Order**

41. The Applicants seek an order directing the sealing of the Confidential Affidavit of Patrick Smith (the "Sealing Order").
42. The Confidential Affidavit contains commercially sensitive relating to a third-party's valuation of certain of the Symphony Units and the potential sales and value maximization strategy with respect to the same.
43. The disclosure of the information contained in the Confidential Affidavit could adversely affect the Receiver's efforts to maximize value of Symphony's Assets.
44. The proposed form of Sealing Order is the least restrictive and prejudicial alternative to prevent the disclosure of commercially sensitive information. The benefits of a Sealing Order outweigh any negative effects on the interests of the public.

### **Material or evidence to be relied on:**

41. Statement of Claim;
42. Affidavit of Patrick Smith sworn January 12, 2022;
43. Confidential Affidavit of Patrick Smith sworn January 12, 2022;
44. Affidavit of Richard Kay, to be filed;
45. Affidavit of Service of Richard Kay, to be filed;
46. The Consent to Act as Receiver executed by MNP; and
47. Such further and other materials as counsel may advise and this Honourable Court may permit.

### **Applicable rules:**

48. The *Alberta Rules of Court*, including Rules 1.2, 1.3, 1.4, 6.1, 6.2, 6.3 and 6.47; and
49. Such further and other rules as counsel may advise and this Honourable Court may permit.

### **Applicable Acts and regulations:**

50. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and in particular section 243 thereof;
51. *Judicature Act*, RSA 2000, c J-2, as amended, and in particular section 13(2) thereof; and
52. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

**Any irregularity complained of or objection relied on:**

53. None.

**How the application is proposed to be heard or considered:**

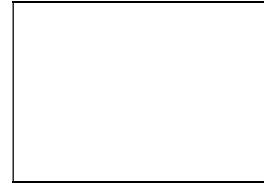
54. Via Webex.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A"

Clerk's Stamp:



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APPLICANTS:

RESPONDENTS:

DOCUMENT

CONTACT

INFORMATION OF

PARTY FILING THIS

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TIMBERCREEK MORTGAGE SERVICING INC. and 2292912  
ONTARIO INC.

SYMPHONY CONDOMINIUM LTD., ROCKWOOD MANAGEMENT  
LTD. and ALLEN WASNEA

**RECEIVERSHIP ORDER**

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888 3<sup>rd</sup> Street SW  
Calgary, Alberta, T2P 5C5

Telephone 403-351-2921  
Facsimile 403-648-1151  
Email: joliver@cassels.com / kdavis@cassels.com

File No. 45109-101

**Attention: Jeffrey Oliver / Kara N. Davis**

**DATE ON WHICH ORDER WAS PRONOUNCED:** January 21, 2022

**NAME OF JUDGE WHO MADE THIS ORDER:** The Honourable Mr. Justice R. Mah

**LOCATION OF HEARING:** Edmonton, Alberta

**UPON** the application of Timbercreek Mortgage Servicing Inc. and 2292912 Ontario Inc. (the “**Applicants**”) in respect of Symphony Condominium Ltd. (the “**Debtor**”); **AND UPON** having read the Application, the Affidavit of Patrick Smith, sworn January 12, 2022, and the Affidavit of Service of Richard Kay, filed; **AND UPON** reading the consent of MNP Ltd. to act as receiver and manager (the “**Receiver**”) of the Debtor, filed; **AND UPON** hearing counsel for the Applicants, counsel for the proposed Receiver and any other counsel or other interested parties present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

### **SERVICE**

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

### **APPOINTMENT**

2. Pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) and section 13(2) of the *Judicature Act*, R.S.A. 2000, c.J-2, MNP Ltd. is hereby appointed Receiver, without security, of all of the Debtor’s current and future assets, undertakings and properties, of every nature and kind whatsoever, and wherever situate, including all proceeds thereof and including, without limitation, those lands and premises with the legal descriptions set out on Schedule “A” hereto (collectively, the “**Property**”).

### **RECEIVER'S POWERS**

3. The Receiver is hereby 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 hereby 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 proceeds, 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, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
  - (c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, property managers, maintenance staff, 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) subject to further order of this Court, to instruct on behalf of the Debtor any and all listing agents and brokers, sales agents and other agents or consultants with respect to the marketing of any of the Property in accordance with agreements or other arrangements existing as of the date of this Order;
- (f) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (h) to settle, extend or compromise any indebtedness owing to or by the Debtor;
- (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 Debtor, for any purpose pursuant to this Order;
- (j) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;
- (l) to take such steps from time to time as the Receiver deems necessary or desirable in order to complete the sales of any of the Property agreed to by the Debtor prior to the making of this Order, in each case to the extent such sales are consented to by the Applicants (each, a "**Pending Sale**"), and to execute any documents and make any registrations on behalf of the Debtor with the Registrar of Land Titles and otherwise in order to effect the completion of such Pending Sales;

- (m) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$300,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, R.S.A. 2000, c. P-7 or any other similar legislation in any other province or territory shall not be required.
- (n) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (p) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered not later than ten days after the date on which this Order is made by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c. L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity;
- (q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (s) to exercise any contractual, shareholder, partnership, joint venture or other rights which the Debtor may have, including with respect to its rights as a member of Condominium Corporation No. 1920542; and
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

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

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

4. (i) The Debtor, (ii) all of its 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 (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 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 the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to 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 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 onto paper 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 in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

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

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

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) 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 (ii) affect a Regulatory Body's investigation in respect of the Debtor or an action, suit or proceeding that is taken in respect of the Debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. **"Regulatory Body"** means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

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

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Debtor or the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided, however, that nothing in this Order shall:
  - (a) empower the Debtor to carry on any business that the Debtor is not lawfully entitled to carry on;

- (b) prevent the filing of any registration to preserve or perfect a security interest;
  - (c) prevent the registration of a claim for lien; or
  - (d) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment.
10. Nothing in this Order shall prevent any party from taking an action against the Applicant where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

#### **NO INTERFERENCE WITH THE RECEIVER**

11. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, except with the written consent of the Debtor and the Receiver, or leave of this Court.

#### **CONTINUATION OF SERVICES**

12. All persons having:
- (a) statutory or regulatory mandates for the supply of goods and/or services; or
  - (b) oral or written agreements or arrangements with the Debtor, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtor

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Debtor or exercising any other remedy provided under such agreements or arrangements. The Debtor shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Debtor in accordance with the payment practices of the Debtor, or such other practices as may be agreed upon by the supplier or service provider and each of the Debtor and the Receiver, or as may be ordered by this Court.

13. Any tenant or other Person who occupies a unit in the Property pursuant to any lease, or agreement to lease, licence or other form of agreement, whether written or oral (each a “**Lease**”), shall pay to the Receiver and not to any other Person all rent due to the Debtor pursuant to the terms of the Lease as and when due.

#### **RECEIVER TO HOLD FUNDS**

14. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

#### **EMPLOYEES**

15. Subject to employees’ rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor’ behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47 (“**WEPPA**”).
16. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## LIMITATION ON ENVIRONMENTAL LIABILITIES

17. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
- (i) before the Receiver's appointment; or
  - (ii) 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.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for 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,
- (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
    - A. complies with the order, or
    - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
  - (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,
    - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
    - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or

- (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

- 18. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the BIA.

#### **RECEIVER'S ACCOUNTS**

- 19. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, which charge shall not exceed an aggregate amount of \$250,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) of the BIA.
- 20. The Receiver and its legal counsel shall pass their accounts from time to time.
- 21. 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 the legal fees and disbursements, incurred at the normal 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**

- 22. The Receiver be at liberty and it is hereby 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 \$250,000 (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it 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 hereby 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, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

23. 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.
24. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “B” hereto (the **“Receiver’s Certificates”**) for any amount borrowed by it pursuant to this Order.
25. 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.
26. The Receiver shall be allowed to repay any amounts borrowed by way of Receiver’s Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

#### **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 various assets comprising the Property.

#### **GENERAL**

28. Notwithstanding any other provision of this Order, but subject to the prior receipt of a written legal opinion from its independent counsel as to the validity and enforceability of the security granted by the Debtor to the applicable Applicant, the Receiver is entitled but not obligated to make one or more interim distributions to an Applicant of any net proceeds arising out of the completion of any Pending Sales. Any such interim distribution(s) shall be without prejudice to the Receiver’s right to require the return of such net proceeds from such Applicant in the event that the Receiver or this Honourable Court determines that the security granted in favour of such Applicant is invalid, unenforceable or ranks junior in priority to any other interest in such net proceeds.

29. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
30. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
31. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
32. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby 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, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
33. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that 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.
34. The Plaintiff shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtor' estate with such priority and at such time as this Court may determine.
35. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

**FILING**

36. The Receiver shall establish and maintain a website in respect of these proceedings at <https://mnpdebt.ca/en/corporate/corporate-engagements/symphony-condominium-ltd> (the “**Receiver’s Website**”) and shall post there as soon as practicable:
- (a) all materials prescribed by statute or regulation to be made publicly available; and
  - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
37. Service of this Order shall be deemed good and sufficient by:
- (a) serving the same on:
    - (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
    - (ii) any other person served with notice of the application for this Order;
    - (iii) any other parties attending or represented at the application for this Order; and
  - (b) posting a copy of this Order on the Receiver’s Website
- and service on any other person is hereby dispensed with.
38. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

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Justice of the Court of Queen’s Bench of Alberta



**SCHEDULE "A"**

**LEGAL DESCRIPTIONS OF REAL PROPERTY SUBJECT TO RECEIVERSHIP ORDER**

**SCHEDULE "B"**

**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that MNP Ltd., the receiver and receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of Symphony Condominium Ltd. appointed by Order of the Court of Queen's Bench of Alberta and Court of Queen's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "Court") dated the 21st day of January, 2022 (the "**Order**") made in action numbers [●], 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 [ \$ ] that 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 Bank 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 (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such 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 so as 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 in respect of which it may issue certificates under the terms of the Order.

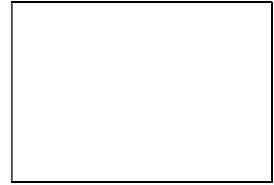
DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

MNP Ltd., solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

Schedule "B"

Clerk's Stamp:



COURT FILE NUMBER

COURT

JUDICIAL CENTRE OF

APPLICANTS:

RESPONDENTS:

DOCUMENT

CONTACT

INFORMATION OF

PARTY FILING THIS

DOCUMENT:

COURT OF QUEEN'S BENCH OF ALBERTA

EDMONTON

TIMBERCREEK MORTGAGE SERVICING INC. and 2292912  
ONTARIO INC.

SYMPHONY CONDOMINIUM LTD., ROCKWOOD MANAGEMENT  
LTD. and ALLEN WASNEA

**SEALING ORDER**

Cassels Brock & Blackwell LLP  
Suite 3810, Bankers Hall West  
888 3<sup>rd</sup> Street SW  
Calgary, Alberta, T2P 5C5

Telephone 403-351-2921  
Facsimile 403-648-1151  
Email: joliver@cassels.com / kdavis@cassels.com

File No. 45109-101

**Attention: Jeffrey Oliver / Kara N. Davis**

**DATE ON WHICH ORDER WAS PRONOUNCED:** January 21, 2022

**NAME OF JUDGE WHO MADE THIS ORDER:** The Honourable Mr. Justice R. Mah

**LOCATION OF HEARING:** Edmonton, Alberta

**UPON** the application of Timbercreek Mortgage Servicing Inc. and 2292912 Ontario Inc. (the "**Applicants**") for the appointment of a receiver and manager of the assets, properties and undertakings of Symphony Condominium Ltd. (the "**Debtor**") and a sealing order; **AND UPON** having read the Affidavit of Patrick Smith, sworn January 12, 2022 and the Confidential Affidavit of Patrick Smith, sworn January 12, 2022 (the "**Confidential Affidavit**"); **AND UPON** hearing counsel for the Applicants, counsel for the proposed Receiver and any other counsel or other interested parties present;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

1. Service of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

#### **SEALING ORDER**

2. The Confidential Affidavit shall be sealed on the Court file, notwithstanding Division 4 of Part 6 of the *Alberta Rules of Court*, Alta Reg 124/2010, until further order of this Honourable Court.
3. The Clerk of the Court shall file the Confidential Affidavit in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS FILED IN COURT FILE NO. [insert]. THE CONFIDENTIAL MATERIALS ARE SEALED PURSUANT TO THE SEALING ORDER ISSUED BY THE HONOURABLE MR. JUSTICE R. MAH ON JANUARY 21, 2022 UNTIL FURTHER ORDER OF THE COURT, AND ARE NOT TO BE PLACED ON THE PUBLIC RECORD OR MADE PUBLICLY ACCESSIBLE.

4. Any party may apply to set aside paragraph 2 of this order upon providing the parties to this proceeding and all other interested parties with 5 days notice of such application.
5. Service of this order shall be deemed good and sufficient by serving same on the persons listed on the service list utilized for the within application (the "**Service List**").
6. Service of this order on any party not listed in the Service List is hereby dispensed with.

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J.C.Q.B.A