

Clerk's Stamp

COURT FILE NUMBER:  
COURT  
JUDICIAL CENTRE  
PLAINTIFF  
DEFENDANTS

2001-11615  
COURT OF QUEEN'S BENCH OF ALBERTA  
CALGARY  
CANADA ICI CAPITAL CORPORATION  
SUNPARK PLACE LTD., SUNPARK PLACE  
LIMITED PARTNERSHIP and SUNPARK  
PLACE LIMITED PARTNERSHIP by its general  
partner SUNPARK PLACE LTD., IEC LTD. and  
RIAZ MAMDANI

DOCUMENT  
**APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

**OSLER, HOSKIN & HARCOURT LLP**  
Barristers & Solicitors  
Suite 2500, 450 – 1st Street S.W.  
Calgary, AB T2P 5H1  
Solicitors: Randal Van de Mosselaer / Emily Paplawski  
Telephone: (403) 260-7060 / 7071  
Facsimile: (403) 260-7024  
Email: [RVandemosselaer@osler.com](mailto:RVandemosselaer@osler.com) / [EPaplawski@osler.com](mailto:EPaplawski@osler.com)  
File Number: 1202743

## NOTICE TO THE RESPONDENT

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

You have the right to state your side of this matter before the Court.

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

Date: November 27, 2020  
Time: 10:00 a.m.  
Where: Calgary Courts Center, 601 – 5<sup>th</sup> Street SW, Calgary AB (by Webex Video call)  
Before: The Honourable Madam Justice B.E.C. Romaine

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

**Order Sought:**

1. The Applicant, TELUS Core Investment Corporation (“**TCIC**”) seeks an Order generally in the forms attached at Schedules “A” and “B” hereto:

- (a) deeming service of this Application to be good and sufficient and abridging the time for service of this Application to the time actually given;
- (b) substituting TCIC for Canada ICI as Plaintiff in this Action pursuant to Rule 3.74 of the *Alberta Rules of Court*, Alta Reg 124/2010 (the “**Rules**”) and permitting TCIC to file an Amended Statement of Claim in the form attached as Schedule “A” hereto;
- (c) appointing Colliers Macaulay Nicolls Inc. (“**Colliers**”) as receiver, without security or bond, of all of the rentals due and accruing due now or hereinafter from the lands and premises described as:

**PLAN 9912291**

**BLOCK 2**

**LOT 6**

**EXCEPTING THEREOUT ALL MINES AND MINERALS**

(hereinafter referred to as the “**Lands**”) and as manager of the undertakings and assets of the Defendants situated upon or relating to the Lands and premises (“**Colliers**”); and

- (d) such further and other relief as counsel for the Applicant may request and this Honourable Court may grant.

**Basis for this Claim:**

2. By a mortgage dated February 13, 2018 and registered in the Alberta Land Titles Registry as Instrument No. 181 047 192 (as amended, renewed, and extended, the “**Mortgage**”), Sunpark Place Ltd., both on its own behalf and as the general partner of Sunpark Place Limited Partnership (together, “**Sunpark**”) mortgaged to Canada ICI Capital Corporation (“**Canada ICI**”), as agent and trustee for TCIC, the Lands. The Mortgage was to secure payment of the principal sum of

\$9,500,000 (the “**Principal Amount**”) and interest at the rate of 7.25% per annum, payable both before and after maturity, default and judgment.

3. As further security for the repayment of the Principal Amount, and all accrued and accruing interest and costs, Sunpark executed, among other things, a General Security Agreement and a General Assignment of Rents and Leases (together with other security granted by Sunpark, the “**Collateral Security**”).

4. In breach of the Mortgage, Sunpark has failed to: (a) make monthly interest payments under the Mortgage as such amounts became due; (b) repay the Principal Amount to Canada ICI (and now TCIC), plus all accrued and unpaid interests and costs, upon the Mortgage maturing on March 1, 2020; and (c) pay property taxes of \$8,898.56 plus \$355.96 in penalties for the Lands in accordance with the Mortgage.

5. As at November 20, 2020, Sunpark is indebted to TCIC under the Mortgage in the amount of \$10,768,534.71, plus certain costs and expenses to be determined.

6. On December 20, 2019, Alvarez and Marsal Canada Inc., LIT was appointed receiver and manager (the “**Receiver**”) in respect of the Lands, among other lands and premises, pursuant to the Interim Receivership Order of the Honourable Madam Justice Horner, dated December 20, 2019 (“**Interim Receivership Order**”) in Alberta Court of Queen’s Bench Action No. 1901-18029 (the “**Strategic Group Receivership Action**”).

7. On November 24, 2020, Canada ICI assigned to TCIC all present and future indebtedness, fees, expenses and other liabilities direct or indirect, absolute or contingent, due by Sunpark under the Mortgage, as well as all of Canada ICI’s right, title, estate and interest in and to the Mortgage and the Collateral Security for the use and benefit of TCIC pursuant to the terms of an Assignment of Indebtedness and Security Agreement. TCIC consents to being substituted as Plaintiff in this Action.

8. In accordance with the Interim Receivership Order, TCIC and the Receiver have agreed that the Lands will be withdrawn from the possession and control of the Receiver and from the sales and investment solicitation process previously approved by this Court in the Strategic Group Receivership Action. While TCIC (as successor in interest to Canada ICI) has filed a Statement of

Claim against Sunpark and various guarantors seeking, among other things, enforcement of TCIC's rights under the Mortgage and judgment for any deficiency against Sunpark and the guarantors (the "**Claim**"), the Claim has not yet been determined by this Honourable Court. Appointment of Colliers as receiver and manager of the Lands pending determination of the Claim is necessary to ensure proper maintenance of the Lands and proper and timely responses to tenant concerns so as to preserve the long term value of the Lands and the continuing receipt of rental income from tenants of the Lands.

9. Based on the foregoing, among other reasons, TCIC submits that it is just and equitable to appoint Colliers as receiver and manager of the Lands.

10. Colliers has consented to act as receiver and manager of the Lands if so appointed by this Honourable Court.

11. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**Affidavit or other Evidence and Materials to be used in Support of this Application:**

12. Affidavit of David Lawson, sworn November 25, 2020

13. Such further and other evidence or materials as counsel may advise and this Honourable Court may permit.

**Applicable Rules:**

14. The *Alberta Rules of Court*, Alta Reg. 124/2010.

**Applicable Acts and Regulations:**

15. The *Law of Property Act*, RSA 2000, c.L-7, as amended.

16. The *Judicature Act*, RSA 2000, c. J-2, as amended.

**Any Irregularity Complained of or Objection Relied On:**

17. None.

**How the Application is Proposed to be Heard or Considered:**

18. By Webex, before the Honourable Madam Justice B.E.C. Romaine at 10:00 a.m. on November 27, 2020.

**WARNING**

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

**Schedule “A”**

Clerk’s Stamp:



COURT FILE NUMBER 2001-11615

COURT COURT OF QUEEN’S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF CANADA ICI CAPITAL CORPORATION

DEFENDANTS SUNPARK PLACE LTD., SUNPARK PLACE  
LIMITED PARTNERSHIP and SUNPARK  
PLACE LIMITED PARTNERSHIP by its general  
partner SUNPARK PLACE LTD., IEC LTD. and  
RIAZ MAMDANI

DOCUMENT **ORDER**  
**(Amended Statement of Claim)**

CONTACT INFORMATION OF Osler, Hoskin & Harcourt LLP  
PARTY FILING THIS Suite 2500, 450 – 1<sup>st</sup> Street SW  
DOCUMENT: Calgary, AB T2P 5H1

Solicitor: Randal Van de Mosselaer / Emily Paplawski  
Telephone: 403.260.7060 / 7071  
Facsimile: 403.260.7024  
Email: [Rvandemosselaer@osler.com](mailto:Rvandemosselaer@osler.com) / [Epaplawski@osler.com](mailto:Epaplawski@osler.com)  
File Number: 1202743

DATE ON WHICH ORDER WAS PRONOUNCED: November 27, 2020

NAME OF JUDGE WHO MADE THIS ORDER: Madam Justice B.E.C. Romaine

LOCATION OF HEARING: Calgary, Alberta

**UPON** the application of **TELUS CORE INVESTMENT CORPORATION (“TCIC”)**; **AND UPON** having read the Statement of Claim filed by Canada ICI Capital Corporation (**“Canada ICI”**) in this Action on September 8, 2020 and the Affidavit of David Lawson, sworn November 25, 2020; **AND UPON** hearing from counsel for TCIC and the Defendants; **AND**

**UPON** noting the consent of TCIC to be substituted as Plaintiff in this Action; **IT IS HEREBY ORDERED AND DECLARED THAT:**

1. TCIC shall be substituted for Canada ICI as Plaintiff in this Action, and the Style of Cause in this Action is hereby amended so that hereafter the Plaintiff shall be shown as “TELUS Core Investment Corporation”.
2. TCIC may file the Amended Statement of Claim attached as Schedule “A” hereto with the Clerk of this Honourable Court.

---

J.C.Q.B.A

**Schedule “A”**

**[Amended Statement of Claim]**

COURT FILE NUMBER	2001-11615
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	^ <u>TELUS CORE INVESTMENT CORPORATION</u>
DEFENDANTS	SUNPARK PLACE LTD., SUNPARK PLACE LIMITED PARTNERSHIP and SUNPARK PLACE LIMITED PARTNERSHIP by its general partner SUNPARK PLACE LTD., IEC LTD. and RIAZ MAMDANI

Clerk's Stamp

DOCUMENT **AMENDED STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<b>OSLER, HOSKIN &amp; HARCOURT LLP</b> Barristers & Solicitors Suite 2500, 450 – 1st Street S.W. Calgary, AB T2P 5H1
---	--

Solicitors: Randal Van de Mosselaer / Emily Paplawski  
Telephone: (403) 260-7060 / 7071  
Facsimile: (403) 260-7024  
Email: [RVandemosselaer@osler.com](mailto:RVandemosselaer@osler.com) / [EPaplawski@osler.com](mailto:EPaplawski@osler.com)  
File Number: 1202743

**NOTICE TO DEFENDANTS:** SUNPARK PLACE LTD., SUNPARK PLACE LIMITED PARTNERSHIP and SUNPARK PLACE LIMITED PARTNERSHIP by its general partner SUNPARK PLACE LTD., IEC LTD., and RIAZ MAMDANI

You are being sued. You are the Defendants.

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

**Note: State below only facts and not evidence (Rule 13.6)**

**Statement of facts relied on:**

1. The original Plaintiff, Canada ICI Capital Corporation (“Canada ICI”), is a body corporate registered pursuant to the laws of, and carrying on business in, the Province of Alberta.
2. The current Plaintiff, TELUS Core Investments Corporation (“TCIC”) is a corporation incorporated pursuant to the laws of Alberta, with offices in Edmonton, Alberta.
3. The Defendant, Sunpark Place Ltd., is a body corporate registered pursuant to the laws of, and carries on (or did carry on at material times) business in, the Province of Alberta, and is the general partner of Sunpark Place Limited Partnership..



4. The Defendant, Sunpark Place Limited Partnership and Sunpark Place Limited Partnership by its general partner Sunpark Place Ltd. is a limited partnership registered pursuant to the laws of the Province of Alberta.
5. The Defendant, IEC Ltd. ("IEC"), is a body corporate registered pursuant to the laws of, and carries on (or did carry on at material times) business in, the Province of Alberta. IEC was formerly known as Irrational Exuberance Corp. ("Irrational Exuberance"). A name change was registered November 26, 2019.
6. The Defendant, Riaz Mamdani is an individual who, so far is known to the Plaintiff, resides in the City of Calgary, in the Province of Alberta.
7. By a Mortgage dated February 13, 2018 and registered in the Land Titles Office of Alberta, as Instrument No. 181 047 192 on or about February 28, 2018, and amended, renewed, and extended on or about March 15, 2019 (the "Mortgage") Sunpark mortgaged to Canada ICI the following lands and premises:

PLAN 9912291  
BLOCK 2  
LOT 6  
EXCEPTING THEREOUT ALL MINES AND MINERALS

(hereinafter referred to as the "Lands")

for securing the payment of the principal sum of \$9,500,000.00 and interest at the rate of 7.25% per annum, payable both before and after maturity, default and judgment.

8. At all relevant times prior to November 24, 2020, Canada ICI was holding the Mortgage as trustee for and on behalf of TCIC.
9. The Mortgage is binding both on Sunpark Place Ltd. and Sunpark Place Limited Partnership and Sunpark Place Limited Partnership by its general partner Sunpark Place Ltd. (collectively, "Sunpark").
10. Under the Mortgage, Sunpark covenanted to pay the principal sum and interest as follows:  
  
Monthly payments, on the basis and in the amounts set out in the Mortgage, on the first day of each and every month in each and every year from the time of the first advance to and including March 1, 2020, or such other dates as shall be proven, and the balance, if any, of the said principal sum and interest thereon, on the date last mentioned.
11. Pursuant to the Mortgage, monies in the amount of \$9,500,000.00 were fully advanced to Sunpark by Canada ICI.
12. Pursuant to the Mortgage, Sunpark covenanted to pay all liens, taxes, charges and encumbrances or claims with respect to the Lands, and also to insure the full value of the Lands against fire and other perils.
13. Pursuant to the Mortgage, it provided that, *inter alia*:
  - a) in the event of default under the Mortgage, including in relation to the payment of the principal or interest on any monies secured thereunder, or any part thereof, and including non-payment of taxes and liens, then, at the option of Canada ICI, the whole of the principal

sum and interest, and every other sum thereby secured, shall become immediately due and payable;

- b) in the event of default of payment on any liens, taxes, charges or encumbrances with respect to the Lands, Canada ICI has the right to pay such charges and add to the Mortgage all such costs and expenses incurred in that respect;
  - c) in the event of default of payment of any instalment of interest, such interest shall become part of the principal sum for the further calculation of interest in accordance with the term of the Mortgage;
  - d) in the event of default in the Mortgage requiring Canada ICI to take proceedings to realize upon the Mortgage, the Defendant, Sunpark would indemnify Canada ICI for any and all costs and expenses incurred, including legal costs on a solicitor and his own client full indemnity basis; and
  - e) the taking of a judgment or judgments on any covenant contained in the Mortgage shall not operate as a merger of such covenant or affect the right of Canada ICI to recover interest at the rate and time set forth in the Mortgage, on any monies which are owed to Canada ICI, and such judgment or judgments shall provide that interest thereon shall be computed at the same rate and in the same manner as provided for in the Mortgage until the judgment or judgments have been paid in full.
14. As security for the repayment of the principal sum, interest and all monies due and owing under the Mortgage, Sunpark executed a General Assignment of Rents and Leases Agreement with Canada ICI dated February 13, 2018 which was registered against the Lands by Caveat as Registration No. 181 047 193 on or about February 28, 2018.
15. As further security for the repayment of the principal sum, interest and all monies due and owing under the Mortgage, Sunpark executed a Security Agreement with Canada ICI dated February 13, 2018 which was registered with the Alberta Personal Property Registry on February 13, 2018 as Registration No. 18021315007.
16. As further security for the repayment of the principal sum, interest and all monies owing under the Mortgage, Sunpark executed an Assignment of Insurance Policies Agreement with Canada ICI dated February 13, 2018.
17. Pursuant to two separate Agreements in writing dated February 13, 2018, IEC and Riaz Mamdani guaranteed the full repayment of the principal sum, interest and other monies secured or due and payable to Canada ICI at the times and in the manners set out in the Mortgage, and all other amounts which may become payable thereunder, and the due performance of all covenants, conditions, stipulations and observances pursuant to the Mortgage, including the payment of Canada ICI's solicitor and his own client legal costs on a full indemnity basis (the "Guarantees").
18. Default has been made by Sunpark under the terms of the Mortgage, including in that Sunpark has failed to make payments on the Mortgage as they become due, and the Mortgage has matured. As such, the entire loan balance owing to Canada ICI, including interest and costs, is due and payable.
19. The Defendants have failed, refused or neglected to repay the amounts due and owing pursuant to the Mortgage and Guarantees.

20. On November 24, 2020, Canada ICI assigned to TCIC all present and future indebtedness, fees, expenses and other liabilities direct or indirect, absolute or contingent, due by Sunpark under the Mortgage, as well as all of Canada ICI's right, title, estate and interest in and to the Mortgage, the General Assignment of Rents and Leases Agreement, the Security Agreement, and the Assignment of Insurance Policies Agreement for the use and benefit of TCIC pursuant to the terms of an Assignment of Indebtedness and Security Agreement.
21. There is due and owing to ^ TCIC by the Defendants, Sunpark, IEC, Riaz Mamdani and each of them, under and by virtue of the Mortgage and Guarantees the sum of ^ \$10,768,534.71 as of ^ November 20, 2020, or alternatively such further and other amounts as shall be proven, plus legal costs on a solicitor and his own client full indemnity basis, plus interest at the Mortgage rate, plus any and all additional charges and costs owed to ^ TCIC under the Mortgage.
22. ^ TCIC states that having regard to the Defendants' ability to pay, and the value of ^ TCIC's security, the period of redemption on any judgment in this action should be set at ONE (1) day or such other period as this Honourable Court may direct.
23. ^ TCIC proposes that, should a trial of this action become necessary, the trial of this action be held at the Law Courts Building, in the City of Calgary, in the Province of Alberta, and any trial of this action will take less than TWENTY FIVE (25) trial days.

**Remedy sought:**

24. Wherefore ^ TCIC claims the following:
- a) A Declaration as to the amount owing under the Mortgage and Guarantees with interest according to the terms thereof, and in default of payment, foreclosure or sale to ^ TCIC or otherwise, and in either case, possession of the Lands;
  - b) Judgment against the Defendants for any sum found to be due and owing to ^ TCIC with interest thereon at the rate set forth in the Mortgage and Guarantees, both before and after default and judgment, or at such other rate as the Court may order;
  - c) Judgment against the Defendants, or any of them, jointly and severally, in the event that there is any deficiency in the amount available or deemed to be available for the satisfaction of ^ TCIC's claim herein following sale and possession of the said land and chattels, for the amount of any such deficiency as determined by this Honourable Court, together with interest according to the terms of the Mortgage, the Security Agreement, and the Guarantees until payment in full, or at such other rate as the Court may order;
  - d) An Order setting the redemption period to be ONE (1) day or such other period as this honourable Court may direct;
  - e) An Order for possession of the Lands, or any portion thereof, and a Writ of Possession;
  - f) An Order for the appointment of a Receiver Manager of the Lands;
  - g) An Order for preservation of the Lands, if necessary;
  - h) An Order indemnifying ^ TCIC for all costs and expenses incurred with interest according to the terms of the Mortgage and Guarantees;

- i) All of ^ **ICIC's** costs in this action including legal costs on a solicitor and his own client full indemnity basis; and
- j) Such further and other relief as this case may require and this Honourable Court deems just and appropriate, including an accounting by the Defendants, or any one or more them, and any appropriate injunctive relief and declarations, including in respect of funds being held in trust or directions in respect of such funds.

**NOTICE TO THE DEFENDANT(S)**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

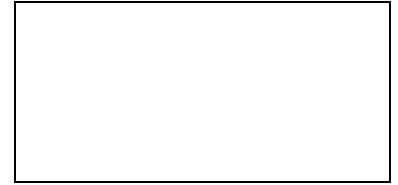
You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

**WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

**Schedule "B"**

Clerk's Stamp:



COURT FILE NUMBER	2001-11615
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	TELUS CORE INVESTMENT CORPORATION
DEFENDANTS	SUNPARK PLACE LTD., SUNPARK PLACE LIMITED PARTNERSHIP and SUNPARK PLACE LIMITED PARTNERSHIP by its general partner SUNPARK PLACE LTD., IEC LTD. and RIAZ MAMDANI
DOCUMENT	<b>CONSENT ORDER</b> <b>(Receiver of Rents and Profits)</b>
CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:	Osler, Hoskin & Harcourt LLP Suite 2500, 450 – 1 <sup>st</sup> Street SW Calgary, AB T2P 5H1  Solicitor: Randal Van de Mosselaer / Emily Paplawski Telephone: 403.260.7060 / 7071 Facsimile: 403.260.7024 Email: <a href="mailto:Rvandemosselaer@osler.com">Rvandemosselaer@osler.com</a> / <a href="mailto:Epaplawski@osler.com">Epaplawski@osler.com</a> File Number: 1202743

DATE ON WHICH ORDER WAS PRONOUNCED: November 27, 2020

NAME OF JUDGE WHO MADE THIS ORDER: Madam Justice B.E.C. Romaine

LOCATION OF HEARING: Calgary, Alberta

**UPON** the application of **TELUS CORE INVESTMENT CORPORATION ("TCIC")**; **AND UPON** having read the Statement of Claim filed by Canada ICI Capital Corporation ("**Canada ICI**") in this Action on September 8, 2020 and the Affidavit of David Lawson, sworn November 25, 2020; **AND UPON** noting the Order of this Honourable Court granted November

27, 2020 permitting for substitution of TCIC as Plaintiff in this Action for Canada ICI and granting TCIC permission to file an Amended Statement of Claim in this Action; **AND UPON** hearing from counsel for TCIC and the Defendants; **AND UPON** noting that the Defendants, Sunpark Place Ltd., both on its own behalf and as the general partner of Sunpark Place Limited Partnership (together, “**Sunpark**”), is in default of the mortgage dated February 13, 2018 and registered in the Alberta Land Titles Registry as Instrument No. 181 047 192 (as amended, renewed, and extended, the “**Mortgage**”); **AND UPON** the Court determining that it is just and equitable to appoint a Receiver and Manager in respect of the Lands (as defined below) and premises; **AND UPON** noting the consent of counsel for the Defendants;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this Application, and the time for service of this Application is abridged to that actually given.

**APPOINTMENT OF RECEIVER AND MANAGER**

2. Pursuant to Section 49 of the *Law of Property Act*, RSA 2000, c.L-7, and Section 13(2) of the *Judicature Act*, RSA 2000, c. J-2, Colliers Macaulay Nicolls Inc. (the “**Receiver and Manager**”) is appointed as receiver, without security or bond, of all of the rentals due and accruing due now or hereinafter from the lands and premises described as:

**PLAN 9912291**

**BLOCK 2**

**LOT 6**

**EXCEPTING THEREOUT ALL MINES AND MINERALS**

(hereinafter referred to as the “**Lands**”) and as manager of the undertakings and assets of the Defendants situated upon or relating to the Lands and premises immediately upon Alvarez & Marsal Canada Inc., LIT (“**A&M**”) in its capacity as Court-appointed Receiver of the Lands in Alberta Court of Queen’s Bench Action No. 1901-18029 (the “**Strategic Group Receivership**”) filing the Receiver’s Certificate attached to, and in accordance with, the Consent Order of the Honourable Justice Romaine granted November 27, 2020 in the Strategic Group Receivership.

## **POWERS OF RECEIVER AND MANAGER**

3. The Receiver and Manager shall have all such powers as this Court may from time to time deem just and expedient, or as are inherent in the office, and without restricting the generality of the foregoing, shall have the power to:
  - a. manage, administer, maintain and operate the Lands;
  - b. lease and re-let the Lands or any part thereof, and to renegotiate leases thereof, as may in its discretion deem advisable;
  - c. terminate leases or obtain possession, or both with respect to the Lands, or any part thereof;
  - d. collect the rents, profits or other receipts arising from the Lands, or any part thereof;
  - e. distrain and pursue other remedies available at law or in equity for rent in arrears in the same manner and with the same right of recovery as a landlord;
  - f. borrow monies for the purpose of carrying out duties and powers hereunder, including (without limitation) borrowing monies from TCIC, (provided that no more than \$200,000 in the aggregate shall be borrowed without further leave of this Court) and to repay and again borrow monies within the aforesaid limits; all monies so borrowed to be a charge upon the Lands bearing the same priority as the Mortgage;
  - g. effect repairs and to make improvements needed to render the Lands rentable and to pay for the cost of the same;
  - h. collect and administer damage deposits and other security deposits; and
  - i. such other powers as may be deemed just and necessary by this court from time to time.
4. The Receiver and Manager shall be at liberty to employ such agents and assistants, including the appointment of solicitors, as it may consider necessary for the purpose of

preserving the Lands, premises and assets of the Defendants, carrying on the business and undertaking on the Lands and exercising any of the powers granted hereunder, and any expenditure which shall properly be made or incurred by the Receiver and Manager in doing so shall be allowed in its passing of accounts and shall for all purposes be deemed to be a disbursement in accordance with paragraph 6(a) hereof.

5. To the extent not previously delivered to A&M in the Strategic Group Receivership, the Defendants shall as soon as reasonably possible deliver over to the Receiver and Manager all the books, documents of every kind, and all damage or security deposits received from or in respect of the Lands, all post-dated cheques and any and all rent and other payments which may hereinafter fall due from the tenants of the Lands, which the Defendants have or will have in their power or possession, relating to the business and undertaking on the Lands.
6. The Receiver and Manager shall pay the proceeds of any rents, profits and other monies collected or received by it for the month of November 2020 and on a go forward basis as follows:
  - a. first, towards fees and disbursements of the Receiver and Manager as and by way of remuneration for its services as Receiver and Manager, including any disbursements for normal operating expenses (including any urgent repairs) and utilities;
  - b. second, in payment of taxes accruing and owing in relation to the Lands;
  - c. third, to repay any monies borrowed by the Receiver and Manager as permitted by this Order; and
  - d. fourth, to repay the outstanding balance owed to TCIC pursuant to the Mortgage, including all costs and expenses (including legal costs on a full indemnity basis), as may be allowed by the Court.



7. Any balance remaining after payment of all amounts defined under section 6 above shall be held by the Receiver and Manager subject to further order of the Court upon Application by any interested party.
8. The Receiver and Manager shall provide TCIC monthly with an accounting of all monies collected, and fees, disbursements and payments made, in respect of the Lands and the undertakings and assets of the Defendants situated upon or relating to the Lands and premises.
9. Prior to discharge, the Receiver and Manager shall have its accounts approved by the Court.
10. The Receiver and Manager shall not be required to furnish any security or bond for the due performance of its duties.
11. No proceedings or enforcement process in any court of tribunal (each, a “**Proceeding**”) shall be commenced or continued against the Receiver and Manager except with the written consent of the Receiver and Manager or with the leave of this Court.
12. No person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by the Defendants in respect of the Lands, except with the written consent of the Receiver and Manager, or leave of this Court.
13. Notwithstanding anything in any federal or provincial law, the Receiver and Manager is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
  - a. before the Receiver and Manager's appointment; or
  - b. after the Receiver and Manager's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver and Manager's gross negligence or wilful misconduct;provided, however, that nothing in this paragraph 13 shall exempt the Receiver and Manager from any duty to report or make disclosure imposed by federal or provincial law.

14. Notwithstanding anything in any federal or provincial law, but subject to paragraph 13, where an order is made which has the effect of requiring the Receiver and Manager to remedy any environmental condition or environmental damage affecting the Lands, the Receiver and Manager 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,

- a. 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 and Manager, if the order is in effect when the Receiver and Manager is appointed, or during the period of the stay referred to in clause (b) below, the Receiver and Manager:
  - i. complies with the order, or
  - ii. 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;
- b. during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (a) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver and Manager, if the order is in effect when the Receiver and Manager is appointed, by,
  - i. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver and Manager to contest the order; or
  - ii. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
- c. if the Receiver and Manager 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.

15. Except for its own gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order, the Receiver and Manager shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Lands. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver and Manager under any applicable law.

## **SERVICE**

16. A true copy of this Order shall be served upon the Defendants at their registered office and upon the tenants presently or in the future occupying the Lands by leaving a true copy of this Order at the units in question on the Lands.
17. Forthwith upon service of a true copy of this Order as provided under section 16 above, any and all rental payments which may then be due or may thereafter fall due from time to time relating to the Lands, or any part thereof, shall be paid to the Receiver and Manager, and payment of the rentals to the Receiver and Manager shall be deemed, as to those rentals received, to be an effective payment of such rental to the landlord.

## **MISCELLANEOUS**


18. TCIC shall be entitled to its costs for this action on a full indemnity basis, including all costs and expenses of the Receiver and Manager, the quantum of which shall be determined and taxed by a Review Officer or agreed between TCIC, IEC Ltd. and Riaz Mamdani.
19. The Receiver and Manager may from time to time apply to this Honorable Court for direction and guidance in the discharge in its duties as Receiver and Manager of the Lands.

---

J.C.Q.B.A

Consented to this \_\_\_\_\_ day of November, 2020:

**MCCARTHY TÉTRAULT LLP**

Per:   
\_\_\_\_\_  
**Sean Collins**  
Counsel for the Defendants