

SUPREME COURT OF NOVA SCOTIA
In Bankruptcy

BETWEEN:

ADDENDA CAPITAL INC., a body corporate

PLAINTIFF

- and -

NOVA NEW ENGLAND LIMITED, a body corporate, **JAMES BRENNAN** and **TERRANCE BRENNAN**

DEFENDANTS

ORDER FOR RECEIVER OR RECEIVER AND MANAGER

BEFORE THE HONOURABLE JUSTICE

:

Addenda Capital Inc., the Plaintiff, a secured creditor of the Defendant, Nova New England Limited (the "**Company**"), has filed a motion for an order appointing BDO Canada Limited ("**BDO**") as the receiver and manager of the assets, property and undertakings of the Company, pursuant to the provisions of section 243(1) of the Bankruptcy and Insolvency Act (the "**BIA**");

Upon reading the Affidavits of Elvira Dubé and Paul G. Goodman, FCA, FCIRP and FIIC, and the other materials on file herein;

And upon it appearing that BDO has consented to act as receiver and manager of the Company;

And upon hearing Maurice P. Chiasson, Q.C. and Sara Scott on behalf of the Plaintiff in support hereof;

Upon motion of Addenda Capital Inc., it is hereby ordered that:

APPOINTMENT AND POWERS

1. BDO, a body corporate, be and is hereby appointed under section 243(1) of the BIA, as the receiver or receiver and manager (the "**Receiver**") of all of the property, assets, money, goods, legal interests, claims, inventory, intellectual property, records, business, affairs and undertakings of the Company wherever situate, both real and personal, whether legal or equitable, tangible or intangible, vested, contingent, present or future and whether situate in Canada or elsewhere (the "**Assets**") of the Company, including the condominium project under construction located at 66-70-72 Ochterloney Street, 41 Wentworth Street, Dartmouth, Nova Scotia (the "**Condominium Project**") with:

- (a) the authority and power to receive, preserve, protect and realize upon the Assets or any part or parts thereof; and
- (b) the entitlement to immediate, continuous and unrestricted access to the Assets or any part or parts thereof.

2. Each of (i) the Company, (ii) 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 which of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Assets in such Person's possession or control, shall grant immediate and continued access to the Assets to the Receiver, and shall deliver all such Assets to the Receiver upon the Receiver's request.

3. 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 Company, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (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 3 or in paragraph 4 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

4. If any of the Records are stored or otherwise contained on a computer (which term shall include any electronic data processing or storage system) accessible to any Persons, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall, at the request of the Receiver, give the Receiver unfettered access to, and assistance in retrieving, gaining access to, reading and copying such information and data 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 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, passwords, account names and account numbers that may be required to gain access to the information.

5. Each of the Company and any other Persons are hereby restrained and enjoined from disturbing or interfering with the Receiver, or the Receiver's possession and control of the Assets, or the Receiver's entitlement to the Records, except with the Receiver's written consent or with leave of the Court.

6. Each of the Company and any other Persons shall be and are hereby restrained from selling, transferring, alienating, mortgaging, encumbering or dealing with the Assets in any manner without the Receiver's written consent or further order of this Court.

7. Subject to the terms hereof, the Receiver be and is hereby empowered, from time to time, to do every act or thing which, in its opinion, is necessary or desirable to do for the purpose of receiving, preserving, protecting or selling the Assets, or any part or parts thereof, including without limitation, all or any of the following acts or things, until further Order of this Court:

- (a) to take possession of, and exercise control over, the Assets and any and all proceeds or receipts arising out of or from the Assets unless the Receiver is satisfied that it is impractical or inappropriate to do so;
- (b) to receive, maintain control over, protect and preserve the Assets and to take such steps as, in the opinion of the Receiver, are necessary or appropriate to establish and maintain control over the Assets, or any part or parts thereof, including, but not limited to, the changing of the locks and security codes, engaging independent security personnel, taking physical inventory as may be necessary or appropriate and the placement of adequate insurance as required;
- (c) to complete the Condominium Project and to otherwise manage, operate and carry on or cease to carry on the business of the Company, including the powers to enter into any agreements, including agreements of purchase and sale and leases, incur any obligations in the ordinary course of business, or cancel any contracts or projects of the Company;
- (d) to engage contractors, trades, architects, engineers, surveyors, consultants, appraisers, agents, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the completion of the Condominium Project and with the exercise of powers and duties including those powers and duties conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Company or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Company and to exercise all remedies of the Company in collecting such monies, including, without limitation, to enforce any security held by the Company;
- (g) to institute and prosecute all suits, proceedings and actions as may, in the Receiver's judgment, be necessary and desirable to properly receive, protect and preserve the Assets and likewise to defend all suits, proceedings and actions instituted against the Assets or the Receiver and to conduct the prosecution or defence of any such suits, proceedings and actions now pending in any court, the prosecution or defence of which will, in the judgment of the Receiver, be necessary or desirable to properly receive, protect and preserve the Assets. The foregoing authority shall extend to appeals or judicial reviews as the Receiver shall deem proper or advisable in respect of any order or judgment pronounced in any suit, proceeding or action;
- (h) to settle, extend or compromise any indebtedness owing to the Company;

- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Assets, whether in the Receiver's name or in the name and on behalf of the Company, for any purpose pursuant to this Order;
- (j) to make such expenditures (including, without limitation, the payment of real property taxes and capital expenditures or other expenditures properly made by the Receiver in fulfilling its duties and powers hereunder), make any arrangements with any creditors or encumbrances of the Assets, to settle and pay any claims which may be made or brought in relation to the Assets or take such other steps to preserve, protect, repair (including, without limitation, to make repairs of a capital nature), maintain, renew and restore the Assets as shall be, in the Receiver's discretion, necessary in the normal course and in otherwise fulfilling the Receiver's powers and duties hereunder:
 - (i) without the approval of this Court in respect of any single expenditure not exceeding \$250,000, provided that the aggregate amount for all such expenditures does not exceed \$1,000,000; and
 - (ii) with the approval of this Court in respect of any expenditures which exceed the applicable amount set out in the preceding clause.

Any such expenditures properly made or incurred by the Receiver shall be allowed in passing the Receiver's accounts and such expenditures shall form a charge on the Assets as a Receiver's disbursement;

- (k) to apply for any permits, licences, approvals or permissions, if necessary or considered advisable, from any governmental or regulatory authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Company;
- (l) to negotiate and enter into any agreement and to amend any existing agreements as the Receiver finds to be proper and advisable in fulfilling its duties and powers hereunder;
- (m) to market any or all of the Assets, including advertising and soliciting offers in respect of the Assets or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
- (n) to sell, convey, transfer or assign the Assets 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 \$25,000, provided that the aggregate consideration for all such transactions does not exceed \$50,000, excepting the terms as set out in Clause 7(c); 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;

- (o) to apply for any vesting order or other orders necessary to convey the Assets or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Assets;
- (p) to register a copy of this Order and any other orders in respect of the Assets against title to any of the Assets;
- (q) to exercise any shareholders, partnership, joint venture or other rights which the Company may have; and
- (r) to take such other steps as the Receiver finds necessary or desirable to preserve and protect the Assets of the Company in its custody or which are reasonably incidental to the exercise of these powers.

EMPLOYEES

8. All employees of the Company shall remain the employees of the Company until such time as the Receiver, on the Company's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than amounts as the Receiver may specifically agree in writing to pay in respect of its obligations under sections 81.4(5) and 81.6(3) of the BIA.

RECEIVER'S ACCOUNTS

9. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, at their standard rates and charges and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Assets, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Assets in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of Person, but subject to sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

10. The Receiver shall pass its accounts (including those from its legal counsel) from time to time, and, pursuant to *Civil Procedure Rule 73.09(2)*, upon the filing of:

- (a) a copy of the interim account; and
- (b) an undertaking to repay any amount not approved by a judge.

The interim account of the Receiver may be paid from the proceeds of the receivership, unless the proceeds are required for the administration of the receivership.

11. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at normal rates and charges of the Receiver or its legal counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

RECEIVER'S BORROWING POWERS

12. The Receiver be and is hereby authorized to borrow monies, without personal liability, from time to time, as it may consider necessary, not exceeding the principal sum of \$1,000,000 (or such greater amount as this Court may by further order authorize) in the aggregate at such rate or rates of interest as it deems advisable for such period or periods of time as it may be able to arrange for the purpose of exercising its powers and performing its duties hereunder, including for the payment of any costs, disbursements, fees and expenses of the Receiver, notwithstanding any agreement to which the Company is a party prohibiting borrowing money or incurring indebtedness. Any such borrowings shall be without recourse to the Receiver personally and any recourse taken in respect of such borrowings shall, subject to the provisions of this Order, be limited to the Assets taken as security for such borrowings. Any borrowings by the Receiver in accordance with this paragraph shall be evidenced by Receiver's certificates substantially in the form set out in Schedule "A" annexed hereto (the "**Receiver's Certificates**"). The whole of the Assets shall be and are hereby charged by way of a fixed and specific charge as security for payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person, subject only 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. The Receiver is hereby authorized to pledge, sign or give security or securities on the Assets (or a portion thereof) for the purpose of facilitating its borrowings as the Receiver considers necessary or appropriate to fulfill its powers and duties hereunder.

13. Any security granted by the Receiver in connection with its borrowing shall not be enforced without leave of the Court.

14. 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.

STAY OF PROCEEDINGS

15. That, without limiting the generality of any of the provisions herein, no person, firm, corporation, union, government, governmental agency or board shall levy, pursue, initiate or continue any distress, suit, action or proceeding against the Company, the Assets or the Receiver. Nor shall any person, firm, corporation, union, government, governmental agency or board take, institute or continue any action at law, equity or other proceeding against the Company or the Receiver whether before a court, tribunal, board or administrative body. No person, firm, corporation, union, government, governmental agency or board shall otherwise interfere with the carrying on the business of the Company by the Receiver and, without limiting the generality of the foregoing, no person, firm, corporation, union, government, governmental agency or board having agreements or other arrangements with the Company or in connection with the Assets shall accelerate, terminate, suspend, modify, cancel or withdraw any agreements, licences, insurance or any such arrangements relating to the Assets.

16. That no creditor of, nor any person having a contractual relationship with, the Company may exercise any right of set-off or trust claim with respect to its accounts with, or claims against, the Company.

17. All rights and remedies against the Company, the Receiver, or affecting the Assets, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided, however, that nothing in this paragraph shall:

- (a) empower the Receiver or the Company to carry on any business which the Company is not lawfully entitled to carry on;
- (b) exempt the Receiver or the Company from compliance with statutory or regulatory provisions relating to health, safety or the environment;
- (c) prevent the filing of any registration to preserve or perfect a security interest; or
- (d) prevent the registration of a claim for lien.

CONTINUATION OF SERVICES

18. All Persons having oral or written agreements with the Company or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Company are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Company's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Company or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

PRIVACY RIGHTS OF THIRD PARTIES

19. Pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Assets and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of Assets (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 the Assets, or any part or parts thereof, shall be entitled to continue to use the personal information provided to it, and related to the Assets purchased, in a manner which is in all material respects identical to the prior use of such information by the Company, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

ENVIRONMENTAL OBLIGATIONS

20. Nothing in this Order shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Assets that might be environmentally contaminated, might be a pollutant or a contaminant, or might

cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Nova Scotia Environment Act* or the *Nova Scotia Occupational Health and Safety Act* and the regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Assets within the meaning of any Environmental Legislation, unless it is actually in possession of such Assets.

GENERAL

21. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

22. Liberty is hereby preserved to any interested person including, without limitation, any holder of an encumbrance or security in priority to that of the Plaintiff, make a motion to amend this Order or for such further or other Order including an order recognizing, enforcing, preserving or protecting the rights of all other persons, if any, having secured claims superior to that of the Plaintiff upon any part of the Assets.

23. The appointment of the Receiver shall continue from the date hereof until terminated by a further order of this Court.

24. The Receiver shall provide to this Court:

- (a) copies of all reports required to be filed under applicable law with the Superintendent of Bankruptcy as to the conduct of its administration hereunder;
- (b) reports concerning any material change as to the state of the Assets and the conduct of its administration hereunder; and
- (c) such further reports to this Court as the Court may require.

25. The Receiver may and is hereby authorized and empowered to apply to any other courts in any other jurisdictions, whether in Canada, the United States, or elsewhere, for orders recognizing the appointment of the Receiver by this Court and confirming the powers of the Receiver in any other jurisdiction or jurisdictions, and all courts of all other jurisdictions are hereby respectfully requested to make such orders and provide such other aid and assistance to the Receiver, as an officer of this Court, as they may deem necessary or appropriate in furtherance of this Order.

26. The Receiver may, from time to time, apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Company.

Issued , 2010.

PROTHONOTARY

SCHEDULE "A"
RECEIVER'S CERTIFICATE

CERTIFICATE NO. _____ AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that **BDO CANADA LIMITED**, the receiver (the "**Receiver**") of the assets, undertakings and properties of **NOVA NEW ENGLAND LIMITED** (the "**Company**") acquired for, or used in relation to the Company's business, including all proceeds thereof (collectively, the "**Assets**"), appointed by Order of the Nova Scotia Supreme Court (the "**Court**") dated the ____ day of March, 2010 (the "**Order**") in the matter having court file number HFX No. 326000 has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly not in advance on the ____ day of each month] after the date 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 this 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 Assets in priority to the secured interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Assets 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 Assets 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 this Order.

DATED the ____ day of _____, 2010.

BDO CANADA LIMITED, solely in its
capacity as Receiver of the Assets and not in its
personal capacity

Per: _____

Name:

Title: