

NOV 22 2019

FORM 66 (RULES 16-1(2) AND 21-5(14))

No. **51913345**
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

VANCOUVER CITY SAVINGS CREDIT UNION

Petitioner

and

**356746 HOLDINGS INC. doing business as
THE GEORGE DAWSON INN
507016 B.C. LTD.
LUXOR HOLDINGS INC.
UMEDALLI THOBANI also known as
UMED THOBANI and TONY THOBANI
THE ESTATE OF AMINA THOBANI
MANOHAR ALEXANDER SAVUNDRANAYAGAM
BLUESHORE LEASING LTD.
ROYNAT INC.
1156600 B.C. LTD.
GROUPEX SYSTEMS CANADA INC.**

Respondents

PETITION TO THE COURT

ON NOTICE TO: THE RESPONDENTS

This proceeding is brought for the relief set out in Part 1 below by the person named as petitioner in the style of proceedings above.

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

- a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- b) serve on the petitioner
 - i) 2 copies of the filed response to petition, and
 - ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

ORDERS, INCLUDING ORDERS GRANTING THE RELIEF CLAIMED, MAY BE MADE AGAINST YOU, WITHOUT ANY FURTHER NOTICE TO YOU, IF YOU FAIL TO FILE THE RESPONSE TO THE PETITION WITHIN THE TIME FOR RESPONSE.

TIME FOR RESPONSE TO THE PETITION

A response to petition must be filed and served on the petitioner,

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

(1)	THE ADDRESS OF THE REGISTRY IS: The Supreme Court of British Columbia The Law Courts 800 Smithe Street Vancouver, B.C. V6Z 2E1
(2)	THE ADDRESS FOR SERVICE OF THE PETITIONER IS: VANCOUVER CITY SAVINGS CREDIT UNION c/o 2900 – 595 Burrard Street Vancouver B.C. V7X 1J5 Fax number address for service (if any) of the petitioner: N/A E-mail address for service (if any) of the petitioner: N/A
(3)	THE NAME AND OFFICE ADDRESS OF THE PETITIONER’S LAWYER IS: ALAN A. FRYDENLUND, Q.C. OWEN BIRD LAW CORPORATION 2900 – 595 Burrard Street Vancouver, B.C. V7X 1J5

PART 1: ORDERS SOUGHT

1. An Order for the preservation of assets, including the Liquor Licence, pending the hearing of this petition.

2. Receivership Order substantially in the form attached as Schedule “A” or in such other form as the court may order.
3. An order for any further relief that this honourable court may consider just.

PART 2: FACTUAL BASIS

The Parties

1. The petitioner, VANCOUVER CITY SAVINGS CREDIT UNION, (“**Vancity**”) is a credit union having an address for service in these proceedings c/o 2900 – 595 Burrard Street, Vancouver, B.C. V7X 1J5.
2. The respondent, 356746 HOLDINGS INC. (the “**Debtor**”) is a company continued into B.C. with a registered and records office located at 300 – 10366 – 136A Street, Surrey, BC V3T 3R3.
3. The respondent, 507016 B.C. LTD. (“**507016**”) is a B.C. company with a registered and records office located at 300 – 10366 – 136A Street, Surrey, BC V3T 3R3.
4. The respondent, LUXOR HOLDINGS INC. (“**Luxor**”) is a B.C. company with a registered and records office located at 300 – 10366 – 136A Street, Surrey, BC V3T 3R3.
5. The respondents, UMEDALLI THOBANI also known as UMED THOBANI and TONY THOBANI (“**Umedalli**”) and THE ESTATE OF AMINA THOBANI (“**Amina**”), are joined to this proceeding because they are guarantors of the Debtor (as defined below) and, as such, their interests may be effected by the orders sought herein.
6. The respondent, MANOHAR ALEXANDER SAVUNDRANAYAGAM (“**Manohar**”), is joined to this proceeding because he holds second and third mortgages.
7. The respondents, BLUESHORE LEASING LTD., ROYNAT INC. and GROUPEX SYSTEMS CANADA INC., are joined as the holders of security interests registered against the Debtor in the Personal Property Registry.

8. The respondent, 1156600 B.C. LTD. (“1156600”), is a B.C. company with a registered and records office located at 300 – 10366 – 136A Street, Surrey, BC V3T 3R3 and is joined in this proceeding because they apparently agreed to purchase the Liquor Licence as defined below.

The Loan Facility and Security

9. The Debtor is indebted to Vancity pursuant to credit facilities (the “Loan”) as follows:
- a) \$1,301,668.72 as at November 20, 2019 plus interest compounding monthly at the rate of 6.19% per annum which is the current daily rate of \$217.42; and
 - b) \$596,847.22 as at November 20, 2019 plus interest compounding monthly at the rate of 6.19% per annum which is the current daily rate of \$99.69;
- pursuant to a commitment letter dated March 26, 2013 (with a 60 month term) as amended March 20, 2018, extending the term by one year to March 26, 2019 (collectively the “Commitment Letter”).
10. The Loan is secured by, among other things:
- a) a first mortgage and assignment of rents dated June 18, 2008 made between the Debtor, as mortgagor and Vancity, as mortgagee and registered in the Prince George Land Title Office, in the Province of British Columbia, on June 25, 2008, under Numbers BB680604 and BB680605 (collectively the “Mortgage”), the Debtor mortgaged the following lands:

The Corporation of the City of Dawson Creek
Parcel Identifier: 006-931-944
Lot 3 Section 10 Township 78 Range 15 West of the 6th Meridian Peace River District Plan 24114

Parcel Identifier: 006-931-952
Lot 4 Section 10 Township 78 Range 15 West of the 6th Meridian Peace River District Plan 24114

Parcel Identifier: 008-324-212
Parcel A (Plan 26555) of Lot 2 Section 10 Township 78 Range 15 West of
the 6th Meridian Peace River District, Plan 24114

(collectively the “**Dawson Creek Lands**”);

- b) a general security agreement dated September 7, 2016, made between the Debtor, as debtor, and Vancity, as lender, registered in the Personal Property Registry, in the Province of British Columbia, on June 25, 2008, under Base Registration Number 444674E and also registered May 9, 2014 under Base Registration Number 948049H (the “**GSA**”) the Debtor charged all of its present and after acquired personal property, including, without limitation, accounts, intangibles, documents of title, instruments, documents, licences, inventory and proceeds wherever situate (collectively the “**Property**”) to and in favour of the petitioner to secure repayment of all of the indebtedness of the Debtor to Vancity;
- c) a guarantee and postponement of claim dated June 18, 2008 from 507016 guaranteeing the repayment of the Loan to Vancity (the “**507016 Guarantee**”);
- d) a guarantee and postponement of claim dated June 18, 2008 from Luxor guaranteeing the repayment of the Loan to Vancity (“the **Luxor Guarantee**”);
- e) a guarantee and postponement of claim dated June 18, 2008 from Umedali and Amina, guaranteeing the repayment of the Loan to Vancity (“the **Personal Guarantees**”);

(collectively the “**Security**”).

- 11. The Loan matured and is in default, demand letters and Notices of Intention to Enforce Security were issued on October 8, 2019 and payment has not been made.
- 12. The GSA, among other things, grants Vancity the right to appoint a receiver.
- 13. The Mortgage, among other things, grants Vancity the right to appoint a receiver.

The Debtor’s Business and the Loan

14. The Loan is a business loan to the Debtor who owns and operates a hotel business on the Dawson Creek Lands which hotel operates as the “George Dawson Inn” (“**Dawson Creek Hotel**”) which business includes:
 - a) approximately 80 hotel rooms with full service lodging;
 - b) a restaurant and lounge;
 - c) meeting rooms;
 - d) fitness center;
 - e) business center; and
 - f) liquor store.
15. The Debtor also owns a hotel in Prince Albert in the Province of Saskatchewan (“**Prince Albert Hotel**”) which is in financial distress as Conexus commenced a claim under a mortgage against the Debtor and the respondent, Umedalli which resulted in two judgments being taken against the Debtor and Umedalli in the amount of \$1,336,990.65 and \$51,399.08.
16. Vancity did not advance the Loan to the Debtor to be used for the operations of the Prince Albert Hotel.
17. The Dawson Creek Lands were to be sold by the City of Dawson Creek by way of tax sale in September 2017, as a result of which the Debtor requested that Vancity permit a second mortgage to be registered on the Dawson Creek Lands so that the Debtor could borrow funds to pay the delinquent property taxes and avoid the tax sale. Vancity consented to the second mortgage being registered and subsequently the Dawson Creek Lands were taken out of tax sale.
18. Again, in 2018, the Dawson Creek Lands were to be sold by the City of Dawson Creek by way of tax sale in September of that year, as a result of which the Debtor borrowed funds pursuant to a third mortgage registered on the Dawson Creek Lands to pay the delinquent property taxes and avoid the tax sale.

19. Property taxes on the Dawson Creek Lands remain in arrears to the extent of \$324,122.41
20. Though the Loan matured in March 2019, Vancity did not proceed to realization as they were told by the Debtor in the spring of 2019 that the Debtor was “separating” the Prince Albert Hotel from the Dawson Creek Hotel and was refinancing the Dawson Creek Hotel (as a “stand alone” asset) with Business Development Bank of Canada (“**BDC**”) to pay out the Loan.
21. During the summer of 2019, the Debtor represented to Vancity that the BDC refinancing was imminent as all that was required was to prepare financial statements.
22. The Debtor has told Vancity that they have agreed to sell a liquor licence (“**Liquor Licence**”) for the liquor store at the Dawson Creek Hotel for a price of \$1,600,000 to 1156600 closing in late November 2019, but have not furnished Vancity a copy of the contract of purchase and sale notwithstanding repeated requests however they have furnished Vancity with copies of:
 - a) a Liquor Licence purchase agreement dated June 21, 2018 with a sale price of \$2,000,000;
 - b) a further amendment to Liquor Licence purchase agreement and second amendment to lease reducing the sale price of the Liquor Licence from \$2,000,000 to \$1,600,000;
 - c) a further amendment to Liquor Licence purchase agreement dated August 29, 2019 referring to the following amendments to the said sale agreement that have not been furnished to Vancity though they have been requested;
 - a) October 5, 2018;
 - b) November 30, 2018;
 - c) January 31, 2019;
 - d) April 29, 2019.

23. The Debtor has represented to Vancity that certain deposits on account of the sale of the Liquor Licence have been received by the Debtor and applied to, among other things, loans to the Prince Albert Hotel.
24. Vancity has a security interest in the Liquor Licence and is entitled to the proceeds therefrom.
25. Vancity requested a list of accounts payable of the Debtor but were only furnished a list of accounts payable of the Dawson Creek Hotel without reference to the Prince Albert Hotel.
26. The insurance on the Dawson Creek Lands and the Dawson Creek Hotel has been renewed on a month to month basis and expires 12:01 am December 1, 2019.
27. The Mortgage and the GSA, among other things, grant Vancity the right to appoint a receiver.

Default, Demand and Appointment of Receiver

28. The Debtor is in default of the Loan and their obligations to Vancity as required by the Security the particulars of which include:
 - a) Allowing execution proceedings to be taken against them including judgments taken by Conexus Credit Union 2006 (“Conexus”) in the amount of \$1,336,990.65 and \$51,399.08;
 - b) Failure to pay property taxes in the amount of \$324,122.41;
 - c) Being insolvent as the Debtor is;
 - a) repeatedly borrowing funds to avoid property tax sales,
 - b) paying insurance premiums on a monthly basis,
 - d) Failure to insure the Dawson Creek Lands and the Dawson Creek Hotel on year to year basis;

- e) Failure to payout the Loan at the end of the term in March 2019.
29. Vancity has exercised its right to demand repayment of the Loan from the Debtor, 507016, Luxor, Umedalli and Amina; however, the said respondents have failed or neglected to repay the indebtedness.
30. Vancity is concerned that the proceeds of the sale of the Liquor Licence will not be paid by the Debtor to Vancity.
31. A court appointed Receiver over the Dawson Creek Lands and the Property would be just or convenient for reasons including that:
- a) Vancity was granted the contractual right to appoint a Receiver by both the Mortgage and the GSA;
 - b) The Debtor is not meeting its debts as they come due;
 - c) The Debtor does not have sufficient working capital to run the Dawson Creek Hotel and there is the imminent threat that debts owed by the Debtors business at the Prince Albert Hotel may attach the revenues from the Dawson Creek Hotel, including the proceeds from the sale of the Liquor Licence and therefore Vancity is at risk;
 - d) Some proceeds from the deposits received on account of the Liquor Licence sale have been transferred to the Prince Albert Hotel;
 - e) It is unlikely that Dawson Creek Hotel will be refinanced by BDC;

and third parties hold security interests registered against the Debtor.

PART 3: LEGAL BASIS

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 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 640

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

2. Default has occurred and, 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 on 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 on default in the contracts governing their relationship.

6. Vancity will rely on Rules 1-3, 2-1, 10-2, 13-5, 14-1 and 16-1 and the law of contract, the *Law and Equity Act*, R.S.B.C. 1996, c. 253 including s. 39, the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 including s. 243(1) and the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 including s. 66.

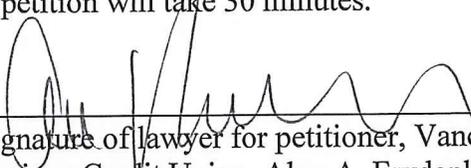
PART 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of FRANK SEMINARA made NOVEMBER 22, 2019, and

2. Affidavit #1 of ALAN A. FRYDENLUND, Q.C. made NOVEMBER 22, 2019.

The petitioner estimates that the hearing of the petition will take 30 minutes.

Date: November 22, 2019



Signature of lawyer for petitioner, Vancouver City
Savings Credit Union, Alan A. Frydenlund QC

TO BE COMPLETED BY THE COURT ONLY:

Order made

in the terms requested in paragraphs _____ of Part 1 of this Petition

with the following variations and additional terms:

Date: _____

Signature of Judge Master

Schedule "A"

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

VANCOUVER CITY SAVINGS CREDIT UNION

Petitioner

and

356746 HOLDINGS INC. doing business as
THE GEORGE DAWSON INN
507016 B.C. LTD.
LUXOR HOLDINGS INC.
UMEDALLI THOBANI also known as
UMED THOBANI and TONY THOBANI
THE ESTATE OF AMINA THOBANI
MANOHAR ALEXANDER SAVUNDRANAYAGAM
BLUESHORE LEASING LTD.
ROYNAT INC.
1156600 B.C. LTD.
GROUPEX SYSTEMS CANADA INC.
CONEXUS CREDIT UNION 2006

Respondents

RECEIVERSHIP ORDER MADE AFTER APPLICATION[†]

[†]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 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 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 **356746 HOLDINGS INC.** (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Affidavit #1 of Frank Seminara sworn ~~{DATE}~~ November 2019, and the consent of D. Manning & Associates Inc. to act as the Receiver; AND ON HEARING Alan A. Frydenlund QC, Counsel for Vancouver City Savings Credit Union and other counsel as listed on Schedule "AC" 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/or}~~ Section 39 of the LEA ~~DLEA~~, D. Manning & Associates Inc. is appointed Receiver, without security, of all of the assets, undertakings and property of the Debtor,⁴ doing business as The George Dawson Inn and the George Dawson Inn Liquor Store and located at 11705- 8th Street, Dawson Creek, British Columbia and wherever situated including all proceeds (the "Property").⁵

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-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 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 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) 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) to settle, extend or compromise any indebtedness owing to the Debtor;
 - (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
 - (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
 - (j) to initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of the

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.

Debtor, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
- (l) 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 \$1,600,000, provided that the aggregate consideration for all such transactions does not exceed \$2,000,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,

and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;

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

- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, 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.

CONTINUATION OF SERVICES

11. 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

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.

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

EMPLOYEES

13. Subject to the employees' right to terminate their employment, all employees of the Debtor 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. 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. Nothing in this Order shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial or other law relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination (collectively "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.
16. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless the Receiver is actually in possession.
17. Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:
 - (a) before the Receiver's appointment; or,
 - (b) after the Receiver's appointment, unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
18. Notwithstanding anything in federal or provincial law, but subject to paragraph 17 of this Order, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the failure to comply with the order and is not personally liable for any costs that are or would be incurred by any Person in carrying out the terms of the order.

LIMITATION ON THE RECEIVER'S LIABILITY

19. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except:
 - (a) any gross negligence or wilful misconduct on its part; or

- (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.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

20. 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
21. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
22. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.¹²

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 \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is charged by way of a fixed and specific charge (the "**Receiver's Borrowings**")

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 Receiver's 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.

Charge”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts,¹³ 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. The Receiver shall establish and maintain a website in respect of these proceedings at: [WEB ADDRESS] 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.
29. Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for each of the Receiver and the Applicant a demand for notice in the form attached as Schedule B (the “**Demand for Notice**”).¹⁴ The Receiver and the Applicant need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed

¹³ The reference to “trusts” is to trusts, including statutory trusts, which secure the performance of an obligation.

¹⁴ 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.

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.¹⁵

30. The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the "**Service List**"). The Receiver shall post and maintain an up-to-date form of the Service List on the Website.
31. Any interested party, including the Receiver, may serve any court materials in these proceedings by facsimile or by emailing a PDF or other electronic copy of such materials to the numbers or addresses, as applicable, set out on the Service List. Any interested party, including the Receiver, may serve any court materials in these proceedings by mail to any party on the Service List that has not provided a facsimile number or email address, and materials delivered by mail shall be deemed received five (5) days after mailing.
32. Notwithstanding paragraph 31 of this Order, service of the Petition [~~OR the Notice of Application~~] and any affidavits filed in support shall be made on the Federal and British Columbia Crowns¹⁶ 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.¹⁷
33. The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by

¹⁵ 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.

¹⁶ 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.

¹⁷ ~~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

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. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Service List and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.
35. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
36. Nothing in this Order shall prevent the Receiver from acting as a Licensee Insolvency Trustee~~trustee in bankruptcy~~ of the Debtor.
37. This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
38. The Receiver is authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
39. The Petitioner~~[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 Petitioner's~~[Plaintiff/Applicant]'s~~ security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
40. Endorsement of this Order by counsel appearing on this application other than the 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:

APPROVED BY:

Alan A. Frydenlund QC Signature of {type of
print name}

lawyer for the Petitioner{Plaintiff/Applicant}

BY THE COURT

DISTRICT REGISTRAR

SCHEDULE "A"

RECEIVER AND MANAGER'S 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 356746 HOLDINGS INC. [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 _____ day of _____, 2019 (the "Order") made in SCBC Action No. _____ 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 [REDACTED] day of [REDACTED], 201[REDACTED].

D. Manning & Associates Inc. [RECEIVER'S NAME], solely in its capacity as Receiver of Receiver and Manager of the assets, undertakings, and property of 356746 Holdings Inc. doing business as The George Dawson Inn and the George Dawson Inn Liquor Store, and not in its personal capacity ~~the Property, and not in its personal capacity~~

Per:
Name:
Title:

Schedule "B"

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 356746 HOLDINGS INC. ~~[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: _____

Action No.

IN THE SUPREME COURT OF BRITISH
COLUMBIA

BETWEEN:

VANCOUVER CITY
SAVINGS CREDIT
UNION

Petitioner

- and -

356746 HOLDINGS INC. doing business as
THE GEORGE DAWSON INN et. al.

Defendant/Respondent

IN THE MATTER OF THE RECEIVERSHIP OF
356746 HOLDINGS INC.

No. _____
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH
COLUMBIA**

BETWEEN:

VANCOUVER CITY SAVINGS CREDIT UNION
Petitioner

AND:

356746 HOLDINGS INC. doing business as
THE GEORGE DAWSON INN
507016 B.C. LTD.
LUXOR HOLDINGS INC.
UMEDALLI THOBANI also known as
UMED THOBANI and TONY THOBANI
THE ESTATE OF AMINA THOBANI
MANOHAR ALEXANDER
SAVUNDRANAYAGAM
BLUESHORE LEASING LTD.
ROYNAT INC.
1156600 B.C. LTD.
GROUPEX SYSTEMS CANADA INC.

Respondents

PETITION TO THE COURT

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. 23024-0091
