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December 24, 2020

VIA EMAIL

Court of Queen's Bench of Alberta
601 - 5 Street SW
Calgary, AB T2P 5P7

Attention: The Honourable Madam Justice K. Eidsvik

**Re: Hillsboro Ventures Inc. v. Ceana Development Sunridge Inc.
Court of Queen's Bench Action No.: 1801 04745**

Further to our attendance in Court on December 10, 2020, we have reviewed the issues surrounding the joint venture contributions and deposits. We can advise that, contrary to my earlier understanding, the deposit amounts and the JV investments are largely corresponding, save for a small amount. Mr. Pontin's addition and interpretation appear to be correct with respect to my clients.

However, in our view, this does not change the analysis, given that the Purchase and Sale Agreements all referred to the amounts as deposits, as do the deposit receipts and other evidence. Further, in at least one instance, the notes in the Joint Venture Agreement expressly state that the JV contributions will be converted to deposits.

Further, the Purchase and Sale Agreements were generally entered into prior to the Joint Venture Agreements. Accordingly, the payments were made as deposits and later adopted within the JOINT Venture Agreements. Indeed, in several instances, an Amended and Restated Purchase Agreement or a new Purchase and Sale Agreement was entered into subsequent to the Joint Venture Agreements whereby the deposit were further recognized. It is arguable that the later agreement supersedes the earlier one in this regard.

In short, the fact that the deposits were also JV contributions does not have any effect on the fact that they were purchase deposits under the Purchase and Sale Agreements. We are not aware of any law which states that the deposits cannot take a dual purpose. It is our understanding that the JV contributions were meant to give purchasers, such of my clients, a role in the overall management of the completed development. Accordingly, the fact that the deposits were also JV investments does not impact the claim of either an express or constructive trust.

With respect to all other issues, we have no further authorities. We rely on the authorities which were presented before you and, in particular, the authorities relating to the inability to register a trust interest at the Land Titles registry. Further, in our view, the numerous matrimonial law cases surrounding constructive trust stand for the proposition that legal title, as reflected up the Land Titles registry may be superseded by a constructive trust. Certainly, that interest may be asserted against the debtor company. With respect to Hillsboro, we rely on the fact that Hillsboro, at all material times, knew of the existence of the deposits (which mostly predate Hillsboro's first registration) and the provisions of the Purchase and Sale Agreements. Therefore, Hillsboro is not a bona fide third party to any *without notice*. In fact, it required these deposits in order to finance.

Thank you for your kind attention.

Sincerely,

FIELD LLP

A handwritten signature in black ink, appearing to read 'D. Nishimura', with a stylized flourish at the end.

Douglas S. Nishimura
Partner

Cc: *The Service List*