

James D Burns*
 Jeffrey B Lightfoot*
 Christopher P Weafer*
 Gregory J Tucker, QC* ** **
 Laura A Wright
 James H McBeath*
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 Charlene R Joanes
 Lucky D Johal

Duncan J Manson*
 Daniel W Burnett, QC*
 Ronald G Paton*
 Gary M Yaffe*
 Harley J Harris*
 Jennifer M Williams*
 Scott H Stephens*
 David W P Moriarty
 Katharina R Spatzl*
 Steffi M Boyce
 H Hailey Graham

Alan A Frydenlund, QC* *
 Harvey S Delaney*
 Paul J Brown*
 Heather E Maconachie
 Jonathan L Williams*
 Kari F Richardson*
 James W Zaitsoff*
 Daniel H Coles* *
 Sameer Kamboj
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Allison R Kuchta*
 James L Carpick*
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 Terence W Yu*
 Michael F Robson*
 Paul A Brackstone* *
 Pamela E Sheppard*
 Jocelyn M Bellerud*
 Brian Y K Cheng**
 Georgia Barnard

Rose-Mary L Basham, QC, Associate Counsel*
 Josephine M Nadel, QC, Associate Counsel*
 Hon Walter S Owen, QC, QC, LLD (1981)
 John I Bird, QC (2005)

* Law Corporation
 * Also of the Yukon Bar
 ** Also of the Alberta Bar
 ** Also of the Ontario Bar
 ** Also of the Washington Bar

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Our File: 22868-0112

January 29, 2020

VIA EMAIL gg@gdlaw.ca

GEHLEN DABBS LAWYERS
 1201 – 1030 West Georgia Street
 Vancouver, BC V6E 2Y3
 Attention: Gregory J. Gehlen

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 Attention: William L. Roberts

VIA EMAIL jwest@watsongoepel.com

WATSON GOEPEL LLP
 Suite 1200-1075 West Georgia Street
 Vancouver, BC V6E 3C9
 Attention: Jeremy D. West

VIA COURIER

FBM CANADA GSD, INC.
 c/o Armitstead & Company
 320 – 31935 South Fraser Way
 Abbotsford, BC V2T 5N7

VIA COURIER

TUCUVAN CONSTRUCTION LTD.
 c/o McLean & Armstrong LLP
 300 – 1497 Marine Drive
 West Vancouver, BC V7T 1B8

VIA COURIER

1223293 B.C. LTD.
 c/o Zahra Jenab & Company Law Corporation
 #220 – 545 Clyde Avenue
 West Vancouver, BC V7T 1C5

VIA EMAIL bill.olaguera@mcmillan.ca and
vicki.tickle@mcmillan.ca

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 Attention: Bill Olaguera/Vicki Tickle

VIA EMAIL dhyndman@kmslawyers.com

KORNFELD LLP
 1100-505 Burrard Street, Box 11
 Vancouver, BC V7X 1M5
 Attention: Douglas B. Hyndman

VIA COURIER

MEDINA CONCRETE SERVICES LTD.
 Suite 1200 – 925 West Georgia Street
 Vancouver, BC V6C 3L2
 Attention: Tim M. Sportschuetz

VIA COURIER

OMNI DRYWALL LTD.
 #105 – 13423 78A Street
 Surrey, BC V3W 0A8

VIA COURIER

RAHUL GLASS LTD.
 #104-8655 130 Street
 Surrey, BC V3W 1V9

Dear Sirs:

**Re: PEOPLES TRUST COMPANY vs. CENSORIO GROUP (HASTINGS & CARLETON)
 HOLDINGS LTD. et al - S.C.B.C., Vancouver Registry, Action Number H-200039**

January 29, 2020

Page 2

Please find enclosed for service upon you as a Respondent in the above-captioned proceeding the following:

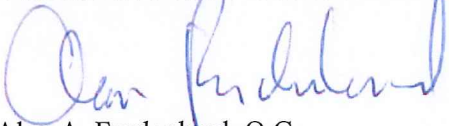
1. Filed Requisition – Short Notice and Order By Endorsement by Master Keim;
2. Filed Notice of Application *to appoint a Receiver and Manager*;
3. Filed Petition to the Court;
4. Filed Amended Petition to the Court;
5. Filed Affidavit #1 of Jonathan Wong;
6. Filed Affidavit #2 of Jonathan Wong; and
7. Filed Affidavit #1 of Liisa Wilder.

Please note that the Notice of Application will be heard on Wednesday, February 5, 2020 at 9:45 am at the Vancouver Supreme Court Registry, Judges Chambers, at 800 Smithe Street, Vancouver, BC

Kindly acknowledge service of these documents by signing, dating and returning the enclosed duplicate copy of this letter at your earliest convenience.

Yours truly,

OWEN BIRD LAW CORPORATION



Alan A. Frydenlund, Q.C.

AAF/arl
Encls.

COPY

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Gregory J Tucker, QC* ** ***
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Our File: 22868-0112

January 29, 2020

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Attention: Bill Olaguera/Vicki Tickle

VIA EMAIL dhyndman@kmslawyers.com

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RAHUL GLASS LTD.
#104-8655 130 Street
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Dear Sirs:

**Re: PEOPLES TRUST COMPANY vs. CENSORIO GROUP (HASTINGS & CARLETON)
HOLDINGS LTD. et al - S.C.B.C., Vancouver Registry, Action Number H-200039**

{01495796;1}

COPY

Please find enclosed for service upon you as a Respondent in the above-captioned proceeding the following:

1. Filed Requisition – Short Notice and Order By Endorsement by Master Keim;
2. Filed Notice of Application *to appoint a Receiver and Manager;*
3. Filed Petition to the Court;
4. Filed Amended Petition to the Court;
5. Filed Affidavit #1 of Jonathan Wong;
6. Filed Affidavit #2 of Jonathan Wong; and
7. Filed Affidavit #1 of Liisa Wilder.

Please note that the Notice of Application will be heard on Wednesday, February 5, 2020 at 9:45 am at the Vancouver Supreme Court Registry, Judges Chambers, at 800 Smith Street, Vancouver, BC

Kindly acknowledge service of these documents by signing, dating and returning the enclosed duplicate copy of this letter at your earliest convenience.

Yours truly,

OWEN BIRD LAW CORPORATION

Alan A. Frydenlund, Q.C.

AAF/arl
Encls.

SERVICE/DELIVERY OF A TRUE COPY
IS HEREBY ACKNOWLEDGED
this day of January/February, 2020.

Solicitor for



FORM 17.1 (RULE 8-5(2))

No. H 200039
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PEOPLES TRUST COMPANY

Petitioner

AND:

CENSORIO GROUP (HASTINGS & CARLETON)
HOLDINGS LTD.

PETER CENSORIO also known as PETER ANTHONY CENSORIO
and PETER ANTHONY CENSORIO

STRADA 39 TRUST

BANCORP GROWTH MORTGAGE FUND II LTD.
BANCORP BALANCED MORTGAGE FUND II LTD.
BANCORP FINANCIAL SERVICES INC.

PK CAPITAL LTD.

ALL CANADIAN INVESTMENT CORPORATION
FBM CANADA GSD, INC.

MEDINA CONCRETE SERVICES LTD.

TUCUVAN CONSTRUCTION LTD.

OMNI DRYWALL LTD.

1223293 B.C. LTD.

RAHUL GLASS LTD.

SERIN INVESTMENTS LTD.

CLARION PROPERTY CORPORATION

G. I. H. PROPERTIES LTD.

BARRY CHARLES HOLDINGS LTD.

BECISON HOLDING CORPORATION

SANDRA CHAPPELL

CREST CAPITAL CORPORATION

DURHAM CAPITAL MANAGEMENT INC.

YORK VENTURES LTD.

HI-GROVE HOLDINGS (1995) LTD.

DIANE RAUCH

JEFFREY RAUCH

GERHARD RAUCH

HELGA RAUCH

PAVILION INVESTMENTS INC.

RODNEY GRANT KENYON

ALAN LONG

MANDATE MANAGEMENT CORPORATION

Respondents

REQUISITION – SHORT NOTICE

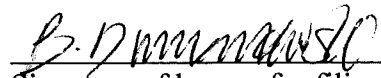
Filed by: **The Petitioner, Peoples Trust Company**

Required: an order under Rule 8-5(1) that the main application be brought on short notice.

This requisition is supported by the following:

1. Notice of Application, dated January 29, 2020;
2. Affidavit #2 of Jonathan Wong, made January 29, 2020.

Date: January 29, 2020



Signature of lawyer for filing party
Brittney Dumanowski, Articled Student

ORDER BY ENDORSEMENT

Date set for hearing of main application: February 5, 2020

Conditions for Service:

Service by applicant of Notice of Application and applicant's affidavits with this order on the respondent(s) having a registered interest in the subject lands before 12:00 a.m. (p.m.) on January 30, 2020.

Service of respondent(s)'s Application Response and affidavits on applicant ~~anytime~~ by 4 pm on February 3, 2020.

Other Conditions:

1. Application ~~copy~~ record to be filed by 12:00 pm February 4, 2020.
2. Service of the Notice of Application and affidavits to be in accordance with the attached schedule.

Endorsed:

Judge/Master/Registrar 

Date January 29, 2020

SCHEDULE "A"

1. Service on counsel, Greg Gehlen, by email (gg@gdlaw.ca) for the respondents Censorio Group (Hastings & Carleton) Holdings Ltd., Peter Censorio also known as Peter Anthony Censorio and Peter Anthony Censorio, and Strada 39 Trust;
2. Service on counsel, William L. Roberts, by email (wroberts@lawsonlundell.com) for the respondents Bancorp Growth Mortgage Fund II Ltd., Bancorp Balanced Mortgage Fund II Ltd., Bancorp Financial Services Inc.;
3. Service on counsel, Bill Olaguera, by email (bill.olaguera@mcmillan.ca) for the respondent PK Capital Ltd.;
4. Service on counsel, Jeremy West, by email (jwest@watsongoepel.com) and monitor, Doug Hyndman, by email (dhyndman@kmslawyers.com) for the respondent All Canadian Investment Corporation; and
5. Service on the following lien claimants as follows:
 - a. FBM Canada GSD, Inc. by courier to the lien claimant address for service as particularized in the claim of builders lien;
 - b. Medina Concrete Services Ltd. by courier to the lien claimant address for service as particularized in the claim of builders lien;
 - c. Tucuvan Construction Ltd. by courier to the lien claimant address for service as particularized in the claim of builders lien;
 - d. Omni Drywall Ltd. by courier to the lien claimant address for service as particularized in the claim of builders lien;
 - e. 1223293 B.C. Ltd. by courier to the lien claimant address for service as particularized in the claim of builders lien; and
 - f. Rahul Glass Ltd. by courier to the lien claimant address for service as particularized in the claim of builders lien.



FORM 32 (RULE 8-1(4))

No. H 200039
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PEOPLES TRUST COMPANY

Petitioner

AND:

CENSORIO GROUP (HASTINGS & CARLETON)
HOLDINGS LTD.
PETER CENSORIO also known as PETER ANTHONY CENSORIO
and PETER ANTHONY CENSORIO
STRADA 39 TRUST
BANCORP GROWTH MORTGAGE FUND II LTD.
BANCORP BALANCED MORTGAGE FUND II LTD.
BANCORP FINANCIAL SERVICES INC.
PK CAPITAL LTD.
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HELGA RAUCH
PAVILION INVESTMENTS INC.
RODNEY GRANT KENYON
ALAN LONG
MANDATE MANAGEMENT CORPORATION

Respondents

NOTICE OF APPLICATION

Name of applicant: PEOPLES TRUST COMPANY

To: The Respondents and to their Solicitors

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia V6Z 2E1 on ~~January 29, 2020~~, at 9:45 am. for the orders set out in Part 1 below. **FEB 05 2020**

Part 1: ORDERS SOUGHT

1. An order appointing D. Manning & Associates Inc. as Receiver and Manager over all of the undertakings, property and assets of CENSORIO GROUP (HASTINGS & CARLETON) HOLDINGS LTD., acquired for, or used in relation to a business carried on by the Debtor in constructing residential and commercial strata lots located at 4223-4229 Hastings Street, Burnaby, British Columbia, legally described as, City of Burnaby, Parcel Identifier 029-877-555, Lot 1, District Lot 121, Group 1, New Westminster District, Plan EPP56644 (the "Lands"), coming on for hearing this day at Vancouver, British Columbia, in accordance with the form of order attached as Schedule "A".

Part 2: FACTUAL BASIS

Parties and Indebtedness

1. The Petitioner, PEOPLES TRUST COMPANY, is a trust company extra-provincially registered in B.C. with an address for service in these proceedings c/o 2900 – 595 Burrard Street, Vancouver, B.C. V7X 1J5.
2. The Respondent, CENSORIO GROUP (HASTINGS & CARLETON) HOLDINGS LTD., (the "Debtor") is the registered owner of the Lands and the Property and as such borrowed monies from the Petitioner, the Bancorp Respondents and the Respondent, PK Capital Ltd., all of whom are mortgagees (the Petitioner is the first mortgagee), for the purpose of constructing 1 commercial and 28 residential strata lots located on the Lands (the "Development") with approximate balances owing to those parties as follows:
 - (a) Petitioner \$11,000,000;

(b) Bancorp Respondents \$4,000,000;

(c) PK Capital Ltd. \$800,000.00;

it being the Debtors' intention to strata title the Development and sell the strata lots.

3. The Respondent, All Canadian Investment Corporation, claims a beneficial interest and mortgage in and to the Lands, subsequent in priority to the Petitioner and says to be owed \$2,374,468.34 by the Debtor.

4. The Respondents, Peter Censorio and Strada 39 Trust, are covenantors of the obligations of the Debtor to the Petitioner.

5. The following Respondents hold Claims of Builders' Lien registered against the Lands:

(a) FBM CANADA GSD, INC. \$36,115.27;

(b) MEDINA CONCRETE SERVICES LTD. \$33,325.55;

(c) TUCUVAN CONSTRUCTION LTD. \$41,027.71;

(d) OMNI DRYWALL LTD. \$93,593.43;

(e) 1223293 B.C. LTD. \$27,835.77;

(f) RAHUL GLASS LTD. \$38,100;

(collectively the "Liens").

6. The balance of the named Respondents hold interests registered in the Personal Property Registry subsequent in priority to the Petitioner.

7. The Petitioner has commenced these proceedings as the Debtor is in default and, unable to complete the Development.

Current Status of the Development

8. The Development has 23 presales (22 residential, 1 commercial) and 5 unsold units and the Debtor is not proceeding with the Development.

9. The Development is 91.7% complete according to a Narrative Appraisal conducted by Grover Elliott & Co. Ltd. (the “Appraiser”) January 12, 2020 who say that the value of the Lands is as follows:
 - (a) “As Is” \$17,100,000, which allows a 5% developers profit for completing the Development;
 - (b) Based on current presales (assuming that they close) and the market value of unsold (not yet presold) units \$19,000,000;
 - (c) Value at current market without presales \$22,000,000.

10. The Appraiser says the:
 - (a) highest and best use is to complete the Development;
 - (b) previously contracted residential presales average a price of \$692 per square foot;
 - (c) unsold (not yet presold) residential units in the Development would sell at an estimated \$808 per square foot;
 - (d) quoted costs to complete the Development are \$968,874.

11. If the Lands and Development are sold “As Is” for \$17,100,000 there will be shortfalls for the lien claimant respondents as well as perhaps others.

Receiver Necessary

12. The Petitioner’s loan is fully due and payable and the only way to recover is to sell the Lands “as is” or by completing the Development, the latter of which generates a better recovery for the stakeholders which will be best achieved by the appointment of Receiver and Manager to complete construction, strata title and sell the Development.

13. The mortgage of the Lands in favour of the Petitioner (s.12.1 - 12.6) grants the Petitioner the contractual right to the appointment of a receiver over the Debtor and the Development.

14. The general security agreement over the Debtor and the Debtor's property in favour of the Petitioner grants the Petitioner the contractual right to appoint a receiver over the Debtor (s. 18.1 - 18.4) and its assets.
15. The Development is partially constructed and may be wasting, completing construction will add value relative to the costs.
16. The Debtor appears insolvent as trades are unpaid and the Lands have multiple Claims of Builders' Lien registered against it and construction to the Development has stopped.

Revisions to Model Order

17. The order sought is substantially in the form of a model order. The primary revisions involve:
 - (a) completing construction of the Development and addressing New Home Warranty;
 - (b) the Petitioner advancing monies to the Receiver to fund the costs to complete construction and sell the Development in priority to all parties, including Builders' Lien claimants;
 - (c) permitting some distributions before the final passing of accounts permitting the Receiver to effectively pay proven, undisputed and other claims that the Receiver has comfort in paying.

Part 3: LEGAL BASIS

Receiver

1. A secured creditor is entitled to the appointment of a receiver and manager as a matter of course where default has occurred under the security. The court should only exercise its discretion not to make such an appointment only in those rare occasions where the debtor can show compelling commercial or other reasons why such an order ought not to be made.

United Savings Credit Union v. F & R Brokers Inc., 2003 BCSC 604
Canadian Imperial Bank of Commerce v. Can-Pacific Farms Inc., 2012 BCSC 437

2. Default in the present case has occurred. Accordingly, the appointment of a receiver and manager ought to go as a matter of course.

3. The appointment may be made under the *Law and Equity Act* where “just or convenient.”

Textron Financial Canada Ltd. v. Chetwynd Motels Ltd., 2010 BCSC 477

4. Where the security instrument governing the relationship between the debtor and the secured creditor provides for a right to appoint a receiver upon default, the burden on the applicant is relaxed. While the appointment of a receiver is generally regarded as an extraordinary equitable remedy, the nature of the remedy is not extraordinary or equitable in circumstances where commercial parties have expressly contemplated the appointment in a contract governing their relationship.

Textron at paras 50 and 75

Bank of Nova Scotia v. Freure Village on Clair Creek, [1996] O.J. No. 5088 (G.D.) at para 12

Canadian Tire Corp. v. Healy, [2011] O.J. No. 3498 (S.C.J.) at para 18

Bank of Montreal v. Carnival National Leasing Limited, [2011] O.J. No. 671 (S.C.J.) at para 27

Farallon Investments Ltd. v. Bruce Pallett Fruit Farms Ltd., [1992] O.J. No. 330 (G.D.) at paras 2 - 6

5. In the present case, the parties agreed to the appointment of a receiver upon default in the contracts governing their relationship. Other factors militating in favour of the appointment of a receiver and manager include:

- a) The Debtor is apparently insolvent and unable to complete the Development;
- b) In the absence of a receiver there is no efficient and effective method for the Development to be completed, sold and the Loan to be repaid without prejudicing subsequent stakeholders.

Funding in Priority to Lien Claims

6. S. 32 of the Builders’ Lien Act:

32 (1) Subject to subsection (2), the amount secured in good faith by a registered mortgage as either a direct or contingent liability of the mortgagor has priority over the amount secured by a claim of lien.

(2) Despite subsection (1), an advance by a mortgagee that results in an increase in the direct or contingent liability of a mortgagor, or both, under a registered mortgage occurring after the time a claim of lien is filed ranks in (3) In a proceeding for the enforcement of a claim of lien,

(a) the court may order the sale of mortgaged land at an upset price of at least the amount secured by all registered mortgages that have priority over the claim of lien, court ordered costs and the costs of the sale, and

(b) the amount secured by any registered mortgages must be satisfied out of the proceeds of the sale in the order of their priorities and in priority over the claim of lien to the extent provided under this section.

(4) A mortgagee who applies mortgage money in payment of a claim of lien that has been filed is subrogated to the rights and priority of the lien claimant to the extent of the money applied.

(5) Despite subsections (1) and (2) or any other enactment, if one or more claims of lien are filed in a land title office in relation to an improvement, a mortgagee may apply to the court for an order that one or more further advances under the mortgage are to have priority over the claims of lien.

(6) On an application by a mortgagee under subsection (5), the court must make the order if it is satisfied that

(a) the advances will be applied to complete the improvement, and

(b) the advances will result in an increased value of the land and the improvement at least equal to the amount of the proposed advances.

7. Citing *Bank of Montreal v. Peri Formwork Systems Inc.* (BCCA) at paras 68 & 69:

The purpose of ss. 32(5) and (6), interpreted within the overall scheme of the Builders Lien Act, is consistent with the goal of promoting the interests of multiple stakeholders in the industry by, in specific circumstances, enabling the completion of projects that encounter financial difficulty. The lender must satisfy the court that the

advances will increase the value of the land, that the increase in value will at least match the value of the advance, and that the loan will be applied to complete an improvement. These requirements protect the lien holder by providing assurance that the advance will not ultimately increase the proportion of the secured debt ranking in priority to the lien.

The question that remains however is just how broad the Legislature intended the exception to be. In other words, whether the words "further advances" are broad enough to include any loan secured by a mortgage or whether additional advances given by the same mortgagee that are not secured by the pre-existing registered mortgage excluded. I agree with the Bank that the scenario in which ss. 32(5) and (6) come into play will almost always be one of financial difficulty. However, I do not think that the plain meaning of s. 32(5) may be stretched so far that, upon application by the creditor, any loan secured by a mortgage may fit within s. 32(5). This is an overly broad construction of the provision in question. It is both inconsistent with the plain meaning of the provisions and unnecessary to fulfil the remedial purposes of the Act. To give the words "further advances" any meaning, the Legislature must be presumed to have intended there be a link to the original mortgage. In this case there was no link because of the order nisi and the existence of a new loan secured by an entirely new charge. I cannot read this legislation as extending so far as is contended for by the respondent Bank.

7. The Petitioner's mortgage security (s. 16.16) provides for the Petitioner to complete construction of the Development and that:
 - a) monies so advanced by the Petitioner for that purpose will be secured by the Petitioner's mortgage security pursuant to its priority amounts others; and
 - b) the Debtor shall be liable to the Petitioner for all sums paid by the Petitioner for the purpose of completing the Development.
8. The Petitioner has not taken Order Nisi of Foreclosure.
9. The funding of the Receiver's costs by the Petitioner are for the benefit of the Lien Claimant Respondents as if the Lands were sold "As Is" the Petitioner and the

Bancorp Respondents anticipate a full recovery with little or nothing to the Lien Claimant Respondents.

General

10. The Petitioner will rely upon the law of contract, s. 39 of the *Law and Equity Act*, s. 243(1) of the *BIA*, the *Personal Property Security Act* including s. 66, the *Builders' Lien Act* including s.32 the Supreme Court Civil Rules including 8-5, 10-1, 10-2, 10-4 and 14-1 and the inherent jurisdiction of this Court.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 Jonathan Wong made January 21, 2020.
2. Affidavit #1 of Liisa Wilder January 14, 2020.
3. Affidavit #2 of Jonathan Wong made January 29, 2020.
4. The Petition to the Court.
5. The Amended Petition to the Court.
6. Consent of Receiver to Act.

The applicant estimates that the application will take 20 minutes.

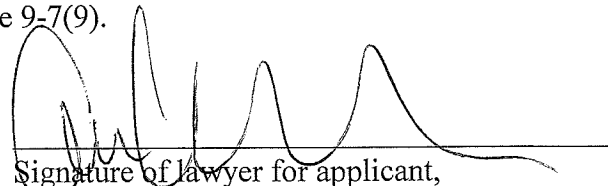
This matter is NOT within the jurisdiction of a master.

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

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

iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: January 29, 2020


Signature of lawyer for applicant,
Alan A. Frydenlund QC

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____

Signature of Judge Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts.

Schedule "A"

B.C. MODEL RECEIVERSHIP ORDER

No. _____ H 200039
Vancouver _____ Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PEOPLES TRUST COMPANY

Petitioner

AND:

CENSORIO GROUP (HASTINGS & CARLETON)
HOLDINGS LTD.
PETER CENSORIO also known as PETER ANTHONY CENSORIO
and PETER ANTHONY CENSORIO
STRADA 39 TRUST
BANCORP GROWTH MORTGAGE FUND II LTD.
BANCORP BALANCED MORTGAGE FUND II LTD.
BANCORP FINANCIAL SERVICES INC.
PK CAPITAL LTD.
ALL CANADIAN INVESTMENT CORPORATION
FBM CANADA GSD, INC.
MEDINA CONCRETE SERVICES LTD.
TUCUVAN CONSTRUCTION LTD.
OMNI DRYWALL LTD.

1223293 B.C. LTD.

RAHUL GLASS LTD.
SERIN INVESTMENTS LTD.
CLARION PROPERTY CORPORATION
G. I. H. PROPERTIES LTD.
BARRY CHARLES HOLDINGS LTD.
BECISON HOLDING CORPORATION
SANDRA CHAPPELL
CREST CAPITAL CORPORATION
DURHAM CAPITAL MANAGEMENT INC.
YORK VENTURES LTD.
HI-GROVE HOLDINGS (1995) LTD.
DIANE RAUCH
JEFFREY RAUCH
GERHARD RAUCH
HELGA RAUCH
PAVILION INVESTMENTS INC.
RODNEY GRANT KENYON
ALAN LONG
MANDATE MANAGEMENT CORPORATION

Respondents

~~IN THE SUPREME COURT OF BRITISH COLUMBIA~~

~~{PLAINTIFF/PETITIONER}¹~~

Plaintiff/Petitioner

~~-and-~~

~~{DEFENDANT/RESPONDENT}²~~

Defendant/Respondent

Action No. _____

Estate No. _____

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

~~**IN THE MATTER OF THE RECEIVERSHIP OF
CENSORIO GROUP (HASTINGS & CARLETON) HOLDINGS LTD. {THE DEBTOR}**~~

ORDER MADE AFTER APPLICATION²

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

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

BEFORE THE HONOURABLE)
)
 _____ JUSTICE _____) DD/MM/YEAR
)
)

ON THE APPLICATION of the Petitioner/~~Plaintiff/Applicant~~³ for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”) ~~[and/or]~~ Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the “LEA”) appointing D. MANNING & ASSOCIATES INC. ~~[RECEIVER’S NAME]~~ as ~~[Receiver and/or Receiver and Manager]~~ (in such capacity, the “Receiver”) without security, of all of the assets, undertakings and property of CENSORIO GROUP (HASTINGS & CARLETON) HOLDINGS LTD. ~~[DEBTOR’S NAME]~~ (the “Debtor”) acquired for, or used in relation to a business carried on by the Debtor in constructing residential and commercial strata lots located at 4223-4229 East Hastings Street, Burnaby British Columbia, legally described as, City of Burnaby, Parcel Identifier 029-877-555, Lot 1, District Lot 121, Group 1, New Westminster District, Plan EPP56644 (the “Lands”), coming on for hearing this day at Vancouver _____, British Columbia.

AND ON READING the Affidavits #1 and #2 of Jonathan Wong _____ of ~~[NAME]~~ sworn ~~◆~~ January 21, 2020 and ~~◆~~ January 29, 2020, respectively and the pleadings filed herein ~~[DATE]~~ and the consent of D. MANNING & ASSOCIATES INC. ~~[RECEIVER’S NAME]~~ to act as the Receiver; AND ON HEARING Alan A. Frydenlund QC _____, Counsel for PEOPLES TRUST COMPANY ~~[NAME]~~ and other counsel as listed on Schedule “ACB” hereto, and no one else appearing, although duly served.⁴

THIS COURT ORDERS AND DECLARES that:

APPOINTMENT

1. Pursuant to Section 243(1) of the BIA ~~[and/or]~~ Section 39 of the LEA D. MANNING & ASSOCIATES INC. ~~[RECEIVER’S NAME]~~ is appointed Receiver, without security, of all of the assets, undertakings and property of the Debtor, acquired for or used in relation to a business carried on by the Debtor in constructing a condominium and commercial strata lots development at and on the Lands⁵ including all proceeds (the “Property”).⁶

³ Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

⁴ If the application is brought *ex parte*, or service has been brought on short notice, the Order should reflect that. If the application is brought *ex parte*, counsel should also consider whether or not all of the relief sought is appropriate on a without notice basis. Specifically, pursuant to the BIA s.243(6), a charge for the receiver’s fees and disbursements (Paragraph 20) can only be made if the Court is satisfied that the secured creditors who would be materially affected were given reasonable notice and an opportunity to make submissions.

⁵ If the Order is made only under section 243(1) of the BIA, the wording “acquired for, or used in relation to a business carried on by the Debtor” should be added at this point in the paragraph to reflect the specific wording of section 243 of the BIA.

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

RECEIVER'S POWERS⁷

2. The Receiver is empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
- (a) to take possession of and exercise control over the Property and any and all receipts and disbursements arising out of or from the Property;
 - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing insurance coverage;
 - (c) to manage, operate and carry on the business of the Debtor, 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, 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;
 - ~~(d)~~(e) to take those steps the Receiver considers necessary for the construction or completion of the construction of any buildings or improvements on the lands included in the Property to make the Property available for sale or to make any existing buildings or improvements on the Property continually habitable, but without liability to the Receiver for permissive or voluntary waste.
 - ~~(e)~~(f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
 - ~~(f)~~(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 these amounts, including, without limitation, enforcement of any security held by the Debtor;
 - ~~(g)~~(h) to settle, extend or compromise any indebtedness owing to the Debtor;
 - ~~(h)~~(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;
 - ~~(i)~~(j) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;

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

- (j)(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 Debtor, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;
- (k)(l) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
- (l)(m) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:⁸
- (i) without the approval of this Court in respect of a single transaction for consideration up to ~~\$250,000~~, provided that the aggregate consideration for all such transactions does not exceed ~~\$750,000~~; and
 - (ii) with the approval of this Court, OR THE CONSENT OF THE Petitioner and all of the parties to the proceeding herein in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,
- and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;
- (m)(n) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;
- (n)(o) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;
- (o)(p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p)(q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the Debtor;
- (q)(r) to enter into agreements with any Licensee Insolvency Trustee trustee in bankruptcy appointed in respect of the Debtor, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r)(s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

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

- (t) _____ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,
- (s)(u) to receive further advances of the Petitioner's loan to the Debtor (which loan amount may be further increased on the agreement of the Receiver and the Petitioner) for the purpose of carrying on its duties pursuant hereto which advances from the Petitioner to the Receiver will be in full priority to all Respondents and all Claims of Builders' Lien, pursuant to s. 32(5) of the Builders' Lien Act S.B.C. 1997 c.45.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

3. Each of (i) the Debtor; (ii) all of the Debtor's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, "**Persons**" and each a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
4. All Persons, other than governmental authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "**Records**") in that Person's possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
5. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 4, 5 or 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to solicitor client privilege or statutory provisions prohibiting such disclosure.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may require including,

without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR 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 stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of the Proceeding except for service of the initiating documentation on the Debtor and the Receiver.

NO EXERCISE OF RIGHTS OR REMEDIES

9. All rights and remedies (including, without limitation, set-off rights) against the Debtor, the Receiver, or affecting the Property, are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor 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,⁹ (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. This stay and suspension shall not apply in respect of any “eligible financial contract” as defined in the BIA.

NO INTERFERENCE WITH THE RECEIVER

10. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, 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.
11. Any person who has provided policies of insurance or indemnities (including, without limitation, New Home Warranty) at the request of the Receiver shall be required to continue or renew such policy of insurance or indemnity following the date of this Order provided that the Receiver make payment of the premium (on the usual commercial terms) as if this proceeding had not been commenced.

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

~~10.12.~~ THIS COURT FURTHER ORDERS THAT the Superintendent of Real Estate is prohibited from issuing cease trading or cease selling orders without leave of this Court on the condition that the Receiver will not offer or sell the lands until a new Disclosure Statement with respect to the lands has been filed.

CONTINUATION OF SERVICES

~~11.13.~~ All Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor 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

~~12.14.~~ 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

~~13.15.~~ Subject to the employees' right 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's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the Debtor, 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

~~14.16.~~ Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection*

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

~~15.~~17. 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.~~18. 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.~~19. 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.~~20. 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.~~21. 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.¹⁰

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

~~20-22.~~ The Receiver and its legal counsel, if any, are granted a charge (the "**Receiver's Charge**") on the Property 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,¹¹ liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.¹²

~~21-23.~~ 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.

24. 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;

(a) against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel in respect of carrying out any of the foregoing activities (and such amounts shall constitute advances against its remuneration and disbursements when as approved by this Court;

(b) in payment of any charges for taxes, utilities, or insurance premiums with relate to any of the Property;

(c) In repayment of the Receiver's interim advances from the Petitioner pursuant to the Petitioner's loan to the Debtor borrowings;

~~22-(d)~~ In reduction of the amount owing under the Petitioner's mortgage and subsequent to payment thereof to the Respondent mortgagees in reduction of the amounts owing thereunder as per their respective priorities, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.¹³

¹⁰ For example, and without limitation, Sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

¹¹ The reference to "trusts" is to trusts, including statutory trusts, which secure the performance of an obligation.

¹² Subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations". Accordingly, counsel should give notice of the application to all secured creditors whose security interests would rank subordinate to the proposed Receivers Charge, including any beneficiaries of statutory trusts.

¹³ This Order's reference to "standard rates and charges" is not approval of the reasonableness of those fees and charges. The fees and charges of the Receiver and its legal counsel remain subject to Court approval in accordance

FUNDING OF THE RECEIVERSHIP

23. ~~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 \$4,000,000.00 (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,¹⁴ liens, charges and encumbrances, statutory or otherwise, 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

~~28.25.~~ The Receiver shall establish and maintain a website in respect of these proceedings at: www.manning-trustee.com~~[WEB ADDRESS]~~ (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

with paragraph 21. The Court's approval of fees and charges will include an assessment of whether the amounts charged are fair and reasonable in the circumstances.

¹⁴The reference to "trusts" is to trusts, including statutory trusts, which secure the performance of an obligation.

confidential and the subject of a sealing order or pending application for a sealing order.

~~29.~~26. 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**”).¹⁵ 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.¹⁶

~~30.~~27. 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.~~28. 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.~~29. Notwithstanding paragraph ~~26~~31 of this Order, service of the Petition [OR the Notice of Application] and any affidavits filed in support shall be made on the Federal and British Columbia Crowns¹⁷ 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.¹⁸

¹⁵ It is important to note that the restriction on notice created by this section only applies to parties that are served with a copy of the Receivership Order.

¹⁶ This provision (and paragraph 31 confirming service by email or fax) is intended to simplify and streamline service of applications in receivership proceedings, particularly since many applications may need to be heard on short notice. Although this Order alters the service requirements for future applications in accordance with the Rules of Court, where a party’s interests are directly affected by the relief sought on an application, the Committee is of the view that it would be best practice to serve those parties, even if they were served with the Receivership Order and did not deliver a Demand for Notice. In such cases, the Court may require service on those affected parties, notwithstanding this provision.

¹⁷ Counsel should consider whether the Debtor has property in any other provinces and, if so, consider whether it is appropriate to include a reference to those Provinces and the relevant legislation in those Provinces with respect to service.

¹⁸ *The Crown Proceeding Act*, R.S.B.C. 1996, c. 89, s. 8 provides for service on the British Columbia Crown, as follows:

8. A document to be served on the government
 - (a) must be served on the Attorney General at the Ministry of the Attorney General in the City of Victoria, and
 - (b) is sufficiently served if
 - (i) left there during office hours with a solicitor on the staff of the Attorney General at Victoria, or
 - (ii) mailed by registered mail to the Deputy Attorney General at Victoria.

A similar provision relating to the Federal Crown is found at s. 23(2) of the *Crown Liability and Proceeding Act*, R.S. 1985, c. C-50, which provides for service on the Deputy Attorney General of Canada or the chief executive

~~33-~~30. The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to the Debtor's 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-~~31. 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-~~32. 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-~~33. Nothing in this Order shall prevent the Receiver from acting as a Licensed Insolvency Trustee~~trustee in bankruptcy~~ of the Debtor.

~~37-~~34. 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-~~35. 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-~~36. The Petitioner~~[Plaintiff/Applicant]~~ 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~~[Plaintiff/Applicant]'s~~ security or, if not so provided by the [Plaintiff/Applicant]'s security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

~~40-~~37. Endorsement of this Order by counsel appearing on this application other than the Petitioner~~[Plaintiff/Applicant]~~ is dispensed with.

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

officer of the agency in whose name the proceedings are taken, as the case may be. The Federal Crown requests that service of documents be by delivery to Department of Justice, 900 - 840 Howe Street, Vancouver, B.C. V6Z 2S9

APPROVED BY:

Signature of Alan A. Frydenlund QC{type of
print name}
lawyer for Petitioner{Plaintiff/Applicant}

BY THE COURT

DISTRICT REGISTRAR

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that D. MANNING & ASSOCIATES INC. [RECEIVER'S NAME], the [Receiver and/or Receiver and Manager] (the "Receiver") of all of the assets, undertakings and properties of CENSORIO HOLDINGS (HASTINGS AND CARLETON) LTD. [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (In Bankruptcy and Insolvency) (the "Court") dated the 11 day of February, 2021 (the "Order") made in SCBC Action No. H 200039 and/or SCBC Action No. _____ /Estate No. _____ 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 _____, 2020.

~~D. MANNING & ASSOCIATES INC.
[RECEIVER'S NAME], solely in its
capacity as Receiver of the Property, and not
in its personal capacity~~

Per: _____
Name:—
Title:—

Schedule "BA"

Demand for Notice

TO: [Name of Applicant]
c/o [Name of Counsel to the Applicant]
Attention:
Email:

AND TO: D. MANNING & ASSOCIATES INC. [Name of Receiver]
c/o Owen Bird Law Corporation [Name of Counsel to the Receiver]
Attention: Alan A. Frydenlund QC
Email: afrydenlund@owenbird.com

Re: In the matter of the Receivership of CENSORIO GROUP (HASTINGS & CARLETON) HOLDINGS LTD. [DEBTOR]

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 "B"

Counsel Appearing

Action No. H 2000039
Vancouver Registry

IN THE SUPREME COURT OF BRITISH
COLUMBIA

BETWEEN:

Peoples Trust Company ~~[PLAINTIFF/PETITIONER]~~
Plaintiff/Petitioner

- and -

CENSORIO GROUP (HASTINGS
& CARLETON)
HOLDINGS LTD.
AND OTHERS
~~[DEFENDANT/RESPONDENT]~~
Defendant/Respondents

AND:

Action No. _____

Estate No. _____

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

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

~~B.C. MODEL RECEIVERSHIP ORDER VERSION
NO. 3, _____, 2015~~

Schedule "A"

B.C. MODEL RECEIVERSHIP ORDER

No. H 200039
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PEOPLES TRUST COMPANY

Petitioner

AND:

CENSORIO GROUP (HASTINGS & CARLETON)
HOLDINGS LTD.
PETER CENSORIO also known as PETER ANTHONY CENSORIO
and PETER ANTHONY CENSORIO
STRADA 39 TRUST
BANCORP GROWTH MORTGAGE FUND II LTD.
BANCORP BALANCED MORTGAGE FUND II LTD.
BANCORP FINANCIAL SERVICES INC.
PK CAPITAL LTD.
ALL CANADIAN INVESTMENT CORPORATION
FBM CANADA GSD, INC.
MEDINA CONCRETE SERVICES LTD.
TUCUVAN CONSTRUCTION LTD.
OMNI DRYWALL LTD.
1223293 B.C. LTD.
RAHUL GLASS LTD.
SERIN INVESTMENTS LTD.
CLARION PROPERTY CORPORATION
G. I. H. PROPERTIES LTD.
BARRY CHARLES HOLDINGS LTD.
BECISON HOLDING CORPORATION
SANDRA CHAPPELL
CREST CAPITAL CORPORATION
DURHAM CAPITAL MANAGEMENT INC.
YORK VENTURES LTD.
HI-GROVE HOLDINGS (1995) LTD.
DIANE RAUCH
JEFFREY RAUCH
GERHARD RAUCH
HELGA RAUCH
PAVILION INVESTMENTS INC.
RODNEY GRANT KENYON
ALAN LONG
MANDATE MANAGEMENT CORPORATION

Respondents

**IN THE MATTER OF THE RECEIVERSHIP OF
CENSORIO GROUP (HASTINGS & CARLETON) HOLDINGS LTD.**

ORDER MADE AFTER APPLICATION¹

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

ON THE APPLICATION of the Petitioner² for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”) [and/or] Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the “LEA”) appointing D. MANNING & ASSOCIATES INC. as **Receiver and Manager** (in such capacity, the “Receiver”) without security, of all of the assets, undertakings and property of CENSORIO GROUP (HASTINGS & CARLETON) HOLDINGS LTD. (the “Debtor”) acquired for, or used in relation to a business carried on by the Debtor in constructing residential and commercial strata lots located at 4223-4229 Hastings Street, Burnaby British Columbia, legally described as, City of Burnaby, Parcel Identifier 029-877-555, Lot 1, District Lot 121, Group 1, New Westminster District, Plan EPP56644 (the “Lands”), coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Affidavits #1 and #2 of Jonathan Wong sworn January 21, 2020 and January 29, 2020, respectively and the pleadings filed herein and the consent of D. MANNING & ASSOCIATES INC. to act as the Receiver; AND ON HEARING Alan A. Frydenlund QC, Counsel for PEOPLES TRUST COMPANY and other counsel as listed on Schedule “B” hereto, and no one else appearing, although duly served.³

THIS COURT ORDERS AND DECLARES that:

APPOINTMENT

1. Pursuant to Section 243(1) of the BIA and/ Section 39 of the LEA D. MANNING & ASSOCIATES INC. is appointed Receiver, without security, of all of the assets, undertakings and property of the Debtor, acquired for or used in relation to a business carried on by the Debtor in constructing a condominium and commercial strata lots at and on the Lands⁴ including all proceeds (the “Property”).⁵

¹ This model order is not in any way determinative of the applicant’s entitlement to the relief set out in this model order. It is the responsibility of counsel to ensure that the form of order they propose is appropriate in the circumstances and to justify the relief sought, including providing the necessary evidentiary support and judicial authority. The footnotes in this model order identify some, but not all, of the issues that might arise in respect of the relief sought.

² Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

³ If the application is brought *ex parte*, or service has been brought on short notice, the Order should reflect that. If the application is brought *ex parte*, counsel should also consider whether or not all of the relief sought is appropriate on a without notice basis. Specifically, pursuant to the BIA s.243(6), a charge for the receiver’s fees and disbursements (Paragraph 20) can only be made if the Court is satisfied that the secured creditors who would be materially affected were given reasonable notice and an opportunity to make submissions.

⁴ If the Order is made only under section 243(1) of the BIA, the wording “acquired for, or used in relation to a business carried on by the Debtor” should be added at this point in the paragraph to reflect the specific wording of section 243 of the BIA.

⁵ This definition of “Property” is expansive and is intended to include **all** real and personal property, including anything arising or derived from such property. There may be circumstances where a narrower definition or carve-

RECEIVER'S POWERS⁶

2. The Receiver is empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
- (a) to take possession of and exercise control over the Property and any and all receipts and disbursements arising out of or from the Property;
 - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing insurance coverage;
 - (c) to manage, operate and carry on the business of the Debtor, 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, 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 considers necessary for the construction or completion of the construction of any buildings or improvements on the lands included in the Property to make the Property available for sale or to make any existing buildings or improvements on the Property continually habitable, but without liability to the Receiver for permissive or voluntary waste.
 - (f) to purchase or lease such 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 these amounts, including, without limitation, enforcement of any security held by the Debtor;
 - (h) to settle, extend or compromise any indebtedness owing to 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;

outs is preferable. Given the expansive definition of Property, counsel should be cognizant of the scope of the appointing creditor's security. In particular, counsel should consider whether the creditor's application is based on their security pursuant to the BIA s.243 or equity pursuant to the LEA s.39, or some combination. Counsel should also bear in mind the differing tests for appointment depending on the nature and extent of the creditor's security.

⁶ Counsel should consider whether all of the powers sought in Paragraph 2 are appropriate on an initial basis, particularly if the application is brought without notice. Counsel should also consider whether there is sufficient evidence for granting such powers on an initial basis.

- (j) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (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 Debtor, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;
- (l) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
- (m) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:⁷
 - (i) without the approval of this Court in respect of a single transaction for consideration up to \$250,000, provided that the aggregate consideration for all such transactions does not exceed **\$750,000**; and
 - (ii) with the approval of this Court, OR THE CONSENT OF THE Petitioner and all of the parties to the proceeding herein in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;
- (n) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;
- (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;
- (p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the Debtor;
- (r) to enter into agreements with any Licensed Insolvency Trustee appointed in respect of the Debtor, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

⁷ As noted above, counsel should consider whether there is sufficient basis for granting this power on an initial basis.

- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,
- (u) to receive further advances of the Petitioner's loan to the Debtor (which loan amount may be further increased on the agreement of the Receiver and the Petitioner) for the purpose of carrying on its duties pursuant hereto which advances from the Petitioner to the Receiver will be in full priority to all Respondents and all Claims of Builders' Lien, pursuant to s. 32(5) of the *Builders' Lien Act* S.B.C. 1997 c.45.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

3. Each of (i) the Debtor; (ii) all of the Debtor's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, "**Persons**" and each a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
4. All Persons, other than governmental authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "**Records**") in that Person's possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
5. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 4, 5 or 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to solicitor client privilege or statutory provisions prohibiting such disclosure.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may require including,

without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR 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 stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of the Proceeding except for service of the initiating documentation on the Debtor and the Receiver.

NO EXERCISE OF RIGHTS OR REMEDIES

9. All rights and remedies (including, without limitation, set-off rights) against the Debtor, the Receiver, or affecting the Property, are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor 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,⁸ (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. This stay and suspension shall not apply in respect of any “eligible financial contract” as defined in the BIA.

NO INTERFERENCE WITH THE RECEIVER

10. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, 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.
11. Any person who has provided policies of insurance or indemnities (including, without limitation, New Home Warranty) at the request of the Receiver shall be required to continue or renew such policy of insurance or indemnity following the date of this Order provided that the Receiver make payment of the premium (on the usual commercial terms) as if this proceeding had not been commenced.

⁸ Counsel should consider whether, on an initial or subsequent application, they should apply to extend the stay of proceedings to specific regulatory bodies under section 69.6 (3) of the BIA, other applicable statutes or the inherent jurisdiction of the Court.

12. THIS COURT FURTHER ORDERS THAT the Superintendent of Real Estate is prohibited from issuing cease trading or cease selling orders without leave of this Court on the condition that the Receiver will not offer or sell the lands until a new Disclosure Statement with respect to the lands has been filed.

CONTINUATION OF SERVICES

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

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 the employees' right 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's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the Debtor, 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

16. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection*

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. 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.
18. 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.
19. 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.
20. 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

21. 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.⁹

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

- 22. The Receiver and its legal counsel, if any, are granted a charge (the "**Receiver's Charge**") on the Property 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,¹⁰ liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.¹¹
- 23. 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.
- 24. 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:
 - (a) against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel in respect of carrying out any of the foregoing activities (and such amounts shall constitute advances against its remuneration and disbursements when as approved by this Court;
 - (b) In payment of any charges for taxes, utilities, or insurance premiums with relate to any of the Property;
 - (c) In repayment of the Receiver's interim advances from the Petitioner pursuant to the Petitioner's loan to the Debtor;
 - (d) In reduction of the amount owing under the Petitioner's mortgage and subsequent to payment thereof to the Respondent mortgagees in reduction of the amounts owing thereunder as per their respective priorities.¹²

⁹ For example, and without limitation, Sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

¹⁰ The reference to "trusts" is to trusts, including statutory trusts, which secure the performance of an obligation.

¹¹ Subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations". Accordingly, counsel should give notice of the application to all secured creditors whose security interests would rank subordinate to the proposed Receivers Charge, including any beneficiaries of statutory trusts.

¹² This Order's reference to "standard rates and charges" is not approval of the reasonableness of those fees and charges. The fees and charges of the Receiver and its legal counsel remain subject to Court approval in accordance with paragraph 21. The Court's approval of fees and charges will include an assessment of whether the amounts charged are fair and reasonable in the circumstances.

SERVICE AND NOTICE OF MATERIALS

25. The Receiver shall establish and maintain a website in respect of these proceedings at: www.manning-trustee.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.
26. 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**”).¹³ 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.¹⁴
27. 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.
28. 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.
29. Notwithstanding paragraph 26 of this Order, service of the Petition [OR the Notice of Application] and any affidavits filed in support shall be made on the Federal and British Columbia Crowns¹⁵ in accordance with the *Crown Liability and Proceedings Act*, R.S.C.

¹³ It is important to note that the restriction on notice created by this section only applies to parties that are served with a copy of the Receivership Order.

¹⁴ This provision (and paragraph 31 confirming service by email or fax) is intended to simplify and streamline service of applications in receivership proceedings, particularly since many applications may need to be heard on short notice. Although this Order alters the service requirements for future applications in accordance with the Rules of Court, where a party’s interests are directly affected by the relief sought on an application, the Committee is of the view that it would be best practice to serve those parties, even if they were served with the Receivership Order and did not deliver a Demand for Notice. In such cases, the Court may require service on those affected parties, notwithstanding this provision.

¹⁵ Counsel should consider whether the Debtor has property in any other provinces and, if so, consider whether it is appropriate to include a reference to those Provinces and the relevant legislation in those Provinces with respect to service.

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.¹⁶

30. The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to the Debtor's 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

31. 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.
32. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
33. Nothing in this Order shall prevent the Receiver from acting as a Licensed Insolvency Trustee of the Debtor.
34. 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.
35. 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.

¹⁶ *The Crown Proceeding Act*, R.S.B.C. 1996, c. 89, s. 8 provides for service on the British Columbia Crown, as follows:

8. A document to be served on the government
- (a) must be served on the Attorney General at the Ministry of the Attorney General in the City of Victoria, and
 - (b) is sufficiently served if
 - (i) left there during office hours with a solicitor on the staff of the Attorney General at Victoria, or
 - (ii) mailed by registered mail to the Deputy Attorney General at Victoria.

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

36. 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 or, if not so provided by the [Plaintiff/Applicant]'s security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
37. Endorsement of this Order by counsel appearing on this application other than the Petitioner is dispensed with.

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

APPROVED BY:

Signature of Alan A. Frydenlund QC
lawyer for Petitioner

BY THE COURT

REGISTRAR

Schedule "A"

Demand for Notice

TO: [Name of Applicant]
c/o [Name of Counsel to the Applicant]
Attention:
Email:

AND TO: **D. MANNING & ASSOCIATES INC.**
c/o Owen Bird Law Corporation
Attention: Alan A. Frydenlund QC
Email: afrydenlund@owenbird.com

Re: In the matter of the Receivership of CENSORIO GROUP (HASTINGS & CARLETON) HOLDINGS LTD.

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 "B"

Counsel Appearing

Action No. H 200039
Vancouver Registry

IN THE SUPREME COURT OF BRITISH
COLUMBIA

BETWEEN:

Peoples Trust Company

Petitioner

- and -

CENSORIO GROUP (HASTINGS
& CARLETON) HOLDINGS LTD.
AND OTHERS

Respondents

RECEIVERSHIP ORDER

**IN THE SUPREME COURT OF BRITISH
COLUMBIA**

BETWEEN:

PEOPLES TRUST COMPANY

Petitioner

AND:

CENSORIO GROUP (HASTINGS & CARLETON)
HOLDINGS LTD., PETER CENSORIO also known as PETER
ANTHONEY CENSORIO and PETER ANTHONY CENSORIO,
STRADA 39 TRUST, BANCORP GROWTH MORTGAGE
FUND II LTD., BANCORP BALANCED MORTGAGE FUND II
LTD., BANCORP FINANCIAL SERVICES INC., PK CAPITAL
LTD., ALL CANADIAN INVESTMENT CORPORATION, FBM
CANADA GSD, INC., MEDINA CONCRETE SERVICES LTD.,
TUCUVAN CONSTRUCTION LTD., OMNI DRYWALL LTD.,
1223293 B.C. LTD., RAHUL GLASS LTD., SERIN
INVESTMENTS LTD., CLARION PROPERTY
CORPORATION, G. I. H. PROPERTIES LTD., BARRY
CHARLES HOLDINGS LTD., BECISON HOLDING
CORPORATION, SANDRA CHAPPELL, CREST CAPITAL
CORPORATION, DURHAM CAPITAL MANAGEMENT INC.,
YORK VENTURES LTD., HI-GROVE HOLDINGS (1995)
LTD., DIANE RAUCH, JEFFREY RAUCH, GERHARD
RAUCH, HELGA RAUCH, PAVILION INVESTMENTS INC.,
RODNEY GRANT KENYON, ALAN LONG and MANDATE
MANAGEMENT CORPORATION

NOTICE OF APPLICATION

OWEN BIRD LAW CORPORATION
P.O. Box 49130
Three Bentall Centre
2900 - 595 Burrard Street
Vancouver, BC V7X 1J5
Attention: Alan A. Frydenlund, Q.C.
File No. 22880/0112