

COURT FILE NUMBER 2203 - 01087

Clerk's Stamp

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

APPLICANTS TIMBERCREEK MORTGAGE SERVICING INC. and 2292912 ONTARIO INC.

RESPONDENTS SYMPHONY CONDOMINIUM LTD., ROCKWOOD MANAGEMENT LTD. and ALLEN WASNEA

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Cassels Brock & Blackwell LLP  
Suite 3810, Bankers Hall West  
888 3<sup>rd</sup> Street SW  
Calgary, Alberta, T2P 5C5  
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File No. 45109-101

**Attention: Jeffrey Oliver / Kara N. Davis**

AFFIDAVIT OF: Yvonne McAndrew

SWORN ON: March 28, 2022

I, Yvonne McAndrew, of the City of Toronto, in the Province of Ontario, SWEAR AND SAY THAT:

1. I am employed as a Vice President of Timbercreek Mortgage Servicing Inc. ("**Timbercreek**"). Timbercreek is the servicer of a loan facility held by 2292912 Ontario Inc. ("**229 Inc.**" and together with Timbercreek, the "**Lender**") that is the subject of the within proceeding and as such, I have personal knowledge of the matters hereinafter deposed to except where stated to be based upon information and belief, and where so stated I do verily believe the same to be true.
2. I am authorized by the Lender to swear this affidavit on their behalf.
3. In preparation for this affidavit, I have reviewed the affidavit of Patrick Smith sworn January 12, 2021 (the "**Smith Affidavit**") and the confidential affidavit of Patrick Smith sworn January 12, 2021 (the "**Confidential Smith Affidavit**").
4. Capitalized terms not defined herein have the meaning ascribed to them in the Smith Affidavit or the Forbearance Agreement (defined herein).

*Background*

5. The purpose of this affidavit is to update this Honourable Court on the events that have transpired since the filing of the Smith Affidavit and the Confidential Smith Affidavit.

6. On January 12, 2022, the Lender, via its counsel, served Symphony Condominium Ltd. (the "**Borrower**"), Rockwood Management Ltd. ("**Rockwood**"), Allen Wasnea ("**Wasnea**" and together with the Borrower and Rockwood, the "**Obligors**") and Canada ICI Capital Corporation ("**Canada ICI**") and together with the "**Obligors**", the "**Parties**"), among other potentially interested parties, with an application to appoint a receiver, returnable January 21, 2022 (the "**Application**") and related materials.
7. The Parties subsequently entered into discussions, following which the Lender agreed to forbear from continuing to enforce its rights and remedies under the Loan Documents.
8. The Lender adjourned the Application, initially to February 1, 2022 and subsequently *sine die*, to permit the Parties to negotiate the terms of a forbearance agreement.

*Forbearance Agreement*

9. On February 18, 2022, the Lender and the Obligors entered into a forbearance agreement (the "**Forbearance Agreement**"). Attached hereto and marked as **Exhibit "A"** is a copy of the Forbearance Agreement.
10. Pursuant to the Forbearance Agreement, among other things:
  - (a) the Lender's agreement to forbear from enforcement expired on March 25, 2022 or upon the occurrence of any Forbearance Default;
  - (b) it was a condition precedent that each of the Obligors and Canada ICI execute a consent receivership order (the "**Consent Receivership Order**");
  - (c) the Lender is entitled to enter the consent receivership order after the expiry of the Forbearance period;
  - (d) the Lender could, in its sole and absolute discretion, extend the term of the Forbearance Period if the Obligor provided the Lender with one or more *bona fide* offers to purchase a substantial portion of the Inventory Units; and
  - (e) the Lender would pay certain carrying costs of the Borrower.
11. The Consent Receivership Order was executed by the Obligors and Canada ICI and is attached as Schedule "E" to the Forbearance Agreement.

*Notable Events During the Forbearance Period*

12. I am advised by my colleague, Geoff McTait, that on February 15, 2022, Glen Fisher of Canada ICI forwarded Mr. McTait a letter sent by the board of directors (the "**Board**") of the Condo Corporation to all owners of the units in the Symphony Tower on February 8, 2022, advising of the following, among other things:
  - (a) the Condo Corporation was facing a shortfall of operating funds resulting from unpaid condominium fees by Symphony;
  - (b) the Board was discussing a special levy in the approximate amount of \$115,000 (\$11.62 per unit factor) (the "**Special Levy**") to make up the current (and future) operating cash shortfall;
  - (c) the monthly condominium fees would be increased by 35%, effective April 1, 2022;
  - (d) the Board asked for and received Mr. Wasnea's resignation from the Board; and
  - (e) the property manager had engaged legal counsel and was registering caveats on titles of the Inventory Units.

Attached hereto and marked as **Exhibit "B"** is a copy of the February 8, 2022 correspondence.

13. On February 10, 2022, the Condo Corporation sent a letter to Mr. Wasnea (the "**Demand Letter**") demanding that payment of the outstanding condominium fees be made no later than February 17, 2022, or the Condo Corporation would be taking actions to ensure the collection of the outstanding funds. Attached hereto and marked as **Exhibit "C"** is a copy of the Demand Letter that was forwarded to the Lender's counsel by the Borrower's counsel.
14. I am advised by the Lender's counsel, Cassels Brock & Blackwell LLP ("**Cassels**"), that on February 24, 2022, the Condo Corporation's counsel advised Cassels that the Board approved the Special Levy.
15. Pursuant to the Forbearance Agreement and in some cases at the Lender's own election due to threats of enforcement by other creditors such as the Condo Corporation, the Lender has permitted the payment of certain carrying costs of the Borrower (administered by Sharek Logan & Van Leenen LLP ("**Sharek&Co**"), the Obligors' corporate counsel) in relation to the remaining unsold Inventory Units and the Symphony Project, from proceeds of previous sales of Inventory Units that Timbercreek would otherwise be entitled to under the Loan Documents. These payments have totalled approximately \$443,000 to date and are comprised of the following expenses, including interest where applicable, incurred in relation to the Inventory Units and Symphony Project:
  - (a) condominium fees — \$70,935.80;
  - (b) a special levy — \$35,580.45;
  - (c) property taxes — \$312,323.70
  - (d) repair costs — \$12,716.02; and
  - (e) marketing fees — \$11,848.09.

I advise that the Lender has not paid certain additional carrying costs listed in Schedule D to the Forbearance Agreement that Sharek&Co advised the Lender, via its counsel, had already been paid by the Borrower; and certain of the property taxes and marketing fees listed above would have ordinarily been deductible from unit sale proceeds under the terms of the Commitment Letters prior to the Maturity Date. Attached hereto and marked as **Exhibit "D"** is a copy of an excerpt of email correspondence from Sharek&Co confirming payment of the above amounts.

16. The Borrower presented one bulk offer to the Lender on March 9, 2022, but the offer was not acceptable to the Borrower nor the Lender. Attached hereto as **Exhibit "E"** is a copy of an excerpt of email correspondence dated March 14, 2022 from the Obligors' counsel indicating that the offer is not acceptable.
17. On March 18, 2022, the Lender also received one conditional offer to purchase Parkview, which it is reviewing.
18. Since entering into the Forbearance Agreement, while 4 individual unit sales have closed, the Lender is not aware of any new agreements of purchase and sale for any of the approximately 34 remaining Inventory Units. Accordingly, in the Lender's opinion, there has not been any *bona fide* offer(s) to purchase a substantial portion of the Inventory Units.
19. As a result of the lack of sales and interest in the Symphony Tower, as well as the Lender's loss of faith in the management of Symphony's ability to execute a sale strategy, the Lender has elected not to extend the Forbearance Period and seeks to have the Consent Receivership Order entered.
20. On March 28, 2022, the Lender, via its counsel, sent a letter to the Obligors and Canada ICI's respective counsel advising them, among other things, of the expiry of the Forbearance Period; the Lender's decision not to extend the Forbearance Period; and the Lender's intention to apply to the


court have the Consent Receivership Order entered. Attached hereto and marked as **Exhibit "F"** is a copy of this correspondence.


- 21. As at March 28, 2022, the total amount that remains due, owing and unpaid by the Borrower to the Lender is \$23,359,470.18, inclusive of interest up to and including March 28, 2022 and the Exit Fee. Attached hereto and marked as **Exhibit "G"** is a copy of an information statement evidencing the particulars of the indebtedness as at March 28, 2022.

*Conclusion*

- 22. I swear this affidavit in support of an order appointing MNP Ltd. as the court appointed receiver and manager of the assets, undertakings and properties of the Borrower and for no other improper purpose.

SWORN BEFORE ME at the City of Toronto, in the )  
Province of Ontario, this 28th day of March, 2022. )

  
 \_\_\_\_\_ )  
 Notary Public in and for the Province of Ontario )

  
 \_\_\_\_\_ )  
 Yvonne McAndrew )

This is Exhibit "A"  
referred to in the Affidavit of  
YVONNE MCANDREW  
sworn this 28th day of March, 2022

A handwritten signature in blue ink, consisting of stylized initials and a long horizontal stroke extending to the right.

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A Notary Public in and for the  
Province of Ontario

## FORBEARANCE AGREEMENT

This Forbearance Agreement (the "**Agreement**") is effective February 18, 2022 (the "**Effective Date**").

BETWEEN:

**TIMBERCREEK MORTGAGE SERVICING INC. and 2292912 ONTARIO INC.**  
corporations incorporated pursuant to the laws of Ontario  
and extra provincially registered in Alberta

(together, the "**Senior Lender**")

- and -

**SYMPHONY CONDOMINIUM LTD.**  
a corporation incorporated pursuant to the laws of Alberta

(the "**Borrower**")

- and -

**ROCKWOOD MANAGEMENT LTD.**  
a corporation incorporated pursuant to the laws of Alberta

("Rockwood")

- and -

**ALLEN WASNEA**  
an individual ordinarily resident in Edmonton, Alberta

("Wasnea")

(Rockwood and Wasnea are collectively referred to as the "**Guarantors**" and together with the Borrower, as the "**Obligors**")

### RECITALS:

- A. The Senior Lender and the Obligors are parties to a commitment letter and amendment to the commitment letter as set out in Schedule "A" hereto (collectively, the "**Commitment Letters**").
- B. Pursuant to the Commitment Letters, the Senior Lender advanced funds to the Borrower (the "**Loan**").
- C. The Borrower has executed and delivered to the Senior Lender the documents listed in Schedule "A" hereto (the "**Security Agreements**") for the purpose of providing continuing security (the "**Security**") for the payment and performance of all of the present and future debts, liabilities and obligation of the Obligors to the Senior Lender that may be outstanding from time to time under the Loan and the Security (the "**Obligations**"). A description of the Security is set out in Schedule "B" hereto.
- D. The Guarantor guaranteed the Obligations under a guarantee listed in Schedule "A" hereto (the "**Guarantee**" and together with the Commitment Letters and the Security Agreements, the "**Loan Documents**").
- E. The Loan matured on July 1, 2021 (the "**Maturity Date**").

- F. The Obligors committed events of default under the Loan Documents by failing to perform certain obligations under the Loan Documents including, among other things, failure to pay the outstanding amounts owing under the Loan by the Maturity Date (the "**Default Events**").
- G. As a result of the Default Events, the Senior Lender became entitled to demand the immediate repayment of the Obligations and to enforce all rights and remedies available to the Senior Lender under the Loan Documents and at law generally (collectively the "**Enforcement Rights**"), upon the expiry of the of statutory time limit on November 5, 2021 (the "**Enforcement Date**").
- H. On October 25, 2021, the Senior Lender issued the Obligors written demands letters, declaring the Indebtedness due and payable in full and demanded payment (the "**Demand Letters**"). The Senior Lender also issued the Borrower a Notice of Intention to Enforce Security under section 244(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**").
- I. As at February 4, 2022, the Borrower is indebted to the Senior Lender in the amount of \$22,484,701.02, inclusive of accrued interest (the "**Indebtedness**").
- J. The Loan Documents provide for an exit fee payable by the Borrower to the Senior Lender at the earlier of maturity or repayment of the Loan (the "**Exit Fee**").
- K. The parties acknowledge that the amount of the Indebtedness, as defined above, does not include the Exit Fee.
- L. On January 12, 2022, the Senior Lender served the Obligors and Canada ICI Capital Corporation (the "**Subordinate Lender**"), among others, with an application to appoint a receiver, returnable January 21, 2022 (the "**Application**") and related materials.
- M. The parties subsequently entered into discussions, following which the Senior Lender agreed to forbear from continuing to enforce its rights and remedies under the Loan Documents.
- N. The Senior Lender adjourned the Application, initially to February 1, 2022 and subsequently *sine die*, to permit the parties to negotiate the terms of this Agreement.
- O. The Senior Lender is willing to forbear from exercising its rights and remedies under the Loan Documents for a limited period, provided that:
  - a. each of the Obligors comply with all of the terms, conditions, covenants and representations of this Agreement, as applicable; and
  - b. the Obligors expressly acknowledge that any and all obligations owing under the Loan Documents by the Obligors, now or hereafter, whether such obligations are owing as debtor, guarantor or surety, to the Senior Lender, shall be and continue to be owing and payable on demand.
- P. The Obligors acknowledge that the Security held by the Senior Lender is valid and enforceable upon the terms and conditions therein and that the Security is in default and the Senior Lender was and continues to be entitled to enforce the Security Agreement, at any time on or after the Enforcement Date.
- Q. The Senior Lender's Security includes, among other things, the Parkview Apartment and remaining unsold condominium units in the Symphony Tower (the "**Symphony Units**"), as further described in Schedule "B" to this Agreement.
- R. The Senior Lender has not waived the Default Events, nor has the Senior Lender taken any action or agreed in any fashion to changing the character of the Loan Documents other than in accordance with

the terms and conditions set out herein, but rather, the Senior Lender strictly reserves its rights and remedies under the Loan Documents.

- S. This Agreement witnesses that, in consideration of the mutual covenants herein contained, including, without limitation, the Senior Lender's agreement to forbear from exercising its Enforcement Rights and other accommodations described herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, all parties hereto agree as follows:

#### ARTICLE 1 INTERPRETATION

- 1.1 All capitalized terms used herein without express definition shall have the same meanings herein as are ascribed to such terms in the Loan Documents, as indicated herein or as the context may otherwise require. The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular section or other portion hereof and include this Agreement, in its entirety, and any agreements supplemental hereto.
- 1.2 Unless specified otherwise, all dollar amounts expressed in this Agreement refer to Canadian currency.

#### ARTICLE 2 AGREEMENT TO FOREBEAR

- 2.1 Subject to the terms of this Agreement, during the period (the "**Forbearance Period**") commencing on the Effective Date and ending on the earlier of:
- (a) March 25, 2022; or
  - (b) the date that any Forbearance Default (as defined below) occurs,

the Senior Lender will forbear in the exercise of its Enforcement Rights as against the Obligors. Following the expiration of the Forbearance Period, the Senior Lender will have no obligations to forbear under this Agreement.

- 2.2 The Senior Lender may choose, in its sole and unfettered discretion, to extend the term of the Forbearance Period to April 29, 2022 if, on or before March 25, 2022, the Obligors provide the Senior Lender with one or more *bonafide* offers with a closing date of no later than April 29, 2022, to purchase a substantial portion of the Symphony Units in the form of an executed agreement of purchase and sale, letter of intent or other documentation (an "**Offer**"), on terms and in a form and substance satisfactory to the Senior Lender in its sole and absolute discretion. For further clarity, whether an Offer or multiple Offers together, constitute a sale of a substantive portion of the Symphony Units, shall be determined by the Senior Lender in its sole and absolute discretion.

#### ARTICLE 3 ACKNOWLEDGEMENTS OF THE OBLIGORS

- 3.1 The Obligors acknowledge and agree that:
- (a) **Recitals.** The facts, as set out above in the Recitals to this Agreement, are true and accurate in all respects and that same are expressly incorporated into and form part of this Agreement;



- (b) **Loan Documents.** Subject to the terms, conditions, and covenants contained herein, the Loan Documents and all covenants, terms, and provisions thereof shall be and continue to be in full force and effect and the Loan Documents are hereby ratified and confirmed and shall, from and after the date hereof, continue in full force and effect;
- (c) **Security.** The Security Agreements have not been discharged, varied, waived, or altered, and are binding upon the Borrower and are enforceable against the Borrower in accordance with the terms therein. The Senior Lender's charge over the assets and real and personal property of the Borrower, and related undertakings, as contained in the Security Agreements, are valid, binding and crystallized in accordance with the terms of the Security Agreements, and that the Senior Lender may, at the Senior Lender's sole and unfettered discretion, cause any additional registrations to be made against any of the Borrower's interests over which the Security Agreements charge and the Borrower hereby expressly consents to any and all such fixed charge registrations being made;
- (d) **Guarantee.** Each Guarantor hereby ratifies and reaffirms (i) the validity, legality and enforceability of the Guarantee; (ii) that the reaffirmation of the Guarantee is a material inducement to the Senior Lender to enter into this Agreement; and (iii) that the Guarantors obligations under the Guarantee shall remain in full force and effect until all the Obligations have been satisfied in full. Wasnea acknowledges the validity and enforceability of the certified *Guarantees Acknowledgment Act*, RSA 200, c G-11 (the "**GAA**") certificate and statement of guarantor executed and attached to the Guarantee delivered to the Lender upon execution.
- (e) **Priority.** The Obligors acknowledge and agree that the Senior Lender's Security ranks ahead of the Subordinate Lender's Security, with the exception of the Foote Residence (legal unit no. 347) and the Obligors are precluded from disputing the priority of the Senior Lender's Security at any time;
- (f) **No Waiver.** The Senior Lender has made no promises, other than the covenants and agreements specifically contained herein, and has taken no action or omitted to take any action that would constitute a waiver or estoppel of the Senior Lender's rights to enforce the Security Agreements or pursue any or all of its rights and remedies in respect of the Loan Documents;
- (g) **Right to Enforce.** Since Enforcement Date, the Senior Lender has been in and continues to be in, a position to exercise all of its Enforcement Rights and pursue all other remedies with respect to the Loan Documents, in accordance with applicable laws;
- (h) **Costs.** All of the Senior Lender's reasonable expenses that it has incurred or will incur arising in connection with its dealings with the Obligors, the Loan Documents and this Agreement, and in the preparation, registration, protection, preservation, and enforcement of the Security Agreements or any of the Senior Lender's interests thereunder, including, without limitation, all of the Senior Lender's legal costs, as calculated between a solicitor and its own client, on a full indemnity basis, and all costs, fees, and disbursements, are recoverable by the Senior Lender under and pursuant to the Loan Documents and this Agreement, with the same priority as now exists thereunder (collectively, the "**Senior Lender's Costs**") and the Borrower irrevocably acknowledges that the Senior Lender's Costs form part of the Obligations and will continue to form part of the Indebtedness;
- (i) **Indebtedness.** The Borrower is indebted to the Senior Lender in the amount of the Indebtedness, with interest and Senior Lender Costs continuing to accrue. The Indebtedness is due and payable on demand and that the Senior Lender may, subject to the terms of this Agreement, require repayment of the Indebtedness in full, at any time, and at the Senior Lender's sole and unfettered discretion;

- (j) **No Rights to Setoff.** The Obligors do not dispute their liability to repay any of the Indebtedness, on any basis, and all rights of the Senior Lender shall remain in full force and effect and the Obligors hereby confirm that they do not have any right of setoff, damages, recoupment, offset, or any defense, claim, or counterclaim with respect to the Indebtedness, the Loan Documents, this Agreement, or any other document, agreement, or instrument in connection thereto or granted in connection therewith;
- (k) **No Further Credit.** The Borrower expressly acknowledges and agrees that, except as otherwise provided herein, there shall be no further availability of any credit whatsoever under the Commitment Letters and that any and all amounts paid or otherwise received by the Senior Lender shall be used to irrevocably and indefeasibly pay down the Indebtedness owing under the Loan Agreement, as allocated by the Senior Lender in the Senior Lender's sole and unfettered discretion, thereby indefeasibly, irrevocably, and permanently decreasing the Indebtedness owing under the Loan;
- (l) **Default.** The Obligors expressly acknowledge and admit the Default Events and expressly acknowledge and admit that the Senior Lender was and continues to be, in a position to require immediate compliance with the Demand Letters on or after the Enforcement Date; and
- (m) **Demand Letters.** The Obligors expressly acknowledge receipt of the Demand Letters and 244 Notice on October 25, 2021, and waive the requirement for any further demand or notice, and hereby consent to the enforcement of the Security Agreements in accordance with section 244(2) of the BIA and the terms of this Agreement on or after the Enforcement Date.

**ARTICLE 4  
OBLIGATIONS OF THE OBLIGORS  
DURING THE FORBEARANCE PERIOD**

- 4.1 By no later than 4:00pm (Calgary time) on February 21, 2022:
  - (a) the Obligors shall deliver to the Senior Lender, marketing and sale proposals for the Symphony Units (the "**Proposals**") from the listing brokers listed in Schedule "C" hereto (the "**Brokers**"); and
  - (b) the Obligors shall advise the Senior Lender of its preferred Proposal and provide brief reasons for its selection.
- 4.2 Subject to approval by the Senior Lender in its sole and unfettered discretion, the Obligors shall engage one of the Brokers by no later than February 24, 2022. The terms of engagement with the Broker shall:
  - (a) require the Broker to, beginning the week of February 28, 2022 and for the duration of the Broker's engagement, provide the Senior Lender with a weekly written update of the Broker's marketing efforts; and
  - (b) permit the Broker to communicate with the Senior Lender directly and be available to answer any questions of the Senior Lender.

**ARTICLE 5  
AGREEMENT TO PAY CARRYING COSTS**

- 5.1 During the Forbearance Period, the Senior Lender agrees to permit the payment of the carrying costs listed in Schedule "D" hereto (the "**Carrying Costs**") from the proceeds of the sale of

Symphony Unit 401 (the "**Proceeds**"), which the Senior Lender is otherwise entitled to apply towards payment of the Indebtedness pursuant to the Loan Documents. All parties shall, as applicable, direct the Proceeds to be or remain held in trust with Sharek Logan & van Leenen LLP ("**Sharek&Co**") and utilized to pay the Carrying Costs on the following conditions:

- (a) Sharek&Co shall not release any of the Proceeds to pay any Carrying Costs or any other amounts without the prior written approval of the Senior Lender; and
- (b) the Senior Lender shall direct that any portion of the Proceeds remaining in trust with Sharek&Co after the earlier of:
  - (i) a Forbearance Default; or
  - (ii) April 29, 2022

shall be released to the Senior Lender and applied towards the accrued interest portion of the Indebtedness.

- 5.2 Sharek&Co shall be entitled to disburse and retain sufficient monies from the Proceeds for all reasonable fees and disbursements incurred in the course of carrying out directions issued under Article 5.1.
- 5.3 Any amounts advanced from the Proceeds to pay the Carrying Costs or any other expenses of the Borrower will be added to and form part of the Indebtedness.

#### **ARTICLE 6 EXIT FEE**

- 6.1 The Senior Lender reserves the right to assert that the Exit Fee is payable and should be added to the Indebtedness.
- 6.2 The Obligors reserve the right to dispute the Exit Fee is payable and should be added to the Indebtedness.

#### **ARTICLE 7 CONDITIONS PRECEDENT**

- 7.1 This Agreement shall not be effective, as against the Senior Lender, unless and until each of the following conditions (collectively, the "**Conditions Precedent**") have been satisfied or waived by the Senior Lender in writing:
  - (a) a fully executed copy of a consent receivership order in the form attached hereto as Schedule "E" has been delivered by each of the Obligors and the Subordinate Lender;
  - (b) a fully executed copy of this Agreement has been delivered by each of the Obligors to the Senior Lender;
  - (c) a new fully executed and notarized copy of a certificate and statement of guarantor in the form prescribed by sections 3 and 4(1) of the GAA and attached to an executed copy of the original Guarantee, has been delivered by Wasnea to the Senior Lender; and
  - (d) a fully executed copy of a joint direction and agreement to abide by Article 5.1 (the "**Joint Direction**") has been delivered to Sharek&Co by the Senior Lender and Sharek&Co has acknowledged receipt of the Joint Direction in writing.

- 7.2 The conditions precedent stated herein are for the sole and exclusive benefit of the Senior Lender and may be waived by the Senior Lender, at the Senior Lender's sole, absolute, and unfettered discretion.

## **ARTICLE 8 REPRESENTATIONS AND WARRANTIES**

- 8.1 The Obligors hereby represent and warrant to the Senior Lender that:
- (a) the Borrower and Rockwood are duly registered in all jurisdictions where the nature of their property or character of their businesses requires registration, and have all of the necessary powers and authority to own their respective properties, as applicable and carry on their respective businesses, as presently carried on or as contemplated by this Agreement;
  - (b) Each of the Obligors have the full power, legal right, and authority to enter into this Agreement and to do all such acts and things as are required by this Agreement to be done, observed, or performed, in accordance with the terms hereof;
  - (c) Each of the Obligors have taken all necessary action to authorize the execution, delivery, and performance of this Agreement and to observe and perform the provisions hereof in accordance with the terms herein;
  - (d) Each of the Obligors represent and warrant that none of the authorization, execution, or delivery of this Agreement, or the performance of any obligations hereunder requires or will require, pursuant to applicable laws, now in effect, any governmental authorization from any governmental authority (except such authorizations as have already been obtained and are in full force and effect) nor is in conflict with or in contravention of the provisions of any other indenture, instrument, undertaking, or other agreement to which the Obligors are a party to or the Borrower's properties or assets are bound by. This Agreement constitutes valid and legally binding obligations and is enforceable against the Obligors in accordance with its terms and conditions;
  - (e) The Obligors represent and warrant that other than the Default Events, no defaults or events of default are occurring under the Loan Documents; and
  - (f) except for those representations and warranties that are expressly stated in the Loan Documents, to be made as at the date thereof or with respect to the Default Events, the Obligors represent and warrant that all representations and warranties contained in the Loan Documents are true and accurate, as if made on the date hereof.
- 8.2 The representations and warranties set out in this Agreement shall survive the execution and delivery of this Agreement, notwithstanding any investigations or examinations which may be made by or on behalf of the Senior Lender, and the representations and warranties in connection with the Loan Documents and this Agreement shall survive until the Indebtedness has been fully and finally repaid and terminated, in accordance with the terms and conditions applicable thereto.

## **ARTICLE 9 COVENANTS OF THE OBLIGORS**

- 9.1 Unless the Lender otherwise consents, in writing, during the Forbearance Period the Obligors shall:
- (a) to the extent permitted by law, waive any further requirements of demand;
  - (b) continue to comply with all financial and reporting obligations under the Loan Documents;

- (c) subject to the terms of this Agreement, take all necessary steps at their own cost to preserve the collateral under the Security Agreements;
- (d) not, other than in the ordinary course of business, without the prior written consent of the Senior Lender:
  - (i) sell, lease, pledge, transfer, dispose of, encumber, or otherwise alienate any interest in any collateral subject to the Security Agreements;
  - (ii) remove any of the collateral subject to the Security Agreements from the Borrower's business premises;
  - (iii) compromise any book debts or account receivables;
  - (iv) make any debt repayments of any kind to any person aside from those Carrying Costs for which the Senior Lender provides its prior written approval, including but not limited any payments to any person who does not deal at arm's length with the Borrower;

provided that the Senior Lender may impose terms and conditions upon its approval as it sees fit, in its sole and unfettered discretion including, without limitation and to the extent that it is not already a requirement under the Loan Documents, a requirement that any proceeds from the sale of any collateral subject to the Security Agreements shall be applied to reduce the Indebtedness to the Lender; and

- (e) immediately notify the Senior Lender of:
  - (i) any actions, proceedings or steps taken by any other creditor to enforce or collect payment of monies; or
  - (ii) any other information which comes to their attention which has or might reasonably have a material effect on the position of the Senior Lender.

9.2 Unless otherwise agreed to by the Senior Lender in writing, the Borrower shall remit to the Senior Lender all receipts, funds or proceeds received by the Borrower from:

- (a) the sale, lease or other dealings with any assets or property owned or controlled by the Borrower over which the Senior Lender's Security applies;
- (b) any governmental disaster assistance; and
- (c) any insurance proceeds from any claim made by the Borrower.

9.3 The Borrower shall advise the Senior Lender of the details of any accounts opened with any bank or other financial institution either in existence on the Effective Date or any date thereafter and shall, at the request of the Senior Lender, provide to the Senior Lender details of any transactions through any of those accounts.

9.4 Nothing in this Agreement shall limit the right of the Senior Lender to exercise any right of set off from time to time with respect to the Borrower.

9.5 The Obligors covenant and agree to provide such further and additional information, documents, and records to the Senior Lender, the Senior Lender's counsel, and any representative of the Senior Lender, as are required pursuant to the Loan Documents and this Agreement, or as may be

reasonably requested by the Senior Lender, the Senior Lender's counsel, or any other representative of the Senior Lender, from time to time.

#### **ARTICLE 10 ADDITIONAL COVENANTS OF THE OBLIGORS**

- 10.1 Each of the Obligors shall execute and deliver to the Senior Lender the Consent Receivership Order, which shall be provided upon execution of this Agreement and held by counsel for the Senior Lender in trust until a Forbearance Default, as defined herein, occurs or the Forbearance Period expires. The Obligors acknowledge, agree, and represent that:
- (a) the Consent Receivership Order is irrevocable and no objection shall be raised by any of the Obligors if the Senior Lender applies to have the Consent Receivership Order entered, filed, used, and relied upon by the Senior Lender in its absolute discretion, subject to the remaining terms of this Agreement; and
  - (b) the Senior Lender and the Senior Lender's solicitors are irrevocably authorized to complete (or delete), without notice to the Obligors or their counsel, any portion of the Consent Receivership Order provided pursuant to this Agreement that is not fully complete as at the date of the delivery of the Consent Receivership Order.

#### **ARTICLE 11 FORBEARANCE DEFAULTS**

- 11.1 Each of the following shall constitute a "**Forbearance Default**" hereunder:
- (a) if the Borrower fails to direct the proceeds from any sale of property over which the Senior Lender's Security applies, to the Senior Lender;
  - (b) if the Borrower fails to keep or perform any of the covenants or agreements contained or to be performed under this Agreement;
  - (c) material adverse change occurs in the business, affairs, financial condition or operations of the Borrower or the value of the material collateral secured by the Security Agreements, for any reason whatsoever;
  - (d) the Borrower fails to maintain insurance coverages or other material contracts, in each case as required by the terms of the Loan Documents;
  - (e) the occurrence of any other event which has or could reasonably be expected to materially and adversely impact the priority or enforceability of the Security Agreements, or the realizable value of the collateral subject to such Security Agreements;
  - (f) the loss, damage, destruction, deterioration or confiscation of any of the Borrower's property or assets or any part thereof, unless, upon such event, the Borrower pays to the Senior Lender forthwith such amount as the Lender, in its sole and absolute discretion, determines is satisfactory (whether under an insurance policy or otherwise);
  - (g) any person (i) takes possession of any property of any of the Borrower by way of or in contemplation of enforcement of security, or a distress or execution or similar process levied or enforced against any material property of the Borrower, or (ii) commences any action or proceeding in connection therewith;
  - (h) if any representation or warranty made by the Obligors in this Agreement or in any certificate or other document at any time delivered thereunder to the Senior Lender proves

to have been incorrect or misleading, in any respect, on and as of the date that it was made or was deemed to have been made;

- (i) the existence or occurrence of any new defaults, event(s) of default, or further deterioration of the Default Events under the Loan Documents, this Agreement, the Security Agreements, or any of the guarantees or security documents provided pursuant to or in connection thereof;
  - (j) if the Obligors makes an assignment in bankruptcy or any other assignment for the benefit of creditors, make any proposal, or seeks any relief under the BIA, the *Business Corporations Act* (Alberta), the *Companies' Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada), or any other bankruptcy, insolvency, or analogous law; or
  - (k) if any person applies for a bankruptcy order, receivership order, or any other order under the BIA, the *Business Corporations Act* (Alberta), the *Companies' Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada), or any other bankruptcy, insolvency, or analogous statutes or laws which would affect any of the Senior Lender's rights and remedies under this Agreement or the Loan Documents.
- 11.2 Upon the occurrence of: (i) a Forbearance Default, as determined by the Senior Lender in its sole and unfettered discretion; or (ii) the expiration of the Forbearance Period (each of which constitutes, jointly or severally, a "**Terminating Event**") the Senior Lender may immediately and without further notice pursue any and all rights and remedies that the Senior Lender may have in connection with the Obligors, the Loan Documents or this Agreement, as the Senior Lender deems appropriate and to the extent permissible by law.
- 11.3 The foregoing remedies are not exhaustive and the Senior Lender may, in its sole discretion, elect to exercise some, none, or all of the foregoing remedies, and such remedies may be exercised independently and in any order deemed necessary or advisable by the Senior Lender.

## **ARTICLE 12 RELEASE**

- 12.1 The Obligors hereby releases, remises, acquits, and forever discharges the Senior Lender and its respective employees, agents, representatives, consultants, counsel, fiduciaries, servants, officers, directors, partners, predecessors, successors and assigns, subsidiary corporations, parent corporations, and related corporate divisions and the successors and assigns of each of the foregoing (all of the foregoing hereinafter called, the "**Released Parties**"), from any and all actions and causes of action, judgments, executions, suits, debts, claims, demands, liabilities, obligations, damages, and expenses of any and every character, known or unknown, direct or indirect, at law or in equity, of whatsoever kind or nature, for or because of any manner of things done, omitted or suffered to be done by any of the Released Parties prior to and including the date of execution hereof and in any way directly or indirectly arising out of or in any way connected to this Agreement, the Loan Documents or the Loan (collectively, the "**Released Matters**"). The Obligors acknowledge that the statements in this paragraph are intended to be in full satisfaction of all or any alleged injuries or damages arising in connection with the Released Matters. The Borrower represents and warrants to the Senior Lender that the Borrower has not purported to transfer, assign, or otherwise convey any of right, title, or interest in any Released Matters to any other person and that the foregoing constitutes a full and complete release of all Released Matters.
- 12.2 The Obligors hereby agree that they are obligated to indemnify and hold the Released Parties harmless with respect to any and all liabilities, obligations, losses, penalties, actions, judgments, suits, costs, expenses, or disbursements, of any kind or nature, whatsoever, incurred by the Released Parties, or any of them, whether direct, indirect, or consequential, as a result of or arising from or relating to any proceeding by, or on behalf of any person, whether threatened or initiated,

in respect of any claim for legal or equitable remedy under any statute, regulation, or common law principle arising from or in connection with the negotiation, preparation, execution, delivery, performance, administration, and enforcement of the Loan Documents, this Agreement or any other document executed or delivered in connection therewith; provided, that the Obligors shall have no obligation to indemnify or hold harmless any of the Released Parties hereunder with respect to any liabilities to the extent that any such liabilities result from the gross negligence or wilful misconduct of that specific Released Party, as finally determined by a court of competent jurisdiction. If and to the extent that the foregoing undertaking may be unenforceable for any reason, the Obligors agree to make the maximum contribution to the payment and satisfaction thereof which is permissible under applicable law. The foregoing indemnity shall survive the termination of the Loan Documents, this Agreement and any other document executed or delivered in connection thereto, and the payment in full of the Indebtedness owed by the Borrower to the Senior Lender.

- 12.3 The Obligors, on behalf of themselves and their successors, assigns, and other legal representatives, hereby absolutely, unconditionally, and irrevocably, covenants and agrees with, and in favour of, each of the Released Parties that they will not sue (at law, in equity, in any regulatory proceeding, or otherwise) any of the Released Parties on the basis of any of the Released Matters. If the Obligors or any of their successors, assigns, or other legal representatives violate the foregoing covenant, the Obligors, for themselves and their successors, assigns, and legal representatives, agree to pay, in addition to such other damages as any of the Released Parties may sustain, as a result of such violation, all reasonable attorneys' fees and costs (on a solicitor and its own client basis) incurred by any of the Released Parties, as a result of such violation.

### ARTICLE 13 GENERAL

- 13.1 **Incidental Steps.** The parties hereto shall from time to time do all such further acts and things and execute and deliver all such further documents as are reasonably required in order to effect the full intent of and fully perform and carry out the terms of this Agreement.
- 13.2 **Successors and Assigns.** This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. The Obligors may not assign any rights or delegate any obligations arising herein without the prior written consent of the Senior Lender and any prohibited assignment shall be void. The Senior Lender may assign its rights and interests in this Agreement, the Loan Documents and all documents executed in connection with or related to the foregoing, at any time, without the consent of or notice to the Obligors or the Subordinate Lender.
- 13.3 **Notice of Default.** The Obligors shall provide the Lender with notice immediately upon the occurrence of any Forbearance Default, or any further deterioration of the Default Events under the Loan Documents, this Agreement or any other document and agreement in connection therewith.
- 13.4 **Entire Agreement.** This Agreement constitutes the entire agreement of the parties relating to the subject matter hereof and may not be amended or modified except by written consent executed by all parties. For greater certainty, no amendments or modifications to this Agreement shall be effective unless such amendments or modifications are in writing and are executed by all parties. No provision of this Agreement shall be deemed waived by any course of conduct unless such waiver is in writing and signed by all parties, specifically stating that it is intended to modify this Agreement.
- 13.5 **Advice of Counsel.** This Agreement and all other agreements and documents executed or delivered in connection herewith have been prepared through the joint efforts of all of the parties hereto. Neither the provisions of this Agreement, nor any such other agreements and documents, nor any alleged ambiguity therein shall be interpreted or resolved against any party on the grounds that such party or its counsel drafted this Agreement or such other agreements and documents, or



based on any other rule of strict construction. Each of the parties hereto represents and declares that such party has carefully read this Agreement and all other agreements and documents executed in connection therewith and that such party knows the contents thereof and signs the same freely and voluntarily. The parties hereto acknowledge that they have been represented by legal counsel of their own choosing in negotiations for and preparation of this Agreement and all other agreements and documents executed in connection herewith and that each of them has read same and had their contents fully explained by such counsel and is fully aware of their contents and legal effect. If any matter is left to the decision, right, requirement, request, determination, judgment, opinion, approval, consent, waiver, satisfaction, acceptance, agreement, option, or discretion of the Senior Lender or its employees, counsel, or agents, in any of the Loan Documents or this Agreement, such action shall be deemed to be exercisable by the Senior Lender or such other person in its sole and absolute discretion and according to standards established in its sole and absolute discretion. Without limiting the generality of the foregoing, "option" and "discretion" shall be implied by the use of the words "if" and "may".

- 13.6 **No Additional Obligations.** The execution, delivery and effectiveness of this Agreement shall not directly or indirectly: (i) create any obligation to make any further extensions of credit; (ii) continue to defer any enforcement action after the occurrence of any defaults or events of default (including, without limitation, any Forbearance Default(s)) other than the Default Events; (iii) constitute a consent or waiver of any past, present, or future violations of any provisions of the Loan Documents including, but not limited to, the Default Events; (iv) except to the extent as expressly set forth herein, amend, modify, or operate as a waiver of any provision of the Loan Documents or any right, power, or remedy of the Senior Lender; (v) constitute a consent to any potential transaction, merger, or other transaction or to any sale, restructuring, or refinancing transaction; (vi) except as expressly set out in this Agreement or the Loan Documents, constitute a course of dealing or other basis for altering the Loan Documents, or any other contract or instrument. The Senior Lender reserves all of its rights, powers, and remedies under the Loan Documents, this Agreement, and applicable law. All of the provisions of the Loan Documents, including, without limitation, any time of the essence provisions, are hereby reiterated, and if ever waived, are hereby reinstated. This Agreement shall not be deemed or construed to be a satisfaction, reinstatement, novation, or release of the Loan Documents.
- 13.7 **No Waiver of Existing Rights or Remedies.** The Senior Lender has not waived, is not by this Agreement waiving, and has no intention of waiving (regardless of any delay in exercising such rights and remedies), any Default Events, defaults, or events of default which may be continuing on the date hereof or any events of default which may occur after the date hereof (whether the same or similar to the Default Events or otherwise), and the Senior Lender has not agreed to forbear with respect to any of its rights or remedies concerning any events of default (other than, during the Forbearance Period with respect to the Default Events, solely to the extent expressly set forth herein), which may have occurred or are continuing as of the date hereof, or which may occur after the date hereof.
- 13.8 **No Waiver of Existing Obligations.** The Obligors agree and acknowledge that the Senior Lender's agreement to forbear from exercising certain of its default-related rights and remedies with respect to the Default Events during the Forbearance Period does not in any manner whatsoever limit the Senior Lender's right to insist upon strict compliance by the Obligors with the Loan Documents or this Agreement during the Forbearance Period.
- 13.9 **Notices.** Any notices or demands given under this Agreement may be delivered by courier or electronic mail to the parties at the addresses set forth below and, where so given, shall be deemed received by the recipient on the same business day as delivered or transmitted if delivered or transmitted prior to 4:00 p.m. (Calgary time), otherwise such notice or demand will be deemed received by the recipient on the next business day:

(a) to the Senior Lender:

25 Price Street  
Toronto, ON M4W 1Z1

Attention: Yvonne McAndrew

Email: ymcandrew@timbercreek.com  
with a copy to:

Cassels Brock & Blackwell LLP  
Suite 3810, Bankers Hall West, 888 3rd Street SW  
Calgary, AB T2P 5C5 Canada

Attention : Jeffrey Oliver / Kara N. Davis

Email: joliver@cassels.com / kdavis@cassels.com

(b) to the Obligors:

2100, 10060 Jasper Ave NW  
Edmonton, AB T5J 3R8

Email: allen@wasnea.com

with a copy to:

Biamonte LLP  
1700, 10025 102A Ave NW  
Edmonton, AB T5J 2Z2

Attention: Brian S. Sussman, Q.C.

Email: bussman@biamonte.com

- 13.10 **Remedies Cumulative.** The rights, remedies and powers provided in this Agreement and the Loan Documents to the Senior Lender are cumulative and in addition to, and are not exclusive of or in substitution for, any rights, remedies and powers otherwise available to the Senior Lender.
- 13.11 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein. Any dispute arising out of this Agreement that cannot be resolved by the parties will be heard in the ongoing action in the Court of Queen's Bench of Alberta bearing court file no. 2203 01087.
- 13.12 **Severability.** The invalidity or unenforceability of any particular terms of this Agreement will not affect or limit the validity or enforceability of the remaining terms.
- 13.13 **Counterparts/Electronic Execution.** This Agreement may be executed electronically in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Such executed counterparts may be delivered in emailed PDF form and, when so delivered, shall constitute a binding agreement of the parties hereto.

**[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]**

This Agreement has been executed by the parties.

**TIMBERCREEK MORTGAGE SERVICING INC.**

By: T. Johnston  
Name: Tracy Johnston

Title: Treasurer

By: Patrick Smith  
Name: Patrick Smith

Title: Vice President

**2292912 ONTARIO INC.**

By: T. Johnston  
Name: Tracy Johnston

Title: Treasurer

By: Blair Tomblin  
Name: Blair Tomblin

Title: President

**SYMPHONY CONDOMINIUM LTD.**

By: Allen Krueger  
Name: ALLEN KRUEGER

Title: Director

By: \_\_\_\_\_

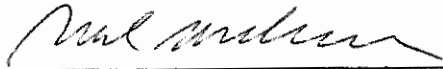
Name:  
Title:

**ROCKWOOD MANAGEMENT LTD.**

By: Allen Krueger  
Name: ALLEN KRUEGER

Title: DIRECTOR

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



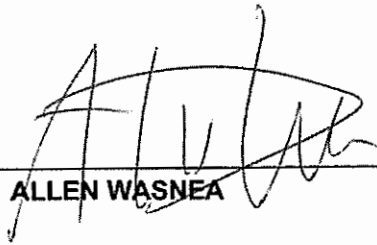
Witness signature

Name: NEAL ANDERSON

(please  
print)

Address: 10819 - 79 AVENUE  
EDMONTON AB

Phone: T5K-0E7  
(780) 932-6042

  
\_\_\_\_\_  
**ALLEN WASNEA**

**SCHEDULE "A"**  
**LOAN DOCUMENTS**

Commitment Letters

1. Commitment Letter between the Obligors and the Senior Lender, dated May 14, 2019; and
2. Amendment to Commitment Letter between the Obligors and the Senior Lender, dated June 20, 2019.

Security & Related Documents

3. Mortgage granted by the Borrower, dated June 25, 2019;
4. General Assignment of Leases and Rents granted by the Borrower, dated June 25, 2019;
5. General Security Agreement granted by the Borrower, dated June 25, 2019;
6. General Assignment of the Benefit of Material Agreements granted by the Borrower, dated June 25, 2019;
7. Environmental Indemnity granted by the Borrowers and the Guarantor, dated June 25, 2019;
8. Indemnity re Fraud and Misrepresentation granted by the Borrowers and the Guarantor, dated June 25, 2019;
9. Assignment of Insurance granted by the Borrower, dated June 25, 2019
10. General Assignment of Deposits granted by the Borrower, dated June 25, 2019;
11. General Assignment of Rights Under Agreements of Purchase and Sale granted by the Borrower, dated June 25, 2019;
12. Assignment re Letters of Credit granted by the Borrower, dated June 25, 2019;
13. Acknowledgments of the Borrower's interest in the Condominium Corporation and Condominium Plan;
14. Assignment Agreement between Computershare Trust Company of Canada and the Obligors, dated October 7, 2021; and
15. all additional security and ancillary and supplemental documents delivered or entered into by one or more of the Obligors.

Guarantee

16. Guarantee granted by the Guarantors, dated June 25, 2019.

**SCHEDULE "B"**

**LEGAL DESCRIPTION OF REAL PROPERTY**

CONDOMINIUM PLAN 1920542

UNITS 15 - 17, 22, 24, 29, 31, 32, 37, 39, 46, 58, 65, 67, 81, 93, 95, 102, 106, 107, 109, 112, 116, 117,  
122 - 124, 126 - 129, 133, 138, 140 - 143, 152, 156 - 159, 163, 167, 168, 170 - 173, 199, 202 - 204, 208,  
214, 221, 226, 229, 230, 239, 240, 242 - 245, 253, 255 - 257, 259, 260, 265, 266, 267, 273, 277, 278,  
280, 281, 284, 287, 299 - 305, 313, 314, 321 - 324, 335, 338, 339, 340, 344 - 346

INCLUSIVE AND ALL THE APPLICABLE UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE  
COMMON PROPERTY

EXCEPTING THEREOUT ALL MINES AND MINERALS

**SCHEDULE "C"**

**APPROVED LISTING BROKERS**

1. Institutional Property Advisors

a. Bradley Gingerich  
Senior Managing Director  
Office: 587-756-1575  
Mobile: 780-719-9025  
[bgingerich@ipammi.ca](mailto:bgingerich@ipammi.ca)

b. Bradyn Arth  
Senior Vice President  
Office: 587-756-1555  
Mobile: 780-982-3848  
[barth@ipammi.ca](mailto:barth@ipammi.ca)

2. Jones Lang LaSalle

Samuel Dean  
Senior Vice President  
Mobile: 780-328-2560  
[samuel.dean@am.jll.com](mailto:samuel.dean@am.jll.com)

3. CBRE

David Young  
Executive Vice President & Managing Director  
Office: 780-917-4625  
Mobile: 780-908-4525  
[Dave.young@cbre.com](mailto:Dave.young@cbre.com)

4. Avison Young

a. Amit Grover  
Principal  
Office: 780-540-5421  
Mobile: 780-953-1735  
[amit.grover@avisonyoung.com](mailto:amit.grover@avisonyoung.com)

b. Jandip Deol  
Principal  
Office: 780-540-5422  
Mobile: 780-278-2791  
[jandip.deol@avisonyoung.com](mailto:jandip.deol@avisonyoung.com)



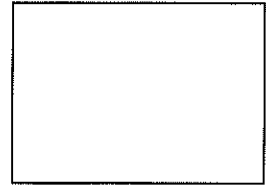
**SCHEDULE "D"**

**APPROVED CARRYING COSTS**

<b><u>DESCRIPTION</u></b>	<b><u>AMOUNT</u></b>
Condo Fees (December 1, 2021 – February 28, 2022)	\$80,234.97
Utilities (December 10, 2021 – February 2, 2022)	\$3,142.44
Insurance (Wawanesa — December 15, 2021)	\$660.50
Insurance (Parkview) (Desjardins — February 1, 2022)	\$8,813
Insurance (Foote) (Desjardins — February 1, 2022)	\$3,192
Software Licenses (December 18, 2021 – January 18, 2022)	\$156.80
Repairs (December 1, 2021 – February 9, 2022)	\$3,013.48
<b>Total:</b>	<b>\$99,213.19</b>

**SCHEDULE "E"**  
**CONSENT RECEIVERSHIP ORDER**

Clerk's Stamp:



COURT FILE NUMBER 2203-01087  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE OF EDMONTON  
APPLICANTS: TIMBERCREEK MORTGAGE SERVICING INC. and 2292912  
ONTARIO INC.  
RESPONDENTS: SYMPHONY CONDOMINIUM LTD., ROCKWOOD MANAGEMENT  
LTD. and ALLEN WASNEA

DOCUMENT **CONSENT RECEIVERSHIP ORDER**  
CONTACT Cassels Brock & Blackwell LLP  
INFORMATION OF Suite 3810, Bankers Hall West  
PARTY FILING THIS 888 3<sup>rd</sup> Street SW  
DOCUMENT: Calgary, Alberta, T2P 5C5  
Telephone 403-351-2921  
Facsimile 403-648-1151  
Email: joliver@cassels.com / kdavis@cassels.com

File No. 45109-101

**Attention: Jeffrey Oliver / Kara N. Davis**

**DATE ON WHICH ORDER WAS PRONOUNCED:**

**NAME OF JUDGE WHO MADE THIS ORDER:**

**LOCATION OF HEARING:** Edmonton, Alberta

**UPON** the application of Timbercreek Mortgage Servicing Inc. and 2292912 Ontario Inc. (the "**Applicants**") in respect of Symphony Condominium Ltd. (the "**Debtor**"); **AND UPON** having read the Application, the Affidavit of Patrick Smith, sworn January 12, 2022, and the Affidavit of Service of Richard Kay, filed; **AND UPON** reading the consent of MNP Ltd. to act as receiver and manager (the "**Receiver**") of the Debtor, filed; **AND UPON** hearing counsel for the Applicants, 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 notice of application for this order (the "**Order**") is hereby abridged and deemed good and sufficient and this application is properly returnable today.

### **APPOINTMENT**

2. Pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") and section 13(2) of the *Judicature Act*, R.S.A. 2000, c.J-2, MNP Ltd. is hereby appointed Receiver, without security, of all of the Debtor's current and future assets, undertakings and properties, of every nature and kind whatsoever, and wherever situate, including all proceeds thereof and including, without limitation, those lands and premises with the legal descriptions set out on Schedule "A" hereto (collectively, 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 Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, property managers, maintenance staff, 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) subject to further order of this Court, to instruct on behalf of the Debtor any and all listing agents and brokers, sales agents and other agents or consultants with respect to the marketing of any of the Property in accordance with agreements or other arrangements existing as of the date of this Order;
- (f) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (h) to settle, extend or compromise any indebtedness owing to or by the Debtor;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (j) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (k) 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 Debtor, 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;
- (l) to take such steps from time to time as the Receiver deems necessary or desirable in order to complete the sales of any of the Property agreed to by the Debtor prior to the making of this Order, in each case to the extent such sales are consented to by the Applicants (each, a "**Pending Sale**"), and to execute any documents and make any registrations on behalf of the Debtor with the Registrar of Land Titles and otherwise in order to effect the completion of such Pending Sales;

- (m) 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 \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$300,000; 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.
- (n) 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;
- (o) 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;
- (p) 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 not later than ten days after the date on which this Order is made 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 Debtor and not in its personal capacity;
- (q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (s) to exercise any contractual, shareholder, partnership, joint venture or other rights which the Debtor may have, including with respect to its rights as a member of Condominium Corporation No. 1920542; and
- (t) 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 Debtor, and without interference from any other Person (as defined below).

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

4. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (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 Debtor, 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 DEBTOR OR THE PROPERTY**

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are 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 Debtor or an action, suit or proceeding that is taken in respect of the Debtor 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 Debtor 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 nothing in this Order shall:
  - (a) empower the Debtor to carry on any business that the Debtor is 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 Debtor 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 Applicant 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 Monitor 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 Debtor, except with the written consent of the Debtor and the Receiver, or leave of this Court.

#### **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 Debtor, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtor

are 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 Debtor or exercising any other remedy provided under such agreements or arrangements. The Debtor shall be entitled to the continued use of its 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 Debtor in accordance with the payment practices of the Debtor, or such other practices as may be agreed upon by the supplier or service provider and each of the Debtor and the Receiver, or as may be ordered by this Court.

13. Any tenant or other Person who occupies a unit in the Property pursuant to any lease, or agreement to lease, licence or other form of agreement, whether written or oral (each a "**Lease**"), shall pay to the Receiver and not to any other Person all rent due to the Debtor pursuant to the terms of the Lease as and when due.

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

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

#### **EMPLOYEES**

15. Subject to employees' rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor' 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**").
16. 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 Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

**LIMITATION ON ENVIRONMENTAL LIABILITIES**

17. (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 sub-paragraph (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**

- 18. 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**

- 19. 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 \$250,000, 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) of the BIA.
- 20. The Receiver and its legal counsel shall pass their accounts from time to time.
- 21. 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**

- 22. 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 \$250,000 (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) of the BIA.

23. 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. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.
25. 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.
26. 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**

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

#### **GENERAL**

28. Notwithstanding any other provision of this Order, but subject to the prior receipt of a written legal opinion from its independent counsel as to the validity and enforceability of the security granted by the Debtor to the applicable Applicant, the Receiver is entitled but not obligated to make one or more interim distributions to an Applicant of any net proceeds arising out of the completion of any Pending Sales. Any such interim distribution(s) shall be without prejudice to the Receiver's right to require the return of such net proceeds from such Applicant in the event that the Receiver or this Honourable Court determines that the security granted in favour of such Applicant is invalid, unenforceable or ranks junior in priority to any other interest in such net proceeds.

29. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
30. 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.
31. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
32. 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.
33. 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.
34. 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 Debtor' estate with such priority and at such time as this Court may determine.
35. 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**

36. The Receiver shall establish and maintain a website in respect of these proceedings at <https://mnpdebt.ca/en/corporate/corporate-engagements/symphony-condominium-ltd> (the "**Receiver's Website**") and shall post there as soon as practicable:
- (a) all materials prescribed by statute or regulation to be made publicly 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.
37. 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.
38. 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.

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Justice of the Court of Queen's Bench of Alberta

**CONSENTED TO BY:**

**CASSELS BROCK & BLACKWELL  
LLP**



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Name: Jeffrey Oliver  
Counsel to Timbercreek Mortgage  
Services Inc. and 2292912 Ontario Inc.

**BIAMONTE LLP**



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Name: Brian Sussman, Q.C.  
Counsel to Symphony Condominium  
Ltd., Rockwood Management Ltd. and  
Alien Wasnea

**SWAINSON MIKI PESKETT LLP**

---

Name: Roger Swainson, Q.C.  
Counsel to Canada ICI Capital  
Corporation



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Counsel to Symphony Condominium  
Ltd., Rockwood Management Ltd. and  
Allen Wasnea

**SWAINSON MIKI PESKETT LLP**



Name: Roger Swainson, Q.C.  
Counsel to Canada ICI Capital  
Corporation

**SCHEDULE "A"**

**LEGAL DESCRIPTIONS OF REAL PROPERTY SUBJECT TO RECEIVERSHIP ORDER**

CONDOMINIUM PLAN 1920542

UNITS 15 - 17, 22, 24, 29, 31, 32, 37, 39, 46, 58, 65, 67, 81, 93, 95, 102, 106, 107, 109, 112, 116, 117,  
122 - 124, 126 - 129, 133, 138, 140 - 143, 152, 156 - 159, 163, 167, 168, 170 - 173, 199, 202 - 204, 208,  
214, 221, 226, 229, 230, 239, 240, 242 - 245, 253, 255 - 257, 259, 260, 265, 266, 267, 273, 277, 278,  
280, 281, 284, 287, 299 - 305, 313, 314, 321 - 324, 335, 338, 339, 340, 344 - 347

INCLUSIVE AND ALL THE APPLICABLE UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE  
COMMON PROPERTY

EXCEPTING THEREOUT ALL MINES AND MINERALS

As at January 27, 2022		
Legal Unit	Suite/Parking/Storage Number	Type
15	505	Suite
16	506	Suite
17	507	Suite
22	605	Suite
24	607	Suite
29	705	Suite
31	707	Suite
32	801	Suite
37	806	Suite
39	901	Suite
46	1001	Suite
58	1106	Suite
65	1206	Suite
67	1301	Suite
81	1501	Suite
93	1606	Suite
95	1701	Suite
102	1801	Suite
106	1805	Suite
107	1901	Suite
109	1903	Suite
112	2001	Suite
116	2005	Suite
117	2101	Suite
122	2201	Suite
123	2202	Suite
124	2203	Suite
126	2205	Suite
127	2301	Suite
128	2302	Suite
129	2303	Suite
133	2402	Suite
138	2502	Suite
140	2504	Suite
141	2601	Suite
142	2602	Suite
143	2701	Suite
152	15	Parking

158	17	Parking
159	18	Parking
157	24	Parking
163	25	Parking
156	26	Parking
167	31	Parking
168	32	Parking
172	28	Parking
173	34	Parking
170	35	Parking
171	36	Parking
202	33	Parking
203	37	Parking
204	38	Parking
335	45	Parking
199	48	Parking
284	58	Parking
240	84	Parking
253	105	Parking
208	108	Parking
214	116	Parking
221	119	Parking
226	125	Parking
229	129	Parking
230	130	Parking
242	86	Parking
243	87	Parking
244	88	Parking
245	89	Parking
257	152	Parking
287	134	Parking
281	146	Parking
299	155	Parking
340	156	Parking
255	157	Parking
256	158	Parking
300	159	Parking
302	160	Parking
265	165	Parking
260	166	Parking
266	167	Parking

259	168	Parking
267	169	Parking
280	170	Parking
339	176	Parking
273	177	Parking
277	181	Parking
278	182	Parking
324	192	Parking
323	194	Parking
322	196	Parking
321	200	Parking
313	205	Parking
314	207	Parking
338	209	Parking
301	139	Storage
303	185	Storage
304	186	Storage
305	187	Storage
239	S2	Storage
344	S3	Storage
346	Parkview Apartment Building	
347	Foote Residence	

**SCHEDULE "B"**

**RECEIVER CERTIFICATE**

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

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that MNP Ltd., the receiver and receiver and manager (the "Receiver") of all of the assets, undertakings and properties of Symphony Condominium Ltd. appointed by Order of the Court of Queen's Bench of Alberta and Court of Queen's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "Court") dated the 21st day of January, 2022 (the "Order") made in action numbers [●], 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 [●] 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\_\_.

MNP Ltd., solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

This is Exhibit "B"  
referred to in the Affidavit of  
YVONNE MCANDREW  
sworn this 28th day of March, 2022



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A Notary Public in and for the  
Province of Ontario



# **CONDOMINIUM CORPORATION NO. 192 0542** **SYMPHONY TOWER**

February 8, 2022

Owner(s)  
9720 106 Street NW  
Edmonton, AB T5K 0K8

Dear Sir/Madam:

Re: Monthly shortfall of operating funds resulting from unpaid contributions

The Developer, Symphony Condominium Ltd., advised the Board of Directors in late January 2022 that due to financial difficulties, it had defaulted on loans with two financial institutions. The loans are secured against several unsold Symphony Tower suites and parking units and various other properties owned by Symphony Condominium Ltd. and Allen Wasnea, personally. The Developer is currently in talks with the financial institutions to determine the best way to repay the loans. If they are unable to reach an agreement, the financial institutions may apply to have a court-appointed receiver take over control of the properties which were pledged as security.

## **How Does This Affect our Condominium Corporation?**

We all pay monthly contributions ("condo fees") to the corporation, a portion of which are typically placed into the Reserve Fund Account and the balance of which are used to fund the day-to-day operations of the condominium. The amount of each of our monthly condo fees is based on the number of unit factors assigned to the units we own.

The Developer currently owns approximately 30 to 35 percent of the unit factors. Due the Developer's financial difficulties, it has not paid its monthly condo fees since November 2021. We rely on the timely payment of condo fees each month so that we can pay our operational costs. As of February 1, 2022, Symphony Condominium Ltd. owes more than \$72,000 in contributions and that figure increases each month that the condo fees are not paid by approximately \$24,000.

## **What is the Board Doing About This?**

As a result of the unpaid condo fees, the Board of Directors asked for (and received) Allen Wasnea's resignation from the Board of Directors. Through our property manager, KDM Management Inc., caveats are being registered on titles of the unsold units owned by Symphony Condominium Ltd. which will ensure that the unpaid condo fees are eventually paid to the condominium corporation.

The Board has engaged a law firm specializing in condominium issues (Willis Law) to help the Board navigate these complex issues and to advocate on behalf of the condominium corporation.

Owners can take comfort in the fact that the money owed will be paid back to the corporation, one way or another. As you can imagine, being short \$24,000 each month has put our cash position in a shortfall, and we do not have enough funds in our operating account to pay our ongoing monthly operations. We cannot wait for the Developer, Developer's lenders and the courts to sort things out and must act immediately to put ourselves in a positive cash position.

### **How Will We Raise the Funds Required to Operate?**

The Board has explored various ways to raise the funds required to operate and after discussing with our lawyers, we have determined that a hybrid approach is our best option.

#### Special Levy

The Board will be discussing and likely approving a Special Levy of approximately \$115,000 (\$11.62 per unit factor) to make up the current (and future) operating cash shortfall as a result of the Developer's current inability to pay monthly condo fees.

#### Adopt a New Budget to Increase Monthly Contributions

Increasing our budget by 35% means that we will all see a 35% increase in our monthly condo fees, effective April 1, 2022. This will provide the condominium corporation the monthly cash required to operate.

### **What Will Happen When the Developer Eventually Pays All Outstanding Amounts?**

When the Developer (or the court-appointed receiver) eventually pays the condominium corporation all arrears (including the aforementioned Special Levy), those funds will be applied to our Reserve Fund. Additionally, we sincerely hope that once the arrears are paid, that we will be in a cash surplus position. This would allow us to reduce the monthly condominium fees back to levels seen when the Developer was paying its monthly share of condo fees.

### **I have Questions!**

The Board will be scheduling an information meeting for all owners to attend and ask questions. The corporation's property manager and its lawyer will be at this meeting.


While this is not an ideal situation, the Board is working very diligently with KDM Management and Willis Law to ensure the best outcome for owners. The Board will communicate more information with owners as it becomes available to us.

Yours Truly,  
**BOARD OF DIRECTORS**



Per:  
Michael Baker  
President

This is Exhibit "C"  
referred to in the Affidavit of  
YVONNE MCANDREW  
sworn this 28th day of March, 2022



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A Notary Public in and for the  
Province of Ontario

# SYMPHONY TOWER

## Condominium Corporation No 192 0542

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February 10, 2022

Allen Wasnea

Delivered via email: [allen@wasnea.ca](mailto:allen@wasnea.ca)

Dear Owner:

**RE: SYMPHONY TOWER – OUTSTANDING AMOUNT TOTALING - \$80,234.97**

At a meeting held by the Board of Directors, the Board discussed the outstanding balances on your multiple accounts.


The Board of Directors has a duty to ensure that all Owners are current with their Condominium Fees, or any Assessment and the Board does have certain avenues available to ensure the collection of the balance due which includes, but is not limited to:

1. **Acceleration of the Condominium Contributions** to the fiscal year end if the Corporation Bylaws permit;
2. **Caveat registration against the Title for the Unit** - any and all costs related to this action will be applied to the account increasing the outstanding balance;
3. **Advice to the Mortgagee** - we are required to report all outstanding balances to the Mortgage Company and may request that amount from the Mortgagee;
4. **Forward file to Collections Lawyer for litigation** - all associated costs will be at the Owners expense.

We would prefer to avoid the actions available to the Board and we would ask that you pay the arrears prior to **February 17, 2022**. Should you fail to comply the Board will have no choice but to proceed with further action to collect the outstanding amount for the amount, with all associated costs at your expense. No further notice will be given.

Thank you for your immediate attention to this matter. Should you have any questions please do not hesitate to contact Kristy at [kmaclean@kdmmgmt.ca](mailto:kmaclean@kdmmgmt.ca) or 780-460-0444 ext. 314.

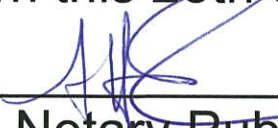
Sincerely yours,  
KDM MANAGEMENT INC.  
On Behalf of Symphony Tower  
The Condominium Corporation No. 192 0542

  
Kristy MacLean  
Condominium Manager  
KM/

Cc: Sharek & Co

Delivered via email: Cheryl Pangrass [cpangrass@sharekco.com](mailto:cpangrass@sharekco.com)

This is Exhibit "D"  
referred to in the Affidavit of  
YVONNE MCANDREW  
sworn this 28th day of March, 2022



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A Notary Public in and for the  
Province of Ontario

**From:** Kathryn Orthner <korthner@sharekco.com>  
**Sent:** Friday, March 25, 2022 1:40 PM  
**To:** Davis, Kara N.  
**Cc:** David van Leenen; Cheryl Pangrass; Oliver, Jeffrey  
**Subject:** RE: 11963.026 - Timbercreek v. Symphony; Your File 94,064 BSS [IWVOV-LEGAL.045109-00101]  
**Attachments:** Statement of Receipts & Disbursements - Suite 705.pdf; 2022.03.18 LTR to City of Edmonton - pay property taxes .pdf; 2022.03.18 LTR to KDM - pay March condo fees\_001.pdf; 2022.03.18 LTR to City of Edmonton pay U 29 & 158 taxes.pdf; 2022.03.18 LTR to Velocity pay marketing fees.pdf; Statement of Receipts and Disbursements - Suite 2202.pdf; 2022.02.25 LTR to City of Edmonton tax dept..pdf; ltr to KDM pay outstanding condo fees Feb 28.22.pdf; ltr to Metergy pay statement Feb 28.22.pdf; ltr to Velocity pay Inv 0025.pdf; Inv #37302 March 15.22.pdf

Hi Kara,

We enclose the following, showing payment of various items from the wired funds we received on February 25<sup>th</sup>, or from condo unit sale proceeds, as follows:

1. Statement of Receipts & Disbursements showing payments made from Unit 705 sale proceeds, which includes:
  - (a) Payment to the City of Edmonton for outstanding 2021 property taxes in the amount of \$300,662.94, copy of letter dated March 18, 2022 attached;
  - (b) Payment to KDM Management for March condo fees in the amount of \$26,761.00, copy of letter dated March 18, 2022 attached;
  - (c) Payment to the City of Edmonton for outstanding 2021 property taxes totalling \$6,223.92 for condo unit 29 and parking unit 158 (suite 705), copy of letter dated March 18, 2022 attached;
  - (d) Payment to Velocity re marketing fee of \$4,486.90, copy of letter dated March 18, 2022 attached;
2. Statement of Receipts & Disbursements showing payments made from Unit 2202 sale proceeds, which includes:
  - (a) Payment to the City of Edmonton for outstanding 2021 property taxes totalling \$5,436.84, copy of letter dated February 25, 2022, attached (this completes payment of outstanding 2021 taxes with 1(a) and (c) above);
  - (b) Payment to Metergy Solutions towards Statement 0524196998-18 for \$9,573.58 (see 3(b) below); and
  - (c) Payment to KDM Management Inc. for condominium special levy for \$35,580.45 (see 3(a) below);
3. From wired funds received from your office on February 25, 2022, in the amount of \$122,855.28, the following has been paid:
  - (a) Payment to KDM Management for payment of outstanding condo fees [to end of February] in the amount of \$79,755.25 (which included payment of the special levy noted in 2(c)), copy of letter dated February 28, 2022 attached;
  - (b) Payment to Metergy Solutions towards Statement 0524196998-18 for \$3,142.44 (which included payment in 2(b) above, totalling \$12,716.02), copy of letter dated February 28, 2022 attached;
  - (c) Payment to Velocity for Invoice 0025 (Suite 1804) for \$7,361.19, copy of letter dated March 1, 2022, attached; and
  - (d) Our Statement of Account #37302 dated March 15, 2022, which you authorized us to pay from trust funds, in the amount of \$8,299.84.

We confirm \$24,296.56 remains in our trust account from the wired funds received February 25, 2022.

Our client has more invoices that need to be paid, or that he needs to be reimbursed for payment (some of them are automatic withdrawal payments). Also, Feisal Rahall's salary (sales) for March, Carrera's maintenance and repair invoices for Symphony, and janitorial services from Teamfam Cleaning are outstanding. Our client has no funds to pay these. Please confirm that we can forward these for payment.

For your information, another condo sale has just closed (unit 605) and we have the closing funds at our office. Can use these funds to pay outstanding invoices and salaries?

We look forward to hearing from you.

Regards,

**Kathryn Orthner | APP | Commercial/Conveyancing Paralegal**

Sharek Logan & van Leenen LLP

☎ 780 413 6577 | ✉ korthner@sharekco.com | 🌐 yeglaw.ca

**Important Notice:** This office will not accept documents for service by email, unless we have given express prior written consent to do so

**From:** Davis, Kara N. <kdavis@cassels.com>

**Sent:** Friday, March 25, 2022 8:12 AM

**To:** Kathryn Orthner <korthner@sharekco.com>

**Cc:** David van Leenen <dvanleenen@sharekco.com>; Cheryl Pangrass <cpangrass@sharekco.com>; Oliver, Jeffrey <joliver@cassels.com>

**Subject:** RE: 11963.026 - Timbercreek v. Symphony; Your File 94,064 BSS [IWOV-LEGAL.045109-00101]

Hi Kathryn,

Further to the below, can you confirm that the payment of the March condo fees has been paid or let us know when it will be made? Can you also provide us with copies of receipts or payment confirmations for all payments that have been processed to date by your office with Timbercreek funds?

Kind regards,

**Cassels**

**KARA N DAVIS**

☎ +1 587 441 3065

✉ [kdavis@cassels.com](mailto:kdavis@cassels.com)

Cassels Brock & Blackwell LLP | [cassels.com](http://cassels.com)  
Suite 3810, Bankers Hall West, 888 3rd Street SW  
Calgary, Alberta T2P 5C5 Canada

This is Exhibit "E"  
referred to in the Affidavit of  
YVONNE MCANDREW  
sworn this 28th day of March, 2022



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A Notary Public in and for the  
Province of Ontario



**From:** Brian Sussman <bsussman@biamonte.com>  
**Sent:** Monday, March 14, 2022 4:00 PM  
**To:** Oliver, Jeffrey; dpeskett@smpllp.ca  
**Cc:** Davis, Kara N.  
**Subject:** Timbercreek Mortgage Servicing Inc. et al. v. Symphony Condominium Ltd. et al.

Our file: 94,064 BSS

Your file: 45109-101

March 14, 2022

Dear Jeffrey and Dan:

I am forwarding you an e-mail with two attachments that was sent to our respective clients on March 9, 2022. It was just brought to my attention today. It is obvious that this offer is not acceptable to any of our clients. Firstly, it is for an amount that does not even cover what is owing to Jeffrey's client. Secondly, it proposed that my client take back a mortgage.

To my knowledge the subject property has not been appraised since one was done in June, 2019 by Glen Cowan & Associates Real Property Appraisals Ltd. Would your clients consider funding a new appraisal so that we can intelligently consider any offer for either an individual unit or for all that remains unsold? If so, it might be less expensive if the aforementioned appraiser was simply asked to update its figures.

Jeffrey, I would confirm that I am still waiting to know if your client is agreeable to the property being listed with McLeod Realty & Management Ltd.

Brian

The office has moved one floor up to suite 1700.

Brian S. Sussman, Q.C.

c/o Biamonte LLP

Barristers and Solicitors

Suite 1700 - 102A Tower

10025 – 102A Avenue NW

Edmonton, Alberta T5J 2Z2

(Current address for service)

During COVID-19 pandemic, call cellphone No. 780-993-2554.

Direct Telephone No.: 780-425-5807

Office Telephone No.: 780-425-5800, extension 807

Office Toll-Free Telephone No.: 1-888-425-2620, extension 807

Fax No.: 780-426-1600

E-mail: [bsussman@biamonte.com](mailto:bsussman@biamonte.com)

Website: [www.biamonte.com](http://www.biamonte.com)

This is Exhibit "F"  
referred to in the Affidavit of  
YVONNE MCANDREW  
sworn this 28th day of March, 2022



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A Notary Public in and for the  
Province of Ontario

# Cassels

March 28, 2022

Via E-Mail

**Biamonte LLP**  
Barristers and Solicitors  
1700, 102A Tower  
10025 102A Ave NW  
Edmonton, AB T5J 2Z2

joliver@cassels.com  
tel: +1 403 351 2921  
file # 45109-101

Attention: Brian S. Sussman, Q.C.

Email: bsussman@biamonte.com

**Allen Wasnea**  
2100, 10060 Jasper Ave NW  
Edmonton, AB T5J 3R8

Email: allen@wasnea.com

**Swainson Miki Peskett LLP**  
2800, 10104 103 Ave NW  
Edmonton, AB T5J 0H8

Attention: Roger I. Swainson, Q.C. / Dan R. Peskett

Email: rswainson@smpllp.ca / dpeskett@smpllp.ca

Dear Sirs:

**Re: Timbercreek Mortgage Servicing Inc., et al (the "Lender") v Symphony Condominium Ltd., et al. (the "Obligors")**

As you are aware, the Forbearance Agreement entered into by the Lender and the Obligors on February 18, 2022, provides that the Forbearance Period (as defined therein) expired on March 25, 2022 or the occurrence of a Forbearance Default (as defined therein). While the Lender is of the view that prior to the expiry of the Forbearance Period, certain actions or inaction of the Obligors, constituted one or more Forbearance Defaults, it is not determinative of the Lender's intended actions given that the Forbearance Period has expired. For various reasons including the lack of unit sales and interest in the Symphony Tower, the Lender, in its sole and absolute discretion pursuant to Article 2.2 of the Forbearance Agreement, will not be extending the Forbearance Period.

Article 10 of the Forbearance Agreement provides that the Consent Receivership Order (the "**CRO**"), which has been executed by the Obligors and Canada ICI Capital Corporation, shall be held by the Lender in trust until a Forbearance Default occurs or the Forbearance Period expires. It also provides that the CRO is

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t: 403 351 2920  
f: 403 648 1151  
cassels.com

Cassels Brock & Blackwell LLP  
Suite 3810, Bankers Hall West, 888 3rd Street SW  
Calgary, AB T2P 5C5 Canada

irrevocable and no objection shall be raised by any of the Obligors if the Senior Lender applies to have the CRO entered, filed, used and relied upon by the Lender in its sole discretion.

Accordingly, since the Forbearance Period has expired, the Lender will be making an application to the Court on Thursday, April 7, 2022 at 10:00am. In addition to the materials previously filed by the Lender in the proceeding bearing Court File No. 2203-01087, the Lender intends to file and serve additional materials shortly.

We trust the foregoing to be in order, but please contact the undersigned should you wish to discuss this matter further.

Yours truly,

Cassels Brock & Blackwell LLP



Jeffrey Oliver  
Partner

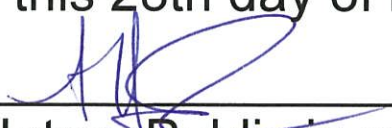
JO/kd

Enclosures

cc: Sharek Logan & van Leenen LLP ([dvanleenen@sharekco.com](mailto:dvanleenen@sharekco.com))  
Timbercreek Mortgage Servicing Inc. & 2292912 Ontario Inc. ([ymcandrew@timbercreek.com](mailto:ymcandrew@timbercreek.com))

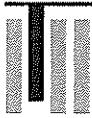
LEGAL\*55553908.1

This is Exhibit "G"  
referred to in the Affidavit of  
YVONNE MCANDREW  
sworn this 28th day of March, 2022



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A Notary Public in and for the  
Province of Ontario



TIMBERCREEK  
CAPITAL

Timbercreek Capital  
25 Price Street  
Toronto, ON, M4W 1Z1  
Canada

timbercreek.com  
Tel 416 928 3740

## INFORMATION STATEMENT

Date: 25 March 2022

To: **Symphony Condominium Ltd.**  
**10519 99 Avenue N.W.**  
**Edmonton, AB**

RE: Mortgage number 19-22  
Mortgagor Symphony Condominium Ltd.  
Property Address 9720 – 106 Street N.W. Edmonton, AB/10612 97 Avenue N.W.  
Edmonton, AB

**PLEASE BE ADVISED THAT THE BALANCE OUTSTANDING UNDER THE ABOVE-MENTIONED MORTGAGE LOAN IS AS FOLLOWS:**

Interest Rate	6.50%
Outstanding principal balance as of March 28, 2022	22,227,325.04
Interest Mar. 22 to Mar. 28 <sup>th</sup> (#6 days)	24,079.60
Late Interest	0.00
	-----
Subtotal	22,251,404.64
Interest Reserve Balance	(1,934.46)
Exit Fee	1,110,000.00
Property tax balance at	0.00
Statement fee	0.00
	-----
Balance Outstanding	23,359,470.18

Per diem interest	4,013.27
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**\*\*PLEASE NOTE\*\***

This statement is for information only purposes and is not a discharge statement.

This statement is subject to the correction of any errors or omissions.

Timbercreek Mortgage Servicing Inc.

Laura Wheller  
Manager Global Mortgage Servicing  
E&OE