



Affidavit #1 of
Joel S. Mackoff in this case
made on August 30, 2017

Court File No. VLC-S-H-**S-178181**
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROBERT SAUER
MELVIN HABER
CRAIG SHERIDAN
DR. STEVEN L. KIRZNER INC.
MACKOFF MANAGEMENT SERVICES (2012) INC.

PETITIONERS

AND:

KELOWNA MOUNTAIN DEVELOPMENT SERVICES LTD.
KELOWNA MOUNTAIN LIMITED PARTNERSHIP
MARK CONSIGLIO
0741449 B. C. LTD.
0722955 B.C. LTD.
0768723 B.C. LTD.
0877099 B.C. LTD.

RESPONDENTS

AFFIDAVIT

I, Joel S. Mackoff, Retired Lawyer, of North Vancouver, Province of British Columbia, SWEAR
THAT:

GENERAL

1. I am a director and the president of Mackoff Management Services (2012) Inc., ("MMSI") one of the Plaintiffs herein, and as such have personal knowledge of the facts and matters hereafter deposed to, save where the same are stated to be upon information and belief, and where so stated, I verily believe the same to be true.
2. I have read the Petition herein and the facts stated therein are true.

THE LOAN FROM THE PETITIONERS AND FORECLOSURE OF LOT C

3. On behalf of MMSI, one of a number of lenders (the “**Lot C Petitioners**”), I commenced communication with Mark Consiglio on behalf of the borrowers (the “**Respondents**”) prior to May 15, 2013 when a commitment letter was written for a loan (the “**Loan**”).
4. The Loan was in the principal amount of \$3,150,000 and was secured by a mortgage (the “**Lot C Mortgage**”) registered in the Kamloops Land Title Office on June 4, 2013.
5. Attached as **Exhibit “A”** to my Affidavit is a true copy of the Lot C Mortgage and all the mortgage terms relating thereto.
6. As at April 1, 2016 the sum of \$4,129,143.42 was due from the Partnership (as defined below) and the other Respondents to the Petitioners under the Lot C Mortgage.
7. The Lot C Mortgage was for a 13 month term, but the Respondents failed to make payment upon maturity.
8. The Lot C Petitioners granted a forbearance until August 1, 2014, but the Lot C Mortgage continued in default thereafter.
9. As a result of the continuing default, the Petitioners commenced foreclosure proceedings.
10. On April 8, 2016 an Order Nisi of Foreclosure and Sale was granted to the Petitioners with a 6 month redemption period which expired in October 2016.
11. Attached as **Exhibit “B”** to this my Affidavit is a true copy of the Lot C Order Nisi of Foreclosure, which also granted judgment against Mr. Consiglio and others, including 0768723 BC Ltd. (“**076**”), 0741449 BC Ltd. (“**074**”), 0722955 BC Ltd. (“**072**”), 0877099 BC Ltd. (“**087**”).
12. Mr. Consiglio is also a judgment debtor of the Petitioners Robert Sauer and Melvin Haber (the “**Chute Lake Road Judgment Creditors**”) herein (and others) in Vancouver Registry No VLC-S-H-150102 (the “**Chute Lake Road Foreclosure**”) in respect of

which the June 11, 2015 judgment against him remains unsatisfied in excess of the amount of \$292,000.

13. As part of the Lot C Order Nisi, the Petitioners obtained Conduct of Sale of Lot C, effective after October 1, 2016.
14. Mr. Consiglio, on behalf of Services, obtained for the Lot C Petitioners an appraisal of Lot C from Mr. Dubois valuing it in May 2013 at \$9,825,000. An excerpt from that appraisal is marked **Exhibit "C"** to my Affidavit.
15. Lot C has been on the market since February 2017, in what has recently been described as a very "hot market" with the price reduced from \$6,400,000 to \$6,150,000 in June 2017.
16. No serious expression of interest at this value for this property alone has been generated.
17. Another appraiser, Mr. Bramwell, has been highly critical of Mr. Dubois' work.

CHUTE LAKE ROAD FORECLOSURE

18. The Chute Lake Road Judgment Creditors, along with some others, also lent money to Mr. Consiglio's companies in respect of development property located on Chute Lake Road in Kelowna.
19. As security for those advances a first mortgage was taken.
20. The Borrowers and covenantors did not pay the mortgage when due and foreclosure proceedings were commenced.
21. Counsel for the Borrowers and Covenantors consented to the proceedings being commenced in Vancouver, but then Mr. Consiglio resiled from the consent given by his lawyer and retained new counsel who unsuccessfully argued that the appropriate venue was Kelowna and not Vancouver.
22. As well, the allegation was made by the Respondents that our lawyer, Douglas Hyndman, who acted for the Lenders in preparing all of the loan documentation and was also acting

for us on the Chute Lake Road Foreclosure, was conflicted out on the basis (later abandoned by Mr. Consiglio – but resurrected in the Lot C Foreclosure) that he was the lawyer for the Respondents on the Loan as well.

23. As a result, we had to retain Mr. William Kaplan, Q.C. of Blakes LLP to continue with the conduct of the Chute Lake Road Foreclosure.
24. The venue opposition was argued in Chambers here in Vancouver for one full day.
25. The Court determined that there was an agreement to have the matter heard in Vancouver and the matter stayed in Vancouver.
26. After venue was resolved the Respondents unsuccessfully contested on the merits.
27. That contested hearing took two days and was resolved in favour of the Petitioners.
28. Order nisi was pronounced and Order for Conduct of Sale in favour of the Petitioners.
29. When the Order for Conduct of Sale took effect the Petitioners listed the lands for sale.
30. An offer was obtained and an application to approve the sale was made in the Supreme Court.
31. The application was heard by Master Muir and was opposed by the Respondents, taking over 2 hours in Chambers.
32. Master Muir reserved and gave reasons one week later, approving the sale.
33. Part of the opposition to the sale was an allegation that there was a criminal interest rate under the mortgage, a matter that was res judicata having already been dealt with by the granting of the Order Nisi.
34. However, the Respondents persisted in the Criminal Interest Rate argument, even representing to the Court that they would be retaining an actuary to substantiate their argument and would be seeking leave to appeal to the Court of Appeal to reopen their ability to make that argument.

35. If they did retain an actuary they never provided us with a copy of any report.
36. They never did seek Leave to Appeal on the interest rate issue.
37. During the period of time when we were applying for approval of the Chute Lake Road sale the Respondents commenced separate proceedings in an attempt to collaterally attack and frustrate the efforts of the Petitioners to sell the Chute Lake Road property.
38. I, personally, was named as a defendant in those proceedings.
39. Those proceedings have never proceeded.
40. Master Muir's order approving the sale was appealed to a Supreme Court Judge and, after a full day of argument before Mr. Justice Sewell, the appeal was dismissed.
41. The sale of the Chute Lake Road property completed, but the sale proceeds were not sufficient to pay the Petitioners out completely, leaving a deficiency balance of around \$292,000 as at June 5, 2017 (plus costs) (the "**Chute Lake Road Shortfall**").
42. All of this demonstrates quite clearly the litigious nature of Mr. Consiglio and the lengths to which he is prepared to go to frustrate the attempts of creditors to obtain the payment to which they are entitled.

WRIT OF SEIZURE AND SALE

43. On or about June 21, 2017 the Chute Lake Road Judgment Creditors issued a Writ of Seizure and Sale (the "**Writ**") with respect to the Chute Lake Road Shortfall.
44. Attached as **Exhibit "D"** to this my Affidavit is a true copy of the Writ.
45. Believing that Mr. Consiglio still had assets in Kelowna, the Writ was delivered to North Central Bailiffs in Kelowna.
46. Attached as **Exhibit "E"** to this my Affidavit is a true copy of the report from North Central advising that Mr. Consiglio did not have any assets in the Kelowna Area.

47. The motor vehicle searches conducted by my lawyers identified an address for Mr. Consiglio in West Vancouver.
48. Attached as **Exhibit "F"** to this my Affidavit is a true copy of the Motor Vehicle searches setting out a residential address for Mr. Consiglio in West Vancouver.
49. The Writ was therefore transferred from North Central in Kelowna to Consolidated Bailiffs here in the Lower Mainland.
50. After being unable to locate any assets in the Lower Mainland, Consolidated Bailiffs reported that they were returning the Writ to the Court Registry in Vancouver endorsed Unable to Locate Exigible Assets.
51. Attached as **Exhibit "G"** to this my Affidavit is a true copy of the report from Consolidated Bailiffs.

KM AGRI PARK

52. The lands ("**Lot C**") against which the Lot C Mortgage was registered (PID 011-781-866) formed part of a development ("**KM AgriPark**") which Mr. Consiglio, through Kelowna Mountain Development Services Ltd. ("**Services**"), undertook as the principal of the general partner and trustee on behalf of Kelowna Mountain Limited Partnership (the "**Partnership**").
53. Two other parcels of lands contiguous to Lot C formed part of KM AgriPark: PID: 015-122-085 ("**Lot A**") registered to Services as owner and PID: 015-122-107 ("**Lot B**") registered to 076 as owner.
54. Services built structures on KM AgriPark include suspension bridges, a "Welcome Centre" and other touristic attractions.
55. To the best of my knowledge the Welcome Centre is located on Lot C.

56. Though I was aware that Lot C was held in trust for the Partnership, according to **Exhibit “H”**, Mr. Consiglio presented the KM AgriPark as the personal asset of him and his wife, Nicola Consiglio.
57. Attached as **Exhibit “H”** to this my Affidavit is a three-page true printout from the KM AgriPark internet website www.kelownamountain.com, printed on August 25, 2017, which bills the KM AgriPark as follows: “Mark & Nicola Consiglio, Owners and Operators of The Kelowna Mountain Bridges & Vineyards”.
58. These pages make reference to hours of operation and entrance rates as well as food items.
59. Attached as **Exhibit “I”** to this my Affidavit are printed internet WebPages concerning weddings at the KM AgriPark.
60. At one time Mr. Consiglio told me that he was receiving \$10,000 for the venue, per wedding or corporate event.
61. On the afternoon of January 25, 2015 I spoke with Mr. Consiglio about the possibility of a “soft receivership” for the KM AgriPark as I was concerned about the fact that revenue was coming to the AgriPark, but the Lot C Petitioners were receiving nothing, which is still the case.
62. In fact, in May of 2016 the Lot C Petitioners paid \$57,122.20 of unpaid 2014 and 2015 property taxes for Lot C.
63. In 2017 the Lot C Petitioners paid \$23,388.37 for the unpaid 2016 Lot C property taxes.

LOT A

64. Lot A had been owned by one of Mr. Consiglio’s companies, 076, and on January 30, 2009 he granted a mortgage of Lot A (the “**Lot A Mortgage**”) to a syndicate of Lenders (the “**Lot A Lenders**”), the Petitioners in Kelowna Registry Action No. S-H-102974 (the “**Lot A Foreclosure Proceedings**”).

65. According to the Order Nisi in the Lot A Foreclosure Proceedings, as at June 8, 2016 the sum of \$4,438,607.13 was due under the Lot A Mortgage.
66. Attached as **Exhibit “J”** to this my Affidavit is a true copy of the Order Nisi of Foreclosure on Lot A, and an excerpt from the Lot A Mortgage in the sum of \$5,200,000 with interest at an annual rate of 18% to which it pertains.
67. On May 12, 2011, 076 transferred title to Lot A to Services in trust for the Partnership. The transfer was subject to the Lot A Mortgage in respect of which, based upon the Lot A Petitioners’ Petition, the Partnership gave no express covenant to the Lot A Petitioners.
68. Attached as **Exhibit “K”** to this my Affidavit is an excerpt from the offering memorandum for the Partnership taken from the Lot A Petitioners’ foreclosure Petition. It indicates that Services entered into purchase agreements with affiliates 076 and 074 to purchase for \$37,300,000 Lots A, C and a property with a PID of 005-855-926.

LOT B

69. I am informed by Alf Kempf, a solicitor acting in proceedings for the foreclosure of Lot B (the “**Lot B Foreclosure Proceedings**”) and do verily believe that an Order Absolute has been pronounced in respect of Lot B in favour of his clients, but that Order is under Appeal.

FLOATING CHARGE

70. The Lot C Mortgage contains a floating charge which could be crystallized against assets of the Respondents.
71. In April 2016 the Lot C Petitioners crystallized their floating charge security over the assets of 076 and Services which included crystallization against both Lots A and B.
72. Attached as **Exhibit “L”** to this my Affidavit are the Notices of Crystallization, which I am informed by my solicitor were delivered to the registered offices of those companies in April 2016. Also as part of Exhibit “L” is a registration on August 22, 2017 of the crystallized floating charge against Lot A.

DEALINGS WITH MR. CONSIGLIO

73. Within the documents received from the mortgage broker were documents related to Mr. Consiglio's "Personal Net Worth". These included a Summary showing:
- a. 074 was 100% owned by 072;
 - b. 072 was 100% owned by Mr. Consiglio;
 - c. 076 was 100% owned by Mr. Consiglio;
 - d. 087 was 100% owned by Mr. Consiglio.
74. Attached as **Exhibit "M"** to this my Affidavit is an excerpt from those documents.
75. Attached as **Exhibit "N"** to this my Affidavit are true copies of the company searches which I caused to be conducted of 072, 076, 074, and 087, respectively.
76. I contacted the records office of 072, 076, 074, and 087, Porter Ramsay LLP, to review the minute books of these companies. I was informed by Karen Clark of that office that minute books had been removed and had not been returned, although Porter Ramsay LLP continued to be the records office of the companies. Accordingly, I have been unable to determine whether there has been any transfer by the judgment debtors of shareholdings or other material transactions.
77. The offering memorandum in respect of the partnership, clause 3.3 (b) indicates that Mr. Consiglio is a discharged bankrupt.
78. During the course of my involvement with him, Mr. Consiglio has made some pretty extraordinary statements. A few years ago I met him at a coffee shop on Robson Street to discuss resolving matters. He told me at that time that I should not be concerned, that he had a secret trust that would take care of matters if I did not push and if I did, I would never find the assets of that trust.

79. I have recently reviewed an “Offering Summary” which I at some time in about 2012 obtained from Service’s mortgage broker relating to Lot A, an excerpt from which is attached as **Exhibit “O”** to this my Affidavit. This excerpt is intended to show that:
- a. The Partnership purchased Lots A and C from 076 in 2011 for \$36,100,000 and continued to be indebted to 076 [Partnership draft Financial Statement, Note 7];
 - b. The Partnership was indebted to 076 in the sum of \$15,911,255. [Partnership draft Financial Statement, “Long-term Liabilities”];
 - c. As part of Mr. Consiglio’s net worth, his shares in 076 were worth \$25,707,545.

EASEMENT OVER LOT C AND FIDUCIARY ISSUES

80. In November 2014, Mr. Consiglio raised the issue of what he referred to as an easement in respect to Lot C in favour of 076 as owner of Lot B. His solicitor, Mr. Brown, provided a draft easement which contemplated the grant of an easement by Services to 076. The terms of the document referred to as an easement would provide sole and exclusive use of the Welcome Centre to 076.
81. Services is the general partner of the Partnership.
82. The Partnership includes third party investors not related to Mr. Consiglio or any of his other corporations.
83. In the proposed arrangement, Services, as the general partner of the Partnership, was requesting consent of its mortgagee to the grant of an exclusive use easement to a company which I believed was owned and controlled by Mr. Consiglio and his immediate family. I expressed my concern about this to Mr. Consiglio on a number of occasions and confirmed it in a letter I sent him attached as **Exhibit “P”** to this my Affidavit. I believe Exhibit “P” fairly sets out the substance of a conversation I had with Mr. Consiglio, including his remarks that in 2014 revenues from KM AgriPark were about \$400,000, which he was hoping to double in 2015.

84. Mr. Consiglio assured me that he had a legal opinion from Kathy Tang of Boughton & Company, solicitors, indicating that the contemplated easement transaction was not objectionable.
85. I had enquiries made concerning the existence of such a legal opinion and was able to confirm that such an opinion existed. Enquiries made included one made by Mr. Hyndman as evidenced by **Exhibit “Q”** to this my Affidavit. I so advised Mr. Consiglio and while he expressed to me he had received such a legal opinion, he confirmed that he could not produce a written opinion for my review. He stated the problem with getting the legal opinion was a matter of legal fees.
86. In the absence of such an opinion I was not prepared on behalf of my company, one of the mortgagees of Lot C, to consent to the proposed easement and it has not gone forward.
87. The fact that Mr. Consiglio proposed the arrangement as between the general partner that he controlled which had a fiduciary duty to limited partner investors and a company apparently controlled by himself and his family caused me concern.
88. I was certainly interested in considering the financial benefit of acceding to the easement. However, I was very concerned that he, on behalf of Services, as the general partner for the Partnership, was executing an easement as the servient tenement in favour of 076 as dominant tenement. I expressed this concern in my letter at p. 2, paragraph A and confirmed his answer that his legal advisors informed him he could do so if he considered it in the best interests of the Partnership.

CANADA REVENUE AGENCY AND THE FEDERAL COURT OF CANADA JEOPARDY ORDER

89. In December 2016 I came across Reasons for Judgment in the Federal Court of Canada granting The Minister of National Revenue a “Jeopardy Order” against 074 and 072 concerning a claimed tax refund of \$1,157,568.24. The Order was granted because the Court was satisfied [para. 11] “that there are reasonable grounds to believe that the funds now in the hands of the minister would likely be jeopardized if returned to the Respondent.”

90. Attached as **Exhibit “R”** to this my Affidavit is a copy of the Federal Court Reasons.

CONCERNS

91. Attached as **Exhibit “S”** to this my Affidavit is a true copy of an email from Jeff Hudson of Macdonald Realty Kelowna, the listing agents engaged by the Petitioners to list and attempt to sell Lot C, with respect to the difficulties he experienced with Mr. Consiglio’s daughter during one of his attempts to show Lot C to a prospective purchaser on or about July 19, 2017.

92. As set out in Exhibit “S”, Mr. Hudson was told by Mr. Consiglio’s daughter, Tuscany, that “...the property wasn’t for sale because they have already raised the money to pay off the mortgage.”

93. I am concerned:

- a. Though the draft materials presented were to the effect that Mr. Consiglio’s shareholdings in 076 are worth in excess of \$25,000,000, he has been unable to satisfy a more than 2 year old judgment against him personally for just over \$250,000;
- b. Though the draft materials presented were to the effect that the Partnership has a liability to 076 for \$15,911,255 remaining from the purchase of Lots A and C at price of \$36,100,000, both Lots A and C have had orders nisi of foreclosure pronounced with redemption times having passed;
- c. That the combined value of Lots A and C according to Mr. Consiglio’s appraiser, who has suffered peer criticism, is approximately 50% of the price at which the Partnership purchased them;
- d. That Lot C has been on the market for about 6 months and has not had an offer at a list price representing approximately 2/3rd of Mr. Dubois’ valuation of it;
- e. That the integrity of the AgriPark has been broken by the pronouncement of an Order Absolute concerning Lot B;

- f. That Mr. Consiglio was fully prepared to execute an easement on behalf of the Partnership in favour of his company, in what I perceived to be a conflict of interest and was unable to provide a legal opinion which he represented he had;
 - g. That Mr. Consiglio raised the prospect of a secret trust to which he had access, if he chose, to satisfy his obligation to us;
 - h. That Mr. Consiglio has generated substantial revenue from the operations of the AgriPark while the Lot C Petitioners have paid 3 years of property taxes totalling in excess of \$80,000 and without receipt of any contribution from Services;
 - i. A Federal Court judge has seen fit to preserve a tax refund for Mr. Consiglio's companies 074 and 072 by a "Jeopardy Order" for fear that if refunded, the funds may disappear;
 - j. Though Mr. Consiglio's daughter has stated to our agent that funds were raised to pay off the mortgage, no approach has been made to me in this regard so that, if her statement was true those funds are at risk of disappearing.
94. When in the past I have spoken with Mr. Consiglio about the operations of the suspension bridge and Welcome Centre tourist business, he informed me that it runs from May to the end of August.
95. Given all of the matters referenced herein, I am concerned that there may be substantial assets that are or will be dissipated to the prejudice and detriment of the Petitioners, and that if assets and funds are diverted or dissipated by all or some of the Respondents the Petitioners may never get repaid the full amount of what they are owed and which they, in good faith, advanced to the Respondents, particularly if the Respondents receive advance notice of this hearing.
96. Attached as **Exhibit "T"** to this my Affidavit is a true copy of a notice posted on Kelowna Mountain's Twitter account, advising followers that Kelowna Mountain is closed now for the 2017 season.

KAMLOOPS LAND TITLE OFFICE

LAND TITLE ACT
FORM B (Section 225)

Jun-04-2013 14:45:52.001

CA3162605 CA3162606

MORTGAGE - PART 1 Province of British Columbia

PAGE 1 OF 7 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

Douglas Burton
Hyndman
F3CXU7

Digitally signed by Douglas Burton
Hyndman F3CXU7
DN: c=CA, cn=Douglas Burton Hyndman
F3CXU7, o=Lawyer, ou=Verify ID at
www.juricart.com/LKUP.cfm?id=F3CXU7
Reason: I have reviewed this document
Date: 2013.08.04 09:20:47 -07'00'

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

Kornfeld LLP
Barristers & Solicitors
1100 - 505 Burrard Street
Vancouver BC V7X 1M5
Document Fees: \$147.00

Telephone No. (604) 331-8300
LTO Client No. 010448
File No. MMS002KEL131 DBH

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID] [legal description]

011-781-866 SUB LOT 28 DISTRICT LOT 2711 SIMILKAMEEN DIVISION YALE DISTRICT
PLAN 1190

STC? YES

3. BORROWER(S) (MORTGAGOR(S)): (including postal address(es) and postal code(s))

KELOWNA MOUNTAIN DEVELOPMENT SERVICES LTD.

200-1465 ELLIS STREET
KELOWNA

BRITISH COLUMBIA
CANADA

Incorporation No
BC0901147

V1Y 2A3

4. LENDER(S) (MORTGAGEE(S)): (including occupation(s), postal address(es) and postal code(s))

SEE SCHEDULE

5. PAYMENT PROVISIONS:

(a) Principal Amount: \$3,150,000.00	(b) Interest Rate: SEE SCHEDULE	(c) Interest Adjustment Date:	Y 13	M 06	D 01
(d) Interest Calculation Period: MONTHLY	(e) Payment Dates: 1ST DAY OF EACH MONTH	(f) First Payment Date:	13	07	01
(g) Amount of each periodic payment: SEE SCHEDULE	(h) Interest Act (Canada) Statement. The equivalent rate of interest calculated half yearly not in advance is N/A % per annum.	(i) Last Payment Date:	14	07	01
(j) Assignment of Rents which the applicant wants registered ? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> If YES, page and paragraph number: Pages 29-31, Paragraph 15 of MT040103	(k) Place of payment: POSTAL ADDRESS IN ITEM 4	(l) Balance Due Date:	14	07	01

This is Exhibit "A" referred to in the
affidavit of Douglas Burton Hyndman
sworn before me at Vancouver
in the Province of British Columbia
this 20 day of August, A.D. 20 13
A Commissioner for Taking Affidavits
within British Columbia

MORTGAGE - PART 1

6. MORTGAGE contains floating charge on land ?
YES NO

7. MORTGAGE secures a current or running account ?
YES NO

8. INTEREST MORTGAGED:

Freehold
Other (specify)

9. MORTGAGE TERMS:

Part 2 of this mortgage consists of (select one only):

- (a) Prescribed Standard Mortgage Terms
- (b) Filed Standard Mortgage Terms
- (c) Express Mortgage Terms

D F Number: MT040103
(annexed to this mortgage as Part 2)

A selection of (a) or (b) includes any additional or modified terms referred to in item 10 or in a schedule annexed to this mortgage.

10. ADDITIONAL OR MODIFIED TERMS:

SEE SCHEDULE

11. PRIOR ENCUMBRANCES PERMITTED BY LENDER:

RESERVATION 14865E

12. EXECUTION(S): This mortgage charges the Borrower's interest in the land mortgaged as security for payment of all money due and performance of all obligations in accordance with the mortgage terms referred to in item 9 and the Borrower(s) and every other signatory agree(s) to be bound by, and acknowledge(s) receipt of a true copy of, those terms.

Officer Signature(s)

TIMOTHY T. BROWN
Barrister & Solicitor
#200-1465 Ellis Street
Kelowna, B.C. V1Y 2A3
Phone: 250-763-7646

Execution Date		
Y	M	D
13	05	30

Borrower(s) Signature(s)

KELOWNA MOUNTAIN
DEVELOPMENT SERVICES LTD.
by its authorized signatory:

Mark Consiglio

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.



**LAND TITLE ACT
FORM D**

EXECUTIONS CONTINUED

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

TIMOTHY T. BROWN
Barrister & Solicitor
#200-1465 Ellis Street
Kelowna, B.C. V1Y 2A3
Phone: 250-763-7646

Y	M	D
13	05	30
13	05	30
13	05	30

KELOWNA MOUNTAIN LIMITED
PARTNERSHIP [Covenantor] by its
general partner, KELOWNA MOUNTAIN
DEVELOPMENT SERVICES LTD. by
its authorized signatory

Mark Consiglio

TIMOTHY T. BROWN
Barrister & Solicitor
#200-1465 Ellis Street
Kelowna, B.C. V1Y 2A3
Phone: 250-763-7646

Mark Consiglio [Covenantor]

TIMOTHY T. BROWN
Barrister & Solicitor
#200-1465 Ellis Street
Kelowna, B.C. V1Y 2A3
Phone: 250-763-7646

0768723 B.C. LTD. [Covenantor] by its
authorized signatory:

Mark Consiglio

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED**

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

TIMOTHY T. BROWN

Barrister & Solicitor

#200-1465 Ellis Street
Kelowna, B.C. V1Y 2A3
Phone: 250-763-7646

Y	M	D
13	05	30

0741508 B.C. LTD. [Covenantor] by its authorized signatory:

Mark Consiglio

TIMOTHY T. BROWN

Barrister & Solicitor

#200-1465 Ellis Street
Kelowna, B.C. V1Y 2A3
Phone: 250-763-7646

Y	M	D
13	05	30

0741449 B.C. LTD. [Covenantor] by its authorized signatory:

Mark Consiglio

TIMOTHY T. BROWN

Barrister & Solicitor

#200-1465 Ellis Street
Kelowna, B.C. V1Y 2A3
Phone: 250-763-7646

Y	M	D
13	05	30

0877099 B.C. LTD. [Covenantor] by its authorized signatory:

Mark Consiglio

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT
FORM E

SCHEDULE

PAGE 5 OF 7 PAGES

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

4. LENDERS / MORTGAGEES:

MELVIN HABER, BUSINESSMAN, AS TO AN UNDIVIDED 800/3150 INTEREST

DR. STEVEN L. KIRZNER INC. (INC. NO. BC0503755), AS TO AN UNDIVIDED 800/3150 INTEREST

ROBERT SAUER, BUSINESSMAN and CRAIG SHERIDAN , BUSINESSMAN, AS TO AN UNDIVIDED 800/3150 INTEREST

MACKOFF MANAGEMENT SERVICES (2012) INC. (INC. NO. BC0842713) AS TO AN UNDIVIDED 750/3150 INTEREST

C/O 1755 EDGEWATER LANE, NORTH VANCOUVER, B.C. V7H 1T3

5. PAYMENT PROVISIONS

(b) Interest Rate

- (i) 12.50% per annum calculated and compounded monthly not in advance for the period ending June 1, 2014; and
- (ii) 14.50% per annum calculated and compounded monthly not in advance for the period from June 1, 2014 and ending on the Balance Due Date.

(g) Amount of each periodic payment:

INTEREST ONLY.

10. ADDITIONAL OR MODIFIED TERMS:

To include the following parties as Covenantors:

KELOWNA MOUNTAIN LIMITED PARTNERSHIP, of 200-1465 Ellis Street, Kelowna, B.C. V1Y 2A3

MARK CONSIGLIO, of PO Box 29025, RPO Okanagan Miss, GD, Kelowna, B.C., V1W 4A7

0768723 B.C. LTD. (INC. NO. BC0768723), of 200-1465 Ellis Street, Kelowna, B.C. V1Y 2A3

0741508 B.C. LTD. (INC. NO. BC0741508), of 200-1465 Ellis Street, Kelowna, B.C. V1Y 2A3

0741449 B.C. LTD. (INC. NO. BC0741449), of 200-1465 Ellis Street, Kelowna, B.C. V1Y 2A3

0877099 B.C. LTD. (INC. NO. BC0877099), of 200-1465 Ellis Street, Kelowna, B.C. V1Y 2A3

**LAND TITLE ACT
FORM E****SCHEDULE**

PAGE 6 OF 7 PAGES

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

To delete the entire paragraph 3.5 on page 7 of the Filed Standard Mortgage Terms MT040103 and replace with the following:

3.5. Interest Reserve

The Grantor will pay to the Lender, or its authorized agent the amount, if any, set out in item 10 of the Mortgage Form as the interest reserve amount (the "Interest Reserve"). The Interest Reserve will bear no interest and shall and will be used for payment of Interest, and if a Default is outstanding, it may also be used by the Lender to pay other Indebtedness. The existence of the Interest Reserve and the debiting of funds from it does not relieve the Grantor of its obligation to pay Interest. In the event that the Interest Reserve is used to pay other Indebtedness, the Grantor shall forthwith with thereafter replenish such amount used. After payment of all the Grantor's liabilities hereunder, any remaining balance of the Interest Reserve shall be credited to the Grantor against the final amount required to discharge the Mortgage.

The Filed Standard Mortgage Terms MT040103 shall also be amended as follows.

1. This Debenture is dated for reference May 24, 2013.
2. The word "Lender" in the first line of the definition of "Prime" on page 4 of the Filed Standard Mortgage Terms is deleted and the words "Royal Bank of Canada" are substituted therefore.
3. Notwithstanding section 2.2 of the Filed Standard Mortgage Terms, the Loan shall be closed for the first six months of its term, provided always that if the Loan is not in default, then upon at least 5 business days' prior notice in writing to Mackoff Management Services (2012) Inc. stating the specific date of intended payment, it may be paid in full and discharged on any date thereafter. Upon such date, the principal amount, all interest and other charges due, a lender's discharge fee of \$325.00 plus disbursements, including disbursement for legal fees shall be paid. The Lender further agrees that the Borrower, after the first six months of the term shall be entitled, once only, to make a partial prepayment, upon at least 5 days written notice, provided that such payment shall be made upon any regular interest payment date.
4. The Loan secured by this Debenture is a term loan.
5. This Debenture includes a general floating charge.
6. The Interest Reserve is \$393,750.00.

**LAND TITLE ACT
FORM E**

SCHEDULE

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

- 7. The Grantor shall pay a \$500.00 fee to the Lender for each non-negotiable cheque, to cover the Lender's costs.
- 8. The Grantor shall pay a \$500.00 fee to the Lender each time a signature is provided by the Lender relating to the loan secured hereby and after the funding of the Loan, \$500.00 per hour (or portion thereof thereof) as a working fee for each occasion Mackoff Management Services (2012) Inc. or the Lender performs work in connection with the Loan or the Loan Security.
- 9. Notwithstanding anything to the contrary contained in this Debenture, the additional or modified terms contained in item 10 of this Form B will take priority over any other provisions of this Debenture in case of conflict or inconsistency.
- 10. The terms and conditions contained in the Commitment Letter executed by the Grantor and the representations, warranties and covenants of the Grantor contained in the Commitment Letter executed by the Grantor shall not be merged herein and shall remain in full force and effect.

Standard Mortgage Terms
Land Title Office No.

10 MAY 2004 10 43

Filed By: Lawson Lundell
Barristers & Solicitors

MT040103

15 04/05/10 10144100 04 LH 539352
MTSC \$20.00

Address: 1600 Cathedral Place
925 West Georgia Street
Vancouver, B.C., V6C 3L2

These Standard Mortgage Terms are deemed to be included in and form a part of every mortgage that incorporates these Standard Mortgage Terms by an election in the Mortgage Form.

Table Of Contents

1.	Definitions.....	2
2.	Payment Of The Indebtedness.....	5
3.	Interest.....	6
4.	Cash-Equivalent Instruments.....	7
5.	Fixed Charge And Security Interest.....	7
6.	Notice.....	9
7.	Warranties And Representations.....	10
8.	Positive Covenants Of The Grantor.....	11
9.	Negative Covenants Of The Grantor.....	17
10.	Events Of Default.....	19
11.	Lender's Rights On Default.....	21
12.	Receiver.....	22
13.	Other Rights Of The Lender.....	25
14.	Security Provisions.....	27
15.	Assignment Of Rents.....	29
16.	Construction.....	31
17.	Subdivision By Stratification.....	35
18.	Miscellaneous.....	37
19.	Interpretation.....	40
20.	Waiver Of Receipt Of Financing Statements.....	42
21.	Acknowledgement.....	42

me

69

DEBENTURE

Notice: This debenture prohibits any grantor from granting, assuming or permitting to exist any mortgage, charge, security, interest or other encumbrance on its property unless it is specifically permitted by this debenture or the prior written consent of the lender is obtained.

1. DEFINITIONS

In these Standard Mortgage Terms:

"Associate" means any "associate" or "affiliate" or "insider of a corporation" of any of the Grantor including controlled and subsidiary companies, all as determined or defined from time to time in the *Company Act* (British Columbia);

"Cash-Equivalent Instruments" means any letter of credit, letter of guarantee, banker's acceptance, indemnity, or similar undertaking or facility issued, given or made available by the Lender at the request of the Grantor in connection with the Loan;

"Charge" means a mortgage, lien, agreement for sale, lease, security interest or other charge of the Mortgaged Property whether before or after in priority to this Debenture;

"Chattels" means all of the personal property, construction materials, on and off site offices, moveable on or off site display suites, elevators, furnaces, boilers, heating, ventilation and air conditioning equipment, refrigerators, ranges, hot water tanks, dishwashers, carpeting, furniture, furnishing, fixtures, attachments and equipment on, or attached to the Project or intended to become a part of or used in connection with the Project;

"Claims" means all claims and demands of contractors and materialmen and all wages, salaries, holiday pay, workers' compensation assessments or other charges of any nature or kind that could in any circumstances constitute a lien or charge having priority over this Debenture or any future advance on the Loan;

"Covenantor" means any person or persons who sign the Mortgage Form or a copy of these Standard Mortgage Terms as a covenantor, notwithstanding that the relationship of the Covenantor to the Lender may be as borrower, covenantor, guarantor, mortgagor or other obligor;

"Grantor" means the person or persons named in the Mortgage Form as a borrower or mortgagor and the Covenantor, notwithstanding that the relationship of the Grantor to the Lender may be as borrower, covenantor, guarantor, mortgagor or other obligor;

"Grantor's Address" means the postal address of the parties other than the Lender shown on the Mortgage Form or any other place specified in a written notice given by any such party to the Lender under these Standard Mortgage Terms;

"Default" includes each of the events of default listed in Section 10;

"Expenses" means all expenses incurred by the Lender relating to the Loan including, but without limitation, all registration fees, insurance fees or premiums, costs of surveys, appraiser's fees, quantity surveyor's fees and expenses, travel expenses of the Lender's personnel for regular inspections of the Project and all fees and expenses for legal and other professional services;

"Guarantee" means any guarantee by any of the Grantor, whether alone or together with others, to pay and perform the obligations of another person to the Lender, whether direct, indirect, absolute, contingent, past, present or future;

"Indebtedness" means the Principal Amount, Interest and any other money the payment of which is secured by this Debenture;

"Interest" means interest at the Interest Rate;

"Interest Rate" means the interest rate shown on the Mortgage Form unless, pursuant to Section 3 of this Debenture, the Backup Rate applies;

"Lands" means all the Grantor's present and future interest in the mortgaged land described in the Mortgage Form together with improvements, appurtenances and every other thing referred to in Section 10 of the *Land Transfer Form Act*, Part 3 now or hereafter existing or acquired;

"Lender" means the person or persons named in the Mortgage Form as a lender or mortgagee and named as a secured party in any financing statement, financing change statement or verification statement and includes any person to whom the Lender transfers this Debenture;

"Lender's Address" means the postal address of the Lender shown on the Mortgage Form or any other place specified in a written notice given by the Lender to the Grantor;

"Loan" means the credit facilities for which this Debenture is granted as security;

"Maturity Date" means the balance due date shown on the Mortgage Form and is the date on which all unpaid Indebtedness becomes due and payable, or such earlier date on which the Lender can lawfully require payment of the Indebtedness;

"Mortgage Form" means Form B under the *Land Title (Transfer Forms) Regulation* and all schedules and addenda to Form B;

"Mortgaged Property" means all the undertakings and other properties and assets, present and future, of the Grantor as the context requires, expressed in this Debenture or in any instruments supplemental to this Debenture to be, or intended to be, mortgaged, pledged or charged under this Debenture or such supplemental instruments, whether by way of fixed or floating charge or by way of security interest;

"Permitted Encumbrances" means:

10

- (i) liens for taxes, assessments or governmental charges or levies not at the time due and delinquent;
- (ii) undetermined or inchoate liens and charges incidental to current construction or current operations that have not been filed against the Grantor or the Project or that relate to obligations not due or delinquent;
- (iii) the right reserved to or vested in any governmental or public authority by any lease, licence, franchise, grant, permit or statutory provision to terminate any lease, licence, franchise, grant or permit, or to require annual or other periodic payments as a condition of the continuance thereof that are not at the time due and delinquent or the validity of which is being contested in good faith by the Grantor;
- (iv) the encumbrance resulting from the deposit of cash or obligations as security when the Grantor is required to do so by governmental or other public authority or by normal business practice in connection with contracts, licences or tenders or similar matters in the ordinary course of business and for the purpose of carrying on the same or to secure worker's compensation, surety or appeal bonds or to secure costs of litigation when required by law;
- (v) the reservations, limitations, provisos and conditions expressed in any original grant from the Crown; and
- (vi) the charges described in item 11 of the Mortgage Form as prior encumbrances permitted by Lender;

"Place of Payment" means the place of payment by the Grantor shown on the Mortgage Form or any other place specified for payment in a written notice given by the Lender to the Grantor;

"Plans and Specifications" means the plans and specifications for the Project submitted to and approved by the Lender;

"Prime" means the annual rate of interest published from time to time by the Lender as its prime rate and used as a reference rate for determining interest rates on Canadian Dollar loans;

"Principal Amount" means the amount of money shown as the principal amount on the Mortgage Form, as reduced by payments made thereon from time to time or increased by the advance or re-advance of money on the Loan, and includes all money that is later added to the Principal Amount under these Standard Mortgage Terms;

"Project" means, unless otherwise defined in item 10 of the Mortgage Form, the buildings or other improvements erected, to be erected or being erected on the Mortgaged Property as approved by the Lender;

"Project Cash Flow" means all cash received or receivable by the Grantor or any Associate (except sale proceeds paid to the Lender) from any insurer, vendor, purchaser, lender, tenant, licensee, user, neighbour or occupier or from any prospective insurer, vendor, purchaser, lender, tenant, licensee, user, neighbour or occupier, of the whole or any portion of, or of any interest in the Project including, without limitation, option payments; rent; licence, participation, easement, right of way, termination and modification payments; loan, insurance and bond proceeds; all damage awards; common area maintenance charges; tax, insurance and other cost recoveries; purchase, rental, damage and other deposits; sand, gravel, mineral, timber and similar payments; and cost recoveries and latecomer payments in respect of the installation of local services;

"Project Costs" include Expenses and all costs that in the Lender's opinion have been or may be incurred up to the date on which the Indebtedness, in the Lender's opinion, will be repaid or the Project will be producing sufficient rents to pay all operating costs and Interest, for the acquisition, development, leasing and sale of the Project including cost of the Land and costs for design, construction, permits, maintenance, interest, commitment fees, leasing fees, brokerage fees, sales fees, commissions, taxes, professional fees, management fees, lending fees, consultants' fees, liability and hazard insurance, promotion, advertising, payments on prior charges, and other items in connection with the development, leasing and sale of the Project but do not include any element of overhead, management fees, profit, interest, bonus, fee, salary or wage (other than such overhead, management fees, profit, interest, bonus, fee, salary or wage as would normally be paid and has been specifically approved in writing by the Lender), return of invested capital, repayment of loans, debts or liabilities, withdrawal of equity, to, for or by any Associate;

"Receiver" means a person appointed by the Lender pursuant to the terms of this Debenture to be a receiver or receiver-manager of the Mortgaged Property, or any portion or portions thereof; and

"this Debenture" means the combination of the Mortgage Form and these Standard Mortgage Terms.

2. PAYMENT OF THE INDEBTEDNESS

2.1. For value received, the Grantor will pay:

- (a) if item 10 of the Mortgage Form specifies that this is a demand loan, on demand, the Indebtedness to the Lender at the Place of Payment; and
- (b) if item 10 of the Mortgage Form specifies that this is a term loan, monthly or other payments (as specified in item 10 of the Mortgage Form) of the Principal Amount and Interest to the Lender at the Place of Payment.

13

2.2. **Prepayment**

The Grantor shall not be entitled to prepay in full or in part any of the Loan due hereunder during the term of this Debenture except as specified by the Lender in writing and then only in accordance with the terms so specified.

3. **INTEREST**

3.1. **Payment & Calculation of Interest**

Interest on the Indebtedness, computed and compounded monthly from the dates such Indebtedness becomes secured, will become due and be paid on the date shown in the Mortgage Form during the term of this Debenture, commencing with the month next following the month in which the first moneys become secured under this Debenture and continuing to and including the date the entire Indebtedness is repaid; arrears of Indebtedness will bear Interest, payable on demand, or if not demanded, on the date the next payment of Interest is due and all such Interest on arrears will be secured by the charge on the Mortgaged Property in the same manner as all other Indebtedness hereby secured.

3.2. **Changes in Prime**

The Grantor agrees that if Prime changes, and so often as it changes during the currency of this Debenture, the Interest Rate payable under this Debenture, if based on Prime, will change on the same day and in the same amount as Prime changed.

3.3. **Prime**

A Certificate of a Vice-President or an Assistant Vice-President of the Lender as to its Prime on the relevant date will be deemed to be conclusive evidence of such Prime.

3.4. **Backup Rate**

If the Interest Rate stipulated in this Debenture or charged on the Loan would, except for this Subsection, be a criminal rate, or void for uncertainty, or unenforceable for any other reason, or not be able to be ascertained, or is determined by a court to be subject to deemed reinvestment of interest, then the Interest Rate (the "Backup Rate") chargeable on the credit so advanced or secured will be one per cent *per annum* less than the maximum rate that would not be a criminal rate calculated in accordance with generally accepted actuarial practices and principles; NOTWITHSTANDING ANY OTHER PROVISION OF THIS DEBENTURE, the Grantor will not pay or tender for payment any interest, cost, fee, bonus, fine, penalty, commission or other similar charge or expense that would result in payment of interest at a rate higher than the Backup Rate. If any such payment is tendered contrary to this Subsection, it will be applied to the Principal Amount or, if no Principal Amount is then outstanding, refunded by the Lender to the Grantor without interest on demand.

3.5. **Interest Reserve**

The Grantor will deposit with the Lender the amount, if any, set out in item 10 of the Mortgage Form as the interest reserve amount, which together with interest thereon (the "Interest Reserve") will be invested in the name of the Grantor in a deposit account with the Lender bearing interest at the interest rate for the Interest Reserve set out in the item 10 of the Mortgage Form. The Interest Reserve is hereby pledged by the Grantor to the Lender as collateral security for the payment of the Indebtedness. The Interest Reserve will be used for payment of Interest, which may be deducted monthly by the Lender, and if a Default is outstanding, it may also be used by the Lender to pay other Indebtedness. On depletion of the Interest Reserve, the Lender may require the Grantor to replenish the Interest Reserve with an amount that in the Lender's opinion is sufficient to pay Interest until Project Cash Flow is sufficient to pay the Indebtedness.

The existence of the Interest Reserve and the debiting of funds from it does not relieve the Grantor of its obligation to pay Interest.

After payment of all the Grantor's liabilities hereunder, any remaining balance of the Interest Reserve will be paid by the Lender to the Grantor.

4. **CASH-EQUIVALENT INSTRUMENTS**

On the request of the Grantor and on payment by the Grantor to the Lender of a fee determined by the Lender (in accordance with its agreement with the Grantor), the Lender may advance moneys on the Loan to be secured under this Debenture by way of a Cash-Equivalent Instrument. If the Lender issues a Cash-Equivalent Instrument and requires that the Grantor deposit a reserve as security for such Cash-Equivalent Instrument, such reserve is hereby pledged by the Grantor to the Lender as collateral security for the payment of Indebtedness.

5. **FIXED CHARGE AND SECURITY INTEREST**

5.1. Subject to the exception as to leaseholds set out in Subsection 5.3, as security for payment of the Indebtedness from time to time owing or secured hereunder and of advances and re-advances from time to time and for the performance and observance of all the Grantor's obligations and covenants in this Debenture:

- (a) the Grantor hereby grants, mortgages, charges, pledges, assigns and conveys as and by way of a first, fixed and specific assignment, mortgage, pledge and charge to and in favour of the Lender all its right, title and interest registered, legal and equitable, now or hereafter owned, held or acquired in and to the Lands;
- (b) the Grantor hereby grants, mortgages, charges, pledges, assigns and conveys as and by way of a first, fixed and specific assignment, mortgage, pledge and charge and security interest to and in favour of the Lender all its right, title and interest, registered, legal and equitable, now or hereafter owned, held or acquired in and to the Project Cash Flow and the proceeds of any cash collateral, reserve or deposit by the Grantor with the Lender;

15

- (c) if item 10 of the Mortgage Form states that this Debenture contains a *general floating charge*, this Subsection applies and the Grantor hereby charges as and by way of first, floating charge to and in favour of the Lender, and grants to and in favour of the Lender a security interest in (to the extent the same have not been specifically and validly pledged or charged, or subjected to a prior security interest, in favour of the Lender pursuant to Subsections (a) and (b)) all its property, assets and undertaking including without limitation all its real and personal property and assets of every nature and kind, both present and future, which it may be possessed of or entitled to or which may be hereafter acquired, but except as hereinafter provided such floating charge and security interest will in no way hinder or prevent the Grantor, until the security hereby constituted has become enforceable and the Lender has determined or become bound to enforce the same, from selling, disposing of or otherwise dealing with any and all of the subject matter of such floating charge and security interest in the ordinary course of its business and for the purpose of carrying on and extending the same;

- (d) if item 10 of the Mortgage Form specifies that this Debenture contains a *limited floating charge*, this Subsection applies and the Grantor hereby charges as and by way of first, floating charge to and in favour of the Lender, and grants to and in favour of the Lender a security interest in (to the extent the same have not been specifically and validly pledged or charged, or subjected to a security interest, in favour of the Lender pursuant to Subsections (a) and (b)) all its property, assets and undertaking comprised of the Lands and any Project including all its personal property and assets of every nature and kind, both present and future, which it may be possessed of or entitled to or which may be hereafter acquired and which are located on the Lands or used or relate exclusively or primarily to or in connection with the Lands including, without limitation, accounting records, statements, receipts, cheques, bank records, bank statements, bank accounts; holdback accounts to the extent not impressed with a trust; receivables; rental agreements, equipment leases, site offices, equipment, furniture and supplies; tender and contract forms; construction materials, equipment and supplies; contracts relating to construction of improvements on the Lands and selling all or any part of the same, including architectural, landscaping, engineering, labour, material, supplies, consultant and management; plans, specifications, working and shop drawings and diagrams, change orders, construction schedules, cost distributions, construction budgets; offers to purchase or lease, interim agreements, deposits, leases, purchase agreements, options; permits, licences, approvals, consents, warranties, guarantees and insurance, but except as hereinafter provided such floating charge and security interest will in no way hinder or prevent the Grantor, until the security hereby constituted has become enforceable and the Lender has determined or become bound to enforce the same, from selling, disposing of or otherwise dealing with any and all of the subject matter of such floating charge and security interest in the ordinary course of its business and for the purpose of carrying on and extending the same;

- (e) the Covenantor joins in:

- (i) the grants, mortgages, charges, pledges, assignments and conveyances of the Grantor set forth in Subsection (a);
- (ii) the grants, mortgages, charges, pledges, assignments and conveyances and security interests of the Grantor set forth in Subsection (b);
- (iii) the floating charge and security interest, if any, of the Grantor in Subsection (c); and
- (iv) the floating charge and security interest, if any, of the Grantor set forth in Subsection (d),

but only to the extent such charges relate to the Lands and all the property, assets and undertaking of the Covenantor comprised of the Lands and any project now or hereafter developed thereon including all its personal property and assets of every nature and kind, both present and future, which it may be possessed of or entitled to or which may hereafter be acquired and which are located on the Lands or used or relate exclusively or primarily to or in connection with the Lands;

5.2. The floating charges and security interests provided for in this Debenture prohibit the Grantor, unless it has the express written consent of the Lender, from granting, creating, assuming or permitting to exist any mortgage, pledge, charge, assignment, lease, lien, security interest or other security, whether fixed or floating or as a security interest (except Permitted Encumbrances), on the whole or any part of the Mortgaged Property, whether or not advances made on the security of this Debenture are, or may be, made before or after advances made on such mortgage, pledge, charge, assignment, lease, lien, security interest or security;

5.3. The last day of any term created by any lease or agreement therefor is hereby excepted out of the charges and security interest created by this Debenture but the Grantor will stand possessed of the reversion thereof remaining in trust for the Lender to assign and dispose thereof as the Lender may direct.

5.4. The Grantor acknowledges that the security interest hereby created attaches on the execution of this Debenture (or, in the case of after-acquired property, on the date of acquisition thereof) and that the Grantor has or, in the case of the after-acquired property, will have rights in the Mortgaged Property.

To have and to hold the same unto and to the use and benefit of the Lender for the uses and purposes and with the powers and authority and subject to the terms and conditions set forth in this Debenture; provided, however, that until Default hereunder the Grantor will have quiet possession of the Mortgaged Property.

6. NOTICE

Any notice required to be given in connection with this Debenture will effectively be given by a party to this Debenture by delivering the same directed, in the case of the Grantor, to the Grantor's Address or, in the case of the Lender, to the Lender's Address,

as the case may be. Notice will be deemed to have been received by a party immediately on delivery to such party as aforesaid. Notwithstanding the foregoing, the Lender may give notice to the Grantor of any change in the Lender's Address or of any change in the Place of Payment by mailing the same to the Grantor's Address or to such other address of the Grantor as is used by the Grantor in the conduct of its business with the Lender.

7. WARRANTIES AND REPRESENTATIONS

The Grantor warrants and represents to the Lender that:

7.1. Due Authorization

This Debenture is issued and all security collateral to this Debenture is executed and delivered in accordance with resolutions of the directors of the Grantor and all other matters and things have been done and performed so as to authorize and make the execution, creation, issuance and delivery of this Debenture and such collateral security legal and valid and in accordance with the requirements of the laws relating to the Grantor and all other statutes and laws in that regard;

7.2. Title to Assets

The Grantor lawfully owns or is entitled to become the lawful owner of the Mortgaged Property with which it carries on its business and, on registration of this Debenture in the Land Title Office, will be and until the release of this Debenture will remain the lawful owner of and lawfully possessed and seized of all of the Mortgaged Property and will have good title thereto free from all liens, charges and encumbrances whatsoever except the Permitted Encumbrances and has good right and lawful authority to grant, convey, sell, bargain, assign, transfer, mortgage, pledge and charge the Mortgaged Property;

7.3. Representations Correct

All statements, reports, certificates, warranties and representations heretofore or hereafter made by the Grantor or its officers to the Lender have been, are, will be and will continue to be true, correct and complete in all respects;

7.4. No Claims Pending

No claim, action or proceeding affecting the Grantor or any part of the Mortgaged Property is now pending before any court, administrative board or tribunal which, if decided against the Grantor, would materially adversely affect its business or financial status;

7.5. No Adverse Agreements

The Grantor is not a party to or bound by any contract or agreement that will materially adversely affect the business, properties, operations or financial condition of the Grantor and the execution and delivery of this Debenture will not conflict with or constitute a default under any indenture, agreement, deed or instrument to which it is a party or by

which it may be bound;

7.6. Financial Statements

The financial statements provided to the Lender by the Grantor prior to the execution of this Debenture were all prepared in accordance with good and generally accepted accounting principles consistently applied, and are correct and complete, and fairly present the financial condition and results of operations of the person or entity that each purports to reflect, and the financial conditions and results of operations so reflected have not suffered any material adverse change to the date of this Debenture;

7.7. Due Incorporation and Registration

The Grantor is duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its incorporation and is duly registered and in good standing under the laws of each jurisdiction in which any of the Mortgaged Property owned by the Grantor is situate and has all powers, government permits, authorizations and such other powers and authorizations as are necessary to enable it to carry on its business and to execute, deliver and carry out its obligations under this Debenture and all security collateral to this Debenture; and

7.8. Location of Grantor

The place of business of the Grantor or, if the Grantor has more than one place of business, the chief executive office of the Grantor is in British Columbia or in such other jurisdiction notice of which has been given to the Lender by the Grantor.

8. POSITIVE COVENANTS OF THE GRANTOR

The Grantor covenants and agrees with the Lender:

8.1. To Pay

To pay the Indebtedness hereby secured at the times and in the manner as provided in this Debenture. Any moneys paid after 12:00 noon at the Place of Payment on the date of payment will be deemed to have been paid on the next day that the Lender is open for business. All payments by the Grantor must be in lawful money of Canada or such other currency as is set out in item 5(a) of the Mortgage Form (in funds payable at par at the Place of Payment);

8.2. Apply Project Cash Flow

To apply all Project Cash Flow to Project Costs;

8.3. Insure Property

To insure and keep insured in the name of the Lender, with loss payable to the Lender (as its interest may appear), the Mortgaged Property, at least in such amounts as the Lender

may from time to time specify, but in any event at least for the full insurable replacement costs thereof without coinsurance in lawful money of Canada and in such forms, and with a company or companies and policy or policies of insurance approved by the Lender, against all risks of direct physical loss with only such exclusions as the Lender may approve and, in addition, without limiting the generality of the foregoing, the Grantor will maintain earthquake insurance, flood insurance, boiler insurance, business interruption insurance, delayed rental income insurance, insurance against any abatement or loss of rent or other payments required to be paid or made by any tenants of the Mortgaged Property resulting from damage caused by those risks described in this Section, consequential loss insurance against any abatement or loss of rent resulting from the operation of any provision of any lease, to the extent of the full amount of such abatement or loss of rent and such other insurance as may be required by the Lender, and to assign to the Lender the policies of insurance and all claims thereunder, and the Grantor will not allow any policy or policies of insurance to be invalidated;

8.4. Deliver Policies

To deliver all policies of insurance or certified copies thereof, which will contain a "standard mortgage clause" in favour of the Lender, to the Lender and to deliver proof of renewal of all insurance policies at least 15 days prior to their expiration;

8.5. Furnish Proofs

On the happening of any loss or damage, to furnish all necessary proofs to the Lender and do all necessary acts to enable the Lender to obtain payment of the insurance moneys;

8.6. Liability Insurance

To procure and maintain in force comprehensive liability insurance protecting the Grantor against claims and liabilities that may arise out of its operations in at least such amount as may from time to time be specified by the Lender;

8.7. Repair

At all times to repair and keep in repair and in good order and condition the Mortgaged Property;

8.8. Location of Chattels

To notify the Lender on request of the location of all chattels forming part of the Mortgaged Property;

8.9. Books of Account

To keep proper books of account on the premises of the Grantor including separate books of account relating to the Mortgaged Property (and to notify the Lender immediately of any change of location of such books of account) and make therein true and faithful entries of all the Grantor's dealings in relation to its business and operations and to

conduct its business in a proper and efficient manner so as to preserve and protect the security hereby created and the earnings, income, rents and profits thereof;

8.10. Enter and Inspect

To allow the Lender or its employees or agents to enter on the premises of the Grantor and enter and inspect the books and records of the Grantor and make extracts therefrom and generally conduct such examinations of the books and records as the Lender may deem fit and to allow the Lender to inspect the Mortgaged Property at all times;

8.11. Information

At the Lender's request, to furnish or cause to be furnished to the Lender all information relating to the Grantor's business as the Lender may require;

8.12. Financial Statements

If required by the Lender, to deliver to the Lender:

- (a) within 90 days after the close of each fiscal year of the Grantor, chartered accountant prepared and audited financial and operating statements including the current financial and operating statements covering the Lands only, for such fiscal year in such detail and with such schedules as the Lender may require and prepared in accordance with the requirements of applicable legislation and generally accepted accounting principles;
- (b) within 30 days of the close of each three-month period of each fiscal year of the Grantor, to deliver to the Lender interim financial statements prepared in accordance with generally accepted accounting principles; and
- (c) from time to time, to deliver to the Lender such additional financial statements as may be required by the Lender and to deliver to the Lender on request from time to time such other financial statements and reports as the Lender may require.

All financial statements of the Grantor must be accompanied by the certificate of a principal financial or accounting officer of the Grantor dated within five days of the delivery of such statements to the Lender, stating that he or she knows of no Defaults under this Debenture, nor of any material adverse change in the financial position of the Grantor since the date of such financial statements;

8.13. Taxes

To pay or cause to be paid from time to time all capital, real estate, purchase or other taxes, rates, levies, or assessments, ordinary or extra-ordinary government fees or duties levied, assessed, rated or imposed or hereafter levied, assessed, rated or imposed no matter by whom or by what authority or howsoever on the Grantor, on the Mortgaged Property or the Lender (except taxes on the Lender's income) in respect of the Mortgaged Property or any part thereof as and when the same will become due and payable;

provided however, that in respect of taxes on the Mortgaged Property, the Lender may deduct from any advance of the Loan an amount sufficient to pay any taxes that have become due and payable as at the date of such advance or, at the request of the Lender, the Grantor will in each year during the currency of this Debenture pay to the Lender in equal monthly installments such amount as the Lender estimates as being the taxes due and payable in each calendar year, such monthly installments to be paid along with and in addition to such monthly installments due and payable under this Debenture; such payments will, so long as the Grantor is not in default hereunder, be applied by the Lender towards the payment of taxes; the Grantor will transmit to the Lender the copies of the tax bills and other notices affecting the imposition of taxes forthwith after the receipt of same by the Grantor;

8.14. Wages

To pay duly and punctually all debts and obligations to labourers, workers, employees, workers' compensation boards and others which if unpaid might, under any laws of Canada or any province thereof, have priority over the security hereby created or any part thereof;

8.15. Costs and Fees

Forthwith, on the request of the Lender, to pay to the Lender any and all Expenses incurred or to be incurred by the Lender:

- (a) in connection with or incidental to the preparation, negotiation, execution, registration or filing of this Debenture or any security collateral or incidental to this Debenture or any loan agreement relating to this Debenture or any financing statement or financing change statement filed in respect of any indebtedness secured by, *inter alia*, this Debenture against any person including any person comprised in the Grantor;
- (b) in investigating or perfecting title to the Mortgaged Property;
- (c) in responding to any demand for information made in accordance with applicable law including providing copies of any security agreements, statements confirming or providing the amount of indebtedness and terms of payment thereof, confirming or providing lists of collateral and providing information as to the location of any security agreements;
- (d) in advancing any portion of the moneys hereby secured;
- (e) in taking, recovering, keeping, possessing or inspecting the Mortgaged Property or attempting the same;
- (f) in collecting or attempting to collect any of the Indebtedness;

- (g) in enforcing or attempting to enforce the personal or other remedies under this Debenture or otherwise enforcing this Debenture or any security collateral to this Debenture and of every renewal of this Debenture;
- (h) in any sale, foreclosure or other proceedings, judicial or otherwise to protect the Mortgaged Property or to realize on this Debenture or any security collateral to this Debenture; or
- (i) in connection with any receivership or management related to the loan secured by this Debenture.

The Grantor will pay such account whether legal or otherwise and, if legal, then on the basis of such solicitor's or barrister's usual professional charges as between solicitor and own client and, at the option of the Lender, on a lump-sum bill basis without necessity of taxation and if any other professional person or firm is retained or employed, such person's or firm's fees will be paid on the basis of their normal professional charges.

8.16. Observe Terms of Prior and Subsequent Charges

If the Mortgaged Property or any part thereof is subject to one or more Charges, to pay or cause to be paid as they become due all payments whether for principal, interest, taxes, rent or otherwise under or by virtue of the Charges and will otherwise observe, perform and comply with the Grantor's covenants, provisos and agreements therein contained; any default by the Grantor under a Charge will be deemed to be a Default hereunder;

8.17. Corporate Existence

To maintain its corporate existence in good standing in the jurisdiction of its incorporation and all other jurisdictions in which any part of the Mortgaged Property may be situate or in which it carries on business;

8.18. Consents and Waivers of Lessors and Others

To make all reasonable efforts to obtain all required consents or waivers required in connection with the grant, assignment, transfer, mortgage, pledge or charge hereunder of any lease, leasehold interest, interest in land, licence or agreement;

8.19. Further Assurances

Forthwith and from time to time, to do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, mortgages, assignments, transfers, assurances or indentures supplemental to this Debenture as the Lender requires for the better assuring, mortgaging, assigning and confirming unto or vesting in the Lender all and singular the Mortgaged Property charged or intended so to be or which the Grantor may hereafter become bound to mortgage and charge in favour of the Lender or for the better accomplishing and effectuating of the intention of this Debenture;

8.20. Certificate to Third Party

To certify to the Lender or any person designated by the Lender, within seven days after receipt of a request to do so, the Principal Amount, the date to which Interest is paid, that it has no right of set-off against the moneys due hereunder and that there have been no amendments of this Debenture or, if there has been any such amendment, specifying it or them;

8.21. Specific Charge

To create from time to time at the Lender's request a specific charge or charges on any property or properties included in the Mortgaged Property now owned or hereafter acquired by the Grantor;

8.22. Defend Title

To defend the title of the Grantor to the Mortgaged Property for the benefit of the Lender against any adverse claims;

8.23. Maintain Security

To maintain and keep maintained fully and effectually the security hereby created as a valid and effective security at all times during the continuance of this Debenture in all jurisdictions in which any part of the Mortgaged Property may be situate or in which the Grantor carries on business;

8.24. Obey Laws

To observe and perform punctually all its obligations and all matters and things necessary or expedient to be done, observed or performed under any law, by-law, rule or regulation of Canada, any Province of Canada, or any Municipality, District or similar political subdivision thereof or any other jurisdiction in which any part of the Mortgaged Property may be situate or in which the Grantor carries on business;

8.25. Recognition of Trusts

That the holder of this Debenture for the time being, or other legal representative, successor or assign, will be regarded as exclusively entitled to the benefit of this Debenture and all persons may act accordingly and the Grantor will not be bound to recognize any trust or equity affecting the ownership of this Debenture or the moneys hereby secured;

8.26. Subdivision

That every part, lot or strata lot into which the Mortgaged Property or any part thereof is or may hereafter be divided does and will stand charged with the whole of the moneys hereby secured and no person will have any right to require the moneys hereby secured to be apportioned on or in respect of any such part, lot or strata lot;

8.27. **Set-Off**

That the Indebtedness will be paid without regard to any equities or any right of set-off or counterclaim between the Grantor and the original, intermediate or current holder of this Debenture;

8.28. **Observance and Performance**

To observe and perform all covenants, provisos and conditions contained in this Debenture and payment of all moneys as provided in this Debenture;

8.29. **Expropriation**

Immediately on obtaining knowledge of the institution of any proceedings for the expropriation of the Mortgaged Property, or any part thereof, notify the Lender of such proceedings and, if the Mortgaged Property or any part thereof is taken or damaged in or by any such expropriation proceedings or otherwise, the award or compensation payable to the Grantor will be paid and is hereby assigned to the Lender, provided that the Grantor will be credited with such payment only when actually received by the Lender; and

8.30. **Notice of Changes**

To notify the Lender forthwith of any change in the description of the Mortgaged Property from that contained in this Debenture or of any change in the Grantor's name or of any change in the jurisdiction in which the place of business of the Grantor is located or, if the Grantor has more than one place of business, the jurisdiction of the chief executive office of the Grantor.

9. **NEGATIVE COVENANTS OF THE GRANTOR**

The Grantor covenants and agrees with the Lender that it will not, without the express written consent of the Lender:

9.1. **Alteration of Memorandum or Articles of Incorporation**

Alter its constituting documents in any manner affecting the business that may be carried on by the Grantor or affecting its powers or wind up or dissolve;

9.2. **Disposal of Undertaking**

Become a party to any transaction whereby all or a substantial part of the undertaking, property or assets of the Grantor would become the property of any other person, firm or corporation, whether by way of reconstruction, reorganization, amalgamation, merger, transfer, sale, lease, winding up, dissolution or otherwise;

9.3. **Dividends**

Declare or pay any dividends on any class or kind of its shares;

9.4. **Repurchase of Shares & Reduction of Capital**

Repurchase or redeem any of its shares or reduce its capital in any way whatsoever;

9.5. **Secondary Financing and Other Charges**

Grant, create, assume or permit to exist any conditional sales agreement, mortgage, pledge, charge, assignment, lease, security interest or other security, except Permitted Encumbrances, whether fixed or floating or otherwise on the whole or any part of the Mortgaged Property;

9.6. **Bonds Issued under a Trust Deed**

Issue or assume the obligations under or otherwise permit to be outstanding any secured or unsecured bonds issued under a trust deed or other instrument running in favour of a trustee;

9.7. **Bonus to Officers & Shareholder Loans**

Pay, directly or indirectly, any fee, salary, wage or bonus to any officer, director or employee of the Grantor other than those which would be payable in the normal course of the Grantor's business; nor repay any loans from shareholders of the Grantor or pay any interest thereon;

9.8. **Leases**

Lease or rent the whole or any portion of the Mortgaged Property; provided, however, that the granting of consent to any lease will not be or be deemed to be a grant of priority for any such lease over this Debenture or estop the Lender from foreclosing such lease;

9.9. **Loans and Guarantees**

Make loans to, investments in, or guarantees on behalf of other persons, companies, partnerships, joint ventures, or other entities except to the Lender;

9.10. **Waste**

Permit waste to be committed or suffered on the Mortgaged Property other than as may be specifically permitted by the Lender in writing;

9.11. **Use**

Use the Mortgaged Property or permit it to be used other than for such purposes as may be specifically permitted by the Lender in writing; or

9.12. **Miscellaneous**

Take any action that would materially impair the Mortgaged Property; conduct any business differing materially from that presently conducted by it; commit, suffer or permit any act giving rise to a breach of any covenants or condition on its part to be performed under any contract to which it is a party or by which it is bound; permit any judgements to remain unpaid without giving security therefor for a period of 10 days.

10. **EVENTS OF DEFAULT**

The Grantor covenants and agrees with the Lender that the Indebtedness will, at the option of the Lender, become due and payable and the security hereby constituted will become enforceable on the happening of any one or more of the following events:

10.1. **Payment of Indebtedness**

If the Grantor defaults in payment of the whole or any installment of the Indebtedness when payable; or

10.2. **Other Covenants**

If the Grantor defaults in the observance or performance of any other covenant or condition hereby required to be observed or performed or any other thing hereby required to be done other than those specified in Section 10.1; or

10.3. **Representation Untrue**

If any warranty or representation by the Grantor to the Lender is or becomes untrue or incorrect in whole or in part; or

10.4. **Winding-Up**

If an order is made or a resolution passed for the winding-up, dissolution, liquidation or amalgamation of the Grantor; or

10.5. **Bankruptcy**

If the Grantor becomes or acknowledges that it is insolvent or makes a voluntary assignment or proposal under the *Bankruptcy and Insolvency Act* (Canada) or otherwise sells or purports to sell all or a substantial part of its undertaking or if a bankruptcy petition is filed or presented against the Grantor; or

10.6. **Execution**

If any execution, sequestration, extent or any other process of any kind becomes enforceable against the Grantor and is not satisfied within 10 days; or

10.7. **Distress**

If a distress or analogous process is levied on the Mortgaged Property or any part thereof unless the process is in good faith disputed by the Grantor, and the Grantor gives the Lender adequate security to pay in full the amount claimed; or

10.8. **Debts Due**

If the Grantor permits any amount that it has admitted is due and payable (or has not disputed is due and payable by it) to remain unpaid for 30 days after proceedings have been taken to enforce the same; or

10.9. **Cease of Business**

If the Grantor ceases or demonstrates an intention to cease to carry on its business; or

10.10. **Loss of Charter**

If the Grantor fails to file any report or document in a public office as required; or

10.11. **Appointment of Receiver**

If a receiver and/or manager or receiver-manager is appointed for all or any part of the assets of the Grantor or any other person with like powers as either a receiver or manager; or

10.12. **Dissent Proceedings**

If a member of the Grantor:

- (a) commences an action against the Grantor; or
- (b) gives notice of dissent to the Grantor;

in accordance with the laws of the jurisdiction in which the Grantor was incorporated; or

10.13. **Restricted Business**

If the Grantor carries on any business that it is restricted from carrying on by its constating documents; or

10.14. **Unauthorized Use of Proceeds**

If the Grantor uses any of the funds secured by this Debenture for any purpose other than Project Costs; or

10.15. **Misstatement of Officer**

If any certificate of officer or any agent or employee of the Grantor delivered in

connection with this Debenture or any request for an advance on the loan secured by this Debenture, contains any misstatement; or

10.16. Other Default

If the Grantor or any guarantor or indemnifier of any obligation of the Grantor defaults under any other loan or agreement to which it or they is or are a party with the Lender or if the Grantor defaults under any other loan or mortgage to which it is party; or

10.17. Material Adverse Change

If, in the opinion of the Lender, there occurs any material adverse change in the financial position or voting control of the Grantor;

Provided, however, that the Lender may waive any breach of any of the provisions contained in this Debenture or any default by the Grantor in the observance or performance of any covenant, condition or obligation required to be observed or performed by it under the terms of this Debenture. No waiver, consent, act or omission by the Lender will extend to or be taken in any manner whatsoever to affect any subsequent breach or default of the same or any other provision or the rights resulting therefrom and no waiver or consent by the Lender will bind the Lender unless it is in writing.

11. LENDER'S RIGHTS ON DEFAULT

The Grantor covenants and agrees with the Lender that, at any time after the security hereby constituted has become enforceable, the Lender will have the right and power to do any one or more of the following:

11.1. Crystallization of Floating Charge

To crystallize the floating charge comprised in this Debenture so that it constitutes a fixed charge on all Mortgaged Property that was subject to such floating charge immediately prior to crystallization;

11.2. Enter and Possess

To enter, take possession of, inspect, collect, get in, manage, and use all or any part or parts of the Mortgaged Property with power to exclude the Grantor and its respective agents and servants therefrom and for such purpose to take any proceedings in the name of the Grantor or otherwise;

11.3. Terminate Tenancy

Enter the Lands and immediately terminate the tenancy created by this Debenture, without notice to the Grantor;

11.4. **Repair**

To preserve, maintain and repair the Mortgaged Property and make such replacements thereof and additions thereto as the Lender deems appropriate; or

11.5. **Sell or Lease**

Either before or after entry, to sell and dispose of or lease the Mortgaged Property, either as a whole or in parts, by public and/or private sale, on such terms as to credit and otherwise as appear to the Lender most advantageous and for such prices or rents as can reasonably be obtained therefor; leases or sales may be made from time to time of portions to satisfy the Indebtedness; the Lender may rescind or vary any contract of sale or lease that was entered into and resell or re-lease with or under any of the powers conferred hereunder and adjourn any sale from time to time and execute and deliver to the purchaser or purchasers or tenant or tenants of the whole or any part of the Mortgaged Property a sufficient transfer, deed or lease, as the case may be, therefor, the Lender being in this Debenture constituted the irrevocable attorney of the Grantor to sell or lease the Mortgaged Property and to execute a transfer or deed and a sale made as aforesaid will perpetually bar, both at law and in equity, the Grantor and all other persons from claiming the whole or any part of the Mortgaged Property; in case of a sale on credit, the Lender will only be bound to pay to the Grantor such moneys as have been actually received from Purchasers after the satisfaction of the Lender's claim; any such sale or lease will not result in a merger of the covenant to pay in this Debenture or affect the Lender's right to recover any deficiency and Interest thereon at the rate and time as provided in this Debenture. The proceeds of sale will be applied:

- (a) firstly, in payment of all costs, charges and expenses of and incidental to such sale or lease;
- (b) secondly, in payment of the Principal Amount;
- (c) thirdly, in payment of all other moneys owing hereunder, except Interest; and
- (d) fourthly, in payment of all Interest accrued hereunder;

and any surplus will be paid to the Grantor; the provisions of Section 12.3 of these Standard Mortgage Terms will apply to this Section and references therein to the Receiver will be deemed to refer to the Lender for the purposes of this Section.

12. **RECEIVER**

The Grantor covenants and agrees with the Lender that:

12.1. **Appointment of Receiver**

At any time after the security hereby constituted has become enforceable, the Lender will have the right and power to appoint in writing, without the necessity of obtaining any order of the Court, a person to be a Receiver of the Mortgaged Property, or any portion or

portions thereof, and may likewise remove the Receiver and appoint another in his place;

12.2. **Powers of Receiver**

The Receiver will have the power:

- (a) To take possession of and to collect and get in and use the Mortgaged Property and for those purposes to enter the Mortgaged Property and to act whether by action, distress, or otherwise, in the name of the Grantor or otherwise as the Receiver considers necessary;
- (b) To carry on or concur in carrying on the business of the Grantor and to employ and discharge any persons on the terms and at the remuneration the Receiver considers proper;
- (c) To keep in repair the Mortgaged Property and to do all necessary things to carry on the business of the Grantor and to protect the Mortgaged Property;
- (d) To make any arrangement or compromise the Receiver considers expedient in the interests of the Lender and to assent to any modification of this Debenture, and to exchange any part or parts of the Mortgaged Property for any other property suitable for the purposes of the Grantor on such terms as the Receiver considers expedient, either with or without payment of money for equality of exchange or otherwise;
- (e) To borrow money to carry on the business of the Grantor or to maintain the whole or any part of the Mortgaged Property;
- (f) To exercise, at the discretion of the Lender in writing, and be vested with, all the powers and discretions of the Lender under this Debenture;
- (g) To continue with the construction and development of any or all Projects being undertaken by the Grantor on the Mortgaged Property with such variations, additions or deletions thereto as the Lender may approve or carry on the business of the Grantor relating to the Mortgaged Property or any part thereof and to exercise all of the powers conferred on the Lender under this Debenture;
- (h) To sell or lease or concur in the selling or leasing of the whole or any part of the Mortgaged Property and in exercising the Receiver's foregoing power to sell, or lease the Mortgaged Property, the Receiver may in his or her absolute discretion:
 - (i) sell or lease the whole or any part of the Mortgaged Property by public or private tender or by private contract;
 - (ii) grant options to purchase or lease or both;
 - (iii) grant rights of first refusal to purchase or lease or both;

- (iv) complete any contract for sale, lease, option or right of first refusal;
- (v) grant exclusive and multiple listing contracts for sale or lease;
- (vi) sign and file subdivision, condominium, strata, consolidation or other plans or plats;
- (vii) complete and file *Real Estate Act* prospectuses, disclosure statements or affidavits;
- (viii) effect a sale or lease by conveying in the name of or on behalf of the Grantor or otherwise;
- (ix) make any stipulation as to title or conveyance or commencement of title;
- (x) rescind or vary any contract of sale, lease, option or right of first refusal;
- (xi) resell or release without being answerable for any loss occasioned thereby;
- (xii) sell on terms as to credit as appear to be most advantageous to the Receiver and if a sale is on credit the Receiver will not be accountable for any moneys until actually received; and
- (xiii) make any arrangements or compromises the Receiver thinks expedient;

and for such purposes the Grantor hereby irrevocably empowers the Receiver so appointed as its attorney to execute deeds, transfers, leases, contracts, agreements or other documents on its behalf and in its place under the Receiver's seal and the same will bind the Grantor and have the same effect as if such deeds were under the Grantor's common seal or to affix the Grantor's common seal or a duplicate thereof to any of the same;

12.3. Validity of Sale

No purchaser or lessee at any sale or lease purporting to be made by the Receiver pursuant to the aforesaid power will be bound to enquire whether any notice required hereunder has been given, or as to the necessity or expediency of the sale or lease or the stipulations subject to which it is made, or otherwise as to the propriety of the sale or regularity of its proceedings, or be affected by notice that no default has been made or continues, or notice that the sale or lease is otherwise unnecessary, improper or irregular, and despite any impropriety or irregularity, or notice thereof to any purchaser, the sale or lease as regards that purchaser or lessee will be deemed to be within the aforesaid powers and be valid accordingly and the remedy, if any, of the Grantor in respect of any impropriety or irregularity whatsoever in any sale or lease by the Receiver will be in damages only;

12.4. Application of Proceeds by Receiver

The net profit of the business and the net proceeds of any disposal of the Mortgaged Property will be applied by the Receiver subject to the claims of all creditors ranking in priority to this Debenture:

- (a) firstly, in payment of all costs, charges and expenses of and incidental to the appointment of the Receiver and the exercise by him of all or any of the powers aforesaid including the remuneration of the Receiver and all amounts properly payable by him;
- (b) secondly, in payment of the Principal Amount of this Debenture;
- (c) thirdly, in payment of all other moneys owing hereunder, except Interest; and
- (d) fourthly, in payment of all Interest accrued hereunder;

and any surplus will be paid to the Grantor; and

12.5. Receiver Agent of Grantor

The Receiver will not be liable for any loss unless it is caused by the Receiver's own gross negligence or willful default. The Receiver will be considered to be the agent of the Grantor and the Grantor will be solely responsible for the Receiver's acts, defaults and remuneration.

13. OTHER RIGHTS OF THE LENDER

The Grantor covenants and agrees with the Lender that:

13.1. Lender May Pay or Perform

The Lender may, but will not be obliged to, pay and satisfy any moneys or do any acts or things that the Grantor is required to do hereunder or under any security collateral to this Debenture, on the Grantor's failure to do so including, without limiting the generality of the foregoing, satisfaction of any builders' liens, payment of any costs of construction, repairs, taxes, rates, insurance premiums, rents, encumbrances, legal and other professional fees. The amount so paid or the costs and expenses so incurred and all costs, fees or commissions in connection with the collection of moneys due hereunder or enforcement of the security hereby granted will be repayable forthwith and will bear interest at the Interest Rate and will be deemed to be secured by the charges contained in this Debenture from the date of issue of this Debenture; provided, however, that so long as the validity of any tax, lien or fine is in good faith contested by the Grantor, the Lender will not pay the same if the Grantor satisfies the Lender and, if required, furnishes security satisfactory to the Lender, that such contestation will involve no forfeiture of any part of the Mortgaged Property;

13.2. Lender May Compromise or Release

If applicable, the Lender may compound, compromise, or release any one or more guarantors, covenantors or sureties of the moneys hereby secured, or any part of the Mortgaged Property without releasing any other guarantors, covenantors or sureties, and without any liability to account to any guarantor, covenantor or surety, and without prejudice to the security in this Debenture;

13.3. Application of Insurance Proceeds

Any insurance moneys received by the Lender may at the option of the Lender be applied to rebuilding, reinstating or repairing the Mortgaged Property, or be paid to the Grantor or be applied in whole or in part on the Indebtedness whether then due or not or be applied or paid partly in one way and partly any of the others;

13.4. Lender May Assign

The Lender may, without consent, assign, grant security interests in, negotiate, pledge or otherwise dispose of the Indebtedness, this Debenture and any security collateral to it in whole or in part to any bank, person, firm, body corporate, company or other entity and all rights and remedies of the Lender in connection with the interest so assigned will be enforceable against the Grantor and other parties thereto by such assignee as the same would have been by the Lender but for such assignment. The Lender may in connection with such transactions release any information or documents in its control in connection with the Loan and the Grantor and its Associates to any assignee or intended assignee;

13.5. Right to Inspect

The Lender or agent of the Lender may, at any time and from time to time, enter on the Mortgaged Property to inspect the Mortgaged Property or any portion thereof;

13.6. Distrain

The Lender may distrain for arrears of the Indebtedness;

13.7. Preservation of Rights

In the case of an instrument, a security or chattel paper comprised in the Mortgaged Property, the Lender will not be obliged to preserve rights against other persons;

13.8. Accounts

The Lender may collect, realize, sell or otherwise deal with any accounts or any part thereof in such manner, on such terms and conditions and at such time or times, whether before or after Default, as may seem to it advisable, and without notice to the Grantor, except in the case of disposition after Default and then subject to the provisions of applicable law;

13.9. Attornment Clause

The Grantor attorns to and becomes the tenant of the Lender for a term expiring when this Debenture is paid in full. The rent will be an amount equivalent to, applicable in satisfaction of, and payable at the same times as payment of interest hereunder; and

13.10. Rights Cumulative

All rights and remedies of the Lender prescribed in this Debenture are cumulative and no remedy in this Debenture conferred or reserved or in any security collateral to this Debenture is intended to be exclusive but is in addition to every other remedy given hereunder or under any other security now or hereafter existing at law or in equity or by statute; the Lender may realize on all or part of the Mortgaged Property or any securities collateral to this Debenture in any order it desires and any realization by any means on any security will not bar realization on any other security.

14. SECURITY PROVISIONS

The Grantor covenants and agrees with the Lender that:

14.1. Security Additional

The security hereby constituted is in addition to and not in substitution for any other security now or hereafter held by the Lender, and this security will not merge in any other security now or hereafter held by the Lender;

14.2. Security Continuing and for Running Account

Until this Debenture has been discharged in accordance with 18.5 of these Standard Mortgage Terms:

- (a) This Debenture and the charges hereby created will be and remain valid and continuing security and will cover and secure the payment of any and all indebtedness and liability, present and future, direct or indirect, absolute or contingent of the Grantor to the Lender, including, without limitation, obligations of the Grantor to indemnify or pay the Lender in respect of any Cash-Equivalent Instruments or any Guarantee;
- (b) This Debenture will be deemed to secure, *inter alia*, the repayment to the Lender of the full face amount of such Cash-Equivalent Instruments from the date of this Debenture notwithstanding that at the time of realization hereunder or earlier, the Lender has not been called on to pay any moneys thereunder;
- (c) This Debenture will be deemed to secure, *inter alia*, the repayment to the Lender of the liability and indebtedness guaranteed by any Guarantee notwithstanding that at the time of realization hereunder or earlier, the Grantor has not yet been called on to pay moneys thereunder; and

(d) This Debenture is made to secure a running account, *inter alia*, and will not be redeemed by reason only that advances secured hereunder are repaid; any such payment will be deemed not to be a cancellation *pro tanto* of this Debenture and any subsequent advance or re-advance by the Lender to the Grantor will be secured hereby to the same extent as if such advance or re-advance had been made on the issue of this Debenture;

14.3. **Consolidation**

This Debenture is subject to the Doctrine of Consolidation as and to the extent permitted by Section 27 of the *Property Law Act* of British Columbia;

14.4. **No Merger**

The Lender may, in its discretion, commence a personal action on one or more of the covenants in this Debenture or in any security collateral to this Debenture, or petition for foreclosure of the equity of redemption or sale of the Mortgaged Property or any part thereof and neither the taking or refusal of any judgement nor the exercise of any power of seizure or sale will bar the Lender from proceeding, on any or all other covenants, or to foreclose the equity of redemption or sell the Mortgaged Property, or any part thereof, or from pursuing any or all other remedies hereunder or under any collateral security and under no circumstances will the doctrine of *res judicata* apply and the taking of judgement or judgements on any of the covenants contained in this Debenture or the taking of an *order nisi* or order for sale will not operate as a merger of such covenants or affect the Lender's rights to Interest on the amount of judgement or other moneys secured hereunder at the rate and times provided in this Debenture or operate to extinguish the obligation of the Grantor to pay the Indebtedness and the acceptance of any payment or alternate security will not constitute or create a novation; any such judgement will be secured by this Debenture and interest will be computed at the same rate and in the same manner as provided in this Debenture until the judgement has been fully paid and satisfied;

14.5. **Extension of Charge**

The specific charge contained in this Debenture is intended to be a charge on all of the Grantor's right, title and interest in the Mortgaged Property and each and every part thereof and if the right, title and interest of the Grantor in the Mortgaged Property or any part thereof enlarges, or is renewed, extended or added to, then the specific charge contained in this Debenture will be enlarged and extended to be a charge of the enlarged right, title and interest; all improvements, extensions or additions to the rights, properties and interests of the Grantor which by this Debenture are, or are intended to become, part of the Mortgaged Property will promptly on the acquisition thereof by the Grantor, and without any further act on the part of the Grantor, become and be subject to the specific charge as fully and completely as though now owned by the Grantor; and

14.6. **Obligations Secured**

The performance of all of the Grantor's obligations hereunder will be deemed to be

secured from the date of issue of this Debenture.

15. ASSIGNMENT OF RENTS

15.1. If item 5(j) of the Mortgage Form indicates that there is an assignment of rents, this Section applies.

15.2. In this Section,

"Assignment of Rents" means the provisions of this Section;

"Lease" means any lease, tenancy agreement, agreement to lease, licence, right of occupation of every nature and kind whatsoever, and any agreement collateral thereto, written or oral, or any part thereof, together with all covenants, agreements, guarantees, or indemnities regarding the payment of Rents or the performance of any obligations thereunder (all whether now existing or at any time during the existence of the Indebtedness made or in effect with respect to the Lands);

"Notice" means a notice from the Lender to the Grantor of the Lender's intention to demand, collect, sue for, recover, or receive Rents from a Tenant;

"Rents" means any rent, revenue or other money due or accruing due or at any time hereafter due to the Grantor under any Lease, including the benefit of any guarantee of payment or covenant to pay the Rents; and

"Tenant" means any tenant, sub-tenant, user, occupant, or licensee of the Lands or any part thereof, and includes any guarantor, indemnitor or other person liable under any Lease;

15.3. The Grantor hereby assigns, transfers and sets over to the Lender the Rents (with the full power and authority to demand, collect, sue for, distrain for, recover, receive and give receipts for the Rents in the name of and as agent for the Grantor), TO HAVE AND TO HOLD unto the Lender until all the Indebtedness has been paid.

15.4. Although this is a present assignment, unless and until the Lender has delivered a Notice, the Grantor may collect and receive the Rents as and when they become due and payable according to the terms of each Lease. This Subsection does not relieve the Grantor from any obligation in this Debenture.

15.5. If the Lender has delivered a Notice to the Grantor, the Lender or its agent may give notice to any Tenant under any Lease requiring the Tenant to pay the Rents to the Lender. The production of a copy of this Section will be absolute and irrevocable authority to the Tenant to make payment to the Lender of any amount then due by the Tenant to the Grantor and of all amounts thereafter to become due from the Tenant to the Transferor until:

- (a) the Tenant has received a copy of a release of this Debenture registered in the Land Title Office; or

(b) the Lender has advised the Tenant in writing to make future payments to the Grantor (without prejudice to the Lender's right at any time thereafter deliver a further Notice to the Grantor).

15.6. No Tenant will be bound to ascertain the validity of this Assignment of Rents or any actions taken by the Lender pursuant to it. Payment of Rents by any Tenant to the Lender will be effective to discharge the liability of the Tenant to pay the Rents under its Lease, notwithstanding any deficiency or invalidity in connection with this Assignment of Rents or any action taken by the Lender pursuant to it.

15.7. Any Rents received by or on behalf of the Grantor after delivery of a Notice to the Grantor will be held in trust by the Grantor for the Lender. The Grantor will immediately deliver such Rents to the Lender.

15.8. Nothing in this Section will:

(a) make the Lender responsible for the collection of the Rents or for the performance of any covenant, provision, stipulation, term or condition of any party under any Lease; or

(b) make the Lender a mortgagee in possession of the Lands.

15.9. The Lender will be liable to account only for such moneys as may actually come into its hands by virtue of this Section (by applying them to the Indebtedness), including, without limitation, monies held in trust for it by the Grantor hereunder; provided, however, that the Lender is entitled to deduct all related Expenses to which the Lender may be put in respect collecting such moneys.

15.10. The Grantor will not, without the written consent of the Lender:

(a) assign, pledge, or hypothecate any Lease or Rents, except to the Lender;

(b) do (or permit to be done) or omit to do anything that either directly or indirectly would have the effect of waiving, releasing, reducing, discounting or abating any rights or remedies of the Grantor or obligation of any other party under or in connection with any Lease;

(c) terminate, surrender, accept a surrender of, sublet, assign, encumber, discount, anticipate, waive, reduce, release, abate or amend in any manner any Lease (other than a month-to-month tenancy); or

(d) receive or permit the prepayment of Rents for more than one month in advance.

15.11. The Grantor will at all times observe and perform all of its obligations under every Lease and do or cause to be done all things necessary or expedient to maintain, preserve and protect all of the rights and remedies of the Grantor under each Lease. If the Grantor fails to do so, the Lender may, in its absolute discretion, perform such obligations on behalf of

the Grantor and may add any cost or expense thereby incurred to the amount owing by the Grantor to the Lender, and any such amount is secured by this Debenture.

15.12. The Grantor will from time to time:

- (a) provide to the Lender within 7 days of a request a current list of every Lease in such detail as the Lender may require and, if requested, a copy of any Lease;
- (b) execute such further assurances as may be required by the Lender to perfect this Assignment of Rents, including executing a specific assignment similar to this Assignment of Rents with respect to any or every Lease and the Grantor hereby irrevocably appoints the Lender as its attorney to execute any such assignment; and
- (c) give notice to any party to a Lease of this or any specific assignment of such Lease and obtain from such party acknowledgements of such notice in such forms as the Lender may require;

15.13. The Grantor represents and warrants that:

- (a) it has good right, full power and absolute authority to assign the Rents in accordance with this Section;
- (b) none of the Rents have been or will be paid prior to the due date (other than one month's worth of such Rents);
- (c) there has been no material default under any Lease by any of the parties to such Lease;
- (d) there is no outstanding dispute between the Grantor and any other party to a Lease; and
- (e) the Grantor has observed and performed and will observe and perform all of its obligations under each Lease.

15.14. The rights, powers, and remedies of the Lender under this Assignment of Rents are continuing rights, powers, and remedies and may be exercised from time to time at the discretion of the Lender.

16. **CONSTRUCTION**

If item 10 of the Mortgage Form specifies that this is a construction loan, the provisions of this Section apply and the Grantor covenants and agrees with the Lender that:

16.1. **Commence Construction**

The Grantor will forthwith commence construction and installation of the Project on the Lands and will carry on such construction and installation continuously, diligently and

with dispatch until completed no later than the time set out as the "Completion of Construction Date" in item 10 of the Mortgage Form and the Grantor will devote its full efforts and energy to the development, leasing and sale of the Project and will not abandon or delay completion of the Project or, except as set out in this Debenture, depart from the Plans and Specifications; the judgement and determination of the Lender under this provision will be final and conclusive;

16.2. **Materials**

The Project will be constructed in a good and workmanlike manner using first-class quality materials in accordance with the Plans and Specifications and will comply with all restrictions, conditions, ordinances, codes, regulations and laws of governmental departments and agencies having direction over, or an interest in the Lands;

16.3. **Utilities**

All utility services necessary for the construction of the Project and the operation and use thereof for its intended purpose, including, but not limited to, water supply, storm and sanitary sewer facilities, gas, electric and telephone facilities, are available to the boundaries of the Lands;

16.4. **Access**

The Lands are contiguous to publicly dedicated streets or roads or highways and vehicular and pedestrian access thereto is permitted or, if not, are the dominant tenement under an easement or easements creating the perpetual right of such access to any such publicly dedicated streets or roads or highways;

16.5. **Defects and Variations**

Any defects in the construction or variation in the construction of the Project as reported to the Lender by its consultants will be promptly corrected by the Grantor to the satisfaction of the Lender;

16.6. **Notice of Meetings**

The Grantor will use its best efforts to give the Lender adequate notice of all management and job site meetings and inspections of the Project by the Grantor's architect and other consultants;

16.7. **Job Site Meetings**

The Grantor will permit representatives of the Lender and its consultants to attend all management and job site meetings and inspections of the Project by the Grantor's architect and other consultants;

16.8. List of Trades

The Grantor will require all contractors on the Project to provide and update monthly lists of subcontractors, materialmen and suppliers of services, including the amount of their contracts and the current status of their accounts;

16.9. Proceedings

If any proceedings are commenced seeking to enjoin or otherwise prevent or declare invalid or unlawful the construction, occupancy, maintenance or operation of the Project or the Lands or any portion thereof, the Grantor will cause such proceedings to be vigorously contested in good faith, and in the event of an adverse ruling or decision, prosecute all allowable appeals therefrom, and will, without limiting the generality of the foregoing, resist the entry or seek the stay of any temporary or permanent injunction that may be entered, and use its best efforts to bring about a favourable and speedy disposition of all such proceedings;

16.10. Documents

The Grantor will provide the Lender with such records, books, drawings, Plans and Specifications, diagrams, construction budgets, schedules and costings, documents, agreements, contracts, and other materials in connection with the construction or proposed construction of the Project as the Lender may require;

16.11. Personal Property

All of the Chattels will be kept free and clear of all security interests, chattel mortgages, conditional vendors' liens and all liens and encumbrances other than as may be granted to the Lender and the Grantor will be the absolute owner of the Chattels and will, from time to time, furnish the Lender with satisfactory evidence of such ownership, including searches of applicable public records; on the Lender's request, the Grantor will forthwith execute and deliver a supplemental Mortgage or other security interest on the Chattels and such other supporting documents as the Lender may require in connection therewith, including financing statements and searches of records under any applicable legislation;

16.12. Claims, Demands and Wages

The Grantor will pay or cause to be paid as soon as the same are due all Claims and the Grantor will from time to time on demand provide the Lender with such books, payrolls, or other records, receipts, certificates and declarations as the Lender may deem necessary to satisfy itself that such Claims have been paid as soon as the same are due;

16.13. Right to Construct

The Grantor will have prior to commencement of construction of the Project and will continue thereafter to have until the release of this Debenture from the Project, the power, authority and legal right to construct the Project on the Lands;

16.14. Completion on Default

If a Default occurs, in addition to any other remedies which the Lender may have, the Lender personally, or by its agents, servants, contractors or attorneys, may enter into and on the Mortgaged Property or any part thereof, and may exclude the Grantor, its agents and servants wholly therefrom and may inspect, use, operate, manage, lease, sell and control the Mortgaged Property and conduct the business thereof, and, in addition, the Lender, from time to time, may repair, renew, replace, maintain and restore the Mortgaged Property and may complete the construction of the Project and in the course of such completion may make such changes in the Project as it may deem desirable;

16.15. Project Costs

Unless otherwise expressly agreed to in writing by the Lender, the Grantor will:

- (a) only employ any advances on the Loan for Project Costs; and
- (b) pay from sources other than funds advanced on the Loan such portion of the Project Costs as may be necessary so that the moneys unadvanced hereunder from time to time will, in the opinion of the Lender, at all times be sufficient to pay all Project Costs necessary to complete construction and leasing of the Project;

16.16. Changes in Work

The Grantor will not authorize any extra work or change in the Plans and Specifications without the prior written consent of the Lender;

16.17. Residential Premises

The Grantor, its officers, employees, agents or contractors will not occupy the Lands or any part thereof for residential premises as defined under the *Residential Tenancy Act* (British Columbia) without the prior written consent of the Lender;

16.18. Leasing

If item 10 of the Mortgage Form specifies that the Lands are leaseable, this Subsection applies and the Grantor will commence a leasing program relating to the Project and proceed diligently and continuously with and devote its best efforts to the leasing of the Project on the terms and conditions previously approved by the Lender;

16.19. Sales

If item 10 of the Mortgage Form specifies that the Lands are saleable, this Subsection applies and the Grantor will commence and diligently pursue a sales program for the Project and proceed diligently and continuously with and devote its best efforts to the sale of the Project on terms and conditions previously approved by the Lender;

16.20. Monthly Reports on Construction & Sales or Leasing

The Grantor will provide a monthly report on construction and sales or leasing to the Lender by the 10th day of the month following the month to which such report relates with the following information:

- (a) if no Advance was requested during such month, a Project expense summary showing, on an item-by-item basis, budgeted cost, cost to date and cost to complete;
- (b) all changes to the Plans and Specifications and the Project budget; and
- (c) details of offers, counteroffers and correspondence relating to the sale or lease (as applicable) of the Land, or any portion thereof; and

16.21. Deposit of Deficiencies

If, at any time, in the opinion of the Lender, the amount of the unadvanced portion of the Loan for the Project is less than the aggregate of:

- (a) the amount necessary to pay for all approved Project Costs that are not yet paid or incurred; and
- (b) all amounts not paid by the Grantor to contractors, materialmen and workmen for work completed, labour and services rendered and material furnished,

the Grantor will forthwith deposit the amount of such deficiency with the Lender.

17. SUBDIVISION BY STRATIFICATION

If the Lands are stratified or the Project involves the stratification of the Lands, the Grantor covenants and agrees with the Lender that:

17.1. Definition

In this Section, the "Act" means the British Columbia enactment dealing with strata lots as is from time to time in force; any strata corporation and any successor thereof created under or pursuant to the Act is called the "Strata Corporation" in this Debenture;

17.2. Disclosure Statement, Prospectus and Strata Plan

The Grantor will, as soon as legally possible, file a disclosure statement or prospectus under the *Real Estate Act* relating to the Lands, deliver copies thereof to the Lender and subdivide the Lands into strata lots by depositing a strata plan in the appropriate land title office pursuant to the Act;

17.3. Approvals

The Grantor will obtain the consent and approval of the Lender to such strata plan and

any by-law amendments prior to tendering the same for registration;

17.4. Strata Lots and Common Property

The Mortgaged Property will be and be deemed to include any and all strata lots including the associated common property;

17.5. Compliance

The Grantor will comply with all provisions of the Act and its regulations and the bylaws, rules and regulations of the Strata Corporation;

17.6. Assessments

The Grantor will pay when due, all assessments, contributions, charges, fines or levies (collectively, the "Assessments") made by the Strata Corporation in respect of the strata lot (or lots) charged hereunder; provided, however, that if the Lender so requires, the Grantor will, in each year during the currency of this Debenture, pay to the Lender in equal monthly installments such amount as the Lender may estimate as being the Assessments payable for that year; the Grantor will pay these monthly installments at the same time as the other monthly instalments payable under this Debenture and the Lender will apply them towards the payment of the Assessments;

17.7. Certificates

The Grantor, on the Lender's request, will apply for and forward to the Lender from time to time such certificates as the Strata Corporation is required by the Act to give an owner; the Grantor irrevocably authorizes the Lender to apply from time to time to the Strata Corporation for such certificates;

17.8. Voting Rights

The Lender may exercise the Grantor's right to vote at meetings of the Strata Corporation on all matters on which the Act permits a mortgagee to vote, and the Grantor assigns such right to vote to the Lender; except for those matters on which the Grantor's right to vote has been thus assigned, the Grantor irrevocably appoints the Lender or its nominee to be the proxy for the Grantor, to attend, act and vote in the place of the Grantor at such meetings of the Strata Corporation as the Lender or its nominee from time to time attends, on any matters and at any times when the Grantor has the right to vote conferred on it by the Act; for this purpose the Grantor will execute such proxy, whether general or specific, as the Lender may request; if the Grantor fails to execute such proxy or proxies, the Grantor irrevocably appoints the Lender its attorney for this purpose; the Lender or the Lender's nominee will not be obliged to vote or to protect the interest of the Grantor, and the Lender or its nominee will not be liable to the Grantor for any consequences of the Lender's or its nominee's exercise or failure to exercise such right to vote; nothing in this Section will constitute or be deemed to constitute the Lender a mortgagee in possession;

44

17.9. **Manner of Voting**

If for any reason the Grantor has the right to vote at a meeting of the Strata Corporation, the Grantor will vote in such manner (if any) as the Lender directs on every matter to be voted on;

17.10. **Notices**

At least five days prior to every general meeting of the Strata Corporation, the Grantor will deliver to the Lender written notice of the meeting specifying the place, date, hour and purpose of the meeting; in addition, immediately after receiving them, the Grantor will deliver to the Lender true copies of the bylaws, rules and regulations of the Strata Corporation from time to time in force, and all notices, minutes, resolutions, accounts, financial statements and other documents relating to the financial statements and to the affairs of the Strata Corporation; and

17.11. **Defaults**

If, without the consent of the Lender, the bylaws of the Strata Corporation are amended, or any special resolution directing the Strata Corporation to transfer or charge or add to the common property or any part thereof is passed, or the Strata Corporation enters into any contract that has not been approved by the Lender, the same will be deemed a Default hereunder.

18. **MISCELLANEOUS**

The Grantor covenants and agrees with the Lender that:

18.1. **No Obligation to Advance**

Subject to any other written agreement between the Grantor and the Lender, neither the preparation, issuance, delivery or registration of this Debenture or any security collateral to this Debenture nor the advancement in part of the moneys hereby intended to be secured will bind the Lender to advance the moneys or any unadvanced portion thereof, it being understood and agreed that the advance of moneys or any part thereof from time to time will be in the sole discretion of the Lender, but nevertheless the charge hereby created will take effect forthwith on the execution of this Debenture by the Grantor, nor will such preparation, issuance, delivery or registration bind the Lender to extend the time within which the Grantor must repay the Indebtedness;

18.2. **Lender Acting Only on Own Behalf**

The authority in this Debenture conferred on the Lender and any inspection or approval of any insurance coverages or policies, assets, plans, specifications, security, leases, subleases, agreements, bonds, budgets, appraisals, reports, statements, books, records, zoning, charges, title, or any other matter or thing of any nature or kind whatsoever including without limitation the holding of insurance, or any action taken or not taken by the Lender, its employees or agents are for the sole benefit and protection of the Lender

45

only and the Lender does not assume any responsibility to the Grantor or any other person or entity or waive or modify any obligations of the Grantor by reason of any of the foregoing and the Grantor may not rely on the Lender, its employee or its agents with respect thereto and releases any claim for negligence with respect thereto against the Lender, its employees and agents;

18.3. **Time**

Time is of the essence;

18.4. **Payment of Indebtedness**

If item 10 of the Mortgage Form specifies that this is a demand loan, the Lender may at any time demand payment of the whole of the Indebtedness;

If item 10 of the Mortgage Form specifies that this is a term loan, if the Grantor defaults hereunder, the Lender may, at its option, accelerate the requirement for payment and demand payment of the whole of the Indebtedness;

18.5. **Redemption and Discharge**

On payment of all moneys and performance of all obligations secured hereby, the Lender will at the request in writing of the Grantor, deliver this Debenture to the Lender and will, at the expense of the Grantor, within a reasonable time, execute and deliver to the Grantor such releases and discharges or other instruments as may be required to discharge the charges hereby created;

18.6. **Negotiability**

This Debenture is to be treated as a negotiable instrument and all persons are invited by the Grantor to act accordingly;

18.7. **Dealing with Equity of Redemption**

No sale or other dealing by the Grantor with the equity of redemption in the Mortgaged Property or any part thereof will in any way change the liability of the Grantor or in any way alter the rights of the Lender as against the Grantor or any other person liable for payment of the moneys secured hereby;

18.8. **Amendment or Modification**

This Debenture cannot be added to, amended or waived orally or by any course of conduct of the Lender, its employees or agents; no amendment, waiver, or modification of this Debenture in whole or in part will be enforceable against the Lender unless it is by a formal instrument in writing expressed to be a modification of or supplemental to this Debenture and executed by both the Lender and the Grantor;

18.9. No Judicial Review

The Grantor acknowledges that the loan for which this Debenture is delivered as security has been made on the express condition that the Lender's opinions, approvals, consents, requirements, estimates, determinations and decisions and what is or is not acceptable, material, adverse or satisfactory to it are in its sole and absolute discretion and are not subject to judicial review as to their reasonableness but only as to whether or not they are fraudulent;

18.10. Partnership, Joint Venture, Agent, Trustee

If the Mortgaged Property or any portion thereof is held by the Grantor as a partner or partners of any firm and/or joint venturer of a joint venture and/or agent for any principal, and/or trustee or nominee for any beneficiary (any such firm, joint venture, principal or beneficiary is herein called the "Other Party"), then:

- (a) this Debenture will be deemed to be a mortgage and charge of each Other Party's interest in the Mortgaged Property as well as a mortgage and charge of the interest of the Grantor in the Mortgaged Property;
- (b) all grants, covenants, agreements, assignments, warranties and representations in this Debenture will be deemed to be joint and several grants, covenants, agreements, assignments, warranties and representations of each Other Party and of the Grantor; and
- (c) the Grantor warrants and represents that it has full power and authority to mortgage and charge the Other Party's interest in the Mortgaged Property and to agree that all grants, covenants, agreements, assignments, warranties and representations in this Debenture will be deemed to be joint and several grants, covenants, agreements, assignments, warranties and representations of each Other Party and of the Grantor;

18.11. Sign

The Lender will have the right to erect and maintain a sign on the Lands to the effect that the Lender is providing financing for the Lands; the sign will be erected at the Lender's expense and the Lender will have the right to select a prominent location and dimensions of such sign; the sign will remain the property of the Lender and may only be removed by the Lender; provided, however, that if the sign is damaged, destroyed or stolen, the Grantor will pay the cost of replacing the sign; and

18.12. Deed

Notwithstanding that this Debenture may not be executed under seal, it is the intention of the parties that this Debenture take effect as a deed.

47

18.13. Sale or Transfer

If the Lands or any part thereof are sold, transferred, conveyed or assigned or otherwise disposed of, or the Grantor enters into any agreement to effect any of the foregoing, whether by registered or unregistered instrument and whether for valuable or nominal consideration or otherwise, to a party not first approved in writing by the Lender; or if such purchaser, grantee, transferee or assignee should fail to:

- (a) apply for and receive the Lender's written approval as aforesaid;
- (b) if required by the Lender, personally assume all the obligations of the Grantor under this Debenture, and
- (c) if required by the Lender, execute an assumption agreement in the form required by the Lender;

then the Lender at its option may declare the Principal Amount then secured hereunder, all accrued interest and all other moneys then secured hereby, to become immediately due and payable in full and the Grantor will pay the same forthwith.

It will be deemed to be a disposition of the Lands for the purposes of Section 18.13 if there is any transfer, sale, assignment, bequest, inheritance, encumbrance or other disposition of shares of any body corporate comprising the Grantor, in whole or in part, having the result of changing the identity of the Person(s) who during the currency of this Debenture exercise the effective voting control of such body corporate.

The Lender will be entitled to charge a reasonable servicing fee to process each application for approval as herein contemplated, which fee will be payable forthwith upon demand. Failure by the Grantor to pay such servicing fee will be deemed to be an act of default hereunder. It is further understood and agreed that any approval given hereunder will in no way change the liability of the Grantor or in any way alter the rights of the Lender as against the Grantor or any other person liable for payment of the moneys hereby secured.

Provided, however, that the Lender may waive any breach of any of the provisions contained in this Debenture or any default by the Grantor in the observance or performance of any covenant, condition or obligation required to be observed or performed by it under the terms of this Debenture. No waiver, consent, act or omission by the Lender will extend to or be taken in any manner whatsoever to affect any subsequent breach or default of the same or any other provision or the rights resulting therefrom and no waiver or consent by the Lender will bind the Lender unless it is in writing.

19. INTERPRETATION

The Grantor covenants and agrees with the Lender that:

48

19.1. **Governing Law**

This Debenture will be construed in accordance with the laws of the Province of British Columbia;

19.2. **Severability**

If any provision of this Debenture is held to be wholly or partially invalid or unenforceable, at the option of the Lender, such invalidity or unenforceability will attach only to such provision and will not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Debenture and this Debenture will be interpreted as if the invalid or unenforceable provision had not been a part of this Debenture;

19.3. **Headings**

The headings of the Sections of this Debenture have been inserted for reference only and do not define, limit, alter or enlarge the meaning of any provision of this Debenture;

19.4. **Binding Effect**

This Debenture and all of its provisions will enure to the benefit of each Lender, and each of their successors and assigns, and will be binding on the Grantor and its successors and assigns; the expression the "Lender" as used in this Debenture includes each Lender's assigns, whether immediate or derivative; wherever the singular is used in this Debenture it will be construed as meaning the plural where the context or the parties to this Debenture so require;

19.5. **Covenantor adopts Covenants of Grantor**

If applicable, the Covenantor jointly and severally makes and adopts each and every warranty, representation, grant, assignment, covenant and agreement of the Grantor in this Debenture s if each Covenantor were a Grantor;

19.6. **Joint and Several Effect**

Each and every warranty, representation, grant, assignment, covenant and agreement of the Grantor in this Debenture will be deemed to be made by each and every entity comprising the Grantor all jointly as well as severally;

19.7. **No Agency, Joint Venture or Partnership**

The Lender is not the agent or partner of the Grantor and the Grantor is not the agent or partner of the Lender, and nothing in this Debenture will be construed to make the Lender liable to anyone for goods or services furnished to the Lands, or for debts or claims accruing therefrom against the Grantor and there will be no implied contractual relationship between the Lender and any person or persons supplying work or materials to the Lands; and

19.8. **References to Acts**

Any reference to an enactment is a reference to that enactment as amended from time to time and to any subsequent enactment that replaces the substance of such enactment from time to time.

20. **WAIVER OF RECEIPT OF FINANCING STATEMENTS**

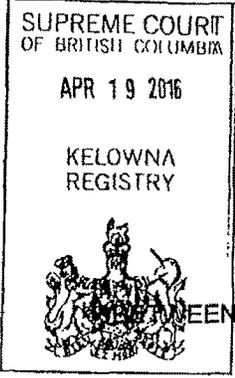
Each person comprising the Grantor waives all rights to receive from the Lender a copy of any financing statement, financing change statement or verification statement or any other similar filing made by the Lender in respect of any person comprised in the Grantor.

21. **ACKNOWLEDGEMENT**

Each person comprising the Grantor hereby acknowledges receipt from the Lender or its agent at or before the time this Debenture is executed of a true copy of this Debenture, consisting of the Mortgage Form and these Standard Mortgage Terms.

END OF SET

This is Exhibit " B " referred to in the affidavit of Debra Mackoff sworn before me at Vancouver in the Province of British Columbia this 20 day of August A.D. 2012



A Commissioner for taking Affidavits within British Columbia

No. KEL-S-H-108833 Kelowna Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

MELVIN HABER, DR. STEVEN L. KIRZNER INC., ROBERT SAUER, CRAIG SHERIDAN, MACKOFF MANAGEMENT SERVICES (2012) INC.

PETITIONERS

AND

KELOWNA MOUNTAIN DEVELOPMENT SERVICES LTD., KELOWNA MOUNTAIN LIMITED PARTNERSHIP, MARK CONSIGLIO, 0741508 .B.C. LTD., 0741449 B.C. LTD., 0877099 B.C. LTD., 0768723 B.C. LTD., 0722955 B.C. LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION (CONSENT ORDER NISI AND ORDER FOR CONDUCT OF SALE)

BEFORE) THE HONOURABLE JUSTICE ROGERS) April 8, 2016

ON THE APPLICATION of the Petitioners coming on for hearing at 1355 Water Street, Kelowna, British Columbia on April 8, 2016 and on hearing Peter Bychawski counsel for the Petitioners, and Reinhard Burke, counsel for Kelowna Mountain Development Services Ltd., Kelowna Mountain Limited Partnership ("KMLP"), 0768723 B.C. Ltd., 0741508 B.C. Ltd., 0741449 B.C. Ltd., 0877099 B.C. Ltd. and Mark Consiglio (collectively, the "Mortgagor Respondents") and 0722955 B.C. Ltd. ("072");

THIS COURT ORDERS and DECLARES that:

The Primary Mortgage

1. The mortgage and assignment of rents (collectively, the "Primary Mortgage") made in writing and executed May 30, 2013, between Kelowna Mountain Development Services Ltd., as mortgagor, and Kelowna Mountain Limited Partnership, 0768723 B.C. Ltd., 0741508 B.C. Ltd.,

0741449 B.C. Ltd., 0877099 B.C. Ltd. and Mark Consiglio, as covenantors, and the Petitioners as mortgagees, which Primary Mortgage was registered in the Kamloops Land Title Office on June 4, 2013 under Nos. CA3162605 and CA3162606, is a valid and enforceable mortgage and assignment of rents which is a first financial charge on the following lands and premises:

ALL AND SINGULAR those certain parcels or tracts of lands and premises situate lying and being in the City of Kelowna, in the Province of British Columbia and more particularly known and described as:

Parcel Identifier No.: 011-781-866
Sub Lot 28 District Lot 2711 Similkameen Division Yale District Plan 1190

(the "Primary Mortgage Lands")

in priority to all of the right, title and interests of the Mortgagor Respondents (together with their heirs, executors, administrators and assigns and all persons claiming by, through or under them) and any interests in the Primary Mortgage Lands registered subsequent to the Petitioners' Certificate of Pending Litigation in these proceedings.

2. The Mortgagor Respondents have made default under the Primary Mortgage and all monies secured thereby are due and owing to the Petitioners.

3. The Mortgagor Respondents have made default under a Promissory Note dated August 1, 2014 (the "Primary Mortgage Note") arising out of and given by KMLP in connection with the Primary Mortgage.

4. The amount of money due and owing under the Primary Mortgage and the Primary Mortgage Note, and the amount of money required to redeem the Primary Mortgage Lands as of April 1, 2016, is the sum of \$4,129,143.42 plus interest thereon in accordance with the terms of the Primary Mortgage and the Primary Mortgage Note, being a present daily rate of \$1,635.86, to accrue until the Primary Mortgage Lands are redeemed or sold, whether or not redemption or sale occurs before or after the last date set for redemption herein, together with the Petitioners' costs of this proceeding at Scale A of Appendix B to the *Supreme Court Civil Rules*, BC Reg 168/2009 (as amended) (the "Amount Required to Redeem the Primary Mortgage").

5. The Mortgagor Respondents, or any of them, may exercise the equitable right of redemption under the Primary Mortgage by paying into Court at 1355 Water Street, Kelowna, British Columbia, to the credit of this proceeding or to counsel for the Petitioners, the Amount Required to Redeem the Primary Mortgage on or before October 1, 2016 (the "Primary Mortgage Redemption Date").

6. If the Amount Required to Redeem the Primary Mortgage is not paid prior to the Primary Mortgage Redemption Date pursuant to paragraph 5 of this Order, then the Petitioners shall be at liberty to apply for an Order Absolute of Foreclosure and upon pronouncement of Order Absolute of Foreclosure each of the Mortgagor Respondents, their heirs, executors, administrators, successors and assigns and all persons claiming by, through or under them shall thenceforth stand absolutely debarred and foreclosed of and from all right, title, interest and equity of redemption in or to the Primary Mortgage Lands and that thereupon the Mortgagor Respondents shall immediately deliver to the Petitioners vacant possession of the Primary Mortgage Lands.

7. The Petitioners shall have judgment against the Mortgagor Respondents, and each of them, jointly and severally, in the sum of \$4,129,143.42 plus interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79 (as amended) and costs of this proceeding at Scale A of Appendix B to the *Supreme Court Civil Rules*, BC Reg 168/2009 (as amended).

8. The Petitioners' judgments against the Mortgagor Respondents shall be stayed pursuant to Rule 13-2(31) of the *Supreme Court Civil Rules*, BC Reg 168/2009 (as amended) until the Redemption Date or further Order by this Court.

The Guarantee and Collateral Mortgage

9. The Guarantee and Postponement and Assignment of Claim dated August 1, 2014 and made by 072 for the benefit of the Petitioners is valid and enforceable against 072 in accordance with its terms.

10. The mortgage and assignment of rents (collectively, "**Collateral Mortgage**") made in writing and executed August 26, 2014, between 072, as mortgagor, and the Petitioners, as mortgagees, which Collateral Mortgage was registered in the Kamloops Land Title Office on August 26, 2014 under Nos. CA3924379 and CA3924380, is a valid and enforceable mortgage and assignment of rents which is a financial charge on the following lands and premises:

ALL AND SINGULAR those certain parcels or tracts of lands and premises situate lying and being in the City of Kelowna, in the Province of British Columbia and more particularly known and described as:

Parcel Identifier No.: 006-496-598

Lot 1 Section 24 Township 28 Similkameen Division Yale District Plan 5485

Except Plans 18646, KAP49406, KAP50989, KAP64523, KAP87908 and KAP90635

(the "**Collateral Mortgage Lands**")

in priority to all of the right, title and interests of 072 (together with its heirs, executors, administrators and assigns and all persons claiming by, through or under it) and any interests in the Collateral Mortgage Lands registered subsequent to the Petitioners' Certificate of Pending Litigation in these proceedings.

11. 072 has made default under the Collateral Mortgage and all monies secured thereby are due and owing to the Petitioners.

12. The amount of money due and owing under the Collateral Mortgage as of April 1, 2016 is the sum of \$904,631.77 plus interest thereon in accordance with the terms of the Collateral Mortgage, being a present daily rate of \$1,605.98, to accrue until the Collateral Mortgage Lands are redeemed or sold together with the Petitioners' costs for this proceeding at Scale A of Appendix B to the *Supreme Court Civil Rules*, BC Reg 168/2009 (as amended).

13. The Petitioners shall have judgment against 072 in the sum of \$904,631.77 plus interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79 (as amended) and costs of this proceeding at Scale A of Appendix B to the *Supreme Court Civil Rules*, BC Reg 168/2009 (as amended).

14. The Petitioners judgment against 072 shall be stayed pursuant to Rule 12-3(13) of the Supreme Court Civil Rules, BC Reg 168/2009 (as amended) until the Redemption Date or further Order by this Court.

15. Nothing in this Order shall affect the rights or obligations of any party to this Order in respect to that party's rights or obligations under Orders made in the proceedings under Supreme Court of British Columbia Action No. VLC-S-H-150102 (Vancouver Registry) ongoing in respect to the Collateral Mortgage lands.

Conduct of Sale of the Primary Mortgage Lands

16. At the date prescribed in paragraph 17 herein, the Petitioners are entitled to list the Primary Mortgage Lands for sale, free and clear of all encumbrances save and except the reservations, provisos, exceptions and conditions contained in the original grant thereof from the Crown.

17. The Petitioners have exclusive conduct of the sale and are at liberty to list the Primary Mortgage Lands for sale (the "Listing Process") immediately upon the expiry of the Primary Mortgage Redemption Date until further order of this Court (the "Listing Period") and shall be at liberty to do all things reasonably incidental thereto including paying to any real estate agent or firm that may arrange a sale commission of not more than 7% of the first \$100,000.00 of the gross selling price and not more than 2.5% of the balance of the gross selling price, that commission to be paid from the proceeds of the sale.

18. Any person or persons in possession of the Primary Mortgage Lands, including any tenant or tenants, shall:

72 HOURS - W

- (a) at any time from the pronouncement of this Order until the Primary Mortgage Redemption Date, upon ~~36~~ hours prior notice, permit any duly authorized agent of the Petitioners to inspect or appraise the Primary Mortgage Lands and the interior thereof between the hours of 9:00 a.m. and 7:00 p.m. on any day except holidays; and
- (b) during the Listing Period, immediately permit any authorized agent of the Petitioners to inspect or appraise the Primary Mortgage Lands and the interior thereof and show the Primary Mortgage Lands and the interior thereof to prospective purchasers between the hours of 9:00 a.m. and 7:00 p.m. on any day except holidays, and to post signs on the Primary Mortgage Lands indicating that the Primary Mortgage Lands are offered for sale.

19. The Petitioners or any duly authorized agent of the Petitioners be entitled to force entry to any buildings on the Primary Mortgage Lands, and the interior thereof, in the event they are abandoned or vacated.

20. Any sale of the Primary Mortgage Lands shall be subject to the approval of this Honourable Court unless agreed to by all parties of record.

General

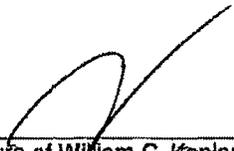
21. From and after July 1, 2016, upon 72 hours written notice provided by the Petitioners to the Respondent KMLP, the Petitioners shall be provided access to the lands and premises for the purposes of carrying out survey work and an appraisal of the Primary Mortgage Lands.

22. The Petitioners are at liberty to apply for a further summary accounting of amounts owed to the Petitioners for interest or as reimbursement for payments made for protective disbursements relating to taxes, arrears of taxes, insurance premiums or appraisals or for inspecting, repairing or maintaining the Primary Mortgage Lands and any premises located thereon, or for other expenses or costs which the Petitioners may incur before or after the date of this Order, before a Master in Chambers or by reference to the office of the District Registrar.

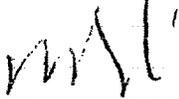
23. The parties have leave to apply to this Court for further orders or directions with respect to this Order, including the conduct of the Listing Process or the approval of any proposed sale of the Primary Mortgage Lands resulting therefrom, on eight business days' notice to each party or such abridged notice period as may be ordered by this Court.

24. The balance of the relief sought in the Petition is adjourned *sine die*.

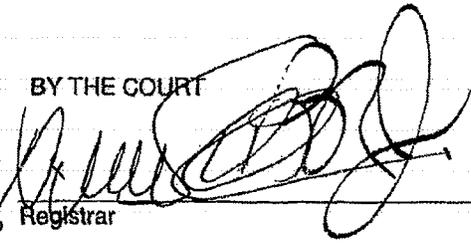
THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS PRONOUNCED:



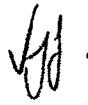
Signature of William C. Kaplan, Q.C.
Lawyer for the Petitioners



Signature of Reinhard Burke
Lawyer for the Respondents

BY THE COURT


DID Registrar



55

R & C APPRAISERS

1368 Gregory Road
West Kelowna
BC, V1Z 3P2

www.rcappraisers.com

Phone: 250-454-9216
Fax: 250-454-9216
rcappraisers@gmail.com

May 23, 2013

Attention:

Melvin Haber, Dr. Steven Kirzner Inc., Robert Sauer and Craig Sheridan, tenants in common, and Mackoff Management Services(2012) Inc.
C/O 1755 Edgewater Lane, North Vancouver, B.C.

Re: Short Narrative Report, Real Estate Appraisal
Hedeman Rd; PL 1190, DL 2711 , Kelowna, BC
Canada

File Name: C1305018

To whom it may concern:

At your request, I have prepared an appraisal for the above referenced property. Please reference page 13 of this report for important information regarding the scope of research and analysis for this appraisal, including property identification, inspection, highest and best use analysis and valuation methodology.

I certify that I have no present or contemplated future interest in the property beyond this estimate of value. Your attention is directed to the Limiting Conditions and Assumptions section of this report (page 12). Acceptance of this report constitutes an agreement with these conditions and assumptions. In particular, I note the following:

Extraordinary Assumptions:

- Pursuant to our instructions, the estimated market value reported herein reflects the total value of the subject property, as if unaffected by any and all registered encumbrances other than a first mortgage financing.

This is Exhibit " C " referred to in the
 affidavit of JAR MACKOFF
 sworn before me at WEST KELOWNA
 in the Province of British Columbia
 this 20 day of May A.D. 2013

A Commissioner for taking Affidavits
 within British Columbia

May 23, 2013
Page 2

Based on the appraisal described in the accompanying report, subject to the Limiting Conditions and Assumptions, Extraordinary Assumptions and Hypothetical Conditions (if any), I have made the following value conclusion(s):

Current As Is Market Value:

The "As Is" market value of the Fee Simple estate of the property, as of May 23, 2013, is

NINE MILLION EIGHT HUNDRED TWENTY FIVE THOUSAND DOLLARS, \$9,825,000

The market exposure time¹ preceding May 23, 2013 would have been 2 years and the estimated marketing period² as of May 23, 2013 is 2 years.

Supporting data upon which this conclusion is based are contained in the accompanying report plus a residential form appraisal report complete under separate cover, both subject to the **Assumptions and Limiting Conditions** within the body of their respective reports. This appraisal report is prepared exclusively for Melvin Haber, Dr. Steven Kirzner Inc., Robert Sauer and Craig Sheridan, tenants in common, and Mackoff Management Services(2012) Inc. for mortgage lending purposes. We are not aware of any third parties that are likely to see or rely on the report: liability in this respect or for any other user is expressly denied.

Respectfully submitted,
R & C Appraisers



Rod Dubois, AACI, P.App. DULE
British Columbia-901210

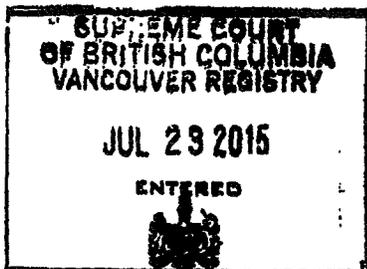
¹ Exposure Time: see definition on page 9.
² Marketing Time: see definition on page 9.

Name and address of person whose goods and chattels are to be seized: Mark Consiglio

Amount remaining due and payable on judgment as at June 4, 2017:	\$	292,539.89
Amount of costs remaining due and payable:	\$	to be assessed
Amount of interest on judgment and costs remaining due and payable as at June 4, 2017:	\$	292,539.89 plus costs to be assessed
Costs of party entitled to execution:	\$	185
Sheriff's costs <i>[to be filled in by Sheriff]</i> :	\$	
Total <i>[to be filled in by Sheriff]</i> :	\$	

Identities of persons entitled to payment of judgment:

Robert Sauer
Melvin Haber
Joel Sheldon Mackoff
Mia Gita Mackoff



No. VLC-S-H-150102
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

ROBERT SAUER, MELVIN HABER, JOEL SHELDON MACKOFF, AND MIA GITA MACKOFF

PETITIONERS

AND

0722955 B.C. LTD., 0768723 B.C. LTD., 0877099 B.C. LTD., MARK CONSIGLIO, MACBETH MORTGAGE INVESTMENT CORP., DR. STEVEN L. KIRZNER INC., CRAIG SHERIDAN, AND MACKOFF MANAGEMENT SERVICES (2012) INC.

RESPONDENTS

**ORDER MADE AFTER APPLICATION
(ORDER NISI AND ORDER FOR CONDUCT OF SALE)**

BEFORE THE HONOURABLE
MR. JUSTICE THOMPSON

)
June 11, 2015
)

ON THE APPLICATION of the petitioners, Robert Sauer, Melvin Haber, Joel Sheldon Mackoff, and Mia Gita Mackoff (collectively, the "Petitioners"), for an Order Nisi and Order for Conduct of Sale, and on the application of MacBeth Mortgage Investment Corp. (the "Second Mortgagee") for an Order for Conduct of Sale, and on application of the respondents, Robert Sauer, Melvin Haber, Dr. Steven L. Kirzner Inc., Craig Sheridan, and Mackoff Management Services (2012) Inc. (collectively, the "Third Mortgagees") for an Order for Conduct of Sale, all coming on for hearing at 800 Smiths Street, Vancouver, British Columbia on June 10 - 11, 2015, and on hearing William C. Kaplan, Q.C. and Peter Bychawski, counsel for the Petitioners and the Third Mortgagees, Reinhard Burke and Syed Nizami (articled student), counsel for 0722955 B.C. Ltd., 0768723 B.C. Ltd., 0877099 B.C. Ltd. and Mark Consiglio (together, the "Mortgagor Respondents"), and Brad MacBeth, appearing on behalf of MacBeth Mortgage investment Corp.;

THIS COURT ORDERS AND DECLARES that:

1. The mortgage and assignment of rents (collectively, the "Mortgage") made in writing executed May 2, 2013, between, 0722955 B.C. Ltd., as mortgagor (the "Mortgagor"), 0768723 B.C. Ltd., 0877099 B.C. Ltd. and Mark Consiglio, as covenantors (the "Covenantors"), and the Petitioners, as mortgagees, which Mortgage was registered in the Kamloops Land Title Office on May 3, 2013 under Nos. CA3111308 and CA3111309, is a first financial charge on the following lands and premises:

Parcel Identifier No.: 006-496-598
Lot 1 Section 24 Township 28 Similkameen Division Yale District
Plan 5485 Except Plans 18646, KAP49406, KAP50989, KAP64523,
KAP87908 and KAP90635

(the "Lands")

2. The Mortgagor Respondents have made default under the Mortgage and all monies secured thereby are due and owing to the Petitioners.

3. The amount of money due and owing to the Petitioners under the Mortgage and the amount of money required to redeem the Lands as of June 10, 2015 is the sum of \$2,633,557.73 plus interest thereon in accordance with the terms of the Mortgage, being a present daily rate of \$1,005.85, to accrue until the Lands are redeemed or sold, whether or not redemption or sale occurs before or after the last date set for redemption herein, plus the Petitioners' costs of this proceeding calculated on Scale C of Appendix B to the *Supreme Court Civil Rules*, BC Reg 168/2009 (as amended) (the "Amount Required to Redeem").

4. The Mortgagor Respondents, or any of them, may exercise the equitable right of redemption under the Mortgage by paying into Court at 800 Smithe Street, Vancouver, British Columbia, to the credit of this proceeding or to counsel for the Petitioners the Amount Required to Redeem on or before December 11, 2015 (the "Redemption Date").

5. If the Amount Required to Redeem is not paid prior to the Redemption Date pursuant to paragraph 4 of this Order, then the Petitioner shall be at liberty to apply for an Order Absolute of Foreclosure and upon pronouncement of Order Absolute of Foreclosure each of the Mortgagor Respondents, their heirs, executors, administrators, successors and assigns and all persons claiming by, through or under them shall thenceforth stand absolutely debarred and foreclosed of and from all right, title, interest and equity of redemption in or to the Lands and all monies paid under the Mortgage shall become the property of the Petitioners free from any right of the Mortgagor Respondents and that thereupon the Mortgagor Respondents shall immediately deliver to the Petitioners vacant possession of the Lands.

6. The Petitioners shall have judgment against the Mortgagor Respondents, and each of them, jointly and severally, in the sum of \$2,633,557.73 plus interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79 (as amended) and costs of this proceeding calculated on Scale C of Appendix B to the *Supreme Court Civil Rules*, BC Reg 168/2009 (as amended).

7. The Petitioners' judgments against the Mortgagor Respondents shall be stayed pursuant to Rule 13-2(31) of the *Supreme Court Civil Rules*, BC Reg 168/2009 (as amended) until the Redemption Date or further order by this Court.

8. The Petitioners are at liberty to apply for a further summary accounting of amounts owed to the Petitioners for interest or as reimbursement for payments made for protective disbursements relating to taxes, arrears of taxes, insurance premiums or appraisals or for inspecting, repairing or maintaining the Lands and any premises located thereon, or for other expenses or costs which the Petitioners may incur before or after the date of this Order, before a Master in Chambers or by reference to the office of the District Registrar.

9. The Second Mortgagee and the Third Mortgagees are hereby entitled to immediately list the Lands for sale (the "Listing Process"), free and clear of all encumbrances save and except the reservations, provisos, exceptions and conditions contained in the original grant thereof from the Crown, and shall be at liberty to do all things reasonably incidental thereto, including paying

to any real estate agent or firm that may arrange a sale commission of not more than 7% of the first \$100,000.00 of the gross selling price and not more than 2.5% of the balance of the gross selling price, that commission to be paid from the proceeds of the sale, shall have exclusive conduct of the sale of the Lands, as follows:

- (a) The Second Mortgagee shall have exclusive conduct of the Listing Process from the date of this Order until September 11, 2015, or such other period of time as may be agreed to by the Second Mortgagee and the Third Mortgagees or ordered by this Court (the "Second Mortgagee Listing Period");
- (b) The Third Mortgagees shall have exclusive conduct of the Listing Process from September 11, 2015 until the ~~granting of an Order Absolute Foreclosure with respect to the Lands~~ or such other period of time as may be agreed to by the Third Mortgagees and the Petitioners or ordered by this Court (the "Third Mortgagee Listing Period"); and
- (c) any sale of the Lands shall be subject to the approval of this Court.

Redemption Date →

10. Any person or persons in possession of the Lands, including any tenant or tenants, shall immediately and during the currency of this Order permit any duly authorized agent of the Second Mortgagee, during the Second Mortgagee Listing Period, or the Third Mortgagees, during the Third Mortgagees' Listing Period, inspect or appraise the Lands and the interior thereof and show the Lands and the interior thereof to prospective purchasers between the hours of 9:00 a.m. and 7:00 p.m. on any day except holidays, and to post signs on the Lands indicating that the Lands are offered for sale.

11. The Second Mortgagee shall have costs of this proceeding against the Mortgagor Respondents at Scale B of Appendix B to the *Supreme Court Civil Rules*, BC Reg 168/2009 (as amended).

12. The Petitioners' Petition filed in the within proceedings on January 29, 2015 (the "Petition") is hereby amended pursuant to Rule 6-1(8) the *Supreme Court Civil Rules*, BC Reg 168/2009 (as amended) to add the following paragraph 14.1 to the Petition:

14.1 It is manifestly clear that 072, 076, 087 and Consiglio, and each of them, are without a defence to the Petition that deserves to be tried.

13. The Petitioners' application for the appointment of a receiver over 0768723 B.C. Ltd. is dismissed.

14. The balance of the relief sought in the Petition is adjourned *sine die*.

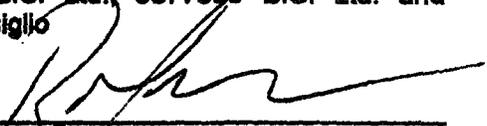
15. The parties have leave to apply to this Court for further orders or directions with respect to this Order, including the conduct of the Listing Process or the approval of any proposed sale of the Land resulting therefrom, on eight business days' notice to each party or such abridged notice period as may be ordered by this Court.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER:



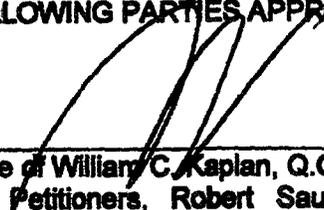
Signature of William C. Kaplan, Q.C., counsel for the Petitioners, Robert Sauer, Melvin Haber, Joel Sheldon Mackoff, and Mia Gita Mackoff, and the Third Mortgagees, Robert Sauer, Melvin Haber, Dr. Steven L. Kirzner Inc., Craig Sheridan, and Mackoff Management Services (2012) Inc.

Signature of Reinhard Burke, counsel for Mortgagor Respondents, 0722955 B.C. Ltd., 0768723 B.C. Ltd., 0877088 B.C. Ltd. and Mark Consiglio

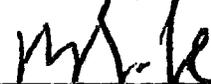


Signature of BRAD MACBETH
On behalf of the Second Mortgagee, MacBeth Mortgage Investment Corp.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER:



Signature of William C. Kaplan, Q.C., counsel
for the Petitioners, Robert Sauer, Melvin
Haber, Joel Sheldon Mackoff, and Mia Gita
Mackoff, and the Third Mortgagees, Robert
Sauer, Melvin Haber, Dr. Steven L. Kirzner
Inc., Craig Sheridan, and Mackoff
Management Services (2012) Inc.



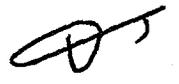
Signature of Reinhard Burke, counsel for
Mortgagor Respondents, 0722955 B.C. Ltd.,
0768723 B.C. Ltd., 0877099 B.C. Ltd. and
Mark Consiglio

Signature of
On behalf of the Second Mortgagee, MacBeth
Mortgage Investment Corp.

BY THE COURT



Registrar



From: North Central Bailiffs Ltd. - Kelowna [mailto:kelowna@northcentralbailiffs.bc.ca]
Sent: June 27, 2017 11:22 AM
To: Sandra Riley
Subject: RE: MMS002CON171-: RE: Undertaking - Writ of Seizure and Sale

We have received a copy of the original Writ and can provide the following information regarding execution.

With the searches you provided we located the 2006 Pontiac located in a driveway at 490 Trumpeter Rd in Kelowna, this address was formerly lived in by Consiglio and his family before they moved to the mainland in 2014??

This vehicle is known to me as it has been parked at this location for at least 3 years and I have never seen it moved, it is locked, not known if it ever runs. There is a lien on this vehicle to a numbered company, 0768723 B.C. Ltd. which is also one of your Debtors on the Writ. I don't know if seizing and subsequent sale would recover costs because I can't determine its value. Don't think there is recovery here.

We see no other assets of Consiglio in Kelowna, and can return the Writ as Nulla Bona

Dan Roberts
North Central Bailiffs, Kelowna

This is Exhibit " E " referred to in the affidavit of *Rosemary* sworn before me at *Kelowna* in the Province of British Columbia this *20* day of *August* A.D. 20*17*
A Commissioner for taking Affidavits within British Columbia

68

11.20.29

VEHICLE REGISTRATION AND LICENCING INQUIRY

17JUN2017

===== LICENCING INFORMATION =====

LICENCE NUMBER
EFFECTIVE DATE

REGISTRATION NUMBER 03412047
EXPIRY DATE

TERMINATION DATE

===== CURRENT VEHICLE DESCRIPTION =====

VEHICLE IDENTIFICATION NUMBER 1G2MB33BX6Y103760
MODEL YEAR 2006 MAKE PONTIAC MODEL SOLST STATUS
COLOR GREY BODY STYLE 2 DOOR CONVERTIBLE FUEL GASOLINE
NET WEIGHT(KG) 1285 GROSS WEIGHT(KG) DISPLACEMENT

===== REGISTERED OWNER =====

CONSIGLIO MARK ANTHONY
STEPHEN
490 TRUMPETER RD
KELOWNA BC
V1W5J4



CONSOLIDATED

active bailiff

69

Our File No.: 40235/9606
Your Ref. No: MMS002/CON171

August 17th, 2017

Kornfeld LLP
Barristers & Solicitors
1100 One Bentall Centre
505 Burrard Street Box 11
Vancouver BC V7X 1M5

Attn: Douglas Hyndman & Sandra Riley

RE: Robert Sauer et al vs. Mark Consiglio et al
Writ of Seizure and Sale – Vancouver Court File No. VLC-S-H-150102

On July 28/17 Court Bailiff attended Unit 105 1751 Savage Road in Richmond and spoke with a female Receptionist who stated that the company doing business at this address is Levico Lighting and the debtor Mark Consiglio collects his email there since he is friend of her boss. A corporate search was conducted for Levico Lighting and the director is not the debtor. Aug 2/17 Issuing was updated. Aug 3/17 Court Bailiff attended 2743 Ottawa Avenue in West Vancouver which it is a very private house with a large fence. The Court Bailiff knocked on the door, but nobody answered; therefore he posted on the door a copy of the Writ of Seizure and Sale, certificate along with our costing sheet. Issuing was informed but the Bailiff was advised to wait. After various phone calls between Issuing and the Bailiff on August 15/17, Bailiff stated that the file is been closed since there are no assets. We have closed our file and returned the original Writ to the Court Registry endorsed "Returned Unable to Locate Exigible Assets". Attached for your records is our Client Ledger outlining the financial activity to execute this Order. As your initial deposit did not cover all our expenses, we also enclose our invoice #43558 for payment and thank you for the opportunity to be of service.

Best regards,

**CONSOLIDATED CIVIL ENFORCEMENT BC INC.
COURT BAILIFF DIVISION**

J. Milton, General Manager
Senior Court Bailiff

JM:rp
encl.

This is Exhibit "6" referred to in the
affidavit of John Miskewich
sworn before me at Vancouver
in the Province of British Columbia
this 20 day of August, A.D. 2017
.....
A Commissioner for taking Affidavits
within British Columbia



HOME STORY ADVENTURE SHOPS AGRIPARK GALLERY SPECIAL EVENTS CONCERT SERIES HOURS & RATES CONTACT

His vision, its journey, Our Story

In 2003, the Okanagan Mountain Park Fire devastated the entire south slopes, turning its once beautiful lush green landscape to black. Our family purchased the property following the fire with a vision to revitalize it and turn it into an amenity-based park for our youth, residents and tourists alike.

Mark's vision has evolved and grown into something so much more than what he had first imagined. So far we have constructed a spectacular cliff walk across a 100 foot waterfall, a chairlift and four bridges over vineyards, one of which we are thrilled to say is the longest in North America. The magnificent views, cliffs and rock faces that the fire has revealed is what make The Kelowna Mountain Bridges & Vineyards so breathtaking and unique.

It's a hidden gem, and once you're here you'll never want to leave. Over the years the park will grow, adding more to its ever-expanding list of Agritourism activities. It has taken us years to get to this point and we are thrilled to finally be able to share this wonderful vision and location with you.

We hope you have a wonderful time and visit us again soon!

Mark & Nicola Consiglio

Owners and Operators of The Kelowna Mountain Bridges & Vineyards

"Cherish your visions and your dreams as they are the children of your soul; the blueprints of your ultimate achievements" —Napoleon Hill (1883-1970)

This is Exhibit "H" referred to in the affidavit of Joel Madoff sworn before me at Vancouver in the Province of British Columbia this 20th day of August A.D. 2017. A Commissioner for taking Affidavits within British Columbia



Walk the longest suspension bridge in North America! Hours & Rates

July & August Saturdays & Sundays only 10am - 5pm

RATES FOR 2015

Table with 2 columns: Category (Child, Student, Adult, Senior, Wheelchair) and Price (\$1 per year, \$19.95, \$24.95, \$19.95, FREE). Includes descriptive text for child rates.

Terms and Conditions:

- 1. Tickets are non-refundable. No Exceptions.
2. Your ticket is valid for the entire season! And can be used on any day the park is open during the season it was purchased.
3. In case of lost or stolen seasons pass card, it is highly recommended you store your ticket in a safe place.
4. Wheelchairs and Strollers are not permitted on the Bridges or Cliff Walk.
5. Dogs MUST be on leashes at ALL TIMES.
6. Due to the uneven outdoor terrain at The Kelowna Mountain Bridges & Vineyards, we ask that you please wear appropriate clothing and shoes.
7. Take care and use caution at all times!!!!
8. Children under 12 years MUST be accompanied by an adult.
9. HOLD small children by the hand and carry babies below railing height.
10. No alcoholic beverages allowed in the park

Your ticket is a DAY PASS. However, you can upgrade your day pass to a SEASONS PASS for free!
Upgrades must be done on the day you purchase your ticket.
You must have photo Identification.
You will not be able to re enter the park on another day with only a ticket.
Seasons passes are not valid for concerts and special events.
*Rates are subject to change each year, and are subject to GST in Canadian dollars. Wheelchair complimentary.



Collectibles and Delectables

CONTACT

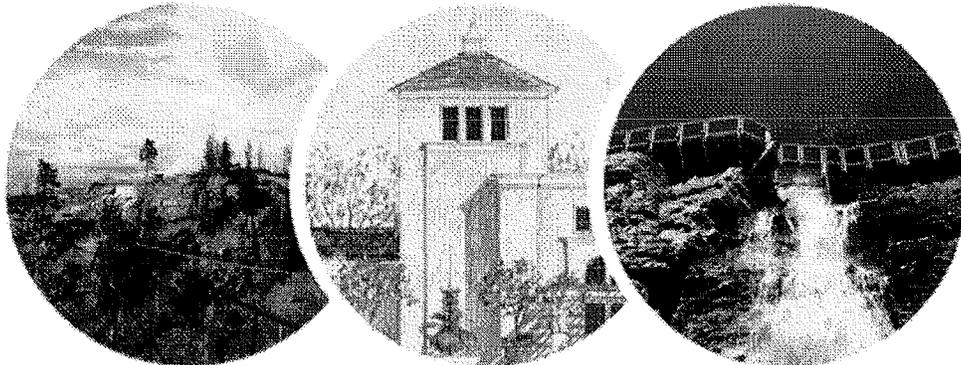
Shops

Kelowna Mountain Bridges & Vineyards visitors can enjoy a local artisan shopping experience inspired by nature, located in the East Gallery Wing of the Welcome Centre building. All methods of payment are accepted.

The Delectables Snack shop features Muffins, Baked Goods, Cold drinks and snacks. We look forward to opening a 100 seat restaurant in the coming years. Until then we welcome you to bring your own family picnic to be enjoyed at one of the many scenic spots in the park. We ask that you take care and help keep our beautiful park clean by cleaning up after your picnic. A friendly reminder that we do not allow alcohol at Kelowna Mountain. Thank You for your understanding at this time.

The Kelowna Mountain Bridges and Vineyard also features Sandrine's fine French chocolates, cookies and sweets. This locally made delectable can be purchased in the Delectables Snack shop as well as the Collectibles gift shop. Local Caterer Marmalade Cat Café has prepared a signature Hiking Cookie big enough for sharing!

Kelowna Mountain Bridges and Vineyards is pleased to share these fine local Chefs with our guests to compliment your overall experience. Enjoy!



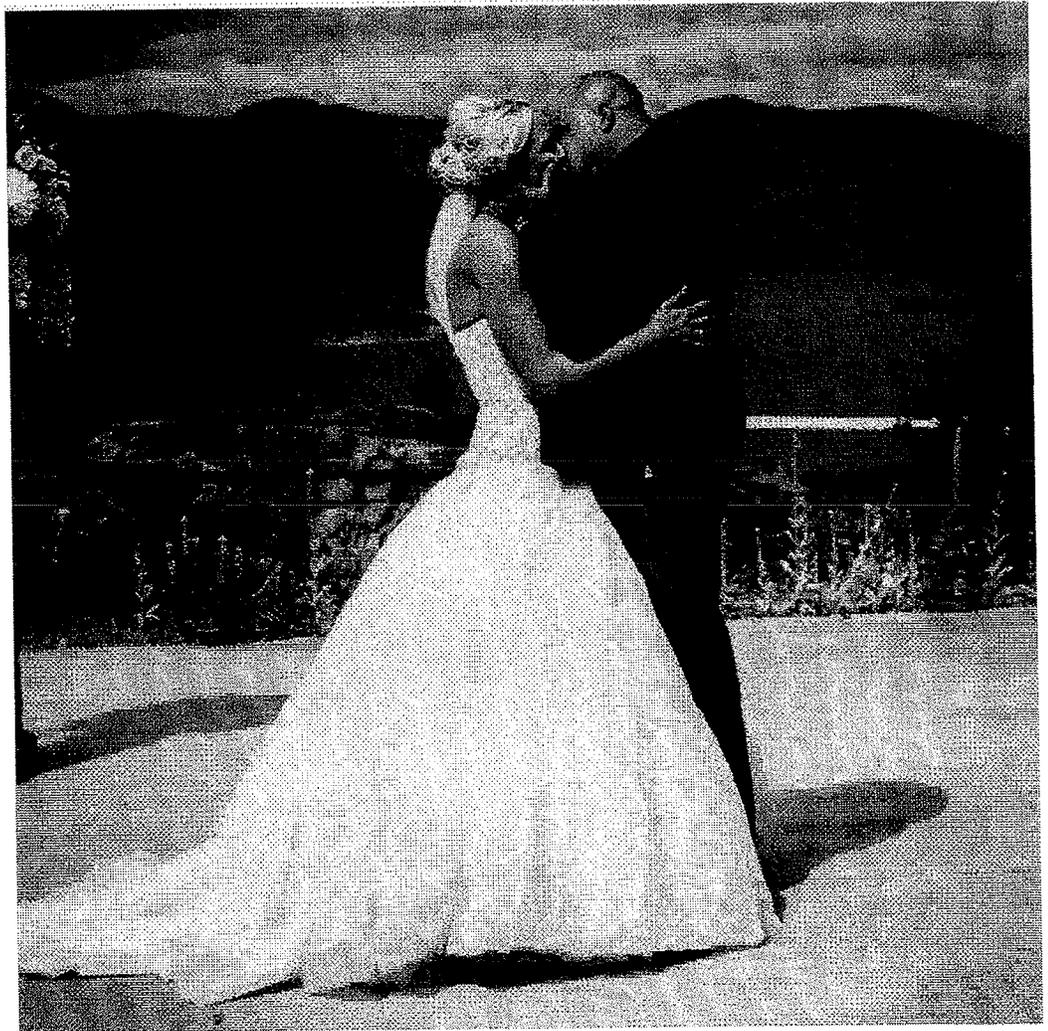
All methods of payment are accepted. An ATM is located in the Welcome Centre building for your convenience.



thack_attak

Kelowna Mountain Suspensio... >

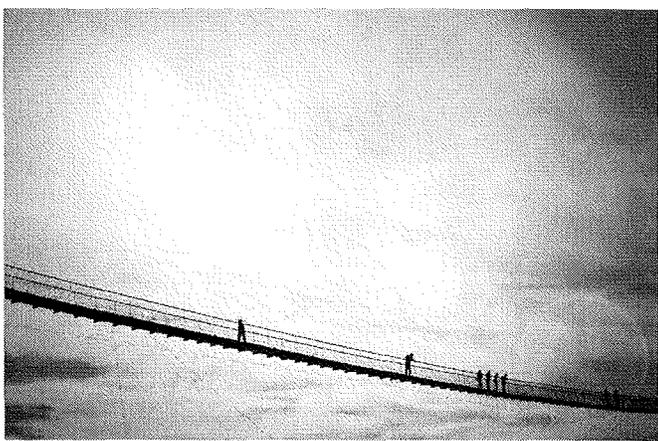
Follow



This is Exhibit "I" referred to in the affidavit of Joel Mahaff sworn before me at Vancouver in the Province of British Columbia this 20th day of August A.D. 2017

.....
A Commissioner for taking Affidavits within British Columbia


**KELOWNA
MOUNTAIN**
 BRIDGES & VINEYARDS



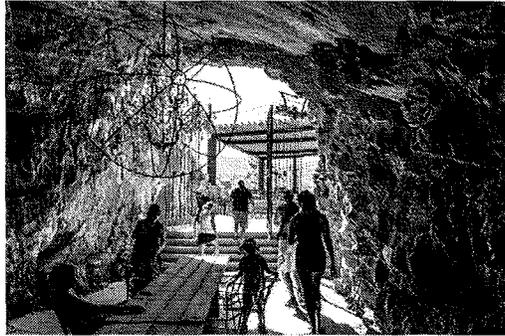
Kelowna Mountain in its unique Natural Settings is your Ultimate Wedding Day Canvas. Located in Kelowna's Upper Mission neighborhood and embracing the most magnificent Views the Okanagan has to offer. Kelowna Mountain was recently voted The Okanagan's #1 Tourist attraction by Okanagan life Magazine. The 6000 square foot Welcome centre with Tiered Amphitheatre seating was built for Concerts and The Ultimate Wedding Venue in mind. Over 1000 terraced white tables and chairs grace the patio that embraces the most breathtaking view.

Book your Tour with us today and see all that Kelowna Mountain has to offer

Kelownamountain.com

250-300-3456

kelownamountainbridges@gmail.com



Kelowna Mountain Venue Facts

- ❖ *Kelowna Mountain allows you to do your own Catering*
- ❖ *Kelowna Mountain allows you to do your own bar however a liquor licence must be provided one month prior to your event.*
- ❖ *Kelowna Mountain provides all of the Tables and Chairs.*
- ❖ *Kelowna Mountain charges on a per person Park admission basis and reserves you the areas of your choosing.*
- ❖ *Kelowna Mountain Interior Seating Capacity is 100 and Exterior Seating Capacity is 1000*
- ❖ *Several stunning scenic park locations at Kelowna Mountain make it possible for you to hold both your ceremony and reception.*
- ❖ *Kelowna Mountain Park Hours are 10-5 Daily therefore the park will be closed to the Public during your reception time.*



Kelowna Mountain Amphitheatre



The Kelowna Mountain Amphitheatre is the ultimate reception or ceremony location. This tiered seating area is always set and ready to use.

Exterior tiered Seating for up to 500 could be used for either the Ceremony and or Reception. The Saddle Tent seen in the Picture is not included in our pricing.

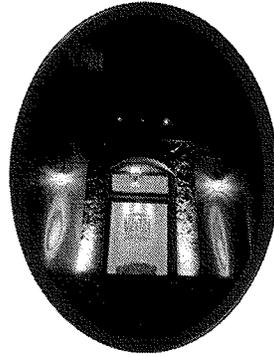


Kelowna Mountain Welcome Centre



*Grand Guest Entrance Foyer with interior seating capacity for 100 Guests.
When Booking the Venue, the Welcome Centre, Amphitheatre and Patio is
included giving you many seating arrangement options.*

Recent Wedding Reviews



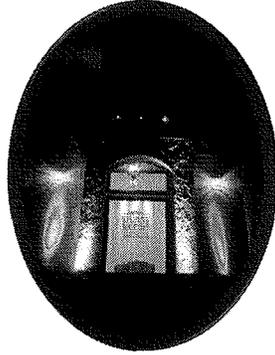
Pav and Avtar Basran

Kelowna Mountain Wedding

500 Guests

Kelowna Mountain offers spectacular views that are absolutely breathtaking--like nothing you could find anywhere else in the valley! The owners Mark and Nicola Consiglio are genuine, kind-hearted individuals--my husband and I are forever thankful for having them host our wedding up at Kelowna Mountain!:) Our wedding was of 450 people from all over Canada and overseas, and not a single person had a negative review on it--our guests were utterly speechless by the venue. The owners had a huge part to play with ensuring everything went as planned--they even helped us make a phenomenal grand entrance walking across one of the suspension Bridges!! I definitely recommend Kelowna Mountain without no hesitation, and commend the owners for putting together such a fabulous venue

Recent Wedding Reviews



Novakowski Wedding

75 Guests

"The Kelowna Mountain staff and owners went out of their way to make our dream wedding come true. The event was beautifully decorated and well thought out. The views from any point at Kelowna Mountain are enough to take your breath away, therefore the photos are absolutely stunning. We are forever grateful for our experience at Kelowna Mountain and will hold the memories close to our hearts forever."



In order to establish a price for you we will need you to provide us with the following information.

Date, Year and Time of your Wedding?

An approximate number of Guests you expect?

Will you be needing Kelowna Mountain as a Ceremony and or Reception Venue?

Venue Prices are Available upon request. Please do not hesitate to contact us by phone or email if you have any further questions or would like a tour of the venue.

We have included a Sample Wedding quote to give you an Idea of the cost

SAMPLE ONLY

Curtis Wedding

150 Guests

May 15th 2015

Ceremony at the Sundial at 3 pm

Pictures on site 4-5:30

Cocktails for guests in the Cave 4-5:30

Reception begins 6pm at the Welcome Centre/ Amphitheatre

Cost: \$30.00 per person (plus applicable taxes)

Please note that prices vary with the number of guests, time of year and length of time of the event.

Kelowna Mountain retweeted



Raihan Ahmed

@RaygunArts

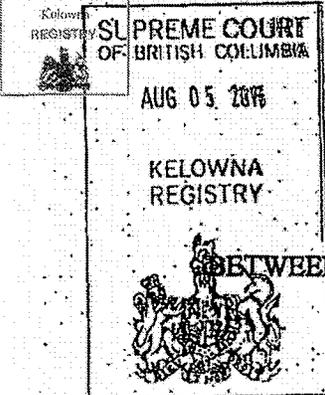
+ Follow

Gorgeous wedding at @kelownamountain
#kelowna #BritishColumbia #canada #wedding
#panorama



7/7/15, 10:56 PM

SUPREME COURT OF BRITISH COLUMBIA
SEAL
05-Aug-16



No. S-H-102974
Kelowna Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**648657 B.C. Ltd,
Interior Savings Credit Union, In Trust for SDRSP Plan 37000853
and SDRSP Plan 37000514 and
The Canada Trust Company, in Trust for SDRSP Plan 6K-6628S**

PLAINTIFFS

AND

**Kelowna Mountain Development Services Ltd.
Kelowna Mountain Limited Partnership
0768723 B.C. Ltd.
RBD Financial Inc.
Pamela Chung also known as Pamela Grice
Art Trojan**

DEFENDANTS

**ORDER MADE AFTER APPLICATION
- ORDER NISI WITH CONDUCT OF SALE**

**BEFORE THE HONOURABLE JUSTICE G.P.
WEATHERILL**

08/JUN/2016

THE APPLICATION of the plaintiffs, 648657 B.C. Ltd., Interior Savings Credit Union, In Trust for SDRSP Plan 37000853 and SDRSP Plan 37000514, and The Canada Trust Company, in Trust for SDRSP Plan 6K-6628S, coming on for hearing at 1355 Water Street, Kelowna, BC, on the 7th and 8th days of June, 2016, and on hearing Roy H. Sommerey lawyer for the petitioners, and Reinhard Burke lawyer for the defendants Kelowna Mountain Development Services Ltd., Kelowna Mountain Limited Partnership, and 0768723 B.C. Ltd.; and no one appearing on behalf of the defendants RBD Financial Inc., Pamela Chung also known as Pamela Grice, and Art Trojan although duly served with notice of the application, and on reading the material filed;

THIS COURT DECLARES:

This is Exhibit "J" referred to in the affidavit of *[Signature]* sworn before me at *[Signature]* in the Province of British Columbia this *20* day of *Aug* A.D. 20 *17*
.....
A Commissioner for taking Affidavits within British Columbia

1. The mortgage dated January 30, 2009, made between the defendant 07686723 B.C. Ltd. as mortgagor, and the plaintiffs, Interior Savings Credit Union in Trust (see KR80639 and KN31123), The Canada Trust Company (see KX1754652) and 648657 B.C. Ltd, as mortgagees (collectively referred to herein as "the plaintiffs"), which mortgage was registered in the Kamloops Land Title Office on March 25, 2009 under number CA1067274 (the "Mortgage"), is a mortgage which is a first mortgage charge on the following lands and premises:

Parcel Identifier: 015-122-085
 The Northeast ¼ of Section 13
 Township 28
 Similkameen Division Yale District
 Except Plan KAP49085

(the "Lands")

which ranks in priority to the interest of the defendants, Kelowna Mountain Development Services Ltd. (as registered Owner of the Lands and certain easements registered against them), Kelowna Mountain Limited Partnership (the beneficial owner of the Lands), 0768723 B.C. Ltd. (as original covenantor of the Mortgage and the owner of an Easement registered against the Lands), and RBD Financial Inc., Pamela Chung and Art Trojan (as 2nd Mortgage Holders) and their respective heirs, executors, administrators, successors and assigns and all persons claiming by, through or under them.

2. By the Mortgage the defendant 0768623 B.C. Ltd. mortgaged the Lands to the plaintiffs as to:

- a. An undivided 102,520/5,200,000 interest to Interior Savings Credit Union, in Trust, (see KR80639) for Gay Sheila Schmidt through SDRSP #37000853 who resides in Kelowna, B.C.;
- b. An undivided 54,375/5,200,000 interest to Interior Savings Credit Union, in Trust (See KN31123) for Richard Bruce Dowding through SDRSP #37000514 who resides in Kelowna, B.C.;

- c. An undivided 56,000/5,200,000 interest to The Canada Trust Company, in Trust (see KX175642) for Hugh Gordon through SDRSP #6K-66288, who resides in West Kelowna, B.C.; and
- d. An undivided 3,908,821/5,200,000 interest to 648657 B.C. Ltd.,
(totalling 4,121,716/5,200,000 interest which comprises the "Plaintiffs' Mortgage Segment")

and to the then Co-Mortgagees of the Mortgage as to:

- e. An undivided 233,000/5,200,000 interest to B2B Trust (see BP214508);
- f. An undivided 143,954/5,200,000 interest to B2B Trust (see EP81651);
- g. An undivided 87,375/5,200,000 interest to B2B Trust in trust for (see KX187337);
- h. An undivided 44,270/5,200,000 interest to B2B Trust (see KX187335);
- i. An undivided 39,610/5,200,000 interest to B2B Trust (see KX187336);
- j. An undivided 460,175/5,200,000 interest to B2B Trust (see BP264770);
- k. An undivided 69,900/5,200,000 interest to B2B Trust (see KX187334)

(totalling 1,078,284/5,200,000 interest which was subsequently purchased by and assigned to the defendant, 0768723 B.C. Ltd. and is hereinafter called the "0768723 Mortgage Segment").

- 3. The defendant 0768723 B.C. Ltd., has made default under the Mortgage, and the full amount due and owing under the Plaintiff's Mortgage Segment is now due and payable.
- 4. There is no amount due and payable under the 0768723 Mortgage Segment to the defendant, 0768723 B.C. Ltd.

THIS COURT ORDERS THAT:

- 5. The amount of money due and payable under the Mortgage and the amount required to redeem the Lands and the Mortgage as at June 8, 2016 is the sum of \$4,438,607.13 together with interest thereafter at 9% per annum, calculated annually not in advance, (currently \$1,026.85 per day from and including June 9, 2016 to September 15, 2016 when compounding occurs), and compounding on the 15th day of September of each year, to accrue until the Lands are redeemed or sold, whether or not redemption or sale occurs before or after the last date set for redemption herein, together with the assessed costs of the plaintiffs at the date of redemption or of payment pursuant to a sale.
- 6. The last date for redemption of the Mortgage is December 8, 2016.
- 7. Upon the defendants or any, of them paying into Court, or to the lawyers for the plaintiffs, prior to the pronouncement of Order Absolute or an Order approving a sale of the Lands the amount required to redeem the plaintiffs' interest in the Mortgage, then the plaintiffs shall convey their respective interests in the Mortgage and the Lands to the defendant who made payment.
- 8. If the Mortgage and the Lands are not redeemed by December 8, 2016, the plaintiffs shall be at liberty to exercise their rights under the Order for Sale hereinafter ordered, or alternatively apply to this Court for an Order Absolute of Foreclosure. On pronouncement of Order Absolute then the defendants and the heirs, executors, administrators, successors and assigns of the defendants and all persons claiming by, through or under them shall be foreclosed of all right, title interest, estate and equity of redemption in and to the Lands, and shall immediately deliver to the plaintiffs vacant possession of the Lands.
- 9. The plaintiffs are awarded costs of this action assessed in accordance with Appendix B of the Rules of Court, Scale C, except for the costs of the application heard by Madam Justice Beames on September 14, 2015.
- 10. The defendant 0768723 B.C. Ltd. pay to the petitioners the sum of \$4,438,607.13 as at June 8, 2016, together with post-judgment interest thereafter set by this Court pursuant to the

Court Order Interest Act, R.S.B.C., 1996, Chapter 79 at 9% per annum simple interest, together with the plaintiffs' assessed costs of this action.

- 11. The plaintiffs' claims for judgment against the defendants Kelowna Mountain Development Services Ltd., and Kelowna Mountain Limited Partnership, are adjourned generally.
- 12. There shall be a stay of execution of the plaintiff's judgment against the defendant 0768723 B.C. Ltd. until the end of the last day of redemption, with liberty to the plaintiffs to apply during the redemption period to lift the stay of execution.
- 13. The plaintiffs are at liberty to apply to the Court after the Order Nisi to add post-Order Nisi protective disbursements (including but not limited to interest, taxes, arrears of taxes, insurance premiums, costs, charges, expenses or otherwise) incurred by the plaintiffs to the amount required to redeem the Plaintiffs' Mortgage Segment, which are not included in the Order Nisi, and to the Judgment amount obtained in the Order Nisi.

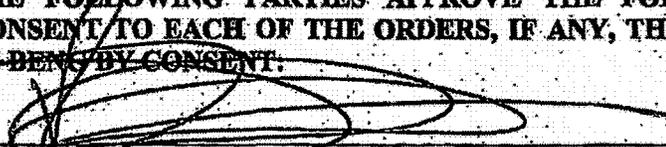
Conduct of Sale:

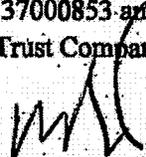
- 14. Commencing on December 9, 2016, the Lands shall be offered for sale by private sale, free and clear of all encumbrances of the parties, together with any other charges, liens, encumbrances, caveats, or certificates of pending litigation registered against the Lands subsequent to the plaintiffs' certificate of pending litigation, but subject to the reservations, provisos, exceptions, and conditions expressed in the original grant/s/ thereof from the Crown.
- 15. Commencing on December 9, 2016, the plaintiffs shall have exclusive conduct of the sale and may list the Lands for sale, until further order of the court, and may pay to any real estate licensee or firm that arranges a sale of the Lands a commission of up to a maximum of 3% of the gross selling price to be paid from the proceeds of the gross selling price.
- 16. A sale of the Lands is subject to the approval of the court unless otherwise agreed to in writing by all parties.
- 17. Commencing December 9, 2016, the defendants, or any person or persons on behalf of the defendants, including any person or persons in possession of the Lands, do forthwith and

until further order of the court, permit any duly authorized agent on behalf of the plaintiffs to inspect, appraise, or show to any prospective purchaser the Lands, including the interior of the Lands between 9:00 a.m. and 5:00 p.m. Monday through Sunday inclusive, but excluding statutory holidays, and to post signs on the Lands stating that the Lands are offered for sale.

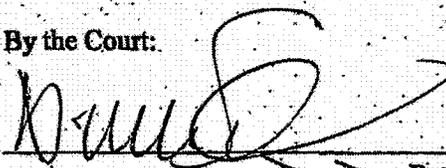
18. The parties may apply for such further direction as may be necessary to carry out the terms of this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:


Signature of Roy H. Sommerey, lawyer for the Plaintiffs,
648657 B.C. Ltd., Interior Savings Credit Union, In Trust for
SDRSP Plan 37000853 and SDRSP Plan 37000514, and
The Canada Trust Company, in Trust for SDRSP Plan 6K-6628S


Signature of Reinhard Burke, lawyer for the Defendants,
Kelowna Mountain Development Services Ltd.,
Kelowna Mountain Limited Partnership, and
0768723 B.C. Ltd.

By the Court:


DID. Registrar



ANNEXURE A

FORM B_V14

KAMLOOPS LAND TITLE OFFICE

Mar-25-2009 11:47:42.001

CA1067274

LAND TITLE ACT
FORM B (Section 225)

MORTGAGE - PART 1 Province of British Columbia

PAGE 1 OF 6 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

Digitally signed by Leighton D. Meyer
DN: cn=CA, o=www.landtitle.com.bc.ca,
c=CA, email=leighton.d.meyer@h131fh.com
Leighton D. Meyer
H131FH
Date: 2009.03.25 11:42:01 -0700

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

Doak Shirreff LLP
Barristers and Solicitors
200 - 537 Leon Avenue
Kelowna
Document Fees: \$64.85

Phone: (250)763-4323
File Ref: 195-115509/ms
LTO Client No. 10565

BC V1Y 2A9

Deduct LTO Fees? YES

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID] [legal description]

SEE SCHEDULE

STC? YES

3. BORROWER(S) (MORTGAGOR(S)): (including postal address(es) and postal code(s))

0768723 B.C. LTD.

5460 LAKESHORE ROAD
KELOWNA

BRITISH COLUMBIA
CANADA

Incorporation No
BC0768723

V1W 4J5

4. LENDER(S) (MORTGAGEE(S)): (including occupation(s), postal address(es) and postal code(s))

SEE SCHEDULE

5. PAYMENT PROVISIONS:

(a) Principal Amount: \$5,200,000.00	(b) Interest Rate: 18.00% per annum	(c) Interest Adjustment Date:	Y 06	M 09	D 15
(d) Interest Calculation Period: Annually	(e) Payment Dates: NA	(f) First Payment Date: N/A			
(g) Amount of each periodic payment: N/A	(h) Interest Act (Canada) Statement: The equivalent rate of interest calculated half yearly not in advance is N/A % per annum.	(i) Last Payment Date: N/A			
(j) Assignment of Rents which the applicant wants registered? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> If YES, page and paragraph number:	(k) Place of payment: Postal Address in Item 4	(l) Balance Due Date:	09	07	15

MORTGAGE - PART 1

PAGE 2 of 6 pages

6. MORTGAGE contains floating charge on land ?
YES NO

7. MORTGAGE secures a current or running account ?
YES NO

8. INTEREST MORTGAGED:

Freehold
Other (specify)

9. MORTGAGE TERMS:

Part 2 of this mortgage consists of (select one only):

- (a) Prescribed Standard Mortgage Terms
- (b) Filled Standard Mortgage Terms
- (c) Express Mortgage Terms

D F Number:
(annexed to this mortgage as Part 2)

A selection of (a) or (b) includes any additional or modified terms referred to in item 10 or in a schedule annexed to this mortgage.

10. ADDITIONAL OR MODIFIED TERMS:

SEE SCHEDULE

11. PRIOR ENCUMBRANCES PERMITTED BY LENDER:

SEE SCHEDULE

12. EXECUTION(S): This mortgage charges the Borrower's interest in the land mortgaged as security for payment of all money due and performance of all obligations in accordance with the mortgage terms referred to in item 9 and the Borrower(s) and every other signatory agree(s) to be bound by, and acknowledge(s) receipt of a true copy of, those terms.

Officer Signature(s)

Timothy T. Brown
Barrister & Solicitor
#200 - 1465 Ellis Street
Kelowna, BC V1Y 2A3

Execution Date

Y	M	D
09	01	30

Borrower(s) Signature(s)

0766723 B.C. Ltd. by its authorized signatory:

Name: Mark Consiglio

OFFICER CERTIFICATION:

My signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

90

FORM E_V14

LAND TITLE ACT
FORM E

SCHEDULE

PAGE 3 OF 6 PAGES

1. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND

STC for each PID listed below? YES

[PID] [LEGAL DESCRIPTION - must fit in a single text line]

015-122-085 THE NORTHEAST 1/4 OF SEC 13 TP 28 SDYD EXCEPT PLAN KAP49085

3

America D

OFFERING MEMORANDUM

April 29, 2011

KELOWNA MOUNTAIN LIMITED PARTNERSHIP
(the "Partnership")
Up to \$39,095,750 (850 Units)

The Issuer

200-1465 Ellis Street, Kelowna, BC, V1Y 2A3

Telephone: 250-763-7645 / Fax: 250-762-9860

Currently listed or quoted:

These securities do not trade on any exchange or market

Reporting issue:

No

SEDAR filer:

No

The Offering

Class A Units ("Class A Units")

Securities offered:

First Series: \$39,995 per Class A Unit (510 Units)

Price per security:

Second Series: \$49,995 per Class A Unit (170 Units)

Minimum Offering:

Third Series: \$59,995 per Class A Unit (170 Units)

Maximum Offering:

510 Class A Units (\$20,397,450)

Minimum Subscription Amount:

850 Class A Units (\$39,095,750)

The minimum initial subscription amount is: 1 Class A Unit (\$39,995 First Series), 1 Class A Unit (\$49,995 Second Series) and 1 Class A Unit (\$59,995 Third Series) and no minimum subscription amount for all subsequent purchases

Payment terms:

Payment in full on closing by certified cheque or bank draft

Proposed closing date(s):

- First Series: In trust window commencing April 29, 2011 and ending on May 14, 2011 for the First Series of Class A Units. The closing in trust window is to facilitate the administration of the issuance of the Class A Units.
- Second Series: August 31, 2011
- Third Series: December 31, 2011

Income Tax consequences:

There are important tax consequences to these securities. See "Certain Canadian Federal Income Tax Consequences"

The Partnership is a limited partnership formed under the laws of the Province of British Columbia. The affairs of the Partnership are governed by a limited partnership agreement dated January 25, 2011, and any amendments thereto (the "Partnership Agreement") and subject to certain restrictions contained therein. The General Partner, Kelowna Mountain Development Services Ltd. (the "General Partner"), has exclusive authority to administer, manage, control and generally carry on the business of the Partnership. The Class A Units are being offered by the Partnership to provide capital to enable the Partnership to acquire approximately 480 acres of raw land located in Kelowna, British Columbia (the "Property") for eventual sale, development, subdivision or other disposition with a view to making a profit. See "The Property".

Resale restrictions

You will be restricted from selling your securities for an indefinite period. See "Resale Restrictions".

Purchaser's rights

You have 2 business days to cancel your agreement to purchase these securities. If there is a misrepresentation in this Offering Memorandum, you have the right to either sue for damages or to cancel the agreement. See "Purchaser's Rights".

Notwithstanding the prior statement, if you are resident in Quebec, Northwest Territories, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador or Nunavut and have been provided with a copy of this Offering Memorandum, it has been provided to you for information purposes only and not in connection with or to facilitate a sale of Class A Units to you. As a result, you do not and will not have statutory or contractual rights of action against any person in the event of a misrepresentation in this Offering Memorandum.

No securities regulatory authority has assessed the merits of these securities or reviewed this Offering Memorandum. Any representation to the contrary is an offence. This is a risky investment. See "Risk Factors".

This is Exhibit "K" referred to in the affidavit of *Debra MacKinnon* sworn before me at *Vancouver* in the Province of British Columbia this *20* day of *Aug* A.D. 20*11*

A Commissioner for taking Affidavits within British Columbia

RECEIVED
2011 MAY 24 AM 11:42
BRITISH COLUMBIA
SECURITIES
COMMISSION

42

-2-

Prospective investors should thoroughly review this Offering Memorandum and are advised to consult with their own legal and tax advisors concerning this investment.

This Offering Memorandum does not constitute, and may not be used for or in conjunction with, an offer or solicitation of the Class A Units by anyone in any jurisdiction or in any circumstances in which such offer or solicitation is not authorized by us or to any person to whom it is unlawful to make such an offer or solicitation and this Offering Memorandum is not, and under no circumstances is to be construed as a public offering or advertisement of these securities. You are directed to inform yourself of and observe all legal requirements and restrictions of your jurisdiction of residence in respect of the acquisition, holding and disposition of the securities offered hereby.

The securities offered hereby will be issued only on the basis of information contained in this Offering Memorandum and provided by the General Partner in writing, and no other information or representation is authorized or may be relied upon as having been authorized by the General Partner and the Partnership. Any subscription for the securities offered hereby made by any person on the basis of statements or representations not contained in this Offering Memorandum or so provided, or inconsistent with the information contained herein or therein, shall be solely at the risk of such person. Neither the delivery of this Offering Memorandum at any time nor any sale to you of any of the securities offered hereby shall, under any circumstances, constitute a representation or create any implication that there has been no change in the business and affairs of the Partnership since the date of the sale to you of the securities offered hereby or that the information contained herein is correct as of any time subsequent to that date.

This Offering Memorandum is highly confidential and has been prepared solely for delivery to and review by selected prospective purchasers of the securities offered hereby. This copy of the Offering Memorandum is personal to you and does not constitute an offer to any other person or to the public generally to subscribe for or otherwise acquire any of the securities offered hereby. Distribution of this Offering Memorandum to any person other than you and those persons, if any, retained to advise you with respect hereto is unauthorized, and any disclosure of any of its contents without the prior written consent of the General Partner is prohibited. By accepting delivery of this Offering Memorandum, you agree to the foregoing and undertake to make no photocopies of or to otherwise reproduce, in whole or in part, this Offering Memorandum or any documents relating hereto and, if you do not purchase any of the securities offered hereby or the Offering is terminated, to return promptly this Offering Memorandum and all such documents to the General Partner, if so requested by the General Partner.

Where used in this Offering Memorandum, the following terms shall have the indicated meanings:

- **Affiliate**, in describing the relationship between two persons, means that:
 - (a) one of them is an affiliate, an associate, or an associate of an affiliate of the other, as those terms are defined in the *Securities Act* (British Columbia),
 - (b) one is a director or senior officer, as defined in the *Business Corporations Act* (British Columbia), of the other or of an affiliate of the other, or
 - (c) one does not deal at arm's length with the other;
- **Affiliated Entity** means an Affiliate of the General Partner;
- **Concept Planning** may include, without limitation, (i) commissioning studies, including, without limitation, planning, engineering, environmental, hydrology, utility, traffic and other related studies; (ii) preparing a master plan for the Property; (iii) pursuing and acquiring local governmental planning and regulatory approvals necessary to implement a conceptual master plan, including, without limitation, plan amendments, rezoning, and subdivision and development plans, agreements and permits;
- **Distributable Cash** means cash flow of the Partnership less Reserves;
- **Fiscal Period** means a fiscal period of the Partnership which coincides with the calendar year, the first of which shall commence on April 4, 2011 and end on April 3, 2012;
- **Reserves** means the amounts from time to time which the General Partner, acting reasonably, but in its sole discretion, determines are necessary or desirable; (i) to meet the past, current and future expenses, liabilities, commitments and obligations of the Partnership, including those arising from the retirement of a Partner; and (ii) for such other purposes as may be determined by the General Partner to be necessary or desirable for the conduct, promotion, protection and financing of the business and activities of the Partnership as described in the Partnership Agreement, its property, assets and Partners, including, without limitation commissions, management fees and costs associated with Concept Planning;
- **Unit** means an interest in the Partnership expressed as a Class A Unit.

26

USE OF NET PROCEEDS

1.1 Net Proceeds

		Assuming Min. Offering	Assuming Max. Offering
A	Amount to be raised by this offering	\$20,397,450	\$39,085,750
B	Estimated offering costs (including legal, accounting, audit, etc.)	\$30,000	\$30,000
C	Net Proceeds: C=A - B	\$20,367,450	\$39,065,750

1.2 Use of Net Proceeds

Net Proceeds from the Offering will be used as follows:

Description	Assuming Minimum Offering	Assuming Maximum Offering
Acquisition of the Property ⁽¹⁾	\$38,040,000	\$38,040,000
Reserves ⁽²⁾	\$1,025,750	\$1,025,750

⁽¹⁾ The General Partner has entered into a purchase agreement with 0788723 B.C. Ltd. and 0741508 B.C. Ltd., Affiliates of the General Partner, to purchase the Property for a purchase price of \$37,300,000 (the "Purchase Price"). The Partnership must also pay \$740,000 in property transfer tax. The General Partner will hold the Property in trust for the Partnership. If there are multiple closings of this Offering, the General Partner may, in its sole discretion, purchase the Property on or shortly following the first closing under this Offering, may purchase an interest in the Property following each closing under this Offering or may wait to purchase the Property on or shortly following the final closing under this Offering. In the event that the purchase of the Property occurs after the initial closing at the minimum offering and there remain funds owing on the purchase price, the Partnership shall hold the remaining Class A Units as security for the payment of the balance. Sale proceeds from the remaining series of Class A units shall be applied towards the balance owing on the purchase price. The Vendors of the Property, 0788723 B.C. Ltd. and 0741508 B.C. Ltd., have agreed to pay a commission to those individuals who were the effective clause of sale of Class A Units. No commission shall be paid to the General Partner or any affiliate thereof. 0788723 B.C. Ltd. and 0741508 B.C. Ltd. are Affiliated with the General Partner. See "The Property", "Terms of Securities and Summary of the Partnership Agreement", "Subscription Procedure".

⁽²⁾ The Partnership reserves will be used to fund the expenses of the Property and the Partnership over time and will include, without limitation, property taxes and other expenses related to the holding, operation, Concept Planning, Development and disposition of the Property and administrative expenses of the Partnership, which may include legal, accounting and auditing expenses, corporate and partnership maintenance fees, insurance, limited partner communication and reporting costs, and property management fees and project management fees".

The proceeds of the Offering may not be sufficient to accomplish all of the Partnership's proposed objectives. The Partnership may also seek financing from third parties, the General Partner or Affiliated Entities on commercially reasonable terms. There is no assurance that financing will be available on terms acceptable to the Partnership or at all.

1.3 Reallocation

The Partnership intends to spend the available funds as stated. The Partnership will reallocate funds only for sound business reasons.

28

(94)

BUSINESS OF THE PARTNERSHIP

2.1 Structure

The Partnership

The Partnership was formed as a limited partnership in British Columbia on January 26, 2011 pursuant to a Certificate of Limited Partnership, is governed by a Limited Partnership Agreement dated January 26, 2011 (the "Partnership Agreement") and is subject to the Partnership Act (British Columbia) (the "Partnership Act"). See "Terms of Securities and Summary of the Partnership Agreement". The Partnership will register under applicable partnership legislation of other provinces if, as and when it determines such registration is required or desirable. The General Partner, Kelowna Mountain Development Services Ltd., is a company incorporated under the laws of British Columbia. The General Partner is an affiliate of 0768723 B.C. Ltd. and 0741508 B.C. Ltd. and may have directors and/or officers in common with 0769723 B.C. Ltd. and 0741508 B.C. Ltd.

2.2 Our Business

General

The Partnership was formed solely to purchase and hold the Property for investment and eventual sale or other disposition with a view to making a profit. The General Partner may decide to perform activities incidental to or arising therefrom, such as conducting or participating in the management, operation, zoning, re-zoning, annexation, planning, marketing or Concept Planning of or on the Property prior to its development or sale or other disposition as well as any other business which is complementary or incidental to, or in furtherance of the foregoing, all as determined by the General Partner and its board of directors.

The Property

Status

Kelowna Mountain Development Services Ltd. has entered into a purchase agreement to purchase the Property from 0768723 B.C. Ltd. and 0741508 B.C. Ltd., affiliated corporations, for a purchase price of \$37,300,000 with an anticipated closing date of April 29, 2011. On closing, the Property will be registered in the name of the General Partner. The General Partner will act as bare trustee and hold the Property in trust for the Partnership. All pre-conditions to closing have been satisfied, however, there is no guarantee that the Property purchase will complete on time or at all.

Acquisition

The Partnership will enter into a trust agreement with the General Partner, a related party to the Partnership, whereby the General Partner will act as bare trustee and hold the Property in trust for the Partnership. The General Partner has not yet closed on its purchase of the Property from the original vendor, which closing is slated for April 29, 2011. See "Status" above, if there are multiple closings of this Offering and the General Partner may, in its sole discretion, purchase the Property on or shortly following the first closing under this Offering, may purchase an interest in the Property following each closing under this Offering or may wait to purchase the Property on or shortly following the final closing under this Offering. See "Terms of Securities and Summary of the Partnership Agreement" and "Subscription Procedure".

Location and Description

The Property is located just outside the southern end of the city limits of Kelowna, a city centrally located within the Okanagan Valley of British Columbia, 48 kilometres south of Vernon, British Columbia, 368 kilometres northeast of Vancouver, British Columbia and 603 kilometres south-west of Calgary, Alberta. As it is situated in the heart of the Okanagan Valley, Kelowna is the main commercial and business hub of the valley. Kelowna is surrounded by Lake Country to the North and mountains to the east and south while Okanagan Lake forms the western boundary. A bridge spanning Okanagan Lake connects Kelowna to the bedroom community of West Kelowna and provides a major link to the southern portions of the Okanagan Valley, including the District of Peachland and 45 kilometres further south, the City of Penticton.

The Property is approximately 480 acres (194 hectares) in area and consists of three separate legal lots described as follows:

- (a) PID: 015-122-085
The Northeast ¼ of Section 13 Township 28 Similkameen Division Yale District except Plan KAP49085;
- (b) PID: 011-781-868
Sub Lot 28 District Lot 2711 Similkameen Division Yale District Plan 1190; and
- (c) PID: 005-855-926
Lot 1 District Lot 4498 ODYD Plan 24696.

Property Characteristics

Title

On the purchase of the Property from the current owners, title to the Property will be registered in the name of the General Partner and held in trust for the Partnership. After the purchase of the Property by the Partnership, the Property will remain registered in the name of the General Partner. See "Acquisition" above. Limited Partners of the Partnership have no right to use, occupy, or seek partition of, any part of the Property or the right to encumber any part of the Property.

TO: Kelowna Mountain Development Services Ltd.
PO Box 49290
1000 - 595 Burrard Street
Vancouver, BC V7X 1S8

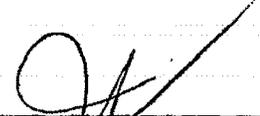
NOTICE OF CRYSTALLIZATION

Pursuant to a Debenture, mortgage and security agreement (collectively the "Security") executed by, among others, Kelowna Mountain Development Services Ltd. ("Kelowna Mountain") on or about May 30, 2013 to secure the principal amount of \$3,150,000.00, and delivered to Melvin Haber, Robert Sauer, Craig Sheridan, Dr. Steven L. Kirzner Inc. and Mackoff Management Services (2012) Inc. (collectively the "Lender"), the Lender declares:

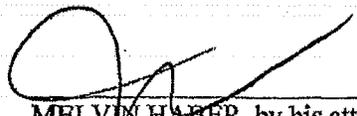
- 1) that the Security is in default;
- 2) that the Indebtedness as defined in and secured by the Security is due and payable (and has been since at least January of 2015);
- 3) that the Security is enforceable;
- 4) in accordance with Clause 11.1 of Standard Mortgage Terms MT040103 attached to and forming part of the Security, that the floating charge in the Security is crystallized and fixed on all the Mortgaged Property (as defined in the Mortgage Terms and the Security) of Kelowna Mountain including, but not limited to, the following lands:

PID:	Legal Description
005-855-926	Lot 1 District Lot 4499 Osoyoos Division Yale District Plan 24696
015-122-085	The Northeast ¼ of Section 13 Township 28 Similkameen Division Yale District except Plan KAP49085

DATED this 20 day of April, 2016.



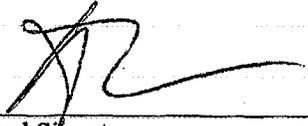
 ROBERT SAUER and CRAIG SHERIDAN, by their attorney in fact, Joel Sheldon Mackoff



 MELVIN HABER, by his attorney in fact, Joel Sheldon Mackoff

DR. STEVEN L. KIRZNER INC.

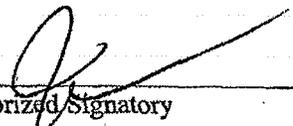
Per:



 Authorized Signatory

MACKOFF MANAGEMENT SERVICES (2012) INC.

Per:



 Authorized Signatory

This is Exhibit "L" referred to in the affidavit of Joel Sheldon Mackoff sworn before me at Vancouver in the Province of British Columbia this 20 day of April A.D. 2016

.....
 A Commissioner for taking Affidavits within British Columbia

TO: 0768723 B.C. LTD.
200 - 1465 Ellis Street
Kelowna, BC V1Y 2A3

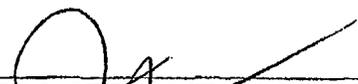
NOTICE OF CRYSTALLIZATION

Pursuant to a Debenture, mortgage and security agreement (collectively the "Security") executed by, among others, 0768723 B.C. LTD. ("0768723") on or about May 30, 2013 to secure the principal amount of \$3,150,000.00, and delivered to Melvin Haber, Robert Sauer, Craig Sheridan, Dr. Steven L. Kirzner Inc. and Mackoff Management Services (2012) Inc. (collectively the "Lender"), the Lender declares:

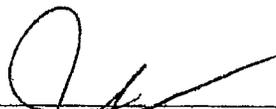
- 1) that the Security is in default;
- 2) that the Indebtedness as defined in and secured by the Security is due and payable (and has been since at least January of 2015);
- 3) that the Security is enforceable;
- 4) in accordance with Clause 11.1 of Standard Mortgage Terms MT040103 attached to and forming part of the Security, that the floating charge in the Security is crystallized and fixed on all the Mortgaged Property (as defined in the Mortgage Terms and the Security) of 0768723 including, but not limited to, the following lands:

PID:	Legal Description
027-736-121	Lot 9 Section 24 Township 28 Similkameen Division Yale District Plan KAP87908
015-122-107	The Northwest ¼ of Section 18 Township 29 Similkameen Division Yale District except Plan KAP49085

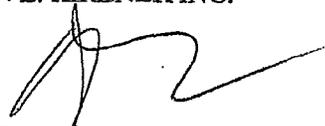
DATED this 20 day of April, 2016.



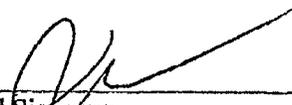
 ROBERT SAUER and CRAIG SHERIDAN, by their attorney in fact, Joel Sheldon Mackoff



 MELVIN HABER, by his attorney in fact, Joel Sheldon Mackoff

DR. STEVEN L. KIRZNER INC.
 Per: 

 Authorized Signatory

MACKOFF MANAGEMENT SERVICES (2012) INC.
 Per: 

 Authorized Signatory

KAMLOOPS LAND TITLE OFFICE

LAND TITLE ACT BRITISH COLUMBIA

FORM 17 CHARGE, NOTATION OR FILING Aug-22-2017 15:54:01.001

LAND TITLE AND SURVEY AUTHORITY

CA6240239

PAGE 1 OF 63 PAGES

- Your electronic signature is a representation by you that:
 - you are a subscriber; and
 - you have incorporated your electronic signature into
 - this electronic application, and
 - the imaged copy of each supporting document attached to this electronic application,

and have done so in accordance with Sections 168.3 and 168.41(4) of the *Land Title Act*, RSBC 1996, C.250.

- Your electronic signature is a declaration by you under Section 168.41 of the *Land Title Act* in respect of each supporting document required in conjunction with this electronic application that:
 - the supporting document is identified in the imaged copy of it attached to this electronic application;
 - the original of the supporting document is in your possession; and
 - the material facts of the supporting document are set out in the imaged copy of it attached to this electronic application.

Each term used in the representation and declaration set out above is to be given the meaning ascribed to it in Part 10.1 of the *Land Title Act*.

Douglas Burton Hyndman KAKQ9K	Digitally signed by Douglas Burton Hyndman KAKQ9K Date: 2017.08.22 15:40:46 -07'00'
--	--

1. APPLICANT: (Name, address, phone number of applicant, applicant's solicitor or agent)

Kornfeld LLP

Barristers & Solicitors

1100 - 505 Burrard Street

Vancouver

BC V7X 1M5

Telephone No. (604) 331-8300

LTO Client No. 010448

DBH: MMS002KEL171

Document Fees: \$71.58

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[legal description]

015-122-085

**THE NORTHEAST 1/4 OF SECTION 13 TOWNSHIP 28 SIMILKAMEEN DIVISION
YALE DISTRICT EXCEPT PLAN KAP49085**

STC? YES

3. NATURE OF CHARGE, NOTATION, OR FILING: AFFECTED CHARGE OR NOTATION NO:

CRYSTALLIZED FLOATING CHARGE

ADDITIONAL INFORMATION:

NATURE OF CHARGE, NOTATION, OR FILING: AFFECTED CHARGE OR NOTATION NO:

ADDITIONAL INFORMATION:

4. PERSON TO BE REGISTERED AS CHARGE OWNER: (including occupation(s), postal address(es) and postal code(s))

SEE SCHEDULE

SCHEDULE

PAGE 2 OF 63 PAGES

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION APPEARS ON THE FIRST PAGE.

4. PERSON TO BE REGISTERED AS CHARGE OWNER: (including occupation(s), postal address(es) and postal code(s))

MELVIN HABER, BUSINESSMAN, AS TO AN UNDIVIDED 800/3150 INTEREST

DR. STEVEN L. KIRZNER INC. (INC. NO. BC0503755), AS TO AN UNDIVIDED 800/3150 INTEREST

ROBERT SAUER, BUSINESSMAN and CRAIG SHERIDAN , BUSINESSMAN, AS TO AN UNDIVIDED 800/3150 INTEREST

MACKOFF MANAGEMENT SERVICES (2012) INC. (INC. NO. BC0842713) AS TO AN UNDIVIDED 750/3150 INTEREST

C/O 1755 EDGEWATER LANE, NORTH VANCOUVER, B.C. V7H 1T3

Mark Consiglio - Personal Net Worth - Summary

	NOTE	Ownership	ASSETS			NOTE	Liabilities			PNW
			Real Estate Assets	Other Assets	Total Assets		Mortgage Debt	Mortgage Gaurantees	Total Liabilities	
			Market Value	(A/R, Equip, Cash)						
Kelowna Mountain Development Services Ltd.		1	Mark Consiglio 100%	\$ 60,000.00				\$ 60,000.00		
0768723 BC Ltd.		2	Mark Consiglio 100%	\$ 12,800,000.00	\$ 25,400,000.00	\$ 38,200,000.00	A	\$ 6,700,000.00 \$ 3,400,000.00 \$ 10,100,000.00	\$ 28,100,000.00	
07414449 BC Ltd.			Owned 100% by 0722955 BC Ltd.	\$ 1,200,000.00		\$ 1,200,000.00		\$ 775,000.00 \$ 775,000.00	\$ 425,000.00	
0722955 BC Ltd.		3	Mark Consiglio 100%	\$ 5,100,000.00	\$ 132,000.00	\$ 5,232,000.00		\$ 3,200,000.00 \$ 3,200,000.00	\$ 2,032,000.00	
0877081 BC Ltd.			Mark Consiglio 100%	\$ 500,000.00		\$ 500,000.00		\$ 350,000.00 \$ 350,000.00	\$ 150,000.00	
0877099 BC Ltd.			Mark Consiglio 100%	\$ 500,000.00		\$ 500,000.00		\$ 350,000.00 \$ 350,000.00	\$ 150,000.00	
0847925 BC Ltd.			Mark Consiglio 100%	\$ 1,100,000.00		\$ 1,100,000.00		\$ 875,000.00 \$ 875,000.00	\$ 225,000.00	
Personal		4		\$ 250,000.00		\$ 250,000.00			\$ 250,000.00	
				\$ 21,200,000.00	\$ 25,842,000.00	\$ 47,042,000.00		\$ 12,250,000.00 \$ 3,400,000.00 \$ 15,650,000.00	\$ 31,392,000.00	

NOTES

1 - Other Assets LP Unit of Kelowna Mountain LP

2 - Other Assets
 Account Receivable \$ 18,000,000.00
 Equipment and Vehicles - Market Value \$ 450,000.00
 Contingent Receivable \$ 6,500,000.00
\$ 24,950,000.00

3 - Other Assets
 GST Receivable \$ 130,000.00
 Cash \$ 2,000.00
\$ 132,000.00

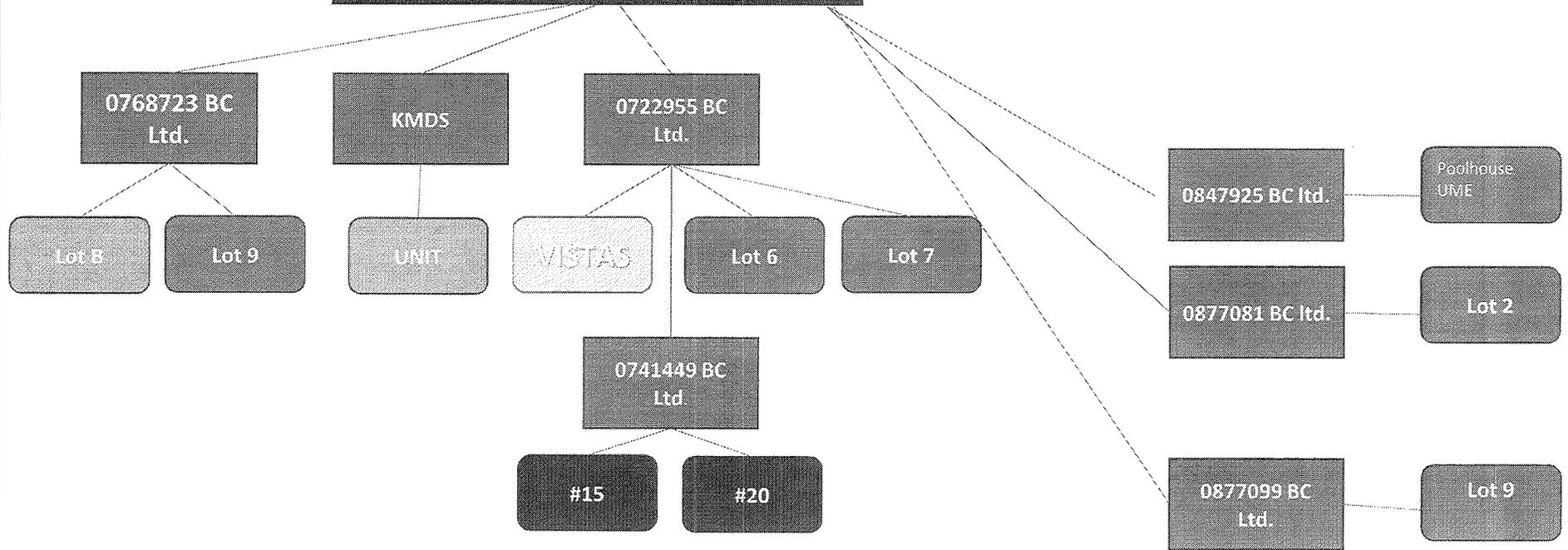
4 Cash In Bank

A Mortgage / Gurantee Liability registered on Lots A and C (Owned by KMLP) to be paid from \$18,000,000 A/R)

This is Exhibit "M" referred to in the affidavit of *[Signature]* sworn before me at *[Signature]* in the Province of British Columbia this *30th* day of *AUGUST* A.D. 20 *17*

A Commissioner for taking Affidavits within British Columbia

Mark Consiglio



LEGEND

COMPANY

KELOWNA MOUNTAIN

UPPER MISSIONS ESTATES

VISTAS

MONTO GRIGIO

COTTAGES

102



BC Company Summary

For 0722955 B.C. LTD.

Date and Time of Search: June 14, 2017 09:25 AM Pacific Time
Currency Date: May 08, 2017

ACTIVE

Incorporation Number: BC1050313
Name of Company: 0722955 B.C. LTD.
Recognition Date and Time: September 28, 2015 11:59 PM Pacific Time as a result of an Amalgamation In Liquidation: No
Last Annual Report Filed: Not Available Receiver: No

AMALGAMATING CORPORATION(S) INFORMATION

Name of Amalgamating Corporation Incorporation Number in BC
0722955 B.C. LTD. BC0722955
0741449 B.C. LTD. BC0741449

REGISTERED OFFICE INFORMATION

Mailing Address: 200-1465 ELLIS STREET KELOWNA BC V1Y 2A3 CANADA
Delivery Address: 200-1465 ELLIS STREET KELOWNA BC V1Y 2A3 CANADA

RECORDS OFFICE INFORMATION

Mailing Address: 200-1465 ELLIS STREET KELOWNA BC V1Y 2A3 CANADA
Delivery Address: 200-1465 ELLIS STREET KELOWNA BC V1Y 2A3 CANADA

DIRECTOR INFORMATION

This is Exhibit "N" referred to in the affidavit of ... sworn before me at ... in the Province of British Columbia this ... day of ... A.D. 20 ...

A Commissioner for taking Affidavits within British Columbia

103

Last Name, First Name, Middle Name:

Consiglio, Mark

Mailing Address:

PO BOX 29025
RPO OKANAGAN MISS. GD
KELOWNA BC V1W 4A7
CANADA

Delivery Address:

PO BOX 29025
RPO OKANAGAN MISS. GD
KELOWNA BC V1W 4A7
CANADA

NO OFFICER INFORMATION FILED .

104



BC Company Summary

For 0741449 B.C. LTD.

Date and Time of Search: June 14, 2017 09:27 AM Pacific Time
Currency Date: May 08, 2017

HISTORICAL - Amalgamated on September 28, 2015

Incorporation Number: BC0741449
Name of Company: 0741449 B.C. LTD.
Recognition Date and Time: Incorporated on November 25, 2005 09:57 AM Pacific Time
Last Annual Report Filed: November 25, 2014
In Liquidation: No
Receiver: No

AMALGAMATED INTO

Name of Amalgamated Company: 0722955 B.C. LTD.
Incorporation Number: BC1050313

REGISTERED OFFICE INFORMATION

Mailing Address: 200-1465 ELLIS STREET KELOWNA BC V1Y 2A3 CANADA
Delivery Address: 200-1465 ELLIS STREET KELOWNA BC V1Y 2A3 CANADA

RECORDS OFFICE INFORMATION

Mailing Address: 200-1465 ELLIS STREET KELOWNA BC V1Y 2A3 CANADA
Delivery Address: 200-1465 ELLIS STREET KELOWNA BC V1Y 2A3 CANADA

DIRECTOR INFORMATION

Last Name, First Name, Middle Name: Consiglio, Mark

Mailing Address: PO BOX 29025 RPO OKANAGAN MISS. GD KELOWNA BC V1W 4A7 CANADA
Delivery Address: PO BOX 29025 RPO OKANAGAN MISS. GD KELOWNA BC V1W 4A7 CANADA

105

OFFICER INFORMATION AS AT November 25, 2014

Last Name, First Name, Middle Name:

Consiglio, Mark

Office(s) Held: (President, Secretary)

Mailing Address:

PO BOX 29025
RPO OKANAGAN MISS. GD
KELOWNA BC V1W 4A7
CANADA

Delivery Address:

PO BOX 29025
RPO OKANAGAN MISS. GD
KELOWNA BC V1W 4A7
CANADA

106



BC Company Summary

For 0768723 B.C. LTD.

Date and Time of Search: June 14, 2017 09:24 AM Pacific Time
Currency Date: May 08, 2017

ACTIVE

Incorporation Number: BC0768723
Name of Company: 0768723 B.C. LTD.
Recognition Date and Time: Incorporated on September 12, 2006 04:15 PM Pacific Time
Last Annual Report Filed: September 12, 2016
In Liquidation: No
Receiver: No

REGISTERED OFFICE INFORMATION

Mailing Address: 200-1465 ELLIS STREET KELOWNA BC V1Y 2A3 CANADA
Delivery Address: 200-1465 ELLIS STREET KELOWNA BC V1Y 2A3 CANADA

RECORDS OFFICE INFORMATION

Mailing Address: 200-1465 ELLIS STREET KELOWNA BC V1Y 2A3 CANADA
Delivery Address: 200-1465 ELLIS STREET KELOWNA BC V1Y 2A3 CANADA

DIRECTOR INFORMATION

Last Name, First Name, Middle Name: Consiglio, Mark
Mailing Address: PO BOX 29025 RPO OKANAGAN MISS. GD KELOWNA BC V1W 4A7 CANADA
Delivery Address: PO BOX 29025 RPO OKANAGAN MISS. GD KELOWNA BC V1W 4A7 CANADA

OFFICER INFORMATION AS AT September 12, 2016

107

Last Name, First Name, Middle Name:

Consiglio, Mark

Office(s) Held: (President, Secretary)

Mailing Address:

PO BOX 29025 RPO OKANAGAN MISS. GD
KELOWNA BC V1W 4A7
CANADA

Delivery Address:

PO BOX 29025 RPO OKANAGAN MISS. GD
KELOWNA BC V1W 4A7
CANADA

108



BC Company Summary

For

0877099 B.C. LTD.

Date and Time of Search: June 14, 2017 09:26 AM Pacific Time

Currency Date: May 08, 2017

ACTIVE

Incorporation Number: BC0877099

Name of Company: 0877099 B.C. LTD.

Recognition Date and Time: Incorporated on March 26, 2010 01:05 PM Pacific Time **In Liquidation:** No

Last Annual Report Filed: March 26, 2016 **Receiver:** No

REGISTERED OFFICE INFORMATION

Mailing Address:
200-1465 ELLIS STREET
KELOWNA BC V1Y 2A3
CANADA

Delivery Address:
200-1465 ELLIS STREET
KELOWNA BC V1Y 2A3
CANADA

RECORDS OFFICE INFORMATION

Mailing Address:
200-1465 ELLIS STREET
KELOWNA BC V1Y 2A3
CANADA

Delivery Address:
200-1465 ELLIS STREET
KELOWNA BC V1Y 2A3
CANADA

DIRECTOR INFORMATION

Last Name, First Name, Middle Name:
Consiglio, Mark

Mailing Address:
PO BOX 29025
RPO OKANAGAN MISS. GD
KELOWNA BC V1W 4A7
CANADA

Delivery Address:
PO BOX 29025
RPO OKANAGAN MISS. GD
KELOWNA BC V1W 4A7
CANADA

OFFICER INFORMATION AS AT March 26, 2016

109

Last Name, First Name, Middle Name:

Consiglio, Mark

Office(s) Held: (President, Secretary)

Mailing Address:

PO BOX 29025
RPO OKANAGAN MISS. GD
KELOWNA BC V1W 4A7
CANADA

Delivery Address:

PO BOX 29025
RPO OKANAGAN MISS. GD
KELOWNA BC V1W 4A7
CANADA

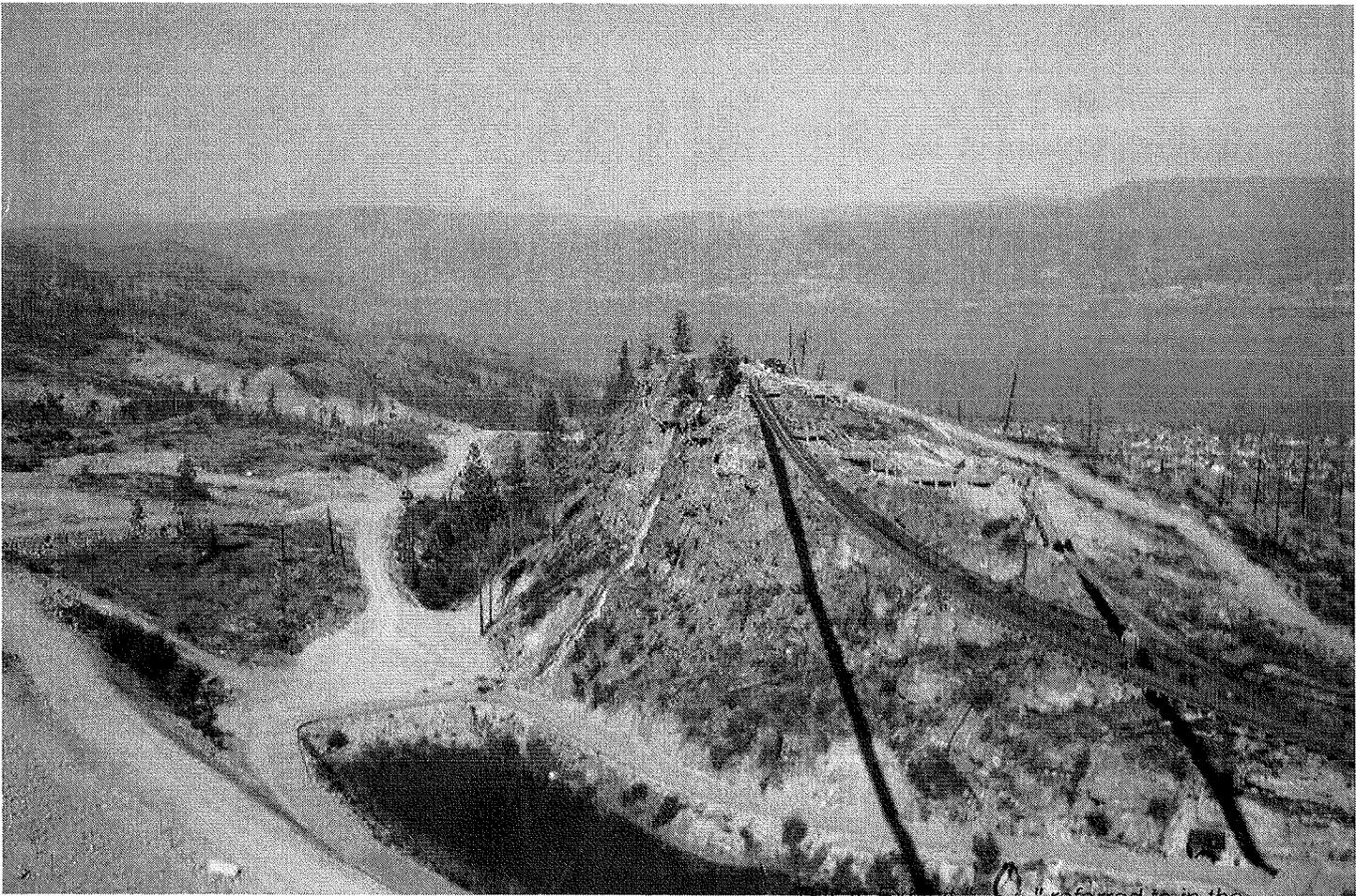


COMMERCIAL

DOMINION LENDING CENTRES COMMERCIAL CAPITAL INC.

A FIRST MORTGAGE OFFERING SUMMARY

ON THE REFINANCE OF THE 160 ACRE LOT A LOCATED WITHIN
THE KELOWNA MOUNTAIN DEVELOPMENT IN KELOWNA, BRITISH COLUMBIA



This is Exhibit "O" referred to in the affidavit of J. M. Mackay sworn before me at Victoria in the Province of British Columbia this 20 day of July A.D. 2017

.....
A Commissioner for taking Affidavits
within British Columbia

This presentation is prepared based on information from sources believed reliable, however, all information has not been verified by DLC Commercial Capital Inc., and we do not make any guarantees or representations, as to its accuracy or completeness.

A. MORTGAGE DETAILS

- 1) Purpose: First mortgage to provide refinancing for Lot A of the Kelowna Mountain Development. The 160 acre lot is legally described as: Part NE31/4, Except Plan KAP49085, Section 18, TP 28, SDYD. PID# 015-122-085 Roll# 723-6931.000
- 2) Borrower: Kelowna Mountain Limited Partnership
- 3) Guarantor: Mark Consiglio
- 4) Loan Amount: \$ 3,000,000
- 5) Term: 12 months
- 6) Amortization: Interest Only
- 7) Interest Rate: Best possible
- 8) Security:
 - 1. First mortgage
 - 2. Assignment of Contracts
 - 3. Standard loan documentation.
 - 4. Assignment of Plans & Leases
 - 5. Corporate Guarantee
 - 6. Personal Guarantee of Guarantor
 - 7. Assignment of permits
- 9) Appraisal: \$6,700,000 as at July 9, 2012 prepared by Rod Dubois of R&C Appraisers
- 10) Current Financing: First mortgage in the amount of \$ 3,000,000 with a syndication of lenders that will be paid out upon funding.
- 11) Program: First Mortgage \$ 3,000,000
- 12) Funding: May 21, 2013
- 13) Loan to Value: 45%
- 14) Exit Strategy:
 - 1) Proceeds from the pending sale of a portion of the Kelowna Mountain real estate
 - 2) Proceeds from the sale of units of the Kelowna Mountain Limited Partnership
- 15) Purchase Price: \$ 6,653,830- A non-arms length transaction as a share transfer. This transfer within the Kelowna Mountain Limited partnership was an internal transaction.

- 16) Equity Cash: The Kelowna Mountain Limited Partnership has issued 482 units to investors for a total value of \$ 20,303,592.

- 17) Secondary Financing: A second mortgage has been committed by MacBeth Mortgage Investment Corporation for \$1,000,000 to fund the same day as the proposed first mortgage.

B. PROJECT INFORMATION

- 1) Address of Security: Chute Lake Rd; NE ¼ Sec. 13, Kelowna, BC, Canada
- 2) Legal Description: Part NE31/4, Except PlanKAP49085, Section 18, TP 28, SDYD. PID# 015-122-085 Roll# 723-6931.000
- 3) Zoning: RU1- Large Lot Housing
- 4) Lot Size: 160 acres, more or less
- 5) Site Improvements: Ski runs and a ski/snowboard half pipe have been designed and constructed on the subject property.

An access road has also been created on the subject property yielding access to the majority of the site, 1.2 miles/ 2 km long, 2 lane and shoulder access road. One lane paved, other is prepared for asphalt paving, roads are ditched and sloped, entry gates, signage & landscaping, cleared areas, driveway to viewing platform me viewing platform and trail network; approximately 1.2 miles/ 2km.

- 6) Proposed Improvements: 100,000 square feet of Shotel, Winery and accommodation:

Shotel-	6,500 sq.ft.
Sake Winery-	5,500 sq.ft.
Winery Restaurant-	2,000 sq.ft.
Winery Retail-	1,500 sq.ft.
Spa-	3,000 sq.ft.
Residential-	7,000 sq.ft.- 4x1 bedroom villas
Tourism Suites-	8,500 sq.ft.- 10x2 bedroom villas
Support/Guest Suites-	10,000 sq.ft.- 16x2 bedroom suites 3,000 sq.ft.- 2x1 bedroom suites

* Plans for the proposed improvements will be provided upon receipt of a commitment letter.

MARK CONSIGLIO
Statement of Net Worth
Draft - Internal Document - For Discussion Purposes Only
August 31, 2012

Canadian Dollars

ASSETS

Current assets

Bank deposits	\$	275,000
Registered retirement savings plans and marketable securities		-
		275,000

Shares

Kelowna Mountain Development Services Ltd. (100%)		40,001
0768723 BC Ltd. (100%)		25,707,545
0877099 BC Ltd. (100%)		100,001
		25,847,547

Other assets

Household furnishings and other personal effects		35,000
Automobiles		75,000
		110,000

Total assets

	\$	26,232,547.00
--	----	---------------

LIABILITIES

Current liabilities

Line of credit		-
Income taxes payable		35,777
		35,777

Total liabilities

		35,777
--	--	--------

Approximate net worth

	\$	26,196,770
--	----	------------

0768723 BC Ltd.
Estimated Market Value
Draft - Internal Document - For Discussion Purposes Only
April 31, 2012

	<u>Canadian Dollars</u>	
	<u>Internal Financial Statements</u>	<u>Estimated Market Value</u>
ASSETS		
<i>Current assets</i>		
Cash	204,918	204,918
Accounts receivable	24,495,470	24,495,470
HST Receivable	204,435	204,435
Prepaid	8,950	8,950
Shareholder Loan	266,586	266,586
	-	-
	<u>25,180,359</u>	<u>25,180,359</u>
 ADVANCES		
Related Party co	5,837,046	5,837,046
<i>Advances to related parties</i>	<u>5,837,046</u>	<u>5,837,046</u>
 <i>Investments</i>		
Construction in Process	4,325,223	10,300,000
Residential Lot for Resale	307,000	500,000
	<u>4,632,223</u>	<u>10,800,000</u>
 <i>Capital Assets - Net</i>	 <u>211,906</u>	 <u>175,000</u>
 <i>Incorporation costs</i>	 <u>986</u>	 <u>-</u>
 <i>Total assets</i>	 <u><u>35,862,520</u></u>	 <u><u>41,992,405</u></u>

0768723 BC Ltd.
Estimated Market Value
Draft - Internal Document - For Discussion Purposes Only
April 31, 2012

	<u>Canadian Dollars</u>	
	<u>Internal Financial Statements</u>	<u>Estimated Market Value</u>
LIABILITIES		
<i>Current liabilities</i>		
Accounts payable	32,520	32,520
Accrued Interest Payable	6,789,632	6,789,632
Accrued Commission payable	684,544	684,544
	-	-
	<u>7,506,696</u>	<u>7,506,696</u>
LOANS AND MORTGAGES PAYABLE		
Mortgages Payable	<u>8,778,164</u>	<u>8,778,164</u>
<i>Long-term debt</i>	<u>8,778,164</u>	<u>8,778,164</u>
	-	-
<i>Total liabilities</i>	<u>16,284,860</u>	<u>16,284,860</u>
EQUITY		
Share capital	1	1
Retained earnings	19,577,659	19,577,659
Increase to Market Value		6,129,885
<i>Share Value</i>	<u>19,577,660</u>	<u>25,707,545</u>
TOTAL LIABILITIES AND EQUITY	<u>35,862,520</u>	<u>41,992,405</u>

0877099 BC Ltd.
Estimated Market Value
Draft - Internal Document - For Discussion Purposes Only
August 31 2012

	<u>Canadian Dollars</u>	
Draft	<u>Internal Financial Statements</u>	<u>Estimated Market Value</u>
ASSETS		
<i>Current assets</i>		
Cash	-	-
Accounts receivable	-	-
Inventory	-	450,000
	<hr/>	<hr/>
	-	450,000
	<hr/>	<hr/>
<i>Total assets</i>	-	450,000
	<hr/>	<hr/>

2. Kelowna Mountain Limited Partnership Financial Statements

**Kelowna Mountain
Limited Partnership
Financial Statements
For the year ended April 3, 2012**

DRAFT

Kelowna Mountain Limited Partnership
STATEMENT OF FINANCIAL POSITION
As at April 3, 2012

	2012	2011
ASSETS		
Current assets		
Receivables	\$ -	\$ 100
Prepaid expense	3,033	-
	3,033	100
Fixed asset (note 5)	67,991	-
Investment properties (note 6)	5,858,897	-
	5,926,888	-
TOTAL ASSETS	\$ 5,929,921	\$ 100
LIABILITIES		
Current liabilities		
Accrued liabilities	\$ 42,000	\$ -
Current portion of amount Due to 0741449 B.C. Ltd. (note 7)	2,463,315	-
	2,505,315	-
Long-term liabilities		
Due to 0768723 B.C. Ltd. (note 7)	15,911,255	-
Due to 0741449 B.C. Ltd. (note 7)	1,191	-
	15,912,446	-
TOTAL LIABILITIES	18,417,761	-
PARTNERS' DEFICIT		
Partners' deficit (note 8)	(12,487,840)	100
TOTAL LIABILITIES AND PARTNERS' DEFICIT	\$ 5,929,921	\$ 100

Approved by the Director of Kelowna Mountain Development Services Ltd., as General Partner:

Mark Consiglio
Director

The accompanying notes are an integral part of these financial statements.

Kelowna Mountain Limited Partnership
STATEMENT OF PARTNERS' DEFICIT
For the year ended April 3, 2012

	Limited Partners		General Partner		Total	
	Units	Amount	Units	Amount	Units	Amount
Balance, April 4, 2011	-	\$ -	1	\$ 100	1	\$ 100
Contributions (note 8)	481	20,303,492	-	-	481	20,303,492
Net loss for the year	-	(32,788,153)	-	(3,279)	-	(32,791,432)
Balance, April 3, 2012	481	\$(12,484,661)	1	\$ (3,179)	482	\$(12,487,840)

	Limited Partners		General Partner		Total	
	Units	Amount	Units	Amount	Units	Amount
Balance, January 26, 2011	-	\$ -	-	\$ -	-	\$ -
Contributions (note 8)	-	-	1	100	1	100
Net loss for the period	-	-	-	-	-	-
Balance, April 3, 2011	-	\$ -	1	\$ 100	1	\$ 100

The accompanying notes are an integral part of these financial statements.

123

Kelowna Mountain Limited Partnership

STATEMENT OF LOSS

For the year ended April 3, 2012

	2012	For the period from formation on January 26, 2011 to April 3, 2011
REVENUES	\$ -	\$ -
EXPENSES		
Advertising and marketing	199,355	-
Amortization	11,999	-
Consulting fees	150,232	-
Insurance	2,779	-
Professional fees	160,463	-
Repairs and maintenance	610,750	-
Travel	13,677	-
TOTAL EXPENSES	1,149,255	-
NET LOSS BEFORE OTHER ITEM	(1,149,255)	-
OTHER ITEM		
Impairment on Investment Properties (note 6)	(31,642,177)	-
NET LOSS	\$(32,791,432)	-

The accompanying notes are an integral part of these financial statements.

(124)

Kelowna Mountain Limited Partnership
STATEMENT OF CASH FLOWS
For the year ended April 3, 2012

	2012	For the period from formation on January 26, 2011 to April 3, 2011
Cash flows from operating activities		
Net loss for the year	\$(32,791,432)	\$ -
Adjustments for:		
Amortization	11,999	-
Impairment on Investment Properties	31,642,177	-
	(1,137,256)	-
Changes in:		
Receivables	100	(100)
Prepaid expense	(3,033)	-
Accrued liabilities	42,000	-
Net cash used in operating activities	(1,098,189)	(100)
Cash flows from investing activities		
Acquisition of investment properties	(37,501,074)	-
Acquisition of fixed asset	(79,990)	-
Net cash from (used in) investing activities	(37,581,064)	-
Cash flows from financing activities		
Proceeds from issue of general partnership units	-	100
Proceeds from issue of limited partnership units	20,303,492	-
Advances from 0741449 B.C. Ltd.	1,191	-
Advances from 0768723 B.C. Ltd.	18,374,570	-
Net cash from financing activities	38,679,253	100
Net change in cash	-	-
Cash, beginning of year	-	-
Cash, end of year	\$ -	\$ -

The accompanying notes are an integral part of these financial statements.

125

Kelowna Mountain Limited Partnership

NOTES TO FINANCIAL STATEMENTS

For the year ended April 3, 2012 and the period ending April 3, 2011

1. NATURE OF THE BUSINESS

Kelowna Mountain Limited Partnership (the "Partnership") was formed under the Laws of British Columbia pursuant to the Partnership Act (British Columbia) and the Limited Partnership Agreement ("LPA") dated January 26, 2011 as amended on April 28, 2011, on October 28, 2011 and on February 19, 2013.

The objectives of the Partnership are to own and plan for the rezoning of a 480 acre parcel of land located in the Central Okanagan Regional District adjacent to Kelowna, British Columbia city boundary. The registered office of the Partnership is 200-1465 Ellis Street, Kelowna B.C., V1Y 2A3.

The General Partner of the Partnership is Kelowna Mountain Development Services Ltd. (the "General Partner"). The General Partner is responsible for the management and administration of the affairs of the Partnership. Under the LPA, profit and losses of the Partnership are allocated as 0.01% to the General Partner and the balance to the Limited Partners and it authorized the issuance of these financial statements.

These financial statements were approved by the General Partner for issue on March 1, 2013.

The Partnership's interest is not traded in a public market, nor does it file its financial statements with a regulatory organization for the purpose of issuing a class of instrument in a public market. However, the Partnership is not a private issuer under the British Columbia Securities Laws.

2. REPORTING ENTITY

During the first fiscal period, the Limited Partnership, conducted a private offering of the Partnership units ("the Offering Memorandum") and issued 481 Units. Each Unit consists of one unit of the Partnership.

3. BASIS OF PREPARATION

a) **Statement of compliance**

The Limited Partnership's financial statements have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB").

b) **Basis of measurement**

These financial statements have been prepared on the historical cost basis except for Investment Properties which are measured at fair value.

These financial statements have also been prepared on a going concern basis. The Partnership has not yet generated positive cash flows from operations and further funds will be required to fund the existing investment trading operations. While there can be no assurances that the Partnership will be able to raise additional financing in the future, or at favourable terms, if needed, management is of the opinion that additional financing will be available to continue its planned activities in the normal course of operations.

c) **Functional and presentation currency**

These financial statements are presented in Canadian dollars, which is the Partnership's functional currency.

126

Kelowna Mountain Limited Partnership

NOTES TO FINANCIAL STATEMENTS

For the year ended April 3, 2012 and the period ending April 3, 2011

3. BASIS OF PREPARATION (cont'd)

d) Use of estimates and judgments

The preparation of the financial statements in conformity with IFRS requires management to make judgments, estimates and assumptions that affect the application of accounting policies and the amounts reported in the financial statements and accompanying disclosures. Although these estimates are based on management's knowledge of current events and actions the Partnership may undertake in the future, actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

i. Judgments

Information about critical judgments in applying accounting policies that have the most significant effect on the amounts recognized in the consolidated financial statements is discussed below:

- Classification of partnership units

The Partnership has issued partnership units to the General Partner and to Limited Partners. In determining whether these should be classified as liabilities or equity, management has assessed whether the Partnership units contain a contractual agreement to deliver cash or another financial asset to another entity, whether the units are puttable, and whether the criteria in IAS 32 "Financial Instruments: Presentation", which permit classification of a puttable instrument as equity, have been satisfied.

ii. Estimates

Information about assumptions and estimation uncertainties that have a significant risk of resulting in a material adjustment within the next financial year are discussed below:

- Valuation of investment properties

The fair value of the properties is determined by management. The determination of the fair value of investment properties requires the use of management's estimates applicable to those assets. These estimates are based on market conditions existing at the reporting date.

The following approach was used by management in their determination of the fair value of the investment properties:

BC Assessment Market appraisal was used to reflect the changes to the overall market for real properties in the region. See note 6.

- Estimated useful lives

Management estimates the useful lives of fixed assets based on the period during which the assets are expected to be available for use. The amounts and timing of recorded expenses for amortization fixed assets for any period are affected by these estimated useful lives. The estimates are reviewed at least annually and are updated if expectations change as a result of physical wear and tear, technical or commercial obsolescence and legal or other limits to use. It is possible that changes in these factors may cause significant changes in the estimated useful lives of the Partnership's fixed assets in the future. See note 3(d).

127

Kelowna Mountain Limited Partnership

NOTES TO FINANCIAL STATEMENTS

For the year ended April 3, 2012 and the period ending April 3, 2011

4. SIGNIFICANT ACCOUNTING POLICIES

a) Allocation of net income or net loss

The General Partner receives 0.01% of the current account of the net loss. The deficit in the current account will be allocated among the limited partners holding units in accordance with the number of units held.

b) Financial instruments

• *Non-derivative financial assets/liabilities*

The Partnership initially recognizes financial assets and liabilities at fair value at the date they originated.

The Partnership has the following non-derivative financial assets: accounts receivable.

The Partnership derecognizes a financial asset when the contractual rights to the cash flows from the financial asset expire, or when substantially, all the risks and rewards of ownership of the financial assets are transferred in a transaction.

The Partnership has the following non-derivative financial liabilities: accrued liabilities and due to related parties.

The Partnership derecognizes a financial liability when its contractual obligations are discharged, cancelled or expired.

c) Fixed Assets

Fixed assets are stated at historical cost less accumulated amortization and accumulated impairment losses.

Subsequent costs are included in the asset's carrying amount or recognized as a separate asset, as appropriate, only when it is probable that future economic benefits associated with the item will flow to the Partnership and the cost of the item can be measured reliably. The carrying amount of the replaced part is derecognized. All other repairs and maintenance are charged to the statement of income and comprehensive income during the financial period in which they are incurred.

Gain and losses on disposals are determined by comparing the proceeds with the carrying amount and are recognized in profit or loss.

Amortization is calculated on a straight-line method to write-off the cost of the assets to their residual values over their estimated useful lives. The amortization rate applicable to the current fixed asset is 15%.

d) Investment properties

Investment properties are comprised of property held for future development and/or sale to Limited Partners. The cost of investment properties represents the costs of the acquisition of the lands. Investment properties are measured initially at its cost which includes transfer taxes.

After initial recognition, properties are carried at fair value.

Kelowna Mountain Limited Partnership

NOTES TO FINANCIAL STATEMENTS

For the year ended April 3, 2012 and the period ending April 3, 2011

4. SIGNIFICANT ACCOUNTING POLICIES (cont'd)

e) Impairment

i. Financial assets (including receivables)

A financial asset not carried at fair value through profit or loss is assessed at each reporting date to determine whether there is objective evidence that it is impaired. A financial asset is impaired if objective evidence indicates that a loss event has occurred after the initial recognition of the asset, and that the loss event had a negative effect on the estimated future cash flows of that asset that can be estimated reliably.

Objective evidence that financial assets are impaired can include: default or delinquency by a debtor, restructuring of an amount due to the Partnership on terms that the Partnership would not consider otherwise or indications that a debtor or issuer will enter bankruptcy.

The Partnership assesses evidence of impairment for receivables and collection level. All individually significant receivables are assessed for specific impairment. All individually significant receivables found not to be specifically impaired are then collectively assessed for any impairment that has been incurred but not yet identified. Receivables that are not individually significant are collectively assessed for impairment by grouping together receivables with similar risk characteristics.

In assessing collective impairment, the Partnership uses historical trends of the probability of default, timing of recoveries and the amount of loss incurred, adjusted for management's judgment as to whether current economic and credit conditions are such that the actual losses are likely to be greater or less than suggested by historical trends.

An impairment loss in respect of a financial asset measured at amortized cost is calculated as the difference between its carrying amount and the present value of the estimated future cash flows discounted at the asset's original effective interest rate. Losses are recognized in profit or loss and reflected as a provision for doubtful accounts which are netted against receivables. Interest on the impaired asset continues to be recognized through the unwinding of the discount. When a subsequent event causes the amount of impairment loss to decrease, the decrease in impairment loss is reversed through profit or loss in the reporting fiscal year.

ii. Non-financial assets

Fixed assets are tested for impairment when events of changes in circumstances indicate that the carrying amount may not be recoverable. For the purpose of measuring recoverable amounts, assets are grouped at the lowest levels for which there are separable identifiable cash flows. The recoverable amount is the higher of an asset's fair value less costs to sell and value in use. An impairment loss is recognized for the amount by which the asset's carrying amount its recoverable amount. Management did not note impairment on fixed asset during the current year.

f) Income taxes

The Partnership is not subject to income taxes. The net income or loss of the Partnership is allocated to the individual partners for taxation purposes.

Kelowna Mountain Limited Partnership

NOTES TO FINANCIAL STATEMENTS

For the year ended April 3, 2012 and the period ending April 3, 2011

4. SIGNIFICANT ACCOUNTING POLICIES (cont'd)

g) Operating segments

Operating segments are reported in a manner consistent with the internal reporting provided to the chief operating decision-maker. The chief operating decision-maker is the person or Limited Partnership that allocates resources to and assesses the performance of the operating segments of an entity. The Partnership has determined that its chief operating decision-maker is the General Partner.

The Limited Partnership holds investment properties and carries all business activities in Kelowna, British Columbia. Management, in measuring the Partnership's performance, does not distinguish or groups its operations on a geographical or other basis. Accordingly, the Partnership has a single reportable segment for disclosure purposes in accordance with IFRS 8 Operating Segments, which uses a management approach to segmented reporting under which the information reported would be that which management uses internally for evaluating the performance of operating segments.

h) New standards and interpretations not yet adopted

The following is a summary of recent accounting pronouncements which have not yet been adopted by the Partnership:

- **Amendments to IAS 1 Presentation of Financial Statements**

In June 2011, the IASB announced an amended IAS 1 Presentation of Financial Statements. This amendment requires an entity to separately present the items of Other Comprehensive Income as items that may or may not be reclassified to profit and loss. This amended standard will be effective for the Partnership's interim and annual financial statements commencing April 1, 2013. The Partnership is assessing the impact of this amended standard on its consolidated financial statements.

- **IFRS 9 Financial Instruments**

In October 2010, the IASB issued IFRS 9 Financial Instruments. IFRS 9, which replaces IAS 39 Financial Instruments: Recognition and Measurement, establishes principles for the financial reporting of financial assets and financial liabilities that will present relevant and useful information to users of financial statements for their assessment of the amounts, timing and uncertainty of an entity's future cash flows. This new standard will be effective for the Partnership's annual financial statements commencing April 1, 2015. The Partnership is assessing the impact of this new standard on its financial statements.

- **IFRS 13 Fair Value Measurement**

In May 2011, the IASB issued IFRS 13 Fair Value Measurement. IFRS 13 replaces the fair value guidance contained in individual IFRS with a single source of fair value measurement guidance. The standard also requires disclosures which enable users to assess the methods and inputs used to develop fair value measurements. This new standard will be effective for the Partnership's interim and annual consolidated financial statements commencing April 1, 2013. The Partnership is assessing the impact of this new standard on its consolidated financial statements.

Kelowna Mountain Limited Partnership

NOTES TO FINANCIAL STATEMENTS

For the year ended April 3, 2012 and the period ending April 3, 2011

5. FIXED ASSET

	Motor vehicle
Cost:	
Balance at April 3, 2011	\$ -
Addition	79,990
Disposal	<u>-</u>
Balance at April 3, 2012	\$ 79,990
Amortization:	
Balance at April 3, 2011	\$ -
Charge for the period	<u>(11,999)</u>
Balance at April 3, 2012	\$(11,999)
Net book value at April 3, 2012	<u>\$ 67,991</u>

	Motor vehicle
Cost:	
Balance at January 26, 2011	\$ -
Addition	-
Disposal	<u>-</u>
Balance at April 3, 2011	\$ -
Amortization:	
Balance at January 26, 2011	\$ -
Charge for the period	<u>-</u>
Balance at April 3, 2011	\$ -
Net book value at April 3, 2011	<u>\$ -</u>

6. INVESTMENT PROPERTIES

The General Partner has entered into a trust agreement with the Partnership for the following acquired properties:

Lot 1 District Lot 4499 ODYD Plan 24696, commonly referred to as "Westside Lot".

Northeast ¼ Section 13 Township 28 SDYD except plan KAP49085, commonly referred to as "Lot A".

Sub Lot 28 District Lot 2711 SDYD Plan 1190, commonly referred to as "Lot C"

The results of ownership of these properties have not been included in these financial statements. The beneficial ownership remains with the Partnership.

Utilization of a third party appraised value would not be the method that would provide the best indication of the fair value for the investment properties. Appraisers rely upon available data from recent sales of comparable properties, and the investment properties of the Partnership are incredibly unique, so that at any time, finding a comparable property will prove difficult. Further, even if there were comparable properties in the area; which management asserts there are none, there have not been sufficient sales of large parcels in the immediate area over the recent time period that could be relied upon as a fair basis for comparison. Moreover, BC Assessment is a Provincial Crown corporation whose sole purpose is to determine the market value of all real properties in British Columbia, including investment properties. Management asserts that the fair value of the investment properties will be based on the BC Assessment value.

131

Kelowna Mountain Limited Partnership

NOTES TO FINANCIAL STATEMENTS

For the year ended April 3, 2012 and the period ending April 3, 2011

6. INVESTMENT PROPERTIES (cont'd)

However, BC Assessment assigned the value to the investment properties on July 1, 2011. Therefore, in order to arrive at the fair value of the investment properties as of April 3, 2012, management has adjusted the BC Assessment value by appreciating it by the increase in median values for the Central Okanagan that were reported by the Okanagan Main Line Real Estate Board for the time period July 1, 2011 to March 31, 2012, which appreciation aggregates at 3.077%.

The following table identifies each parcel comprising each investment property, the BC Assessment value for such parcel and the fair value as determined by the General Partner utilising the method described in the paragraph above:

PROPERTY	BC ASSESSED VALUE	FAIR VALUE – April 3, 2012
Westside Lot	\$ 861,000	\$ 887,493
Lot A	3,441,000	3,546,880
Lot C	1,382,000	1,424,524
TOTAL	\$ 5,684,000	\$ 5,858,897

At the end of the fiscal year, impairment due on the fair value of the investment properties was assessed due to the difference between the purchase price and the fair value at year-end. The impairment was calculated as follows:

Investment properties

Fair value:	
At April 3, 2011	\$ -
Purchase price	37,501,074
Impairment	(31,642,177)
Disposal	-
At April 3, 2012	<u>\$ 5,858,897</u>

Investment properties

Fair value:	
At January 26, 2011	\$ -
Purchase price	-
Disposal	-
At April 3, 2011	<u>\$ -</u>

7. RELATED PARTY TRANSACTIONS

a) Due to 0768723 B.C. Ltd.

This company is owned by the Director of the General Partner. The Partnership does not have a bank account, as such, when it incurs expenses, such as legal or accounting fees, these costs are paid using the cash of a related entity. This creates a balance due to the related entity.

According to the Contract of Purchase and Sale dated May 1, 2011, the Partnership purchased from 0768723 B.C. Ltd. both Lot A and Lot C for \$36,100,000. Property transfer taxes of \$118,000 and \$58,000 were paid for Lot A and Lot C respectively.

All of the funds that are invested by the limited partners are deposited to the Partnership's lawyer's trust account, which get transferred to 0768723 B.C. Ltd.'s trust account. Those funds are then forwarded and applied against the balance to be paid for the land.

Kelowna Mountain Limited Partnership

NOTES TO FINANCIAL STATEMENTS

For the year ended April 3, 2012 and the period ending April 3, 2011

7. RELATED PARTY TRANSACTIONS (cont'd)

a) Due to 0768723 B.C. Ltd. (cont'd)

The following is a summary of transactions incurred during the fiscal year affecting the balance due to 0768723 B.C. Ltd.:

Purchase price – Lot A & Lot C	\$ 36,100,000
Property transfer tax	176,000
Purchase price – Westside Lot	1,218,000 *
Operating expenses	1,024,082
Less:	
Cash paid during the year against purchase price	(19,383,570)
Partnership units issued as payment for commission expenses incurred by 0768723 B.C. Ltd. per Offering Memorandum	<u>(759,942)</u>
 Due to 0768723 B.C. Ltd. as of April 3, 2012	 18,374,570
 Current portion	 <u>(2,463,315)</u>
 Long-term portion as of April 3, 2012	 <u>\$ 15,911,255</u>

* This balance was transferred to 0768723 B.C. Ltd. trust account, which was transferred to 0741508 B.C. Ltd. on behalf of the Partnership.

b) Due to 0741449 B.C. Ltd.

This company is owned by a non-arms length family member of the Director of the General Partner. The Partnership does not have a bank account, as such, when it incurs expenses, such as legal or accounting fees, these costs are paid using the cash of a related entity. This creates a balance due to the related entity. The amount of \$1,191 relates to legal fees paid on behalf of the Partnership.

c) Due to 0741508 B.C. Ltd.

This company is owned by the Director of the General Partner. According to the Contract of Purchase and Sale dated May 1, 2011, the Partnership purchased from 0741508 B.C. Ltd. the Westside Lot for \$1,200,000 in addition to \$18,000 of property transfer tax.

All of the funds that are invested by the limited partners are deposited to the Partnership's lawyer's trust account, which get transferred to 0768723 B.C. Ltd.'s trust account. The amount of \$1,218,000 was transferred to 0741508 B.C. Ltd. bank account on behalf of the Partnership. No balance payable to 0741508 B.C. Ltd. was outstanding at year-end.

d) Transactions with key management personnel

The General Partner provides all management services to the Partnership. As such, the General Partner is the only person or entity which meets the definition of "key management personnel" as defined in IAS 24 Related Party Disclosures. The General Partner is not paid a management fee for its services.

Kelowna Mountain Limited Partnership

NOTES TO FINANCIAL STATEMENTS

For the year ended April 3, 2012 and the period ending April 3, 2011

8. PARTNERSHIP CONTRIBUTIONS

According to the terms of the Limited Partnership Agreement dated January 26, 2011 as amended on April 28, 2011, on October 28, 2011 and on February 19, 2013, all the Partnership Units are of the same class (with equal rights and privileges, including equal participation in any distribution made by the Partnership) and the right to one vote at any meeting of the Limited Partners. The authorized and issued limited partner units for the Partnership are provided below:

Kelowna Mountain Limited Partnership

Authorized - 850
Issued - 482

	Number of Units	Value
Units issued during 2011		
At January 26, 2011		\$ -
Disposal	<u>1</u>	<u>100</u>
Units issued at April 3, 2011	1	\$ 100
Units issued during 2012		
Units issued for cash	458	\$19,383,570
Units issued to reduce balance Due to 0768723 B.C. Ltd.	19	759,942
Units issued in lieu of professional fees	1	39,995
Units issued in lieu of fixed asset	2	79,990
Units issued in lieu of advertising and marketing	<u>1</u>	<u>39,995</u>
Units issued at April 3, 2012	481	\$20,303,492
Total units issued as of April 3, 2012	<u>482</u>	<u>\$20,303,592</u>

9. FINANCIAL INSTRUMENTS AND FINANCIAL RISK MANAGEMENT

Fair value of financial instruments

The Partnership follows the requirements of IAS 39 *Financial Instruments – Recognition and Measurement*, which requires enhanced disclosures to enable users to evaluate the significance of financial instruments on the entity’s financial position and performance, and the nature and extent of an entity’s exposure to risks arising from financial instruments, including how the entity manages those risks.

The Partnership uses the following hierarchy to determine and disclose fair value of financial instruments:

- Level 1 – Unadjusted quoted prices in active markets for identical assets or liabilities;
- Level 2 – Inputs other than quoted prices that are observable for the asset or liability, either directly or indirectly;
- Level 3 – Inputs that are not based on observable market data, which are unobservable inputs.

The fair values of accounts receivable and accrued liabilities approximate their carrying amounts due to the relatively short periods to maturity of these financial instruments.

The fair values of the partnership units outstanding are not readily determinable as they are dependent on future performance of the Partnership.

Kelowna Mountain Limited Partnership

NOTES TO FINANCIAL STATEMENTS

For the year ended April 3, 2012 and the period ending April 3, 2011

9. FINANCIAL INSTRUMENTS AND FINANCIAL RISK MANAGEMENT (cont'd)

Risk management framework

The overall responsibility for the establishment and oversight of the Partnership's risk management policies resides with the director of the General Partner. The Partnership's risk management policies are established to identify, analyze and manage the risks faced by the Partnership and to implement appropriate procedures to monitor risks and adherence to established controls. Risk management policies and systems are reviewed periodically in response to the Partnership's activities and to ensure applicability.

In the normal course of business, the main risks arising from the Partnership's use of financial instruments include liquidity risk, interest rate and currency risk. These risks, and the actions taken to manage them, include:

(i) *Liquidity risk*

Liquidity risk is the risk that the Partnership will not be able to meet its financial obligations as they fall due. The Partnership's approach to managing liquidity is to ensure that it will have sufficient financial resources available to meet its liabilities as they become due. This includes monitoring of cash, current receivables and payables and non-current liabilities as they become current.

Real property investments tend to be relatively illiquid, with the degree of liquidity generally fluctuating in relation to the demand for and the perceived desirability of such investments. Such illiquidity may tend to limit the Partnership's ability to respond to changing economic or investment conditions. If the Partnership were required to liquidate a real property investment, the proceeds to the Partnership might be significantly less than the aggregate carrying value of such property.

(ii) *Interest rate risk*

Interest rate risk arises from the possibility that the value of, or cash flows related to, a financial instrument will vary as a result of changes in market interest rates. The Limited Partnership manages its financial instruments with the objective of mitigating any potential interest rate risks. Management has assessed the Limited Partnership's exposure to interest rate risk as at April 3, 2012, and determined it to be negligible.

(iii) *Currency risk*

Currency risk is the risk associated with a fluctuation in the value of the Canadian dollar as related to other foreign currencies. The Limited Partnership is not exposed to currency risk as all transactions are denominated in Canadian dollars.

10. CAPITAL RISK MANAGEMENT

The Partnership's primary objective is to safeguard its ability to continue as a going concern so that the Partnership is able to meet its financial obligations as they become due. In order to achieve this objective, the Partnership may issue more Partnership Units or sell parcels of the investment properties.

The Partnership is not exposed to any externally imposed capital requirements.

Kelowna Mountain Limited Partnership

NOTES TO FINANCIAL STATEMENTS

For the year ended April 3, 2012 and the period ending April 3, 2011

11. COMMITMENTS

The Partnership entered into a Limited Partnership Agreement with the General Partner dated January 26, 2011 as amended on April 28, 2011, on October 28, 2011, and on February 19, 2013, whereby the General Partner agreed to provide certain services in connection with the business of the Partnership, including its initial and ongoing financing, supervision of property management, investor communications and asset management and disposition services.

12. SUBSEQUENT EVENTS

On July 10, 2012, the Partnership entered into a mortgage agreement in the amount of \$502,500 with a Canadian mortgage lender, holding the Westside Lot as a security on the mortgage. The mortgage proceeds were paid against the balance owing from the Partnership to 0768723 B.C. Ltd.

From April 3, 2012 to August 1, 2012, an additional 45 limited partnership units were issued to new investors for proceeds of \$2,463,315 and 2 limited partnership units were gifted as promotional items.

On January 2, 2013, the General Partner signed on behalf of the Partnership a "Letter of Intent" to work jointly on a project that will generate construction and purchase payments to the Partnership in the amount of \$100,000,000.00. The letter anticipates a series of draws starting on January 30, 2013. The first draw of \$1,000,000 has been received as of the date of publishing these statements, March 1, 2013. The next draw is to occur on March 30, 2013 in the amount of \$4,000,000. Subsequent four draws will follow every 60 days in the amount of \$10,000,000 each. The final draw of \$55,000,000 will be made upon substantial completion of the project.

On February 19, 2013, an Extraordinary General Meeting was held to revise the Limited Partnership Agreement dated January 26, 2011 as amended April 28, 2011 and October 28, 2011. The revision was to increase from \$850,000 as the limit on the amount of money the Partnership may borrow from time to time, and replace it with \$35,000,000 as the new limit on the amount of money the Partnership may borrow from time to time. The motion was passed by the required Extraordinary Resolution of Limited Partners, voting in person or by proxy.

13. CONTINGENT LIABILITY

The Partnership holds title to the investment property through a trust agreement with the General Partner. The General Partner is a related party to 0768723 B.C. Ltd. and 0741508 B.C. Ltd., the vendors of the Investment Properties.

During the 12 months ended April 3, 2012 title for the investment properties was transferred to the Partnership under the trust agreement. The General Partner entered into purchase agreements with 0768723 B.C. Ltd. and 0741508 B.C. Ltd. to purchase the Investment Properties.

The Investment Properties continue to have mortgages registered against the titles. The mortgages outstanding at the end of the current fiscal year are fully due and payable by 0768723 B.C. Ltd. In the event that 0768723 B.C. Ltd. defaulted on these mortgages the mortgagor has an option to seek mortgage rights against the title Investment Properties owned by the Partnership. In the unlikely event of a lender being required to enforce its mortgage rights for mortgage defaults, the General Partner would take all course of action available to it, to act in the best interest of the Partnership and protect the Investment Properties.

The total amount owing on the mortgages as of April 3, 2012 is \$8,507,000.

3. Corporate Documents

R & C APPRAISERS

1368 Gregory Road
West Kelowna
BC, V1Z 3P2

www.rcappraisers.com

Phone: 250-454-9216
Fax: 250-454-9216
rcappraisers@gmail.com

October 5, 2012

Mr. Mark Consiglio
Mark Consiglio

Re: Short Narrative Report, Real Estate Appraisal
Chute Lake Rd; NE ¼ Sec. 13, Kelowna, BC
Canada

File Name: C1208016

Dear Mr. Consiglio:

At your request, I have prepared an appraisal for the above referenced property. Please reference page 13 of this report for important information regarding the scope of research and analysis for this appraisal, including property identification, inspection, highest and best use analysis and valuation methodology.

I certify that I have no present or contemplated future interest in the property beyond this estimate of value. Your attention is directed to the Limiting Conditions and Assumptions section of this report (page 12). Acceptance of this report constitutes an agreement with these conditions and assumptions. In particular, I note the following:

Hypothetical Conditions:

- --

Extraordinary Assumptions:

- Pursuant to our instructions, the estimated market value reported herein reflects the total value of the subject property, as if unaffected by any and all registered encumbrances other than a first mortgage financing.

Mr. Consiglio
Mark Consiglio
October 5, 2012
Page 2

Based on the appraisal described in the accompanying report, subject to the Limiting Conditions and Assumptions, Extraordinary Assumptions and Hypothetical Conditions (if any), I have made the following value conclusion(s):

Current As Is Market Value:

The "As Is" market value of the Fee Simple estate of the property, as of July 9, 2012, is

SIX MILLION SEVEN HUNDRED THOUSAND DOLLARS, \$6,700,000

The market exposure time¹ preceding July 9, 2012 would have been 2 years and the estimated marketing period² as of July 9, 2012 is 2 years.

Supporting data upon which this conclusion is based are contained in the accompanying report plus a residential form appraisal report complete under separate cover, both subject to the **Assumptions and Limiting Conditions** within the body of their respective reports. This appraisal report is prepared exclusively for Mr. Mark Consiglio for internal- accounting purposes only. We are not aware of any third parties that are likely to see or rely on the report other than first mortgage lender: liability in this respect or for any other user is expressly denied.

Respectfully submitted,
R & C Appraisers



Rod Dubois, AACI, P.App. DULE
British Columbia-901210

¹ Exposure Time: see definition on page 9.
² Marketing Time: see definition on page 9.

TABLE OF CONTENTS

Summary of Important Facts and Conclusions 5

Definitions 7

Report Type..... 11

Limiting Conditions and Assumptions 12

Appraisal Scope..... 13

Market Area Analysis 16

Market Area and Property Characteristics17

The Competitive Market20

Zoning 32

Highest and Best Use..... 34

Valuation Methodology 36

Analyses Applied.....36

Cost Approach..... 37

Land Value37

Sales Comparison Approach – Land Valuation 38

Analysis Grid.....45

Sales Comparison Approach48

Certification Statement 50

Addenda 51

Zoning and Resource Study area Information 52

Site Improvement/Development Cost Summary..... 55

Appraisal Qualifications 56

Summary of Important Facts and Conclusions

GENERAL

Subject: Chute Lake Rd; NE ¼ Sec. 13, Kelowna, BC, Canada

Legal Description The subject property has been identified by the legal description and the BC Assessment Authority parcel identifier number; PID.
LEGAL DESCRIPTION: Part NE31/4, Except Plan KAP49085, Section 18, TP 28, SDYD.
PID# 015-122-085 Roll# 723-6931.000

PID No. : 015-122-085

Taxes: \$2,892

Date of Report: October 5, 2012

Intended Use: The intended use is for internal- accounting purposes only.

Intended User(s): Mark Consiglio.

Sale History:
Under CUSPAP we are required to report the past three years sales activity. According to BC Assessment and MLS data, the subject property has not been for sale or sold in the past 3 years. Last recorded transaction was an internal, non arms length transaction, registered August 2011, reported by client as a share transfer. This transfer within the Kelowna Mountain Limited partnership was an internal transaction, yielding 850 units or shares, a total aggregate subscription value of \$26,615,320. The subject property was part of that share sale, including a total of approximately 640 Acres of total property, all three properties, including subject adjacent borders.

Current Listing/Contract(s): The subject property is not known to currently be listed for sale, or under contract.

PROPERTY

Land Area:	160.00Acres
Improvements:	Entrance gate with signage and landscaping, approximately 40 feet x 60 feet wood frame viewing platform with graveled roadway access, approximate 1.2 mile trail network, 1.2 mile, 2 lane road, one lane paved the other prepared for paved, clearing and preparation work to approximately 50 Acres.
Zoning:	RU1 – Zoned designed to accommodate agricultural and rural uses on parcels that are 30 hectares or greater and located outside the Land Reserve.
Highest and Best Use of the Site:	The site is under review as a recreational resource study area with probability for re-development. Therefore highest and best use is for holding property for future redevelopment.
Highest and Best Use as Improved:	As is currently developed as a holding property with agri-tourism based development use.

VALUE INDICATION

Value Conclusion: **\$6,700,000**

142

JOEL & MIA MACKOFF
1755 EDGEWATER LANE
NORTH VANCOUVER, BC V7H 1T3

December 31, 2014

Kelowna Mountain Development Service Ltd.
0768723 BC Ltd.
200-Ellis Street
Kelowna, BC V1Y 2A3

Attention: Mark Consiglio

Dear Mark:

Re: Draft Easement

This is Exhibit "P" referred to in the affidavit of Joel Mackoff sworn before me at Vancouver in the Province of British Columbia this 20th day of March A.D. 2014
A Commissioner for taking Affidavits within British Columbia

Further to our telephone conversation last night, I am writing on behalf of my wife and myself regarding our interests as mortgagees of what I am calling the "Mtn. Development" [PID: 011-781-866], (sometimes referred to as "Lot C"). I am writing at length as I want to make certain I understand what is being proposed, the basis for it and how it would be accomplished.

Your solicitor, Mr. Brown, provided a draft easement under the cover of his letter of November 20, 2014. That draft contemplates a grant of an easement by Kelowna Mountain Development Service Ltd. ("Services") to 0768723 BC Ltd. ("723") in respect of its adjacent lands to the north-west [PID: 015-122-107] (sometimes referred to as "Lot B"). As I understand it, you and your immediate family are the owners of 723.

Your proposal and what you advised about it, as I understand it, is as follows:

- You have constructed a "Welcome Centre" on the Mtn. Development site at a cost of approximately \$5 million.
- The Welcome Centre has been used to host special events, e.g. weddings or corporate functions.
- The Welcome Centre can, under the existing occupancy permit, host 100 persons indoors, and is unrestricted for outdoor functions.
- The parking currently being used for the Welcome Centre is on the adjacent lands. While that facility can accommodate up to 300 cars, generally, functions do not seem to exceed 100 cars.
- There is a parking facility on the Mtn. Development site, but it can only accommodate about 100 cars at a time.
- Part of the performance area of the Welcome Centre encroaches on Lot B.
- The four suspension bridges are largely on Lot B, but two of them encroach upon the northeasterly lot, sometimes referred to as Lot A.

- You believe there is a business case to be made that the grant of the easement would benefit the Kelowna Mountain Limited Partnership, of which Services is the general partner.
- You believe that if the easement is granted, you can benefit the Lot C mortgagees, of which we are a part, by raising an additional \$500,000 on Lot B. That sum can be used in some manner toward the account of the Lot C mortgage. You believe you can raise this sum because you have received a preliminary expression of interest from the second mortgagee of Lot "B" (a private lender) in this regard. (By the title, I assume this lender is 638070 Alberta Ltd.) You said you would also consider approaching Canterra (a MIC), the first mortgagee. (The title shows the first mortgagee to be Classic Mortgage Corporation, which I assume therefore to be an affiliate of Canterra.)

If I have in any manner misunderstood your proposal, please advise me.

During our conversation I asked for some information that I expect all the mortgagees in our group would need in considering your proposal. Your information to me included the following:

- Because functions at the Welcome Centre are in excess of 100 persons, special events are seasonally hosted. In 2014 the Welcome Centre operated 7 days a week from Easter through the Canadian Thanksgiving.
- None of the management was contracted out, and all was done under your auspices.
- Revenues from the Welcome Centre's operations were about \$400,000, with income (net of expenses) of about \$200,000.
- You are hoping to double these revenues in 2015.

[I did not ask during our conversation, but do now: what bookings do you presently have for the 2015 season and who manages this for you?]

I earlier asked you the following questions which were premised on our mortgage group favourably entertaining your proposal. I understand your responses to be as set out below.

- A. In view of your personal interest in 723 and your position as the executive of Services, how would the agreement of the Limited Partnership to the easement be accomplished?

You informed me your legal team advised you, that if you deemed it to be in the best interests of the Limited Partnership, you could execute the easement without a vote or approval of the Limited Partners.

- B. One of your original "exit strategies" to pay the Lot C mortgage, was through the continued sale of partnership units. In view of the earlier cease trade order, how could you carry on with that strategy?

You informed me that your business associate, Dennis Drummond was committed to the Partnership and would be acquiring an interest sufficient to pay out the mortgagees. Alternatively, you suggested, you would market units to sophisticated investors in

segments valued in excess of \$150,000. This would avoid the need for a prospectus, and you would instead proceed by a regulation exempt offering memorandum.

I expect to meet next week with our solicitor next week to discuss the draft easement and your proposal. If you have any comment on the above, could you please let me know in the meantime?

Sincerely,

A handwritten signature in black ink, appearing to be 'D. A. H.', written in a cursive style.



KORNFELDLLP

1100 ONE BENTALL CENTRE
505 BURBARD STREET, BOX 11

VANCOUVER, B.C., CANADA V7X 1M3
T: 604.331.8300 F: 604.583.0570
WWW.KORNFELDLLP.COM

145

Douglas B. Hyndman
dhyndman@kornfeldllp.com

d: 604-331-8303

January 9, 2015

Porter Ramsay LLP
Barristers & Solicitors
200-1465 Ellis Street
Kelowna, B.C.
V1Y 2A3

Attention: Mr. Tim Brown

Dear Tim:

This is Exhibit " Q " referred to in the
affidavit of
sworn before me at
in the Province of British Columbia
this 20..... day of A.D. 2015
.....
A Commissioner for taking Affidavits
within British Columbia

Thank you for your letter of November 20, 2014 attaching a draft easement.

As I think you are aware, I act for the first mortgagees of the "Mtn. Development"
[PID: 011-781-866], (sometimes referred to as "Lot C"). Your letter states that
your client intends to grant an easement to mine.

My understanding is that your client, Kelowna Mountain Development Services
Ltd. ("Services"), the general partner of Kelowna Mountain Limited Partnership,
intends to grant an easement to 0768723 BC Ltd. ("723") in respect of its adjacent
lands to the north-west [PID: 015-122-107] (sometimes referred to as "Lot B").
Further, there is a proposal that my clients would receive \$500,000 toward their
mortgage for acceding to the easement.

I have been asked to consider this proposal and how it might be implemented. One
matter of special concern about this proposal is the following.

My understanding is that the shares of 723 are closely held by Mr. Consiglio's
family. Mr. Consiglio is also the chief officer of Services. Your draft has Mr.
Consiglio signing the grant of the easement on behalf of the Limited Partnership
for the benefit of 723.

KORNFELD LLP

January 9, 2015

Page 2

Mr. Consiglio has advised my client that he has received legal advice that, as general partner, he need not obtain a resolution of the Limited Partners to make the grant; and that he, as general partner, is entitled to decide whether the grant is in the best interests of the Partnership.

If my clients decide to proceed, they will need to be satisfied as to the regularity of any transaction involving them.

In *Naramalta Development Corporation v. Therapy General Partner Ltd.*, 2012 BCSC 191, Mr. Justice Kelleher considered the obligations of a general partner to limited partners. His Lordship decided that a general partner stands in a fiduciary relationship to the limited partners. The following is an excerpt from his Reasons for Judgment.

[63] I conclude that these payments to Omnex under the Management Fee Agreement were no more than a device to compensate Mr. McBean in a manner in which NDC could not be compensated.

[64] NDC, as a general partner, has a fiduciary duty to the limited partners. In *Rochweg v. Truster* (2002), 2002 CanLII 41715 (ON CA), 58 O.R. (3d) 687 (C.A.), a unanimous panel of the Ontario Court of Appeal described the nature of the duty. At para. 22, Cronk J.A. wrote:

Equitable principles recognized by the courts during the last 100 years impose on partners duties of loyalty, utmost good faith and avoidance of conflict and self-interest. In Ontario, the principles which inform these duties are partially reflected in the *Act*. At all times while Rochweg was a partner of RTZ, he owed these duties to his partners.

[65] And at para. 36, he wrote:

It has long been established that partners owe a fiduciary duty to each other, and that equitable principles hold fiduciaries to a strict standard of conduct, encompassing duties of loyalty, utmost good faith and avoidance of conflict of duty and self-interest. These are well recognized, core principles of the law of partnership.

[66] These principles are entirely applicable to a limited partnership. It is clear from *Molchan v. Omega Oil and Gas Ltd.*, 1988 CanLII 103 (SCC), [1988] 1 S.C.R. 348, that a general partner is a trustee and owes a fiduciary duty to its limited partners (para. 34).

[67] The reasoning in *Molchan* was applied by Mr. Justice Shaw of this court in *King v. On-Stream Natural Gas Management Inc.*, [1993] B.C.J. No. 1302 (S.C.). I adopt his conclusion, from para. 28:

KORNFELD LLP

January 9, 2015

Page 3

On reviewing the provisions in the *Partnership Act* relating to limited partnerships, I can find nothing which either expressly or by necessary implication says that a general partner in a limited partnership is under any lesser duty than a partner in an ordinary partnership with respect to partnership property. Considering the fact that a general partner in a limited partnership has the sole right to manage the business of the partnership and the limited partners are precluded from taking part in management, this, in my opinion, is a compelling reason why a general partner should be under at least the same duty as a partner in an ordinary partnership holding partnership property.

[68] Shaw J. went on to elaborate on the nature of the fiduciary duty owed by a general partner (at para. 29, quoting from *Molchan*):

For these purposes I assume the highest status of the general partner, namely, that of a trustee holding the properties of the partnership on behalf of all other partners.

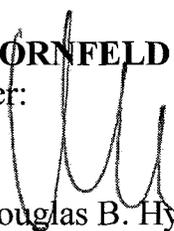
To quote from the above passage, it seems to me that in respect of the Limited Partners, Services has “duties of loyalty, utmost good faith and avoidance of conflict and self-interest”. On the face of it, it seems to me that proposed manner of implementing the easement puts Mr. Consiglio and 723 into a conflict of interest with Services and the Limited Partnership.

If you believe I am wrong in this wrong, could you please explain? If you know of another manner of avoiding the issue, could you please propose it?

Yours truly,

KORNFELD LLP

Per:



Douglas B. Hyndman

cc: Client

Federal Court



Cour fédérale

Date: 20160511

Docket: T-1327-15

Citation: 2016 FC 530

Vancouver, British Columbia, May 11, 2016

PRESENT: The Honourable Mr. Justice Hughes

IN THE MATTER OF 0741449 B.C. LTD.
AND AN APPLICATION BY
THE MINISTER OF NATIONAL REVENUE
UNDER SECTION 164(1.2) OF THE *INCOME TAX ACT*

2016 FC 530 (CanLII)

BETWEEN:

THE MINISTER OF NATIONAL REVENUE

Applicant

and

0741449 B.C. LTD.

Respondent

JUDGMENT AND REASONS

[1] The Minister is seeking jeopardy orders under the provisions of subsection 164(1.2) of the *Income Tax Act*, RSC 1985, c 1, (5th Supp) permitting funds presently in the hands of the Minister to be retained, such funds having been paid by the Respondent in respect of tax owing

This is Exhibit "R" referred to in the affidavit of *[Signature]* sworn before me at *[Signature]* in the Province of British Columbia this 20th day of *[Signature]* A.D. 2017
A Commissioner for taking Affidavits within British Columbia

until all appeals respecting the tax have been determined. For the reasons that follow, I will issue such an Order.

[2] The Respondent 0741449 B.C. Ltd. is a British Columbia corporation of which Mark Consiglio or his wife Nicola Consiglio is the sole director and shareholder. There are two applications in respect of this Respondent. The evidence and argument is common to both and both were heard together. Since those applications were filed, the Respondent has been amalgamated with another British Columbia corporation is also owned by one of both of the Consiglios. The resulting corporation continues under the name 0722955 B.C. Ltd.

[3] Subsection 164(1.2) of the *Income Tax Act* permits the Minister to apply to the Court to order that funds in the hands of the Minister not be repaid to the taxpayer despite a request for repayment, in circumstances where the judge “*is satisfied that there are reasonable grounds to believe that the collection of all or any part of an amount assessed in respect of the taxpayer would be jeopardized.*” Subsection 164(1.2) provides:

164(1.2) Notwithstanding subsection 164(1.1), where, on application by the Minister made within 45 days after the receipt by the Minister of a written request by a taxpayer for repayment of an amount or surrender of a security, a judge is satisfied that there are reasonable grounds to believe that the collection of all or any part of an amount assessed in respect of the taxpayer would be jeopardized by the repayment of the amount or the surrender of the security to the

164(1.2) Malgré le paragraphe (1.1), le juge saisi peut, sur requête du ministre faite dans les 45 jours suivant la réception de la demande écrite d'un contribuable visant le remboursement d'une somme ou la remise d'une garantie, soit ordonner que tout ou partie de la somme ne soit pas remboursée au contribuable ou que tout ou partie de la garantie ne lui soit pas remise, soit rendre toute ordonnance qu'il estime raisonnable dans les circonstances, s'il est

taxpayer under that subsection, the judge shall order that the repayment of the amount or a part thereof not be made or that the security or part thereof not be surrendered or make such other order as the judge considers reasonable in the circumstances.

convaincu qu'il existe des motifs raisonnables de croire que le fait de lui rembourser la somme ou de lui remettre la garantie conformément à ce paragraphe compromettrait le recouvrement de tout ou partie du montant d'une cotisation établie à son égard.

[4] The present Applications deal with three requests for refunds made by the Respondent totalling \$1,157,568.24. The first Application deals with two of these requests, the second deals with the third request which was made after the first Application was initiated. I am advised that the Respondent has taken proceedings in respect of those assessments in the Tax Court but that no date for a hearing has yet been set out.

[5] The Respondent is principally in the real estate development business. The assets of the Respondent, aside from the refunds sought from the Minister, is in the form of real estate in the Kelowna, British Columbia area, much of which is heavily mortgaged. I repeat the description of those assets as set out in Respondent's Counsel's memorandum:

22. The Respondent owns the following real property assets (acquired from Predecessor 0741 on the amalgamation):

- a. #15-4215 Westside Road, Kelowna, B.C. ("Lot 15") having a fair market value of \$400,000 and liabilities secured against title as follows:

 - a. two mortgages registered against title to Lot 15 totalling \$563,808;*
 - b. a CRA judgment in the amount of \$530,531.77; and*
 - c. outstanding strata fees of approximately \$10,000; and**

- b. #20-4215 Westside Road, Kelowna, B.C. ("Lot 20") having a fair market value of \$600,000 and liabilities secured against title as follows:
 - i. a registered mortgage having a face value of \$800,000 but with only \$431,697 outstanding; and
 - ii. outstanding strata fees of approximately \$10,000.
- 23. The Respondent owns the following additional real property assets (acquired from Predecessor 0722 on the amalgamation):
 - a. 517 Trumpeter Road, Kelowna, B.C. ("517 Trumpeter") having an estimated fair market value of \$410,000 and mortgages registered against title totalling approximately \$400,000;
 - b. 521 Trumpeter Road, Kelowna, B.C. ("521 Trumpeter") having an estimated fair market value of \$450,000 and mortgages registered against title totalling approximately \$414,000; and
 - c. 5171 Chute Lake Road, Kelowna, B.C. (the "Chute Lake Road Property") having mortgages totaling \$4,200,000 registered against title.

[6] The only asset of real value that could potentially be realized, is the Chute Lake property. The Minister's evaluation places a market value of about \$1.5 million on this property, the Respondent's evaluation places a value of about \$4.85 million as undeveloped property and about \$7.15 million as developed property. The evidence is that there is an outstanding foreclosure Order of the British Columbia Court against this property; there is no evidence in the record as to whether that Order has been satisfied or otherwise resolved. The Respondent says that development plans respecting this property are underway but a letter from the Department Manager, Community Planning, City of Kelowna, in the record states that a Preliminary Layout Review (PRL) letter has been issued but that it could be revoked at any time and that, in any

event if Consiglio were still to be involved, he would not approve a subdivision application. There is also a suggestion in the evidence that a sale of the Chute property may be pending.

[7] The evidence also shows that Mr. Consiglio has been involved in a number of business ventures in the past, many of which have failed to pay taxes or gone bankrupt.

[8] There are only two reported decisions dealing with subsection 164(1.2) of the *Income Tax Act*, they are *The Minister of National Revenue v Chabot*, 2010 FC 574, a decision of the late Justice Blanchard of this Court, and *Minister of National Revenue v Clarke*, 2011 FC 838, a decision of Justice Simpson of this Court. Of these, *Chabot* is the more instructive.

[9] Earlier jurisprudence deals with the provisions of section 225.2 of the *Income Tax Act*, which permits the Court to issue a jeopardy order to speed up a pending assessment where the Minister has not yet received funds. The jurisprudence, including *Canada v Golbeck*, [1990] 2 CTC 438, a decision of the Federal Court of Appeal, and *1853-9049 Quebec Inc v Her Majesty the Queen*, [1987] 1 CTC 137, a decision of the late Justice Rouleau of this Court, speak of cases of fraud and cases where the taxpayer may waste, liquidate or otherwise transfer property to escape the tax authorized. I agree with Justice Blanchard where he wrote at paragraph 22 of his decision in *Chabot* that the jurisprudence developed under subsection 225.2(2) has little bearing on applications under subsection 164(1.2).

[10] Justice Blanchard in *Chabot* established that in order for a Judge to be satisfied that there are “reasonable grounds to believe” that the collection of tax would be jeopardized, the Court

must assess the taxpayers net worth and ability to satisfy the tax debt independently of the refund at issue. Factors such as unorthodox behaviour of the taxpayer and evidence regarding potential dissipation of assets by the taxpayer may be considered. He wrote at paragraphs 23 to 26 of

Chabot:

[23] In interpreting subsection 164(1.2) of the Act, I will apply the so-called “modern rule” of statutory interpretation mandated by the Supreme Court of Canada in Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 S.C.R. 27. The rule provides that:

The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.

[24] The clear language of subsection 164(1.2) provides that the jeopardy to the collection of the taxpayer’s debt that needs to be established by the Ministers is the jeopardy that would be caused by the “repayment” of the amount of the refund.

[25] Further, by inserting the provision in that part of the Act dealing with refunds, Parliament intended to provide for measures to be available on application by the Minister, where jeopardy is established, to ensure that such refunds be retained and applied as a set-off against amounts that are under objection or appeal.

[26] In my view, factors that require consideration in the circumstances of a subsection 164(1.2) application are the amount of the debt to be collected relative to the amount of the refund, the taxpayer’s ability to pay or otherwise satisfy the debt, the value of the taxpayer’s net assets and whether these are sufficient and available to satisfy the debt independently of the refund. Where it is established that the taxpayer is able to repay the debt or that his assets are of sufficient value to satisfy the debt, then releasing the amount of the refund would not jeopardize the collection of the amount. It is in the context of assessing the taxpayer’s net wealth and the taxpayer’s ability to satisfy the debt independently of the refund that the issue of jeopardy is assessed. This may include considering factors such as unorthodox behaviour of the taxpayer and any evidence regarding dissipation of assets by the taxpayer. Upon consideration of such factors, if there are reasonable grounds to believe, in all of the circumstances, that release of the refund to the taxpayer would result in that amount not being available to the Minister for collection against the debt, then

collection of the debt is jeopardized for the purposes of subsection 164(1.2) and a jeopardy order pursuant to that provision is justified.

[11] In this case, I am satisfied that there are reasonable grounds to believe that the funds now in the hands of the Minister would likely be jeopardized if returned to the Respondent. The only real asset is the Chute Lake property; it is heavily mortgaged and subject to a foreclosure order. There is a suggestion that a sale may be imminent. Approval of a subdivision plan is tentative and may not ever occur. The principal of the Respondent, Consiglio, or the companies with which he is associated, has a history of non-payment of taxes and bankruptcy. All of this makes it reasonable for this Court to conclude that funds in the hands of the Minister may well be in jeopardy if returned to the taxpayer.

[12] Counsel for the Respondent points out that the last few words of subsection 164(1.2) gives the Court a discretion to make “*such other order as the judge considers reasonable in the circumstances.*” Counsel suggests that an Order be made that a portion of the funds in the hands of the Minister be paid to the City of Kelowna to cover subdivision approval fees and that the balance be secured by a mortgage or other charge on the Chute Lake property.

[13] I will decline to make such an Order as it will, in effect, be making the Minister a business partner of the taxpayer in a somewhat risky venture. There are already several mortgages on the property and it is by no means clear as to whether the Respondent still owns the property.

[14] I will award costs to the Minister fixed in the sum of \$5000.00

JUDGMENT

FOR THE REASONS PROVIDED, THE COURT ADJUDGES that:

1. A Jeopardy Order is granted in each of the applications T-1327-15 and T-1377-15 authorizing the Minister to retain and apply a tax refund to the tax debt of the Respondent, including its successor by amalgamation 0722955 B.C. Ltd., until all objections and appeals in respect of such tax debt have been concluded.
2. The Minister is entitled to costs, in both of T-1327-15 and T-1377-15 to be paid by the Respondent and its successor as aforesaid collectively in the sum of \$5000.00

"Roger T. Hughes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1327-15

STYLE OF CAUSE: THE MINISTER OF NATIONAL REVENUE v 0741449
B.C. LTD.

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: MAY 10, 2016

JUDGMENT AND REASONS: HUGHES J.

DATED: MAY 11, 2016

2016 FC 530 (CanLII)

APPEARANCES:

Jason Levine	FOR THE APPLICANT
Loretta Chun	
David R. Davies	FOR THE RESPONDENT
Shawn Tryon	

SOLICITORS OF RECORD:

William F. Pentney	FOR THE APPLICANT
Deputy Attorney General of Canada	
Vancouver, British Columbia	
Thorsteinssons LLP	FOR THE RESPONDENT
Vancouver, British Columbia	

(157)

This is Exhibit " S " referred to in the
affidavit of Joel Mackoff
sworn before me at Vancouver
in the Province of British Columbia
this 20th day of August A.D. 2017
.....
A Commissioner for taking Affidavits
within British Columbia

----- Forwarded message -----
From: **Jeff Hudson** <jeff@hmcommercial.com>
Date: Tue, Aug 29, 2017 at 12:55 PM
Subject: Kelowna Mountain
To: "Joel Mackoff (mackoffmanagement@shaw.ca)" <mackoffmanagement@gmail.com>
Cc: Marshall McAnerney <marshall@hmcommercial.com>

Joel, as it relates to the Property: Sub Lot 28, LD 54, Plan 1190, DL 2711, SDYD (a portion of what is referred to as Kelowna Mountain), I offer my statement as to the events of July 19, 2017.

On July 19, 2017, I as a Realtor went to show the Property and Welcome Centre to an interested buyer.

No one was there to let myself, the buyer and their Realtors in as was pre-arranged. I was able to get onto the property as the gate was unlocked, but upon getting to the building Mark Consiglio's, daughter: Tuscany, was there with another person cleaning the interior. She did not want to let us into the building at all, and said that we could tour the property, but not the building. I explained that Mark had advised we could tour the building, and that the court order allowed us to do so. I then presented her with the court order in order to convince her, at which point she called Mark and after a conversation with him she said we could go through the building. At this point she also mentioned that it wouldn't matter if we went through the building because they weren't selling.

After this, myself, the buyer and cooperating Realtors walked through the building and onto the terrace. After about 5-10 minutes, we ventured back to the doors we'd come thru to notice that they had been locked which meant we had to walk all the way around the building, and when we got to the front entrance doors I could there them being chained-up. I knocked on the window to get Tuscany's attention and when I mentioned to her that she had locked us out, she was very curt and said, "I know. We are leaving".

The potential buyer sensed there was a very confrontational attitude towards allowing access, and Tuscany also said the property wasn't for sale because they have already raised the money to pay off the mortgage. It should be noted that on the day of the showing there were several windows broken with piles of glass at the base of the windows on the outside the building. The buyer made an observation that because there was so much glass outside the windows, it appeared to him that the windows had been broken from the inside.

Regards,



Jeff Hudson
Personal Real Estate Corporation

Principal/Co-founder
jeff@hmcommercial.com

cell: [250 215 4776](tel:2502154776)

tel: [250 712 3130](tel:2507123130)

fax: [250 860 1600](tel:2508601600)
www.hmcommercial.com

MACDONALD REALTY KELOWNA

2700 Richter St. | Kelowna, BC V1Y 2R5 Canada

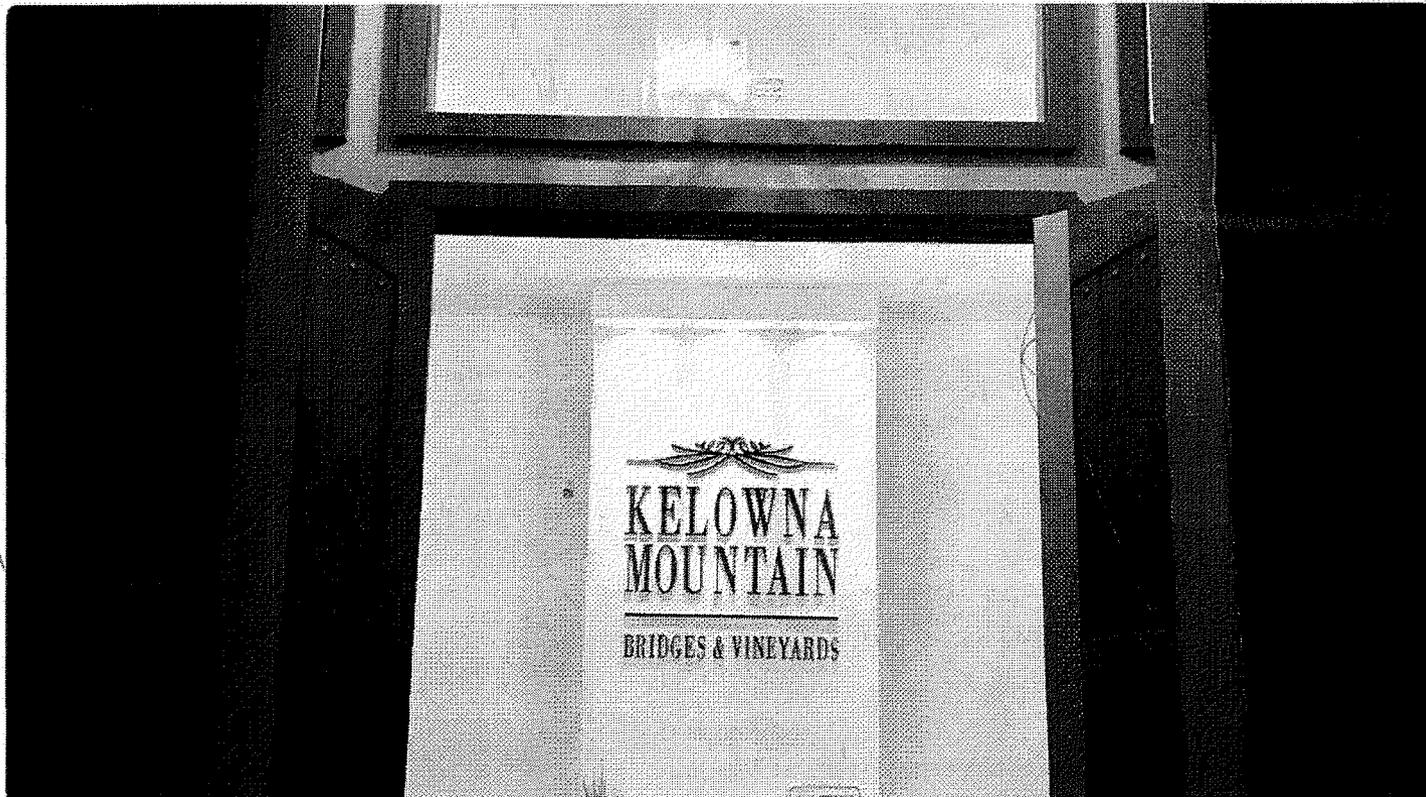


Home



Kelowna Mountain @kelownamountain · 2h

Thank You to all that visited #kelownamountain this year! After today, kelownamountain is closed for the Season. See you in 2018! KMBV



This is Exhibit "1" referred to in the affidavit of M. Mackenzie sworn before me at Kelowna in the Province of British Columbia this 30 day of August, A.D. 2017
A Commissioner for Taking Affidavits within British Columbia

(159)

This is Exhibit " U " referred to in the affidavit of *Dennis Drummond* sworn before me at *Kelowna BC* in the Province of British Columbia this *20th* day of *AUGUST* A.D. 201*7*
.....
A Commissioner for taking Affidavits within British Columbia

This is the 1st affidavit of Dennis Drummond in this case and was made on March 17, 2017

No. S-H-108833
Kelowna Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Melvin Haber
Dr. Steven L. Kirzner Inc.
Robert Sauer
Craig Sheridan
Mackoff Management Services (2012) Inc.

PETITIONERS

AND:

Kelowna Mountain Development Services Ltd.
Kelowna Mountain Limited Partnership
Mark Consiglio
0741508 B.C. Ltd.
0741449 B.C. Ltd.
0877099 B.C. Ltd.
0768723 B.C. Ltd.
0722955 B.C. Ltd.

RESPONDENTS

AFFIDAVIT

I, Dennis Drummond, businessman, of 16446 77th Avenue, Surrey, British Columbia, V4N 0L5, MAKE OATH AND SAY AS FOLLOWS:

1. I am familiar with the property that is the subject of this foreclosure proceeding. It is a 320 acre parcel owned by Kelowna Mountain Development Services Ltd., and Kelowna Mountain Limited Partnership. It forms part of the overall plan for the development of Kelowna Mountain. Kelowna Mountain Limited Partnership and Kelowna Mountain Development Services Ltd., own another parcel of land consisting of 160 acres. The overall development of Kelowna Mountain consists of 640 acres.

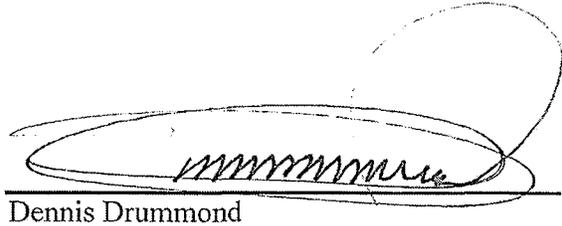
- 2. Since 2012 I have through various companies paid for and acquired partnership units in Kelowna Mountain Limited Partnership for approximately 8 million dollars.
- 3. Since 2012 I have through my company, Eldon Investments Ltd. (Eldon), made many loans to Mark Consiglio and his companies.
- 4. I am not prepared to allow Kelowna Mountain Development Services Ltd. and Kelowna Mountain Limited Partnership lose title to a 320 acre parcel, which is valued at in excess of 15 million dollars to be lost as a result of a 4 million dollar debt. Eldon is prepared to lend to Kelowna Mountain Development Services Ltd., and Kelowna Mountain Limited Partnership the full amount that is required to redeem the petitioners mortgage.
- 5. Eldon will be in a position to fund the loan within the next 5 months.

SWORN BEFORE ME at Vancouver,)
 British Columbia, this 17 day of March,)
 2017.)



_____)
 A commissioner for taking affidavits)
 For British Columbia)

REINHARD BURKE
Barrister & Solicitor
 744 Shuswap Ave.
 Chase, BC V0E 1M0
 Ph: (250) 679-8444



 Dennis Drummond

**IN THE SUPREME COURT OF BRITISH
COLUMBIA**

BETWEEN:

ROBERT SAUER
MELVIN HABER
CRAIG SHERIDAN
DR. STEVEN L. KIRZNER INC.
MACKOFF MANAGEMENT SERVICES (2012) INC.

PETITIONERS

AND:

KELOWNA MOUNTAIN DEVELOPMENT SERVICES LTD.
KELOWNA MOUNTAIN LIMITED PARTNERSHIP
MARK CONSIGLIO
0741449 B. C. LTD.
0722955 B.C. LTD.
0768723 B.C. LTD.
0877099 B.C. LTD.

RESPONDENTS

AFFIDAVIT

KORNFELD LLP

Barristers & Solicitors
1100 One Bentall Centre
505 Burrard Street, Box 11
Vancouver, British Columbia, Canada V7X 1M5
Telephone: (604) 331-8300
Fax: (604) 683-0570

D.B. Hyndman
File: MMS002/KEL171
