

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43**

B E T W E E N:

**OWEMANCO MORTGAGE HOLDING CORPORATION**

Applicant

- and -

**CONCEPT LOFTS LTD. and DONALD DESROCHERS**

Respondents

**MOTION RECORD OF THE COURT-APPOINTED  
RECEIVER ROSEN GOLDBERG INC.**

September 12, 2023

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Guarantor

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED**

B E T W E E N:

*(Court Seal)*

**OWEMANCO MORTGAGE HOLDING CORPORATION**

Applicant

- and -

**CONCEPT LOFTS LTD. and DONALD DESROCHERS**

Respondents

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# TAB 1

Court File No. CV-22-00688570-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED**

B E T W E E N:

*(Court Seal)***OWEMANCO MORTGAGE HOLDING CORPORATION**

Applicant

- and -

**CONCEPT LOFTS LTD. and DONALD DESROCHERS**

Respondents

**NOTICE OF MOTION**

Rosen Goldberg Inc., in its capacity as receiver and manager (in such capacities, the “**Receiver**”) of all of the assets, undertakings and properties of the Respondent Concept Lofts Ltd. (“**CLL**”) acquired for, or used in relation to a business carried on by CLL, including the property municipally known as 1183 Dufferin Street, in Toronto, Ontario (the “**Dufferin Property**”) and the lands and premises owned by Donald Desrochers municipally known as Suites 502 and 503, 1 Balmoral Avenue in Toronto, Ontario, will make a Motion to a Judge presiding over the Commercial List on date to be fixed at a scheduling appointment at 9:30 am on Thursday, September 14, 2023 by Zoom videoconference.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard by videoconference.

**THE MOTION IS FOR:**

1. an Order abridging the time for service and filing of this Notice of Motion and Motion Record, including the Fifth Report of the Receiver dated September 12, 2023 (the “**Fifth Report**”), and validating service of the Notice of Motion and Motion Record, including the Fifth Report, and dispensing with further service thereof;
2. an Order approving the Fifth Report and the activities and proposed activities of the Receiver described therein;
3. an Order authorizing the Receiver to file articles of amendment to change the legal name of CLL to Heritage Towns at Hallam Inc.; and
4. such further and other relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The Dufferin Property is a converted church residential condominium project (the “**Project**”) on the east side of Dufferin Street north of Bloor Street West. It consists of 14 residential units and 11 below grade parking stalls. Although construction was substantially completed in the summer of 2021, the Project had not progressed significantly, if at all, prior to the Receiver’s initial appointment as interim receiver on October 21, 2022 (the “**IR Appointment Order**”) and the condominium corporation had not yet been created;
2. On September 15, 2022, the City of Toronto (the “**City**”) caused notice of an Order issued on July 16, 2019 under the *Building Code Act, 1992* to be registered against the Dufferin

Property (the “**City Order**”). The City Order prohibited footings, foundations, structural framing, ductwork and piping for heating and air conditioning systems from being covered or enclosed. Contrary to the City Order, the footings, foundations, structural framing, ductwork and piping for heating and air conditioning systems were in fact covered or enclosed before the IR Appointment Order was granted;

3. As result of the City Order, the City would not issue occupancy certificates for the condominium units and the condominium units could not be effectively marketed and sold;
4. Although CLL had entered into a number pre-filing agreements of purchase and sale with buyers, the occupancy dates under the agreements of purchase and sale had passed prior to the IR Appointment Order. Due to the City Order, occupancy certificates for the units had not been issued;
5. All of the pre-filing agreements of purchase and sale provided that CLL’s right to unilaterally extend occupancy dates were limited to factors beyond CLL’s control. Prior to the IR Appointment Order, a number of the buyers initiated legal proceedings for declarations that CLL repudiated their agreements of purchase and sale and for the return of their deposits. Those buyers who had not commenced legal proceedings confirmed to the Receiver that they no longer wished proceed;
6. In the Receiver’s assessment, CLL’s inability to obtain occupancy certificates for condominium units due to the City Order could not reasonably be said to have arisen from factors beyond CLL’s control. Therefore, its right to unilaterally extend occupancy dates to buyers could not be triggered. Accordingly, the Receiver did not believe that there was any basis to engage in potentially expensive litigation with the buyers or to purport to tender on them. As such, it agreed to release their deposits and terminate their agreements of purchase and sale;
7. On May 23, 2023, the Receiver entered into a listing agreement with T.K. Butler (“**Butler**”), of Frank Leo & Associates (Re/Max West Realty Inc. Brokerage), a real estate agent who was proposed by Donald Desrochers;
8. On Butler’s advice, three units were initially listed, advertised and staged at listing prices

that were set with input from Butler. Although there were numerous showings and regular reporting was provided by Butler, no offers were generated;

9. On July 10, 2023, with input from Butler, price reductions for all three units were implemented and three further units were listed for sale. Notwithstanding the price reductions and numerous showings that followed, only one offer was received but no agreement of purchase and sale was reached;
10. In view of the poor results, the Receiver in consultation with the appointing creditor, Owemanco Mortgage Holding Corporation (“OMHC”), has re-evaluated the marketing and sale process based upon, among other things:
  - concerns raised by prospective buyers regarding the quality of finishes in the units and the absence of a vendor’s warranty;
  - the incongruity of the name “Concept Lofts” and the layout of the units as townhomes; and
  - the vestigial stigma associated with the name “Concept Lofts” given the history of delays, issues with the City, non-payment of pre-filing suppliers and aborted pre-filing sales;
11. In view of the above-noted concerns and the current environment of high interest rates, the Receiver formed the view that a rebranding of the project and relaunching of the marketing and sale process are required;
12. Effective September 7, 2023, the units were taken off the market. The Receiver has also terminated its listing agreement with Butler;
13. The Receiver intends to proceed as follows:
  - continue remediating the units, including painting touch ups, fixing nail pops and other cosmetic work;
  - continue undertaking work required by the City for occupancy permits to be issued;

- prepare a new logo, new professional marketing material and new signage;
  - establish a well-appointed sales centre at the Dufferin Property, open several days a week;
  - tastefully furnish and stage several model units;
  - keep the Project well maintained throughout the relaunched marketing and sale process;
  - consult with OWMC regarding the establishment of a warranty fund or other financial assurance to deal with post-closing deficiencies;
  - rebrand the project as Heritage Towns at Hallam, to better reflect the product being sold and alleviate or minimize the historical stigma associated with the name Concept Lofts and file articles of amendment to implement the name change; and
  - relaunch the marketing and sales process in the next thirty to sixty days;
14. Section 249 of the *Bankruptcy and Insolvency Act* and Rules 3.02(1), 16.08 and 41.05 of the *Rules of Civil Procedure*; and
15. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

- (a) The Fifth Report; and
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

September 12, 2023

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Lofts Ltd. and Donald Desrochers

TO: **SERVICE LIST**

**OWEMANCO MORTGAGE HOLDING CORPORATION**  
Applicant

**-and- CONCEPT LOFTS LTD. et al.**  
Respondents

Court File No. CV-22-00688570-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT  
TORONTO

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**NOTICE OF MOTION**

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Desrochers

# TAB 2



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

Court File No. CV-22-00688570-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE  
ACT*, R.S.O. 1990 C. C.43, AS AMENDED**

**BETWEEN:**

**OWEMANCO MORTGAGE HOLDING CORPORATION**

Applicant

- and -

**CONCEPT LOFTS LTD. and DONALD DESROCHERS**

Respondents

**FIFTH REPORT OF ROSEN GOLDBERG INC.**

**September 12, 2023**

**I. INTRODUCTION**

1. By Order of Justice Cavanagh dated October 21, 2022 (the “**IR Appointment Order**”), Rosen Goldberg Inc. was appointed interim receiver of certain real property of the Respondent Concept Lofts Ltd. (the “**CLL**”) municipally known as 1183 Dufferin Street, in Toronto, Ontario (the “**Dufferin Property**”) pursuant to section 47(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”). A copy of the IR Appointment Order is attached as **Appendix**



**A.**

2. By Order of Justice Cavanagh dated November 7, 2022 (the “**Expanded Powers Order**”), the status and mandate of Rosen Goldberg Inc. as interim receiver was varied and amended and, pursuant to section 243(1) of the BIA and section 101 of the *Courts of Justice Act*, it was appointed ‘full blown’ receiver and manager (in such capacities, the “**Receiver**”) of:
  - (a) all of the assets, undertakings and properties of CLL acquired for, or used in relation to a business carried on by CLL, including the Dufferin Property, and all proceeds thereof; and
  - (b) the lands and premises municipally owned by (“**Desrochers**”) known as Suites 502 and 503, 1 Balmoral Avenue in Toronto, Ontario, and all proceeds thereof.
3. A copy of the Expanded Powers Order is attached as **Appendix B**.

**II. TERMS OF REFERENCE**

4. In preparing this Fifth Report, the Receiver has relied upon information from third party sources (collectively, the “**Information**”). Certain information contained in this Fifth Report may refer to, or be based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Receiver has relied on this Information, and to the extent possible reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy and completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.



### III. PURPOSE OF THIS REPORT

5. This Fifth Report is being filed to report on and seek approval of the Receiver's plan to rebrand the Dufferin Property for marketing and sale purposes and in support of seeking authorization for the Receiver to file articles of amendment to change the legal name of CCL to Heritage Towns at Hallam Inc.

### IV. BACKGROUND

6. The narrative background respecting the Receiver's appointment and events subsequent thereto was canvassed extensively in the Receiver's Fourth Report dated August 11, 2023 (the "**Fourth Report**") and is not repeated at length herein. A copy of the Fourth Report is attached (without appendices) as **Appendix C**.
7. A copy of the endorsement of Justice Penny dated August 14, 2023, in respect of the most recent motion in the within proceedings, is attached as **Appendix D**.

### V. THE DUFFERIN PROPERTY

8. The Dufferin Property is a converted church residential condominium project (the "**Project**") on the east side of Dufferin Street north of Bloor Street West. It consists of 14 residential units and 11 below grade parking stalls. Although construction was substantially completed in the summer of 2021, the Project had not progressed significantly, if at all, prior to the IR Appointment Order and the condominium corporation had not yet been created.
9. On September 15, 2022, the City of Toronto (the "**City**") caused notice of an Order issued on July 16, 2019 under the *Building Code Act, 1992* to be registered against the Dufferin Property (the "**City Order**"). The City Order prohibited footings, foundations, structural framing, ductwork and piping for heating and air conditioning systems from being covered



- or enclosed. Contrary to the City Order, the footings, foundations, structural framing, ductwork and piping for heating and air conditioning systems were in fact covered or enclosed before the IR Appointment Order was granted.
10. As result of the City Order, the City would not issue occupancy certificates for the condominium units and the condominium units could not be effectively marketed and sold.
  11. Although CLL had entered into a number pre-filing agreements of purchase and sale with buyers, the occupancy dates under the agreements of purchase and sale had passed prior to the IR Appointment Order. Due to the City Order, occupancy certificates for the units had not been issued.
  12. All of the pre-filing agreements of purchase and sale provided that CLL's right to unilaterally extend occupancy dates were limited to factors beyond CLL's control. Prior to the IR Appointment Order, a number of the buyers initiated legal proceedings for declarations that CLL repudiated their agreements of purchase and sale and for the return of their deposits. Those buyers who had not commenced legal proceedings confirmed to the Receiver that they no longer wished proceed.
  13. In the Receiver's assessment, CLL's inability to obtain occupancy certificates for condominium units due to the City Order could not reasonably be said to have arisen from factors beyond CLL's control. Therefore, its right to unilaterally extend occupancy dates to buyers could not be triggered. Accordingly, the Receiver did not believe that there was any basis to engage in potentially expensive litigation with the buyers or to purport to tender on them. As such, it agreed to release their deposits and terminate their agreements of purchase and sale.
  14. On May 23, 2023, the Receiver entered into a listing agreement with T.K. Butler ("**Butler**"), of Frank Leo & Associates (Re/Max West Realty Inc. Brokerage), a real estate agent who was proposed by Desrochers.



15. On Butler's advice, three units were initially listed, advertised and staged at listing prices that were set with input from Butler. Although there were numerous showings and regular reporting was provided by Butler, no offers were generated.
16. On July 10, 2023, with input from Butler, price reductions for all three units were implemented and three further units were listed for sale. Notwithstanding the price reductions and numerous showings that followed, only one offer was received but no agreement of purchase and sale was reached.
17. In view of the poor results, the Receiver in consultation with the appointing creditor, Owemanco Mortgage Holding Corporation, has re-evaluated the marketing and sale process based upon, among other things:
  - concerns raised by prospective buyers regarding the quality of finishes in the units and the absence of a vendor's warranty;
  - the incongruity of the name "Concept Lofts" and the layout of the units as townhomes; and
  - the vestigial stigma associated with the name "Concept Lofts" given the history of delays, issues with the City, non-payment of pre-filing suppliers and aborted pre-filing sales.
18. In view of the above-noted concerns and the current environment of high interest rates, the Receiver formed the view that a rebranding of the Project and relaunching of the marketing and sale process are required.
19. Accordingly, effective September 7, 2023, the units were taken off the market. The Receiver has also terminated its listing agreement with Butler.
20. The Receiver intends to proceed as follows:



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

- continue remediating the units, including painting touch ups, fixing nail pops and other cosmetic work;
- continue undertaking work required by the City for occupancy permits to be issued;
- prepare a new logo, new professional marketing material and new signage;
- establish a well-appointed sales centre at the Dufferin Property, open several days a week;
- tastefully furnish and stage several model units;
- keep the Project well maintained throughout the relaunched marketing and sale process;
- consult with OWMC regarding the establishment of a warranty fund or other financial assurance to deal with post-closing deficiencies;
- rebrand the Project as Heritage Towns at Hallam, to better reflect the product being sold and alleviate or minimize the historical stigma associated with the name Concept Lofts and file articles of amendment to implement the name change; and
- relaunch the marketing and sales process in the next thirty to sixty days.

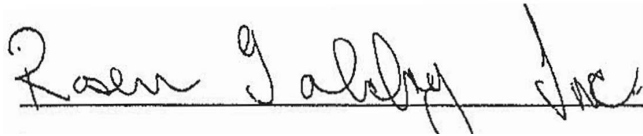
All of which is respectfully submitted,



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

Dated at Toronto, Ontario, this 12th day of September, 2023.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS  
RECEIVER OF CONCEPT LOFTS LTD.  
THE BALMORAL PROPERTY, AND NOT IN  
ITS PERSONAL OR CORPORATE CAPACITY**



## APPENDIX “A”

Court File No. CV-22-00688570-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE  
ACT*, R.S.O. 1990 C. C.43, AS AMENDED**

THE HONOURABLE	)	FRIDAY, THE 21 <sup>st</sup>
	)	
JUSTICE CAVANAGH	)	DAY OF OCTOBER, 2022

**OWEMANCO MORTGAGE HOLDING CORPORATION**

Applicant

- and -

**CONCEPT LOFTS LTD. and DONALD DESROCHERS**

Respondents

**APPOINTMENT ORDER  
(Interim Receiver)**

THIS MOTION made by the Applicant for an Order pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, (the “BIA”) appointing Rosen Goldberg Inc. as interim receiver (in such capacities, the “Interim Receiver”) of certain property of the Respondent Concept Lofts Ltd. (“CCL”) municipally known as 1183 Dufferin Street, Toronto, Ontario, and legally described in Schedule “A” attached hereto (the “Dufferin Property”), was heard this day by Zoom judicial videoconference.

ON READING the Affidavit of Graham Tobe sworn October 20, 2022 and on hearing the submissions of counsel for the Applicant, Sanjay Gupta on behalf of 2264405 Ontario Inc., and Saneh Bhardwaj on behalf of World Financial Solutions Inc., no one else on the service list appearing, although duly served as appears from the Affidavit of Service of David Seifer sworn October 20, 2022 and on reading the consent of Rosen Goldberg Inc. to act as the Interim Receiver,

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 47(1) of the BIA, Rosen Goldberg Inc. is hereby appointed Interim Receiver, without security, of the Dufferin Property.

### **INTERIM RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Dufferin Property and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Dufferin Property;
- (b) to receive, preserve, and protect the Dufferin Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to cease to perform any contracts of CCL in relation to the Dufferin Property which interfere with the Interim Receiver's exercise of its powers and duties;

- (d) to engage contractors, engineers, architects, consultants, experts and such other persons for the purpose of taking conservatory measures in respect of the Dufferin Property;
- (e) to purchase or lease such machinery, equipment, or other assets to assist with the Interim Receiver's exercise of its powers and duties;
- (f) to execute, assign, issue and endorse documents in relation to the Dufferin Property, whether in the Interim Receiver's name or in the name and on behalf of CCL, for any purpose pursuant to this Order;
- (g) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on matters relating to the Dufferin Property and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;
- (h) to register a copy of this Order against title to the Dufferin Property and title to the lands and premises legally described in Schedule "B" attached hereto (the "Balmoral Property"); and
- (i) 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 Interim 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 CCL, and without interference from any other Person.

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

4. THIS COURT ORDERS that (i) CCL (ii) its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith grant immediate and continued access to the Dufferin Property to the Interim Receiver upon the Interim Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Interim 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 Dufferin Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim 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 INTERIM RECEIVER**

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

**NO PROCEEDINGS AGAINST THE DUFFERIN PROPERTY**

8. THIS COURT ORDERS that no Proceeding against or in respect of the Dufferin Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Dufferin Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

9. THIS COURT ORDERS that all rights and remedies against the Interim Receiver, or affecting the Dufferin Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Interim Receiver or CCL to carry on any business which CCL is not lawfully entitled to carry on, (ii) exempt the Interim Receiver or CCL from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE INTERIM RECEIVER**

10. THIS COURT ORDERS that 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 CCL in relation to the Dufferin Property, without written consent of the Interim Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

11. THIS COURT ORDERS that all Persons having oral or written agreements with CCL or statutory or regulatory mandates for the supply of goods and/or services, including without

limitation, all computer software, communication and other data services, insurance, utility or other services to CCL in relation to the Dufferin Property, are hereby 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 Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of CCL'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 Interim Receiver in accordance with normal payment practices of CCL or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

### **EMPLOYEES**

12. THIS COURT ORDERS that the Interim Receiver shall not be liable for any employee-related liabilities of CCL, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Interim Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

13. THIS COURT ORDERS that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of the Dufferin 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 respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver's duties and powers under this Order, be deemed to be in Possession of the

Dufferin Property within the meaning of any Environmental Legislation, unless it is actually in possession.

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

14. THIS COURT ORDERS that the Interim 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 for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

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

15. THIS COURT ORDERS that the Interim Receiver and counsel to the Interim Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the "Interim Receiver's Charge") on the Dufferin Property and the Balmoral Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Interim Receiver's Charge shall form a first charge on the Dufferin Property and the Balmoral Property in priority to all security interests, trusts, 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.

16. THIS COURT ORDERS that the Interim Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

17. THIS COURT ORDERS that prior to the passing of its accounts, the Interim 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 Interim 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 INTERIM RECEIVERSHIP**

18. THIS COURT ORDERS that the Interim Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Interim Receiver by this Order, including interim expenditures. The whole of the Dufferin Property and the Balmoral Property shall be and are hereby charged by way of a fixed and specific charge (the “Interim 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 Interim Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that neither the Interim Receiver’s Borrowings Charge nor any other security granted by the Interim Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

20. THIS COURT ORDERS that the Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “C” hereto (the “Interim Receiver’s Certificates”) for any amount borrowed by it pursuant to this Order.

21. THIS COURT ORDERS that the monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim 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 Interim Receiver’s Certificates.

22. THIS COURT ORDERS that all monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court shall be deposited into one or

more new accounts to be opened by the Interim Receiver (the “Post Interim Receivership Accounts”) and the monies standing to the credit of such Post Interim 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.

### **SERVICE AND NOTICE**

23. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [http://www.rosengoldberg.com/company-files.php?company\\_id=83](http://www.rosengoldberg.com/company-files.php?company_id=83).

24. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the creditors of CCL and the Respondent Donald Desrochers (collectively, the “Debtors”) other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

### **TERM OF INTERIM RECEIVER’S APPOINTMENT**

25. THIS COURT ORDERS that the term of the Interim Receiver’s appointment shall expire on the earliest of:

- (a) the taking of possession by a receiver, within the meaning of subsection 243(2) of the BIA, of the Dufferin Property;
- (b) the taking of possession by a trustee in bankruptcy of the Dufferin Property; and
- (c) November 19, 2022, or such earlier or later date as this Court may order.

## **GENERAL**

26. THIS COURT ORDERS that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. THIS COURT ORDERS that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy or receiver and manager of the Debtors.

28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

29. THIS COURT ORDERS that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Interim 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.

30. THIS COURT ORDERS that the 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 Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid from the Debtors' estates with such priority, according to such allocation as between Debtors and the Dufferin Property and the Balmoral Property, and at such time as this Court may determine.

31. THIS COURT ORDERS that this Order is strictly without prejudice to the relief sought by the Applicant in its Notice of Application.

32. THIS COURT ORDERS that any interested party (including the Applicant, the Interim Receiver and any of the Debtors) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

33. THIS COURT ORDERS that this Order is effective from today's date and is not required to be entered.

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**SCHEDULE "A"****LANDS AND PREMISES OWNED BY THE  
RESPONDENT CONCEPT LOFTS LTD.**

<i>PIN</i>	21291 - 0415	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PART OF LOTS 18, 19 & 20, BLOCK O, PLAN 622, DESIGNATED AS PART 1, PLAN66R26944; CITY OF TORONTO			
<i>Address</i>	1183 DUFFERIN STREET TORONTO			

**SCHEDULE "B"**

**LANDS AND PREMISES OWNED BY THE  
RESPONDENT DONALD DESROCHERS**

<i>PIN</i>	12205 - 0069LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 2, LEVEL 5, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION E184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO. SUBJECT TO A RIGHT FOR 5 YEARS FROM 9809 09 AS IN D621469, CITY OF TORONTO		
<i>Address</i>	502 UNIT 1 BALMORAL AVENUE TORONTO		
<i>PIN</i>	12205 - 0177LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 8, LEVEL B, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION E184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO. SUBJECT TO A RIGHT FOR 5 YEARS FROM 9809 09 AS IN D621469, CITY OF TORONTO		
<i>Address</i>	8B UNIT 1 BALMORAL AVENUE TORONTO		
<i>PIN</i>	12205 - 0070LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 3, LEVEL 5, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION E184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO.		
<i>Address</i>	503 UNIT 1 BALMORAL AVENUE TORONTO		

<i>PIN</i>	12205 - 0281LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 24, LEVEL C, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION E184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO.		
<i>Address</i>	24C UNIT 1 BALMORAL AVENUE TORONTO		

**SCHEDULE “C”**

**INTERIM RECEIVER CERTIFICATE**

CERTIFICATE NO. ●

AMOUNT \$●

1. THIS IS TO CERTIFY that Rosen Goldberg Inc., the interim receiver (the “Interim Receiver”) of certain property of the Respondent Concept Lofts Ltd. municipally known as 1183 Dufferin Street, Toronto, Ontario (the “Dufferin Property”) appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated the 21<sup>st</sup> day of October, 2022 (the “Order”) made in an application having Court file number CV-22-00688570-00CL, has received as such Interim Receiver from the holder of this certificate (the “Lender”) the principal sum of \$●, being part of the total principal sum of \$● which the Interim Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the ● day of each month] after the date hereof at a notional rate per annum equal to the rate of ● per cent above the prime commercial lending rate of Bank of ● from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Interim Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Dufferin 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 Interim Receiver to indemnify itself out of such Dufferin 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 Toronto, Ontario.

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 Interim

Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Interim Receiver to deal with the Dufferin Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Interim Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ● day of ●, 20●.

ROSEN GOLDBERG INC., solely in its  
capacity as Interim Receiver of the Dufferin  
Property, and not in its personal capacity

Per: \_\_\_\_\_

Name:

Title:

**OWEMANCO MORTGAGE HOLDING CORPORATION**  
Applicant

-and-

**CONCEPT LOFTS LTD. et al.**  
Respondents

Court File No. CV-22-00688570-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
PROCEEDING COMMENCED AT  
**TORONTO**

**ORDER (APPOINTING INTERIM RECEIVER)**

**DICKINSON WRIGHT LLP**

Barristers & Solicitors  
199 Bay Street  
Suite 2200, P.O. Box 447  
Commerce Court Postal Station  
Toronto, Ontario, M5L 1G4

**DAVID P. PREGGER (36870L)**

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**DAVID Z. SEIFER (77474F)**

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Tel: (416) 646-6867  
Fax: (844) 670-6009

Lawyers for the Applicant

## APPENDIX “B”



Court File No. CV-22-00688570-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE*  
*ACT*, R.S.O. 1990 C. C.43, AS AMENDED**

THE HONOURABLE	)	MONDAY, THE 7th
	)	
JUSTICE CAVANAGH	)	DAY OF NOVEMBER, 2022

B E T W E E N:

**OWEMANCO MORTGAGE HOLDING CORPORATION**

Applicant

- and -

**CONCEPT LOFTS LTD. and DONALD DESROCHERS**

Respondents

**EXPANDED POWERS ORDER**  
**(appointing Receiver)**

THIS APPLICATION made by the Applicant 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 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, (the “CJA”) appointing Rosen Goldberg Inc. as receiver and manager (in such capacities, the “Receiver”) without security, of all of the assets, undertakings and properties of the Respondent Concept Lofts Ltd. acquired for, or used in relation to a business carried on by the Respondent Concept Lofts Ltd. and over certain real property owned by the Respondent Donald Desrochers (and together with the Respondent

Concept Lofts Ltd., collectively, the “Debtors”), was heard this day by Zoom judicial videoconference.

ON READING the Affidavit of Graham Tobe sworn October 19, 2022, the Affidavit of Graham Tobe sworn October 20, 2022, the Affidavit of David Seifer sworn November 4, 2022, and the First Report of Rosen Goldberg Inc. dated November 3, 2022, (the “First Report”) and on hearing the submissions of counsel for the Applicant, counsel for the Debtors, Steve Basille, an occupant of Unit 102 at 1183 Dufferin Street, and Fernando Franco, an occupant of Unit 108 at 1183 Dufferin Street, no one else on the service list appearing, although duly served as appears from the Affidavit of Service of Janet Nairne sworn October 20, 2022, the Affidavit of Service of David Seifer sworn October 20, 2022, and the Affidavit of Service of Janet Nairne sworn November 4, 2022, and on reading the First Report and the consent of Rosen Goldberg Inc. to act as the Receiver,

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Application Record, the Supplementary Application Record and the First Report is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. THIS COURT ORDERS that the status and mandate of Rosen Goldberg Inc. as interim receiver pursuant to the Appointment Order (Interim Receiver) dated October 21, 2022 is hereby varied and amended as hereinafter set out.

3. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Rosen Goldberg Inc. is hereby appointed Receiver, without security, of:

- (a) all of the assets, undertakings and properties of the Respondent Concept Lofts Ltd. acquired for, or used in relation to a business carried on by the Respondent Concept Lofts Ltd., including the lands and premises described in Schedule “A” attached hereto, and all proceeds thereof; and

- (b) the lands and premises owned by the Respondent Donald Desrochers described in Schedule “B” hereto, and all proceeds thereof

(collectively, the “Property”).

#### **RECEIVER’S POWERS**

4. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, rents, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Respondent Concept Lofts Ltd., including the powers to complete any outstanding or remedial construction on the lands and premises described in Schedule “A”, cause a condominium corporation to be created, execute a condominium declaration, 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 Respondent Concept Lofts Ltd.;
- (d) to deal with the City of Toronto and any government authority having jurisdiction in respect of any building or other permits or approvals, outstanding or new, required in connection with the lands and premises described in Schedule “A” whether in the Receiver’s name or in the name and on behalf of the Respondent Concept Lofts Ltd., for any purpose pursuant to this Order;

- (e) to engage contractors, project managers, engineers, architects, 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;
- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Respondent Concept Lofts Ltd. or any part or parts thereof;
- (g) to receive and collect all monies, rents and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Respondent Concept Lofts Ltd. in collecting such monies, including, without limitation, to enforce any security held by the Respondent Concept Lofts Ltd.;
- (h) to settle, extend or compromise any indebtedness owing to the Respondent Concept Lofts Ltd.;
- (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 any of the Debtors, for any purpose pursuant to this Order;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Respondent Concept Lofts Ltd., the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (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 in its discretion may deem appropriate;

- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business with the approval of this Court and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, 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 thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (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 thought desirable by the Receiver, in the name of the Respondent Concept Lofts Ltd.;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Respondent Concept Lofts Ltd. may have; and
- (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 Debtors, and without interference from any other Person.

### **WRIT OF POSSESSION**

5. THIS COURT ORDERS that leave be and is hereby granted to issue a writ of possession in respect of the lands and premises described in Schedule “B” hereto in order that the Sheriff of the City of Toronto give possession of the lands and premises described in Schedule “B” hereto to the Receiver without delay.

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

6. THIS COURT ORDERS that (i) the Debtors, (ii) the Respondent Concept Lofts Ltd.’s current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “Persons” and each being a “Person”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

7. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Respondent Concept Lofts Ltd. or in relation to the lands and premises described in Schedule “B” hereto, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “Records”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 7 or in paragraph 8 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege

attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

8. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

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

9. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a “Proceeding”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

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

10. THIS COURT ORDERS that no Proceeding against or in respect of the Respondent Concept Lofts Ltd. 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 Respondent Concept Lofts Ltd. or the Property are hereby stayed and suspended pending further Order of this Court.

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

11. THIS COURT ORDERS that all rights and remedies against the Respondent Concept Lofts Ltd., the Receiver, or affecting the Property, are hereby stayed and suspended except with the

written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Respondent Concept Lofts Ltd. to carry on any business which the Respondent Concept Lofts Ltd. is not lawfully entitled to carry on, (ii) exempt the Receiver or the Respondent Concept Lofts Ltd. from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

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

12. THIS COURT ORDERS that 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 Respondent Concept Lofts Ltd. or by the Respondent Donald Desrochers in in relation to the lands and premises described in Schedule “B” hereto, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

13. THIS COURT ORDERS that all Persons having oral or written agreements with the Respondent Concept Lofts Ltd. 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 Respondent Concept Lofts Ltd., or to the Respondent Donald Desrochers in in relation to the lands and premises described in Schedule “B” hereto, are hereby 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 that the Receiver shall be entitled to the continued use of the Respondent Concept Lofts Ltd.’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 Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

**RECEIVER TO HOLD FUNDS**

14. THIS COURT ORDERS that 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. THIS COURT ORDERS that all employees of the Respondent Concept Lofts Ltd. shall remain the employees of the Respondent Concept Lofts Ltd. until such time as the Receiver, on the Respondent Concept Lofts Ltd.’s behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

**PIPEDA**

16. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “Sale”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects

identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

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

17. THIS COURT ORDERS that nothing herein contained 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 respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “Environmental Legislation”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. 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 it is actually in possession.

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

18. THIS COURT ORDERS that 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 for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. 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**

19. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “Receiver’s Charge”) on the Property, as

security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. THIS COURT ORDERS that 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 hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. THIS COURT ORDERS that 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

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$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 it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, 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.

23. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “C” hereto (the “Receiver’s Certificates”) for any amount borrowed by it pursuant to this Order.

25. THIS COURT ORDERS that 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.

### **SERVICE AND NOTICE**

26. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [http://www.rosengoldberg.com/company-files.php?company\\_id=83](http://www.rosengoldberg.com/company-files.php?company_id=83).

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors’ creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

28. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

30. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estates, according to such allocation as between the Debtors' estates, with such priority and at such time as this Court may determine.

33. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

34. THIS COURT ORDERS that this Order is effective from today's date and is not required to be entered.



Digitally signed by  
Mr. Justice Cavanagh

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**SCHEDULE "A"****LANDS AND PREMISES OWNED BY THE  
RESPONDENT CONCEPT LOFTS LTD.**

<i>PIN</i>	21291 - 0415 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PART OF LOTS 18, 19 & 20, BLOCK O, PLAN 622, DESIGNATED AS PART 1, PLAN66R26944; CITY OF TORONTO		
<i>Address</i>	1183 DUFFERIN STREET TORONTO		

**SCHEDULE "B"****LANDS AND PREMISES OWNED BY THE  
RESPONDENT DONALD DESROCHERS**

<i>PIN</i>	12205 - 0069LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 2, LEVEL 5, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION E184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO. SUBJECT TO A RIGHT FOR 5 YEARS FROM 9809 09 AS IN D621469, CITY OF TORONTO		
<i>Address</i>	502 UNIT 1 BALMORAL AVENUE TORONTO		
<i>PIN</i>	12205 - 0177LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 8, LEVEL B, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION E184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO. SUBJECT TO A RIGHT FOR 5 YEARS FROM 9809 09 AS IN D621469, CITY OF TORONTO		
<i>Address</i>	8B UNIT 1 BALMORAL AVENUE TORONTO		
<i>PIN</i>	12205 - 0070LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 3, LEVEL 5, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION E184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO.		
<i>Address</i>	503 UNIT 1 BALMORAL AVENUE TORONTO		

<i>PIN</i>	12205 - 0281LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 24, LEVEL C, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATIONE184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO.		
<i>Address</i>	24C UNIT 1 BALMORAL AVENUE TORONTO		

## SCHEDULE "C"

## RECEIVER CERTIFICATE

CERTIFICATE NO. ●

AMOUNT \$●

1. THIS IS TO CERTIFY that Rosen Goldberg Inc., the receiver (the "Receiver") of the assets, undertakings and properties of Concept Lofts Ltd. and certain real property owned by the Donald Desrochers (and together with Concept Lofts Ltd., collectively, the "Debtors"), including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ● day of ●, 2022 (the "Order") made in an application having Court file number CV-22-00688570-00CL, 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 Bank of ● from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, 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 such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ● day of ●, 20●.

ROSEN GOLDBERG INC., solely in its  
capacity as Receiver of the Property, and not in  
its personal capacity

Per: \_\_\_\_\_

Name:

Title:

**OWEMANCO MORTGAGE HOLDING CORPORATION**  
Applicant

-and-

**CONCEPT LOFTS LTD. et al.**  
Respondents

Court File No. CV-22-00688570-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
PROCEEDING COMMENCED AT  
**TORONTO**

**EXPANDED POWERS ORDER**  
**(APPOINTING RECEIVER)**

**DICKINSON WRIGHT LLP**

Barristers & Solicitors  
199 Bay Street  
Suite 2200, P.O. Box 447  
Commerce Court Postal Station  
Toronto, Ontario, M5L 1G4

**DAVID P. PREGER (36870L)**

Email: [dpreger@dickinsonwright.com](mailto:dpreger@dickinsonwright.com)

Tel: (416) 646-4606

**DAVID Z. SEIFER (77474F)**

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Tel: (416) 646-6867

Fax: (844) 670-6009

Lawyers for the Applicant

## APPENDIX “C”



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

Court File No. CV-22-00688570-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE*  
*ACT*, R.S.O. 1990 C. C.43, AS AMENDED

BETWEEN:

**OWEMANCO MORTGAGE HOLDING CORPORATION**

Applicant

- and -

**CONCEPT LOFTS LTD. and DONALD DESROCHERS**

Respondents

**FOURTH REPORT OF ROSEN GOLDBERG INC.**

**August 11, 2023**

**I. INTRODUCTION**

1. By Order of Justice Cavanagh dated October 21, 2022 (the “**IR Appointment Order**”), Rosen Goldberg Inc. was appointed interim receiver of certain real property of the Respondent Concept Lofts Ltd. (the “**CLL**”) municipally known as 1183 Dufferin Street, in Toronto, Ontario (the “**Dufferin Property**”) pursuant to section 47(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”). A copy of the IR Appointment Order is attached as **Appendix**



**A.**

2. By Order of Justice Cavanagh dated November 7, 2022 (the “**Expanded Powers Order**”), the status and mandate of Rosen Goldberg Inc. as interim receiver was varied and amended and, pursuant to section 243(1) of the BIA and section 101 of the *Courts of Justice Act*, it was appointed ‘full blown’ receiver and manager (in such capacities, the “**Receiver**”) of:
  - (a) all of the assets, undertakings and properties of CLL acquired for, or used in relation to a business carried on by CLL, including the Dufferin Property, and all proceeds thereof; and
  - (b) the lands and premises municipally owned by Donald Desrochers (“**Desrochers**”) known as Suites 502 and 503, 1 Balmoral Avenue in Toronto, Ontario (the “**Balmoral Property**”), and all proceeds thereof.
3. A copy of the Expanded Powers Order is attached as **Appendix B**. A copy of Justice Cavanagh’s endorsement in connection with granting the Expanded Powers Order is attached as **Appendix C**.

**II. TERMS OF REFERENCE**

4. In preparing this Fourth Report, the Receiver has relied upon information from third party sources (collectively, the “**Information**”). Certain information contained in this Fourth Report may refer to, or be based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Receiver has relied on this Information, and to the extent possible reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy and completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada



Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

### III. PURPOSE OF THIS REPORT

5. This Fourth Report is being filed to respond to a pending motion by Desrochers and his spouse Laura Lawrence (“**Lawrence**”) to stay or obtain relief from forfeiture from execution of a writ of possession (the “**Writ**”) in respect of the Balmoral Property (the “**Pending Motion**”).
6. The Sheriff has delivered notices to vacate the Balmoral Property on or before August 14, 2023 at 8:30 am on the instructions of the Receiver.

### IV. BACKGROUND

7. OMHC is a secured lender to:
  - (a) CLL in connection with a principal loan of \$6.675M (the “**Facility A Loan**”); and
  - (b) CLL and Desrochers in connection with a principal loan of \$2.05M (the “**Facility B Loan**”).
8. As security for the Facility A Loan, OMHC holds a first-ranking mortgage over the Dufferin Property (the “**Facility A Mortgage**”).
9. As security for the Facility B Loan, OMHC holds mortgages blanketed over the Dufferin Property in second position (immediately behind the Facility A Mortgage) and over the Balmoral Property in first position (the “**Facility B Mortgage**”).
10. The Dufferin Property is subject to three additional mortgages that rank subordinate in priority to Facility A Mortgage and the Facility B Mortgage. The three subordinate



mortgages secure payment of the principal face amounts of \$1.3M, \$1.152M and \$547.5K, respectively, in favour of other mortgagees.

11. The Facility B Mortgage is the only mortgage registered against the Balmoral Property
12. The Facility B Mortgage contains a cross-default provision such that default under the Facility A Mortgage is a default under the Facility B Mortgage.
13. The Dufferin Property is a converted church residential condominium project (the “**Project**”) on the east side of Dufferin Street north of Bloor Street West. It consists of 14 residential units and 11 below grade parking stalls. Although construction was substantially completed in the summer of 2021, the Project had not progressed significantly, if at all, prior to the IR Appointment Order and the condominium corporation had not yet been created.
14. On September 15, 2022, the City of Toronto (the “**City**”) caused notice of an Order issued on July 16, 2019 under the *Building Code Act, 1992* to be registered against the Dufferin Property (the “**City Order**”). The City Order prohibited footings, foundations, structural framing, ductwork and piping for heating and air conditioning systems from being covered or enclosed. Contrary to the City Order, the footings, foundations, structural framing, ductwork and piping for heating and air conditioning systems were in fact covered or enclosed before the IR Appointment Order was granted.
15. As result of the City Order, the City would not issue occupancy certificates for the condominium units in the Dufferin Property and the condominium units could not be effectively marketed and sold.

## V. THE BALMORAL PROPERTY

16. Desrochers and Lawrence reside in the Balmoral Property. The Balmoral Property is a 2,208 square foot residential condominium unit with 2 underground parking spaces, on the west side of Yonge Street between Farnham Avenue and Balmoral Avenue.



17. Pursuant to paragraph 5 of the Expanded Powers Order, leave was granted to issue the Writ.
18. Lawrence subsequently moved before Justice Cavanagh on December 20, 2022 (the “**First Stay Motion**”) to discharge the Receiver over the Balmoral Property and stay the Writ on the basis that she was never given notice of the receivership application notwithstanding her spousal interest in the Balmoral Property. In the alternative, Lawrence sought an Order permitting her to put the Facility B Mortgage into good standing.
19. In reasons released on December 30, 2022, Justice Cavanagh dismissed the First Stay Motion and held that Lawrence failed to show that she did not receive notice of the receivership application. His Honour further held that the Facility B Mortgage could not be put into good standing without also putting the Facility A Mortgage into good standing by virtue of the cross-default provision in the Facility B Mortgage.
20. A copy of His Honour’s endorsement is attached as **Appendix D**.
21. The dismissal of the First Stay Motion prompted negotiations leading an arrangement being reached between Desrochers and OMHC on January 13, 2023 (the “**Arrangement**”). The Arrangement was premised on permitting Desrochers and Lawrence to remain in possession of the Balmoral Property on certain terms and conditions, subject to Court approval.
22. The consideration given by Desrochers for the Arrangement was the assignment of 1.2M units that he held in Owemanco Mortgage Trust (the “**Investment**”) to OMHC. The net asset value of each unit was approximately \$1.00 (Cdn).
23. The Arrangement was follows:
  - (a) the Investment would be immediately and irrevocably assigned to OMHC;
  - (b) the Investment would be liquidated by OMHC, from time to time, and applied for any of the following purposes:



- i. to pay interest arrears that have accrued under the Loans and protective expenses that have been incurred under the Loans to date;
- ii. to pay monthly interest on the Loans, insurance and property taxes on a go forward basis; and
- iii. to pay expenses required for the Receiver to ready condominium units in the Dufferin Property for sale

(collectively, the “**Purposes**”);

- (c) the proceeds of the Investment as and when liquidated and applied for the Purposes would be secured by a subordinate interest in the Facility B Loan and the security given therefor, including the Facility B Mortgage, in favour Desrochers or his nominee in accordance with an agreement to be executed by OMHC and Desrochers or his nominee (the “**Participation Agreement**”). For greater certainty, proceeds of the Investment when applied for the Purposes would be deemed to be added to the indebtedness secured under the Facility B Loan;
  - (d) the Sheriff would not execute the Writ unless and until the Investment was exhausted for the Purposes; and
  - (e) any claims and appeal rights that Lawrence and Desrochers may have that the Writ is not enforceable if and when the Investment was exhausted for the Purposes would be irrevocably withdrawn and released.
24. Before the Receiver’s motion for approval of the Arrangement was heard, the Arrangement was subject to each of Lawrence and Desrochers receiving independent legal advice and an agreement being executed by OMHC and Desrochers, or his nominee, governing the subordinate interest in the Facility B Loan and security
25. Each of Lawrence and Desrochers received ILA on January 20, 2023. Copies of the ILA



Certificates that each of them and their lawyers signed are attached, collectively, as **Appendix E**.

26. The Participation Agreement, pursuant to which the the subordinate interest in the Facility B Loan is held by Lawrence, was executed on January 20, 2023. A copy is attached as **Appendix F**.
27. The Arrangement was subject to Court approval due the Receiver’s concern that the subordinate mortgagees over the Dufferin Property who have no security over the Balmoral Property could be prejudiced if the Dufferin Property is sold before the Balmoral Property is sold.
28. On a motion by the Receiver, on notice to the subordinate ranking mortgagees over Dufferin, the Arrangement was approved by Order of Justice Osborne dated January 23, 2023 (the “**Approval Order**”). A copy of the Approval Order is attached as **Appendix G**.
29. In approving the Arrangement, Justice Osborne noted that the subordinate mortgagees of the Dufferin Property may have equitable claims against the Balmoral Property, or the proceeds thereof, and that it had always been open to any of them to protect their interest by paying out the Facility B Loan and taking assignments of the Facility B Loan and security and yet they had not done so. A copy of His Honour’s endorsement is attached as **Appendix H**.

## VI. EXHAUSTION OF THE INVESTMENT

30. On May 11, 2023, Desrochers was notified that it was virtually certain that the proceeds of the Investment would be exhausted by July 1, 2023, before any sale proceeds are realized from the sale of the Dufferin Property condominium units. He was also advised that unless he continued to pay monthly interest on the Loans, insurance and property taxes and to pay expenses associated with the receivership, that the Sheriff would be directed to execute the Writ against the Balmoral Property. Copies of the notice, sent by email, and the enclosures



that accompanied the email, are attached, collectively, as **Appendix I**.

31. The enclosures to the email included OMHC's monthly statements, which accounted for the redemption of the Investment and application of the Investment proceeds for the Purposes. The statements had previously been delivered to Desrochers on a monthly basis by OMHC.
32. Copies of OMHC's subsequent statements accounting for the redemption of the Investment for the Purposes, dated June 6, 2023 and June 30, 2023 respectively, are attached, collectively, as **Appendix J**.
33. The Investment was exhausted at the end of June, 2023. Since that time, Desrochers has not paid monthly interest on the Loans, insurance, property taxes or expenses associated with the receivership.

## **VII. INDEBTEDNESS UNDER LOAN FACILITY A AND LOAN FACILITY B**

34. Copies of OMHC's mortgage information statements under Loan Facility A and Loan Facility B are attached, collectively, as **Appendix K**. As at August 9, 2023, the amount owing under Loan Facility A was \$6,817,535.83. As at August 9, 2023, the amount owing under Loan Facility B was \$3,463,874.23, consisting of OMHC's senior interest of \$2,197,261.95 and Lawrence's junior interest of \$1,266,612.18.

## **VIII. STATUS OF THE DUFFERIN PROPERTY**

35. Desrochers asserts in paragraphs 31 and 34 of his Affidavit sworn on July 26, 2023 in support of the Pending Motion, that there are five condominium units in the Dufferin Property that have already been sold, with firm agreements of purchase and sale, and the transactions can be closed if the Receiver would tender on the buyers.
36. Although CLL had entered into pre-filing agreements of purchase and sale with buyers, the



- occupancy dates under the agreements of purchase and sale had passed prior to the IR Appointment Order. As previously noted, due to the City Order, occupancy certificates for the units had not been issued.
37. All of the agreements of purchase and sale provided that CLL's right to unilaterally extend occupancy dates were limited to factors beyond CLL's control. Prior to the IR Appointment Order, a number of the buyers initiated legal proceedings for declarations that CLL repudiated their agreements of purchase and sale and for the return of their deposits. Those buyers who had not commenced legal proceedings confirmed to the Receiver that they no longer wished proceed.
38. In the Receiver's assessment, CLL's inability to obtain occupancy certificates for condominium units due to the City Order could not reasonably be said to have arisen from factors beyond CLL's control. Therefore, its right to unilaterally extend occupancy dates to buyers could not be triggered. Accordingly, the Receiver did not believe that there was any basis to engage in potentially expensive litigation with the buyers or to purport to tender on them. As such, it agreed to release their deposits and terminate their agreements of purchase and sale.
39. Desrochers asserts in paragraph 5 of his Affidavit that the Dufferin Property is now ready to be sold.
40. A copy of a partially redacted memorandum dated August 2, 2023, prepared by Landscape Ltd. ("**Landscape**"), the Receiver's project manager in relation to the Dufferin Property, is attached as **Appendix L**. An unredacted copy of the memorandum is attached as **Confidential Appendix 1**.
41. As indicated in the Landscape memorandum, the condominium units have been listed for sale by the Receiver with T.K. Butler ("**Butler**"), of Frank Leo & Associates (Re/Max West Realty Inc. Brokerage), a real estate agent who was proposed by Desrochers. As of this date,



- there no units are subject to agreements of purchase and sale, although the listing prices for all of the units were recently reduced.
42. As set out in the Landscape memorandum, there is certain minor work that remains to be done to the units before occupancy certificates will be issued. There are other general deficiencies to the building, which although not tied to the issuance of occupancy certificates, must also be remedied.
43. In paragraph 44 of his Affidavit, Desrochers is critical of the Receiver for not having recovered \$270,000 in cash security from the Royal Bank of Canada (“**RBC**”) in connection with a letter of credit held by the City. As explained in the Landscape memorandum, a \$70,000 letter of credit that the City held as security for certain site work (including landscaping) was reduced to \$20,000 at the Receiver’s request. After considerable delay in the part of RBC and the deduction of RBC’s legal costs, the Receiver obtained \$46,315. The Receiver’s statement of receipts and disbursements for the period of November 7, 2022 to August 3, 2023 is attached as **Appendix M**. Two outstanding items remain to be addressed before the balance of \$20,000 is recovered.
44. The City also holding a \$200,000 letter of credit issued by RBC as security, pending satisfactory completion of certain heritage preservation works. The letter of credit is collateralized with \$200,000 of cash, which is held by RBC. As explained in detail in the Landscape memorandum, although considerable efforts have made by Landscape to obtain the release of the letter of credit, the City’s heritage preservation services has raised a number of concerns, which Landscape is addressing. Notwithstanding Landscape’s efforts, the Receiver is not optimistic that the return of \$200,000 is imminent.
45. A copy of a letter from the City’s legal services department to Desrochers and Lawrence’s counsel sent today in response to a threat to seek legal relief against the City is attached as **Appendix N**. The letter confirms the City’s position that the request for the release of security is premature.



46. Desrochers and Lawrence’s threat to seek legal relief against the City was not authorized by the Receiver and is unhelpful. Under the terms of the Expanded Powers Order, only the Receiver is authorized and empowered to deal with the City in relation to the release of security to the exclusion of all other “Persons” (as defined in the Expanded Powers Order).
47. In paragraphs 35 to 38 of his Affidavit, Desrochers is critical of a vendor’s condition in the Receiver’s form of agreement of purchase and sale which provides that nine or more units must be sold before sales become firm. The Receiver considers that condition to be critical as it preserves the option of selling the Dufferin Property as an apartment complex if there is insufficient market interest from buyers of individual units.
48. As noted in the Landscape memorandum, Landscape did discuss the potential impact of vendor’s condition with Butler. In Butler’s view, it was of secondary concern to prospective buyers. Prospective buyers’ primary concerns relate to the quality of the finishings, the small/irregular floor plates and a general discomfort with the lengthy time it took CLL to develop the Dufferin Property.

## IX. ANTICIPATED REALIZATION FROM SALE OF DUFFERIN UNITS

49. On the First Stay Motion, Lawrence argued (just as she and Desrochers argue on the Pending Motion) that there is enough equity in the Dufferin Property to repay the Facility A Loan and the Facility B Loan.
50. In paragraphs 15 to 18 of its Second Report dated December 8, 2022 (the “**Second Report**”), a copy of which is attached as **Appendix O** (without appendices), the Receiver addressed the question of anticipated realizations from the sale of the Dufferin property condominium units. A copy of the realization analysis that was attached as a confidential appendix to the Second Report (the “**Realization Analysis**”) is attached as **Confidential Appendix 2**.
51. The Realization Analysis was premised upon a number assumptions that have not come to fruition including, among other things, that:



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INSOLVENCY & RESTRUCTURING

- the marketing and sales process would be launched by the Receiver on January 15, 2023;
- the first agreement of purchase and sale would be signed on February 1, 2023; and
- 2 units would be sold every month.

52. Given that the Realization Analysis that was before Justice Cavanagh on the First Stay Motion did not support the contention that there is enough equity in the Dufferin Property to repay the Facility A Loan and the Facility B Loan, and that a number of the key assumptions underlying the Realization Analysis have not come to fruition, the possibility that the sale the Dufferin Property will generate sufficient proceeds to repay the Facility A Loan and the Facility B Loan is becoming increasingly remote with the passage of time.

All of which is respectfully submitted,



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

Dated at Toronto, Ontario, this 11th day of August, 2023.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS  
RECEIVER OF CONCEPT LOFTS LTD.  
THE BALMORAL PROPERTY, AND NOT IN  
ITS PERSONAL OR CORPORATE CAPACITY**

Rosen Goldberg Inc.

## APPENDIX “D”

**A**

## SUPERIOR COURT OF JUSTICE

**ENDORSEMENT**COURT FILE NO.: CV-22-00688570-00CL DATE: 14 August 2023NO. ON LIST: 1TITLE OF PROCEEDING: **Owemanco Mortgage Holding Corporation v. Concept Lofts Ltd., et al.**

BEFORE JUSTICE: Justice Penny

**PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
David P. Preger	Owemanco Mortgage Holding Corporation	<a href="mailto:dpreger@dickinsonwright.com">dpreger@dickinsonwright.com</a>

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
Paul Robson	Donald Desrochers & Laura Lawrence	<a href="mailto:Paulrobsonlaw@aol.com">Paulrobsonlaw@aol.com</a>

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Manny Rai	Receiver (Rosen Goldberg Inc.)	<a href="mailto:mrai@mandlaw.com">mrai@mandlaw.com</a>
Christopher Henderson	City of Toronto (non-party)	<a href="mailto:Christopher.Henderson@toronto.ca">Christopher.Henderson@toronto.ca</a>

**ENDORSEMENT OF JUSTICE PENNY:**

Donald Desrochers and his wife Laura Lawrence (whom I will collectively refer to as the Desrochers) move for a stay of enforcement of a writ of possession issued by Cavanagh J. on

December 30, 2022. The ground for the motion is relief from forfeiture. At the conclusion of oral argument, I dismissed the motion with reasons to follow. These are my reasons.

Mr. Desrochers is a principal of Concept Lofts Ltd. CLL acquired a former church on Dufferin Street and was in the process of developing it into 14 condominium units. Owemanco has a first mortgage on the Dufferin property in respect of loan advances made in the amount of \$6.675 million. There are other, subsequent mortgages as well. CLL required more funds. Owemanco advanced an additional \$2.05 million but, as security, obtained a first mortgage on the Desrochers' home, a condominium at Yonge and Balmoral in Toronto. The two mortgages are cross collateralized.

CLL went into default under the Dufferin mortgage. This caused a default under the Balmoral mortgage as well.

On November 7, 2022, Cavanagh J. granted an "expanded powers" order appointing Rosen Goldberg as receiver over all of the assets and undertakings of CLL (including the Dufferin property) and over the Balmoral property. Leave was also granted to issue a writ of possession over the Balmoral property. That writ was issued.

Ms. Lawrence brought a motion before Cavanagh J. on December 20, 2022 to discharge the Receiver over the Balmoral property and to stay the writ of possession. Cavanagh J. dismissed this first stay motion with reasons on December 30, 2022. The dismissal of Ms. Lawrence's motion prompted negotiations. An arrangement was reached between the Desrochers and Owemanco on January 13, 2023. Under the arrangement agreement, the Desrochers would remain in possession of the Balmoral property in exchange for the assignment of 1.2M units that Mr. Desrochers held in Owemanco Mortgage Trust. The net asset value of each unit was approximately \$1, for a total value of \$1.2 million. Owemanco would draw down on this investment to pay interest arrears, monthly interest and property taxes on the loans, and expenses required for the Receiver to prepare the condominium units in the Dufferin property for sale. Under the terms of the arrangement agreement, a) the sheriff would not execute the writ of possession until the investment was exhausted, and b) any claims and appeal rights that the Desrochers might have that the writ was not enforceable (once the investment was exhausted) would be irrevocably withdrawn and released. The Desrochers each received independent legal advice. The agreement was subject to court approval. That approval was granted by Osborne J. on January 23, 2023. Osborne J.'s order provides, in para. 8, that any claims and appeal rights that the Desrochers may have that the writ of possession is not enforceable against the Balmoral property when the investment is exhausted "are hereby irrevocably withdrawn and released."

Over the course of the ensuing months, the Receiver drew down on the investment collateral. It provided monthly statements. There was no complaint. In May, with the exhaustion of the investment collateral in sight, the Desrochers were warned that the funds were expected to be fully depleted by the end of June 2023.

That this point, Mr. Robson was retained to seek relief from forfeiture. This motion is supported by affidavits from Mr. Desrochers.

Relief from forfeiture simply refers to the power of a court to protect a person against the loss of an interest or a right because of a failure to perform a covenant or condition in an agreement or contract. The remedy of relief against forfeiture is equitable in nature and purely discretionary. The power is predicated on the existence of circumstances in which enforcing a contractual right of forfeiture, although consistent with the terms of the contract, visits an inequitable consequence on the party that breached the contract. Relief from forfeiture is granted sparingly and the party seeking the relief bears the onus of making the case for it, *Ontario (Attorney General) v. McDougall*, 2011 ONCA 363 at paras. 86-87.

In exercising its discretion to grant relief from forfeiture, a court must consider three factors:

- (1) the conduct of the applicant;
- (2) the gravity of the breach; and
- (3) the disparity between the value of the property forfeited and the damage caused by the breach:

*Saskatchewan River Bungalows Ltd. v. Maritime Life Assurance Co.*, [1994] 2 S.C.R. 490 at p. 504.

Essentially, the Desrochers argue that the exercise of the writ of possession will cause inequity and unfairness because Owemanco is well secured by the mortgage on the Dufferin property, and, now that the Receiver has essentially readied the Dufferin project for sale, the imminent sale proceeds will obviate the need to realize on the security of their home.

Mr. Desrochers has not been involved in the management of this project for about a year. His information about the state of condominium unit sales at the Dufferin project, and the likely realizations from those sales, is simply inaccurate. All of Mr. Desrochers assertions have been contradicted by the more informed, up to date and, frankly, realistic and objective evidence of the Receiver.

Sales of the Dufferin units are not imminent. Indeed, there are no concluded sales. In a December 2022 projection, the Receiver, using certain assumptions (such as sales of units a \$1 million each starting as early as February 2023 and continuing at the rate of 2 unit sales per month) the Receiver calculated that there would be a shortfall on the Dufferin mortgage of about \$750,000 (therefore requiring realization from the Balmoral mortgage). The assumptions used at that time have not panned out. Sales did not start in February 2023. Prices of \$1 million plus per unit were not achievable. The sales agent is now recommending listings at well under \$1 million. The Dufferin project still does not have occupancy certificates. As the Receiver points out, the projections from December 2022 turned out to be wildly optimistic. The picture is considerably gloomier now, such that the shortfall is almost certain to be significantly greater than \$750,000, to the point that it threatens to consume all of the Balmoral security as well. There is still significant work to be done to complete the project, ongoing accrual of interest and costs of sales and professional fees to be incurred. This has been in the region of about \$130,000 to \$150,000 per month to date.

I would also point out that this same argument was made to Cavanagh J. last December. Even the rosier picture portrayed then was rejected because it too involved a clear shortfall in realizations.

The Desrochers also complain that there is a prospect of repayment of letters of credit required by the City in the amount of \$270,000. Here too, Mr. Desrochers' evidence is incorrect. The Receiver has filed an affidavit from a City employee who has said, in no uncertain terms, that the City's requirements for the release of the letters of credit have not been met and that the City has no intention of releasing any funds until all requirements have been fully complied with. There is, therefore, no assurance of any imminent payment of even these lesser amounts (which, on the evidence would only cover about one and a half months of expenses in any event).

I also find that the waiver of rights contained in the arrangement agreement and the order of Osborne J. precludes the relief from forfeiture argument now being advanced. In my view, the motion for relief from forfeiture is a "claim" that that the writ of possession is not enforceable, being made now that that the value of the investment collateral has been exhausted. This is precisely what the Desrochers promised not to do. Owemanco was prepared to grant an indulgence in exchange for payments covering the ongoing costs of the mortgages and the receivership. Owemanco was not prepared to have that indulgence used as a stepping stone for more attacks on the validity or enforceability of the writ of possession once those funds were used up.

Mr. Robson emphasizes that the Desrochers are elderly and that the enforcement of the writ of possession will force them out of their home. However, it is frequently the case that mortgage enforcement proceedings visit hardship upon the mortgagors. Relief from forfeiture does not apply in most mortgage enforcement proceedings. It is simply not sufficient for a debtor to assert that funds might be available to pay off the mortgage or that the debtor, given more time, might be able to refinance. The Desrochers' have had a year to refinance; they have not done so. On the evidence, there is no prospect that the proceeds of sale from the Dufferin property will cover the mortgage secured by that property. The Desrochers still have the ability to pay off the mortgage on Balmoral and redeem their interest.

There is no minor or inadvertent slip or misjudgment involved here. The forfeiture is not disproportionate to the liability. Mr. Desrochers borrowed to develop the Dufferin property. He pledged the Balmoral property as further security in order to borrow more money. The Dufferin project did not work out as he hoped. The Desrochers, with the benefit of independent legal advice, were able to stave off enforcement of the writ of possession by paying a further \$1.2 million. They promised to make no further attacks on the enforceability of the writ of possession. They were warned that the extension of time purchased by the consideration paid was coming to an end.


There is no evidence of improvidence or carelessness on the Receiver's part. Mr. Desrocher complains that the present term of sales requiring at least 9 of 14 units to be sold is inappropriate and imposes a disincentive to possible buyers. The sales agent does not agree. Further, the Receiver has a duty to maximize value for the benefit of all stakeholders. The

prospect of a sale of the entire project to one buyer, who might want to acquire a rental income property, cannot be ruled out in the face of the slow pace of individual unit sales. I am not prepared to say that this business judgement on the Receiver's part was improper.

It is for all these reasons that the motion based on relief of forfeiture is dismissed.

Execution by the sheriff of the writ of possession is, however, stayed for 30 days to enable the Desrochers to arrange their affairs and to provide vacant possession on an orderly basis.

Owemanco does not seek an order for costs of this motion at this time. It reserves a right to revisit the question of costs depending on the outcomes of the dispositions of the Dufferin property.



Penny J.

## APPENDIX “E”

**OWEMANCO MORTGAGE HOLDING CORPORATION**  
Applicant

-and-

**CONCEPT LOFTS LTD. et al.**  
Respondents

Court File No. CV-22-00688570-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
PROCEEDING COMMENCED AT  
**TORONTO**

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## **MOTION RECORD**

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