



No. KEL-S-H-135244  
KELOWNA REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

HARBOURFRONT HOLDINGS LTD.

PETITIONER

AND:

1245946 B.C. LTD.  
RICHARD VERNON PROVOST  
LINDSAY ANDREA KNITTER  
HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
OCCUPANTS OF THE LANDS

RESPONDENTS

**ORDER MADE AFTER APPLICATION  
(RECEIVERSHIP ORDER)**

BEFORE

MASTER SCHWARTZ

WEDNESDAY, THE 23rd DAY  
OF NOVEMBER, 2022

ON THE APPLICATION of the Petitioner for an Order pursuant to Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the “LEA”) appointing C. Cheveldave & Associates Ltd. as Receiver (in such capacity, the “Receiver”) without security, of Lands as described below, coming on for hearing this day at Kelowna, British Columbia.

AND ON READING the Affidavit ## of Lisa Trenzek sworn November 10, 2022 and the consent of C. Cheveldave & Associates Ltd to act as the Receiver; AND ON HEARING Sherryl Dubo, Counsel for the Petitioner, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that:

**APPOINTMENT**

1. Pursuant to Section 39 of the LEA C. Cheveldave & Associates Ltd. is appointed Receiver, without security, of lands legally described as:

PID: 031-114-440  
Strata Lot 1, Section 19, Township 26, ODYD, Strata Plan EPS6505

PID: 031-114-458  
Strata Lot 2, Section 19, Township 26, ODYD, Strata Plan EPS6505

PID: 031-114-466  
Strata Lot 3, Section 19, Township 26, ODYD, Strata Plan EPS6505

PID: 031-114-474  
Strata Lot 4, Section 19, Township 26, ODYD, Strata Plan EPS6505

PID: 031-114-482  
Strata Lot 5, Section 19, Township 26, ODYD, Strata Plan EPS6505

PID: 031-114-491  
Strata Lot 6, Section 19, Township 26, ODYD, Strata Plan EPS6505

(collectively the “**Lands**”).

## RECEIVER’S POWERS

2. The Receiver is empowered and authorized, but not obligated, to act at once in respect of the Lands 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 Lands and any and all receipts and disbursements arising out of or from the Lands, and, for greater certainty, the Receiver is authorized and empowered to:
    - (i) collect, get in and receive the rents and profits from the Lands and to retain and employ some competent person or persons to assist the Receiver in the collection of the said rents;
    - (ii) to enter into such lease or leases of any part of the Lands and the let the same from time to time upon such terms as the Receiver shall consider advisable and to fix daily, weekly, monthly, or yearly or other rents of the Lands or part thereof at such sum or sums as it may consider proper under the circumstances; and
    - (iii) obtain from Bank of Montreal the particulars of the amount outstanding under Bank of Montreal’s first mortgage registered against title to the Lands under registration no. CA8663026 (“**BMO Mortgage**”), may make payment to Bank of Montreal of any arrears outstanding under the BMO Mortgage as of the date of pronouncement of this Order, and may make payments to Bank of Montreal under the Mortgage from and after pronouncement of this Order;
  - (b) to receive, preserve and protect the Lands, or any part or parts thereof, including, but not limited to, changing locks and security codes, engaging independent

security personnel, taking physical inventories, taking whatever steps it may consider advisable for repairing and preserving the Lands or any part thereof, and placing such insurance coverage as may be necessary or desirable;

- (c) 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) to execute, assign, issue and endorse documents of whatever nature in respect of the Lands for any purpose pursuant to this Order;
- (e) to undertake environmental or workers' health and safety assessments of the Lands;
- (f) subject to further order of the Court, to market any or all of the Lands, including advertising and soliciting offers in respect of the Lands or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
- (g) subject to further order of the Court, to apply for any vesting order or other orders necessary to convey the Lands or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances affecting such Lands;
- (h) 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 Lands and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;
- (i) to register a copy of this Order and any other Orders in respect of the Lands against title to any of the Lands;
- (j) to apply for any permits, licences, approvals or permissions in connection with the Lands as may be required by any governmental authority and any renewals thereof, if considered necessary or appropriate by the Receiver; and
- (k) 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 Respondents, and without interference from any other Person.

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

3. Each of (i) the Respondents and (ii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order including without limitation all persons occupying the Lands as tenants (all of the foregoing, collectively, being "**Persons**" and each a "**Person**") shall forthwith grant immediate and continued access to



the Lands to the Receiver, and shall deliver and vacate all such Lands to the Receiver upon the Receiver's request.

4. All Persons shall upon the Receiver's request, 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 Lands (collectively, the "**Records**") in that Person's possession or control and including without limitation copies of all leases, tenancy agreements, licences and insurance certificates in connection with the Lands.
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 INTERFERENCE WITH THE RECEIVER**

8. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, licence or permit held by the Respondents in relation to the Lands, without written consent of the Receiver or leave of this Court, and for greater certainty:
  - (a) all Persons who occupy the Lands as tenants shall pay their rents in respect of the Lands to the Receiver until such time as the Receiver provides written direction otherwise or until further Order of this Court;



- (b) in respect of the rents which came due and owing in respect of the Lands between October 14, 2022 and the date of pronouncement of this Order (the “**Assigned Rents**”):
- (i) all Persons who occupy the Lands as tenants shall forthwith pay the Assigned Rents to the Receiver (in accordance with the letter dated October 14, 2022 issued on behalf of the Petitioner pursuant to which notice was given to such Persons to pay rents to the Petitioner under the Petitioner’s Assignment of Rents which forms part of the Mortgage);
  - (ii) any Assigned Rents which have been received by the Respondent 1245946 B.C. Ltd. shall be paid over by the Respondent 1245946 B.C. Ltd. to the Receiver within 5 business days of the pronouncement of this Order; and
  - (iii) the obligation to pay Assigned Rents to the Receiver hereunder shall be joint and several as between the Respondent 1245946 B.C. Ltd. and the corresponding tenant(s) and the Receiver shall be at liberty to pursue payment from any or all of them.

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

9. 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 Lands 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.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

10. 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 Lands 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.
11. 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 Lands within the meaning of any Environmental Legislation, unless the Receiver is actually in possession.

12. 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.

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

13. 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 any gross negligence or wilful misconduct on its part.

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

14. The Receiver and its legal counsel, if any, are granted a charge (the "**Receiver's Charge**") on the Lands 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 charge on the Lands in priority to all other interests in the Lands except for the interest of the Bank of Montreal under the BMO Mortgage.
15. 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.
16. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

17. 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 **\$25,000** (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 Lands shall be and are charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances,

statutory or otherwise, 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.

18. 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.
19. 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.
20. 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**

21. 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 Lands.

#### **GENERAL**

22. 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.
23. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Respondents 1245946 B.C. Ltd. and/or Richard Provost.
24. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
25. 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 Petitioner's security, then on a substantial indemnity basis to be paid by the Receiver from monies collected or received by the Receiver, if any, with such priority and at such time as this Court may determine.



26. Endorsement of this Order by counsel appearing on this application other than the Petitioner is dispensed with.

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



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Signature of Sherryl A. Dubo  
Lawyer for the Petitioner

By the Court

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Registrar

**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

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

AMOUNT

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

1. THIS IS TO CERTIFY that C. Cheveldave & Associates Ltd., the Receiver ("**Receiver**") of lands legally described as:

PID: 031-114-440

Strata Lot 1, Section 19, Township 26, ODYD, Strata Plan EPS6505

PID: 031-114-458

Strata Lot 2, Section 19, Township 26, ODYD, Strata Plan EPS6505

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PID: 031-114-482

Strata Lot 5, Section 19, Township 26, ODYD, Strata Plan EPS6505

PID: 031-114-491

Strata Lot 6, Section 19, Township 26, ODYD, Strata Plan EPS6505

(collectively the "**Lands**").

appointed by Order of the Supreme Court of British Columbia (the "**Court**") dated the \_\_\_\_ day of \_\_\_\_\_, 2022 (the "**Order**") made in SCBC Action No. KEL-S-H-135244 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 \$25,000 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 Lands 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 Lands 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 Lands as authorized by the Order and as authorized by any further or other order of the Court.

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 \_\_\_\_\_, 202\_\_.

C. Cheveldave & Associates Ltd., solely in its capacity as Receiver of the Lands, and not in its personal capacity

Per:  
Name:  
Title:



No. KEL-S-H-135244  
KELOWNA REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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BETWEEN:

HARBOURFRONT HOLDINGS LTD.

PETITIONER

AND:

1245946 B.C. LTD.  
RICHARD VERNON PROVOST  
LINDSAY ANDREA KNITTER  
HER MAJESTY THE QUEEN IN  
RIGHT OF CANADA  
OCCUPANTS OF THE LANDS

RESPONDENTS

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**ORDER MADE AFTER APPLICATION**  
**(RECEIVERSHIP ORDER)**

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FILE NO. 5001-108

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