

COURT FILE NUMBER: 2003 07303

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: EDMONTON

PLAINTIFF: INSTITUTIONAL MORTGAGE  
CAPITAL CANADA INC.

DEFENDANTS: 744 (2011) CAPITAL CORP.,  
744 (2011) LIMITED PARTNERSHIP,  
IRRATIONAL EXUBERANCE WINDUP CORP.,  
and RIAZ MAMDANI

DOCUMENT: CONSENT ORDER FOR  
RECEIVER AND MANAGER

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT:

Richard H. Kennedy  
Kennedy Agrios LLP  
Barristers and Solicitors  
1325, 10180 – 101 Street  
Edmonton, AB T5J 3S4  
Phone: (780) 969-6907  
Fax: (780) 969-6901  
File: 76193-4 RHK

DATE ON WHICH  
ORDER WAS  
PRONOUNCED: May 7, 2020

LOCATION WHERE  
ORDER WAS  
PRONOUNCED: Calgary Courts Centre  
601 – 5 Street NW  
Calgary AB T2P 5P7

NAME OF THE  
JUSTICE/MASTER WHO  
MADE ORDER: The Honourable Justice K. M. Horner



I hereby certify this to be a  
true copy of the original.  
J. Kennedy  
Clerk of the Court

UPON THE APPLICATION of the Plaintiff; AND UPON HAVING READ the pleadings and the application materials; AND UPON HAVING READ the Affidavit of Jean Monardo, sworn April 22, 2020, filed; AND UPON BEING ADVISED that an Interim Receivership Order (the "Interim Receivership Order"), appointing Alvarez & Marsal Canada Inc. as the Receiver Manager (the "Interim Receiver") was granted in court file number 1901 18029 by Justice K. M. Horner on December 20, 2019 in relation to the Defendant, 744 (2011) Capital Corp., and the hereinafter described Lands; AND UPON

BEING ADVISED that the receivership proceedings under the Interim Receivership Order can be terminated by the Plaintiff by the filing of a Termination Certificate as contemplated by the Interim Receivership Order after January 31, 2020; AND UPON BEING ADVISED that the Plaintiff will be filing and serving a Termination Certificate to terminate the interim receivership as contemplated by the Interim Receivership Order; AND UPON noting the consent of Counsel for the Interim Receiver and 744 (2011) Capital Corp. ("744 GP"), 744 (2011) Limited Partnership ("744 LP"), Irrational Exuberance Windup Corp., and Riaz Mamdani (collectively the "Defendants"); AND UPON it appearing that the Plaintiff's mortgage is in default; AND UPON it appearing to be just and equitable to appoint a receiver and manager; AND UPON CONSIDERING this Application by way of a desk application, due to the COVID-19 Pandemic; AND UPON IT APPEARING that all interested and affected parties have been served with notice of this Application; IT IS HEREBY ORDERED AND DECLARED THAT:

#### **SERVICE**

1. The time for service of the notice of this Application and supporting materials is hereby abridged and deemed good and sufficient and this application is properly returnable today.

#### **APPOINTMENT**

2. Pursuant to Section 49 of the *Law of Property Act*, RSA 2000 c. L-7 and Section 13(2) of the *Judicature Act*, R.S.A. 2000, c. J-2, and subject to the Plaintiff filing and serving a Termination Certificate in accordance with paragraph 38 of the Interim Receivership Order, Trillium Realty Advisors Inc. is hereby, as of May 7, 2020, appointed as receiver, without security or bond, of the Property and all the rentals, profits and proceeds due and accruing, due now or hereinafter from the lands and premises described as:

PLAN A1  
BLOCK 13  
LOTS 39 AND 40  
EXCEPTING THEREOUT AS TO SURFACE ONLY  
A PORTION FOR ROAD WIDENING ON PLAN 8310002

(the "Lands")

and appointed as the manager of the Lands and all of the business and undertakings, real and personal property and all other assets of the Defendants situate on or relating to the Lands and premises (hereinafter, collectively with the Lands referred to as the "Property"). The receiver and manager, Trillium Realty Advisors Inc., is hereinafter referred to as (the "Receiver").

3. The Receiver shall have all such powers as this Court may, from time to time, deem expedient or as are inherent in the office and without restricting the generality of the foregoing shall have the power from time to time:

- (a) to take possession and control of the Property;
- (b) to engage a property manager (the "Property Manager") of the undertaking of the Property of the Defendants at rates and under a contract approved by the Receiver and the Plaintiff;
- (c) to receive, manage, protect, administer, maintain and operate the Property with the assistance of the Property Manager;
- (d) to lease and re-let the Lands or any part thereof, and to renegotiate leases thereof as the Receiver or Property Manager may, in their discretion, deem advisable including all renewals, extensions, amending agreements and administration thereof;
- (e) to terminate leases or obtain possession, or both, with respect to the Lands, or any part thereof;
- (f) to collect the rents, profits or other receipts arising from the Property, or any part thereof;
- (g) to distrain and pursue other remedies available at law or in equity for rent in arrears in the same manner and in the same right of recovery as a landlord;
- (h) from time to time, with the approval of the Plaintiff or failing that approval, with the further approval of a court order, to borrow money for the purpose of carrying out the duties and powers hereunder, including, without limitation, borrowing monies from the Plaintiff (provided that no more than \$250,000.00 in the aggregate shall be borrowed in respect of the Property without further leave of this Court) and to repay and again borrow money within the aforesaid limits, all monies so borrowed are to be a charge upon the mortgaged Property in priority to the Plaintiff's mortgage but subordinate to the Receiver's Charge set out in 11(a) herein;

- (i) together with the Property Manager, after approval of the Plaintiff, or failing that approval, with further court order, effect repairs and make improvements needed to render the Property rentable and to pay for the costs of same;
- (j) to collect and administer damage deposits and other security deposits;
- (k) to apply for any landlord or other relief available from any level of government relating to the COVID-19 pandemic in respect of the property;
- (l) to take any steps of actions reasonably necessary or incidental to the exercise of these powers; and
- (m) such other powers as may be deemed just and necessary by this Honourable Court from time to time.

4. The Receiver shall be at liberty to employ such agents and assistance, including the appointment of solicitors, as it may consider necessary for the purpose of preserving the Property, carrying on the business and undertaking on the Property and exercising any of the powers granted hereunder, and any such expenditure which shall properly be made or incurred by the Receiver in doing so shall be allowed to it in passing its accounts and shall be, for all purposes, deemed to be a disbursement referred to in paragraph 11(a) hereof. The fees and other terms of any asset management services provided by the Receiver or any asset manager appointed by the Receiver pursuant to this Order shall require the approval of the Plaintiff or Loan Servicer on its behalf.

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

6. 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.

7. The Defendants shall at once deliver over to the Receiver all the books, documents of every kind, and all damage or security deposits received from or in respect of the Property, all post-dated cheques and any and all rent or 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 of the Property. Without limiting the generality of the foregoing and the terms of the Interim Receivership Order, a request for any records that the Defendants have provided to the Interim Receiver will first be made of the Interim Receiver and the Interim Receiver is authorized and directed to make available to the Receiver upon the Receiver's request any records provided to the Interim Receiver by the Defendants or any affiliate of the Defendants and the Interim Receiver will be compensated by the Receiver for its costs for any work relating to the request, preparation and delivery of any records to the Receiver which costs shall be secured by the Receiver's charge (as defined in the Interim Receivership Order).

8. The Interim Receiver shall continue to have the benefit of the Receiver's charge (as defined in the Interim Receivership Order) which charge shall secure:

- (a) the professional fees and disbursements of the Interim Receiver and counsel to the Interim Receiver which were incurred prior to the earlier of the Termination Date (as defined in the Order granted by the Honourable Justice K. M. Horner on March 27, 2020 in court file number 1901 18029) or the Termination Time (as defined in the Interim Receivership Order) in relation to the Property (as defined in the Interim Receivership Order) which includes the Lands (as defined herein); and
- (b) the professional fees and disbursements of the Interim Receiver and counsel to the Interim Receiver which are incurred after the earlier of the Termination Date or the Termination Time, on account of costs and services rendered by the Interim Receiver to transition the Property (as defined in the Interim Receivership Order) which includes the Lands, to the Receiver.

9. The Interim Receiver shall collect the proceeds of any rents, profits and other monies with respect to the Lands for the month of May 2020 which shall be subject to the Receiver's Charge (as defined in the Interim Receivership Order).

10. The Interim Receiver shall provide an accounting to Institutional Mortgage Capital Canada Inc. of its Receiver Charges referenced in the Interim Receivership Order and paragraph 8 of this Order within 45 days of the date of this Order. After the said Receiver Charges are paid any funds that continue to be held by the Interim Receiver in relation to the Lands shall be forthwith paid to Institutional Mortgage Capital Canada Inc. without further order of this Court.



11. The Receiver shall pay the proceeds of any rents, profits, proceeds and other monies collected or received by it for the month of June 2020 and going forward as follows:

- (a) First, towards fees and disbursements allowed to the Receiver as and by way of remuneration for its services as Receiver at an hourly rate not to exceed the \$300.00 per hour without the approval of the Plaintiff, including any disbursements for normal operating expenses and utilities and, to the extent not paid, such fees and disbursements shall be a first charge against the Property in favour of the Receiver (the "Receiver's Charge");
- (b) Second, in payment of taxes accruing and owing in relation to the Property;
- (c) Third, to repay any monies borrowed by the Receiver as permitted by this Order;
- (d) Fourth, in reduction of the claims of the Plaintiff for the outstanding indebtedness owing to it from time to time under its mortgage loan in care of its solicitors as may be proved to the satisfaction of the Receiver and such costs and expenses, including legal costs on a solicitor-client-full-indemnity-basis, as may be allowed by the Court;
- (e) Fifth, in reduction of the indebtedness owing to any subsequent encumbrancers in respect of the Lands; and
- (f) Sixth, the balance, if any remaining, shall be held by the Receiver subject to the further order of the Court upon application by any interested party.

12. Prior to the payment of the fees which purposes by way of account or interim account per remuneration in their capacity as Receiver, the Receiver shall from time to time provide to the solicitors for the Plaintiff statements of the said fees.

13. The Receiver shall provide a report to the Defendants and the Plaintiff (or the Loan Servicer) on the first day of each quarter with respect to receipts and disbursements including updated rent rolls.

14. Prior to discharge, the Receiver shall have their accounts approved by the Court.

15. The Receiver shall not be required to furnish any security or bond for the due performance of their duties.

16. 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 the leave of this court.

17. Save and except for this action or any other action commenced by the Plaintiff under its mortgage loan or related loan documentation (the "Plaintiff's Actions"), or any action that may be commenced by a subsequent mortgagee, no Proceeding against or in respect of the Property, 744 GP or 744 LP 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 underway against or in respect of the Property (other than the Plaintiff's Actions), are hereby stayed and suspended pending further Order of this court, provided, however, that nothing in this Order shall:

- (a) 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
- (b) affect a regulatory body's investigation in respect of the Defendants, or an action, suit or Proceeding that was taken in respect of the Defendants, 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.

18. For clarity, nothing contained in this order shall prevent or limit the Plaintiff from taking any steps or exercising any rights under its loan documents, loan security or at law as against the Property, or any of the Defendants.

19. No person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, 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 Property, except with the written consent of the Receiver, or leave of this Court.

20. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in those positions 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 the 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 are 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.



21. 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 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.

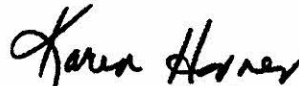
22. Service of this Order on the Defendants may be sufficiently effected upon the Defendants by serving their counsel, Sean Collins of McCarthy Tetrault LLP, by email at [scollins@mccarthy.ca](mailto:scollins@mccarthy.ca).

23. A true copy of this order shall be served upon the person appointed or employed by the Defendant to collect the rents and all other payments from the Property, or, alternatively, upon the tenants presently or in the future occupying the Property, which may be effected by personally serving said employee or alternatively by leaving a true copy of this order at the premises in question on the Property, as the case may be.

24. Forthwith upon service of a true copy of this Order, as aforesaid, any and all rental payments, profits, and proceeds which may then be due or may thereafter fall due from time to time relating to the Property, or any part thereof, shall be paid to the Receiver, and payment of the rentals, profits and proceeds to the Receiver as aforesaid shall be deemed, as to those rentals, profits and proceeds received, to be an effective payment of such rentals, profits and proceeds to the landlord.

25. The Plaintiff shall be entitled to its costs for this action on a solicitor-client-full-indemnity-basis, including all costs and expenses of the Receiver.

26. The Receiver may, from time to time, apply to this Honourable Court for direction and guidance in the discharge in its duties as Receiver of the Property.



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JUSTICE OF THAT COURT OF QUEEN'S  
BENCH OF ALBERTA

CONSENTED TO BY:

**MCCARTHY TETRAULT LLP**

Per: 

**Sean Collins,**  
Counsel for the Defendants

**DENTONS CANADA LLP**

Per: 

**Sam A. Gabor,**  
Counsel for the Interim Receiver,  
Alvarez & Marcel Canada Inc.

**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

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

AMOUNT               \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that **Trillium Realty Advisors Inc.** the receiver and manager (the "Receiver") of certain Property (as defined in the Order) owned by 744 (2011) Capital Corp. appointed by Order of the Court of Queen's Bench of Alberta and Court of Queen's Bench of Alberta (the "Court") dated the [day] of April, 2020 (the "Order") made in action numbers 2003 07303, 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 \$250,000.00 that the Receiver is authorized to borrow under and pursuant to the Order.

2. Pursuant to Section 3(g) of the Order, the borrowing evidenced by the certificate has been approved by the Plaintiff or by further court order.

3. 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.

4. 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 Property (as defined in the Order), having first priority over the Plaintiff's mortgage described in the Statement of Claim in Court File Number 2003 07303 and all subsequent claims, but subject to the priority of the Receiver's Charge set out in Section 11(a) of the Order, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

5. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at [●].
6. 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.
7. 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.
8. 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\_\_.

**Trillium Realty Advisors Inc.**, solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

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

Name:

Title: