

COURT FILE NUMBER	1801-04745
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	HILLSBORO VENTURES INC.
DEFENDANT	CEANA DEVELOPMENT SUNRIDGE INC.,
PLAINTIFFS BY COUNTERCLAIM	CEANA DEVELOPMENT SUNRIDGE INC., BAHADUR (BOB) GAIDHAR and YASMIN GAIDHAR
DEFENDANTS BY COUNTERCLAIM	HILLSBORO VENTURES INC., NEOTRIC ENTERPRISES INC., KEITH FERREL and BORDEN LADNER GERVAIS LLP
DOCUMENT	RESPONSE BRIEF OF THE DEFENDANT, CEANA DEVELOPMENT SUNRIDGE INC.
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	GLENN & CARD LAW LLP Attention: Thomas F Glenn Email: tfglenn@gclawyers.ca 100, 2886 Sunridge Way NE Calgary, Alberta T1Y 7H9 Phone: 403.291.2532 / Fax: 403.291.2534 File No.: 28 9719 015 / Call Box: 10 (Rush Legal)

RESPONSE BRIEF OF THE DEFENDANT, CEANA DEVELOPMENT SUNRIDGE INC.
Hearing Before the Honourable Madam Justice K. Eidsvik
DECEMBER 10, 2020 commencing at 9:30am

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I. INTRODUCTION / BACKGROUND

1. This is the Response Brief by Ceana Development Sunridge Inc. ("Ceana Sunridge"), the registered owner of the property located at 2255 – 32nd Street NE, Calgary, Alberta, and legally described below (the "Sunridge Project").

PLAN 9811891

BLOCK 8

LOT 1

EXCEPTING THEREOUT ALL MINES AND MINERALS

AREA: 1.398 HECTARES (3.45 ACRES) MORE OR LESS

2. The background for the Response by Ceana Development Sunridge Inc. is contained herein in the issues presented and has been written from the perspective of Mr. Bahadur (Bob) Gaidhar.
3. Attached as **TAB 1** is a "Brief Precis of Fact" which is a narrative providing further facts and background as to the purchase, financing and construction of the Sunridge Project described herein.

II. ISSUES and ARGUMENT

4. I am the President and Chief Executive Officer of the Defendant corporation and Guarantor of the corporation's corporate debt to the Plaintiff and as such have a personal knowledge of matters herein deposed to except where stated otherwise.
5. I am the sole shareholder of the corporation, Ceana Development Inc. which is the sole shareholder of the Defendant corporation, Ceana Development Sunridge Inc.
6. I was the agent of Ceana Development Sunridge Inc. ("Ceana Sunridge") when Ceana Sunridge was organized and the building project at 2255 – 32nd Street NE, Calgary, Alberta was planned (the "Sunridge Project").
7. I am guarantor and interested party in these proceedings.
8. That I state that I am in support of an in favor of the Application by the Receiver to retain control of the Sunridge Project previously described.
9. Based on my assessment of Hillsboro Ventures Inc. ("**Hillsboro**") and my history with Hillsboro, I am of the opinion that none of the interested parties have any hope of reasonable recovery of their monies paid either under the Joint Venture Agreements or purchases if the control of the Project were to transfer to Hillsboro.
10. On October 30, 2020, I affirmed an Affidavit which is before these Honourable courts. Exhibit "F" to that Affidavit referred to my own narrative about the conduct of and my experience with Hillsboro. In support and extension of that Exhibit, I attach a number of additional documents which follow.
11. Attached as **TAB 2**, begins with correspondence from Hillsboro's lawyer, BLG, in regards to an advance on one of the mortgages in which \$51,125 was paid to Neotric Enterprises Inc. as some form of commission of which I have never agreed. The additional documents that follow in TAB 2 confirm that withdrawal and transaction.
12. Additionally, there is a copy of my accounting showing that of the loan principle of \$6,500,000, only \$4,473,272 was advanced. Also, excessive and incorrect fees of \$650,125 was paid.

13. The next page is a reconciliation of the overall interest owing versus interest paid. It is my contention that there was never a point where Ceana Sunridge was in default or needed additional funding.
14. **TAB 3** attached hereto, consists of one type written page and three pages in Keith Ferrel's handwriting.
15. I consider the first page to be a threat in which Mr. Ferrel says "You & I are going to meet this afternoon AND I going to clarify how life works".
16. The handwritten sheets simply justify my concern that I was being threatened.
17. **TAB 4** attached hereto, consists of an email dated August 25, 2017 and a letter from BLG confirming that they held \$2,440,000 in "our designated trust account on behalf of Hillsboro to be used only for the development of the project and no other uses". BLG subsequently denied the amount of money in trust and the letter.
18. **TAB 5** attached hereto, is a letter from Keith Ferrel to me. The background is that we had had a meeting in which I indicated that I could come up with \$1,000,000 if he could raise \$2,000,000 so that this project could be completed. Later, he wrote and insisted that I come up with \$2,000,000 and he would raise \$1,000,000.
19. I had no way to raise \$2,000,000. But this is just Mr. Ferrel going back on his word.
20. As well, at paragraph 6 of TAB 5, Mr. Ferrel is indicating that the refinancing of my home would net him \$200,000, which was not part of our agreement.
21. **TAB 6** attached hereto, is an email from my accountant to Mr. Ferrel, dated September 13, 2018 asking for information including the interest reserve accounts and transactions. He provided only a draft which is page 2 of TAB 6 confirming the budget for construction, the calculation for loan amounts, the financing provided by Liberty Investments Inc. and Connect First Credit Union (previously Chinook Financial) and concluding that the advance of the first mortgage should have covered the balance of construction. The accounting is filled with errors.
22. **TAB 7** attached hereto, is a portion of the accounting provided by Mr. Ferrel emphasising \$292,725 for "Forbearance and Legal Fees" and \$337,575 for "Monitoring Fees".
23. **TAB 8** attached hereto, is a Forbearance Agreement, which includes on page 5 at paragraph 3.3 (m), that Ceana Sunridge is required to pay Neotric Enterprises Inc., a company wholly owned by Mr. Ferrel, the sum of \$9,000 per month commencing January 1, 2018 (retroactive) to July 31, 2018, and thereafter, a monitoring fee of \$13,000 plus GST per month so long as there are any amounts outstanding under the mortgage.
24. This Forbearance Agreement was signed under duress and, amongst other things, such monitoring fees were an *in terrorem* payment.
25. **TAB 9** attached hereto, is a copy of an Application and Affidavit brought by Hillsboro Properties Inc. in much the same fashion as this Application and contains draft Orders as sought by Hillsboro Properties Inc.
26. **TAB 10** attached hereto, is a list of payments from Ceana Development Inc. including credit card payments totalling \$1,451,000 which Ceana Development Inc. paid directly for the construction of the Sunridge Project.
27. **TAB 11** attached hereto, is a completion budget showing that even now, with the completion of Building E in its original anticipated form, this property would have yielded a gross sales price of \$20,931,925.

28. **TAB 12** attached hereto, is a text of the Reasons for Judgment of *Ferrel v. The Queen*, 1997 CanLII 182 (TCC) and the Court of Appeal decision on the Appeal. This document tells me that Mr. Ferrel, the principal of Hillsboro, has a lengthy history in litigation and in particular, actions before the court, whether successful or not.
29. I have reviewed the Written Submissions produced by Mr. Pontin on behalf of Hillsboro. The Brief makes reference to questions raised by Mr. Pontin at a cross-examination on November 26, 2020 at page 50 and 51.
30. At line 18, I was asked the question "*And was that the same for the purchaser's deposit monies that were used for whatever payments were necessary at that time?*" And the transcripts say that I said "*Purchaser's money were used in the project. And even if it were, I had to write on my - - what you call management fees*".
31. I hereby state that the transcript is not correct. At the time the questions were raised and the answer was given, I was wearing a mask over my mouth and nose. It is obvious to me that, from my own recollection of the facts, that the answer should say "*Purchaser's monies were not used in the project*".
32. The context of the entire answer suggests that the word "not" was omitted from the transcript.
33. The way that the transcript presently reads is inconsistent with my evidence given in the Affidavit wherein I stated that the JV money was used in the project but the purchasers money was not.
34. Monies received as deposits on purchases were lodged with KH Dunkley and transferred to the Receiver who presently holds those monies.
35. It is also inconsistent with my own evidence that through my other companies, I made a substantial contribution to the acquisition of the lands and construction of the buildings.
36. The Receiver and Hillsboro provided a new plan which divided the large building on the west side into three smaller buildings. They claimed that it would increase the profit on the Project. We objected, setting out properly that three buildings compromised my personal guarantee. More cost and higher risk is added.
37. If Hillsboro is successful in its application to take title and remove the Receiver, and clear the encumbrances, our Cross-Application for an accounting should be set over to a further hearing.

MATERIALS RELIED ON

Statutes and Rules:

1. a) *Alberta Rules of Court*,
b) *Land Titles Act*, RSA 2000, c. L-4;
c) *Law of Property Act*, RSA 2000, c. L-7; and
d) *Condominium Property Act*, RSA 2000, c. L-22.

Pleadings:

2. a) Affidavit of Bahadur (Bob) Gaidhar, sworn October 30, 2020;
b) Affidavit of Bahadur (Bob) Gaidhar, sworn November 23, 2020; and
c) Such further pleadings as counsel may request and the Honourable Court may allow.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4th DAY OF DECEMBER, 2020.

GLENN & CARD LAW LLP

"THOMAS F GLENN"

Per: _____

THOMAS F GLENN

Counsel for Ceana Development Sunridge Inc.

TAB 1

BRIEF PRECIS OF FACTS
Narrated by BAHADUR (BOB) GAIDHAR
Dated December 4, 2020

1. In the fall of 2015, I became aware that the project property land was potentially available for sale. I had, through my companies, done several projects before this and so I became interested in acquiring the property.
2. I had been approached by several people who had invested previously in my other projects to find another project. I was looking for land and good business opportunities. My earliest Joint Venture Agreements on this particular project, were in September 2015.
3. I met with the owner and we struck a deal. I put a deposit on the land and registered a Caveat for purchaser's interest on August 27, 2015, with the anticipated closing in May 2016.
4. I arranged financing for the land purchase through Canadian Western Bank.
5. I contacted persons who I had previous business dealings with to introduce them to a new joint venture that I planned to complete.
6. I had previously had my counsel draft a Joint Venture Agreement, which had been very serviceable and successful on previous projects.
7. Many of the interested parties are people from my own ethnic community. Between the fall of 2015 and May 2016, I had acquired monies from a number of joint venturers.
8. At the same time that the Transfer of Land was registered on May 17, 2016, Canadian Western Bank's mortgage was registered for \$15,000,000.
9. The transaction closed with Canadian Western Bank advancing about \$3,100,000.
10. I made inquiries and was introduced to a gentleman, Dan Deilami, who operated his company Fast Track Commercial Inc. Dan seemed to have good references and we negotiated what I thought was a reasonable price for the actual construction. I anticipated that on the closing date, with the contribution of my own money, the Joint Venture money and the financing from Canadian Western Bank, that we could immediately begin construction.
11. We obtained the development permit for the five buildings including four on the east side of the property and a larger building on the west side. We eventually obtained a building permit.
12. It quickly became apparent to me that the contractor hired was not exactly as he had identified himself. Although he received money from both my personal funds, Joint Venture funds and the mortgage advances, the progress was extremely slow.
13. Throughout 2016, it became apparent that Fast Track Commercial Inc. was not going to be able to fulfill its commitments. Fast Track Commercial Inc. continued to demand money, but there was no progress to show for the money that was given to Fast Track.
14. Because building progress was slow, I was not able to get draws from the bank which I had anticipated. I began looking for lenders. I had previous experience with Hillsboro Ventures Inc. and approached Mr. Keith Ferrel of Hillsboro who agreed to advance a mortgage of \$630,000 which was registered on May 17, 2016. Those monies were advanced and quickly spent by the general contractor.

15. When liens began to appear on the title, all financing efforts and construction ceased. At one point the general contractor placed a lien upon the lands for \$2,100,000 on December 8, 2017. It was impossible. There wasn't that much construction to reflect the \$2,100,000, plus the amount of money that had already been advanced. Because construction had ceased and liens were on the property, I became desperate.
16. The General Contractor issued a Statement of Claim and Certificate of Lis Pendens (registered January 19, 2018). I negotiated with the general contractor who eventually took his \$2,100,000 lien off of the property on April 6, 2018 and we had the CLP removed on May 3, 2018.
17. Because of liens on the property and the inactivity, nothing was happening. Essentially the gate was locked, although me and the general contractor personally had access to the land, but no construction was occurring.
18. Approximately three months later, the general contractor registered another lien on June 7, 2018 for the original amount plus an additional amount of \$700,000 and an additional Certificate of Lis Pendens on December 4, 2018. This was an impossible situation because no further construction had occurred.
19. I authorized my lawyer to seek to have the lien removed. My then lawyer served a Notice to Prove Lien. The general contractor swore an Affidavit Proving Lien and we cross-examined on the Affidavit. When we asked for financial records showing how much money he had received and how the money was spent, anticipating that the money would have been spent on the project, the general contractor could not or would not provide us any records. To my knowledge, those undertakings to provide records remain outstanding.
20. In late 2016, I again approached Hillsboro who agreed to advance a mortgage of \$3,000,000. That mortgage was registered on January 26, 2017 but the money actually flowed in March 2017.
21. In retrospect I acknowledge that I agreed to the improvident terms of the Hillsboro mortgage. The interest rate was exorbitant, at 18%, and the financing conditions were impossible from a business perspective. But I was desperate.
22. When that mortgage was funded, it paid out the original mortgage Hillsboro mortgage then at \$650,000. The balance of the advance on the \$3,000,000 was to set aside approximately 18% as a pre-paid interest fund, and a number of other financing issues, leaving very little to actually be used on the construction. When it appeared that the money advanced was used on the project and paid to the general contractor, I again approached Hillsboro who agreed to advance a \$2,000,000 mortgage, registered August 18, 2017. That would be a mortgage in third position after Canadian Western Bank and Hillsboro's first mortgage.
23. Again, the interest rate was 18%. The other financing conditions were onerous including pre-paid interest, commissions to sales people, bonuses to companies financing and so a small percentage of that mortgage eventually went to construction. There was simply not enough money to clear the title, advance construction and complete any of the four buildings on the east side.
24. In August 2017, I again approached Hillsboro who again agreed to advance \$1,500,000 as a fourth mortgage, registered November 22, 2017. There were agreements with the lien claimants to hold off on their liens and the general contractor received some of those monies.
25. There was a flurry of construction but nothing really advancing the project.
26. Fast Track borrowed from Factors Western Inc. the sum of \$310,000, again with extremely onerous and improvident terms.

27. Eventually the general contractor withdrew his lien, but by then a number of other liens, including Factors Western Inc., were registered against the property.
28. In 2018, under some duress from Mr. Ferrel, my wife and I pledged and essentially mortgaged our home and a small office building that I had constructed in NE Calgary to Hillsboro. The office building was going to be my retirement as it yielded a couple of thousand dollars per month from renters. The mortgage on the commercial building was about 85% of equity. My home is simply occupied by my wife and I but it also has a large mortgage.
29. As part of the pledge of my home and building, I also agreed to some onerous additional terms. If not done previously, I agreed that in the event of default on the mortgages, there would be a monitoring charge. That monitoring charge under the three mortgages is now over \$337,000.
30. I am required to pay forbearance and legal fees, which now amount to \$292,725.
31. When Hillsboro began its foreclosure, I instructed counsel to defend. There were points raised in the operation of Hillsboro and its conduct that I suggest were not consistent with our contractual agreements.
32. For example, Canadian Western Bank asked to be let out and paid out. I approached Connect First Credit Union who agreed to take over Canadian Western Bank's position and register its own caveat. I agreed to a postponement of all of the other encumbrances of the company to Connect First Credit Union so that it would be in first position. Their mortgage was registered on October 26 2017.
33. However, Hillsboro then postponed its first mortgage of \$3,000,000 to its other two mortgages. That meant that when Hillsboro foreclosed on its \$3,000,000 mortgage, it did not have to account to anyone for its conduct or the use or misuse of funds on their \$2,000,000 or their \$1,500,000 mortgages.
34. In the meantime, each of the mortgages continued to draw interest, including a punitive interest of 30% on the third mortgage, while things dragged on interminably.
35. I had actually offered to sell the project to Hillsboro but my offer was refused for some reason.
36. I saw that there were other misrepresentations, including a representation by Hillsboro's lawyer that they had money sitting in their trust account that was to be used for the project. The money was not advanced. When we inquired about the money, both Hillsboro and their lawyer denied that any such money was ever part of the transaction and denied that money was being held for the purpose of construction.
37. I have provided a copy of the correspondence of August 25, 2017 from the lawyer which is attached to this Brief. (**was exhibit D**)
38. In July 2019, we were contacted by counsel for the present Receiver who indicated that they were authorized to seek a Receiving Order from the court with respect to the project. I acknowledged that no progress had been made on the project for more than a year. We essentially consented to the appointment of the Receiver, understanding that so long as Ceana Development Sunridge Inc. was the registered owner, if construction proceeded to its conclusion, there would be money at the end of the Receivership to pay out all of the encumbrances and the Joint Venture holders.
39. After the manner in which Hillsboro had behaved, we welcomed the intervention of the Receiver who was bound to take over the project, obtain financing to complete the project, appoint a general contractor, etc. and carry on until the project was complete.

40. After the Order was granted and the Trustee installed, I drove by the project for approximately seven months and nothing happened. Unbeknownst to us, the Receiver was apparently reapplying for development and building permits and was seeking permission to change the configuration of the large building on the west side to three smaller buildings, suggesting that would draw a larger profit.
41. We had no problem with the larger price, but three buildings versus one building is always problematic because it requires three cooling systems, three electrical systems, three heating and ventilations systems, etc.
42. When construction actually did resume in January or February 2019, the progress was abysmally slow. The project where the buildings were already framed in steel and in various stages of completion, should have been completed within three or four months. So far, as at the date of this Application, those four buildings are not yet or may just barely be available for occupancy. The parking lot has recently been partially paved, the foundation for the large building on the west that is now going to be turned into three smaller buildings needs to be pulled out. The underground servicing needs to be redone, etc. It is a mess.
43. Notwithstanding our letters of complaint, the Trustee, at great expense to Hillsboro, has been defending its position and maintaining the same general contractor who is moving at a glacial rate.
44. However, if the Application of Hillsboro is successful, the ownership in the property transfers to Hillsboro. Although I expect that Hillsboro will then complete the project with dispatch, appointing a proper general contractor, there will be nothing for any of the other owners, Joint Ventures or purchasers. All of the lien claimants will be struck off. Essentially any profit made from the completion of construction and the sale of the buildings as condominium units will be taken by Hillsboro.
45. Notwithstanding our complaints about the speed and the cost of the Receiver, which is addressed in the Receiver's five reports, we have thrown our support behind the Receiver and its Application to maintain control until the property is complete and the Receiver can make a final presentation to the court.
46. Although Hillsboro's counsel continues to propound that all of this is done at great disadvantage to Hillsboro and no one else is suffering, ignores the fact that everyone else loses everything before Hillsboro loses one cent.

Dated December 4, 2020 at Calgary, Alberta.

Bahadur (Bob) Gaidhar

TAB 2

Patrick Mah
T: (403) 232-9637
(403) 286-1395
pm@blg.com

Borden Ladner Gervais LLP
Cantamiet Place, East Tower
1900, 520 - 3rd Ave SW
Calgary, AB, Canada T2P 0R3
T: 403.232.9600
F: 403.286.1395
blg.com

BLG
Borden Ladner Gervais

File No.: 443707/05

November 8, 2017

HILLSBORO VENTURES INC.
927 7A Street N.W.
Calgary, Alberta T2M 3J4

Attention: Keith Ferrel

Dear Sirs:

Re: Loan to CLANA DEVELOPMENT SUNRIDGE INC.
Plan 98T1891, Block 8; Lot 1 and PLAN 0112710, Lot 1

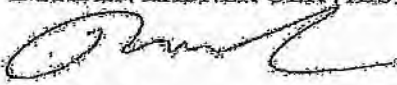
With respect to the above, we enclose our trust cheques as follows:

- 1) \$202,500.00 representing the prepaid interest on this loan.
- 2) \$27,500.00 representing Liberty Fees.
- 3) \$51,125.00 payable to Neotric Enterprises Inc. representing Neotric's fees.

We trust the enclosed to be satisfactory.

Yours truly,

BORDEN LADNER GERVAYS LLP


Patrick Mah
Enclosures
PMcb

Legal Assistant: Cecilia Brandao
Email: cbrandao@blg.com
Direct Line: 403-232-9524

*His own
Company*

Borden Ladner Gervais LLP

Trust Detail

Printed: 9/18/2018 11:58 AM ET
Report: tr06

Client/Matter/Trust

Trans Date Hold Date

443707 Hillisboro Ventures Inc.

000005 Ceana Development Sunridge Inc. (third 1

Canadian Dollars

CDN

Trust Id #4520 CAL - RBC SCDN Trust (CT05)

Money will be disbursed on the other file 443707-05

Payee: Hillisboro Ventures Inc., Cheque Number: 52022057, Cheque Date: 11/03/17, PM Prepaid Interest

Payee: Hillisboro Ventures Inc., Cheque Number: 52022058, Cheque Date: 11/03/17, PM Liberty Fees

Payee: Neotric Enterprises Inc., Cheque Number: 52022059, Cheque Date: 11/03/17, PM Lender's Fee

Payee: KH Dunkley Law Group - In trust, Cheque Number: 52022066, Cheque Date: 11/07/17, PM Net Mortgage Proceeds

Payee: Borden Ladner Gervais LLP, Cheque Number: 52022304, Cheque Date: 01/05/18, To transfer funds to general account to pay invoice 697536470

TR FR 443707/000005 to 443707/000005 to Pay B.L.G. Invoice 697572443

TR FR 443707/000005 to 443707/000005 to Pay B.L.G. Invoice 697586562

TR FR 443707/000005 to 443707/000005 client has authorized payment of invoice 697586123 issued on matter 6 from the financing funds held in trust on matter 5

1	10/18/2017	Principal	1,500,000.00	1,500,000.00
2	11/03/2017	Principal	-202,500.00	1,297,500.00
3	11/03/2017	Principal	-27,500.00	1,270,000.00
4	11/03/2017	Principal	-51,250.00	1,218,750.00
5	11/07/2017	Principal	-424,204.40	794,545.60
6	11/07/2018	Principal	-10,000.00	784,545.60
7	4/23/2018	Principal	-4,156.96	780,388.64
8	5/21/2018	Principal	-18,076.57	762,312.07
9	9/17/2018	Principal	-3,209.56	759,102.51

his own
company

Trust Total 759,227.51
Held Amount 0.00

Available Amount 759,227.51

Trust Total 759,227.51
Held Amount 0.00

Available Amount 759,227.51

Total Canadian Dollars

Total for Trust Id #4520 CAL - RBC SCDN Trust (CT05)

- (g) BLG Trust Letter to KH Dunkley Law Group dated October 6, 2017;
- (h) BLG Trust Letter to KH Dunkley Law Group dated October 10, 2017; and
- (i) BLG Trust Letter to KH Dunkley Law Group dated October 17, 2017.

\$1,500,000.00 Loan

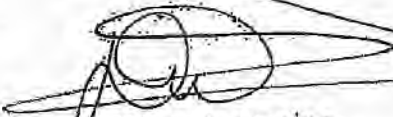
- (a) Statement of Disbursement of Funds (November 7, 2017);
- (b) BLG Trust Detail with respect to (a) above. As of September 18, 2018, we confirm that we are holding \$759,227.51 in our account;
- (c) BLG Trust Letter to KH Dunkley Law Group dated November 7, 2017; and
- (d) BLG Letter to Hillsboro dated November 3, 2017 (funds representing broker fees, management fees and prepaid interest).

With respect to the letter dated August 25, 2017 (the "Letter") from BLG and addressed to Fast Track Development ("Fast Track"), we advised Fast Track that BLG was holding \$2,440,000.00 in our trust account on behalf of Hillsboro to be used only for the purpose of the development of the Project (as defined therein) and no other uses. We refer you to document (b) under the \$2,000,000.00 loan and the line item dated August 29, 2017 evidencing that BLG had \$2,449,524.16 in our trust account on this matter. In response to your query as to an explanation why those funds were not available when requested, our statement in the Letter was a confirmation of actual information. Under the Letter, BLG had no obligation to advance funds directly to Fast Track or to Ceana. **WAS NOT IN THE TRUST ACCOUNT AND THERE WAS NO REASON FOR THESE FUNDS TO BE IN HERE AS THEY DONT CORRESPOND TO**

Yours truly,

THE REPORTS OR TRUST

BORDEN LADNER GERVAIS LLP


DAVID T. MADSEN
assistant: Chris Moggert
direct line: 403.232.9604
faxes

Read this!!!

BORDEN LADNER GERVAIS LLP

STATEMENT OF DISBURSEMENT OF FUNDS

THIS WAS NEVER PUT INTO
THE TRUST ACCOUNT AT
BLG THEREFORE THIS WAS
NOT ACCOUNTED FOR
FROM THEM IN THE TRUST
ACCOUNT BUT ONLY THEIR
REPORTS

OUR FILE: 440221-04A TM
LENDER: HILLSBORO ENTERPRISES INC.
BORROWER: CEANA DEVELOPMENTS SUNRIDGE INC.
PROPERTY: 2255 - 32 Street NE, Calgary

FIRST AND FINAL ADVANCE - Date: January 12, 2017

PRINCIPAL AMOUNT OF LOAN:	\$3,000,000.00
Withheld by Lender re 2 nd Mortgage Funded	\$650,000.00
Withheld by Lender for interest on amendment and new mortgage	\$550,000.00
TOTAL FUNDS RECEIVED:	<u>\$1,800,000.00</u>

DISBURSED HEREWITH:

Withheld for legal fees & disbursements	\$8,450.00
Paid KH Dunkley Law Group - in trust	\$1,231,350.00
Withheld re. holdback until final documents	\$500,000.00
Withheld for payment of broker fees	\$60,000.00
Withheld for final disbursements	<u>\$200.00</u>

TOTAL DISBURSED THIS ADVANCE: \$1,800,000.00

E. & O.E.

Borden Ladner Gervais LLP

Trust Detail

Client/Matter/Trust

Trans Date Hold Date

Amount Type Cnt

Amount

Balance

Next Compound Date

440221 Hillsboro Enterprises Inc.

000004 Ceaná Development Sunridge Inc.

Canadian Dollars

CDN

Trust Id #4620 CAR -RBC \$CDN Trust (CT05)

4/1/2016 4/1/2016 Payer: CC CIBC BD/Hillsboro Enterprises Inc, Cheque Number: 267788016, Cheque Date: 04/12/16, CC CIBC BD/Hillsboro Enterprises Inc Re: Mortgage proceeds

4/1/2016 4/24/2016 Payer: NC Liberty Mortgage Corp, Cheque Number: 234, Cheque Date: 04/11/16, NC Liberty Mortgage Corp Re: legal retainer

4/29/2016 4/29/2016 Payee: KH Dunkley Law Group, Cheque Number: 52019771, Cheque Date: 04/29/16, TM Loan Advance

5/2/2016 5/2/2016 Payee: Hillsboro Enterprises Inc., Cheque Number: 52019773, Cheque Date: 05/02/16, TM Lender's fee

5/2/2016 5/2/2016 Payee: Hillsboro Enterprises Inc., Cheque Number: 52019774, Cheque Date: 05/02/16, TM Prepaid Interest

5/8/2016 5/8/2016 Payee: Borden Ladner Gervais LLP, Cheque Number: 52019797, Cheque Date: 05/08/16, To transfer funds to general account to pay invoice 697335996

11/18/2016 11/18/2016 Payee: Borden Ladner Gervais LLP, Cheque Number: 52020568, Cheque Date: 11/18/16, Transfer to general account to pay invoice # 697397106

11/10/2017 1/10/2017 Payer: CC CIBC Draft/Hillsboro Enterprises Inc, Cheque Number: 275201002, Cheque Date: 01/09/17, CC CIBC Draft (Hillsboro Enterprises Inc.) Re: Mortgage Proceeds

1/12/2017 1/12/2017 Payee: KH Dunkley Law Group - In trust, Cheque Number: 52020849, Cheque Date: 01/12/17, TM Loan Advance

1/13/2017 1/13/2017 Payee: Yorkfield Financial Corporation, Cheque Number: 52020860, Cheque Date: 01/13/17, TM Broker Fee (50)

1/13/2017 1/13/2017 Payee: Liberty Mortgage Services Ltd, Cheque Number: 52020861, Cheque Date: 01/13/17, TM Broker Fee (50)

3/2/2017 3/2/2017 TR FR 440221/000004 to 443707/000001 transfer money as it will be disbursed from the other file

3/9/2017 3/9/2017 Payee: Ceaná Development Sunridge Inc., Cheque Number: 52021050, Cheque Date: 03/09/17, TM Balance of funds in trust

3/10/2017 3/10/2017 Payee: Borden Ladner Gervais LLP, Cheque Number: 52021061, Cheque Date: 03/10/17, To transfer funds to general account to pay invoice 697438485

11/9/2017 11/9/2017 Payee: Ceaná Development Sunridge Inc., Cheque Number: 52021090, Cheque Date: 11/09/17, Stale Dated Cheque Cancellation

11/13/2017 11/13/2017 Payee: Ceaná Development Sunridge Inc., Cheque Number: 52022085, Cheque Date: 11/13/17, PM Balance in trust - re: issuing of stale dated cheque

6/12/2018 6/12/2018 Payee: Ceaná Development Sunridge Inc., Cheque Number: 52022085, Cheque Date: 06/12/18, Stale Dated Cheque Cancellation

THIS DEPOSIT SHOULD HAVE BEEN \$2,350,000 WHICH IS THE 1.8M AND THE 550K INTEREST RESERVE HELD BACK BY HB THIS AMOUNT MIS REPRESENTED AND LOAN FUNDED

630,000.00	630,000.00	Principal
2,500.00	632,500.00	Principal
-567,670.43	64,829.57	Principal
-31,500.00	33,329.57	Principal
-27,300.00	6,029.57	Principal
-5,877.96	51.61	Principal
-51.61	0.00	Principal
1,800,000.00	1,800,000.00	Principal
1,231,350.00	668,650.00	Principal
-30,000.00	638,650.00	Principal
-30,000.00	608,650.00	Principal
-500,000.00	8,650.00	Principal
-210.65	8,439.35	Principal
-8,439.35	0.00	Principal
210.65	210.65	Principal
-210.65	0.00	Principal
210.65	210.65	Principal

[illegible]

LOAN PRINCIPLE	\$ 6,500,000.00
FUNDED	\$ 4,473,272.52
UNDERFUNDED	\$ 2,026,727.48
EXCESSIVE/INCORRECT FEES	\$ 650,125.00

RECONCILIATION OF OVERALL INTEREST OWING VERSUS INTEREST PAID BY DATE

DESCRIPTION	MONEY OUT	MONEY IN	ROLLING BALANCE	DIFFERENCE AND COMMENTS
TOTALS AND DIFFERENCE	\$ 1,177,153.48	\$ 1,177,000.00	\$	153.48
OPENING BALANCE OF INTEREST RESERVE		\$ 550,000.00	\$ 550,000.00	JAN 12 2017 3M LOAN (SEE BLG PAGE3)
INTEREST LOAN 3M TOTAL PER OUR CALC (FEB TO JULY)	\$ 193,402.50		\$ 356,597.50	
FEES PER OUR CALC 3M	\$		\$ 356,597.50	Taken from BLG trust (see accounting)
ADDITIONAL 2 M LOAN INTEREST RESERVE HOLDBACK		\$ 330,000.00	\$ 686,597.50	640K less alpha Steel - AUG 18 2017 (SEE BLG PAGE 16)
ADDITIONAL 2 M LOAN INTEREST RESERVE HOLDBACK		\$ 94,500.00	\$ 781,097.50	Sept 1 2017 (SEE BLG PAGE 17)
INTEREST LOAN 3M TOTAL PER OUR CALC (AUG TO OCT)	\$ 110,250.00		\$ 670,847.50	
INTEREST LOAN 2M TOTAL PER OUR CALC (AUG TO OCT)	\$ 55,075.50		\$ 615,772.00	
FEES PER OUR CALC 2M	\$	0	\$ 615,772.00	
ADDITIONAL 1.5M LOAN INTEREST RESERVE HOLDBACK		\$ 202,500.00	\$ 818,272.00	NOV 3 2017 (SEE PG 26 BLG TRUST)
INTEREST LOAN 3M TOTAL PER OUR CALC (NOV TO OCT 2018)	\$ 441,000.00		\$ 377,272.00	
INTEREST LOAN 2M TOTAL PER OUR CALC (NOV TO OCT 2018)	\$ 283,590.00		\$ 93,682.00	
INTEREST LOAN 1.5M TOTAL PER OUR CALC (NOV TO OCT 2018)	\$ 93,835.48		\$ 153.48	
			\$ -	
			\$ -	

COMMENTS:

THERE WAS NEVER A POINT WHERE CEANA WAS IN DEFAULT OR NEEDED ADDITIONAL FUNDING.

Registration Number	Date	Amount	Location	
1- 171023797	26/01/2017	\$3,000,000.00	Sundridge	y
2- 171183985	18/08/2017	\$2,000,000.00	Sundridge	y
3- 171262890	22/11/2017	\$1,500,000.00	Sundridge	y
4- 181132049	22/06/2018	\$8,500,000.00	Westwinds	y
5- 171262892	22/11/2017	\$1,500,000.00	Conrich	y
6- 171262893	22/11/2017	\$3,000,000.00	Conrich	y

Total Mortgages	\$19,500,000.00
-----------------	-----------------

✓ < 1 - 1 1 - 1

TAB 3

This correspondence from Dan is to get me to loss it and justify
Everything Hillsboro has done ---NOT THE other way around
I am just about at my end of the BULL I am putting up with
Bob have you signed the papers I send OR NOT
You & I are going to meet this afternoon AND I going clarify how life works
What time

Company: 314, 5th St. SE
 Fair: 602-476-0440
 Cell: 408-667-0560
 Email: keith@hillshero.com



Key

Obviously, we are feeling very insecure at the moment, and it doesn't seem possible to commit to doing further work, and worsening the debt situation, without knowing how and when we will be paid.

By
2:30 PM

8/6/18

1. Today Wed - to BUG No change
100% all paper & completely Signed
No Conditions

Friday By 4 PM

2. Monday 10k Paid to Cannon

3. Thursday 8/16/18 Starts Erecting ~~on~~

4. Kenny & you need to stop Blowing
Smoke up each other's narens

Neither of you KNOW SHIT & feed
off each other's Stupidity

5. You go to who ever tells you what is
NOT REAL & what you want to hear

Minimum

6. \$1/m - INTER as per Contract

To \$1.5m Really 1.5m
How many times do I

Need to See it

You hired DAN because he
is unprofessional & this what you
get

If you think you & Larry cannot
screen this up for me crazy
Neither knows what he is doing

Paper was sent to you & Larry

April, Do you really think I am
crazy - NOT going to push me

any more Document(s) 100% No
Change & No Conditions & No bullshit
Hilroy

Not refinancing your house
that is collateral - Some you
are not putting a new extra
mortgage in front of Hillsboro
on Sunrise

ie. We'll check you out
because you want them to

Now I have gone stupid
putting up with this
knowing you are not dealing with
reality

TAB 4

Subject: Fw: Confirmation of Trust Funds re: Ceana Sunridge
Date: Friday, August 25, 2017 at 5:00:47 PM Mountain Daylight Time
From: Clinton Evangelista
To: bg@ceana.ca

Sent from my BlackBerry - the most secure mobile device - via the Rogers Network

From: keith@hillsboro.ca
Sent: August 25, 2017 2:47 PM
To: cevangelista@libertymortgage.ca
Subject: FW: Confirmation of Trust Funds re: Ceana Sunridge

FYI

Keith Ferrel
Hillsboro Enterprises Inc.
www.hillsboro.ca
927 - 7A ST. N.W.
Calgary, AB, T2M 3J4
Fax: 403-770-8400
Cell: **403-680-9609**
Email: keith@hillsboro.ca



From: McArthur, Travis [<mailto:TMcArthur@blg.com>]
Sent: Friday, August 25, 2017 2:44 PM
To: dan@fasttrackcomm.ca
Cc: Keith Ferrel; Khalil Haji; bg@ceana.ca
Subject: Confirmation of Trust Funds re: Ceana Sunridge

Hi Dan,

We are the solicitors for Hillsboro Ventures Inc. and understand that you are looking for confirmation that we are holding funds in trust with respect to the development of the project located at 2255 32 Street NE, Calgary Alberta.

Please see attached confirmation.

Thanks.
Travis

BLG
Borden Ladner Gervais

Travis McArthur
Associate

T 403.232.9720 | F 403.266.1395 | tmcarthur@blg.com
Centennial Place, East Tower, 1900, 520 - 3rd Ave S W, Calgary, AB, Canada T2P 0R3

Travis McArthur
T (403) 232-9720
F (403) 266-1395
tmcarthur@blg.com

Borden Ladner Gervais LLP
Centennial Place, East Tower
1900, 520 - 3rd Ave SW
Calgary, AB, Canada T2P 0R3
T 403.232.9500
F 403.266.1395
blg.com



File No. 440221-04 TM

Via email: dan@fasttrackcomm.ca

August 25, 2017

Fast Track Development
Unit 7-2235 30 Ave NE,
Calgary, AB T2E 7C7

Attention: Dan Deilami – Operation Manager

Dear Sir:

**Re: Hillsboro Ventures Inc. ("Hillsboro")
Development of the project located at 2255 32 Street NE, Calgary AB (the
"Project")**

We are the solicitors for Hillsboro.

We confirm that we hold \$2,440,000.00 in our designated trust account on behalf of Hillsboro to be used only for the purpose of the development of the Project and no other uses.

We trust the foregoing is satisfactory, but please don't hesitate to contact the writer if you have any questions or concerns.

Yours truly,

BORDEN LADNER GERVAIS LLP

A handwritten signature in black ink, appearing to read 'Travis McArthur', is written over a horizontal line.

Travis McArthur
/cb

cc: Keith Ferrel
Khalil Haji (khalil@khalilawgroup.com)
Bob Gaidar (bg@ceana.ca)

TAB 5

1 nucleon

Subject:

- 1) Ceana/Bob to raise \$2,000,000 by July 12/19 to be deposited to trust account of Denton's -- to be used exclusively To pay bills & move the Ceana-Sunridge construction forward.
Bills to be paid directly to contractor or trade
No monies to Hillsboro or Ceana
There will be a mortgage charged behind Connect First BUT in front of Hillsboros's mortgages interest rate will be NIL (0%)
Agree if the \$2,000,000 is not in trust at Denton's by July 12/19 then receiver is appointed unopposed
- 2) Hillsboro will fund \$1,000,000 for construction added to its mortgages
- 3) A general contractor will be appointed with a fixed price contract
- 4) If Connect First requires there will be a monitor or soft receiver appointed
- 5) Bob will refinance his home for an additional \$500,000 net funds which will be paid to Denton's in trust to take over \$500,000 of the \$2m Bob raises or held in trust
- 6) Hillsboro will cap its loan balance as at July 1 2019 at \$6,500,000 plus interest at the rates of the mortgages going forward commencing as at July 1, 2019 -- If Hillsboro is paid the amount owed as per this calculation When fully paid out by the end of the project then Bob will receiver back \$300,000 of the \$500,000 contributed from refinancing his home & Hillsboro will receive \$200,000 of the \$500k
If Hillsboro does not receive form the project the monies owed in full per the above calculation then Hillsboro will receive the full \$500,000 from refinancing -- Bob will have till Sept 4 2019 to have refinanced & paid the \$500k Hillsboro will release the collateral mortgage on Bob's residence after Denton's receives the \$500k

2 all purchaser deposits will be transferred to Denton's trust accounts together with the purchase contracts

Keith Ferrel
Hillsboro Enterprises Inc.
www.hillsboro.ca
927 - 7A ST. N.W.
Calgary, AB, T2M 3J4
Fax: 403-770-8400
Cell: 403-680-9609

It was agreed at meeting at Tim Roten
that Bob projects 1 m e Keith to injud 2 m e
he agreed but reached home e sent this e
mail to me with an acct. / He for mention
11/2/00 10:00 AM - 11/2/00 11:00 AM - 11/2/00 11:00 AM - 11/2/00 11:00 AM -

TAB 6

Simeen Gaidhar-Bhanji, CPA, CA



Partner

Simeen Bhanji Chartered Professional Accountant
Suite 310 - 8678 Greenall Avenue
Burnaby, BC V5J 3M6
Tel: (Burnaby) - (604) 879-9644 ext 22
Tel: (Vancouver) (604) 253-4446
Fax: (604) 879-9645
<http://www.sb-ca.ca>

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----- Original Message -----

From: "CA Simeen Bhanji CPA" <simeen@sb-ca.ca>
To: "Keith Ferrel" <keith@hillsboro.ca>
Cc: "Colin" <colin@hillsboro.ca>; "Conrad" <conrad@truebuch.com>; "Ceana" <bg@ceana.ca>;
"Shameer Gaidhar" <shameerg@mphones.ca>; "Asif" <asif@sb-ca.ca>
Sent: 2018-09-13 9:35:23 PM
Subject: Re: Fwd: CEANA SUNRIDGE

I am reviewing all the accounts and numbers and require the interest reserve accounts and transactions from you.

Please provide at your earliest opportunity

With Kind Regards,

Simeen Gaidhar-Bhanji, CPA, CA



Several requests were
sent before he
provided

What he provided had
lots of mathematical
errors



Insp. Date: September 15, 2017			
Claim No: 1			
LENDER:		BORROWER:	
Chinook Financial (First Mortgage)		Ceana Development Sunridge Inc.	
99 - 2nd Street West, Brooks, AB. T1R 1B9		Suite 101, 3115 - 12 Street NE	
Liberty Investments Inc. (Mezzanine)		Calgary, AB	
Suite 216, 20 Sunpark Plaza Se, Calgary, AB. T2X 3T2		T2E 7J2	
Attention: Mrs. Judy Elliot. Mr. Clinton Evangelista		Attention: Mr. Bob Galdhar	
Original Project Budget	\$	15,115,882	
Approved Budget Revisions	\$	2,181,620	
REVISED PROJECT BUDGET		\$	17,297,502 100.0%
Mezzanine Loan Amount during Budget Review (Liberty)	\$	2,215,882	
Mezzanine Loan Amount Adjustments during Claim 1 (Liberty)	\$	2,084,118	
First Mortgage Loan Amount during Budget Review (Chinook)	\$	9,825,323	
First Mortgage Loan Amount Adjustments during Claim 1 (Chinook)	\$	5,677	
REVISED LOAN AMOUNT		\$	14,131,000 81.7%
Original Equity Requirement	\$	3,074,676	
Approved Equity Revisions	\$	91,825	
REVISED EQUITY REQUIREMENT		\$	3,166,502 18.3%
Work In Place			
Construction	\$	1,760,773	
Development	\$	8,781,603	
TOTAL WORK IN PLACE		\$	10,542,376 60.9%
Cost to Complete			
Construction	\$	6,339,845	
Development	\$	415,281	
TOTAL COST TO COMPLETE		\$	6,755,126 39.1%
Advance Calculation			
Mezzanine Loan Amount (Liberty)	\$	4,300,000	
First Mortgage Loan Amount during Budget Review (Chinook)	\$	9,831,000	
Less: Cost to Complete	\$	(6,755,126)	
Less: Builders Lien Holdback	\$	0	
Add: Holdback Release	\$	0	
Gross Amount Available to Advance		\$	7,375,874 52.2%
Less: Previous Advances (Liberty)	\$	(4,300,000)	30.4%
Add: Previous Liberty Advances directly to Alpha Steel	\$	410,000	
Add: Previous Liberty Advances directly to Kason Excavating	\$	150,000	
Less: Previous Advances (Chinook)	\$	0	0.0%
NET AMOUNT THIS ADVANCE (Chinook):		\$	3,635,874 25.7%

RECOMMENDED BY:

REVIEWED BY:

26-Sep-17

Michael Jenkins, B.A.
 Associate Director

26-Sep-17

Alistair Dearle, MRICS, PQS
 Partner

TAB 7

**Ceana Development Sunridge Inc. (in receivership)
Analysis of Hillsboro Secured Claim Quantum as at June 5, 2019**

**DRAFT AND CONFIDENTIAL
FOR DISCUSSION PURPOSES ONLY**

Exhibit 1: Summary of Hillsboro Ventures Secured Claims as at June 5, 2019
Ceana Development Sunridge Inc. (in Receivership)
CAD \$'s (unaudited)

	\$3M Facility	\$2M Facility	\$1.5M Facility	Total	Notes	Source Documents
BLG Trust Account Advances						
Transfer from Hillsboro	1,800,000	1,500,000	1,500,000	4,800,000		1; 3; 4; 5; 6; 7; 8
Withheld by Lender re: 2nd Mortgage Funded	650,000	-	-	650,000		1; 3
Withheld by Lender for Interest on amendment and new mortgage	550,000	-	-	550,000		1; 3
Transfer from Neotric Enterprises	-	2,441,524	-	2,441,524		1
Principal Amount of Loan	-	260,000	-	260,000		1
Paid to Neotric Enterprises for Excess Funds in Trust Account	-	(501,524)	-	(501,524)		1
Transfer of Funds to Matter 05 - Third Loan to Ceana	-	(1,500,000)	-	(1,500,000)		1; 7; 8
Total Advances	\$ 3,000,000	\$ 2,000,000	\$ 1,500,000	\$ 6,500,000		
BLG Trust Account Disbursements						
Withheld by Lender re: 2nd Mortgage Funded	(650,000)	-	-	(650,000)		1; 3
Withheld by Lender - Prepaid Interest	(550,000)	(270,000)	-	(1,022,500)		1; 3; 5; 6; 7; 8
Withheld for Legal Fees and Disbursements	(8,450)	-	-	(8,450)		1
Paid KH Dunkley Law Group in Trust	(1,231,350)	(613,916)	-	(1,845,266)		1
Paid BLG Legal Fees and Disbursements	(10,789)	(8,000)	(58,946)	(77,715)		1
Paid KH Dunkley - Net Mortgage Proceeds	(489,031)	-	(474,204)	(963,235)		1
Paid Construction Expenses	-	(963,584)	-	(963,584)		1
Withheld for Payment of Broker Fees	(60,000)	-	-	(60,000)	1	1; 3
Withheld for Final Disbursements	(400)	-	-	(400)		1
Lender Fees (Hillsboro, Neotric and Liberty)	-	(154,500)	(78,625)	(233,125)	2	5; 7
Transfer of Funds to Debtors - Post Filing of Counterclaim	-	-	(735,724)	(735,724)		
Total Disbursements	\$ (3,000,000)	\$ (2,000,000)	\$ (1,500,000)	\$ (6,500,000)		
Accrued Interest and Fees						
Estimated Compound Interest - Loan Advance Date to June 5, 2020	(1,428,854)	(729,783)	(626,685)	(2,785,322)	3	3; 4; 5; 6; 7; 8; 9
Amount Withheld by Lender for Interest on amendment and new mortgage	550,000	270,000	202,500	1,022,500	4	3; 4; 5; 6; 7; 8
Forbearance & Legal Fees	(67,500)	(141,225)	(84,000)	(292,725)		9
Monitoring Fees	(229,950)	(52,500)	(85,125)	(367,575)		5; 7; 9
Total Accrued Interest and Fees	\$ (1,176,304)	\$ (653,508)	\$ (509,310)	\$ (2,339,122)		
Denton's Trust Funds deducted from Total Loan Accrual	-	-	694,676	694,676		12
Estimated Amount Outstanding as at June 5, 2019	\$ (4,176,304)	\$ (2,653,508)	\$ (1,398,684)	\$ (8,228,496)		

Notes

- 1 - 2% of \$3M principle advanced based on agreement that Mr. Gardner had with Yorkfield
- 2 - Lender fees paid to Hillsboro, Neotric and Liberty
- 3 - A&M estimate of outstanding compound interest based on loan agreements. See below exhibits with respect to individual loan schedules.
- 4 - A&M has reduced the estimated compound interest by the prepaid interest withheld by lender from the initial advances.

Source Documents Referenced for Analysis

- 1) Affidavit of Travis McArthur. Not yet filed in Court.
- 2) Affidavit of Patrick Mah. Not yet filed in Court.
- 3) \$3.0M Facility Loan Commitment Letter. Signed January 4, 2017.
- 4) \$3.0M Facility Mortgage Agreement. Signed January 6, 2017.
- 5) \$2.0M Facility Loan Commitment Letter. Signed July 6, 2017.
- 6) \$2.0M Facility Mortgage Agreement. Signed July 28, 2017.
- 7) \$1.5M Facility Loan Commitment Letter. Signed October 10, 2017.
- 8) \$1.5M Facility Mortgage Agreement. Signed November 1, 2017.
- 9) Forbearance Agreement. Signed and Effective May 16, 2018.
- 10) First Affidavit of Keith Ferrel ("Ferrel Affidavit of Default"). Filed in Court on September 5, 2018.
- 11) Second Affidavit of Keith Ferrel ("Ferrel Affidavit No. 2"). Filed in Court on June 24, 2019.
- 12) Denton's Trust Account Statement

Note:

- Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N of Affidavit of Travis McArthur are included in the First Affidavit of Keith Ferrel ("Ferrel Affidavit of Default"), filed in Court on September 5, 2018.

TAB 8

FORBEARANCE AGREEMENT

THIS AGREEMENT is made effective this 16th day of May, 2018.

BETWEEN:

HILLSBORO VENTURES INC.
(hereinafter called "Hillsboro")

- and -

CEANA DEVELOPMENT SUNRIDGE INC.
(hereinafter called the "Borrower")

- and -

Bahadur Gaidhar and Yasmin Gaidhar
(hereinafter called the "Guarantors")

- and -

CEANA DEVELOPMENT WESTWINDS INC.
(hereinafter called the "New Guarantor" and,
(the Borrower, the Guarantors, and the New Guarantor are hereinafter sometimes referred to as,
collectively the "Credit Parties" and individually, each a "Credit Party")

WHEREAS:

- A. The Borrower is the registered legal and beneficial owner of certain lands in the City of Calgary in the Province of Alberta, legally described as follows:

PLAN 9811891
BLOCK 8
LOT 1
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.398 HECTARES (3.45 ACRES) MORE OR LESS

(the "Lands")

- B. Hillsboro has made certain loans (collectively, the "Loans") to the Borrower and, in connection therewith, the Borrower granted in favour of Hillsboro certain mortgage security against the Lands including *inter alia*: (i) a mortgage in the principal amount of \$1,500,000.00 registered as Registration No. 171 262 890 ("Mortgage 1"); (ii) a mortgage in the principal amount of \$2,000,000.00 registered as Registration No. 171 183 985 ("Mortgage 2"); and (iii) a mortgage in the principal amount of \$3,000,000.00 registered as Registration No. 171 023 797 ("Mortgage 3" and, together with Mortgage 1 and Mortgage 2, each a "Mortgage" and collectively referred to as the "Mortgages");
- C. Bahadur Gaidhar agreed to guarantee the indebtedness and other obligations of the Borrower to Hillsboro including, *inter alia*, the due repayment of the Loans together with interest thereon pursuant to guarantees dated March 1, 2017 in connection with Mortgage 3 (the "Mortgage 3

Guarantee"), July 28, 2017 in connection with Mortgage 2 and November 1, 2017 in connection with Mortgage 1 (the "**Mortgage 1 Guarantee**") (collectively referred to as the "**Bob Guarantees**");

- D. Yasmin Gaidhar agreed to guarantee the indebtedness and other obligations of the Borrower to Hillsboro including, *inter alia*, the due repayment of the Loans together with interest thereon pursuant to guarantee dated November 1, 2017 in connection with Mortgage 1 (the "**Yasmin Guarantee**") together with the Bob Guarantees, collectively referred to as the "**Guarantees**";
- E. As security for the observance and performance of the Mortgage 3 Guarantee, the Mortgage 1 Guarantee and the Yasmin Guarantee, the Guarantors granted in favour of Hillsboro mortgage security against the lands legally described as follows:

PLAN 0112710
LOT 1
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 4.11 HECTARES (10.16 ACRES) MORE OR LESS

including (i) a mortgage in the principal amount of \$1,500,000.00 registered as Registration No. 171 262 892; (ii) a mortgage in the principal amount of \$3,000,000.00 registered as Registration No. 171 262 893 (collectively, the "**Gaidhar Mortgages**");
- F. The New Guarantor is a corporation related to the Borrower;
- G. The Credit Parties acknowledge and agree that the Borrower is in default of its repayment obligations to Hillsboro (collectively, the "**Existing Defaults**");
- H. Hillsboro has issued a Statement of Claim in Court of Queen's Bench of Alberta Action No. 1801-04745 (the "**Action**"); and
- I. The Borrower and the Guarantors have requested that Hillsboro forbear from continuing to enforce its rights in respect of the Existing Defaults and Hillsboro has agreed to do so, subject to the terms and conditions herein;

NOW THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by all parties hereto, the parties hereto agree as follows:

ARTICLE 1 ACKNOWLEDGMENTS

- 1.1 The parties hereby confirm and ratify the matters contained and referred to in the preamble to this Agreement and agree that same are expressly incorporated into and form part of this Agreement.
- 1.2 The Credit Parties agree and acknowledge that all of the security and guarantees provided by the Borrower and the Guarantors to Hillsboro are valid and enforceable and that amounts owing by the Borrower to Hillsboro under each of the Mortgages is as set out in Schedule "A" hereto.
- 1.3 Save as expressly provided in this Agreement, nothing in this Agreement is intended to alter, amend, modify or limit the existence or the effectiveness of any agreement now or hereafter entered into between Hillsboro and the Credit Parties (or any of them).

ARTICLE 2 FORBEARANCE

- 2.1 The Borrower agrees to not file a Statement of Defence in the Action and shall execute and deliver the Consent Immediate Order for Sale to Plaintiff to Hillsboro ("**Order for Sale**"), in the form attached hereto as Schedule "B" concurrently with the execution of this Agreement.
- 2.2 Subject to the terms and conditions contained herein, Hillsboro will forbear from taking any further steps to enforce its security and not to make application to the Court of Queen's Bench to obtain the Order for Sale, unless and until there has been a material adverse change in the value of Hillsboro's security or the financial position of the Borrower, or there has been a default by one or more of the Credit Parties of the terms of this Agreement.
- 2.3 The Borrower, each Guarantor, and the New Guarantor agree to not oppose or in any way attempt to delay or hinder the Action, and in particular, Hillsboro's application for the Order for Sale.
- 2.4 The purchase price of the Lands pursuant to the Order for Sale shall be the fair market value of the Lands disclosed in a real estate appraisal performed by the Altus Group with such appraisal to have been completed within 14 Days of the Court of Queen's Bench of Alberta granting the Order for Sale to Plaintiff. The Credit Parties hereby waive any conflict of interest that the Altus Group may have and consent to the Altus Group performing such appraisal, and in so doing, using any and all information that the Altus Group may have at any time obtained directly or indirectly from any of the Credit Parties. The purchase price may be paid by Hillsboro assuming the amount owing pursuant to the mortgages having priority to Mortgage 3, with the balance of the purchase price to be paid by way of reduction of the amount owing pursuant to Mortgage 3, with all such amounts owing to be proven by way of affidavit evidence at the time the Order for Sale is granted.

ARTICLE 3 OBLIGATIONS OF THE CREDIT PARTIES

- 3.1 The Borrower shall pay all outstanding property taxes in relation to the Lands on or before June 30, 2018.
- 3.2 The Borrower shall pay to Hillsboro:
 - (a) on the date of this Agreement, a forbearance fee of \$50,000.00 and the sum of \$17,500.00 for accruing legal fees and disbursements of Hillsboro's legal counsel in relation to this Agreement (collectively, the "**Forbearance Fee**") and the Credit Parties agree and acknowledge that the Forbearance Fee shall be deducted from those funds held in trust by Hillsboro's legal counsel in connection with Mortgage 1 and irrevocably directs Hillsboro's legal counsel to release such amounts to Hillsboro in payment of same;
 - (b) for so long as any amounts under Mortgage 2 remain outstanding, on July 5, 2018, a forbearance fee of \$31,000.00, on December 5, 2018, a forbearance fee of \$33,500.00, on March 5, 2018, a forbearance fee of \$35,000.00, and every three months thereafter, a forbearance fee of \$35,000.00;
 - (c) for so long as any amounts under Mortgage 1 remain outstanding, on September 30, 2018, a forbearance fee of \$24,000.00, on February 28, 2019, a forbearance fee of \$27,000.00, on May 31, 2019, a forbearance fee of \$29,000.00; and every three months thereafter, a forbearance fee of \$29,000.00; and

- (d) all other legal fees and disbursements incurred by Hillsboro's legal counsel in connection with the Action or this Agreement.

3.3 The Borrower shall:

- (a) on or before June 16, 2018, have all liens filed on the Certificate of Title to the Lands removed, and thereafter continue to ensure that no liens are registered against the Lands or the New Lands;
- (b) on or before May 20, 2018, provide Hillsboro all information to be prepared and/or provided (as applicable) by all parties pursuant to a Settlement Agreement, dated April 3, 2018, between Fast Track Commercial Inc. ("**Fast Track**"), Mohammad (Dan) Deilami, and Ceana Development Sunridge Inc. including, but not limited to, confirmation of amounts owing based on the review carried out by Rick Balbi Architects Ltd.;
- (c) on or before May 20, 2018, for all of the following that presently exist, and if any of the following come into existence thereafter, immediately upon their coming into existence:
 - (i) notice of any changes in purchasers of units of the Lands, specifically any cancellations by purchasers or new purchasers;
 - (ii) copies of all Quantity Surveyor Reports;
 - (iii) copies of all bills and invoices with respect to the project on the Lands;
 - (iv) change reports and amendments with respect to the project on the Lands;
 - (v) city inspection reports with respect to the project on the Lands;
 - (vi) copies of correspondence with the City of Calgary; and
 - (vii) correspondence with the architect together with any engineering reports with respect to the project on the Lands;
- (d) on or before June 15, 2018, have caused to be injected additional equity in the amount of at least \$500,000.00 and an additional \$500,000.00 before July 30, 2018, to be used as payment for steel joists, materials provided by Kason Industries Inc., plumbing, electrical, and other future and post-site work;
- (e) on or before July 20, 2018, obtain an additional draw from the mortgage registered as Instrument No. 171 240 017 over the Lands by Connect First Credit Union Ltd. (the "**Connect Mortgage**") and in no event shall such funds advanced under the Connect Mortgage exceed the maximum aggregate amount of \$10,000,000.00;
- (f) on or before August 20, 2018, obtain an additional draw from the Connect Mortgage and in no event shall such funds advanced under the Connect Mortgage (including such draw from (e) above) exceed the maximum aggregate amount of \$10,000,000.00;
- (g) on or before September 30, 2018, ensure that all paving required with respect to the Lands is fully completed;

- (h) on or before October 1, 2018, have obtained an occupancy permit for all premises excepting building E on the Lands and provided a copy thereof to Hillsboro;
 - (i) on or before December 30, 2018 have fully paid out the Connect Mortgage and provided evidence of a certificate of title with respect to the Lands evidencing the discharge of the Connect Mortgage to Hillsboro;
 - (j) on or before the Maturity Dates provided for in Schedule "A" in relation to each of the Mortgages, pay out the Outstanding Amounts of each of the Mortgages together with all accrued interest, and other amounts owing pursuant to the Mortgages;
 - (k) on or before the date of this Agreement provide letters to Hillsboro and addressed to each of the City of Calgary, BTY Group, and Rick Balbi Architects Ltd., in forms attached hereto as Schedules "C", "D", and "E" respectively, pursuant to which, *inter alia*, the Borrower agrees that in the event of foreclosure on the Lands, each of those parties may continue to provide information to and work with Hillsboro or any subsequent purchaser of the Lands;
 - (l) the Borrower shall ensure, with respect to the buildings on the Lands, that the items listed in Schedule "F" shall be completed as of and on the dates specified therein;
 - (m) the Borrower shall pay Neotric Enterprises Inc., in addition to any other monitoring fees, a monitoring fee of \$9,000.00 plus GST per month commencing January 1, 2018 (retroactive) up to July 31, 2018 and thereafter, a monitoring fee of \$13,000.00 plus GST per month, for as long as any there are any amounts outstanding under a Mortgage; and
 - (n) on or before December 5, 2018, have obtained an occupancy permit for building E and provided a copy thereof to Hillsboro.
- 3.4 The Borrower agrees that the standby monies (approximately \$750,000.00 as of the date hereof) held in trust by Hillsboro's legal counsel is to be used to pay:
- (a) interest in arrears;
 - (b) interest as due;
 - (c) fees;
 - (d) monitoring fees;
 - (e) prepaid interest;
 - (f) principal;
 - (g) legal fees; and
 - (h) other project costs

in connection with the Mortgages, all at the sole and absolute discretion of Hillsboro, without notice to any Credit Party. The bulk of these funds will stay in trust until the next advance under

the Connect Mortgage unless Hillsboro so chooses to deal with any portion or all the funds prior thereto.

3.5 The New Guarantor shall execute and deliver (as applicable) to Hillsboro concurrently with the execution of this Agreement:

- (a) a guarantee of the indebtedness and obligations of the Borrower to Hillsboro in the form attached hereto as Schedule "G" (the "**Additional Guarantee**");
- (b) a mortgage in the form attached hereto as Schedule "H", securing the New Guarantor's obligations pursuant to the Additional Guarantee (the "**New Mortgage**", together with the Mortgages, the Guarantees, the Gaidhar Mortgages, the Additional Guarantee and all supporting documents, agreements, certificates, instruments, acknowledgements and opinions the "**Loan Documents**") against lands and premises municipally described as 4850 Westwinds Drive NE and legally described as follows:

PLAN 9512983
BLOCK 3
LOT 8
EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "**New Lands**");

- (c) current certified rent roll, operating statements, detailed common area costs, copies of all leases and mortgages, in each case, with respect to the New Lands;
- (d) the latest Review Engagement, Notice to Reader, or Audited Financial Statements (as the case may be) of the New Guarantor;
- (e) copies of all monthly reports from Avenue Properties relating to the New Lands, as well as all future reports immediately upon availability thereof;
- (f) proof of all current and future payments to Liberty Investments Ltd. ("**Liberty**") permitted by Hillsboro in accordance with the terms hereof, made by the New Guarantor to Liberty in connection with the mortgage registered against the New Lands in favour of Liberty in the principal amount of \$1,450,000.00 (the "**Liberty Mortgage**"); and
- (g) an intercreditor agreement entered into by Liberty and Hillsboro and acknowledged by the New Guarantor with respect to the Liberty Mortgage.

ARTICLE 4 ADDITIONAL COVENANTS

4.1 The Credit Parties further covenant, acknowledge and agree with Hillsboro that:

- (a) the Credit Parties shall duly and punctually pay all amounts required to be paid by the Credit Parties hereunder in the manner specified hereunder and the Credit Parties shall perform and observe all of its obligations under this Agreement;

- (b) any and all payment or repayment, as the case may be, of the Liberty Mortgage shall be provided by 100% of the sale proceeds from each closed unit with respect to the New Lands;
- (c) any amount repaid or prepaid with respect to the Liberty Mortgage shall not be re-borrowed;
- (d) there shall be no further advances under the Liberty Mortgage;
- (e) the Borrower shall provide to Hillsboro a list of sources for all new capital injected into the project on the Lands, immediately upon availability thereof;
- (f) the Borrower shall give Hillsboro at least 48 hour prior written notice of all meetings held between subtrades, architects, engineers, and Fast Track;
- (g) the Borrower shall provide to Hillsboro a copy of the new CCDC-2 contract between Hillsboro and Fast Track immediately upon execution of same;
- (h) the Borrower shall immediately notify Hillsboro of any demands made by the City of Calgary with respect to the Lands and shall rectify or otherwise comply with such demands within 14 days of such demand being issued; and
- (i) in the event that an engineer or architect does not approve any component of the structures or any part of the project on the Lands, that the Borrower shall obtain such approval within 14 days.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1 Each Credit Party represents and warrants to Hillsboro, as of the date hereof:

- (a) if a corporation, it has been duly incorporated and organized (or if a partnership or other legal entity, has been duly formed, or settled as relevant) and organized and is properly constituted, is in good standing and subsisting and is entitled to conduct its business in all jurisdictions in which it carries on business or has assets;
- (b) that the execution and delivery of this Agreement and any other document contemplated herein has been duly authorized and all corporate and other approvals and resolutions have been obtained prior to the execution and delivery of this Agreement the execution of this Agreement and any other security, guarantee or other document provided in connection with the Mortgages or herewith, and the incurring of liability and indebtedness to Hillsboro does not and will not contravene:
 - (i) any law, statute, code, ordinance, order, award, judgment, decree, injunction, rule, regulation, authorization, directive, guidance note, advisory, consent, approval, order, permit, franchise, licence, direction, deferred prosecution agreement or other requirement of any governmental authority (collectively, "Legal Requirements") applicable to such Credit Party; or
 - (ii) any provision contained in any other loan or credit agreement or borrowing instrument or contract to which it is a party;

- (c) this Agreement, and any other document contemplated herein or otherwise related to the subject matter hercof have been duly authorized, executed and delivered by it, and constitute its valid and binding obligations and are enforceable in accordance with their respective terms;
- (d) all necessary Legal Requirements have been met and all other authorizations, approvals, consents and orders have been obtained with respect to the execution and delivery of this Agreement and any document contemplated by this Agreement for the purpose of ensuring that the Agreement and any such document is valid, effective and binding upon the parties hereto; and
- (e) all financial and other information provided to Hillsboro in connection herewith or the Loans is true and accurate, and it acknowledges that the forbearance contemplated herein is made in reliance on the truth and accuracy of this information and the above representations and warranties.

ARTICLE 6 EVENTS OF DEFAULT

- 6.1 Each of the following shall constitute an event of default (an "Event of Default") under the terms of this Agreement:
- (a) if the Borrower, any Guarantors, or the New Guarantor, or any of them, fail to perform or comply with any of the agreements, covenants or obligations contained in this Agreement;
 - (b) if a fire occurs on the Lands or the New Lands;
 - (c) if any creditor or other person, exercises or purports to exercise any rights as against any of the Borrower, the Guarantors, or the New Guarantor, or any assets of any of them, including, without limitation, by way of or in contemplation of enforcement of security, or a distress or execution or, which would, in the assessment of Hillsboro to be determined in its absolute discretion, acting reasonably, have an adverse impact on any Credit Party, or the prospect of repayment of the Outstanding Amounts, or payment pursuant to any guarantee;
 - (d) if proceedings are taken to enforce any encumbrance on the assets of any Credit Party, unless such proceedings are contested in good faith by any Credit Party and security satisfactory to Hillsboro has been provided to Hillsboro;
 - (e) if any legal proceeding seeking the dissolution or division or wind-up of the Borrower, the New Guarantor, Ceana Development Evanstone Inc., or Fast Track, save for any legal proceeding to which Hillsboro consents in writing, is commenced; and
 - (f) if a bankruptcy application or any other proceeding or case is filed, instituted, or commenced with respect to any Credit Party, Ceana Development Evanstone Inc., or Fast Track (by any person other than Hillsboro) under any bankruptcy, insolvency, debt restructuring, reorganization, incorporation, readjustment of debts, dissolution, liquidation, winding-up or similar law, now or hereafter in effect, seeking the bankruptcy, liquidation, reorganization, dissolution, winding-up, composition or readjustment of debts of any Credit Party, Ceana Development Evanstone Inc., or Fast Track the appointment of a trustee, interim receiver, receiver, receiver and manager, custodian, guardian,

liquidator, provisional liquidator, administrator, sequestrator or other like official for any Credit Party, Ceana Development Evanstone Inc., or Fast Track or all or any substantial part of the assets of any Credit Party, Ceana Development Evanstone Inc., or Fast Track, or any similar relief.

- 6.2 In the event that an Event of Default occurs, and unless otherwise provided herein, the forbearance contemplated hereby shall immediately terminate and Hillsboro may continue to take proceedings to recover the indebtedness owing to it, including making application to the Court of Queen's Bench to obtain the Order for Sale, or other orders in the Action.

ARTICLE 7 NOTICE

- 7.1 Without prejudice to any other method of giving notice, any notice required or permitted to be given to a party pursuant to this Agreement shall be conclusively deemed to have been received by such party on the next business day following the sending of the notice by email at the email address below:

- (a) for any Credit Party:

Attention: Bahadur Gaidhar
Ceana Development Sunridge Inc.
c/o Suite 101, 3115 - 12th Street NE, Calgary, AB, Canada T2E 7J2
Email: bg@ceana.ca

- (b) for Hillsboro:

Attention: David T. Madsen, Q.C.
Borden Ladner Gervais LLP
1900, 520 Third Avenue S.W., Calgary, AB, Canada T2P 0R3
Email: dmadsen@blg.com

ARTICLE 8 MISCELLANEOUS

- 8.1 The obligation of the Borrower to make all payments hereunder, under the Mortgages or under the New Mortgage shall be absolute and unconditional and shall be made without any deduction or withholding of any nature and shall not be limited or affected by any circumstance, including, without limitation:
- (i) any set-off, compensation, counterclaim, recoupment, defence or other right which the Borrower may have against Hillsboro or anyone else for any reason whatsoever; or
 - (ii) any insolvency, bankruptcy, reorganization or similar proceedings by or against the Borrower.
- 8.2 In addition to and not in limitation of any rights now or hereafter available to Hillsboro under applicable law or arising under this Agreement or any documents contemplated hereby, Hillsboro is hereby irrevocably authorized, at any time and from time to time, to set-off and appropriate and to apply any and all deposits (general and special) and any other indebtedness at any time held by or owing by Hillsboro to or for the credit of the Borrower against and on account of the obligations of the Borrower to Hillsboro under this Agreement, irrespective of currency.

- 8.3 If any provision of this Agreement would obligate the Borrower to make any payment of interest or other amount payable to Hillsboro in an amount or calculated at a rate which would be prohibited by applicable law or would result in a receipt by Hillsboro of interest at a criminal rate (as such terms are construed under the Criminal Code (Canada)) then, notwithstanding such provisions, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by Hillsboro of interest at a criminal rate, such adjustment to be effected, to the extent necessary, as follows: firstly, by reducing the amount or rate of interest required to be paid to Hillsboro under the this Agreement, and thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to Hillsboro which would constitute "interest" for purposes of Section 347 of the Criminal Code (Canada).
- 8.4 The Borrower shall pay to and indemnify and save harmless Hillsboro for the full amount of all out of pocket costs and expenses (including, but not limited to, any interest payable in order to maintain any Loans and legal fees and disbursements on a full indemnity and solicitor and his own client basis) which Hillsboro may sustain or incur as a consequence of the failure by the Borrower to pay when due any principal of or any interest on any Loans or any other amount due hereunder.
- 8.5 In the event of any conflict between the terms of this Agreement, the Mortgages, the New Mortgage or any other Loan Documents, Hillsboro, in its sole and absolute discretion, shall determine which document shall prevail.
- 8.6 The execution of this Agreement or any additional or other security or documentation will not act as a merger of or otherwise affect the enforceability of the Loans. All agreements and securities now or hereafter entered into by any Credit Party with or in favour of Hillsboro, whether related to the within transaction or otherwise, will be in addition to and not in substitution for any agreements or securities previously granted, unless expressly provided to the contrary therein.
- 8.7 No Credit Party shall assign all or any of its rights, benefits or obligations under this Agreement or the other Loan Documents without the prior written consent of Hillsboro. Hillsboro shall be entitled, without the consent of the Credit Parties, to assign, sell or transfer all or any portion of its rights, benefits and obligations under this Agreement or any other Loan Documents.
- 8.8 This Agreement constitutes the entire agreement of the parties relating to the subject matter hereof and may not be amended or modified except by written consent executed by all parties. There are no representations, warranties or undertakings between the parties hereto with respect to the subject matter hereof other than as set out in this Agreement.
- 8.9 Time is of the essence of this Agreement and all documents or instruments delivered hereunder.
- 8.10 Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
- 8.11 This Agreement will be governed by and interpreted in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.
- 8.12 Hillsboro's rights and remedies hereunder are cumulative and not exclusive of any rights or remedies at law or in equity.

- 8.13 The Credit Parties shall take all such steps and execute all such documents as are necessary or appropriate to carry out the terms and intention of this Agreement.
- 8.14 All schedules attached hereto are and form part of this Agreement.
- 8.15 If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:
- (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or
 - (b) the legality, validity or enforceability of that provision in any other jurisdiction.
- 8.16 The headings contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.
- 8.17 This Agreement may be signed in one or more counterparts, originally or by facsimile and PDF and each such counterpart taken together will form one and the same agreement. A facsimile, or PDF transmitted or other copy of this Agreement shall be as effective as an original.
- 8.18 The benefits conferred by this Agreement and the other Loan Documents shall enure to the benefit of Hillsboro and its successors and assigns and shall be binding on each Credit Party and their respective heirs, successors and permitted assigns.
- 8.19 The Credit Parties (and each of them) acknowledge that they have had an opportunity to obtain independent legal advice and if they have not obtained independent legal advice they expressly waive their right to do so.

(Remainder of page left intentionally blank)

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the parties hereto:

HILLSBORO VENTURES INC.

Per:

Name:

Title:

CEANA DEVELOPMENT SUNRIDGE
INC.

Per:

Name:

Title:

CEANA DEVELOPMENT WESTWINDS
INC.

Per:

Name:

Title:

Witness to Bahadur Gaidhar

BAHADUR GAIDHAR

Witness to Yasmin Gaidhar

YASMIN GAIDHAR

SCHEDULE "A"
BUILDING DEVELOPMENT REQUIREMENTS REGARDING THE LANDS

MORTGAGE	OUTSTANDING AMOUNTS	MATURITY DATE
Mortgage 1	\$1,500,000.00 ("Outstanding Amount 1")	September 30, 2018
Mortgage 2	\$2,000,000.00 ("Outstanding Amount 2")	July 5, 2018
Mortgage 3	\$3,000,000.00 ("Outstanding Amount 3")	January 9, 2018

SCHEDULE "B"
CONSENT IMMEDIATE ORDER FOR SALE TO PLAINTIFF

(see attached)

COURT FILE NUMBER

1801-

COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFF

HILLSBORO VENTURES INC.

DEFENDANT

CEANA DEVELOPMENT SUNRIDGE INC.

DOCUMENT

**CONSENT IMMEDIATE ORDER FOR SALE
TO PLAINTIFF**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENT

David T. Madsen, Q.C.
Borden Ladner Gervais LLP
1900, 520 3rd Ave. S.W.
Calgary, AB T2P 0R3

Ph. (403) 232-9612 Fx. (403) 266-1395
Email: dmadsen@blg.com
File No.: 443707-000006/DTM

DATE ON WHICH ORDER WAS PRONOUNCED:	DAY, 201
LOCATION WHERE ORDER WAS PRONOUNCED:	Calgary, Alberta
NAME OF MASTER / JUSTICE WHO MADE THIS ORDER:	

Upon the application of the plaintiff; and upon the Court determining that it is not necessary to attempt a public sale of the mortgaged lands; And upon hearing counsel for the plaintiff and noting the Consent of the Defendant:

IT IS HEREBY ORDERED AND DECLARED THAT:

In this order the mortgaged lands are the following:

PLAN 9811891
BLOCK 8
LOT 1

Excepting thereout all mines and minerals

1. The mortgage described in the statement of claim is a valid and enforceable mortgage over the mortgaged lands (the "Mortgage").
2. It is declared that there is due and owing pursuant to Mortgage the sum of \$ _____ as at the date of this Order.

3. The plaintiff's offer to purchase the mortgaged lands for \$ _____, be and is hereby approved and accepted.
4. The plaintiff is not required to pay the purchase price into Court but may set off the purchase price by assumption of the amounts outstanding pursuant to the mortgages having priority to the Mortgage and set off against the amount outstanding under the Mortgage.
5. The plaintiff is given leave to apply for a deficiency judgment.
6. The Registrar of Land Titles shall cancel the existing certificate of title to the mortgaged lands and shall issue a new certificate of title in the name of the plaintiff (or such other transferee as directed by the plaintiff's counsel in correspondence sent to the Registrar of Land Titles at the time this order is submitted for registration) free and clear from the plaintiff's mortgage and all subsequent encumbrances, but subject to:
 - i. 771 147 064 20/10/1977 ZONING REGULATIONS
 - ii. 981 252 051 19/08/1998 RESTRICTIVE COVENANT
 - iii. 981 252 053 19/08/1998 RESTRICTIVE COVENANT
 - iv. 981 376 744 01/12/1998 EASEMENT
 - v. 171 183 985 18/08/2017 MORTGAGE
 - vi. 171 183 986 18/08/2017 CAVEAT RE : ASSIGNMENT OF RENTS AND LEASES
 - vii. 171 240 017 26/10/2017 MORTGAGE
 - viii. 171 240 018 26/10/2017 CAVEAT RE : ASSIGNMENT OF RENTS AND LEASES
 - ix. 171 240 021 26/10/2017 POSTPONEMENT
7. If the mortgaged lands are or become vacant then the plaintiff is entitled to immediate possession. If the mortgaged lands are not vacant then the defendant, any tenants, and any other occupants, shall deliver up to the plaintiff vacant possession of the mortgaged lands thirty (days) after service of this order upon them. Service of this order may be made on the occupants by posting same on the main entrance door to the mortgaged lands. A Civil Enforcement Agency has authority thirty days after service of this order has been effected, to evict any occupant of the mortgaged lands.
8. The requirement for service of documents prior to entry of this order, set out in Rule 9.35(1)(a), is hereby waived.

9. The Registrar of Land Titles shall comply with this Order forthwith notwithstanding Section 191(1) of the *Land Titles Act*.

MASTER IN CHAMBERS

SCHEDULE "C"
Letter to City of Calgary

(see attached)

Ceana Development Sunridge Inc.
101, 3115 – 12 Street NE
Calgary, Alberta
T2E 7J2

April __, 2018

Delivered by Email

City of Calgary

To Whom It May Concern:

Re: CEANA DEVELOPMENT SUNRIDGE INC. – the Sunridge Project

With respect to the above captioned matter, Hillsboro Ventures Inc. ("**Hillsboro**") has made certain loans (the "**Loans**") to Ceana Development Sunridge Inc. ("**Ceana**") that are secured by a mortgage, which has become due to Hillsboro. The Loans were made in connection with a development undertaken on the lands legally described as follows:

PLAN 9811891
BLOCK 8
LOT 1
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.398 HECTARES (3.45 ACRES) MORE OR LESS

(the "**Lands**")

The development on the Lands is with respect to 5 buildings for which construction is set to commence on April 12, 2018 (the "**Sunridge Project**"). Ceana entered into a contractual relationship with the City of Calgary in relation to the Sunridge Project. This letter is to confirm that in the event Hillsboro, or someone acting through Hillsboro, acquires the Sunridge Project, Ceana waives any conflict and consents to the City of Calgary continuing to work with Hillsboro and consents to provide them with any information they have in relation to the Sunridge Project or the Lands.

Yours truly,

CEANA DEVELOPMENT SUNRIDGE INC.

Bahadur Gaidhar

SCHEDULE "D"
Letter to Quantity Surveyor
(see attached)

Ceana Development Sunridge Inc.
101, 3115 – 12 Street NE
Calgary, Alberta
T2E 7J2

April __, 2018

Delivered by Email: alistairdearie@BTY.com; michaeljenkins@BTY.com

BTY Group
404 – 6 Ave SW
Suite 645
Calgary, AB T2P 0R9

Attention: Alistair Dearie and Michael Jenkin

Re: CEANA DEVELOPMENT SUNRIDGE INC. – the Sunridge Project

With respect to the above captioned matter, Hillsboro Ventures Inc. (“Hillsboro”) has made certain loans (the “Loans”) to Ceana Development Sunridge Inc. (“Ceana”) that are secured by a mortgage, which has become due to Hillsboro. The Loans were made in connection with a development undertaken on the lands legally described as follows:

PLAN 9811891
BLOCK 8
LOT 1
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.398 HECTARES (3.45 ACRES) MORE OR LESS

(the “Lands”)

The development on the Lands is with respect to 5 buildings for which construction is set to commence on April 12, 2018 (the “Sunridge Project”). Ceana entered into a contractual relationship with the BTY Group in relation to the Sunridge Project. This letter is to confirm that in the event Hillsboro, or someone acting through Hillsboro, acquires the Sunridge Project, Ceana waives any conflict and consents to the BTY Group continuing to work with Hillsboro and consents to provide them with any information they have in relation to the Sunridge Project or the Lands.

Yours truly,

CEANA DEVELOPMENT SUNRIDGE INC.

Bahadur Gaidhar

SCHEDULE "E"
Letter to Rick Balbi

(see attached)

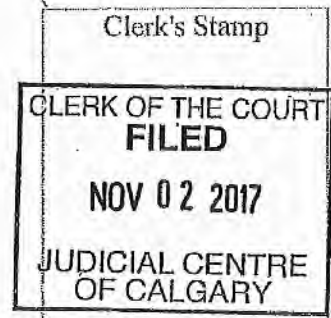
TAB 9

COURT FILE NUMBER 1601-14180
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF HILLSBORO PROPERTIES INC.
DEFENDANT HALF MOON LAKE RESORT LTD and ARMAC INVESTMENTS LTD.

DOCUMENT APPLICATION

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 - 1st Street SW
Calgary, Alberta T2P 5H1

Solicitors: Randal Van de Mosselaer / Matthew M. Huys
Phone: 403.260.7060 / 403.260.7037
Fax: 403.260.7024
Email: RVandemosselaer@osler.com / mhuys@osler.com
Matter: 1182954



NOTICE TO RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Justice.

To do so, you must be in Court when the application is heard as shown below:

Date: November 16, 2017

Time: 10:30 a.m.

Where: Calgary Courts Centre, 601 - 5th Street SW, Calgary, AB

Before Whom: The Honourable Mr. Justice C. M. Jones

Go to the end of this document to see what else you can do and when you must do it.

Orders Sought:

1. Orders substantially in the form attached hereto as **Schedule "A"**, **Schedule "B"**, and **Schedule "C"**:
 - a. dispensing with service of this Application on all parties entitled to service thereof or abridging the time for service to the time given, and deeming service to be good and sufficient in all cases;
 - b. approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between KPMG Inc. (the "**Receiver**") and Hillsboro Properties Inc. (the "**Purchaser**") dated October 31, 2017;
 - c. vesting in the Purchaser (or its nominee) all of Half Moon Lake Resort Ltd.'s and Armac Investments Ltd.'s (collectively referred to herein as the "**Debtor**") right, title, and interest in the Purchase Assets as described in the Sale Agreement;
 - d. sealing the Receiver's First Confidential Report dated October 31, 2017 ("**First Confidential Report**");
 - e. approving the Receiver's Statement of Receipts and Disbursements from June 7, 2017 to discharge, as set out in the First Report of the Receiver, dated October 31, 2017 (the "**First Report**"), and authorizing and directing the Receiver to make the distributions set out in the First Report;
 - f. approving the Receiver's accounts, and the accounts of its independent legal counsel, Osler Hoskin & Harcourt LLP, inclusive of accrual for the fees and disbursements of the Receiver and those of its legal counsel in connection with the completion of these proceedings, including costs of this Application, all as set out in the First Report;
 - g. approving the actions, conduct and activities of the Receiver as outlined in the First Report;
 - h. declaring that the Receiver has duly and properly discharged its duties, responsibilities, and obligations as Receiver;
 - i. upon the filing of a Receiver's Certificate as contemplated by the form of Order attached as Schedule "C", discharging and releasing the Receiver from any and all further obligations as Receiver and any and all liability in respect of the discharge of the Receiver's duties as court-appointed receiver of the Property, save and except for any liability arising out of fraud or gross negligence or wilful misconduct on the part of the Receiver; and
 - j. granting such further and other relief as counsel may request and this Honourable Court may deem just.

Grounds for making this application:

1. On June 7, 2017 KPMG Inc. was appointed as the Court-appointed receiver and manager of the undertaking, property, and assets of the Debtor.

The Sale

2. The Debtor's only asset of value is a recreational vehicle park and campground adjacent to Half Moon Lake south-east of Sherwood Park, Alberta (the "**RV Park**").
3. The Receiver retained Altus Group Ltd. to carry out an appraisal of the RV Park (the "**Altus Appraisal**"). The Receiver also approached a number of commercial real estate brokerages seeking listing proposals. Three listing proposals were obtained.
4. Based on the Altus Appraisal, and the listing proposals that were obtained, the Receiver determined an initial list price for the RV Park. The initial list price significantly exceeded the appraised market value of the RV Park in the Altus Appraisal, and the proposed list price in the listing proposals.
5. Subsequently, Hillsboro advised the Receiver that it would make a credit-bid for the RV Park (the "**Hillsboro Bid**").
6. Hillsboro is the Debtor's senior secured lender. The Debtor has been unable to maintain its financial commitments to Hillsboro. As of June 7, 2017 the Debtor owed Hillsboro \$2,375,000 plus accruing interest, legal, and other costs.
7. The Hillsboro Bid is higher than the list price determined by the Receiver. This amount is:
 - a. significantly higher than the proposed list price set out in the listing proposals the Receiver obtained;
 - b. significantly higher than the appraised market value in the Altus Appraisal; but
 - c. significantly less than the amount owed by the Debtor to Hillsboro.
8. On the basis of this information, the Receiver reviewed the Hillsboro Bid and determined that it was appropriate to accept the Hillsboro Bid.
9. On or about October 31, 2017 the Receiver and the Purchaser entered into the Sale Agreement in respect of the RV Park. Pursuant to the Sale Agreement, the Receiver proposes to sell and the Purchaser proposes to purchase the RV Park.
10. The Transaction contemplated by the Sale Agreement is conditional upon (among other things) approval of the said purchase and sale by this Honourable Court.
11. The Receiver recommends that this Honourable Court approve the Transaction set out in the Sale Agreement because:

- a. The Hillsboro Bid exceeds both the suggested list price set out in the listing proposals and the appraised market value of the RV Park;
- b. The Hillsboro Bid would provide the highest and best value for the RV Park given the appraised value obtained and the interest shown by commercial real estate brokers;
- c. The Debtor's operations are cash-flow negative;
- d. The Receiver understands that Hillsboro is reluctant to continue funding the receivership as any ongoing funding increases the amount owing to Hillsboro, and, therefore, the shortfall Hillsboro will suffer; and
- e. A listing of the RV Park pursuant to one of the listing proposals received will not only take several months (during which time the amount of the debt owing to Hillsboro will continue to increase), but would result in commissions being paid to the realtor, further eroding recovery.

Sealing Confidential Report

12. The First Confidential Report and its exhibits contain confidential information, the disclosure of which may taint the potential market and prejudice creditors if this information were made public and the Transaction did not close. Therefore, it is appropriate that the First Confidential Report be sealed.

Discharge

13. Subject to this Honourable Court approving this Transaction, and apart from minor administrative matters outlined in the First Report, the Receiver has performed its mandate as Receiver under the Receivership Order.
14. The realization of the Property (as that term is defined in the Order of the Honourable Justice Eamon, granted May 12, 2017) is complete, apart from attending to (i) closing the Transaction, (ii) the remittance of GST to Canada Revenue Agency; and (iii) finalizing payment of all Receivership expenses.
15. It is appropriate that the Receiver be discharged as Receiver of the Debtor once these final administrative matters have been completed.
16. Such further and other grounds as counsel may recommend and this Honourable Court may permit.

Affidavit or other Evidence and Materials to be used in Support of this Application:

17. The First Report of the Receiver, dated October 31, 2017;
18. The First Confidential Report of the Receiver, dated October 31, 2017;
19. Order of the Honourable Justice Eamon, granted May 12, 2017; and

20. Such further and other evidence or materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

21. The *Alberta Rules of Court*, Alta Reg. 124/2010.

Applicable Acts and Regulations:

22. The *Bankruptcy and Insolvency Act*, RSC 1985, chap. B-3, as amended.
23. The *Judicature Act*, RSA 2000, c J-2, as amended.

Any Irregularity Complained of or Objection Relied On:

24. None.

How the Application is Proposed to be Heard or Considered:

25. In person.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A"

COURT FILE NUMBER 1601-14180

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF HILLSBORO PROPERTIES INC.

DEFENDANT HALF MOON LAKE RESORT LTD and ARMAC INVESTMENTS LTD.

Clerk's Stamp

DOCUMENT **APPROVAL AND VESTING ORDER**
(Sale by Receiver)

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 – 1st Street SW
Calgary, Alberta T2P 5H1

Solicitors: Randal Van de Mosselaer / Matthew M. Huys
Phone: 403.260.7060 / 403.260.7037
Fax: 403.260.7024
Email: RVandemosselaer@osler.com / mhuys@osler.com
Matter: 1182954

DATE ON WHICH ORDER WAS PRONOUNCED: November 16, 2017

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: Mr. Justice C. M. Jones

UPON THE APPLICATION by KPMG Inc. in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of the undertaking, property and assets of Half Moon Lake Resort Ltd. and Armac Investments Ltd (collectively the "**Debtors**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and Hillsboro Properties Inc. (the "**Purchaser**") dated October 31, 2017 and appended to the First Confidential Report of the Receiver dated October 31,

2017 (the "**Confidential Report**"), and vesting in the Purchaser (or its nominee), the Debtors' right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"); **AND UPON READING** the Confidential Report and the First Report of the Receiver dated October 31, 2017 (the "**First Report**");

AND UPON HAVING READ the Receivership Order dated May 12, 2017 (the "**Receivership Order**"), the First Report, the Confidential Report, and the Affidavit of Service; **AND UPON HEARING** the submissions of counsel for the Receiver, the Purchaser [Names of other parties appearing], no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service, filed;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

APPROVAL OF TRANSACTIONS

2. The Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction or for the conveyance of the Purchased Assets to the Purchaser (or its nominee).

VESTING OF PROPERTY

3. Upon the delivery of a Receiver's certificate to the Purchaser (or its nominee) substantially in the form set out in **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Debtors' right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule "B"** hereto shall vest absolutely in the name of the Purchaser (or its nominee), free and clear of and from any and all security interests (whether

contractual, statutory, or otherwise), hypothecs, caveats, mortgages, leases, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by the Receivership Order;
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system; and
- (c) those Claims listed on **Schedule "C"** hereto;

[all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, caveats, easements and restrictive covenants and other registrations against title listed on **Schedule "D"** hereto (the "**Permitted Encumbrances**")]; and,

for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. Upon the delivery of the Receiver's Certificate, and upon the filing of a certified copy of this Order, together with any applicable registration fees, the Registrar of Land Titles of Alberta (the "**Registrar**") is hereby authorized, requested, and directed to cancel the existing Certificate of Title No. 932 396 628 for those lands and premises municipally described as 21524 Twp Rd 520, Strathcona County, Alberta, and legally described as:

ALL THAT PORTION OF THE SOUTH EAST QUARTER OF SECTION SIX (6)
TOWNSHIP FIFTY TWO (52)
RANGE TWENTY ONE (21)
WEST OF THE FOURTH MERIDIAN, NOT COVERED BY ANY OF THE WATERS
OF LAKE NO. 1 AND LAKE NO. 4 AS SHOWN ON A PLAN OF SURVEY OF
THE SAID TOWNSHIP SIGNED AT OTTAWA ON THE 13TH DAY OF MAY A.D.
1901, CONTAINING 56.3 HECTARES (139 ACRES) MORE OR LESS.
EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "Lands")

and to issue a new Certificate of Title for the Lands in the name of the Purchaser, namely, Hillsboro Properties Inc. (or its nominee), and to register such transfers, discharges, discharge statements of conveyances, as may be required to convey clear title to the Lands to the Purchaser (or its nominee), which Certificate of Title shall be subject only to those Permitted Encumbrances listed on **Schedule "D"** hereto.

5. This Order shall be registered by the Registrar notwithstanding the requirements of section 191(1) of the Land Titles Act, RSA 2000, c.L-7 and notwithstanding that the appeal period in respect of this Order has not elapsed, which appeal period is expressly waived.
6. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets (to be held in an interest bearing trust account by the Receiver) shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
7. The Purchaser (and its nominee, if any) shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever in respect of any Claims against the Debtor.
8. The Debtors and all persons who claim by, through or under the Debtors in respect of the Purchased Assets, save and except for the persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Purchased Assets and, to the extent that any such persons remains in possession or control of any of the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).

9. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtor, or any person claiming by or through or against the Debtor.
10. Immediately after the closing of the Transaction, the holders of the Permitted Encumbrances shall have no claim whatsoever against the Receiver or the Debtor.
11. The Receiver is to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof to the Purchaser (or its nominee).
12. Pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* and section 20(e) of the *Alberta Personal Information Protection Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtors' records pertaining to the Debtors' past and current employees, including personal information of those employees listed in the Sale Agreement. The Purchaser (or its nominee) shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.
13. Notwithstanding:
 - (a) The pendency of these proceedings;
 - (b) Any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
 - (c) Any assignment in bankruptcy made in respect of the Debtor

the vesting of the Purchased Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy*

and Insolvency Act (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

14. The Receiver, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

MISCELLANEOUS MATTERS

15. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals regulatory and administrative bodies are hereby respectfully requested to make such orders as to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
16. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
17. Service of this Order on any party not attending this application is hereby dispensed with.

J.C.C.Q.B.A.

Schedule "A"

Form of Receiver's Certificate

COURT FILE NUMBER	1601-14180
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	HILLSBORO PROPERTIES INC.
DEFENDANT	HALF MOON LAKE RESORT LTD and ARMAC INVESTMENTS LTD.

Clerk's Stamp

DOCUMENT **RECEIVER'S CERTIFICATE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Osler, Hoskin & Harcourt LLP**
Suite 2500, TransCanada Tower
450 – 1st Street SW
Calgary, Alberta T2P 5H1

Solicitors: Randal Van de Mosselaer / Matthew M. Huys
Phone: 403.260.7060 / 403.260.7037
Fax: 403.260.7024
Email: RVandemosselaer@osler.com / mhufs@osler.com
Matter: 1181533

RECITALS

- A. Pursuant to an Order of the Honourable Justice [●] of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated May 12, 2017, KPMG Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of Half Moon Lake Resort Ltd. and Armac Investments Ltd. (collectively the "**Debtors**").
- B. Pursuant to an Order of the Court dated November 16, 2017, the Court approved the agreement of purchase and sale made as of October ●, 2017 (the "**Sale Agreement**") between the Receiver and **Hillsboro Properties Inc.** (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtors' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the

delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser (or its nominee) has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser (or its nominee); and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ on _____.

KPMG Inc., in its capacity as Receiver of the undertaking, property and assets of Half Moon Lake Resort Ltd. and Armac Investments Ltd., and not in its personal capacity.

Per; _____

**Name: Cecil Cheveldave
Title: Vice President, Deal
Advisory, Restructuring &
Turnaround**

Schedule "B"

Purchased Assets

The real property legally described as:

ALL THAT PORTION OF THE SOUTH EAST QUARTER OF SECTION SIX (6)
TOWNSHIP FIFTY TWO (52)
RANGE TWENTY ONE (21)
WEST OF THE FOURTH MERIDIAN, NOT COVERED BY ANY OF THE WATERS
OF LAKE NO. 1 AND LAKE NO. 4 AS SHOWN ON A PLAN OF SURVEY OF
THE SAID TOWNSHIP SIGNED AT OTTAWA ON THE 13TH DAY OF MAY A.D.
1901, CONTAINING 56.3 HECTARES (139 ACRES) MORE OR LESS.
EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "**Lands**")

and (i) all improvements, structures, fixtures, appurtenances and attachments thereon, and (ii) all chattels owned by the Debtors which are located on the Lands; but excluding all recreational vehicles, trade fixtures, leasehold improvements and other property owned by any tenants or removable under the leases included in the Permitted Encumbrances and all other fixtures, improvements and property not owned by the Vendors or the Debtors).

Schedule "C"

Encumbrances

Registration Number	Registration Date	Description
152 016 877	16/01/2015	Mortgage Mortgagee - Hillsboro Properties Inc. 927-7A Street NW Calgary Alberta T2M3J4 Original Principal Amount: \$2,000,000
152 016 878	16/01/2015	Caveat RE : Assignment of Rents and Leases Caveator - Hillsboro Properties Inc. 927-7A Street NW Calgary Alberta T2M3J4 Agent - Kenneth D Tighe
152 016 879	16/01/2015	Mortgage Mortgagee - 1546201 Alberta Ltd. 235, 6025 - Street SE Calgary Alberta T2H2K1 Original Principal Amount: \$7,774,661 (Data Updated by: Change of Address 152093256)
152 016 880	16/01/2015	Caveat Re : Assignment of Rents and Leases Caveator - 1546201 Alberta Ltd. 235, 6025-12 Street SE Calgary Alberta T2H2K1 Agent - Conan J Taylor
162 103 830	18/04/2016	Caveat Re : Amending Agreement Caveator - 1546201 Alberta Ltd. 235, 6025-12 Street SE Calgary Alberta T2H2K1 Agent - Andrew K Maciag

Registration Number	Registration Date	Description
162 169 042	25/06/2016	Caveat Re : Lease Interest Caveator - Robert Lindsay Caveator - Linda Lindsay Both of: 7116-67 St Edmonton Alberta T6B3A6
172 077 188	28/03/2017	Caveat Re : Lease Interest Caveator - Phillip Durant Caveator - Susan Durrant BOTH OF: #16, 3311 - 58 Street Edmonton Alberta T6L6K3 Agent - James W Kadavil
172 155 930	20/06/2017	Caveat Re : Lease Interest Caveator - Sharon Veilleux Caveator - Alain Velilleux Both of: 521 Grandin Drive Morinville Alberta T8R0E3 Agent - Mark W Krochak
172 178 020	12/07/2017	Caveat Re : Lease Interest Caveator - Douglas M Currie Caveator - Michelle D Currie Both of: 80 50322 RR 232 Leduc County Alberta T4X0K9
172 222 694	26/08/2017	Caveat Re : Lease Interest Caveator - Alan Karmaschek Caveator - Ann Karmaschek Both of: 314, 222 Baseline Road Sherwood Park Alberta T8H1S8

Registration Number	Registration Date	Description
072 517 119	27/08/2007	Lease Lessee – Clearquest Media Corp. Commencing on the 13 day of June, 2007 Terminating on the 31 day of August, 2037 As to area A109 Plan 0224824 Leasehold title issued
072 517 122	27/08/2007	Lease Lessee – Clearquest Media Corp. Commencing on the 13 day of June, 2007 Terminating on the 31 day of August, 2037 As to area A110 Plan 0224824 Leasehold title issued
072 517 139	27/08/2007	Lease Lessee – Clearquest Media Corp. Commencing on the 13 day of June, 2007 Terminating on the 31 day of August, 2037 As to area A108 Plan 0224824 Leasehold title issued
102 196 464	08/06/2010	Caveat Re: Lease Interest Caveator – John Kuss Caveator – June Kuss
142 120 277	29/04/2014	Order
152 096 941	27/03/2015	Order

Registration Number	Registration Date	Description
042 487 750	05/11/2004	Caveat Re: Lease Caveator – Ken McKinnon Caveator – Elizabeth McKinnon
052 094 450	14/03/2005	Caveat Re: Lease Caveator – Lorna Groome Caveator – Geoffrey Groome
052 094 454	14/03/2005	Caveat Re: Lease Caveator – Susan Gaudin
052 120 360	04/04/2005	Caveat Re: Lease Caveator – Percy Sutton
052 123 901	05/04/2005	Caveat Re: Lease Caveator – Lynne H A Williams
052 145 637	18/04/2005	Caveat Re: Lease Caveator – Daryl Paul Ammann
052 152 167	22/04/2005	Caveat Re: Lease Caveator – Arthur Ammann Caveator – Cheryl Ammann
052 517 127	23/11/2005	Caveat Re: Lease Caveator – After Eight Holdings Ltd.
062 591 898	28/12/1006	Lease Lessee – CIDC Mortgage Corp. Commencing on the 15 day of July, 2006 Terminating on the 31 day of August, 2037 As to areas A127 to A131, Plan 0224824
062 591 994	28/12/2006	Leasehold Title Application New title issued Affects Instrument: 062591898

Schedule "D"

Permitted Encumbrances

Registration Number	Registration Date	Description
5547PL	01/02/1968	Utility Right of Way Grantee: Atco Gas and Pipelines Ltd. "Part"
1101ST	22/10/1971	Utility Right of Way Grantee: Atco Gas and Pipelines Ltd. "Part"
762 140 627	09/08/1976	Utility Right of Way Grantee: Atco Gas and Pipelines Ltd.
772 094 429	26/05/1977	Utility Right of Way Grantee: Atco Gas and Pipelines Ltd.
812 007 829	13/01/1981	Utility Right of Way Grantee: Atco Gas and Pipelines Ltd.
952 267 107	05/10/1995	Utility Right of Way Grantee: Strathcona County
962 243 157	09/09/1996	Discharge of Utility Right of Way 952267107 Partial Except Plant/Portion 9620637
042 008 513	07/01/2004	Caveat Re: Lease Caveator – Charles Bauman
042 413 899	23/09/2004	Caveat Re: Lease Caveator – Kelly Joseph Schmaltz
042 426 074	30/09/2004	Caveat Re: Lease Caveator – Melvin J Clifford
042 426 075	30/09/2004	Caveat Re: Lease Caveator – Melvin J Clifford

Registration Number	Registration Date	Description
172 258 227	02/10/2017	Caveat Re : Lease Interest Caveator - Linda Dunsby 36 Estates Court Sherwood Park Alberta T8B1M9

Schedule "A"

COURT FILE NUMBER	1601-14180
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	HILLSBORO PROPERTIES INC.
DEFENDANT	HALF MOON LAKE RESORT LTD and ARMAC INVESTMENTS LTD.

Clerk's Stamp

DOCUMENT	RECEIVER'S CERTIFICATE
----------	-------------------------------

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Osler, Hoskin & Harcourt LLP Suite 2500, TransCanada Tower 450 – 1 st Street SW Calgary, Alberta T2P 5H1
---	---

Solicitors:	Randal Van de Mosselaer / Matthew M. Huys
Phone:	403.260.7060 / 403.260.7037
Fax:	403.260.7024
Email:	RVandemosselaer@osler.com / mhuys@osler.com
Matter:	1182954

This Receiver's Certificate is the certificate referred to in paragraph 6 of the Order (Approval of Accounts, and Discharge of Receiver) of the Honourable Mr. Justice C. M. Jones, granted November 16, 2017 (the "**Order**").

Capitalized terms not otherwise defined herein shall have the meanings given to those terms in the Order.

KPMG Inc., solely in its capacity as Court-appointed receiver (the "**Receiver**") of the Property (as that term is defined in the Receivership Order) and not in its personal or corporate capacity, hereby certifies that:

1. The Receiver has closed the sale transaction described in the First Report,

2. All GST remittances owing in relation to the sale of the Property have been remitted by the Receiver to the Canada Revenue Agency,
3. All Receivership expenses have as set out in the First Report and the First Confidential Report have been paid, and
4. The administration of the receivership proceedings as described in the First Report have been completed.

Dated this _____ day of _____, 2017.

KPMG Inc., in its capacity as Receiver of the undertaking, property and assets of Half Moon Lake Resort Ltd. and Armac Investments Ltd., and not in its personal capacity.

Name: Cecil Cheveldave

Title: Vice President, Deal Advisory,
Restructuring & Turnaround

Schedule "B"

COURT FILE NUMBER 1601-14180

COURT COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF HILLSBORO PROPERTIES INC.

DEFENDANT HALF MOON LAKE RESORT LTD and
ARMAC INVESTMENTS LTD.

DOCUMENT **RESTRICTED COURT ACCESS
ORDER**

Clerk's Stamp

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 – 1st Street SW
Calgary, Alberta T2P 5H1

Solicitors: Randal Van de Mosselaer / Matthew M. Huys
Phone: 403.260.7060 / 403.260.7037
Fax: 403.260.7024
Email: RVandemosselaer@osler.com / mhuys@osler.com
Matter: 1182954

DATE ON WHICH ORDER WAS PRONOUNCED: November 16, 2017

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: Mr. Justice C. M. Jones

UPON THE APPLICATION of KPMG Inc. (the "**Receiver**"); **AND UPON HAVING READ** the pleadings, proceedings, orders and other materials filed in this action, including the First Report of the Receiver, filed October 31, 2017 (the "**First Report**"), and the First Confidential Report of the Receiver, dated October 31, 2017 (the "**First Confidential Report**"); **AND UPON HEARING** from counsel for the Receiver, counsel for Hillsboro Properties Inc. (the "**Purchaser**"), and from any other interested persons who by the Court record have appeared at

the within Application; **AND UPON IT APPEARING** that all interested and affected parties have been served with notice of this Application; **AND WHEREAS** all capitalized terms not defined herein shall take the meaning ascribed to them in the Sale Agreement (as that term is defined in the Sale Approval and Vesting Order granted in the within Action);

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this Application, and time for service of this Application is abridged to that actually given, and specifically, the service, notice and formal requirements of Part 6, Division 4 of the *Alberta Rules of Court*, Alta Reg. 124/2010 shall not apply to this Order and are hereby dispensed with.
2. The First Confidential Report shall, subject to further Order of this Court, be marked "SEALED PURSUANT TO COURT ORDER - NOT TO BE OPENED WITHOUT PRIOR ORDER OF THE COURT", and shall be maintained in accordance with the terms of this Order and shall be treated as confidential, sealed and not form part of the public record.
3. Every person on whom the First Confidential Report is served shall keep the information contained therein confidential and such information:
 - (a) shall be used only for the purposes of this proceeding and not for any business or other purpose whatsoever;
 - (b) shall not be given, shown, made available, or communicated in any way to anyone other than for the purpose of retaining and instructing counsel with respect to these proceedings only, who shall be bound by the terms of this Order; and
 - (c) shall not be copied or reproduced, except by counsel for the purpose of responding to the Receiver's application or preparing materials for use in these proceedings.

4. The Receiver is at liberty to reapply for further advice, assistance and direction as may be necessary to give full force and effect to the terms of this Order.
5. This Order will remain in effect subject to further Order of the Court granted on notice to the Receiver and the Purchaser, an Application for which may be brought by any interested party only following the filing by the Receiver of the Receiver's Certificate confirming the closing (if any) of the transaction to which First Confidential Report relates.
6. The First Confidential Report shall be filed with the Court 90 days following the closing of the pending transaction contemplated by the Sale Agreement.

J.C.Q.B.A.

Schedule "C"

COURT FILE NUMBER 1601-14180

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF HILLSBORO PROPERTIES INC.

DEFENDANT HALF MOON LAKE RESORT LTD and ARMAC INVESTMENTS LTD.

Clerk's Stamp

DOCUMENT **ORDER**
Approval of Accounts, and Discharge of Receiver

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Osler, Hoskin & Harcourt LLP**
Suite 2500, TransCanada Tower
450 – 1st Street SW
Calgary, Alberta T2P 5H1

Solicitors: Randal Van de Mosselaer / Matthew M. Huys
Phone: 403.260.7060 / 403.260.7037
Fax: 403.260.7024
Email: RVandemosselaer@osler.com / mhuys@osler.com
Matter: 1182954

DATE ON WHICH ORDER WAS PRONOUNCED: November 16, 2017

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: Mr. Justice C. M. Jones

UPON THE APPLICATION of KPMG Inc. in its capacity as Court-appointed receiver (the "**Receiver**") of the Property (as that term is defined in the Order of the Honourable Justice Eamon, granted May 12, 2017 in the within Action (the "**Receivership Order**")) for an Order approving the Receiver's accounts and the accounts of its legal counsel, approving the Receiver's activities and discharging the Receiver; **AND UPON** having read the First Report of the Receiver, dated October 31, 2017 (the "**First Report**") and the First Confidential Report of

the Receiver dated October 31, 2017 ("**First Confidential Report**"); **AND UPON** hearing from counsel for the Receiver and counsel for any other interested party appearing at the hearing of this Application;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

APPROVAL OF RECEIPTS, DISBURSEMENTS AND ACCOUNTS

2. The Receiver's accounts and the accounts of its independent counsel, Osler Hoskin & Harcourt LLP, are hereby approved.
3. The Receiver's Statement of Receipts and Disbursements set out in the First Report is approved and the Receiver is hereby directed and authorized to make the final distributions set out in the First Report and the First Confidential Report.

DISCHARGE OF THE RECEIVER

4. As of the date of the First Report and based on the evidence before this Honourable Court:
 - (a) The Receiver has acted honestly and in good faith, and has dealt with the Property in a commercially reasonable manner;
 - (b) The actions and conduct of the Receiver are approved and the Receiver has satisfied all of its duties and obligations as receiver of the Property;
 - (c) The Receiver shall not be liable for any act or omission pertaining to the discharge of the Receiver's duties as court-appointed receiver of the Property, save and except for any liability arising out of fraud or gross negligence or wilful misconduct on the part of the Receiver; and

- (d) Any and all claims against the Receiver arising from, relating to or in connection with the performance of the Receiver's duties and obligations as court-appointed receiver of the Property, save and except for claims based on fraud or gross negligence or wilful misconduct on the part of the Receiver, shall be forever barred and extinguished.
5. No action or proceeding arising from, relating to, or in connection with the performance of the Receiver's duties and obligations in respect of the Property may be commenced or continued without the prior leave of this Honourable Court, on notice to the Receiver and on such terms as this Honourable Court may direct.
6. Upon the filing of the Receiver's Certificate attached hereto as Schedule "A" confirming, among other things, that the Receiver has: (i) closed the sale transaction described in the First Report, (ii) remitted to Canada Revenue Agency all GST owing in relation to the sale of the Property (as that term is defined in the Receivership Order); and (iii) finalized payment of all Receivership expenses as set out in the First Report and the First Confidential Report, the Receiver shall be absolutely and unconditionally discharged as Receiver of the Property and shall have no further duty, liability or obligation with respect to the Property, provided however, that notwithstanding its discharge, the Receiver shall:
- (a) remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership; and
- (b) shall continue to have the benefit of the provisions of this Order and all Orders granted in these proceedings, including all approvals, protections and stays of proceedings in favor of the Receiver in its capacity as Receiver.

MISCELLANEOUS

7. The Receiver has leave to reapply to this Honourable Court for such further advice and directions as may be necessary.
8. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal

delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.

9. Service of this Order on any party not attending this application is hereby dispensed with.

J.C.C.Q.B.A.

TAB 10

\$1,212,081,18

1260 per annum x 4 years

\$111,781.59

Apr 02	Apr 04	Ceana Dev Inc - Visa # 98	PIT STOP PORTABLE T	15.75	
Nov 15	Nov 19	Ceana Dev Inc - Visa # 98	PIT STOP PORTABLE T	135.29	
Nov 15	Nov 19	Ceana Dev Inc - Visa # 98	PIT STOP PORTABLE T	183.59	
Nov 15	Nov 19	Ceana Dev Inc - Visa # 98	PIT STOP PORTABLE T	135.29	
Nov 19	Nov 20	Ceana Dev Inc - Visa # 98	G O OGLE *Google Store	2.59	
Nov 20	Nov 22	Ceana Dev Inc - Visa # 98	PIT STOP PORTABLE T	15.75	
Dec 04	Dec 07	Ceana Dev Inc - Visa # 98	LOW GLENN & CARD	6,000.00	
Dec 13	Dec 17	Ceana Dev Inc - Visa # 98	PORTA LCO	151.04	
Dec 17	Dec 20	Ceana Dev Inc - Visa # 98	LOW GLENN & CARD	9,000.00	

21,227.71

\$23,576.67

TOM GLEN
2018/19/20

\$5,000.00
\$6,000.00
\$9,000.00
\$2,000.00
\$12,000.00
\$10,000.00
\$5,300.00
\$5,000.00
\$5,100.00
\$12,000.00

BTY

\$5,145.00

TOTAL

\$76,545.00

\$76,545.00

JCB ENGINEER	TIA			\$8,679.51	
818 STUDIO				\$4,252.50	
818 STUDIO				\$3,465.00	
818 STUDIO				\$393.00	
YORKFIELD				\$6,300.00	
HILLSBORO FEES					
HILLSBORO FEES					
CRIS SKOWR	REAL ESTATE FEES SALE BLDG D				
BTY	QS				
				\$23,090.01	\$23,090.01
cell phone bills x102x12x4				\$4,896.00	\$4,896.00
					\$1,451,970.45

one JV of Nisha Ali wrongly deposite/another project/eventually transferred

\$200,000.00

TAB 11

TAB 12

Canada v. Ferrel, 99 D.TC 5111 (FCA)

Experimental feature warning

The hosting of judicial decisions on Tax Interpretations is in Beta. We do not guarantee the accuracy of this text.

The text-formatting is also in development. The final version will be more polished than what you see here.

Date: 19990118

Docket: A-746-97

CORAM: THE CHIEF JUSTICE

LINDEN, J.A.

SEXTON, J.A.

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

KEITH E. FERREL

Respondent

Heard at Calgary, Alberta on Tuesday, January 26, 1999.

Judgment delivered at Calgary, Alberta on Tuesday, January 26, 1999.

REASONS FOR JUDGMENT BY: LINDEN, J.A.

Date: 19990126

Docket: A-746-97

CORAM: THE CHIEF JUSTICE

LINDEN, J.A.

SEXTON, J.A.

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

KEITH E. FERREL

Respondent

REASONS FOR JUDGMENT

(Delivered from the Bench at Calgary, Alberta

on Tuesday, January 26, 1999)

LINDEN, J.A.:

[1] We can see no basis upon which to interfere with the decision of the Tax Court. Based on the facts as found and the authorities relied on by the Tax Court Judge, he arrived at the right decision. That outcome is fortified by the Neuman

decision (98 DTC 6297) of the Supreme Court of Canada, released following the date of that decision in which Mr. Justice Iacobucci warned that Courts should not be "quick to embellish" tax avoidance provisions in the Income Tax Act but should await "precise and specific" measures from legislators to combat any perceived "mischief" (See p. 6305). He reminded us that "taxpayers can arrange their affairs in a particular way for the sole purpose of deliberately availing themselves of the tax reduction levies on the Income Tax Act." That, he explained, included the use of "corporate structures which exist for the sole purpose of avoiding tax".

[2] It follows that other structures, including trusts, may also be used to save tax, as long as proper legal documentation is prepared to accomplish the purpose desired. Despite the able argument of Mr. McNary, we have not been persuaded that the agreements between the trust and the taxpayer and the trust and the company were illegal for purposes of the Income Tax Act (See Section 104 (2)) nor improper under trust law, which now appears to permit structures called "business trusts", which conduct businesses. (See Flannigan "The Nature and Duration of the Business Trust" 6 Estates and Trusts Quarterly 181).

[3] Nor have we been persuaded that the Alberta Business Corporations Act has been violated by these agreements.

[4] In addition, we are not convinced that section 56 (2) of the Income Tax Act applies to the facts of this case.

[5] The appeal should be dismissed with costs.

"Allen M. Linden"

J.A.

FEDERAL COURT OF APPEAL

Date: 19990126

Docket: A-746-97

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

KEITH E. FERREL

Respondent

REASONS FOR JUDGMENT

FEDERAL COURT OF CANADA

APPEAL DIVISION

NAMES OF COUNSEL AND SOLICITORS ON THE RECORD

COURT FILE NO.: A-746-97

STYLE OF CAUSE: The Queen v. Keith E. Ferrel

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: January 26, 1999

REASONS FOR JUDGMENT OF LINDEN, J.A.

DATED: January 26, 1999

APPEARANCES:

Mr. Carman R. McNary for the Appellant

Mr. H. George McKenzie for the Respondent

SOLICITORS OF RECORD:

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Deputy Attorney General
for Canada

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