

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

ORDER MADE AFTER APPLICATION

APPROVAL AND VESTING ORDER

BEFORE THE HONOURABLE

*GRAY*

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)  
)

27/JUNE/2016

THE APPLICATION of G Powroznik Group Inc., in its capacity as Court-appointed Receiver and Manager (the “Receiver”) of the assets, undertakings and properties of Mount Baldy Real Estate, ULC and Mount Baldy Ski Corporation coming on for hearing at Vancouver, British Columbia, on the 27th day of June, 2016; AND ON NOTICE TO The Osoyoos Indian Band; AND ON HEARING Dennis K., Fitzpatrick, counsel for the Receiver, Bonita Lewis-Hand, counsel for the Petitioner, and Kevin Lee, counsel for the Osoyoos Indian Band and no one appearing for the other Respondents, although duly served; AND UPON READING the material filed, including the Report of the Receiver dated June 14, 2016 (the “Report”) as supplemental and amended by the Receivers supplemental report dated June 24, 2016;

THIS COURT ORDERS AND DECLARES THAT:

1. The sale transaction (the “Transaction”) contemplated by the Asset Purchase Agreement dated March 11, 2016 (the “Sale Agreement”) between the Receiver and 1063205 B.C. Ltd. (the “Purchaser”), a copy of which is attached as Exhibit “A” to the Affidavit #4 of Gary Powroznik, as amended by Exhibits “B”, “C”, “D”, “E” and “F” (the “Fifth

Amendment”) dated June 14, 2016 to the said Affidavit and the Sixth Amendment dated June 20, 2016 and the Subject Removal and Seventh Amendment dated June 23, 2016, is hereby approved for a purchase price (the “**Purchase Price**”) of:

- (a) The payment of CAD \$3,400,000 (Three Million Four Hundred Thousand Dollars), plus applicable GST (the “**Cash Consideration**”), and
- (b) The subdivision of the Development Lands as defined in paragraph 3 below, and subsequent conveyance of Parcel No. 14 thereof described in paragraph 4 below with a deemed value of \$300,000 (the “**Non Cash Consideration**”);

And the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and 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 and for the conveyance to the Purchaser of the assets, material contracts, leases, water rights and licences described in the Sale Agreement, including the inventory of ski equipment, fixed equipment located on the Lands used to transport skiers, all mobile equipment used in the operation of the Resort at Baldy Mountain, the goodwill (including the website ‘skibaldy.com’) and undertaking of the ski business (the “**Chattels**”) and 10 Class “A” Common Shares of Mt. Baldy Waterworks Inc. (the “**Shares**”) charged by the personal property security held by the Petitioner, (the “**Purchased Assets**”).

2. Upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as **Schedule “A”** hereto (the “**Receiver’s Certificate**”), all of the Debtor’s right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, 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: (i) any encumbrances or charges created by the following Orders of this Court: (a) Order Nisi made and entered the 14<sup>th</sup> day of July, 2014; (b) Conduct of Sale Order made and entered the 14<sup>th</sup> day of July, 2014; and (c) Order Appointing the Receiver made and entered the 19<sup>th</sup> day of December, 2014; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (iii) those Claims listed on **Schedule “B”** hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule “C”** hereto), 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.
3. Upon presentation for registration in the Land Title Office for the Land Title District of Kamloops of a certified copy of this Order, together with a letter from Burns Fitzpatrick LLP, solicitors for the Receiver, authorizing registration of this Order and a letter from

the solicitor for the Petitioner herein releasing that certain Certificate of Pending Litigation registered on the 4<sup>th</sup> day of June, 2014 in the Kamloops Title Office under Number LB529567, the British Columbia Registrar of Land Titles is hereby directed to:

- (a) enter the Purchaser as the owner of the Lands, more particularly described as:

Parcel Identifier 027-328-759

Lot 1 District lot 2708 Similkameen Division Yale District Plan  
KAP85510

Parcel Identifier 026-938-081

Lot 13 District Lot 100S Similkameen Division Yale District Plan  
KAP82817

(the "**Development Lands**")

Parcel Identifier 026-938-201

Lot 25 District Lot 100S Similkameen Division Yale District Plan  
KAP82817

Parcel Identifier 027-507-106

Block C of District Lot 100S Similkameen Division Yale District,

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

together with all buildings and other structures, facilities, ski transportation equipment affixed to the Land and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Lands and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Purchaser in and to the Lands is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser as aforesaid; and

- (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Lands all of the registered Encumbrances listed in **Schedule "B"**; and
- (c) upon filing this Order in the Kamloops Land Title Office, all persons claiming possession by, through or under the Petitioner or the Respondents or any of them, shall deliver forthwith to the Purchaser vacant possession of the Lands; and

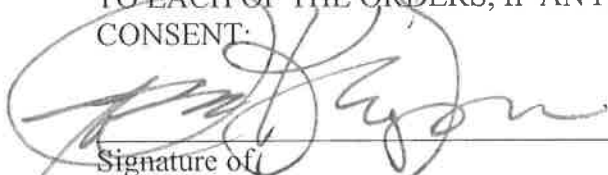
4. In order to give effect to the Non Cash Consideration, in conjunction with the Purchaser presenting the documents set out in paragraph 3 above to the Kamloops Land Title Office for filing, the Purchaser shall also submit for registration a Right to Purchase against the Development Lands on terms substantially in the form attached as **Schedule "D"**.

5. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.
6. The remainder of the net proceeds from the sale of the Purchased Assets after adjustments shall be paid to Burns Fitzpatrick LLP counsel for the Receiver and shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Certificate all Claims 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 had possession or control immediately prior to the sale.
7. On completion of the sale, the cash portion of the sale proceeds after adjustments shall be held in escrow by Burns Fitzpatrick LLP counsel for the Receiver and on expiry of the Holdback Period as set out in paragraph 3.1 (e) of the Sale Agreement and paragraph 5 (c) of the Fifth Amendment shall be disbursed by the Receiver as follows:
  - (a) first pay any outstanding obligations of the Debtors which are not Assumed Obligations but which following a bankruptcy have priority over the security held by the Petitioner including, without limitation, any monies owing to Canada Revenue Agency for employee source deductions;
  - (b) next, to pay the amounts due to the Receiver and its counsel for fees and disbursements under the Receivers Charge as defined in, and with the priority, set out in paragraph 16 of the Receivership Order;
  - (c) next, to repay the Third Party Loans with interest in the amount of \$466,248.51 under the Receiver's Certificates issued to secure the Third Party Loans pursuant to the Receivers Borrowing Charge as defined in and with the Priority set out in paragraph 19 of the Receivership Order;
  - (d) next, to pay the fees expenses of G Force Real Estate Inc in accordance with the terms of the Order for Conduct of Sale;
  - (e) next, to pay the expenses of the Bankruptcy Trustee to the extent of \$15,000; and
  - (f) the remainder to counsel for the Petitioner for distribution to the Secured Creditor in accordance with the Charge in the Order Nisi.
8. Pursuant to Section 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* or Section 18(10)(o) of the *Personal Information Protection Act* of British Columbia, the Receiver is hereby authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the company's records pertaining to the Debtor's past and current employees, including personal information of those employees. The Purchaser 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.

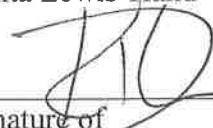
9. Subject to the terms of the Sale Agreement, vacant possession of the Purchased Assets, including any real property, shall be delivered by the Receiver to the Purchaser at 12:00 noon on the Closing Date (as defined in the Sale Agreement), subject to the permitted encumbrances as set out in the Sale Agreement and listed on **Schedule "C"**.
10. The Receiver, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as the parties may agree to without the necessity of a further Order of this Court in accordance with the terms of the Sale Agreement.
11. The Receiver shall be authorized and directed to take such steps as are necessary to transfer the Shares to the Purchaser and shall have authority to execute all share transfers, certificates and documents on behalf of Mount Baldy Ski Corporation.
12. G Powroznik Group Inc. is authorized and directed to take all necessary steps to assign Mount Baldy Ski Corporation into bankruptcy and to act as trustee in bankruptcy of Mount Baldy Ski Corporation and is authorized and directed to execute all necessary documents and statements on behalf of Mount Baldy Ski Corporation as authorized signatory. Notwithstanding:
  - (a) these proceedings;
  - (b) any applications for a bankruptcy order in respect of the Debtor now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made by or in respect of the Debtor, the effect date of bankruptcy is deemed to be the date preceding the date of this order, andthe vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on the trustee in bankruptcy as appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* 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.
13. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, 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 and 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.
14. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order on three business days notice.



15. Approval of this Order by counsel or the parties on Schedule "E" shall be dispensed with provided that the final order shall be provided to them by email prior to entry.

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

  
\_\_\_\_\_  
Signature of  
 Lawyer for the Receiver  
Dennis K. Fitzpatrick

  
\_\_\_\_\_  
Signature of  
 Lawyer for the Petitioner  
Bonita Lewis-Hand

  
\_\_\_\_\_  
Signature of  
 Lawyer for the Osoyoos Indian Band  
Kevin D. Lee

BY THE COURT   
  
  
\_\_\_\_\_  
REGISTRAR

**Schedule A – Receiver’s Certificate**

**CERTIFICATE OF THE RECEIVER**

TO: 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

AND TO: 1063205 B.C. Ltd. [the “Purchaser”]

AND TO: Stark BC Venture, LLC [the “Lender”]

RE: Purchase of the assets of the Mount Baldy Ski Resort through a court-approved sales process in the context the Order of Mr Justice Sewell, on December 19, 2014, as approved by the court in an approval and vesting order made by Justice \_\_\_\_\_ on June 27, 2016 [the “Order”]

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THE RECEIVER DOES HEREBY CERTIFY TO THE PARTIES:

- (1) Pursuant to paragraph 6 of the Order that the cash portion of the Purchase Price described in the Order is paid to Burns Fitzpatrick LLP escrow.
- (2) That the Receiver approves the Vendors’ Statement of Adjustments attached hereto as Schedule ‘A’.
- (3) That the Right to Purchase as described in paragraph 4 of the Order has been accepted for filing with the Land Title Office, or other arrangements satisfactory to the Lender have been made for the non cash component of the Purchase Price.
- (4) That payment of the amounts on the Vendors’ Statement of Adjustments satisfies the requirements of paragraph 6 of the Order.
- (5) That the documents described in paragraphs 6.1 and 6.2 of the Purchaser Agreement may be released and delivered to the parties as required.
- (6) That the Receiver approves the appeal process set out in the Fifth Amendment.

**G. POWROZNIK GROUP INC.**

Per

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Authorized Signatory

Schedule B – Claims to be deleted/expunged from title to Real Property

<b>Charge</b>	<b>Date</b>	<b>Titles Affected</b>
Mortgage LB293389 Brent Alan Baker and Laura Leslie Breuninger Baker	2009-03-25	026-938-081, 026-938-201 027-507-106
Priority Agreement over Mortgage LB293389 CA2066362/3 Stark BC Venture, ULC	2011-06-22	026-938-081, 026-938-201 027-507-106
Judgment CA3032489 VantageOne Credit Union	2013-03-14	027-328-759, 026-938-081 026-938-201, 027-507-106
Mortgage and Assignments of Rents CA3520108/9 B.C. Opportunity Fund LLC	2013-12-20	027-328-759, 026-938-081 026-938-201, 027-507-106
Judgment CA3722298 The Owners, Strata Corporation KAS1840	2014-05-13	027-328-759, 026-938-081 026-938-201, 027-507-106
Certificate of Pending Litigation LB529567 Stark BC Venture, ULC	2014-06-04	027-328-759, 026-938-081 026-938-201, 027-507-106
Judgment Renewal (CA3722298) CA5155230 The Owners, Strata Corporation KAS1840	2016-05-02	027-328-759, 026-938-081 026-938-201, 027-507-106



**Schedule C – Permitted Encumbrances, Easements and Restrictive Covenants**  
**Related to Real Property**

1. The reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown.

2. Lot 1, Plan KAP85510

**Legal Notations:**

None

**Charges, Liens and Interests:**

Undersurface and Other Exc & Res LB122881A

Covenant LB122882

Undersurface and Other Exc & Res LB145049

Statutory Right of Way LB259126

3. *Lot 13*

**Legal Notations:**

Hereto is annexed Easement KG32562 over that part of the common property of Strata Plan KAS1053 shown on Plan KAP49373

Hereto is annexed Easement KK110145 appurtenant to common property Strata Plan KAS1838

**Charges, Liens and Interests:**

Statutory Right of Way KF20873

Easement KF20874

Covenant KK110133

Statutory Right of Way LA123765

Rent Charge LB1885

Statutory Right of Way LB1914

Statutory Building Scheme LB1918

4. *Lot 25*

**Legal Notations:**

Hereto is annexed Easement KG32562 over that part of the common property of Strata Plan KAS1053 shown on Plan KAP49373

Hereto is annexed Easement KK110145 appurtenant to common property Strata Plan KAS1838

**Charges, Liens and Interests:**

Statutory Right of Way KF20873

Easement KF20874

Covenant KK110133

Statutory Right of Way LA123765

Rent Charge LB1885

Statutory Right of Way LB1916

Statutory Building Scheme LB1918

5. *Block C*

**Legal Notations:**

None

**Charges, Liens and Interests:**

Undersurface and Other Exc & Res LB199812

Covenant: LB199813

**Schedule D – Right to Purchase**

LAND TITLE ACT  
FORM C (Section 233) CHARGE  
GENERAL INSTRUMENT - PART 1 Province of British Columbia

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

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

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:  
[PID] [LEGAL DESCRIPTION]

**026-938-081 LOT 13 DISTRICT LOT 100S SIMILKAMEEN DIVISION  
YALE DISTRICT PLAN KAP82817**

STC? YES

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION

**Right to Purchase**

4. TERMS: Part 2 of this instrument consists of (select one only)

(a)  Filed Standard Charge Terms D.F. No. (b)  Express Charge Terms Annexed as Part 2  
A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

**1063205 B.C. LTD.**

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

**STARK BC VENTURES, LLC**

1001 COPPER PL. ROAD, SW, STE 150-165

OLYMPIA

WASHINGTON

98502

UNITED STATES OF AMERICA

7. ADDITIONAL OR MODIFIED TERMS:

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

\_\_\_\_\_

Execution Date

Y	M	D

Transferor(s) Signature(s)

1063205 B.C. Ltd.  
by its authorized signatories

\_\_\_\_\_

\_\_\_\_\_

OFFICER CERTIFICATION:

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

## TERMS OF INSTRUMENT – PART 2

### RIGHT TO PURCHASE

THIS AGREEMENT is dated for reference the \_\_\_\_\_ day of July, 2016

#### BETWEEN:

**1063205 B.C. LTD.**, a company incorporated under the laws of British Columbia  
(the “Grantor”)

#### AND:

**Stark BC Ventures LLC**, a company incorporated under the laws of British Columbia  
(the “Grantee”)

#### WHEREAS:

- A. Capitalized terms used in these Recitals have the meanings set out in section 1 below;
- B. The Grantor is the legal owner of the Lands;
- C. The Grantor acquired the Lands, along with other assets, from the Receiver, under the terms of the Sale Transaction.
- D. As partial consideration for the purchase as set out in the Sale Transaction, the Grantor agreed to grant this right to purchase to the Grantee;
- E. The Sale Transaction, including the granting of this right to purchase was approved by Vesting Order and Order Approving Sale pronounced June 27, 2016 in the Receivership Proceedings; and
- F. The Grantor wishes to grant to the Grantee and the Grantee wishes to accept from the Grantor a right to purchase in respect of Parcel No. 14 on the terms and conditions as set out herein.

WITNESSES THAT in consideration of the sum of \$1.00 now paid by the Grantee to the Grantor (the receipt and sufficiency of which is hereby acknowledged by the Grantor) and in consideration of the mutual covenants and agreements herein contained, the Grantor and the Grantee covenant and agree as follows:

## 1. Definitions

In this Agreement:

- (a) **"Agreement"** means this agreement and the Right to Purchase created hereby, the recitals and all schedules hereto;
- (b) **"Business Day"** means any day except Saturday, Sunday and a day that is a statutory holiday in British Columbia;
- (c) **"Completed Subdivision"** means when the Land Title Office has accepted for filing either a subdivision plan or strata plan for the Lands such that a legal description for Parcel No. 14, has been issued by the Land Title Office.
- (d) **"Lands"** means the property with the legal description of:
  - Parcel Identifier 026-938-081
  - Lot 13 District Lot 100S Similkameen Division
  - Yale District Plan KAP82817
- (e) **"Parcel No. 14"** means that portion of the Lands identified as Parcel No. 14 in the Sale Transaction documents, to be legally defined and described once the Lands have either been subdivided or a strata plan issued in respect of the Lands,
- (f) **"Permitted Encumbrances"** means, collectively:
  - a) conditions, provisos, restrictions, exceptions and reservations, including royalties, contained in any grant or disposition from the Crown; and
  - b) notices of development permits issued by the Grantee;
- (g) **"Purchase Price"** has the meaning set out in section 3;
- (h) **"Receiver"** means G. Powroznik Group Inc., in its capacity as the court appointed Receiver over Mount Baldy Ski Corporation and Mount Baldy Real Estate, ULC, pursuant to a court order pronounced in the Receivership Proceedings;
- G. **"Receivership Proceedings"** means the court proceedings commenced by the Grantee to enforce security rights including mortgage security over the Lands, in Vancouver Action No. H140638, *Stark BC Venture, LLC v. Mount Baldy Real Estate, ULC*, as part of which the court appointed the Receiver.
- (i) **"RTP Closing Date"** means the date that the Grantee advises it will close the sale in accordance with section 12; and
- (j) **"Sale Transaction"** means the transaction contemplated by the agreement for purchase and sale dated March 11, 2016, and amended from time to time, between the Grantor and the Receiver.

## **2. Grant of Right**

The Grantor hereby grants to the Grantee the sole, exclusive right to purchase (the "RTP") Parcel No. 14, including all improvements thereon, free and clear of all liens, interests, encumbrances and legal notations, except for the Permitted Encumbrances, which right shall be exercisable in accordance with the following terms and conditions.

## **3. Purchase Price**

The purchase price for Parcel No. 14 shall be \$1.00 and such other and valuable consideration as was exchanged between the parties under the Sale Transaction and in the course of the Receivership Proceedings.

## **4. Binding Agreement**

Upon the Completed Subdivision, this Agreement will become a binding agreement for the purchase and sale of Parcel No. 14, which shall be completed upon the terms and conditions contained in this Agreement.

## **5. Risk**

The Lands will be at the risk of the Grantor until 12:00 noon on the RTP Closing Date and thereafter at the risk of the Grantee.

## **6. Adjustments and Possession**

All adjustments for property taxes, rates, charges and all other incomings and outgoings with respect to the Lands will be adjusted as of the RTP Closing Date. The Grantee will have vacant possession of the Lands at 12:00 noon on the RTP Closing Date.

## **7. Access**

Upon the Grantee giving the Grantor reasonable written notice, the Grantee, its agents and employees have the licence to enter upon the Lands from the date this RTP is registered in the Land Title Office until the earlier of the RTP Closing Date or expiry of this RTP, at the Grantee's sole risk and expense, for the purpose of making inspections, surveys, tests and studies of the Lands.

## **8. Grantor's Representations, Warranties and Covenants**

The Grantor hereby represents and warrants to the Grantee that the following are true and accurate on the date the Grantor executes this Agreement and will be true on the RTP Closing Date:

- (a) the Grantor has the legal capacity, power and authority to grant the RTP and perform all of the Grantor's obligations under this Agreement;

- (b) the Grantor has taken all necessary or desirable actions, steps and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Agreement;
- (c) the Grantor is duly incorporated and validly existing under the laws of British Columbia and has the power and capacity to enter into and carry out the transaction provided in this Agreement;
- (d) the Grantor is a resident of Canada within the meaning of the *Income Tax Act* (Canada) and will provide the Grantee with a statutory declaration of this, in the Grantee's form, at least 15 days before the RTP Closing Date (the "**Statutory Declaration**").
- (e) the Grantor has not at any time stored, or permitted to be stored, and will not between the time of this Agreement and the RTP Closing, store, any contaminants in, upon or under the lands, and has not treated, emitted, disposed, discharged or permitted the discharge of any contaminants in, upon or under the Lands;
- (f) the Grantor has not and will not use the lands as a landfill or site for the disposal for waste or contaminants;

#### **9. Grantee's Representations and Warranties**

The Grantee hereby represents and warrants to the Grantor that the following are true and accurate on the date the Grantee executes this Agreement and will be true on the RTP Closing Date:

- (a) the Grantee has the legal capacity, power and authority to accept the RTP and perform all of the Grantee's obligations under this Agreement;
- (b) the Grantee has taken all necessary or desirable actions, steps and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Agreement;
- (c) the Grantee is duly incorporated and validly existing under the laws of British Columbia and has the power and capacity to enter into and carry out the transaction provided in this Agreement;

#### **10. Survival of Representations and Warranties**

All representations, warranties, covenants and agreements made by the Grantor and the Grantee will survive the RTP Closing Date and the transfer of the Lands to the Grantee for a period of one (1) years.

Each of the Grantor and the Grantee will indemnify and save harmless the other and its officials, officers, employees and agents from and against all losses, damages and expenses, costs, liabilities and other harm suffered or incurred by reason of a breach of



any of its respective representations, warranties, covenants and agreements set forth in this Agreement. The indemnity in this section will survive the transfer of the Lands to the Grantee for a period of one (1) year.

#### **11. Title and Possession**

On the RTP Closing Date, the Grantor will transfer to the Grantee good and marketable title to the Lands and will give to the Grantee vacant possession of the Lands, subject only to Permitted Encumbrances and clear of any environmental contamination caused or resulting between the date the Grantee transferred the Lands to the Grantor and the RTP Closing Date, for which environmental contamination the Grantor will continue to be fully responsible after completion should any be discovered and for which the Grantor will indemnify and save harmless the Grantee and its officials, officers, employees and agents (including for remediation costs in respect thereof).

The indemnity in this section will survive the transfer of the Lands to the Grantee and will not merge on such transfer for a period of one (1) year, provided that evidence of such environmental contamination is provided to the Grantor on RTP Closing Date.

#### **12. Closing Documents**

Upon the Subdivision Completion:

- (a) the Grantor shall advise the Grantee of the Completed Subdivision within fifteen (15) business days of the filing of the subdivision or strata plan, and lifting of titles in respect of the legal descriptions of the parcels thereto;
- (b) Within five (5) business days of notice being given in accordance with paragraph (a) above, the Grantee will advise the Grantor as to the RTP Closing Date.
- (c) Prior to five (5) business days before the RTP Closing Date, the Grantor will execute and deliver to the Grantee's solicitors all documents reasonably required by the Grantee's solicitors in order to complete this transaction in accordance with the terms of this Agreement, which documents will be prepared by the Grantee's solicitors and will be in form and substance approved by the Grantor's solicitors, each acting reasonably, including without limitation the following:
  - a) a Form A Transfer in registerable form (the "**Transfer**") conveying the Lands to the Grantee, free and clear of all liens, charges, claims, encumbrances and legal notations whatsoever, except the Permitted Encumbrances;
  - b) a statement of adjustments;
  - c) the Statutory Declaration as to the matters referenced in section 8(d)
  - d) a certificate as to representations and warranties;

- e) discharges or releases in registerable form of all liens, charges, encumbrances and notations not constituting Permitted Encumbrances, if any, encumbering the Lands (collectively, the "**Discharges**"), or undertakings to provide such discharges or releases which are in a form satisfactory to the solicitors for the Grantee and the Grantor, acting reasonably; and
- f) such other documents as the Grantee may reasonably require to complete the transaction herein contemplated

(the "**Closing Documents**")

### **13. Closing Procedure**

On the RTP Closing Date, the Grantee's solicitors will tender for registration in the Land Title Office by the Grantee's solicitors the Transfer and all of the Discharges (collectively, the "**Registration Documents**"). Upon acceptance for registration of the Registration Documents and receipt by the Grantee's solicitors of a post-filing index search indicating that, in the normal course of Land Title Office routine, title to the Lands will be issued in the name of the Grantee, free and clear of all charges and encumbrances except the Permitted Encumbrances and those encumbrances being discharged by the Grantor or the Grantor's solicitors on the basis of undertakings acceptable to the Grantor's solicitors and the Grantee's solicitors, each acting in a commercially reasonable manner, the Grantee's solicitors will forthwith provide the Grantor's solicitors and Receiver's solicitors with confirmation of the transfer, so that the Receiver may confirm that the requirement to vest title to Parcel No. 14 as required under the Sale Transaction has been met.

### **14. Encumbrances**

The Grantor must not charge or encumber the Lands with, or permit to arise in respect of the Lands, any lien, claim, charge, encumbrance or legal notation, other than the Permitted Encumbrances, without the Grantee's prior written consent, which shall not be unreasonably withheld.

### **15. Fees and Taxes**

The Grantee must pay, as and when due and payable:

- (a) any applicable property transfer tax payable under the *Property Transfer Tax Act* (British Columbia);
- (b) Land Title Office registration fees in connection with the registration of the Transfer;
- (c) the Grantee's own legal fees and disbursements in connection with the registration of the Transfer; and

- (d) any GST payable under the Excise Tax Act (Canada) in respect of the Transfer and conveyance of the Lands to the Grantee, with the Grantee and the Grantor agreeing that if the Purchase Price does not include GST, and the Grantee will self-assess all GST owing and will remit such GST, if any, directly to the Receiver General of Canada, when and to the extent required under the *Excise Tax Act* (Canada) (subject to any relief to which the Grantee may be entitled under that act).

and the Grantor must pay:

- (e) all amounts necessary to obtain a Discharge in respect of Parcel No. 14; and
- (f) its own legal fees and disbursements and any Land Title Office registration fees in connection with the obtaining of any of the Discharges, and all expenses to ensure that clear title to Parcel No. 14, subject only to the Permitted Encumbrances, is provided.

#### **16. Currency and Payment Obligations**

All dollar amounts referred to in this Agreement are Canadian dollars.

#### **17. Indemnity**

Each of the Grantor and the Grantee covenants and agrees with the other to indemnify and save the other harmless from and against any and all loss, damage, costs and liabilities, including actual fees of solicitors and other professional advisors, arising out of any breach, violation or non-performance by it of any of its covenants or agreements hereunder.

#### **18. Further Assurances**

Each of the parties must at all times execute and deliver at the request of the other all such further documents, deeds and instruments, and do and perform such other acts as may be reasonably necessary to give full effect to the intent and meaning of this Agreement, including to register this Agreement with the Land Title Office in priority to all liens, charges and encumbrances, except for the Permitted Encumbrances, promptly after execution by the parties.

#### **19. Notice**

Any notice or other communication to be given under the provisions of this Agreement by any party will be validly given if delivered personally or sent by fax with a copy by regular mail:

To the Grantor at:

**c/o DS Lawyers Canada LLP**

**(Attention: Victor Tsao)**

1055 West Georgia Street Suite 2700

Vancouver B.C. V6E 3P3

Fax: 604-669-8857

To the Grantee at:

**c/o Lawson Lundell LLP**

**(Attention: Bonita Lewis-Hand)**

1600 – 925 West Georgia Street

Vancouver, B.C. V6C 3L2

Fax 604-669-1620

to the Receiver at:

**c/o Burns Fitzpatrick Rogers Schwartz & Turner LLP**

**(Attention: Dennis Fitzpatrick)**

1400 - 510 Burrard Street

Vancouver, B.C. V6C 3A8

Fax: 604.685.2104

The date of receipt of any such notice or communication will be deemed to be the date of delivery or transmittal by fax if delivered by 4:30 p.m. Pacific Standard Time on a Business Day in the place of the recipient, and if otherwise delivered or transmitted by fax, on the next Business Day following the date of such delivery or transmittal.

Either party may at any time give notice in writing to the other of any change of address of the party giving such notice to be given in the manner aforesaid, and from and after giving such notice, the address therein specified will be deemed to be the address of such party for the giving of such notice.

## **20. No Derogation**

Nothing contained or implied herein will derogate from the obligations of the Grantor under any other agreement with the Grantee, or if the Grantee so elects, prejudice or affect the Grantee's, rights, powers, duties or obligations in the exercise of its functions pursuant to the *Community Charter* (British Columbia) and the *Local Government Act* (British Columbia), or any other Act of the legislature of the Province of British Columbia, as amended from time to time and the rights, powers, duties and obligations of the Grantee under all public and private statutes, bylaws, orders and regulations, all of which may be, if the Grantee so elects, as fully and effectively exercised in relation to the Lands and the Grantor as if this Agreement had not been executed and delivered by the Grantor to the Grantee.

## **21. Time of Essence**

Time is of the essence of this Agreement and the conveyance and transfer for which it provides.

## **22. Benefit**

This Agreement enures to the benefit of and is binding upon the parties and their respective heirs, executors, administrators, successor in title and permitted assigns.

## **23. Modification**

This Agreement may not be amended except by an instrument in writing signed by the parties or by their successors or permitted assigns. Notwithstanding this section the RTP Closing Date may be changed by the Grantor's and Grantee's agreement through their respective solicitors, upon instruction to their solicitors as evidenced in writing by their solicitors.

## **24. Interpretation**

Wherever the singular is used or neuter is used in this Agreement, it includes the plural, the feminine, the masculine or body corporate where the context or the parties so require.

## **25. Governing Law**

This Agreement will be governed by and construed in accordance with the laws of British Columbia.

## **26. Joint and Several**

If at any time more than one person (as defined in the *Interpretation Act* (British Columbia)) is the owner of the Lands, both or all are jointly and severally responsible for the obligations of the Grantor under this Agreement.

**27. Independent Legal Advice**

The Grantor and the Grantee each acknowledges and agrees that it has obtained independent legal advice with respect to the contents and consequences of this Agreement. Each of the Grantor and the Grantee further acknowledges and agrees that it has been advised of and understands the effects of the liabilities and obligations contained in this Agreement.

**28. Counterparts**

This Agreement may be executed and delivered in any number of counterparts by facsimile or by electronic mail in PDF format with the same effect as if all parties had all signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same Agreement and may be compiled for registration as a single document.

**END OF DOCUMENT**

**Schedule "E" – List of Counsel or Parties**

Dennis K. Fitzpatrick, counsel for the Receiver

Bonita Lewis-hand, counsel for the Petitioner

Kevin Lee, counsel for the Osoyoos Indian Band

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**IN THE SUPREME COURT OF BRITISH COLUMBIA**

No. H-140638  
Vancouver Registry

**BETWEEN:**

STARK BC VENTURE, LLC

PETITIONER

**AND:**

MOUNT BALDY REAL ESTATE, ULC,  
WINTER RECREATION LLC, MOUNT BALDY  
SKI CORPORATION, ROBERT BOYLE, BRETT  
SWEETZ, 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

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**ORDER MADE AFTER APPLICATION**

**APPROVAL AND VESTING ORDER**

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**Burns, Fitzpatrick, Rogers, Schwartz & Turner LLP**  
#1400 - 510 Burrard Street Vancouver, BC V6C 3A8  
Telephone: (604) 602-5001; Fax: (604) 685-2104  
Attention: Dennis K. Fitzpatrick