

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

ROMAS KARTAVICIUS

Applicant

- and -

OAK BAY DEVELOPMENTS INC. and OAK BAY GOLF CLUB INC.

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C 1985, c.B-3, AS AMENDED, AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C43, AS AMENDED**

**MOTION RECORD
(Returnable June 22, 2015)**

June 18, 2015

BLANEY McMURTRY LLP
Barristers and Solicitors
1500 - 2 Queen Street East
Toronto, ON M5C 3G5

Eric Golden (LSUC#38239M)
Chad Kopach (LSUC#38239M)
(416) 593-1221 (Tel)
(416) 593-5437 (Fax)

Lawyers for Deloitte Restructuring Inc.,
in its capacity as court appointed receiver
of Oak Bay Developments Inc.

TO: Receivership Service List (see Schedule "B")

Index

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

ROMAS KARTAVICIUS

Applicant

- and -

OAK BAY DEVELOPMENTS INC. and OAK BAY GOLF CLUB INC.

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C 1985, c.B-3, AS AMENDED, AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C43, AS AMENDED**

I N D E X

<u>Tab</u>		Page No.
1.	Notice of Motion returnable June 22, 2015	1 – 5
A.	Draft Order	6 – 12
B.	Receivership Service List.....	13 – 17
2.	Supplement to the Second Report to the Court of the Receiver dated June 18, 2015.....	18 – 26
A.	Receiver’s Second Report dated June 2, 2015 (without appendices)	27 – 43
B.	Order of Justice Conway dated June 12, 2015.....	44 – 48
C.	Receiver’s Statement of Receipts and Disbursements for the period November 12, 2014 to June 17, 2015	49

3.	Affidavit of Hartley Bricks sworn June 17, 2015	50 – 51
A.	Summary of the Invoice Issued by the Receiver for Oak Bay Developments for the period from May 8, 2015 to June 15, 2015	52
B.	Copy of the account of the Receiver with respect to Oak Bay for the period from May 8, 2015 to June 15, 2015	53 – 58
4.	Affidavit of Mervyn D. Abramowitz affirmed June 16, 2015	59 – 61
A.	KRMC’s Legal Account dated June 11, 2015, with supporting dockets.....	62 – 69
5.	Affidavit of Chad Kopach sworn June 18, 2015.....	70 – 72
A.	Blaneys Legal Account dated June 17, 2015	73 - 78

TAB : 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

ROMAS KARTAVICIUS

Applicant

- and -

OAK BAY DEVELOPMENTS INC. and OAK BAY GOLF CLUB INC.

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C 1985, c.B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c.C43, AS AMENDED**

NOTICE OF MOTION

DELOITTE RESTRUCTURING INC. (“**Deloitte**”), in its capacity as receiver (the “**Receiver**”) of Oak Bay Developments Inc. (the “**Debtor**”) will make a motion to a judge presiding over the Commercial List at 10:00 a.m. on Monday, June 22, 2015, at 330 University Avenue, Toronto, Ontario.

THE PROPOSED METHOD OF HEARING: The motion will be heard orally.

THE MOTION IS FOR an Order substantially in the form of the draft attached as Schedule “A” hereto:

1. abridging the time for service of the Notice of Motion and Motion Record herein, validating service of the Notice of Motion and Motion Record, and dispensing with further service thereof;
2. approving the Supplemental Report to the Second Report to the Court of the Receiver dated June 18, 2015 (the “**Supplementary Second Report**”) and the Receiver’s actions and activities as set out in the Supplementary Second Report;
3. approving and accepting the Receiver’s Final Statement of Receipt and Disbursements for the period from November 12, 2014 to June 17, 2015, as set out in Appendix “C” to the Supplementary Second Report;
4. approving the fees and disbursements of the Receiver for the period from May 9, 2015 to June 15, 2015, and the fees of its counsel; and,
5. such further and other relief as counsel may request and this Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. pursuant to an Order (the “**Appointment Order**”) of Justice Wilton-Siegel of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated November 12, 2014 (the “**Receivership Date**”), following an application made on behalf of Romas Kartavicius (the “**Applicant**”), Deloitte was appointed as Receiver of all of the current and future assets, undertakings and properties of the Debtor acquired for, or used in relation to 26 residential units (the “**Units**”, and individually, “**Unit**”) of The Residences of Oak Bay

Golf and Country Club (collectively, the “**Property**”). The appointment of the Receiver was for the limited purpose of administering the completion of the construction of the Units currently subject to agreements of purchase and sale with third parties (the “**APSs**”) in order to allow the Debtor to close the sale of the Units, under the management and direction of the Applicant but at all times subject to the consent and approval of the Receiver, to complete and close the sale of the Units and remit the proceeds of sale of the Units to the Receiver for distribution as directed by this Court (the “**Mandate**”);

Completion of Construction of the Units

2. the Units form part of a 32-unit complex consisting of 4 blocks (identified as 1 through 4) containing 8 units each (the “**Condo Villas**”). The six units that are not included in the Mandate are spread throughout the complex;
3. since its appointment, the Receiver worked with the Debtor to engage sub-contractors and suppliers in order to complete construction of the Units and register the condominium plan and declaration in respect of the Condo Villas;
4. the APSs for Units 15, 25 and 29 (now known as Unit 30), were terminated or voided for various reasons. In addition, a small fire occurred in Unit 21 resulting in the delay of construction of the Unit until the debris was removed, an insurance claim was filed and processed and the District provided the permits so that repairs could be made and construction could resume. Construction of Unit 21 resumed in mid-May and is expected to be completed sometime in June, 2015. Accordingly, the construction of 22 Units has been completed according to the terms of the APSs;

Proceeds of Sale

5. Deloitte has received proceeds of sale for the 22 Units that have closed to date. Pursuant to Order of Justice Conway made June 12, 2015, Deloitte has disbursed a significant portion of these funds (\$3,484,722.15) to the first secured creditor (ICBK). As set out in the Receiver's Final Statement of Receipts and Disbursements attached as Appendix "C" to the Supplementary Second Report (the "**R & D**"), the Receiver is currently holding \$686,539.87 of cash on hand, which amount does not reflect payments for the fees of the Receiver, and its counsel Blaney McMurtry LLP ("**Blaneys**") and Kronis, Rotsztain, Margles, Cappel LLP ("**KRMC**");

Discharge of Deloitte as Receiver

6. the Applicant is bringing a motion to have Deloitte substituted as Receiver by Pollard & Associates Inc. ("**Pollard**"), who is the receiver over Oak Bay Golf Club Inc.;
7. Deloitte consents to the substitution on the terms of the draft Order attached as Schedule "A" hereto;

R&D and Receiver's Fees

8. the R & D is a fair and accurate representation of the funds received and disbursed directly by the Receiver since the appointment of the Receiver, from November 12, 2014 to June 17, 2015;
9. the fees and disbursements of the Receiver and its counsel are fair and reasonable in the circumstances;
10. the *BIA*;
11. the *CJA*;

12. Rule 3.02 of the Rules of Civil Procedure; and,
13. such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the Supplementary Second Report to the Court of the Receiver dated June 18, 2015;
2. the Affidavit of Hartley Bricks sworn June 18, 2015;
3. the Affidavit of Chad Kopach sworn June 18, 2015;
4. the Affidavit of Mervyn D. Abramowitz affirmed June 16, 2015; and
5. such further and other evidence as counsel may advise and this Court permit.

June 18, 2015

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto, Ontario, M5C 3G5

Eric Golden (LSUC # 38239M)
Chad Kopach (LSUC # 48084G)

(416) 593-1221 (Tel)
(416) 593-5437 (Fax)

Lawyers for Deloitte Restructuring Inc., in its capacity as court appointed receiver of Oak Bay Developments Inc.

TO: Receivership Service List

TAB : A

SCHEDULE "A"

Court File No. CV-14-10703-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE)	MONDAY, THE 22 nd DAY
)	
JUSTICE)	OF JUNE, 2015

B E T W E E N:**ROMAS KARTAVICIUS**

Applicant

- and -

OAK BAY DEVELOPMENTS INC. and OAK BAY GOLF CLUB INC.

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C.B-3, AS AMENDED, AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C.C43, AS AMENDED**

ORDER

THIS MOTION made by the Applicant, Romas Kartavicius, for, among other things, an Order substituting Deloitte Restructuring Inc. ("**Deloitte**") with Pollard & Associates Inc. ("**Pollard**") as receiver ("**Receiver**") of the property, assets and undertaking of the respondent, Oak Bay Developments Inc. (the "**Debtor**"), acquired for or used in relation to 26 residential units of The Residences of Oak Bay Golf & Country Club, for the limited purpose of the Mandate, as that term is defined in the Receivership Order of Justice Wilton-Siegel made

November 12, 2014 (the “**Appointment Order**”), and **THIS MOTION** made by Deloitte for an order (i) approving the Supplemental Report to the Second Report to the Court of the Receiver dated June 18, 2015 (the “**Supplementary Second Report**”) and the Receiver’s actions and activities as set out in the Supplementary Second Report; (ii) approving and accepting the Receiver’s Final Statement of Receipts and Disbursements for the period from November 12, 2014 to June 17, 2015, as set out in Appendix “C” to the Supplementary Second Report; and (iii) an Order approving the fees and disbursements for services rendered by the Receiver and its counsel for the period from May 9, 2015 to June 22, 2015, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicant dated June 17, 2015, the Notice of Motion of Deloitte dated June 18, 2015, the affidavit of Hartley Bricks sworn June 18, 2015, the affidavit of Chad Kopach sworn June 18, 2015, the affidavit of Mervyn D. Abramowitz affirmed June 16, 2015, the Supplementary Second Report, the consent of Pollard, Eden Oak (Port Severn) Inc. and 2460112 Ontario Inc., on hearing the submissions of counsel for these parties save and except for Pollard, no one else attending although properly served,

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Applicant’s Notice of Motion dated June 17, 2015, the Deloitte Notice of Motion dated June 18, 2015, and related motion material, be and is hereby abridged, that service of the Notices of Motion and related motion material is hereby validated, and that further service thereof is hereby dispensed with.

REPORT, FEES AND DISBURSEMENTS

2. **THIS COURT ORDERS** that the Supplementary Second Report dated June 18, 2015, and the actions of the Receiver and its counsel described therein, be and are hereby approved.
3. **THIS COURT ORDERS** that the Receiver's Final Statement of Receipts and Disbursements for the period from November 12, 2014 to June 17, 2015 as set out at Appendix "C" of the Receiver's Supplementary Second Report, be and is hereby accepted and approved.
4. **THIS COURT ORDERS** that the fees and disbursements of Deloitte from May 9, 2015 to June 15, 2015, the fees and disbursements of Blaney McMurtry LLP from May 28, 2015 to June 17, 2015, and the fees and disbursements of Kronis Rotsztain, Margles, Cappel LLP ("KRMC") from May 21, 2015 to June 10, 2015, be and are hereby approved.
5. **THIS COURT ORDERS** that all fees and disbursements of Deloitte and its counsel incurred prior to and after this Order, as may be approved by the Court, shall continue to be secured by the Receiver's Charge contemplated by paragraph 17 of the Appointment Order. For greater certainty and without limiting the generality of the foregoing, the Receiver's Charge shall apply to all fees and/or disbursements incurred by Deloitte and its counsel with respect to any and all matters relating to the Debtor from this date onward and shall remain in force until payment in full of all such fees and disbursements of Deloitte and its counsel that may be approved by this Court is completed.

SUBSTITUTION OF RECEIVER

6. **THIS COURT ORDERS** that subject to paragraphs 5 and 9 to 15 herein, Deloitte is hereby discharged and relieved from any further rights, powers, obligations, liabilities, responsibilities or duties in its capacity of Receiver pursuant to the Appointment Order.

7. **THIS COURT ORDERS** that all protections afforded to Deloitte under the Appointment Order shall remain unaffected, including, but not limited to, the stay of proceedings provided for in paragraphs 8 and 10 of the Appointment Order.

8. **THIS COURT ORDERS** that Deloitte shall be and is hereby released from any all claims, suits, actions, complaints, liability and proceedings of any kind relating to its activities as the Receiver arising from its actions and conduct as Receiver, including, but not limited to, the transition of these receivership proceedings to Pollard and the Agreements as defined in paragraph 13 below, and any obligation for the remittance or payment of funds that may be considered to be held by Deloitte in trust, including funds collected and/or received in respect of Harmonized Sales Tax, save and except for any claims based on fraud or intentional misconduct by Deloitte.

9. **THIS COURT ORDERS** that notwithstanding its discharge as contemplated by paragraph 6 above, Deloitte continues to be authorized to do all such things as it considers necessary or advisable to facilitate the transfer of these receivership proceedings to Pollard or to complete its Mandate under the Appointment Order (as modified by the herein Order).

10. **THIS COURT ORDERS** that notwithstanding its discharge as contemplated by paragraph 6 above, Deloitte shall continue to have the right to engage counsel to assist with the exercise of its powers and duties, including without limitation those conferred by this Order.

11. **THIS COURT ORDERS** that Deloitte and its counsel shall be paid their reasonable fees and disbursements (which fees and disbursements shall be subject to the Court's approval) until Deloitte and its counsel are fully paid for their Court-approved fees and disbursements, in each case at their standard rates and charges.

12. **THIS COURT ORDERS** that pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, Pollard be, and is hereby, substituted and appointed as Receiver in place of Deloitte under the Appointment Order and in paragraph 6 of the Order of Justice Conway made June 12, 2015 in these proceedings (the "**Conway Order**"), and that all references to the "Receiver" in the Appointment Order and in paragraph 6 of the Conway Order be are hereby, a reference to Pollard from and after the date hereof.

13. **THIS COURT ORDERS** that Pollard be, and is hereby, substituted for Deloitte as the contracting party in connection with any and all of the obligations and contracts (excluding the fees and disbursements of Deloitte and its counsel) entered into by Deloitte to the date hereof in its capacity as Receiver carrying out the Mandate including but not limited to any and all policies of insurance in place for the Property (as defined in the Appointment Order) and/or the Debtor (collectively, the "**Agreements**"), that Pollard is hereby authorized and directed to take any and all such steps as are necessary to effect such substitution in the Agreements including, but not limited to, with the applicable insurer(s), that Pollard be and is hereby responsible and liable for

any and all obligations flowing from its substitution of Deloitte in the Agreements, and that Deloitte no longer has any duties or obligations under, arising from and/or in connection with the Agreements.

14. **THIS COURT ORDERS** that after payment of the accounts of Deloitte and its counsel up to the date hereof, Deloitte shall transfer to Pollard in trust any and all funds it is holding in respect of the Mandate.

15. **THIS COURT ORDERS** that Deloitte shall deliver to Pollard all of the books and records of the Debtor, and all other books and records and other documentation obtained under the terms of any and all Orders made in this proceeding now in the possession of Deloitte (excluding communications with the Receiver's counsel), which books, records, and documentation (the "**Books and Records**") are to be held by Pollard on the same terms and conditions as Deloitte under the applicable provisions of the Appointment Order and any other applicable Court Order.

16. **THIS COURT ORDERS** that Deloitte may from time to time apply to this Court for advice and directions with respect to this Order and the transition of the receivership proceedings from it to Pollard.

ROMAS KARTAVICIUS

and

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

Proceeding Commenced at **TORONTO**

ORDER

BLANEY MCMURTRY LLP

Barristers & Solicitors

2 Queen Street East, Suite 1500

Toronto, Ontario, M5C 3G5

Eric Golden (LSUC # 38239M)

Chad Kopach (LSUC # 48084G)

(416) 593-1221 (Tel)

(416) 593-5437 (Fax)

Lawyers for Deloitte Restructuring Inc., in its capacity
as court appointed receiver of Oak Bay Developments
Inc.

TAB : B

**RECEIVERSHIP SERVICE LIST
SCHEDULE "B"**

SERVICE — BY EMAIL

**AND TO: CHANG ADVOCACY
PROFESSIONAL CORPORATION**
989 Derry Road East
Suite 407
Mississauga, ON L5T 2J8

Attention: Charles C. Chang
(905) 670-8868 (Tel)
(905) 670-8871 (Fax)
Email: cchang@changadvocacy.com

Attention: Zehra Akbar
(905) 670.8868 (Tel)
(905) 670.8871 (Fax)
Email: zakbar@changadvocacy.com

Lawyers for Romas Kartavicius, Eden Oak (Port Severn) Inc.,
and 2453340 Ontario Inc.

AND TO: POLLARD & ASSOCIATES INC.
31 Wright Street
Richmond Hill, ON L4C 4A2

Attention: Angela K. Pollard
(905) 884-8191 (Tel)
(905) 884-4310 (Fax)
Email: akpollard@pollardandassoc.ca

Proposed Receiver for Oak Bay Developments Inc.

AND TO: RALPH CICCIA PROFESSIONAL CORPORATION
400-7050 Weston Rd
Woodbridge, ON L4L 8G7

Attention: Ralph Ciccia
(905) 850-6408 (Tel)
(905) 850-7050 (Fax)
Email: rciccia@ciccia.ca

Lawyer for 2460112 Ontario Inc.

- 2 -

AND TO: MILLER THOMSON LLP
40 King Street West, Suite 5800
Toronto, ON M5H 3S1

Attention: Stephanie Freedman
(416) 415-6721 (Tel)
Email: sfreedman@millერთhompson.com

Lawyers for Bascrete Inc.

AND TO: R. Q. PARTNERS LLP
BDC Building
3901 Highway #7, Suite 400
Vaughan, ON L4L 8L5

Attention: Adam Grossi
(905) 264-7800 (Tel)
Email: agrossi@rqpartners.ca

Lawyers for Bernard Torchia

AND TO: WAGMAN, SHERKIN
756A Queen Street East
Suite 200
Toronto, ON M4M 1H4

Attention: Charles Wagman
(416) 465-1102 (Tel)
(416) 465-3941 (Fax)
Email: Charles_wagman@wagmansherkin.ca

Lawyers for Bradhill Masonry Inc.

AND TO: GOLDMAN SLOAN NASH & HABER LLP
Barristers & Solicitors,
480 University Avenue
Suite 1600
Toronto ON M5G 1V2

Attention: Irwin Ozier
(416) 597-3381 (Tel)
(416) 597-3370 (Fax)
Email: ozier@gsnh.com

Lawyers for Noble Corporation

AND TO: TORYS LLP
79 Wellington St. W.,
30th Floor, Box 270,
TD South Tower
Toronto, Ontario M5K 1N2

Attention: Scott Bomhoff
(416) 865-7370 (Tel)
(416) 865-7380 (Fax)
Email: sbomhof@torys.com

Attention: Adam Slavens
(416) 865-7333 (Tel)
(416) 865-7380 (Fax)
Email: aslavens@torys.com

Lawyers for Tarion Warranty Corporation

AND TO: DALE & LESSMANN LLP
181 University Avenue
Suite 2100
Toronto, ON M5H 3M7

Attention: David E. Mende
(416) 369-7838 (Tel)
Email: dmende@dalelessmann.com

Lawyers for Industrial and Commercial
Bank of China (Canada)

AND TO: LOOPSTRA NIXON
Woodbine Place
135 Queen's Plate Drive
Suite 600
Toronto, ON M9W 6V7

Attention: R. Graham Phoenix
(416) 748-4776 (Tel)
Email: gphoenix@loonix.com

Lawyers for certain "Millhouse" Investors

AND TO: SISKINDS LLP
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

Attention: Wade W. Sarasin
(519) 660-7888 (Tel)
Email: wade.sarasin@siskinds.com

Lawyers for 1573639 Ontario Limited and Truster Golf Inc.

AND TO: LENTO PROFESSIONAL CORPORATION
3200 Dufferin Street, Suite 504
Toronto, ON M6A 2T3

Attention: Frank Lento
(416) 398-4044 (Tel)
Email: franklento@lentolaw.com

Lawyers for E-M Air Systems Inc.

AND TO: BERKOW, COHEN LLP
141 Adelaide Street W, Suite 400
Toronto, ON M5H 3L5

Attention: Jack B. Berkow
(416) 364-4900 (Tel)
Email: jberkow@berkowcohen.com

Attention: Ilia Valitsky
(416) 364-4900 (Tel)
Email: ivalitsky@berkowcohen.com

Lawyers for Bryan Coleman and Scott Gourley

AND TO: MARCIANO BECKENSTEIN LLP
7625 Keele Street
Concord, ON L4K 1Y4

Attention: Shael E. Beckenstein
(905) 760-8773 (Tel)
Email: sbeckenstein@mblaw.ca

Lawyers for 2453340 Ontario Inc.

AND TO: TARION WARRANTY CORPORATION
5150 Yonge Street
Toronto, ON M2N 6L8

Attention: Sophie Vlahakisi/Angela Vitoria
(416) 229-3875 (Tel)
(416) 229.3845 (Fax)
Email: sophiemiahlakis@tarion.com

AND TO: CANADA REVENUE AGENCY
Hamilton Tax Services Office
P. O. Box 2220
55 Bay Street North
Hamilton, ON L8N 3E1

Attention: Brian Clements
(905) 572-4426 (Tel)
(905) 570-8248 (Fax)
Email: Brian.Clements@cra-arc.gc.ca

**AND TO: HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF ONTARIO AS REPRESENTED
BY THE MINISTER OF FINANCE**
Revenue Collections Branch, Insolvency Unit
PO Box 620
33 King Street West,
6th Floor
Oshawa, ON L1H 8H5
Email: Insolvency.Unit@ontario.ca

AND TO: BRYAN COLEMAN
3464 Semenyk Court
Suite 200
Mississauga, ON L5C 4P8
Email: bcoleman@millhousegroup.ca

AND TO: JOHN DEERE FINANCIAL INC.
1001 Champlain Avenue, Suite 401
Burlington, ON L7L 5Z4

Attention: Vincent Zaroda
Email: zarodavincenatag@johndeere.com

TAB : 2

Court File No.: 14-10703-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

BETWEEN:

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1)
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C 1985, c.B-3, AS AMENDED,
AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c.C43, AS AMENDED

ROMAS KARTAVICIUS

Applicant

- and -

OAK BAY DEVELOPMENTS INC. and OAK BAY GOLF CLUB INC.

Respondents

**SUPPLEMENTARY REPORT TO THE SECOND REPORT
OF DELOITTE RESTRUCTURING INC.,
IN ITS CAPACITY AS RECEIVER**

Dated as of June 18, 2015

TABLE OF CONTENTS

INTRODUCTION	- 2 -
TERMS OF REFERENCE	- 3 -
THE RECEIVER'S ACTIVITIES SINCE THE SECOND REPORT	- 4 -
SUBSTITUTION MOTION	- 5 -
RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS	- 6 -
STATEMENTS OF ACCOUNT OF THE RECEIVER AND ITS COUNSEL	- 7 -
RECEIVER'S REQUEST TO THE COURT	- 8 -

APPENDICES

APPENDIX "A":	Receiver's Second Report dated June 2, 2015 (without appendices)
APPENDIX "B":	Order of Justice Conway dated June 12, 2015
APPENDIX "C":	Receiver's Final Statement of Receipts and Disbursements for the period November 12, 2014 to June 17, 2015

INTRODUCTION

1. On November 12, 2014 (the “**Receivership Date**”), Justice Wilton-Siegel of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued an order (the “**Appointment Order**”) appointing Deloitte Restructuring Inc. (“**Deloitte**”) as Receiver (the “**Receiver**”) of all of the assets, undertakings and properties of Oak Bay Developments Inc. (“**Oak Bay**” or the “**Debtor**”) acquired for, or used in relation to 26 residential units (the “**Units**”, and individually, a “**Unit**”) of The Residences of Oak Bay Golf and Country Club (collectively, the “**Property**”) for the limited purpose of administering the completion of the construction of the Units currently subject to agreements of purchase and sale with third parties (the “**APSs**”, and individually, an “**APS**”) in order to allow the Debtor to close the sale of the Units (the “**Mandate**”).
2. In its First Report to the Court dated March 11, 2015 (the “**First Report**”), the Receiver provided the Court with an update on the status of its activities and the completion of the Units and sought approval, among other things: i) to vacate certain construction lien claims upon payment into Court security for those lien claims; ii) for an increase of an additional \$350,000.00 of the maximum amount that Oak Bay was permitted to borrow from EOH Realty Services Inc. (“**EOH**”) for the purpose of funding the Mandate; and iii) of the Receiver’s fees and disbursements up to February 23, 2015. On March 27, 2015, Justice Patillo issued the order sought (the “**March 27 Order**”).
3. In support of the Receiver’s motion heard on June 12, 2015 (the “**June 12 Motion**”), the Receiver filed its Second Report to the Court of the Receiver dated June 2, 2015 (the “**Second Report**”) in which it: i) updated the Court on its activities; ii) updated the Court on the status of the completion of the construction of the Units and the closing of the APSs for the Units; iii) sought the Court’s approval to distribute a portion of the proceeds it received from the closing of the APSs to Industrial and Commercial Bank of China (Canada) (“**ICBK**”); iv) sought the Court’s approval to have released to the Receiver a deposit that was forfeited as a result of a terminated APS; and v) sought the Court’s approval of the Receiver’s fees and disbursements for the period February 17, 2015 to May 8, 2015. On June 12, 2015, the Justice Conway issued an Order (the “**June 12 Order**”) approving a distribution of \$3,477,787.81 to ICBK plus per diem interest up to

the date of payment as well as approving the balance of relief sought by the Receiver. A copy of the Second Report without appendices is attached hereto as **Appendix "A"**. A copy of the June 12 Order is attached hereto as **Appendix "B"**.

4. This Supplemental Report to the Second Report of the Receiver ("**Supplementary Second Report**") is provided to the Court in response to the Applicant's motion to substitute Deloitte as Receiver of Oak Bay (the "**Substitution Motion**") with Pollard & Associates Inc. ("**Pollard**"). In addition, the purpose of this Supplementary Second Report is to:
 - a) update the Court on the activities of the Receiver since June 2, 2015 in accordance with the provisions of the Appointment Order and the statutory obligations under the BIA, and to seek the Court's approval of those activities;
 - b) seek the Court's approval of the Receiver's Final Statement of Receipts and Disbursements from November 12, 2014 to June 17, 2015; and
 - c) seek approval of the Receiver's fees and disbursements for the period May 9, 2015 to June 17, 2015, the fees of Blaney McMurtry LLP ("**Blaneys**"), the receiver's counsel in respect of its June 12, 2015 motion and the Substitution Motion, and the fees of Kronis, Rotzstain, Margels, Cappell LLP ("**KRMC**").

TERMS OF REFERENCE

5. Capitalized terms not otherwise defined herein are as defined in the First Report, the Receivership Order or the Application Record dated September 22, 2014 (the "**Application Record**"), including the Affidavit of Romas Kartavicius sworn September 20, 2014 (the "**Romas Affidavit**").
6. The information contained in this Supplementary Second Report is based on unaudited financial information as well as discussions with representatives of the Debtor and its advisors. The Receiver has reviewed the information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the

information in a manner that would wholly or partially comply with Canadian Auditing Standards (“CAS”) pursuant to the *Chartered Professional Accountants Canada Handbook* and accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CAS in respect of the information.

7. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

THE RECEIVER’S ACTIVITIES SINCE THE SECOND REPORT

8. Since the date of the Second Report, the Receiver has continued to carry out its duties to fulfill the Mandate, including the following:
 - i) responded to a number of inquiries from Unit purchasers concerning construction and the status of their Units;
 - ii) reviewed supplier invoices submitted by Oak Bay to the Receiver for payment and, where appropriate, prepared disbursements for payment of those invoices;
 - iii) attended in Court on June 12, 2015 in connection with the June 12 Motion resulting in the issuance of the June 12 Order;
 - iv) discussed with counsel to the Applicant its proposed motion to substitute Deloitte as Receiver with Pollard;
 - v) on June 15, 2015, pursuant to paragraph 4 of the June 12 Order, made a distribution to ICBK of \$3,484,722.15, which distribution included per diem interest up to June 14, 2015;
 - vi) wrote to Harris Sheaffer LLP (“**Harris**”), Oak Bay’s real estate counsel who holds purchaser deposits in respect of Unit purchases, to advise them of the issuance of the June 12 Order which directs Harris to release to the Receiver a \$20,000.00 deposit held by them in respect of a terminated APS; and

- vii) prepared this Supplementary Second Report and associated materials associated with the Substitution Motion and the Receiver's motion, including review of the motion materials and draft order.
9. The Receiver is seeking the Court's approval of its activities to the date of its substitution as Receiver.

SUBSTITUTION MOTION

10. Counsel to the Applicant has advised the Receiver of its intention to replace Deloitte as Receiver with Pollard. Its rationale for the substitution is that it would be more efficient from an operational and cost perspective since Pollard is currently the receiver of Oak Bay Golf Club Inc., which owns and operates a golf course adjacent to the Units and constitutes one of the amenities offered to purchasers of the Units.
11. Paragraph 6 of the draft order for the substitution of Deloitte (the "**Substitution Order**") provides that Deloitte would be "discharged and relieved from any further rights, powers, obligations, liabilities, responsibilities or duties in its capacity as Receiver pursuant to the Appointment Order." Paragraph 8 of the draft Substitution Order provides that "Deloitte shall be and is hereby released from any all claims, suits, actions, complaints, liability and proceedings of any kind relating to its activities as the Receiver arising from its actions and conduct as Receiver, including, but not limited to, the transition of these receivership proceedings to Pollard and the Agreements as defined in paragraph 13 below and any obligation for the remittance or payment of funds that may be considered to be held by the Receiver in trust, including funds collected and/or received in respect of Harmonized Sales Tax, save and except for any claims based on fraud or intentional misconduct by Deloitte."
12. Paragraph 13 of the draft Substitution Order further provides that Pollard is to be "substituted for Deloitte as the contracting party in connection with any and all of the obligations and contracts (excluding the fees and disbursements of Deloitte and its counsel) entered into by Deloitte to the date hereof in its capacity as Receiver carrying out the Mandate including but not limited to any and all policies of insurance in place for the Property (as defined in the Appointment Order) and/or the Debtor (collectively, the

“**Agreements**”), that Pollard is hereby authorized and directed to take any and all such steps as are necessary to effect such substitution in the Agreements including, but not limited to, with the applicable insurer(s), that Pollard be and is hereby responsible and liable for any and all obligations flowing from its substitution of Deloitte in the Agreements, and that Deloitte no longer has any duties or obligations under, arising from and/or in connection with the Agreements.”

13. Deloitte considers the substitution provisions in the Substitution Order to be acceptable and consents to its substitution as Receiver of Oak Bay.
14. Upon issuance of final Substitution Order, Deloitte would forward all remaining funds in its receivership account to Pollard after retaining sufficient funds to satisfy payment of its fees and those of its counsel as discussed further below. It would also provide to Pollard any books and records of the Debtor in its possession, and all other books and records and other documentation obtained under the terms of any and all Orders made in this proceeding in the possession of Deloitte.

RECEIVER’S STATEMENT OF RECEIPTS AND DISBURSEMENTS

15. Attached hereto as **Appendix “C”** is the Receiver’s Final Statement of Receipts and Disbursements for the period November 12, 2014 to June 17, 2015 (the “**R&D**”). The R&D indicates that the Receiver has \$686,539.87 of cash on hand. The Receiver is seeking the Court’s approval of the R&D.
16. The R&D does not include payments for the fees of the Receiver, Blaneys and KRMC as further detailed below. Those fees total \$107,667.52 (including HST), which amount is consistent with the projected future disbursements (not including taxes) for Receiver and legal fees set out in paragraph 31 of the Second Report.
17. Should this Court grant the Substitution Order, including approval of the Receiver’s fees and legal fees, the Receiver intends to pay the Receiver and legal fees and transfer the balance of funds on hand to Pollard.

STATEMENTS OF ACCOUNT OF THE RECEIVER AND ITS COUNSEL

18. The Receiver's fees for services rendered for the period May 9, 2015 to June 15, 2015 in respect of its activities as Receiver are particularized in the Affidavit of Hartley Bricks sworn June 18, 2015 and the invoice attached as an exhibit thereto. The total amount of the fees for this period is \$58,993.35, inclusive of HST ("**Receiver Fees**"). The Receiver's fees include a modest accrual for work to be incurred in connection with Substitution Motion, for fulfilling the Receiver's statutory filing obligations, and for post-substitution transitional matters. The Receiver Fees are consistent with the projected future disbursements for Receiver fees set out in paragraph 31 of the Second Report. The Receiver is seeking the Court's approval of the Receiver Fees.
19. The fees and disbursements of Blaneys, counsel to the Receiver in respect of the Receiver's June 12 motion and the Substitution Motion, in respect of work performed for the period May 27, 2015 to June 17, 2015 are particularized in the Affidavit of Chad Kopach sworn June 17, 2015. The total amount of the invoices for this period is \$24,595.30, inclusive of HST ("**Blaneys Fees**"). The Blaneys fees also include a modest accrual for time related to its attendance on the Substitution Motion, and any related steps to follow including having the issued Order entered and distributed to the receivership distribution list.
20. The fees and disbursements of KRMC, counsel to the Receiver engaged to provide opinions on security in connection with the June 12 Motion, in respect of work performed for the period May 21 to June 10, 2015 are particularized in the Affidavit of Mervyn Abramowitz affirmed June 16, 2015. The total amount of the fees and disbursements for this period is \$24,078.87, inclusive of HST ("**KRMC Fees**").
21. The Receiver has reviewed the invoices of Blaneys and KRMC and finds the work performed and charges to be appropriate and reasonable and are consistent with the projected future disbursements for legal fees set out in paragraph 31 of the Second Report. The Receiver is seeking the Court's approval of the Blaneys Fees and KRMC Fees.

RECEIVER'S REQUEST TO THE COURT

22. The Receiver is respectively seeking an order:

- i) approving this Supplementary Second Report and the actions and activities of the Receiver to the date of its substitution as Receiver;
- ii) approving the R&D; and
- iii) approving the Receiver Fees, Blaneys Fees and KRMC Fees.

All of which is respectfully submitted to this Honourable Court.

DATED this 18th day of June, 2015.

Deloitte Restructuring Inc.

in its capacity as Receiver of certain assets
of Oak Bay Developments Inc.
and not in its personal capacity



Paul M Casey, CPA, CA, CIRP
Senior Vice-President



Hartley Bricks, MBA, CPA, CA, CIRP
Vice President

TAB : A

Court File No.: 14-10703-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

BETWEEN:

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1)
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C 1985, c.B-3, AS AMENDED,
AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c.C43, AS AMENDED

ROMAS KARTAVICIUS

Applicant

- and -

OAK BAY DEVELOPMENTS INC. and OAK BAY GOLF CLUB INC.

Respondents

**SECOND REPORT OF
DELOITTE RESTRUCTURING INC.,
IN ITS CAPACITY AS RECEIVER**

Dated as of June 2, 2015

TABLE OF CONTENTS

INTRODUCTION	- 3 -
TERMS OF REFERENCE	- 4 -
THE RECEIVER'S MANDATE AND THE STATUS OF THE PROJECT	- 5 -
CLOSING OF 22 AGREEMENTS OF PURCHASE AND SALE	- 6 -
PROCEEDS FROM THE SALE OF THE UNITS	- 9 -
FUNDS AVAILABLE FOR DISTRIBUTION	- 10 -
CHARGES AND THEIR PRIORITY AGAINST THE UNITS	- 11 -
UNSOLD UNITS	- 14 -
STATEMENTS OF ACCOUNT OF THE RECEIVER	- 14 -
RECEIVER'S REQUEST TO THE COURT	- 15 -

APPENDICES

APPENDIX "A":	Receivership Order dated November 12, 2014
APPENDIX "B":	Receiver's First Report dated March 11, 2015 (without appendices)
APPENDIX "C":	Order of Justice Patillo dated March 27, 2015
APPENDIX "D":	Order of Justice Nordheimer dated May 8, 2015
APPENDIX "E":	Order of Justice McEwen dated May 13, 2015
APPENDIX "F":	Receiver's Interim Statement of Receipts and Disbursements for the period November 12, 2014 to May 28, 2015
APPENDIX "G":	Receiver's Projected Future Receipts/Disbursements to Complete Mandate
APPENDIX "H":	Land Registry Office Parcel Registers for the Units
APPENDIX "I":	Schedule of Priority of Mortgage Registrations for the Units
APPENDIX "J":	Parcel Abstract for PIN 48879-0015 in LRO #35 as of June 2, 2015

- 2 -

- APPENDIX "K": Letter from Dale Lessmann LLP dated May 27, 2015 containing the payout information for the Industrial and Commercial Bank of China (Canada) Mortgage
- APPENDIX "L": First Source Mortgage Corporation payout statement as of May 28, 2015
- APPENDIX "M": Four letters prepared by Kronis, Rotsztain, Margles, Cappel LLP dated May 26, 2015 in respect of their opinion concerning security granted by Oak Bay Developments Inc. to Industrial and Commercial Bank of China (Canada), First Source Mortgage Corporation, Business Development Bank of Canada and EOH Realty Services Inc.

INTRODUCTION

1. On November 12, 2014 (the “**Receivership Date**”), Justice Wilton-Siegel of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued an order (the “**Receivership Order**”) appointing Deloitte Restructuring Inc. as Receiver (the “**Receiver**”) of all of the assets, undertakings and properties of Oak Bay Developments Inc. (“**Oak Bay**” or the “**Debtor**”) acquired for, or used in relation to 26 residential units (the “**Units**”, and individually, a “**Unit**”) of The Residences of Oak Bay Golf and Country Club (collectively, the “**Property**”) for the limited purpose of administering the completion of the construction of the Units currently subject to agreements of purchase and sale with third parties (the “**APSs**”, and individually, an “**APS**”) in order to allow the Debtor to close the sale of the Units (the “**Mandate**”). A copy of the Receivership Order is attached hereto as **Appendix “A”**.
2. In its First Report to the Court dated March 11, 2015 (the “**First Report**”), the Receiver provided the Court with an update on the status of its activities and the completion of the Units and sought approval, among other things: i) to vacate certain construction lien claims upon payment into Court security for those lien claims; ii) for a \$350,000 increase in maximum amount that Oak Bay was permitted to borrow from from EOH Realty Services Inc. (“**EOH**”) for the purpose of funding the Mandate; and iii) of the Receiver’s fees and disbursements up to February 23, 2015. On March 27, 2015, Justice Patillo issued the order sought (the “**March 27 Order**”). A copy of the First Report (without appendices) is attached hereto as **Appendix “B”**. A copy of the March 27 Order is attached hereto as **Appendix “C”**.
3. The purpose of this Second Report to the Court of the Receiver (the “**Second Report**”) is to:
 - a) update the Court on the activities of the Receiver in accordance with the provisions of the Receivership Order and the statutory obligations under the BIA, and to seek the Court’s approval of those activities;
 - b) update the Court on the status of the completion of the construction of the Units and the closing of the APSs for the Units;

- 4 -

- c) seek the Court's approval to distribute a portion of the proceeds received from the closing of the APSs as set out further below;
- d) seek the Court's approval to make further distributions from proceeds not yet received by the Receiver as set out further below;
- e) seek the Court's approval to have released to the Receiver a deposit that was forfeited as a result of a terminated APS; and
- f) seek approval of the Receiver's fees and disbursements for the period February 17, 2015 to May 8, 2015.

TERMS OF REFERENCE

- 4. Capitalized terms not otherwise defined herein are as defined in the First Report, the Receivership Order or the Application Record dated September 22, 2014 (the "**Application Record**"), including the Affidavit of Romas Kartavicius sworn September 20, 2014 (the "**Romas Affidavit**").
- 5. The information contained in this Second Report is based on unaudited financial information as well as discussions with representatives of the Debtor and its advisors. The Receiver has reviewed the information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CAS**") pursuant to the *Chartered Professional Accountants Canada Handbook* ("**CPA Canada Handbook**") and accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CAS in respect of the information.
- 6. Future oriented financial information referred to in this Second Report was prepared based on discussions with representatives of the Debtor ("**Management**"). Readers are cautioned that since forecasts are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the forecasts, even if the assumptions materialize, and the variations could be significant.

7. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

THE RECEIVER'S MANDATE AND THE STATUS OF THE PROJECT

8. As set out in the Receivership Order and discussed in the First Report, the Receiver's Mandate is for "the limited purpose of administering the completion of the construction of the Units currently subject to the APSs in order to allow the Debtor, under the management and direction of the Applicant but at all times subject to the consent and approval of the Receiver, to complete and close the sale of the Units and remit the proceeds of sale of the Units to the Receiver for distribution as directed by this Court".
9. The Units form part of a 32-unit complex consisting of 4 blocks (identified as 1 through 4) containing 8 units each (the "**Condo Villas**"). The six units that are not included in the Mandate are spread throughout the complex. The Condo Villas comprise a portion of Phase 1 of the Residences of Oak Bay Golf & Country Club (the "**Project**"). The master concept plan for the Project provides for 4 phases comprising 108 single units (detached homes), 182 townhouses and 204 condo villas. To date 32 singles and 22 townhouses have been sold and closed. The key amenities to be included in the development are a golf course (constructed and opened in 2010) and clubhouse with swimming pool (currently under construction, and with the golf course, subject to separate receivership proceedings ("**Oak Bay Golf**")), and a marina complete with boathouse, swimming pool, tennis court, and boardwalk (minimal construction work has taken place on the marina).
10. Since its appointment, the Receiver has worked with Oak Bay to engage sub-contractors and suppliers in order to complete construction of the Units and obtain registration of the Condo Villas.
11. On February 13, 2015, a small fire occurred in Unit 21. As a result of the fire, construction of the Unit was delayed until the debris was removed, an insurance claim was filed and processed and The District Municipality of Muskoka (the "**District**") provided a permit so that repairs could be made and construction could resume. Construction recommenced in mid-May and is expected to be completed in early June.

- 6 -

12. As set out in paragraphs 22 to 28 of the First Report, the APSs for three Units, 15, 25 and 29 (now known as Unit #30, as discussed further below), were terminated or voided for various reasons (see paragraphs 40 to 43 below for the Receiver's proposed strategy for dealing with these three Units). Accordingly, the construction of 22 Units has been completed according to the terms of APSs, with one further Unit to be completed in early June (Unit 21).
13. On or about March 10, 2015, after the requisite inspections were completed by the District, the condominium plans for the Condo Villas were submitted to the Land Registry Office (the "LRO") for examination and approval. On April 7, 2015, the LRO registered Condominium Plan MCP79 and Declaration MT150900 in respect of the Condo Villas.
14. In consultation with the Receiver, Harris Sheaffer LLP ("**Harris Sheaffer**"), Oak Bay's real estate counsel, notified the purchasers of the 22 APSs that were still in effect that the closing date for APSs would be May 13, 2015. The closing date for Unit 21 will be established once repairs are complete.

CLOSING OF 22 AGREEMENTS OF PURCHASE AND SALE

15. In order to complete the closings of the APSs, various liens, charges and encumbrances were required to be removed from title in order for purchasers to be given clear title to their Units.

Construction liens

16. As detailed in paragraphs 32, 40, 41 and 42 of the First Report, Noble Corporation had registered a claim for lien (the "**Noble Lien**") against Oak Bay in the amount of \$25,836.94 and E-M Air Systems Inc. had registered two liens (the "**E-M Air Liens**") against Oak Bay totalling \$65,118.00. While Management had disputed the appropriateness of the Noble Lien and the E-M Liens, there was not sufficient time to adjudicate and discharge the liens in advance of the closings of the APSs. Accordingly, on March 27, 2015, the Receiver posted into Court security of \$32,296.18 in respect of

- 7 -

the Noble Lien and \$81,397.50 in respect of the E-M Liens, and on that date Justice Patillo made the March 27 Order vacating those liens from title.

17. As detailed in paragraphs 32 through 40 of the First Report, C.C. Tatham & Associates Ltd. ("**Tatham**") had registered a lien against Oak Bay in the amount of \$245,049.62 (the "**Tatham Lien**") and Basecrete Inc. ("**Basecrete**") had registered a lien against Oak Bay and Oak Bay Golf in the amount of \$90,799.02 (the "**Basecrete Lien**"). The Receiver had sought the advice of Blaney McMurtry LLP concerning the validity of the Tatham Lien and the Basecrete Lien and was advised that both were properly registered and perfected and would need to be cleared off title in order to close the APSs.
18. With respect to the Basecrete Lien, Oak Bay, Oak Bay Golf and Basecrete had entered into Minutes of Settlement dated May 27, 2014 requiring a final payment of \$45,749.80 still to be paid upon registration and closing of the Condo Villas (the "**Basecrete Final Payment**"). Upon execution of a Full and Final Release, the Receiver made the Basecrete Final Payment and the Basecrete Lien was removed from title on April 17, 2015.
19. With respect to the Tatham Lien, Oak Bay and Tatham had entered into Minutes of Settlement dated April 30, 2014 requiring a final payment of \$127,448.62 plus interest at 5% per annum from March 31, 2014 until the final payment was made, plus nominal costs of \$2,500.00 (the "**Tatham Final Payment**") still to be paid in order for Tatham to agree to remove the Tatham Lien. However, subsequent to the date of the Minutes of Settlement, Tatham completed additional work on the lands comprising the Condo Villas at the direction of Oak Bay in the amount of \$10,091.91 and advised that they would not agree to remove their lien unless they received payment for that work in addition to receipt of the Tatham Final Payment. The Receiver concurred, and upon execution of a Full and Final Release, the additional payment and the Tatham Final Payment were made by the Receiver, and on May 1, 2015, the Tatham Lien was removed from title.

Receivership Order

20. The Receivership Order was registered on title by EOH as a result of the security granted to it under the Receivership Order for the credit facility it provided to Oak Bay at the commencement of the receivership. The balance of funds advance by EOH as of the date

- 8 -

of this Second Report is \$1,517,196.00, of which \$1,350,000.00 was advanced to the Receiver in order to carry out the Mandate. The balance of \$167,196.76 was advanced by EOH directly to Industrial Commercial Bank of China (Canada) (“**ICBK**”) (\$35,080.73) and First Source Investment Corporation (“**First Source**”)/Romspen Investment Corporation (“**First Source/Romspen**”) (\$132,116.03) in respect of loan arrears up to including November 1, 2014 (as provided for in the Receivership Order). In order to partially remove the Receivership Order from title to the Units covered by the 23 APSs, the LRO required that an order of the Court be provided. Accordingly, on May 8, 2015, Justice Nordheimer issued an order vacating the Receivership Order from title to the Units subject to the 23 APSs (the “**May 8 Order**”). A copy of the May 8 Order is attached hereto as **Appendix “D”**.

21. On May 11, 2015, Harris Sheaffer advised that, as a result of its work in preparing for the closing of the Units subject to the 23 APSs, it had discovered that the numbers for six Units had changed between the filing of the initial Condominium Site Plan for the Condo Villas, which numbering was reflected in the individual APSs, and the filing and acceptance of the Final Site Plan by the District. The affected Units were as follows:

Unit 11 should be Unit 12
Unit 12 should be Unit 11
Unit 13 should be Unit 14
Unit 27 should be Unit 28
Unit 28 should be Unit 27
Unit 30 should be Unit 29

As a consequence of the change in numbering, it was necessary to amend the May 8 Order to adjust the Schedule A to that Order for the new numbering since it did not provide for removal of the Receivership Order from title to Units 14 and 29. Accordingly, on May 13, 2015, Justice McEwen issued an order (the “**May 13 Order**”) amending *nunc pro tunc* the May 8 Order by substituting an amended Schedule A that included Units 14 and 29 but excluded units 13 and 30. A copy of the May 13 Order is attached hereto as **Appendix “E”**.

22. In addition, each of the secured creditors who had registered security against the Condo Villas provided releases against the Units subject to the 23 APSs, save and except for Unit 21, which has yet to close.
23. Given that clear title had been achieved, 21 of the APSs closed on May 13, 2015. The APS for Unit 4 was unable to close on May 13 as the purchasers had not yet secured their financing. As a result, the closing of the APS for Unit 4 was delayed two days and closed on May 15, 2015. As mentioned above, the closing date for the APS for Unit 21 will be set once construction of the Unit is completed in early June.

PROCEEDS FROM THE SALE OF THE UNITS

24. The Receiver has received from Harris Sheaffer proceeds totalling \$4,254,573.62 (after Harris Sheaffer deducted its legal fees of \$51,071.82 from the closing proceeds it received) for the 22 Units that have closed to date.
25. Harris Sheaffer continues to hold deposits of \$20,000 per unit for the 22 Units that have closed, for a total of \$440,000, which amount will increase to \$460,000 after the closing of Unit 21 in mid to late June (the "**Unit Deposits**"). Harris Sheaffer advises that the Unit Deposits are subject to a Deposit Trust Agreement with Tarion Warranty Corporation ("**Tarion**") and that Tarion must approve the release of any of the Unit Deposits. Oak Bay and Harris Sheaffer are in discussions with Tarion with a view to agreeing on the release of a portion of the Unit Deposits to the Receiver or otherwise providing Tarion with a bond or some other security in place of Unit Deposits. As of the date of this Second Report, there has been no determination as to the portion of Unit Deposits to be released.
26. As discussed in paragraphs 24 to 26 of the First Report, the APS for Unit 15 was terminated by Oak Bay due to the failure of the purchaser to close the APS. Harris Sheaffer is holding the \$20,000 deposit from the terminated sale of Unit 15 (the "**Unit 15 Deposit**"), which amount was retained as liquidated damages as a result of the purchaser's failure to close. Harris Sheaffer has advised that it will require an order of the Court in order to release the \$20,000 to the Receiver. Accordingly, the Receiver is seeking an order releasing the Unit 15 Deposit to the Receiver.

27. Included with the proceeds received by the Receiver are \$343,141.11 of Harmonized Sales Tax (HST) amounts collected from the purchasers (not including the HST to be collected from the impending closing of Unit 21). This total is net of any applicable federal and provincial HST New Housing Rebates credited to purchasers. The HST collected will be remitted to Canada Revenue Agency in conjunction with Oak Bay's HST filings.

FUNDS AVAILABLE FOR DISTRIBUTION

28. Pursuant paragraph 4 of the Receivership Order, "following the closings of the Units, or such earlier date as determined by the Receiver, the Receiver shall make a motion to the Court for the purposes of advice and directions regarding the distribution of the proceeds of sale of the Units to that point". Given that APSs for 22 of the 26 Units have closed, the Receiver is of the view that it is the appropriate time to seek advice and direction of the Court concerning the distribution of the proceeds of sale to date. The Secured Parties, as defined below, have advised the Receiver that they support the Receiver making a motion for a distribution of proceeds of sale received to date.
29. Attached hereto as **Appendix "F"** is the Receiver's Interim Statement of Receipts and Disbursements for the period November 12, 2014 to May 28, 2015 (the "**R&D**"). The R&D indicates that the Receiver has \$4,219,635.66 of cash on hand. The Receiver is seeking the Court's approval of the R&D.
30. Attached hereto as **Appendix "G"** is the Receiver's projected future receipts and disbursements to complete the Mandate. Projected future receipts consist of the estimated proceeds of \$174,000 from the closing of the sale of Unit 21 which is expected to occur in mid to late June 2015 and the release of the Unit 15 Deposit of \$20,000 should the Court grant an Order authorizing and directing Harris Sheaffer to release those funds to the Receiver. Projected receipts do not include any allowance for receipt of any portion of the Unit Deposits.
31. Projected future disbursements consist of current and future obligations and are summarized as follows:

- 11 -

<u>Projected Disbursement</u>	<u>Estimated Amount</u>
HST remittances	\$ 366,000
Current and future site construction costs	112,000
Reserve for suite repairs deficiencies (\$2,000 per unit)	46,000
Site payroll (April & May 2015)	66,000
Receiver fees	50,000
Legal fees	45,000
Miscellaneous reserve	<u>15,000</u>
	\$ 700,000

32. Accordingly, the Receiver is in a position to distribute \$3,519,635.66 (the “**Distributable Funds**”). In addition, the Receiver will be in position to distribute an estimated \$194,000 upon receipt of the closing proceeds from Unit 21 (\$174,000) and to the extent it receives the Unit 15 Deposit. Further, any amounts authorized for release by Tarion in respect of the Unit Deposits would be available for distribution.

CHARGES AND THEIR PRIORITY AGAINST THE UNITS

33. Attached as **Appendix “H”** is the Land Registry Office Parcel Registers for the Units with a currency date of May 1, 2015. Attached as **Appendix “I”** is a schedule prepared by the Receiver identifying the mortgages against the Units, and the respective ranking of priority at different points in time. As set out in Appendix “I”, the mortgage provided by ICBK in the principle amount of \$6,400,000.00 has been the first ranking mortgage since it was registered on title on August 16, 2012 as Instrument Number MT116053 (the “**ICBK Mortgage**”). The ICBK Mortgage currently ranks ahead of the following charges:

- i) A second mortgage in the principle amount of \$8,500,000 held by 2460112 Ontario Inc. (“**2460112**”) registered on title on August 16, 2012 as Instrument Number MT116099 (the “**First Source Mortgage**”) (and which was originally a second mortgage held by First Source which was transferred to 2464713 Ontario Inc. (“**2464713**”) on May 29, 2015 and then subsequently transferred to 2460112 on the same day);

- 12 -

- ii) A third mortgage in the principle amount of \$700,000 held by 2460112 registered on title on March 13, 2012 as Instrument Number MT109807 (the “**BDC Mortgage**”) (and which was originally a first mortgage held by Business Development Bank of Canada, then subordinated to the ICBK Mortgage and the First Source Mortgage, and eventually transferred to 2453340 Ontario Inc. (“**2453340**”) on February 18, 2015 and transferred to 2460112 on May 29, 2015);
 - iii) A fourth mortgage in the principle amount of \$5,000,000 held by Romas Kartavicius and Earl Storie registered on title on March 13, 2012 as Instrument Number MT109808; and
 - iv) A fifth mortgage in the principle amount of \$3,000,000 held by 2460112 registered on title on March 13, 2012 as Instrument Number MT109809 (and which was originally a third mortgage held by Bernard Torchia (the “**Torchia Mortgage**”) that was transferred to 2455150 Ontario Inc. (“**2455150**”) on March 2, 2015 and transferred to 2460112 on May 29, 2015).
34. Attached hereto as **Appendix “J”** is a copy of the Parcel Register for Unit 15, one of the unsold Units, bearing Parcel Identification Number 48879-0015 (the “**Sample Property**”), over which all five of the above-noted mortgages are registered. The abstract for the Sample Property shows the transfer of the First Source Mortgage to 2464713 on May 29, 2015 and then to 2460112 later that day. It further shows the transfer of the BDC Mortgage to 2453340 on February 18, 2015 and to 2460112 on May 29, 2015. Finally, the abstract shows the transfer of the Torchia Mortgage to 2455150 on March 2, 2015 and to 2460112 on May 29, 2015.
35. In addition to the mortgages listed above, EOH was granted a charge under the Receivership Order (the “**EOH Charge**”) in respect of its advances to Oak Bay in the amount of \$1,550,000.00. The Receivership Order provides that the EOH Charge ranks behind: i) the Receiver’s Charge and the Receiver’s Borrowing Charge over the Property; ii) the ICBK Mortgage and the First Source Mortgage; iii) any charges, mortgages, security interests, trusts, liens, construction liens, trust claims (whether or not perfected or preserved), and encumbrances (including but not limited to condominium corporation

- 13 -

arrears), claims of secured creditors, statutory or otherwise against title to any of the Property that rank ahead of security of ICBK or 2460112 over the Property (including the Real Property (as defined in the Receivership Order)); and iv) the BDC Mortgage, but only to the extent that there are any net proceeds from the sale of the Units payable to 2460112 and then only to the extent of the partial discharge payments provided for in the BDC Mortgage.

36. ICBK has provided a mortgage payout statement attached hereto as **Appendix "K"** which is effective as of May 21, 2015. According to Appendix "K", the current amount outstanding under the ICBK mortgage is \$3,450,034.90, which amount includes legal fees of \$82,127.30.
37. First Source has provided an Assignment/Discharge Statement attached hereto as **Appendix "L"** which is effective as of May 28, 2015. According to Appendix "L", the current amount outstanding under the First Source Mortgage is \$9,002,241.25.
38. The Receiver has received opinions from Kronis, Rotsztain, Margles, Cappel LLP dated May 26, 2015 (the "**Opinions**") which state that the charges/mortgages held by ICBK, EOH and 2460112 (collectively, the "**Secured Parties**"), including the ICBK Mortgage, the First Source Mortgage, the EOH Charge and the BDC Mortgage, for each case "were duly registered under the *Land Titles Act* and are valid and enforceable against the Debtor to the extent of the monies advanced thereunder by the Lender, subject to the qualifications noted below and subject to those interests, instruments and registrations listed in Schedule "B" attached hereto (which, for greater certainty, exclude the various charges, mortgages and related instruments registered against the Property), and creates valid and binding obligations of the Debtor in accordance with the terms of the Charge/Mortgage". The Opinions have been attached hereto as **Appendix "M"**.
39. Given the security opinions received, the Receiver proposes to make a distribution to ICBK of \$3,450,034.90 plus per diem interest of \$496.70 up to the date of distribution with the balance of the Distributable Funds distributed to 2460112 or as 2460112 otherwise directs the Receiver. In addition, the Receiver is seeking the Court's approval to distribute to 2460112, or as 2460112 otherwise directs the Receiver, the proceeds from

- 14 -

the closing of Unit 21, the Unit 15 Deposit once received, as well as any funds received by the Receiver as a result of the release of all or a portion of the Unit Deposits, which amount will ultimately be determined by the Receiver based on the actual proceeds received and any changes in the Receiver's future obligations.

UNSOLD UNITS

40. As detailed in paragraphs 22 to 28 of the First Report, subsequent to the Receiver's appointment, the APSs for three units were voided and/or terminated.
41. Of the three terminated APSs, only Unit 15 is completely finished since the APS for this Unit was terminated on March 2, 2015 after construction of the Unit had been completed. Units 25 and 30 are only in a sanded drywall state since those APSs were terminated prior to the installation of customer-selected flooring, ceramics, kitchen cabinets, appliances and painting.
42. On May 21, 2015, Oak Bay entered into an APS for the sale of Unit 25 for a purchase price of \$270,990. The scheduled closing date for the transaction is August 20, 2015. The cost-to-complete Unit 25 has been estimated by Management to be \$40,000 (including HST). The Receiver is of the view that the proposed sale price for Unit 25 is commercially reasonable. The Receiver has included in its projected future costs a reserve for the construction costs to complete Unit 25.
43. With respect to Units 15 and 30, the Receiver's course of action is have Oak Bay to continue to market the properties for sale. To the extent an APS is entered into for Unit 30, the Receiver will seek additional funding from EOH or by way of Receiver's Certificates to obtain sufficient funds to complete construction of that Unit. No significant funding would be required to complete any APS entered into for Unit 15 as that Unit is in a completed state.

STATEMENTS OF ACCOUNT OF THE RECEIVER

44. The Receiver's fees for services rendered for the period February 16, 2015 to May 8, 2015 in respect of its activities as Receiver are particularized in the Affidavit of Hartley

- 15 -

Bricks sworn May 28, 2015 and the invoices attached as exhibits thereto. The total amount of the invoices for this period is \$59,694.51, inclusive of HST ("Receiver Fees").

45. The Receiver is seeking this Honourable Court's approval of its activities to the date of this Second Report and the Receiver Fees.

RECEIVER'S REQUEST TO THE COURT

46. The Receiver is respectively seeking an order:
- i) approving this Second Report and the actions and activities of the Receiver from March 12, 2015 to the date of this Second Report;
 - ii) approving the R&D;
 - iii) authorizing and directing Harris Sheaffer to release to the Receiver the Unit 15 Deposit in the amount of \$20,000;
 - iv) approving the distribution to ICBK of \$3,450,034.90 plus per diem interest of \$496.70 to the date of distribution with the balance of the Distributable Funds distributed to 2460112 or as 2460112 otherwise directs the Receiver;
 - v) approving a further future distribution to 2460112, or as 2460112 otherwise directs the Receiver, consisting of the proceeds from the closing of Unit 21 once received, the proceeds from the proposed release of the Unit 15 Deposit and any funds received by the Receiver as a result of the release of all or a portion of the Unit Deposits, subject to any changes in the Receiver's future obligations; and
 - vi) approving the Receiver Fees.

- 16 -

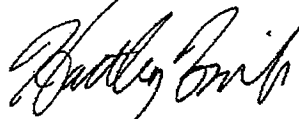
All of which is respectfully submitted to this Honourable Court.

DATED this 2nd day of June, 2015.

Deloitte Restructuring Inc.
in its capacity as Receiver of certain assets
of Oak Bay Developments Inc.
and not in its personal capacity



Paul M Casey, CPA, CA, CIRP
Senior Vice-President



Hartley Bricks, MBA, CPA, CA, CIRP
Vice President

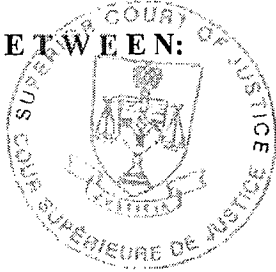
TAB : B

Court File No. CV-14-10703-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE) FRIDAY, THE 12th DAY
)
JUSTICE CONWAY) OF JUNE, 2015

BETWEEN:



ROMAS KARTAVICIUS

Applicant

- and -

OAK BAY DEVELOPMENTS INC. and OAK BAY GOLF CLUB INC.

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C 1985, C.B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C.C43, AS AMENDED**

ORDER

THIS MOTION made by Deloitte Restructuring Inc., in its capacity as Receiver of all of the current and future assets, undertakings and properties of Oak Bay Developments Inc. (the “Debtor”) acquired for, or used in relation to 26 residential units (the “Units”) of The Residences of Oak Bay Golf and Country Club (collectively, the “Property”) for the limited purpose of administering the completion of the construction of the Units currently subject to agreements of purchase and sale with third parties (the “APSs”) in order to allow the Debtor to

-2-

close the sale of the Units (in that capacity, the “**Receiver**”), for an Order (i) abridging the time for service of the notice of motion and motion record herein, (ii) approving the Second Report of the Receiver dated June 2, 2015 (the “**Second Report**”) and the activities described therein, (iii) approving and accepting the Receiver’s Interim Statements of Receipts and Disbursements for the period from November 12, 2014 to May 28, 2015, (iv) approving a partial distribution of from the proceeds of sale of the Units (the “**Distributable Funds**”) to Industrial and Commercial Bank of China (Canada) (“**ICBK**”) and the balance to be paid to 2460112 Ontario Inc. (“**2460112**”) or as 2460112 otherwise directs the Receiver, (v) authorizing and directing Harris Sheaffer LLP (“**Harris Sheaffer**”) to release to the Receiver the \$20,000.00 deposit from the terminated sale of Unit 15 (the “**Unit 15 Deposit**”) (vi) approving a future distribution to 2460112, or as 2460112 otherwise directs the Receiver, consisting of the proceeds from the closing of Unit 21 once received, the Unit 15 Deposit, and any funds received by the Receiver as a result of the release of all or a portion of the deposits for the 22 Units that have closed (the “**Unit Deposits**”), subject to any changes in the Receiver’s future obligations, and (vii) approving the fees and disbursements for services rendered by the Receiver for the period from February 16, 2015 to May 8, 2015, was heard this day at Toronto.

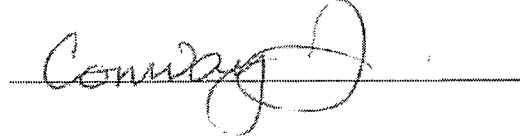
ON READING the Receiver’s Motion Record dated June 2, 2015, the Second Report, the affidavit of Hartley Bricks sworn May 28, 2015, the affidavit of Clarence Cho sworn June 9, 2015, upon hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for 2460112, counsel for Eden Oak (Port Severn) Inc. and counsel for ICBK, no one else appearing, and on being advised that this Order was to issue on the consent of the parties appearing today,

-3-


1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion returnable June 12, 2015 (the "**NOM**"), and related motion material filed in support of that NOM (the "**Motion Material**") be and is hereby abridged, that service of the NOM and Motion Material is hereby validated, and that further service thereof is hereby dispensed with.
2. **THIS COURT ORDERS** that the Second Report dated June 2, 2015, and the actions of the Receiver and its counsel described therein, be and are hereby approved.
3. **THIS COURT ORDERS** that the Receiver's Interim Statement of Receipts and Disbursements for the period from November 12, 2014 to May 28, 2015 as set out at Appendix "F" of the Receiver's Second Report, be and is hereby accepted and approved.
4. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to pay to ICBK from the Distributable Funds the sum of \$3,477,787.81 inclusive of ICBK's legal costs up to and including June 12, 2015, plus *per diem* interest of \$495.31 from and including June 1, 2015 up to the date of payment (the "**ICBK Funds**").
5. **THIS COURT ORDERS** that Harris Sheaffer shall forthwith release to the Receiver the Unit 15 Deposit.
6. **THIS COURT ORDERS** that the balance of the Distributable Funds, the Unit 15 Deposit and any additional funds received by the Receiver from this date onward as a result of the sale of any of the Units including but not limited to any Unit Deposits currently being held by Harris Shaeffer, shall be held by the Receiver pending further Order of this Court.

-4-

7. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period from February 16, 2015 to May 8, 2015, be and are hereby approved.

A handwritten signature in cursive, appearing to read "Conroy", is written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

A small, handwritten mark or initials, possibly "M", is written to the left of the date.

JUN 12 2015

ROMAS KARTAVICIUS

and

Applicant

Court File No. CV-14-10703-00CL
OAK BAY DEVELOPMENTS INC. AND OAK BAY GOLF CLUB INC.

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

Proceeding Commenced at **TORONTO**

ORDER

BLANEY MCMURTRY LLP
Barristers & Solicitors

2 Queen Street East, Suite 1500
Toronto, Ontario, M5C 3G5

Eric Golden (LSUC # 38239M)
Chad Kopach (LSUC # 48084G)

(416) 593-1221 (Tel)
(416) 593-5437 (Fax)

Lawyers for Deloitte Restructuring Inc., in its capacity
as court appointed receiver of Oak Bay Developments
Inc.

TAB : C

Oak Bay Developments Inc.
Receiver's Final Statement of Receipts and Disbursement for the
Period November 12, 2014 to June 17, 2015

	<u>As at June 17</u>	Notes
<u>Receipts</u>		
Proceeds from Closing of Unit Sales	\$ 4,305,645.44	(1)
Funding from EOH Realty Services	1,350,000.00	
Condo fees re Interim Occupancy Agreements	85,062.51	(2)
Proceeds from insurance claim	15,849.05	(3)
Miscellaneous refunds	1,575.39	
	<u>\$ 5,758,132.39</u>	
<u>Disbursements</u>		
Distribution to ICBK	\$ 3,484,722.15	
Trade suppliers - lien claims	353,740.40	(4)
Trade suppliers - new work	446,792.33	(5)
Lien settlement payments	182,290.46	(6)
Bonded off lien claims	113,693.68	(7)
Receiver fees	144,571.08	(8)
Payroll	186,822.16	(9)
Delayed Occupancy Compensation Payments	37,500.00	(10)
Surveyor fees	18,490.15	
Insurance	16,627.68	
Utilities	22,342.40	
Real estate legal fees	53,380.64	
Purchaser refund/reimbursements	8,434.34	
Property taxes	2,025.05	
Filing fees	70.00	
Bank charges	90.00	
	<u>\$ 5,071,592.52</u>	
Cash Balance	<u>\$ 686,539.87</u>	

Notes:

- (1) Includes proceeds received from Harris Sheaffer LLP from the closing of 22 units. Amount has been grossed up for Harris Sheaffer fees that were deducted from net proceeds remitted.
- (2) Includes Occupancy Fees from September 2014 through April 2015 for purchasers in occupancy of their units prior to final closings in May.
- (3) Reflects proceeds received from Northbridge Insurance as a result of an insurance claim for damages from a fire in Unit 21. Proceeds are net of a \$10,000 deductible.
- (4) Includes amounts paid to four suppliers (Gavina Trim Carpentry Ltd. - \$79,869.56; Madera Building & Renovations Inc. - \$5,686.73; Masova Painting Corp. - \$48,100.28; Nelmar Drywall Company Limited - \$220,083.83) who were within their rights and threatened to lien the project as of the date of the receivership if their pre-receivership amounts were not paid. To the extent these amounts were not paid, the Receiver had been advised that to remove the liens in order to provide clear title on closing, an amount equal to the amount of each lien plus 25% up to \$50,000 plus an amount for legal costs would have had to be posted as security to vacate the liens.
- (5) Reflects amounts paid to C.C. Tatham (\$136,540.66) and Basecrete (\$45,749.80) in settlement of their construction lien claims. The claims have been removed from title to the condo villas.
- (6) Reflects amounts paid to new suppliers for work performed since the commencement of the receivership.
- (7) Reflects amounts paid into court to bond off the lien claims of E-M Air (2 liens totalling \$81,397.50, which includes the 25% provision for costs) and Noble Corporation (\$25,836.94 plus 25% for costs).
- (8) Reflects payment of the Receivers Invoices 1 through 5 for the period up to May 8, 2015.
- (9) Represents payroll for five Oak Bay staff for work since the date of the Receivership Order. The staff are actually employed by Romal Management Inc. who pays the employees and the Receiver reimburses Romal. Subsequent to the first disbursement, one staff has been laid off and another has had her hours reduced resulting in bi-weekly payrolls of approximately \$12,900 including WSIB. Reimbursements have thus far been made up to April 30, 2015.
- (10) Includes five Delayed Occupancy Payments of \$7,500 each made to purchasers who submitted claims prior to the receivership. The payments were made to avoid chargeable conciliations applied to the Oak Bay's record, avoid the fees involved in resolving chargeable conciliations and as a gesture to those purchasers to facilitate completion of the sale of the unit.

TAB 3

Court File No.: 14-10703-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

BETWEEN:

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1)
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C 1985, c.B-3, AS AMENDED,
AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c.C43, AS AMENDED

ROMAS KARTAVICIUS

Applicant

- and -

OAK BAY DEVELOPMENTS INC. and OAK BAY GOLF CLUB INC.

Respondents

**AFFIDAVIT OF HARTLEY M. BRICKS
(Sworn June 18, 2015)**

I, **Hartley M. Bricks** of the City of Toronto, in the Province of Ontario,
MAKE OATH AND SAY:

1. I am a Vice-President of Deloitte Restructuring Inc., the court appointed receiver (the "**Receiver**") of certain of the assets, undertakings and properties of Oak Bay Developments Inc. ("**Oak Bay**"). As such, I have personal knowledge of the matters to which I hereinafter refer.

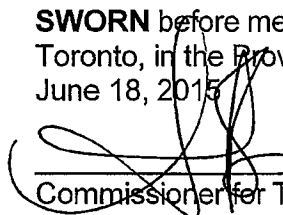
2. Attached hereto as **Exhibit "A"** is a summary of the accounts issued by the Receiver of Oak Bay for services rendered during the period May 8, 2015 to June 15, 2015 (the "**Period**").

3. Attached hereto as **Exhibit "B"** are true copies of the accounts of the Receiver with respect to Oak Bay for the Period, including a detailed description of the activities, number of hours worked, applicable hourly rates, and totals. The accounts include a modest estimate for work to be completed by the Receiver in connection with its proposed substitution as Receiver of Oak Bay. The Receiver's average hourly rate charged over the Period is approximately \$423. I confirm that these accounts accurately reflect the services provided by the Receiver in this proceeding for the Period.

4. Based on my review of the accounts referred to herein and my personal knowledge of this matter, the accounts referred to herein represent a fair and accurate description of the services provided and to be provided and the amounts charged by the Receiver.

5. I swear this affidavit in support of the Receiver's Motion for, among other things, approval of its fees and disbursements and for no other or improper purpose.

SWORN before me at the City of Toronto, in the Province of Ontario, on June 18, 2015



Commissioner for Taking Affidavits

)
)
)
)



HARTLEY M. BRICKS

*Anna Koroneos, a Commissioner, etc.,
Province of Ontario
for Deloitte Restructuring Inc.,
Trustee in Bankruptcy,
Expires July 10, 2016.*

TAB : A

This is Exhibit "A" in the Affidavit of Sworn before me this 18th day of June 2015
 A Commissioner, etc. *[Signature]*

Exhibit "A"

Summary of Invoices Issued by the Receiver for Oak Bay Developments Inc.

Anna Koroneos, a Commissioner, etc.,
 Province of Ontario
 for Deloitte Restructuring Inc.,
 Trustee in Bankruptcy,
 Expires July 10, 2016.

<u>Invoice Date</u>	<u>Invoice Period</u>	<u>Amount of Invoice (including HST)</u>
June 17, 2015	May 9, 2015 to June 15, 2015	\$ 58,993.35

TAB : B

Deloitte

This is Exhibit " B " referred to
 in the Affidavit of Hartley Bricks
 Sworn before me this 18th day of
June 2015
 A Commissioner, etc., AK

Deloitte LLP
 5140 Yonge Street
 Suite 1700
 Toronto ON M2N 6L7
 Canada

Telephone: 416-601-6150
 Fax: 416-601-6151
 www.deloitte.ca

*Anna Koroneos, a Commissioner, etc.
 Province of Ontario
 for Deloitte Restructuring Inc.,
 Trustee in Bankruptcy.
 Expires July 10, 2016*

Private and confidential

Oak Bay Developments Inc.
 c/o Deloitte Restructuring Inc.
 181 Bay Street, Suite 1400
 Toronto, Ontario
 M5J 2V1

Date: June 17, 2015
 Invoice No: **3855298**
 Client/Mandate No: 892587.1000001
 Billing Partner: Paul Casey

HST Registration No: 122893605

Invoice #6

In the matter of the Receivership of Oak Bay Developments Inc. ("Oak Bay" or the "Company")

To professional services rendered in connection with the appointment of Deloitte Restructuring Inc. as Court-appointed Receiver of certain assets of Oak Bay (the "Receiver") for the period May 9 to June 15, 2015.

	Level	Hours	Rate	Fees
Paul Casey, CPA, CA, CIRP	Senior Vice President	3.6	\$575.00	\$ 2,070.00
Adam Bryk, CPA, CA, CIRP	Senior Vice President	1.1	575.00	632.50
Hartley Bricks, MBA, CPA, CA, CIRP	Vice President	95.7	480.00	45,936.00
Rose Brown	Estate Administrator	22.9	140.00	<u>3,206.00</u>
		<u>99.0</u>		
Total hours and professional fees				51,844.50
Courier				180.00
Travel				<u>182.00</u>
Subtotal				52,206.50
HST @ 13%				6,786.85
Total payable				\$ 58,993.35



Oak Bay Developments Inc.
June 17, 2015
Page 2 – Invoice #5

Date	Professional	Description
5/9/2015	Bricks, Hartley	Telephone discussion with C. Chang regarding required marina disbursements; review of court order and respond to same.
5/11/2015	Bricks, Hartley	Further correspondence with C. Chang concerning marina disbursements; correspondence with A. Mendanha concerning supplier invoices and HVAC installation; review and respond to correspondence concerning unit number changes and closing matters.
5/12/2015	Bricks, Hartley	Review and respond to various correspondence concerning closing matters; discussion with a purchaser regarding the status of closing; discussion with D. Mende concerning the status of closings; discussion with A. Mendanha regarding status of unit 21; correspondence with D. Mandel regarding closing matters; correspondence with C. Chang regarding amendment to court order and consent to same; execute consent; correspondence with B. Hou regarding background around revised Acknowledgement and Direction.
5/12/2015	Brown, Rose	Banking administration; disbursement cheque and prepare cheque for courier to company.
5/13/2015	Bricks, Hartley	Correspondence with E. Golden concerning closing matters; review of closing documents; correspondence with K. McNeill regarding closings and transfer of proceeds; correspondence with A. Mendanha concerning construction of unit 21; correspondence with R. Nicolae regarding closings and the status of lender executed Acknowledgement and Direction and correspondence with B. Hou regarding same.
5/14/2015	Bricks, Hartley	Correspondence with K. McNeill regarding wiring of closing proceeds to the Receiver; review correspondence from R. Nicolae regarding condominium board; telephone discussion with purchaser of unit 21 regarding the status of her unit; respond to a status update request from B. Hou; correspondence with E. Golden re status of closings; review of trust statement and correspondence from R. Nicolae regarding closing proceeds and respond with questions.
5/14/2015	Brown, Rose	Trust banking administration; confirm incoming wire received and input; prepare disbursement cheque and courier to location.
5/15/2015	Bricks, Hartley	Review of responses from R. Nicolae and further correspondence regarding same; correspondence with A. Mendanha concerning disbursements.
5/19/2015	Bricks, Hartley	Review of correspondence from K. McNeill concerning a unit closing; correspondence with A. Mendanha regarding HVAC installation; discussion with I. Osti regarding status of various issues; discussion with E. Golden regarding status; review and respond to correspondence from C. Chang concerning the C.C. Tatham lien settlement.



Oak Bay Developments Inc.
June 17, 2015
Page 4 – Invoice #5

Date	Professional	Description
		information to M. Cosentino for HST filing purposes and discussion with her regarding same; prepare fee affidavit.
5/29/2015	Casey, Paul	Review Receiver's Second Report and meeting with H. Bricks to discuss same.
5/29/2015	Bricks, Hartley	Revise report to court and provide to P. Casey for review; review comments from E. Golden and C. Kopach on report to court and revise same; review of security opinions provided by KRMC.
5/30/2015	Bryk, Adam	Review and provide comments on second report of the Receiver.
5/31/2015	Bricks, Hartley	Review and respond to correspondence from R. Kartavicius regarding ICBK payout statement.
6/1/2015	Bricks, Hartley	Review of C. Chang comments on report to court, telephone discussion regarding same and other matters, email update to E. Golden regarding report; correspondence with various purchasers regarding unit matters.
6/2/2015	Bricks, Hartley	Revise report to court; review of correspondence from purchasers regarding issues with their units; discussion with I. Osti regarding issues with units; review and respond to correspondence from B. Hou regarding status; review and approve disbursements; review further comments on report from C. Kopach; review draft notice of motion and provide comments to C. Kopach; forward various materials to C. Kopach for service with the report to court.
6/3/2015	Brown, Rose	Trust Banking Administration; disbursement cheques.
6/8/2015	Bricks, Hartley	Review of correspondence concerning propane; discussion with I. Osti regarding various matters; review of invoices received; discussion with E. Golden regarding status; review disbursement backup and correspondence with I. Osti regarding same; review of proposed substitution order and forward same to E. Golden for comments; review of motion materials; review of correspondence from a unit purchaser.
6/9/2015	Bricks, Hartley	Discussion with I. Osti regarding various issues; review of correspondence concerning distribution motion and discussion with E. Golden regarding same; discussion with a unit purchaser regarding issues with his unit and the upcoming distribution motion.
6/11/2015	Bricks, Hartley	Discussion with C. Kopach regarding ICBK payout and revisions to order and review of same; review of correspondence from D. Mende and C. Chang regarding distribution motion.
6/12/2015	Bricks, Hartley	Prepare for and attendance in court to obtain the distribution motion; correspondence to ICBK concerning wire information, receipt of same and prepare documents for distribution.
6/15/2015	Bricks, Hartley	Coordinate distribution to ICBK and correspondence with B. Hou regarding same.
6/15/2015	Brown, Rose	Trust Banking Administration; disbursement cheques; prepare wire transfer to ICBK.



Oak Bay Developments Inc.
June 17, 2015
Page 3 – Invoice #5

Date	Professional	Description
5/20/2015	Bricks, Hartley	Prepare updated R&D; correspondence with D. Mende regarding status; correspondence with E. Golden regarding date for Receiver's motion; correspondence with I. Osti regarding status of information on further costs and other development matters; correspondence with R. Nicolae concerning legal fees.
5/21/2015	Bricks, Hartley	Conference call with D. Mende and E. Golden to discuss status and timing for distribution; discussion with E. Golden regarding security opinions; begin drafting court report; discussion with I. Osti regarding costs to complete construction and review and respond to email regarding same;
5/22/2015	Bricks, Hartley	Prepare analysis of proceeds received and HST collected; prepare interim statement of receipts and disbursements and projected future disbursements analysis; discussion with E. Golden regarding status and security opinion; review correspondence from E. Golden concerning distribution motion; draft report to court; correspondence with M. Abramowitz regarding security opinions; review of correspondence from I. Osti concerning the status of letters of credit posted by ICBK.
5/25/2015	Bricks, Hartley	Message to M. Cosentino regarding HST returns; discussion with a purchaser regarding delay occupancy compensation and work still outstanding in his unit; discussion with I. Osti regarding costs to complete and other matters; draft report to court; review correspondence from D. Mende concerning ICBK payout statement.
5/26/2015	Bricks, Hartley	Prepare report to court; discussion with E. Golden regarding status of court report; discussion with M. Abramowitz regarding security opinions; discussion with I. Osti regarding costs to complete and site matters; discussion with a purchaser concerning HVAC issues; review of correspondence and discussion with a purchaser concerning problems with their unit; discussion with C. Chang regarding status of motion materials and other matters; discussion with R. Nicolae regarding Tarion matters.
5/26/2015	Brown, Rose	Trust banking administration; issue disbursement cheques.
5/27/2015	Bricks, Hartley	Prepare report to court; discussion with E. Golden regarding notice of motion and report to court and forward same for comments; discussion with I. Osti regarding various matters including costs to complete unfinished unit; correspondence with a purchaser concerning HVAC repairs; correspondence with D. Carvalho regarding insurance; discussion with M. Cosentino regarding HST matters and schedule regarding same; correspondence to C. Chang regarding engagement by the Receiver of KRMC to prepare a security opinions; correspondence with R. Nicolae regarding release to the Receiver of deposits over \$20,000.
5/27/2015	Brown, Rose	Trust banking administration; input wire received May 18 and confirm received and input wire of May 27, 2015 for \$325,099.16.
5/28/2015	Bricks, Hartley	Prepare schedule of priority of mortgage registrations for report to court and forward to E. Golden for comments; forward disbursement

Deloitte.

Oak Bay Developments Inc.
 June 17, 2015
 Page 5 – Invoice #5

Date	Professional	Description
		To all other administrative matters with respect to the receivership administration, including all meetings, telephone attendances, approval and execution of disbursements, written and verbal correspondence to facilitate the foregoing, as well as matters to be completed concerning the substitution of the Receiver including review of draft order and notice of motion and post-substitution transition matters.

Payable upon receipt to Deloitte Restructuring Inc.

Remittance information on last page

Accounts shall be due and payable when rendered. Interest shall be calculated at a simple daily rate of 0.0493% (equivalent to 18% per annum). Interest shall be charged and payable at this rate on any part of an account which remains unpaid from thirty (30) days after the invoice date to the date on which the entire account is paid.



Oak Bay Developments Inc.
 June 17, 2015
 Page 6 – Invoice #5

Please note our banking information has changed.

Remittance instructions

Please use one of the three payment options below:

**We encourage our clients to pay by Electronic Funds Transfer.
 Please note we do not accept Interac e-Transfers.**

Electronic Funds Transfer Information:

The Bank of Nova Scotia,
 Business Service Centre, 20 Queen Street West, 4th Floor, Toronto, Ontario M5H 3R3

To pay invoices in CAD\$:

To pay invoices in USD\$:

CAD Account

USD Account

Transit-Institution #: 47696-002
 Account #: 1590219
 Swift code: NOSCCATT

Transit-Institution #: 47696-002
 Account #: 1363514
 ABA #: 026002532

**Please send payment confirmation by email to
receivablesdebiturs@deloitte.ca and reference the invoice number listed.**

We also accept payment by online bill payment:

Select either Deloitte LLP or Deloitte S.E.N.C.R.L./s.r.l. through your financial institution and quote the first 6 digits of your client number.

When paying by cheque please mail your payment to:

CAD Payments

Deloitte Management Services LP
 c/o T04567C
 PO Box 4567, STN A
 Toronto, ON M5W 0J1

USD Payments

Deloitte Management Services LP
 c/o T04567U
 PO Box 4567, STN A
 Toronto, ON M5W 0J1

TAB 4

Court File No. 14-10703-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ROMAS KARTAVICIUS

Applicant

– and –

OAK BAY DEVELOPMENTS INC. and OAK BAY GOLF CLUB INC.

Respondents

AFFIDAVIT OF MERVYN D. ABRAMOWITZ
AFFIRMED JUNE 16, 2015

I, Mervyn D. Abramowitz, of the City of Toronto, in the Province of Ontario, AFFIRM:

1. I am a partner in the law firm of Kronis, Rotsztain, Margles, Cappel LLP (“KRMC”), and was requested by Deloitte Restructuring Inc. (“Deloitte”) in its capacity as the Court-appointed Receiver (the “Receiver”) of Oak Bay Developments Inc. to provide certain security opinions in this matter, and as such, I have personal knowledge and information with respect to the matters deposed to herein.

2. On November 12, 2014, pursuant to the Order of the Honourable Justice Wilton-Siegel (the “**Appointment Order**”), Deloitte Restructuring Inc. (“Deloitte”) was appointed as the Receiver of Oak Bay Developments Inc.

3. As permitted by the Appointment Order, Deloitte retained our firm to act as its counsel in carrying out its mandate as Receiver and specifically, to provide our firm’s opinion as to the validity and enforceability of certain security interests granted by the debtor, Oak Bay Developments Inc.

4. Attached hereto and marked as **Exhibit “A”** to this my affidavit is a true copy of the account rendered to Deloitte for work done by KRMC pursuant to Deloitte’s instructions during the period from May 21, 2015 to June 10, 2015 together with the supporting dockets.

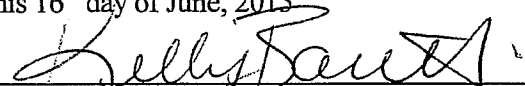
5. I am aware and have knowledge that I believe to be true that the following personnel at KRMC performed work on this matter. Their respective names, position, hourly rate and date of call to the Ontario Bar are as follows:

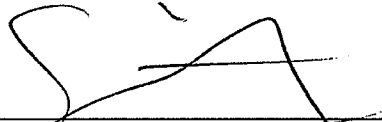
<u>Name</u>	<u>Position</u>	<u>Hourly Rate</u>	<u>Call to Bar</u>
Lawrence Adelberg	Partner	\$550.00	1987
Mervyn Abramowitz	Partner	\$550.00	1988
Mark Gelfand	Associate	\$325.00	2010
Sasha Kraus	Associate	\$250.00	2014

6. The work was all performed and the billing rates are the regular billing rates charged by the individuals who performed the work. There were no additional or special compensation arrangements entered into with Deloitte and as a result, all of the amounts billed were properly due and owing.

AFFIRMED before me
at the City of Toronto,
in the Province of Ontario,
this 16th day of June, 2015

)
)
)
)


A Commissioner for Taking Affidavits, etc.
Kelly Barrett


MERVYN D. ABRAMOWITZ

**Kelly Rose Ann Barrett, a Commissioner, etc.,
Province of Ontario, for Kronis, Rotsztein,
Margles, Cappel LLP, Barristers and Solicitors.
Expires February 11, 2017.**

TAB : A

This is Exhibit "A" referred to in the Affidavit of Mervyn D. Abramowitz affirmed June 16, 2015



Kelly Barrett

Commissioner for Taking Affidavits (or as may be)

KELLY BARRETT

**Kelly Rose Ann Barrett, a Commissioner, etc.,
Province of Ontario, for Kronis, Rotzstein,
Margles, Cappel LLP, Barristers and Solicitors.
Expires February 11, 2017.**

IN ACCOUNT WITH
KRMC

Kronis, Rotsztain, Margles, Cappel, LLP
 Barristers and Solicitors

Deloitte Restructuring Inc.
 181 Bay Street
 Suite 1400
 Toronto, Ontario
 M5J 2V1

25 Sheppard Avenue West (at Yonge)
 Suite 1100 Toronto, ON
 Canada M2N 6S6
 Telephone: (416) 225-8750
 Facsimile: (416) 225-3910

File No. 114161

June 11, 2015

RE: Deloitte Restructuring Inc. – Opinion re Security Granted by Oak Bay Developments

TO ALL PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter for the period from May 21, 2015 to June 10, 2015 as per the attached dockets:

To our professional services rendered in receiving instructions; to communications with Hartley Bricks and Eric Golden requesting our firm's opinion on security from Oak Bay Developments in favour of BDC, EOH, First Source and ICBK; to receiving and conducting detailed review of various documents from the Receiver including application materials with respect to the appointment of a Receiver on behalf of Romas Kartavicus and BDC; to conducting searches of public record and other inquiries as required in the circumstances; to reviewing and considering results of searches and inquiries in context of four opinion letters to be delivered; to preparing four opinion letters and forwarding same to Hartley Bricks and Eric Golden; and generally to all telephone calls, correspondence and all other matters herein;

FEE:

L. Adelberg 12.0 hrs @ \$550/hr	\$6,600.00	
M. Abramowitz 6.7 hrs @ \$550/hr	3,685.00	
M. Gelfand 16.7 hrs @ \$325/hr	5,427.50	
S. Kraus 17.4 hrs @ \$250/hr	<u>4,350.00</u>	
TOTAL FEE	\$20,062.50	
HST (13%)	<u>2,608.13</u>	

TOTAL FEES AND HST

\$ 22,670.61

DISBURSEMENTS (subject to HST)

Laser printing and copies	\$ 135.25	
Point in time reports (x6)	120.00	
Real property searches	<u>991.00</u>	
	\$1,246.25	
HST (13%)	<u>162.01</u>	<u>1,408.26</u>

TOTAL FEES, DISBURSEMENTS AND HST

\$ 24,078.87

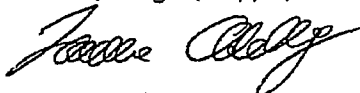
THIS IS OUR ACCOUNT.

Kronis, Rotsztain, Margles, Cappel, LLP

Per:

LA:dar

E.&O.E.



Our HST Registration No. R119428514

Accounts are due when rendered. In accordance with Section 33 of the Solicitors Act, interest will be charged at the rate of 1.3% per annum on all outstanding amounts calculated from July 13, 2015 F:\Corporat\Gelfand\Mortgage Opinion\ACCOUNT June 11-15 Oak Bay.doc

Deloitte Restructuring Inc.

June 11, 2015

Brookfield Place
181 Bay St., Suite 1400
Toronto, Ontario M5J 2V1

Attention:

File #: 114161
Inv #: Sample

RE: Deloitte re: Oak Bay Developments

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
May-21-15	correspondence with H. Bricks regarding independent security opinions; meeting with LA;	0.30	165.00	MA
May-22-15	email from/to MA regarding providing security opinion; cursory review of three further emails from MA with background documents;	0.30	165.00	LA
	receive further emails; discuss mandate with MA; telephone call to E. Golden at Blaney's (VM); office conference with JR regarding same;	0.40	220.00	LA
	correspondence with H. Bricks, E. Golden and LA regarding request for security opinions; receive and review documentation and information forwarded by E. Golden including application materials for appointment of Receiver by Romas;	1.50	825.00	MA
May-24-15	receive and review further materials from E. Golden; meeting with LA and JR;	0.50	275.00	MA
May-25-15	review emails from Receiver's counsel and MA with background of documents; office conferences with MG and SK regarding preparing security opinions;	0.30	165.00	LA
	forward numerous emails with background documents to MG and SK;	0.30	165.00	LA
	conference telephone call with MA - LA, MG, SK regarding background and mandate; office conference with SK regarding next steps;	1.40	770.00	LA
	receive and review additional materials from E. Golden; review application materials	2.20	1,210.00	MA

Invoice #: Sample

Page 2

June 11, 2015

regarding Receiver by BDC as well as loan and security documents of ICBK, First Source; meeting with LA, MG and SK regarding security opinions and documents; telephone call to E. Golden;

Office conference with LA re mortgage opinion; Conference call with LA, SK, MAA re strategy and information required to prepare opinions; Initial review of documentation to obtain charges/parcels and other pertinent information;

2.80 910.00 MG

To conference call re mortgage opinion letter with LA, MA, MG, and SK; To discuss matter and receive instructions from LA; To review of emails and attachments; To review of Receivership Order;

5.10 1,275.00 SK

May-26-15

meeting with MG and SK to discuss results of preliminary review of documents; email to client and E. Golden regarding status, FCTA and information needed;

1.20 660.00 LA

further emails from client and E. Golden with clarification about EOH charge;

0.20 110.00 LA

meeting with MG regarding his preliminary review of parcel register;

0.25 137.50 LA

review rough draft of BDC opinion letter; meeting with MG to discuss amendments and outstanding issues;

1.40 770.00 LA

receive and review correspondence of H. Bricks, E. Golden regarding security opinions, charges, liens; review orders of Nordheimer and MacEwen regarding discharge of EOH charge; meeting with LA;

0.60 330.00 MA

Further review of documentation and ascertain copies of charges; O/C with LA and SK re same and to discuss strategy on drafting opinions and on reviewing further documentation from Receiver and Blaneys; Initial drafts of BDC opinion; Meeting with LA to discuss and review same and to make revisions; Revise BDC opinion and email same to LA for his review; Email to Chad re

6.50 2,112.50 MG

Invoice #: Sample

Page 3

June 11, 2015

	soft copies of legal descriptions and re closing dates of two unsold units			
	To meet with LA and MG re mortgage opinion letter; To review emails;	1.30	325.00	SK
	To review parcel pages (26) for the relevant charges and transfer of charge as instructed by MG;	1.30	325.00	SK
May-27-15	review/revise amended draft opinion letter;	0.25	137.50	LA
	telephone conference with MA regarding status, outstanding steps, cost estimate; review email from Receiver's solicitor regarding construction liens and legal descriptions; office conference with MG regarding next steps on opinion letters;	0.60	330.00	LA
	telephone call from MA to clarify our mandate - not opining on priority; review historic parcel register;	0.20	110.00	LA
	office conference with MG regarding comparing current and prior legal descriptions for subject properties to legal descriptions in charges;	0.10	55.00	LA
	meeting with MG to discuss different legal descriptions in the three mortgages and amendments to BDC opinions;	0.75	412.50	LA
	review/confer with MG regarding revised BDC opinion;	0.25	137.50	LA
	meeting with LA regarding opinons, status, questions regarding various issues; telephone call with H. Bricks regarding time to date and estimate of fees to complete, clarification of mortgages and charges and positions, liens and other interests;	0.90	495.00	MA
	office conference with GX re pulling further parcels and o/c with LA re review of same to ascertain chain of registers; O/C with LA re chain of registrations from parcel to parcel; Revise BDC opinion and email same to LA for his review; Draft EOH Opinion; Meeting with SK to advise on drafting First Source and ICBK opinions; Review and revise same	4.40	1,430.00	MG

Invoice #: Sample

Page 4

June 11, 2015

	To print up each email for our file; To save each attachment received in all emails;	3.20	800.00	SK
	To meetings with MG re directions to prepare opinion letters for ICBK and First Source; To review opinion letter for BDC and prepare opinion letters ICBK and First Source;	1.50	375.00	SK
May-28-15	review amended BDC opinion and first drafts of the other three opinions;	0.50	275.00	LA
	meeting with SK to go over amendments to opinions; office conference with MG regarding same;	0.40	220.00	LA
	meeting with SK to review amended EOH opinion and discuss amendments to same;	0.50	275.00	LA
	review amended drafts of all four opinions; office conference with MG regarding drafts are okay - he should send to client, etc.;	0.50	275.00	LA
	review comments from Receiver's solicitor; discuss with MG; review amended language of Schedule B; emails from/to Receiver's solicitor; sign four opinions; office conferences with MA and MG regarding status;	1.00	550.00	LA
	office conference with SK and LA re finalizing opinions and revisions to Schedule B; Review Mortgage Act re definition of Mortgage; Finalize Schedule A, minor amendments to each opinion; office conference with LA re email opinions to Deloitte/Blaneys and draft email re same to all parties; Read and review email from E. Golden re minor amendment to Sch. B; office conference with LA re same; Prepare draft revised Schedule B and email same to E. Golden	1.80	585.00	MG
	To meetings with LA and MG re opinions; To re-drafting of opinions;	4.50	1,125.00	SK
May-29-15	email from/to Receiver's solicitor regarding amendments to opinion schedules;	0.20	110.00	LA
	office conference with LA re amending opinion paragraph; Revise opinions in accordance with E. Golden's request	1.20	390.00	MG

Invoice #: Sample

Page 5

June 11, 2015

	To discuss with LA and MG re final verison of opinions and print off emails to file;	0.50	125.00	SK
May-30-15	review file and email to MA regarding billing;	0.20	110.00	LA
Jun-02-15	correspondence with E. Golden, H. Bricks and LA regarding security opinions;	0.30	165.00	MA
Jun-03-15	email to/from MA regarding status of matter;	0.40	220.00	LA
Jun-04-15	telephone calls to H. Bricks regarding security opinions;	0.20	110.00	MA
Jun-08-15	eamil from MA regarding status of file;	0.10	55.00	LA
	tleephone call with H. Bricks regarding security opinions; correspondence to LA;	0.20	110.00	MA
Jun-10-15	office conference with MW regarding completion of file;	0.20	110.00	LA
	instructions to DR regarding completion of file;	0.10	55.00	LA
	Totals	52.80	\$20,062.50	
	HST on Fees		\$2,608.13	

FEE SUMMARY:

Lawyer	Hours	Effective Rate	Amount
LAWRENCE ADELBER	12.00	\$550.00	\$6,600.00
MERVYN ABRAMOWI	6.70	\$550.00	\$3,685.00
Mark Gelfand	16.70	\$325.00	\$5,427.50
Sasha Kraus	17.40	\$250.00	\$4,350.00

Romas Kartavicius
Applicant

-and- **Oak Bay Developments Inc. and Oak Bay Golf Club Inc.**
Respondents

Court File No. 14-10703-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF MERVYN D. ABRAMOWITZ
AFFIRMED JUNE 16, 2015

KRONIS, ROTSZTAIN,
MARGLES, CAPPEL LLP
Barristers and Solicitors
8 King Street East, Suite 1000
Toronto ON M5C 1B5

Mervyn D. Abramowitz (LSUC # 28323R)
Tel: 416-225-8750
Fax: 416-306-9874
Email: mabramowitz@krmc-law.com
Lawyers for Deloitte Restructuring Inc.

TAB 5

Court File No. CV-14-10703-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

ROMAS KARTAVICIUS

Applicant

- and -

OAK BAY DEVELOPMENTS INC. and OAK BAY GOLF CLUB INC.

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C 1985, c.B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c.C43, AS AMENDED**

AFFIDAVIT OF CHAD KOPACH

I, CHAD KOPACH, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY AS FOLLOWS:**

1. I am a partner with the law firm of Blaney McMurtry LLP ("**Blaneys**"), the lawyers for Deloitte & Touche Inc. ("**Deloitte**") in relation to Oak Bay Developments Inc. (the "**Debtor**"). As such, I have knowledge of the matters hereinafter deposed to except where stated to be on information and belief, and where so stated I verily believe it to be true.

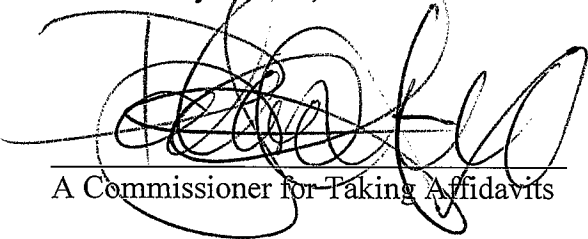
- 2 -

2. Pursuant to an Order (the “**Appointment Order**”) of Justice Wilton-Siegel of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated November 12, 2014 (the “**Receivership Date**”), following an application made on behalf of Romas Kartavicius (the “**Applicant**”), Deloitte was appointed as Receiver of all of the current and future assets, undertakings and properties of the Debtor acquired for, or used in relation to 26 residential units (the “**Units**”, and individually, “**Unit**”) of The Residences of Oak Bay Golf and Country Club (collectively, the “**Property**”) for the limited purpose of administering the completion of the construction of the Units currently subject to agreements of purchase and sale with third parties (the “**APSs**”) in order to allow the Debtor to close the sale of the Units
3. Blaneys has provided services and incurred disbursements in relation to the receivership of the Debtor (the “**Receivership**”) for the period from May 27, 2015 to and including June 17, 2015 as described in the detailed account rendered by Blaneys dated June 18, 2015 (redacted to remove privileged communication), which is attached hereto and marked as **Exhibit “A”** (the “**Blaneys Account**”).
4. Based on my review of the Blaneys Account and my personal knowledge of this matter, the Blaneys Account represents a fair and accurate description of the services provided and the amounts charged by Blaneys.
5. A total of approximately 54.4 hours were expended by Eric Golden and Chad Kopach during the period noted above in performing legal services relating to the Receivership.

6. I verily believe that the hourly billing rates, outlined in detail in the Blaneys Account, are in the range of normal average hourly rates charged by legal counsel for services rendered in relation to engagements similar to Blaneys' engagement as counsel for Deloitte.


7. I swear this Affidavit in support of a motion for, among other things, approval of Deloitte's fees and disbursements and those of its counsel and for no other or improper purpose.

SWORN BEFORE ME at)
the City of Toronto,)
in the Province of Ontario,)
this 18th day of June, 2015)



A Commissioner for Taking Affidavits

Patricia Louralea Keane, a Commissioner, etc.,
Province of Ontario, for Blaney McMurtry LLP,
Barristers and Solicitors.
Expires August 26, 2017.



CHAD KOPACH

TAB : A

HST REGISTRATION # R119444149

PRIVATE & CONFIDENTIAL
Deloitte & Touche Inc.
181 Bay Street, Suite 1400
Toronto, ON M5J 2V1

Date
June 18, 2015

Invoice No.
558020

File No.
104079-0004

Attention: Hartley Bricks

RE: Receivership - Oak Bay

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended June 16, 2015 as more particularly described below.

<u>Date</u>	<u>Lawyer</u>	<u>Description</u>
May 28, 2015	EG	Communications with Bricks regarding second report and mortgage schedule; review and revise same; instructions to Chad regarding same;
May 29, 2015	EG	Draft Notice of Motion for Distribution Order; instructions to Chad regarding Motion Record;
May 30, 2015	EG	Communications with Bricks and Chad regarding Motion and report; revisions to same; Draft Order;
June 1, 2015	EG	Status email to D. Mende; email from H. Bricks regarding changes to 2nd report following review by Chang;
June 1, 2015	CK	Revise notice of motion and draft order regarding assignment of First Source mortgage;
June 2, 2015	EG	Emails from Bricks regarding latest version of report; revise same; email from Mende regarding distribution motion;

Date
June 18, 2015

Invoice No.
558020

File No.
104079-0004

-2-

<u>Date</u>	<u>Lawyer</u>	<u>Description</u>
June 2, 2015	CK	Revisions to second report, notice of motion and order regarding various assignments of security; correspondence with H. Bricks regarding same;
June 2, 2015	DK	Attend to subsearch of title; obtain and review property parcel register;
June 3, 2015	CK	Revise Notice of Motion; draft letter to courier recipients; revise service list; review file regarding identity of lawyer for purchaser of Unit 15 (aborted purchase);
June 4, 2015	EG	Revisions to motion record and Order; instructions to Chad regarding letters to purchasers and distribution list; communications with Bricks concerning approval of Receiver fees and KRMC fees; letter from Mende concerning distribution; email to same regarding motion;
June 4, 2015	CK	Further revisions to notice of motion regarding assignment of First Source and other mortgages; receipt of letter from lawyer for ICBK;
June 5, 2015	CK	Finalize material for use on motion to approve distribution; serve material; telephone communications with purchaser of Unit 15 regarding upcoming motion; instructions to clerk regarding service of material on lawyer for purchaser of Unit 15;
June 9, 2015	EG	Email from Chad summarizing complaints from Hutching and his position; letter from Mende regarding settlement of motion;
June 9, 2015	CK	Telephone communications with owner of Unit 30; status update to E.G.; instructions to clerk regarding filing motion record;

Date
June 18, 2015

Invoice No.
558020

File No.
104079-0004

-3-

<u>Date</u>	<u>Lawyer</u>	<u>Description</u>
June 10, 2015	EG	Communications with Chad concerning position of the Unit purchasers on Friday's motion; emails to and from Chang and Mende regarding settlement of Friday motion; review emails from Chang and Bricks regarding substitution of Deloittes as Receiver; begin revisions to draft Chang substitution Order; telephone call with Bricks regarding same; email to Court regarding status of motion;
June 10, 2015	CK	Revisions to draft order regarding agreement between assignee of First Source mortgage and ICBK on distribution of balance of Distributable Funds;
June 11, 2015	EG	Email from Mende regarding ICBK position; email to Chang and Mende regarding same; communications with Chad [REDACTED] revise draft distribution motion Order; emails to and from Bricks regarding same; emails from and to Court regarding motions; email from Bricks enclosing KRMC account and dockets for final Receiver motion; emails between ICBK counsel and Chang regarding finalizing Order; email to and from same regarding same;
June 11, 2015	CK	Telephone conversation with Bricks regarding agreement between secured parties on balance of distributable funds; revise draft order regarding same

Date
June 18, 2015

Invoice No.
558020

File No.
104079-0004

-4-

<u>Date</u>	<u>Lawyer</u>	<u>Description</u>
June 12, 2015	EG	Finalize order and attend in court; telephone call with from ICBK counsel regarding payout of funds; form to court regarding June 22 motion date for approval of fees; emails to counsel enclosing Conway Order/Endorsement and advising of June 22 motion date; telephone call with H. Bricks regarding disbursement of funds to ICBK; email from and to same concerning same; email from court confirming June 22 motion date;
June 15, 2015	EG	Email from Bricks regarding written complaint from owners of units not part of the Mandate; review and revise draft substitution Order and add relief for Receiver's final motion;
June 16, 2015	EG	Revise Substitution Order; emails to and from Bricks and telephone call with same concerning same; further revisions to Notice of motion; emails to and from Bricks regarding same; review and revise Supplemental Second Report; communications with KRMC regarding [REDACTED]
June 16, 2015	CK	Review and revise draft order and draft notice of motion; review fee affidavit of M.A.; draft fee affidavit and summary of fees;
June 17, 2015	EG	To all matters regulating to completion of retainer including communications with Distribution List about motion and attendance in Court on same;
June 17, 2015	EG	Emails from and to Chang and counsel for Receiver concerning draft Order; communications with Bricks and Chang regarding motion record and exhibits, NOM, Order and Second report; review and revise same; email from Chang enclosing his client's NOM to replace Deloitte; review and fee affidavits; instructions to Kopach regarding finalizing motion record;

Date
June 18, 2015

Invoice No.
558020

File No.
104079-0004

-5-

<u>Date</u>	<u>Lawyer</u>	<u>Description</u>
June 17, 2015	CK	Revise and finalize notice of motion, supplementary second report and draft order; finalize affidavit;

OUR FEE HEREIN:	\$21,587.50
FEE HST:	\$2,806.38

<u>Lawyer</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Eric Golden	Partner	34.3	\$425.00	\$14,577.50
Chad Kopach	Partner	19.9	\$350.00	\$6,965.00
Dawn Kearns	Clerk	0.2	\$225.00	\$45.00

<u>Disbursements</u>	<u>Amount</u>
Court Fees* - Non-Taxable	\$127.00
Computer Searches - R.E. (Teraview) * - Courier	\$30.00
	\$17.81
Computer Searches - R.E. (Teraview)	\$21.50

TOTAL DISBURSEMENTS:	\$196.31
----------------------	----------

*HST is not charged

DISBURSEMENT HST:	\$5.11
-------------------	--------

TOTAL FEES AND DISBURSEMENTS:	\$21,783.81
-------------------------------	-------------

TOTAL HST:	\$2,811.49
------------	------------

TOTAL AMOUNT DUE:	<u>\$24,595.30</u>
-------------------	--------------------

BLANEY McMURTRY LLP


Eric Golden
E. & O.E

Fees may include charges for services provided by Lawco Limited.

Date

June 18, 2015

Invoice No.

558020

File No.

104079-0004

-6-

Details are available upon request.

ROMAS KARTAVICIUS

and

Applicant

Court File No. CV-14-10703-00CL
**OAK BAY DEVELOPMENTS INC. AND OAK BAY GOLF
CLUB INC.**

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

Proceeding Commenced at **TORONTO**

**MOTION RECORD
(RETURNABLE JUNE 22, 2015)**

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto, Ontario, M5C 3G5

Eric Golden (LSUC # 38239M)
Chad Kopach (LSUC # 48084G)

(416) 593-1221 (Tel)
(416) 593-5437 (Fax)

Lawyers for Deloitte Restructuring Inc., in its capacity
as court appointed receiver of Oak Bay Developments
Inc.