



No. H110471
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**BANCORP BALANCED MORTGAGE FUND LTD.
BANCORP FINANCIAL SERVICES INC.**

PETITIONERS

AND:

**618061 B.C. LTD.
VICTORIA SAWYER
TEODARUS J. KLUMPER also known as GEORGE KLUMPER
KIWEOL KIM
0855573 B.C. LTD.
THE CROWN IN RIGHT OF BRITISH COLUMBIA**

RESPONDENTS

NOTICE OF APPLICATION

NAME OF APPLICANT:

**Bancorp Balanced Mortgage Fund Ltd.
Bancorp Financial Services Inc. (the "Applicant")**

To:

**The Respondents
Boale, Wood & Company Ltd., in its capacity as Receiver of 618061 B.C. Ltd.**

TAKE NOTICE that an application will be made by the applicant to the presiding Judge at the courthouse at **800 Smithe Street, Vancouver, B.C.** on **November 24, 2011** at **9:45 a.m.** for the order(s) set out in Part 1 below.

PART 1: ORDER(S) SOUGHT

1. An Order (in the form attached as **Schedule "A"**) amending and expanding the powers of the Boale, Wood & Company Ltd. in its capacity as Receiver of 618061 B.C. Ltd. (the "Receiver"), appointed herein by the Order of Master Scarth pronounced May 18, 2011 (the "**Appointment Order**"), with such expanded powers being in addition to the terms contained in the Appointment Order and not in substitution thereof;

2. An Order (in the form attached as **Schedule "B"**) that the Receiver do have exclusive conduct of sale of the 618061 Lands (as defined below), in the place and stead of the Petitioners;

PART 2: FACTUAL BASIS

3. By the mortgage granted May 12, 2006 by the Respondent 618061 B.C. Ltd. ("**618061**") and registered in the New Westminster Land Title Office on May 18, 2006 under No. BA5062724, as modified, (the "**618061 Mortgage**") against the following lands:

- A. VILLAGE OF ANMORE
PARCEL IDENTIFIER: 026-652-048
LOT 7 SECTION 19 TOWNSHIP 39
NEW WESTMINSTER DISTRICT PLAN BCP22988;

(**"Lot 7"**)
- B. VILLAGE OF ANMORE
PARCEL IDENTIFIER: 026-652-081
LOT 11 SECTION 19 TOWNSHIP 39
NEW WESTMINSTER DISTRICT PLAN BCP22988;

(**"Lot 11"**)
- C. VILLAGE OF ANMORE
PARCEL IDENTIFIER: 026-652-102
LOT 13 SECTION 19 TOWNSHIP 39
NEW WESTMINSTER DISTRICT PLAN BCP22988;

(**"Lot 13"**)
- D. VILLAGE OF ANMORE
PARCEL IDENTIFIER: 026-652-374
STRATA LOT 1 SECTION 19 TOWNSHIP 39
NEW WESTMINSTER DISTRICT STRATA PLAN BCS1797;

(**"Lot 1"**)
- E. VILLAGE OF ANMORE
PARCEL IDENTIFIER: 026-652-960
STRATA LOT 6 SECTION 19 TOWNSHIP 39
NEW WESTMINSTER DISTRICT STRATA PLAN BCS1798;

(**"Lot 6"**)

(collectively, the "**618061 Lands**")

and by the following agreements:

- F. a security agreement (the “**Security Agreement**”), dated for reference May 11, 2006, granted to the Petitioners by 618081, notice of which was registered at the British Columbia Personal Property Registry on May 18, 2006 under base registration No. 013608D; and
- G. an Assignment of Deposits, Contracts of Purchase and Sale and Proceeds (the “**Assignment of Contracts**”), dated for reference May 11, 2006, granted to the Petitioners by 618081, notice of which was registered at the British Columbia Personal Property Registry on May 18, 2006 under base registration No. 013617D;

618081 granted a security interest to the Petitioners which, by way of the 618061 Mortgage, charges the 618081 Lands, and by way of the Security Agreement and Assignment of Contract, charges the personal property described therein (the “**Personal Property**”), in priority to the interests of the Respondents, and each of them, and their respective successors and assigns and all personal claiming by, through or under them.

- 4. Other security was granted, including covenants of the Respondents, Victoria Sawyer and Teodarus J. Klumper, also known as Georg Klumper, (the “**Covenantors**”), and mortgages to secure lands owned by the Covenantors, which are not the subject of this application.
- 5. By the Order Nisi made herein May 18, 2011:
 - (a) the amount found to be due and owing to the Petitioner as at May 18, 2011 was \$3,562,935.20 plus interest and costs;
 - (b) the last date for redemption was May 19, 2011;
- 6. By the further Order made herein May 18, 2011, Boale, Wood & Company Ltd. was appointed as Receiver of the current and future assets, undertakings and properties of every nature and kind whatsoever and wherever situate, including all proceeds thereof of 618061, including the 618061 B.C. Lands (collectively the “**Property**”), for the limited purpose of preparing an assessment report to the Court in relation to the potential costs and benefits of completing the subdivision of the Property (the “**Assessment**”), and that upon completion of the Assessment, the Petitioners are at liberty to make further order to the Court to extend and increase the powers of the Receiver accordingly.
- 7. By the Order made herein June 22, 2011, the Petitioners were granted exclusive conduct of sale of the 618061 Lands.
- 8. To the best of the Petitioners’ understanding, the 618061 Lands are those lands remaining, after 618061 instituted a subdivision proposal with the City of Anmore whereby it was, intending to subdivide the lands in two phases. The first phase was for a subdivision of 26 lots (Phase I), and the second phase was for a subdivision into 9 lots (Phase 2).

9. Lot 1, Lot 6, Lot 7 and Lot 13 are remaining subdivided lots under the Phase I subdivision. Lot 11 (PID 026-652-102) makes up the Phase 2 lands, which have not yet been subdivided into the 9 lots as intended by 618061.
10. The Petitioners understand that in order to commence the Phase 2 subdivision, certain outstanding items must be completed as required by the City of Anmore in respect of Phase I for its final approval with the City, as well as potential obligations under development agreements with previous developers in the area, by which there may be an obligation to pay fees for common services that have been put in place, known as late-comer fees.
11. The Receiver has determined that it cannot properly assess the financial feasibility of completing the subdivision of Phase 2 until it receives:
 - (a) documents from a neighbouring developer in relation to Latercomer fees; and
 - (b) the preliminary layout approval for Phase 2 from the Village of Anmore.
12. Therefore, the Petitioner seeks an Order that the powers of the Receiver be expanded to allow the Receiver to:
 - (a) obtain the necessary documents to determine the amount of Latecomer fees payable;
 - (b) submit the preliminary layout approval for Phase 2;
 - (c) complete the outstanding items for Phase I.
13. Boale, Wood & Company Ltd. has agreed to continue to act as Receiver for this purpose.

PART 3: LEGAL BASIS

14. Under the terms of the Mortgage and the Security Agreement, the Petitioners are entitled to the appointment of a Receiver.
15. Pursuant to the terms of the Appointment Order, the Petitioners are at liberty to seek an order of the Court extending and increasing the powers of the Receiver.
16. The Petitioners are not aware of any commercial reasons why the order sought should not be granted.

PART 4: MATERIAL TO BE RELIED ON

17. Order Nisi made May 18, 2011;
18. Appointment Order made May 18, 2011;
19. Order for Conduct of Sale made herein June 22, 2011;

20. First Report of the Receiver, dated November 9, 2011.

The applicant(s) estimate(s) that the application will take **15 minutes**.

This matter is within the jurisdiction of a Master.

This matter is not within the jurisdiction of a Master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application.

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated at the City of Vancouver, in the Province of British Columbia, this 10 day of November, 2011.

Lawson Lundell LLP

 Solicitors for the Applicant,
 Bancorp Balanced Mortgage Funds Ltd.
 Bancorp Financial Services Inc.
 (William L. Roberts)

This Notice of Application is filed by the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2.

<i>To be completed by the court only:</i>	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs _____ of Part 1 of this Notice of Application
<input type="checkbox"/>	with the following variations and additional terms:

<hr/> <hr/>	
Date:	
	_____ Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- Other – Enforcement of Security / Appointment of Receiver**

Schedule "A"

NO. H110471
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANCORP BALANCED MORTGAGE FUND LTD.
BANCORP FINANCIAL SERVICES INC.

PETITIONERS

AND:

618061 B.C. LTD.
VICTORIA SAWYER
TEODARUS J. KLUMPER also known as GEORG KLUMPER
KIWEOL KIM
0855573 B.C. LTD.
THE CROWN IN RIGHT OF BRITISH COLUMBIA

RESPONDENTS

ORDER MADE AFTER APPLICATION

BEFORE) _____ THE _____
)
) DAY OF _____, 2011

THE APPLICATION of the Petitioners coming on for hearing this day at Vancouver, B.C.; AND UPON HEARING _____, Counsel for the Petitioners, and no-one else appearing on behalf of the Respondents, although given due notice of this application in accordance with the Supreme Court Civil Rules

THIS COURT ORDERS that:

1. The Order pronounced May 18, 2011 appointing Boale, Woods & Company Ltd. as Receiver (the "Appointment Order") is amended and expanded on the terms contained within this Order, such terms being in addition to the terms contained in the Appointment Order and not in substitution thereof.

2. The Receiver's powers as contained in paragraph 2 of the Appointment Order are expanded to include the following powers, but with the provision that the Receiver shall have discretion to commence, continue or discontinue the development process for subdivision of Phase 2 of the real property described in the Appointment Order, at any time it deems appropriate:
- (a) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
 - (b) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
 - (c) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
 - (d) to settle, extend or compromise any indebtedness owing to the Debtor;
 - (e) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
 - (f) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
 - (g) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (h) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the Debtor;
- (i) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (j) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (k) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

3. The following Borrower Powers of the Receiver are hereby added:

FUNDING OF THE RECEIVERSHIP

- (a) The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$150,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
- (b) Neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced

without leave of this Court.

- (c) The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.
- (d) The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

ALLOCATION

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

4. The Petitioners are entitled to its costs of this application at Scale A.

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:

COUNSEL FOR THE PETITIONERS

BY THE COURT

REGISTRAR

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT

\$ _____

THIS IS TO CERTIFY that ♦, the Receiver Manager (the "Receiver") of all of the assets, undertakings and properties of ♦ acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (In Bankruptcy and Insolvency) (the "Court") dated the ♦ day of ♦, 2011 (the "Order") made in SCBC Action No. ♦ and/or SCBC Action No. ♦ Estate No. ♦, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ ♦, being part of the total principal sum of \$ ♦ which the Receiver is authorized to borrow under and pursuant to the Order.

1. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded ♦ not in advance on the ♦ day of each month after the date hereof at a notional rate per annum equal to the rate of ♦ per cent above the prime commercial lending rate of Bank ♦ from time to time.
2. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of the Property in respect of its remuneration and expenses.
3. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at ♦, British Columbia.
4. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the

Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

5. The charge securing this certificate shall operate to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

6. The Receiver does not undertake, and it is not under any personal liability, to pay any sum under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the ♦ day of ♦, 2011.

RECEIVER'S NAME, solely in its capacity as Receiver of the Property, and not in its personal capacity

Per:
Name:
Title:

NO. H110471
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**BANCORP BALANCED MORTGAGE FUND LTD.
BANCORP FINANCIAL SERVICES INC**

PETITIONERS

AND:

**618061 B.C. LTD.
and others**

RESPONDENTS

ORDER



**Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2
Phone: (604) 685-3456
Attention: William L. Roberts**

WLR/kap

Schedule "B"

NO. H110471
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANCORP BALANCED MORTGAGE FUND LTD.
BANCORP FINANCIAL SERVICES INC.

PETITIONERS

AND:

618061 B.C. LTD.
VICTORIA SAWYER
TEODARUS J. KLUMPER also known as GEORG KLUMPER
KIWEOL KIM
0855573 B.C. LTD.
THE CROWN IN RIGHT OF BRITISH COLUMBIA

RESPONDENTS

**ORDER MADE AFTER APPLICATION
FOR CONDUCT OF SALE TO RECEIVER**

BEFORE

) _____ THE _____
)
) DAY OF _____, 2011

THE APPLICATION of the Petitioners coming on for hearing this day at Vancouver, B.C.; AND
UPON HEARING _____, Counsel for the Petitioners, and no-one else
appearing on behalf of the Respondents, although given due notice of this application in accordance
with the Supreme Court Civil Rules

THIS COURT ORDERS that:

1. The lands and premises, being all and singular that certain parcel or tract of lands and premises situate, lying and being in the Province of British Columbia, and being more particularly known and described as:

- A. VILLAGE OF ANMORE
PARCEL IDENTIFIER: 026-652-048
LOT 7 SECTION 19 TOWNSHIP 39
NEW WESTMINSTER DISTRICT PLAN BCP22988;
- B. VILLAGE OF ANMORE
PARCEL IDENTIFIER: 026-652-081
LOT 11 SECTION 19 TOWNSHIP 39
NEW WESTMINSTER DISTRICT PLAN BCP22988;
- C. VILLAGE OF ANMORE
PARCEL IDENTIFIER: 026-652-102
LOT 13 SECTION 19 TOWNSHIP 39
NEW WESTMINSTER DISTRICT PLAN BCP22988;
- D. VILLAGE OF ANMORE
PARCEL IDENTIFIER: 026-652-374
STRATA LOT 1 SECTION 19 TOWNSHIP 39
NEW WESTMINSTER DISTRICT STRATA PLAN BCS1797;
- E. VILLAGE OF ANMORE
PARCEL IDENTIFIER: 026-652-960
STRATA LOT 6 SECTION 19 TOWNSHIP 39
NEW WESTMINSTER DISTRICT STRATA PLAN BCS1798;

(the "618061 Lands");

charged by the Petitioners' mortgage herein, be offered for sale immediately by private sale, free and clear of all encumbrances except the reservations and conditions in the original grant thereof from the Crown,

2. Boale, Wood & Company Ltd., in its capacity as Receiver of 618061 B.C. Ltd. appointed hereby by the Order of Master Scarth made May 18, 2011 (the "Receiver"), has exclusive conduct of the said sale and is at liberty to list the 618061 Lands for sale until such further order of the court, and to do all things incidental thereto, including to list the same with one or more duly licensed real estate agents or firms, to post signs on the 618061 Lands indicating that the 618061 Lands are offered for sale, to accept any offer to purchase, subject to the approval of this Honourable Court and to pay such real estate agent or firm who may arrange a sale of the 618061 Lands on this Honourable Court's approval of said sale of the 618061 Lands, earned commission based on the gross selling price, such commission to be at a rate not

exceeding seven percent (7%) on the first \$100,000.00 of the gross selling price and 2.5% on the balance of the gross selling price;

- 3. Any person or persons in possession of the 618061 Lands, do permit, on reasonable notice, any duly authorized agent on behalf of the Receiver, to post signs on the 618061 Lands indicating that the 618061 Lands are for sale, to inspect or appraise the 618061 Lands and the interior of the 618061 Lands and to show the 618061 Lands and the interior of the 618061 Lands, to any prospective purchaser or purchasers, between the hours of 9:00 a.m. and 8:00 p.m. on any day of the week;
- 4. Any sale shall be subject to the approval of this Honourable Court, unless agreed to by all parties.
- 5. The Petitioners are entitled to its costs of this application at Scale A.

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:

COUNSEL FOR THE PETITIONERS

BY THE COURT

REGISTRAR

NO. H110471
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**BANCORP BALANCED MORTGAGE FUND LTD.
BANCORP FINANCIAL SERVICES INC**

PETITIONERS

AND:

618061 B.C. LTD. and others

RESPONDENTS

**ORDER FOR CONDUCT OF SALE
TO RECEIVER**



Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2

Phone: (604) 685-3456
Attention: William L. Roberts

WLR/kap

NO. H110471
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**BANCORP BALANCED MORTGAGE FUND LTD.
ET AL.**

PETITIONERS

AND:

618061 B.C. LTD. ET AL.

RESPONDENTS

NOTICE OF APPLICATION



Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2

Phone: (604) 685-3456
Attention: William L. Roberts

19028-106800