



Affidavit #1 of Leah Jonak
Sworn November 25, 2015

No. H-140638
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

STARK BC VENTURE, LLC

PETITIONER

AND:

MOUNT BALDY REAL ESTATE, ULC, WINTER RECREATION ULC,
MOUNT BALDY SKI CORPORATION, ROBERT BOYLE, BRETT SWEEZY,
BRENT ALAN BAKER ALSO KNOWN AS BRENT BAKER, LAURA
LESLIE BREUNINGER BAKER, VANTAGEONE CREDIT UNION, B.C.
OPPORTUNITY FUND LLC, ATTORNEY GENERAL OF CANADA, AS
REPRESENTATIVE OF THE CROWN IN RIGHT OF CANADA, THE
OWNERS, STRATA CORPORATION KAS1840

RESPONDENTS


AFFIDAVIT

I, **LEAH JONAK**, Paralegal, of 1400 – 510 Burrard Street, Vancouver, British Columbia V6C 3A8, **MAKE OATH AND SAY AS FOLLOWS:**

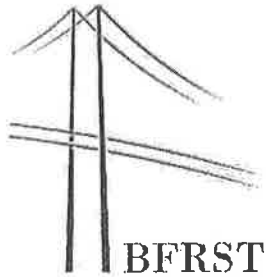
1. I am employed in the office of the solicitor for G Powroznik Group Inc., Receiver of Mount Baldy Real Estate, ULC and Mount Baldy Ski Corporation and as such I have personal knowledge of the facts and matters hereinafter deposed to save and except where the same are stated to be made on information and belief and where so stated, I verily believe the same to be true.
2. Attached hereto and marked as **Exhibit "A"** to this my Affidavit is a true copy of a letter from BFRST LLP to Baldy Operating Corp., dated April 29, 2015 regarding termination of the Operating Agreement.

3. Attached hereto and marked as **Exhibit "B"** to this my Affidavit is a true copy of a drop dead offer for the purchase of the assets delivered on November 4, 2015.
4. Attached hereto and marked as **Exhibit "C"** to this my Affidavit is a true copy of a letter from BFRST LLP to McCarthy Tetrault and Terra Law, dated November 5, 2015 with respect to press releases.
5. Attached hereto and marked as **Exhibit "D"** to this my Affidavit is a true copy of a letter from Lawson Lundell to McCarthy Tetrault and Terra Law, dated November 6, 2015.

SWORN BEFORE ME at the City of
Vancouver, in the Province of British
Columbia, this 25 day of November, 2015.


A Commissioner for Taking Affidavits for the
Province of British Columbia


LEAH JONAK



**BURNS
FITZPATRICK
ROGERS
SCHWARTZ &
TURNER LLP**
Barristers and Solicitors

DARRELL E. BURNS
DENNIS K. FITZPATRICK*
SAMUEL D. HYMAN*
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SAM DE GROOT
SARA PEDLOW

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NORMAN Q. CHOW*
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* Denotes Law Corporation

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Email: dfitzpatrick@bfrst.ca
Direct Line: 604.602.5001

File No. 018498

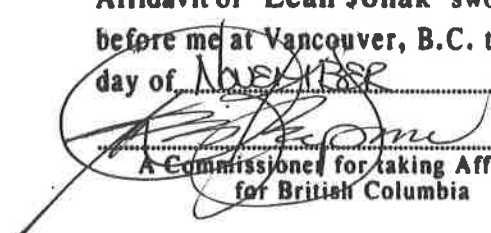
April 29, 2015

Via Mail & By Email to fred.johnston@bcbaldy.com

Baldy Operating Corporation
2680 Mt. Baldy Road
P.O. Box 1499
Oliver, BC V0H 1T0
Attention: Fred Johnston

Dear Mmes. and Messrs.:

Re: Default by Baldy Operating Corporation ("BOC") under the Operating Agreement with G. Powroznik Group Inc. Receiver-Manager of Mount Baldy Real Estate, ULC, and Mount Baldy Ski Corporation (the "Receiver") dated December 19, 2014 (the "Operating Agreement")

This is Exhibit "1" referred to in the
Affidavit of Leah Jonak sworn
before me at Vancouver, B.C. this 25
day of March, 2015.

**A Commissioner for taking Affidavits
for British Columbia**

We are solicitors for the Receiver with respect to the above captioned matter. We write to provide you with formal notice that BOC has defaulted in performance of the following terms of the Operating Agreement as described or defined therein:

1. **Section 16** - By failing to provide the entire amount of the Receiver Financing by January 19, 2015.
2. **Section 18(a)** - By failing to enter into a definitive asset purchase agreement by January 30, 2015.
3. **Section 11(f)** - By failing to provide the Receiver with the financial information requested by the Receiver in correspondence between the Receiver and BOC on February 9, February 16 and February 17, 2015.
4. **Section 4(a) and 5** - By failing to submit invoices to the Receiver for the immediate start-up and for the operating float or for payment of expenses in accordance with the Approved Budget, except for lump sum funding amounts.
5. **Section 4(b)** - By failing to provide Resort Receipts, including details of revenue, seasons passes and day passes.

6. **Section 11(g)** - By failing to detail expenses incurred in excess of individual budget line items as detailed funding requests have not been provided.

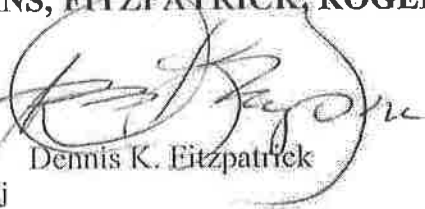
In addition, the works which are defined as the works necessary to prepare the resort for the 2014/2015 have come to an end as the last day of operation was March 22, 2015. It is appropriate to terminate the Operating Agreement.

We wish to draw your attention to Sections 13, 17 (on three days' notice) and 18 of the Operating Agreement, pursuant to which the Receiver may terminate the Operating Agreement for any or all of the above mentioned defaults, in its sole discretion preserving its right to recover damages for the breach. The Receiver has elected to terminate the Operating Agreement and pursue its remedies under Section 13 thereof.

Yours truly,

BURNS, FITZPATRICK, ROGERS, SCHWARTZ & TURNER LLP

Per:

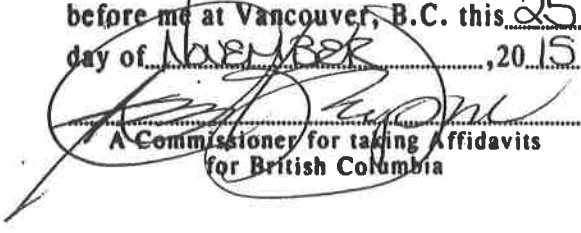


Dennis K. Fitzpatrick

DKF/lj

cc: Terra Law Corporation, Attn: Russell Benson

This is Exhibit "B" referred to in the
Affidavit of Leah Jonak sworn
before me at Vancouver, B.C. this 25
day of NOVEMBER, 2015


A Commissioner for taking Affidavits
for British Columbia

Final "Drop Dead" Offer to Purchase All the Assets of Mt. Baldy Ski Corporation

2015/Nov/04

Deposit upon execution of Asset Purchase Agreement for \$3,375,000. on or before 4:00pm Friday, November 6th

\$25,000.	Initial deposit already paid to Receiver
\$16,180.	Pro rata portion of Insurance as acknowledged by Receiver
\$65,500.	Payment of outstanding accounts payable as at 2015/Apr/30 as per attached
<u>\$10,000.</u>	Payment to replace stolen winch and tools required for lift maintenance
\$116,680.	TOTAL DEPOSIT

The Asset Purchase Agreement by Baldy Capital Corporation or Nominee as Purchaser shall include:

1. Consent for Purchaser to occupy and operate the ski resort on its own account until closing of purchase.
2. Confirmation that all Receiver's Certificates will be paid in full with interest upon closing.
3. A "stand still" agreement confirming that there will be no legal actions initiated by either party prior to court approval and closing of the Asset Purchase Agreement.
4. There will be no confirmation of availability of funds to close from the Purchaser until closing.

Court approval on or before noon Friday, November 27th

1. Receiver shall be responsible for obtaining (in the form required by the court for approval of the Asset Purchase Agreement) the necessary confirmation from the Mountain Resorts Branch that it will assign the Master Development Agreement to the Purchaser (which the Mountain Resorts Branch has indicated can only be provided after court approval).
2. Upon court approval of the APA, the Receiver is to be put "on standby" until closing so that no further fees are incurred.
3. Mutual releases will only be provided upon obtaining court approval of the Asset Purchase Agreement.
4. If court approval cannot be obtained by noon Friday, November 27th then the Purchaser is willing to extend the time for court approval subject to the Receiver taking full responsibility for ensuring that the necessary insurance for the ski resort shall be obtained and in effect commencing no later than Tuesday, December 1st for coverage equal to or in excess of the current coverage provided by Gougeon Insurance Company and at a cost not more than that of the current coverage provided by Gougeon Insurance Company, at the expense of the Purchaser.

Cash to Mortgage upon closing on or before noon Tuesday, December 29th

\$2,500,000.	New 1 st Mortgage in favor of Stark BC Ventures, LLC (<i>6 month term @ 4% deferred interest</i>)
\$758,320.	Cash to close on Asset Purchase Agreement
TBA	Cash to close for adjustments of property tax & electricity from date of court approval.

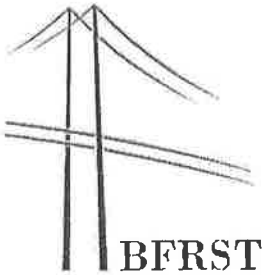
- There will be no adjustment for interest payable on Receiver's Certificates.

These terms are open for acceptance until 4:00 pm Wednesday, November 4th and all documentation must be settled and executed by 4:00 pm, Friday, November 6 failing which they will expire. In such case, we reserve all of our legal rights in respect of this matter.

11:34 PM
2015-11-03

Baldy Operating Corporation
A/P Aging Summary
As of 30 April 2015

	<u>Current</u>	<u>1 - 30</u>	<u>31 - 60</u>	<u>61 - 90</u>	<u>> 90</u>	<u>TOTAL</u>
Baldy Bobcat Services	0.00	192.94	0.00	0.00	0.00	192.94
Beaver Valley Ski Club	0.00	0.00	11,300.00	0.00	0.00	11,300.00
Bell	0.00	0.00	200.49	0.00	0.00	200.49
CWSAA	0.00	131.25	0.00	0.00	0.00	131.25
Fortis BC-1549974	0.00	279.82	0.00	0.00	0.00	279.82
Fortis BC - 1551976	0.00	179.30	0.00	0.00	0.00	179.30
Fortis BC - 162822	0.00	777.59	0.00	0.00	0.00	777.59
Fortis BC - 171254	0.00	286.79	0.00	0.00	0.00	286.79
Fortis BC - 819659	0.00	875.22	0.00	0.00	0.00	875.22
Fortis BC - 819704	736.90	2,331.49	0.00	0.00	0.00	3,068.39
Fortis BC - 846847	0.00	354.45	0.00	0.00	0.00	354.45
Fortis BC - 937180	295.52	1,177.74	0.00	0.00	0.00	1,473.26
Mercurian Management Corporation	2,803.34	2,600.00	2,423.16	0.00	872.00	8,698.50
Minister of Finance for BC	0.00	640.34	0.00	0.00	0.00	640.34
Mueller Lifts Services Inc.	0.00	0.00	111.45	0.00	0.00	111.45
Nu Tech Safety Ltd.	0.00	0.00	0.00	0.00	1,493.99	1,493.99
Oughtred Coffee & Tea Ltd.	0.00	23.06	0.00	0.00	0.00	23.06
Peak Emergency Response Training	0.00	199.50	0.00	0.00	0.00	199.50
Snow-Tech Snowcat Service Inc.	585.86	548.78	14,646.65	0.00	0.00	15,781.29
Telus	285.94	0.00	0.00	0.00	0.00	285.94
To Market Incorporated	0.00	7,350.00	7,350.00	0.00	0.00	14,700.00
Work Safe BC	0.00	4,478.92	0.00	0.00	0.00	4,478.92
TOTAL	<u>4,707.56</u>	<u>22,427.19</u>	<u>36,031.75</u>	<u>0.00</u>	<u>2,365.99</u>	<u>65,532.49</u>



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Direct Line: 604.602.5001

File No. 018498

November 5, 2015

McCarthy Tétrault
Suite 1300, 777 Dunsmuir Street
Vancouver BC V7Y 1K2

Attention: Mr. Scott Griffin

Dear Mmes. and Messrs.:

This is Exhibit "C" referred to in the
Affidavit of Leah Jonak sworn

before me at Vancouver, B.C. this 25th
day of November, 2015

A Commissioner for taking Affidavits
for British Columbia

Re: Stark BC Venture, LLC and Baldy Capital Corporation

We write further to your client's release to the press today, which is enclosed. We enclose for reference our letter to you of September 21, 2015 concerning your client's earlier wrongful publication. Previously, we advised that if there were an offer to purchase from your client, the Receiver would expect that press releases with respect to receivership assets would only be issued with its prior approval. We directed your client to refrain from any further press releases without the Receiver's consent. Your client has chosen to breach that direction.

During the negotiation process, your client's form of Asset Purchase Agreement contained the following Section 11.5:

11.5 Confidentiality

Except as may be required to comply with the requirements of applicable law, the terms and conditions of this Agreement shall remain in confidence between the parties and their agents until after Closing (except as required in relation to the Purchaser's financing purposes) and no press release or similar public announcement or communication shall be made or caused to be made concerning the execution, performance, terms and conditions of this Agreement unless specifically approved in advance by all Parties; provided, however, that to the extent that any Party to this Agreement is required by law to make such a public disclosure, such public disclosure shall only be made after prior consultation with other Parties to this Agreement The Purchaser agrees that this paragraph has no application with respect to any disclosure which the Vendor, acting reasonably, consider is required in relation to the application for the Court Order or in relation to carrying out its role as the Receiver appointed in the Court Action.

Our response contained the following Section 11.5:

11.5 Press Releases

No press release will be issued regarding the Resort or this Agreement unless it is approved by the Vendor in writing.

NTD Baldy has issued press releases

Neither party contemplated a unilateral self-serving press release issued by your client.

It is now clear that your client has no interest in the assets and has no prospect of acquiring an interest. It delivered what, on its own definition, is called a "drop dead offer" (the "Drop Dead Offer"). The final clause of which provides:

These terms are open for acceptance until 4:00 pm Wednesday, November 4th and all documentation must be settled and executed by 4:00 pm, Friday, November 6 failing which they will expire. In such case, we reserve all of our legal rights in respect of this matter.

There was no acceptance; accordingly, your client is adversely affecting the Goodwill and the intellectual property rights of the creditors and the Receiver when it publishes a release concerning assets over which it has clearly no interest.

As to the content of your client's release, previously your client alleged that Baldy Capital was diligently working to complete a purchase. Now, it asserts unresolved differences.

Further, your client's press release is fundamentally misleading for the reasons set out in our September 21, 2015 letter. We will stress to the public and the court the incontrovertible evidence that at the end of last season, your client left bills unpaid which it had listed for convenience in the Drop Dead Offer which it now tries to set up as consideration for a new offer. What your client must tell the public is that the Drop Dead Offer contains no new cash consideration at all, and yet seeks to acquire control of the whole ski hill.

It continues to be misleading to tell the press that its Drop Dead Offer was not accepted when it is based on non cash terms. We repeat that Baldy Capital has not put forth any proposal which is capable of approval by the court on application by the Receiver.

Your client continues to damage the goodwill of the ski operation by publicizing that the ski season is in jeopardy. It now seeks to increase the damage by publicizing insurance risks and by disclosing confidential negotiations among the insurer, the Receiver and your client who previously only had an interest as potential purchaser. That can only be read as an attempt by your client to lead the public to believe that the Receiver at some time received an acceptable offer from Baldy Capital.

In the Receiver's press release of September 2015, it provided that:

The Receiver has maintained ongoing dialogue with last year's operator, Baldy Operating Corporation and with its affiliate Baldy Capital Corporation, from whom the Receiver received an offer which was not acceptable by the primary secured creditor or the Receiver.

That continues to be an accurate reflection of the facts, save and except that a more comprehensive explanation would include the aspects of the relationship which result from failure to pay by your client. We rely heavily on the terms of paragraph 4 of the Drop Dead Offer as follows:

4. There will be no confirmation of availability of funds to close from the Purchaser until closing.

From my own observation, your client's conduct is fully and finally inconsistent with the content and spirit of the discussions in Seattle where we mapped out some basic principles which were expected to lead to an agreement.

Accordingly, we demand that your client refrain, cease and desist from publishing any further press release, opinion, interview, disclosure or other provision of information to the public, of any kind relative to Mount Baldy.

We confirm that damages are an inadequate remedy for interference with the affairs of the receivership. In the event that your client persists in its interaction with the public to achieve its own objectives, we will seek an injunction with special costs.

Kindly advise whether you will accept service of this letter on behalf of your client so we may avoid the cost of a process server. If you do not acknowledge service by 12:00 p.m. tomorrow, we will instruct a process server.

Yours truly,

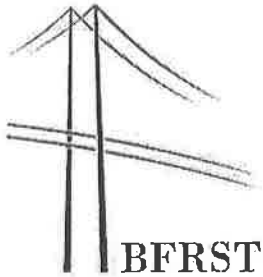
BURNS, FITZPATRICK, ROGERS, SCHWARTZ & TURNER LLP

Per:


Dennis K. Fitzpatrick

Cc Russ Benson

DKF/lj
Enclosure



**BURNS
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SCHWARTZ &
TURNER LLP**
Barristers and Solicitors

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File No. 018498

September 21, 2015

McCarthy Tétrault
Suite 1300, 777 Dunsmuir Street
Vancouver BC V7Y 1K2
Attention: Mr. Scott Griffin

Dear Mmes. and Messrs.:

Re: Stark BC Venture, LLC and Baldy Capital Corporation

We write further to your client's release to the press which is attached. First of all, if there is to be an offer to purchase from your client, the Receiver would expect that press releases with respect to receivership assets would only be issued with its prior approval. Due to the inaccuracies in your client's press release, the Receiver will be forced to respond. Please see attached draft press release by the Receiver.

As to the content of your client's release, we do not see that Baldy Capital has been diligently working to complete a purchase. Instead, it has been threatening litigation. Further, the Receiver has given notice that Baldy Operating is in breach of the terms set out in an Operating Agreement and Baldy Capital has not met the terms of the Memorandum of Understanding with the Secured Creditor and your client has not attempted to remedy the breach.

Based on my reading of your client's position, particularly regarding the payment for the receivership cost; the operating results and the price, your client is not willing to settle documents based on the terms agreed in December with the Receiver and Secured Creditor so it is misleading to tell the press that it is unable to settle documentation based on those terms. Nor to this date has Baldy Capital put forth any proposal which is capable of approval by the court on application by the Receiver.

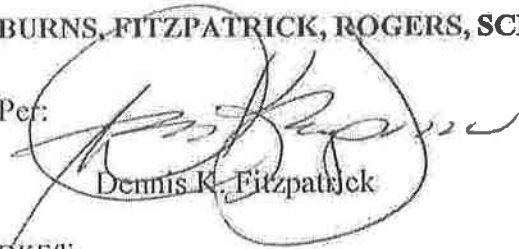
We see no reason to damage the Goodwill of the ski operation by publicizing that the ski season is in jeopardy. That can only be read as an attempt by your client to lead the public to believe that the Receiver has an acceptable offer from Baldy Capital. Also, the Receiver is concerned that your client's media releases could discourage or confuse other interested parties who are examining the opportunity to purchase the Mount Baldy assets.

Accordingly we direct your client to refrain from publishing any further press releases in the absence of prior approval from the Receiver.

Yours truly,

BURNS, FITZPATRICK, ROGERS, SCHWARTZ & TURNER LLP

Per:



Dennis K. Fitzpatrick

DKF/lj
Enclosures

2015/Sep/9

Information Release

Mount Baldy Ski Resort

Although we have been unable to report any progress for several months, Baldy Capital Corporation has been working diligently to complete the purchase of Mt. Baldy Ski Resort on the terms agreed to with the Receiver and the secured creditor last December. Unfortunately, we have not been able to settle the documentation based on those terms. We remain very interested and willing to complete the purchase of Mt. Baldy Ski Resort. However, given the lack of progress to date, we are concerned that the 2015-16 ski season may once again be in jeopardy unless some immediate and significant progress is made which would permit the necessary pre-season preparations.

Any updates will be posted on this site as available.

For further information please contact:

Baldy Capital Corporation
#400, 909 17th Avenue SW
Calgary, AB T2T 0A4
Telephone: (403) 253-3280
Email: fred.johnston@skibaldy.com

The Receiver for the assets of Mt. Baldy Ski Corporation is:

G. Powroznik Group Inc.
Suite 780 – 333 Seymour Street
Vancouver, BC V6B 5A6
Telephone: (778) 371-0008
Email: gpowroznik@g-forcegroup.ca

We look forward to the new season at Mount Baldy Ski Resort.

The Receiver is looking at all options to attract a buyer/operator to acquire Mount Baldy for the 2015/2016 season, in an effort to maximize the benefit to the community and the creditors. In so doing, the Receiver has searched for and has spoken to new interested parties with a view to immediate sale. The Receiver has maintained ongoing dialogue with last year's operator, Baldy Operating Corporation and with its affiliate Baldy Capital Corporation, from whom the Receiver received an offer which was not acceptable by the primary secured creditor or the Receiver. As no party has made an offer that the Receiver and the primary secured creditor find acceptable, we continue to work toward finding a buyer who can complete a purchase at an acceptable price and timeline for opening the 2015/2016 season.

An information package is available from G. Powroznik Group Inc. Suite 780 – 333 Seymour Street Vancouver, BC V6B 5A6 Telephone: (778) 371-0008 Email: pfoster@g-forcegroup.ca

Offers must be approved by the court and accordingly, all conditions must be removed prior to submission of any offer to the court for approval.

November 6, 2015

BY EMAIL: sgriffin@mccarthy.ca

McCarthy Tétrault
Suite 1300, 777 Dunsmuir Street
P.O. Box 10424, Pacific Centre
Vancouver, B.C.
V7Y 1K2

Attention: Scott Griffin

BY EMAIL: rbenson@terralawcorp.ca

Terra Law Corporation
#2800-650 West Georgia Street
PO Box 11506
Vancouver BC V6B 4N7

Attention: Russell Benson

BY EMAIL: fred.johnston@mercidian.com

Attention: Fred Johnston

Dear Sirs and Mesdames:

**RE: Stark BC Venture, LLC ("Stark") v. Mount Baldy Real Estate, ULC
et. al.
BC Supreme Court Action No. H-140638**


As you know, we are solicitors for Stark in relation to the above captioned receivership proceedings involving all of the assets and undertaking of Mount Baldy Ski Corporation and related entities ("**Mount Baldy**").

We are writing in response to a press release issued by Baldy Capital Corp. ("**Baldy Capital**") on November 5, 2015 (the "**Press Release**"), on a website under the domain name www.skibaldy.com (Baldy Capital and Baldy Operating Co. shall herein be referred to as "**Baldy**"). The Press Release contains a number of false statements and it is defamatory.

The contents of the Press Release falsely suggest that Stark and the Receiver are the cause of the delays and lack of sale agreement with respect to Mount Baldy. However, your clients' defaults under the Amended Memorandum of

Peter J. Roberts
T: 604.631.9158
F: 604.641.4400
proberts@lawsonlundell.com

This is Exhibit "D" referred to in the
Affidavit of Leah Jonak sworn
before me at Vancouver, B.C. this 25
day of ~~NOVEMBER~~ NOVEMBER, 2015.


A Commissioner for Taking Affidavits
for British Columbia

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www.lawsonlundell.com

Vancouver
Calgary
Yellowknife

Understanding dated December 18, 2014 ("MOU") led to the delays and termination of the MOU and operating agreement.

On October 1, 2015, the terms of a new agreement were agreed to by Stark, the Receiver, and Baldy. Those terms are described in our email to Mr. Benson dated October 5, 2015. Subsequently, on October 30, 2015, we were advised your clients were not willing to proceed on the terms described in our October 5, 2015 email. Baldy Capital sought various changes, including without limitation, a request that Stark provide the financing needed by Baldy Capital to operate the ski hill this year. Subsequently, Baldy submitted a new proposal on November 2, 2015. This was then followed by a further "drop dead offer" from Baldy on November 4, 2015. Baldy's proposals this week materially changed what was agreed to by the parties on October 1 and these changes were not acceptable to Stark.

The contents of the Press Release are clearly intended to interfere with the Receiver's efforts to negotiate a sale of Mount Baldy to a third party by representing that Baldy Capital has rights to the assets, and will cause damages to Stark. Furthermore, the Press Release falsely implies that Stark and the Receiver have taken unreasonable positions in the negotiations for the sale of Mount Baldy to Baldy Capital, and is therefore defamatory.

We write this letter to demand that Baldy **immediately** remove the Press Release from the Website and any other form of publication in which it may be available to the public. Further, Baldy must cease and desist from making any public statement stating, inferring or otherwise indicating that it has any interest in Mount Baldy or which in any way defames the conduct of Stark and/or the Receiver. We adopt and reiterate the position of the Receiver set out in Mr. Fitzpatrick's letter to Mr. Griffin dated November 5, 2015. We require written confirmation by 6:00 p.m today that Baldy and Mr. Johnston have removed the Press Release and will make no further public comment relating to Mr. Baldy, the Receiver or Stark.

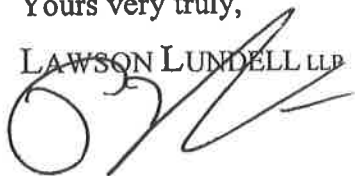
If Baldy Capital persists in making any statements that have the intention or effect of impeding the Receiver's effort to market the assets of Mount Baldy or which are defamatory, we expect to receive instructions to commence legal proceedings immediately, without further notice, against Baldy and Fred Johnson personally. Our client views this matter very seriously. Our client will seek damages, a temporary and permanent injunction preventing further interference and/or defamation, and payment of its legal costs in pursuing this matter on a solicitor-client scale.

Page 3

Our client reserves the right to seek all legal remedies with respect to the loss and damage suffered as the result of the actions of Baldy and Mr. Johnston to date.

Yours very truly,

LAWSON LUNDELL LLP

A handwritten signature in black ink, appearing to read "P. Roberts", is written over the printed name of the law firm.

Peter J. Roberts

cc. client