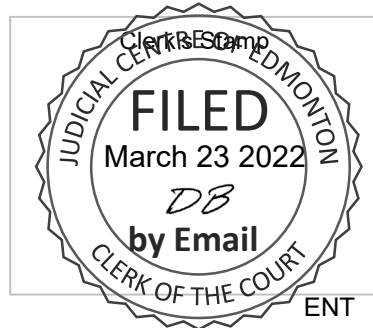


COURT FILE NUMBER 2203-04703
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF BANK OF MONTREAL
DEFENDANTS 608772 ALBERTA LTD. o/a BIRCHWOOD AUTO BODY,
DARRELL PAYNE, VERA PAYNE, BRETT PAYNE and
1943969 ALBERTA LTD.



invoice#E33104
\$50.00

DOCUMENT **APPLICATION**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
McCARTHY TÉTRAULT LLP
4000, 421 – 7th Avenue SW
Calgary, AB T2P 4K9
Attention: Walker MacLeod / Nathan Stewart /
Erinn Wilson (Student-at-Law)
Tel: 403-260-3710 / 3534 / 3682
Fax: 403-260-3501
Email: wmacleod@mccarthy.ca / nstewart@mccarthy.ca /
erinnwilson@mccarthy.ca

NOTICE TO RESPONDENT:

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

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

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

Date: April 1, 2022
Time: 11:00 a.m.
Where: Edmonton Courts Centre via WebEx - Videoconference
details are enclosed as Schedule "A" to this Application
Before Whom: The Honourable Justice J.T. Neilson

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

Remedy claimed or sought: Bank of Montreal ("**BMO**") applies for relief in respect of 608772 Alberta Ltd., operating as Birchwood Auto Body (the "**Borrower**"), and 1943969 Alberta Ltd. (the "**Corporate Guarantor**"), the Borrower and the Corporate Guarantor are collectively referred to as, the "**Debtors**"), substantially in the form of order attached as Schedule "**B**" (the "**Receivership Order**") hereto:

1. If necessary, abridging the time required for service of this application (the “**Application**”) and supporting materials to the date service was effected, declaring that this Application is properly returnable on March 24, 2022, that service of the Application and supporting materials, as described in the corresponding affidavit of service, is good and sufficient, and that no other persons are entitled to service of the Application or any orders arising therefrom.
2. Appointing The Bowra Group Inc. (“**Bowra**”) as the receiver and manager (when referred to in such capacity, the “**Receiver**”) of all of the Debtors’ present and after-acquired properties, assets, and undertaking (collectively, the “**Property**”), pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”), section 13(2) of the *Judicature Act*, R.S.A. 2000, c. J-2 (the “**Judicature Act**”), section 99(a) of the *Business Corporations Act*, R.S.A. 2000, c. B-9 (the “**BCA**”), and section 65(7) of the *Personal Property Security Act*, R.S.A. 2000, c. P-7 (the “**PPSA**”).
3. Such further and other relief as counsel for BMO may advise.

Grounds for Making this Application:

Overview of the Debtors

4. To the best of BMO’s knowledge, the Borrower is a body corporate, incorporated pursuant to the laws of the Province of Alberta, and carrying on business in the Province of Alberta. Specifically, the Borrower operates an auto body repair shop (the “**Business**”), on or around the premises municipally known as 133 MacKenzie St, Fort McMurray, AB T9H 4K9 and legally described as Plan 7620533, Block 19, Lot 1 (the “**Lands**”).
5. The Borrower’s primary assets are the Lands and the corresponding personal property and equipment used in connection with the Business.
6. To the best of BMO’s knowledge, the Corporate Guarantor is a body corporate, incorporated pursuant to the laws of the Province of Alberta, and carrying on business in the Province of Alberta. To the best of BMO’s knowledge, the Corporate Guarantor is a holding corporation, which as at March 9, 2022, held one hundred percent (100%) of the issued and outstanding shares of the Borrower.

Summary of Circumstances Necessitating the Appointment of a Receiver

7. As at March 3, 2022, the Credit Parties (as defined below) are indebted to BMO in the amount of \$2,528,971.97, plus all accruing interest, fees (including, without limitation, solicitor's fees as between a solicitor and his own client), costs, and expenses, pursuant to and in accordance with the terms of the relevant agreements between BMO and the Credit Parties (collectively, the "**Indebtedness**").

8. The Borrower began to experience financial difficulty and liquidity issues in or around January 2020, and its BMO account was transferred to the oversight of BMO's Special Accounts Management Unit in January 2021. The Borrower's financial condition has recently worsened and the Borrower has committed a number of defaults under the Loan Agreement (as defined below).

9. Specifically, the Borrower failed to: (i) make its monthly loan payment to BMO for the month of February 2022, in the amount of \$18,270.95 (the "**February Payment**"), as required by the terms of the Loan Agreement; and, (ii) remit certain employee source deductions and GST payments (the "**Source Deduction Arrears**" and the "**GST Arrears**", respectively, and collectively, the "**Tax Arrears**") to the Canada Revenue Agency (the "**CRA**") (collectively, the "**Defaults**").

10. On March 4, 2022, BMO, through its counsel, delivered a demand letter with respect to the Defaults to the Credit Parties, which letter, among other things, demanded repayment of the Indebtedness in full, and enclosed Notices of Intention to Enforce Security with respect to the Borrower and the Corporate Guarantor, pursuant to Section 244(2) of the BIA.

11. On or around March 8, 2022, the Borrower deposited sufficient funds in its BMO bank account to pay the GST Arrears and the February Payment. On March 8, 2022, BMO processed both payments and advised the Borrower that BMO's demand remained in effect; and if the Borrower wished for BMO to consider entering into a forbearance agreement, the Borrower would need to present a formal repayment plan regarding the Source Deduction Arrears, agreed to by the CRA, on or before March 16, 2022. The Borrower failed to meet this deadline.

12. The Borrower does not currently have access to any further availability under the Credit Facilities or the Loan Agreement, except under the revolving operating Credit Facility. As the Borrower is near the \$200,000 operating line limit, it has limited access to credit. As such, the Borrower lacks the liquidity necessary to pay the Borrower's obligations as they come due,

including certain critical payments required to maintain the Borrower's Business and Property, such as tax and employee payroll obligations. To the best of BMO's knowledge, the Corporate Guarantor has no operations and is similarly unable to repay the Indebtedness or meet its obligations as they come due. BMO is not prepared to extend any further credit to the Borrower, other than as a receiver's borrowings secured by a corresponding charge. Furthermore, the nature of the Debtors' operations and Property necessitate a more fulsome sale, marketing, and realization process, which, in addition to requiring additional funding, is best achieved through the appointment of a receiver and manager over the Debtors and their Property.

The Borrower's Capital Structure

13. In order to fund its operations, the Borrower entered into various financing agreements with BMO, including, most recently, the Letter of Agreement, dated October 30, 2018 (the "**Loan Agreement**"), and accepted and agreed to on October 31, 2018, between the Borrower, as borrower, BMO, as lender, the Corporate Guarantor, as corporate guarantor, and Darrell Payne, Vera Payne, and Brett Payne (collectively, the "**Personal Guarantors**", the Personal Guarantors and the Corporate Guarantor are collectively referred to as, the "**Guarantors**", the Borrower and the Guarantors are collectively referred to as, the "**Credit Parties**"), as personal guarantors.

14. BMO made certain availments to the Borrower under and pursuant to the Loan Agreement. Specifically, BMO made available to the Borrower, pursuant to the Loan Agreement:

- (i) an operating demand loan, in the maximum amount of \$200,000.00 (CAD); and
 - (ii) a non-revolving demand loan, in the maximum amount of \$2,602,277.14 (CAD),
- (collectively, the "**Credit Facilities**").

15. All borrowings under the Credit Facilities are repayable upon the earlier of such Credit Facilities' respective maturity dates or BMO making a demand for repayment.

16. Pursuant to the Loan Agreement, the total advances under the Credit Facilities shall not exceed \$2,802,277.14 at any time.

17. In addition to the Credit Facilities under the Loan Agreement, on or about May 13, 2020, the Borrower received a Canada Emergency Business Account Loan in the total amount of \$40,000 (the "**CEBA Loan**"). The CEBA Loan was advanced to the Borrower through BMO, remains outstanding in full, and forms part of the Indebtedness.

Guarantees

18. The Indebtedness and all other debts, liabilities, obligations and indebtedness due and owing by the Borrower to BMO, are guaranteed to pursuant to:

- (a) \$50,000 Continuing Guarantee, dated June 1, 2012, granted by Darrell Payne and Vera Payne, jointly and severally, to and in favour of BMO;
- (b) \$1,500,000 Continuing Guarantee, dated April 2, 2013, granted by Darrell Payne and Vera Payne, jointly and severally, to and in favour of BMO;
- (c) \$2,000,000 Continuing Guarantee, dated February 19, 2016, granted by Darrell Payne and Vera Payne, jointly and severally, to and in favour of BMO;
- (d) \$1,000,000 Continuing Guarantee, dated February 19, 2016, granted by Brett Payne to and in favour of BMO; and,
- (e) \$2,858,890 Continuing Guarantee, dated February 19, 2016, granted by the Corporate Guarantor to and in favour of BMO,

(collectively, the “**Guarantees**”).

19. Pursuant to the Guarantees, the Guarantors, jointly and severally, continually guaranteed payment to BMO of all present and future debts and liabilities in any currency, direct, indirect, contingent or otherwise, matured or not, including interest thereon, now or at any time due or owing to BMO from the Borrower or by any successor of the Borrower. The liability of the Guarantors is limited to the amount set out under their respective Guarantees, plus interest thereon at the rate set out in the applicable Guarantee, and legal or other costs payable under the applicable guarantee.

Security

20. As continuing security for the Borrower’s obligations to BMO, the Borrower executed the following security agreements:

- (a) General Security Agreement, dated October 22, 2014 (“**GSA #1**”), as granted by the Borrower to and in favour of BMO; and,

- (b) General Security Agreement, dated February 1, 2016 (“**GSA #2**”, GSA #1 and GSA #2 are collectively referred to as, the “**Borrower GSAs**”), as granted by the Borrower to and in favour of BMO.

21. As continuing security for the Corporate Guarantor’s obligations to BMO, the Corporate Guarantor executed a General Security Agreement, dated February 19, 2016 (the “**Corporate Guarantor GSA**”, the Borrower GSAs and the Corporate Guarantor GSA are collectively referred to as, the “**GSAs**”), as granted by the Corporate Guarantor to and in favour of BMO.

22. Pursuant to the GSAs, the Debtors each, among other security interests, assigned, transferred and set over to BMO and granted BMO a security interest in, all of their respective present and after-acquired personal property, and charged in favour of BMO, as and by way of a floating charge, their respective undertaking and all present and after acquired property and assets, real and personal, moveable or immovable, of whatever nature and kind, all as general and continuing security for the payment and performance of all indebtedness, liabilities, and obligations owed to BMO.

23. In addition to the aforementioned, the indebtedness, liabilities, and obligations of the Borrower, to BMO, are secured pursuant to a \$2,775,000 Mortgage of Land, *Land Titles Act* (Alberta), dated February 19, 2016 (the “**Mortgage**”, the Mortgage and the GSAs are collectively referred to as, the “**Security**”), as granted by the Borrower, to and in favour of BMO. Pursuant to the Mortgage, the Borrower mortgaged and charged all of its estate and interest in and to the Lands, to BMO, to secure payment and performance of all indebtedness and liability owed to BMO, up to the principal amount of \$2,775,000, plus interest and all other amounts or sums secured by the Mortgage.

24. BMO’s rights and remedies under the Security are enforceable, *inter alia*, upon the applicable Debtor’s default, which includes, among other things, (i) the Borrower: (a) failing to repay the Indebtedness when due and owing to BMO; or, (b) failing to pay all taxes when due; and, (ii) the Corporate Guarantor failing to repay the Indebtedness when due and owing to BMO.

25. The Security further provides that, upon a default or event of default, BMO is entitled to apply for the appointment of a receiver, manager, or receiver-manager.

Registration of Security Interests

26. BMO perfected its security interests granted under the Security, as against all of the Debtors' present and after-acquired personal and real property, assets, and undertakings, and in all proceeds and renewals thereof, accessions thereto, and substitutions therefor (collectively referred to as, the "**Collateral**") by registering:

- (a) financing statements in the Personal Property Registry of Alberta ("**AB PPR**"), against the Debtors;
- (b) land charges against the Debtors, in favour of BMO, in the AB PPR in accordance with the provisions of the PPSA; and,
- (c) the Mortgage against the Certificate of Title concerning the Lands.

27. In addition to the Security, BMO perfected its security interests granted under the Guarantees, as against any and all present and future accounts and monies and all other indebtedness, obligations and liabilities of any kind, direct or indirect, absolute or contingent, joint or several, of the Borrower owed to the applicable Personal Guarantor, and all proceeds thereof, by registering financing statements in the AB PPR, against the Personal Guarantors.

Demand and 244 Notice

28. In early 2022, BMO discovered that: (i) the Borrower had failed to pay any current source deductions to the CRA in 2021; and, (ii) the Tax Arrears were outstanding throughout 2021.

29. As at February 24, 2022, the Borrower's obligations to the CRA with respect to the GST Arrears were in the total amount of \$44,247.68. BMO is not aware of the specific amount of the Source Deduction Arrears outstanding, but understands that the amount is significant.

30. On March 4, 2022, BMO advised the Borrower that, due to the Borrower's failure to make the February Payment and its failure to pay the Tax Arrears (including both the Source Deduction Arrears and the GST Arrears), the Borrower is in default of the Loan Agreement and BMO is not obligated to provide further credit to the Borrower. BMO further advised the Borrower that, in light of the CRA garnishment, prior to the Borrower making any cash injections into its account, the Borrower must present a formal repayment plan with respect to the Tax Arrears (the "**Repayment Plan**"), approved by the CRA.

31. BMO, through its counsel, delivered a demand letter dated March 4, 2022 (the “**Demand Letter**”), enclosing corresponding notices with respect to the Borrower and the Corporate Guarantor, in accordance with Section 244(2) of the BIA, to the Borrower, copying the Guarantors. Among other things, the Demand Letter demanded repayment, in full, of the Indebtedness.

32. On March 8, 2022, BMO advised the Borrower that: (i) there were now sufficient funds available in the Borrower’s account to permit the full payment of the GST Arrears and the outstanding February Payment; (ii) BMO would process the required payments with respect to the GST Arrears and the February Payment; (iii) BMO’s demand for repayment remained in effect; and, (iv) BMO would consider the possibility of entering into a forbearance agreement regarding the Defaults only if a Repayment Plan addressing the Source Deduction Arrears, agreed to by the CRA, was provided to BMO on or before March 16, 2022.

33. Despite the issuance of the Demand Letter, the Credit Parties have failed, refused, or otherwise neglected to repay the Indebtedness. On March 18, 2022, the Borrower advised BMO that the CRA is not currently prepared to agree to a written Repayment Plan.

Necessity of the Appointment of a Receiver

34. The Borrower does not currently have access to any further availability under the Credit Facilities or the Loan Agreement, except under the revolving operating Credit Facility. As the Borrower is near the \$200,000 operating line limit, it has limited access to credit and does not have sufficient funds available to continue its operations or pay its debts as they become due. To the best of BMO’s knowledge, the Business is currently operating, notwithstanding that it appears that the Borrower is insolvent. BMO is only prepared to fund go-forward critical payment obligations through a receiver’s borrowings, secured by a corresponding charge.

35. In addition to the aforementioned, BMO understands that the Borrower: (i) has employees; (ii) owns certain real property, being the Lands; and, (iii) appears to have ongoing liabilities to the CRA. The appointment of the Receiver will assist in addressing such issues in an orderly manner.

36. Due to the Debtors’ inability to meet their obligations as they become due, absent further funding from BMO, the Debtors will be unable to preserve their Property. BMO therefore has serious and valid concerns regarding the protection and preservation of its Collateral.

37. The granting of the relief sought by BMO will preserve and protect BMO's security position and will further allow go-forward decisions in respect of the Debtors' business to be made by a court-appointed officer, for the benefit of all stakeholders.

38. Bowra is a licensed insolvency trustee, and has consented to acting as the Receiver of the Debtors if so appointed. It is proposed that Kristin Gray, a licensed insolvency trustee, will be responsible for this mandate.

Material or evidence to be relied on:

39. The Affidavit of Michelle Madrigga, sworn on March 23, 2022, filed.

40. Such further and other material as counsel for BMO may advise and this Honourable Court may permit.

Applicable rules:

41. Rules 1.3, 6.3, 6.9, 11.27, and 13.5 of the *Alberta Rules of Court*, Alta. Reg. 124/2010.

42. Such further and other rules as counsel for BMO may advise and this Honourable Court may permit.

Applicable acts and regulations:

43. Section 243 of the BIA.

44. Section 13(2) of the Judicature Act.

45. Section 99(a) of the BCA.

46. Section 65(7) of the PPSA.

47. Such further and other acts and regulations as counsel for BMO may advise or this Honourable Court may permit.

Any irregularity complained of or objection relied on:

48. There are no irregularities complained of or objections relied on.

How the application is proposed to be heard or considered:

49. BMO proposes that the Application be heard in person or via WebEx with one, some, or all of the parties present.

WARNING

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

SCHEDULE "A"

Virtual Courtroom 86 has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom86>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

If you are a non-lawyer attending this hearing remotely, **you must** complete the undertaking located here: <https://www.albertacourts.ca/qb/resources/announcements/undertaking-and-agreement-for-non-lawyers>

For more information relating to Webex protocols and procedures, please visit: <https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the "Cisco Webex Meetings" App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

SCHEDULE "B"
FORM OF RECEIVERSHIP ORDER

See attached.

COURT FILE NUMBER 2203-04703
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF BANK OF MONTREAL
DEFENDANTS 608772 ALBERTA LTD. o/a BIRCHWOOD AUTO BODY,
DARRELL PAYNE, VERA PAYNE, BRETT PAYNE and
1943969 ALBERTA LTD.

DOCUMENT **RECEIVERSHIP ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
McCARTHY TÉTRAULT LLP
4000, 421 – 7th Avenue SW
Calgary, AB T2P 4K9
Attention: Walker MacLeod / Nathan Stewart /
Erinn Wilson (Student-at-Law)
Tel: 403-260-3710 / 3534 / 3682
Fax: 403-260-3501
Email: wmacleod@mccarthy.ca / nstewart@mccarthy.ca /
erinnwilson@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED: April 1, 2022
LOCATION OF HEARING: Calgary, Alberta
NAME OF JUDGE WHO MADE THIS ORDER: Justice J.T. Neilson

UPON the application (the "**Application**") of Bank of Montreal ("**BMO**"), in respect of 608772 Alberta Ltd. operating as Birchwood Auto Body (the "**Borrower**") and 1943969 Alberta Ltd. (the "**Corporate Guarantor**", the Borrower and the Corporate Guarantor are collectively referred to as, the "**Debtors**"); **AND UPON** having read the Application, the Affidavit of Michelle Madrigga, sworn on March 23, 2022 (the "**Madrigga Affidavit**"), and the Affidavit of Service of Katie Doran, sworn on ●, 2022 the ("**Service Affidavit**"), all filed; **AND UPON** reading the consent of The Bowra Group Inc. ("**Bowra**"), to act as receiver and manager (the "**Receiver**") of the Debtors, filed; **AND UPON** hearing counsel for BMO, counsel for the proposed Receiver, and any other counsel or other interested parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Application and the Madrigga Affidavit is abridged, if necessary, the Application is properly returnable today, service of the Application and the Madrigga

Affidavit on the service list (the “**Service List**”) attached as Exhibit “**A**” to the Service Affidavit, in the manner described in the Service Affidavit, is good and sufficient, and no other persons other than those listed on the Service List, are entitled to service of the Application or the Madrigga Affidavit.

APPOINTMENT

2. Pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”), and sections 13(2) of the *Judicature Act*, R.S.A. 2000, c. J-2, 99(a) of the *Business Corporations Act*, R.S.A. 2000, c. B-9, and 65(7) of the *Personal Property Security Act*, R.S.A. 2000, c. P-7, Bowra is hereby appointed Receiver, without security, of all of the Debtors’ current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the “**Property**”).

RECEIVER’S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
 - (c) to manage, operate and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
 - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever

basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to or by the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
- (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 Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;
- (k) to market any or all 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:

- (i) without the approval of this Court in respect of any transaction not exceeding \$20,000, provided that the aggregate consideration for all such transactions does not exceed \$50,000; and,
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, R.S.A. 2000, c. P-7 or any other similar legislation in any other province or territory shall not be required.

- (m) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c. L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtors and not in its personal capacity;
- (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 Debtors;

- (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 Debtors 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, including the Debtors, and without interference from any other Person (as defined below).

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. (i) The Debtors, (ii) all of their respective 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 (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client

communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

8. No Proceeding against or in respect of the Debtors 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 Debtors or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph; and (ii) affect a Regulatory Body’s investigation in respect of the Debtors or an action, suit or proceeding that is taken in respect of the Debtors by or before the Regulatory Body, other than the enforcement of a

payment order by the Regulatory Body or the Court. "Regulatory Body" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

NO EXERCISE OF RIGHTS OF REMEDIES

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Debtors or the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided, however, that 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 Order shall:
- (a) empower the Debtors to carry on any business that the Debtors are not lawfully entitled to carry on;
 - (b) prevent the filing of any registration to preserve or perfect a security interest;
 - (c) prevent the registration of a claim for lien; or
 - (d) exempt the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment.
10. Nothing in this Order shall prevent any party from taking an action against the Debtors where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Receiver at the first available opportunity.

NO INTERFERENCE WITH THE RECEIVER

11. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, except with the written consent of the applicable Debtor and the Receiver, or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract (as defined in the BIA) from closing out and terminating such contract in accordance with its terms.

CONTINUATION OF SERVICES

12. All persons having:

- (a) statutory or regulatory mandates for the supply of goods and/or services; or
- (b) oral or written agreements or arrangements with the Debtors, 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 Debtors,

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

RECEIVER TO HOLD FUNDS

13. 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

14. Subject to employees' rights to terminate their employment, all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors'

behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47 (“**WEPPA**”).

15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
 - (i) before the Receiver's appointment; or,
 - (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.

- (c) Notwithstanding anything in any federal or provincial law, but subject to subparagraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
- (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
- A. complies with the order, or,
- B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
- (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,
- A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or,
- B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or,
- (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

LIMITATION ON THE RECEIVER'S LIABILITY

17. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in

this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the BIA.

RECEIVER'S ACCOUNTS

18. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, which charge shall not exceed an aggregate amount of \$50,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) and 88 of the BIA.
19. The Receiver and its legal counsel shall pass their accounts from time to time.
20. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. 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 \$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 Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts,

liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) and 88 of the BIA.

22. 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.
23. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
24. 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.
25. The Receiver shall be allowed to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

ALLOCATION

26. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

GENERAL

27. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
28. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.

29. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
30. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
31. 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. The Plaintiff shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtors' estates with such priority and at such time as this Court may determine.
33. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

FILING

34. The Receiver shall establish and maintain a website in respect of these proceedings at ● (the "**Receiver's Website**") and shall post there as soon as practicable:
 - (a) all materials prescribed by statute or regulation to be made publically available; and
 - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such

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

35. Service of this Order shall be deemed good and sufficient by:

(a) serving the same on:

- (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
- (ii) any other person served with notice of the application for this Order;
- (iii) any other parties attending or represented at the application for this Order;
and,

(b) posting a copy of this Order on the Receiver's Website,

and service on any other person is hereby dispensed with.

36. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of Queen's Bench of Alberta

**SCHEDULE "A" TO THE RECEIVERSHIP ORDER
RECEIVER CERTIFICATE**

CERTIFICATE NO. _____

AMOUNT: \$ _____

1. THIS IS TO CERTIFY that The Bowra Group Inc., the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 608772 Alberta Ltd. operating as Birchwood Auto Body (the "**Borrower**") and 1943969 Alberta Ltd. (the "**Corporate Guarantor**", the Borrower and the Corporate Guarantor are collectively referred to as, the "**Debtors**") appointed by Order of the Court of Queen's Bench of Alberta and the Court of Queen's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "**Court**") dated the 1st day of April, 2022 (the "**Order**") made in action number 2203-04703, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$●, being part of the total principal sum of \$● that the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [**daily**] [**monthly not in advance on the ● day of each month**] after the date hereof at a notional rate per annum equal to the rate of [●] per cent above the prime commercial lending rate of Bank of Montreal from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at [●].

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

THE BOWRA GROUP INC., solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: _____
Name:
Title: