

Pam K. Boparai #1
Sworn: April 2, 2013

No. H110166
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

1397225 ONTARIO LIMITED

PETITIONER

AND:

682202 B.C. LTD., KINGSWAY ARMS MANAGEMENT SERVICES INC., KINGSWAY ARMS HOLDINGS INC., KINGSWAY ARMS HOLDINGS B.C. LTD., PATRICK BYRNE also known as PATRICK CHARLES BYRNE, GRAHAM PARKER also known as GRAHAM M. PARKER also known as GRAHAM MELTON PARKER, CHAPLIN VENTURES LTD., MICHAEL CHAPLIN also known as MICHAEL R. CHAPLIN, COLTER INVESTMENTS (GP) LTD., COLTER INVESTMENTS LP also known as COLTER INVESTMENTS LIMITED PARTNERSHIP, 0780293 B.C. LTD. and HER MAJESTY THE QUEEN IN RIGHT OF CANADA

RESPONDENTS

AFFIDAVIT

I, **PAM K. BOPARAI**, of 1680 – 400 Burrard Street, Vancouver, British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Managing Director and a Licensed Trustee in Bankruptcy with Alvarez & Marsal Canada Inc. ("A&M"), Receiver and Manager of 682202 B.C. Ltd., as such have personal knowledge of the facts and matters hereinafter deposed to save and except where the same are stated to be made upon information and belief and where so stated I verily believe them to be true.

2. A&M was appointed as the Receiver and Manager of 682202 B.C. Ltd. by Order of Mr. Justice Sigurdson made on March 9, 2011.
3. 682202 B.C. Ltd.'s main asset is the "Cedarbrooke Chateau" which is a 138-unit senior's residence complex located in Mission, B.C.
4. The Cedarbrooke Chateau is a seniors' independent living residence which provides certain services, including meals, housekeeping services, laundry services and recreational facilities.
5. Cedarbrooke Chateau has approximately 33 employees.
6. At the time of the appointment of the Receiver in March, 2011, Cedarbrooke Chateau had a low occupancy rate, needed some repair work to be done to the facility and was suffering from low employee morale.
7. The Receiver has been able to increase occupancy from 46% to approximately 75%, has completed most of the necessary repairs and has stabilized the work force.
8. 1397225 Ontario Limited is the main secured creditor of 682202 B.C. Ltd. pursuant to a mortgage facility and general security agreement, dated January 17, 2007, issued by 682202 B.C. Ltd. in favour of 1397225 Ontario Limited. The amount owing to 1397225 Ontario Limited was approximately \$34.7 million as at December 31, 2012. 1397225 Ontario Limited has assigned the debt and security to 2242229 Ontario Inc.
9. The 2013 tax assessed value of the Cedarbrooke Chateau issued by BC Assessment was \$19.65 million.
10. On April 6, 2011 682202 B.C. Ltd. became bankrupt. Alvarez & Marsal Canada Inc. is the Trustee.
11. The Receiver now proposes to market the Cedarbrooke Chateau for sale.
12. Prospective purchasers for such a facility will likely be parties who are already in the seniors' facility business.

13. The Receiver proposes to market the Cedarbrooke Chateau for sale in the following manner (the "Sales Process"):

- (a) mailing a "teaser" letter to known and potential purchasers, including operators of similar facilities. The Receiver anticipates sending these letters in late April, 2013;
- (b) advertising that the Cedarbrooke Chateau is for sale in the Globe and Mail newspaper and relevant trade publications;
- (c) interested parties will be required to sign a non-disclosure, confidentiality and bidding agreement substantially in the form attached hereto and marked as Exhibit "A" to this my Affidavit, and provide the Receiver with evidence that satisfies the Receiver, in its sole discretion, that the party has the financial ability to complete such a transaction and is likely to make a viable offer;
- (d) parties who sign the confidentiality agreement in a form satisfactory to the Receiver and satisfy the Receiver, in its sole discretion, that they are a viable purchaser will be given access to "due diligence" materials assembled by the Receiver;
- (e) the Receiver will establish a deadline for receipt of Letters of Intent in which bidders will be required to give an indication of the proposed bid price and provide a \$250,000 deposit. The proposed deadline will be May 31, 2013 or such other date as the Receiver may determine;
- (f) the Receiver will establish a deadline for receipt of bids. The proposed deadline will be June 28, 2013 or such other date as the Receiver may determine;
- (g) the Receiver will provide a standard form of Asset Purchase Agreement and all bidders will be requested to make bids in that form. All bids are to be on an as is where is basis, unconditional, not subject to financing nor any further due

diligence conditions or requirements. All bids must be accompanied by a deposit of 10%;

- (h) the Receiver will not be obligated to accept the highest or any bid and any accepted bid will be subject to Court approval;
- (i) the Receiver will not accept any bid that does not pay 2242229 Ontario Inc. in full, unless 2242229 Ontario Inc. consents to the Receiver accepting such a bid;
- (j) copies of all bids and Letters of Intent will be provided to 2242229 Ontario Inc.; and
- (k) 2242229 Ontario Inc. may submit a credit bid and will not be required to submit a Letter of Intent or provide a deposit.

14. The Receiver anticipates that if no Letter of Intent or Bid acceptable to 2242229 Ontario Inc. is received then 2242229 Ontario Inc. will submit a credit bid.

15. The activities of the Receiver from the date of its appointment to March 9, 2011 are detailed in the Receiver's First and Second Reports to the Court dated May 10, 2011 and April 2, 2013 respectively.

16. The Receiver's Statement of Receipts and Disbursements for the period March 9, 2011 to December 31, 2012 are set out in the Receiver's Second Report.

17. The Receiver's fees and disbursements, including legal fees are set out in the Receiver's Second Report. The Receiver's fees are based on the usual hourly rates charged by the Receiver.

18. 2242229 Ontario Inc. has reviewed and approved the Receiver's receipts and disbursements and fees as set out in the Receiver's Second Report.

19. The Receiver currently has approximately \$1.5 million cash on hand. The Receiver proposes to pay \$1 million to 2242229 Ontario Inc. in partial reduction of the debt to 2242229 Ontario Inc. and further funds when the Receiver has surplus funds on hand.

20. In connection with its appointment as the Trustee of 682202 B.C. Ltd, the Trustee obtained an opinion on the validity of the security held by 1397225 Ontario Limited, and now assigned to 2242229 Ontario Inc., a copy of which is attached hereto and marked as Exhibit "B" to this my Affidavit.

SWORN BEFORE ME at Vancouver, BC,)
on the 2 day of April, 2013.)

A Commissioner for taking Affidavits for
British Columbia.)



PAM K. BOPARAI)

JOHN I. MCLEAN, Q.C.
BARRISTER & SOLICITOR
SUITE 2300, 550 BURNARD STREET
P.O. BOX 30, VANCOUVER, B.C. V6C 2B5
TELEPHONE (604) 683-6498

NON-DISCLOSURE, CONFIDENTIALITY AND BIDDING AGREEMENT

This Agreement is made as of the ____ day of _____, 2013

BETWEEN:

ALVAREZ & MARSAL CANADA INC., in its capacity as court-appointed receiver-manager of the assets, undertakings and properties of 682202 B.C. Ltd. ("682202" or "Cedarbrooke") and not in its personal capacity

(the "Receiver")

AND:

(the "Potential Purchaser")

This is Exhibit "A" referred to in the affidavit of PAM K. BOPARAI sworn before me at VANCOUVER this 2 day of APRIL, 20 13

JOHN I. MCLEAN, Q.C.
A Commissioner for taking Affidavits within British Columbia

WHEREAS:

A. The Receiver is the court-appointed receiver-manager of 682202 pursuant to an Order of the Supreme Court of British Columbia pronounced March 9, 2011 (the "Order")

B. The Potential Purchaser is considering making an offer (the "Offer") for a possible acquisition or investment transaction (the "Transaction") involving certain assets and property Cedarbrooke which carries on the business of operating Cedarbrooke Chateau Independent Retirement Home in Mission British Columbia (the "Business"), subject to conducting due diligence, as a result of which certain confidential information of Cedarbrooke may be disclosed to the Potential Purchaser; and

C. The assets of the Business, including the real property, are subject to a mortgage and collateral security held by 2242229 Ontario Inc.

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereto covenant and agree as follows:

1. In this Agreement:

- 1.1 "Affiliate" means an affiliate as that term is defined in the *Business Corporations Act* (British Columbia);
- 1.2 "Actual Purchaser" means the person who acquires all or substantially all of the Business from the Receiver;
- 1.3 "Communication" means any notice, demand, request, consent, approval or other communication which is required or permitted by this Agreement to be given or made by a Party;

- 1.4 **“Confidential Information”** means any information relating to Cedarbrooke and the Business, whether communicated in written form, orally, visually, demonstratively, technically or by any other electronic form or other media, or committed to memory, and whether or not designated, marked, labelled or identified as confidential or proprietary, including:
- 1.4.1 Personal Information; and
 - 1.4.2 all analyses, compilations, records, data, reports, correspondence, memoranda, specifications, materials, applications, technical data, studies, derivative works, reproductions, copies, extracts, summaries or other documents containing or based upon, in whole or in part, any of the information listed above in this Section 1.4,
- but excluding information, other than Personal Information, which:
- 1.4.3 is generally available to or known by the public, other than as a result of improper disclosure by the Potential Purchaser or any of its Representatives; or
 - 1.4.4 is or was obtained by the Potential Purchaser from a source other than the Receiver or any of its Representatives, or any person bound by a duty of confidentiality to the Receiver;
- 1.5 **“Parties”** means the Receiver and the Potential Purchaser, collectively, and **“Party”** means either of them;
- 1.6 **“Personal Information”** means any information in the possession of Cedarbrooke or the Receiver that relates to identifiable individuals; and
- 1.7 **“Representatives”** means the advisors, agents, consultants, directors, officers, employees and other representatives, including accountants, auditors, financial advisors, lenders and lawyers of a Party.
2. The Potential Purchaser acknowledges that the Confidential Information is confidential and proprietary to Cedarbrooke and the Actual Purchaser. The Potential Purchaser further acknowledges that, except for the purpose of evaluating the Transaction, the Potential Purchaser has no right to use, title to, or interest in, the Confidential Information.
3. The Potential Purchaser shall not use the Confidential Information other than to the extent necessary to evaluate and enter into negotiations and discussions with the Receiver and discussions with authorized Representatives of Cedarbrooke, as may be authorized by the Receiver in its sole discretion, for the purposes of making an offer/or consummating the Transaction and further shall not, without prior written consent of the Receiver, disclose or communicate any Confidential Information to any other party other than its Representatives who have a need to know for the purpose aforesaid and who are bound by their relationship with the Potential Purchaser to protect the confidentiality of

such Confidential Information. The Potential Purchaser may also provide access to the Confidential Information to other persons for the purpose of discussing or negotiating a proposed purchase of certain of the assets and property of Cedarbrooke provided such persons are informed in advance by the Potential Purchaser of the confidential nature of the Confidential Information, and the Potential Purchaser ensures in advance that such persons are under written obligations of confidentiality and restricted use which are equal to or more restrictive than those set forth in this Agreement, and the Potential Purchaser provides a copy of such written obligations to the Receiver upon request.

4. All materials furnished to the Potential Purchaser by the Receiver shall be and remain the property of Cedarbrooke and shall be returned to the Receiver promptly upon written request together with all copies made thereof provided, that: (i) neither the Potential Purchaser nor its Representatives will be obligated to erase Confidential Information that is contained in an archived computer system backup in accordance with the Potential Purchaser's or its Representatives' security and/or disaster recovery procedures (accessible only by the Potential Purchaser and its Representatives information technology employees) for which destruction will follow the regular process of such procedures; (ii) these obligations shall not apply to the extent that the Potential Purchaser or its Representatives are required to retain the Confidential Information by any applicable law, rule or regulation.
5. The Potential Purchaser agrees that unauthorized disclosure or use of the Confidential Information of Cedarbrooke by the Potential Purchaser may cause irreparable harm and result in significant commercial damages to Cedarbrooke and the Actual Purchaser, which may be difficult to ascertain. Therefore, the Potential Purchaser agrees that the Receiver and the Actual Purchaser shall have the right to an immediate injunction enjoining any breach of this Agreement.
6. The Potential Purchaser shall keep confidential all Confidential Information that it receives, and it shall take all security precautions that a prudent owner would reasonably be expected to maintain the confidentiality of its own most confidential information, with respect to the Confidential Information of Cedarbrooke.
7. The Potential Purchaser shall promptly notify the Receiver and/or the Actual Purchaser on discovery of any unauthorized use or disclosure of Confidential Information. The Potential Purchaser shall cooperate with the Receiver and the Actual Purchaser in every reasonable way to prevent any further unauthorized use and disclosure.
8. If the Potential Purchaser is required by law or judicial or administrative process to disclose any Confidential Information, the Potential Purchaser shall first: (a) if not legally prohibited, provide the Receiver or the Actual Purchaser with as much written notice as reasonably possible; and (b) cooperate with the Receiver and the Actual Purchaser in any application, proceeding or other action to obtain a protective order or other means of protecting the confidentiality of the Confidential Information.

9. If the Parties determine not to proceed with the Transaction, or if the Transaction is proceeded with but fails to close, the Potential Purchaser agrees that for 2 years after the date of this Confidentiality Agreement, they will not:
 - 9.1 solicit or hire directly or indirectly, any Cedarbrooke employees for employment in or services to any undertaking with which it is associated;
 - 9.2 solicit, directly or indirectly, any customers or clients of the Business; or
 - 9.3 use any of the Confidential Information, in any manner whatsoever, to compete with the Business and/or the Actual Purchaser.
10. The Potential Purchaser acknowledges that no express or implied representation or warranty as to the accuracy or completeness of the Confidential Information, or any other information concerning Cedarbrooke or the Business that is provided to or gathered by the Potential Purchaser, is made by Cedarbrooke or the Receiver or any of its Representatives and agrees that Cedarbrooke, the Receiver, and their respective Representatives, will not have any liability, direct or indirect, to the Potential Purchaser or any of its Representatives, relating to or resulting from the Confidential Information or that other information, or the use by the Potential Purchaser or any of its Representatives of the Confidential Information or that other information, or reliance on any errors in or omissions from the Confidential Information or that other information.
11. The Potential Purchaser agrees and acknowledges that;
 - 11.1 The Receiver is not obliged to accept the highest or any offer it receives,
 - 11.2 The Receiver may in its sole discretion terminate the bidding and sale process at any time,
 - 11.3 Potential Purchasers will be required to submit a Letter of Intent setting out an indicative purchase price and provide a refundable deposit of \$250,000 (the "**Initial Deposit**") by a date to be fixed by the Receiver, [include actual date once fixed]
 - 11.4 Potential Purchasers who have submitted a Letter of Intent and proposed to submit an offer (the "Offer") will be required to submit any Offer together with a deposit which, including the Initial Deposit, is equal to 10% of the proposed purchase price, by a date to be fixed by the Receiver, [include actual date once fixed]
 - 11.5 The Receiver may elect to negotiate with any one or more bidders,
 - 11.6 Copies of all Letters of Intent and Offers will be provided to 2242229 Ontario Inc. when received,

- 11.7 The Receiver will not accept any Offer that does not pay the amount owing to 2242229 Ontario Inc. in full, unless 2242229 Ontario Inc. consents to such Offer,
- 11.8 2242229 Ontario Inc. may at any time submit a credit bid and in doing so does not have to provide a Letter of Intent or any deposit.
- 11.9 All Offers are to be based on the form of Asset Purchase Agreement to be made available by the Receiver with any deviations from that form to be highlighted.
- 11.10 All Offers are to be unconditional, not subject to financing nor any further due diligence, and are to be on an "as is where is basis".
12. The Potential Purchaser hereby releases the Receiver and its Representatives and 2242229 Ontario Inc. and its Representatives (collectively the "**Releasees**"), and each of them, from any and all claims of any kind which the Potential Purchaser or its legal representatives, successors and assigns ever had, now have or may in the future have against the Releasees by reason of any cause, whether known or unknown including, without limitation, any claim arising out of or in any way connected with any Offer, the provision of any Confidential Information, the provision of any non-confidential information, any error or omission in respect of any information, valuation, financial information or results of any kind or nature related to the Business, any claims arising out of or connected with the sale and bidding process, any and all costs, expenses including legal fees incurred by the Potential Purchaser, including, without limitation, any such claims existing as at the date of this Agreement or arising any time after the date of this Agreement.
13. The Potential Purchaser may not assign the benefits of this Agreement without the prior written consent of the Receiver or after the completion of the sale of the Business, the Actual Purchaser (which consent may be arbitrarily withheld).
14. The Parties agree that the Actual Purchaser is intended to have the benefit of this Agreement including the right to enforce its terms as against the Potential Purchaser as if the Actual Purchaser were a party to this Agreement.
15. Any Communication must be in writing and either:
- 15.1 delivered personally or by courier;
- 15.2 sent by prepaid registered mail; or
- 15.3 sent by facsimile, e-mail or functionally equivalent electronic means of transmission, charges (if any) prepaid.

Any Communication must be sent to the intended recipient at its address as follows:

to the Potential Purchaser at:

Attention: _____
 Tel No.: _____
 Facsimile No.: _____
 E-mail: _____

to the Receiver at:

Alvarez & Marsal Canada ULC
 Commerce Place
 Suite 1680, 400 Burrard Street
 Vancouver, British Columbia V6C 3A6

Attention: Pam K. Boparai, Managing Director
 Tel No.: 604-638-7446
 Facsimile No.: 604-638-7441
 E-mail: pboparai@alvarezandmarsal.com

16. This Agreement shall enure to the benefit of and be binding upon each of the Parties hereto and the Actual Purchaser and their respective heirs, executors, administrators, estate trustees, trustees, personal or legal representatives, successors and permitted assigns.
17. Upon the closing of a sale of the Business to the Actual Purchaser, all Confidential Information shall be returned by the Potential Purchaser to the Receiver, and the provisions of this Agreement will continue in effect for the benefit of the Actual Purchaser.
18. Wherever the singular or the masculine is used throughout this Agreement the same shall be construed as meaning the plural or the feminine or the body corporate where the context or the Parties so require, and when any party hereto comprises more than one person, such person shall be bound by the terms hereof both jointly and severally.
19. This Agreement, and any dispute arising from or in relation to this Agreement, shall be governed by, and construed in accordance with, the laws of the Province of British Columbia and the federal laws of Canada applicable therein and the Potential Purchaser hereby attorns to the exclusive jurisdiction of the courts of British Columbia.
20. This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which will be an original, and those counterparts will together constitute one and the same instrument. Delivery of this Agreement by facsimile, e-mail

or other functionally equivalent electronic means of transmission constitutes valid and effective delivery.

21. No supplement, modification, amendment, waiver, discharge or termination of this Agreement or any section of this Agreement is binding unless it is in writing and executed by the Party to be bound. No waiver of, failure to exercise, or delay in exercising, any section of this Agreement constitutes a waiver of any other section (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.

IN WITNESS WHEREOF the Parties hereto have executed these presents as of the day and year first above written.

ALVAREZ & MARSAL CANADA INC.
in its capacity as court-appointed receiver-
manager of the assets, undertakings and
properties of 682202 B.C. Ltd. and not in its
personal capacity

Per: _____
Authorized Signatory

[POTENTIAL PURCHASER]

Per: _____
Authorized Signatory

March 30, 2011

Alvarez & Marsal Canada Inc.
200 Bay Street, Suite 2900
P.O. Box 22
Toronto, Ontario M5J 2J1
Canada

Dear Sirs/Mesdames:

**Re: Validity and Enforceability of Security Granted by
682202 B.C. Ltd. to 1397225 Ontario Limited**

This is Exhibit "B" referred to in the
affidavit of PAM K. BOPARAI
sworn before me at VANCOUVER
this 2 day of APRIL, 20 13

A Commissioner for taking Affidavits
within British Columbia
JOHN I. MCLEAN, Q.C.
BARRISTER & SOLICITOR
SUITE 2300, 550 BURRARD STREET
P.O. BOX 30, VANCOUVER, B.C. V6C 2B5
TELEPHONE (604) 683-6498

We understand that Alvarez & Marsal Canada Inc. is to be appointed as the trustee in bankruptcy (the "Trustee") of 682202 B.C. Ltd. (the "Borrower"). The Borrower granted to 1397225 Ontario Limited (the "Lender") the security (the "Security") set out in **Schedule A**.

You have asked us to provide you with an opinion in connection with the Security. Specifically, you have asked us to opine on the validity and enforceability in the Province of British Columbia (the "Opinion Province"), of the Mortgages, as defined in **Schedule A**, granted, *inter alia*, by the Borrower to the Lender registered against title to the lands (the "Lands") legally described as set out in **Schedule B**, and on the validity, enforceability and perfection of the security interests (the "Security Interests") in the personal property collateral (the "Collateral") to which the *Personal Property Security Act* (British Columbia) (the "PPSA") applies, as granted under the Security or any of it in the Opinion Province. We do not act for the Borrower, the Covenantors, as defined in **Schedule A**, or the Lender in this matter and did not act in the preparation of the Security or the registration of it. This opinion is being given to the Trustee under and for the purposes of section 13.4 of the *Bankruptcy and Insolvency Act* (Canada).

Examination of Documents

For the purposes of the opinions set out herein, we have examined:

- (a) executed copies of the Security;
- (b) a certificate of good standing in respect of the Borrower issued by the Registrar of Companies (British Columbia) on March 23, 2011;
- (c) Personal Property Registry search results dated March 22, 2011 issued under the PPSA with respect to the Borrower, the results of which are summarized in **Schedule C**;

- (d) New Westminster Land Title Office (the "LTO") title search print dated March 22, 2011 with respect to the Lands, the results of which are listed in **Schedule D**; and
- (e) such statutes and public records, original or copies (certified or otherwise identified to our satisfaction) of corporate records, certificates and such other instruments as we have deemed necessary or appropriate for the purposes of this opinion.

For the purposes of the opinions expressed below we have considered the questions of law, made the searches and investigations, and examined originals or copies, certified or otherwise identified to our satisfaction, of the certificates of public officials and other certificates, documents and records, that we considered necessary or relevant, and we have relied without independent verification or investigation on all statements as to matters of fact contained in the certificates, documents and records we examined.

Assumptions and Reliances

For the purposes of the opinions expressed below, we have assumed, without independent investigation or inquiry:

- (a) that with respect to all documents examined by us, the signatures are genuine, the individuals signing those documents had legal capacity at the time of signing, all documents submitted to us as originals are authentic, and certified, conformed or photocopied copies, or copies transmitted electronically or by facsimile, conform to the authentic original documents;
- (b) the completeness, truth, accuracy and currency of the indices and filing systems maintained by the public offices and registries where we have searched or enquired or have caused searches or enquiries to be made and upon the information and advice provided to us by appropriate government, regulatory or other similar officials with respect to those matters referred to in this letter;
- (c) the accuracy of the description of the Collateral set out in the Security;
- (d) that:
 - (i) the Borrower has rights in the Collateral;
 - (ii) value, as that term is defined in the PPSA, has been given to the Borrower; and
 - (iii) the Borrower has not agreed to postpone the time for attachment of the Security Interests;
- (e) that the Collateral does not include "consumer goods", as that term is defined in the PPSA;

- (f) that there is and was at all relevant times a valid, legal, enforceable and subsisting debt or other obligation owing by the Borrower to the Lender;
- (g) that the Borrower:
 - (i) was at the time of authorization, execution and delivery of the Security, and is now, validly constituted and existing under the laws pursuant to which it was constituted;
 - (ii) had the corporate power and authority to execute, deliver and perform its obligations under the Security;
 - (iii) has taken all necessary corporate action to authorize the execution, delivery and the performance of its obligations under the Security; and
 - (iv) has duly executed and delivered the Security;
- (h) that each of the parties to the Security other than the Borrower is validly constituted and existing in accordance with the laws under which it is constituted and has all necessary power and capacity to execute and deliver the Security and perform its obligations under the Security;
- (i) that the Security constitutes a legal, valid and binding obligation of each of the parties to it other than the Borrower, enforceable against each of those other parties under the laws of the applicable jurisdiction governing the Security in accordance with its terms, subject to the qualifications below;
- (j) that the Security executed by the Borrower has not been amended, restated, replaced, terminated or released, and remains in full force and effect;
- (k) that there are no:
 - (i) agreements, judgments, rulings, instruments, facts or understandings affecting or concerning the Security, the Security Interests and/or the various principal obligations for which the Security is granted; or
 - (ii) statutory or regulatory prohibitions on, and no consents, licenses, approvals, authorizations or exemptions of any federal or provincial governmental body or regulatory authority required for or in connection with, the execution, delivery and performance by the Borrower of the Security or the Security Interests and/or the various principal obligations with respect to which the Security is granted;

which are not apparent from a review of the Security and which would or might affect the validity or enforceability of the Security;

- (l) that the execution and delivery by the Borrower of the Security, and the performance by the Borrower of its rights and obligations under the Security did not and do not breach or contravene, and were not and are not in conflict with, any law or regulation applicable to the Borrower or any other agreement to which the Borrower is a party;
- (m) that the execution, delivery and performance of obligations under the Security by the Borrower did not and does not constitute a preference, fraudulent preference, conveyance, fraudulent conveyance, settlement or reviewable transaction under sections 91 or 95 of the *Bankruptcy and Insolvency Act* (Canada) or any provincial legislation relating to those issues;
- (n) that the Lender has not by implicit or explicit course of conduct, waiver, release, discharge, cancellation, forbearance or other means, oral or written, taken any action or steps which have, or which could or would have, altered, diminished, suspended or otherwise affected the terms, conditions of enforceability of the Security or the indebtedness, liabilities and obligations secured by the Security or any of it; and
- (o) that the Lender did not know and did not have any reason to believe at any time that the creation of the Security Interests was in contravention of any agreement by which the Borrower or its property or assets were bound, if there was such a contravention.

Laws Addressed

Except as stated below, the opinions expressed in this letter are limited to the laws of, and the federal laws of Canada applicable in, the Opinion Province. In particular, without limiting the preceding statement, we express no opinion:

- (a) with respect to the laws of any other jurisdiction, to the extent those laws may govern any aspect of the Security or govern the validity, the perfection, the effect of perfection or non-perfection, or the enforcement of any Security Interests, as a result of the conflict of laws rules of the Opinion Province; or
- (b) whether, under the conflict of laws rules of the Opinion Province, the laws of the Opinion Province would govern the validity, perfection, effect of perfection or non-perfection or enforcement of any of the Security Interests.

Opinions

Based upon the assumptions and reliances stated above, and subject to the qualifications, limitations or exceptions stated below, we are of the opinion that:

1. The Security to which the Borrower is a party constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms.
2. Each of the Mortgages created in favour of the Lender is a valid fixed and specific mortgage on the Lands, subject only to the encumbrances referred to in Schedule D.

3. Each of the Mortgages will also create in favour of the Lender, upon delivery to the tenant's of the Lands of notice and a copy of the Mortgages, a valid assignment as against such tenants of all the Borrower's assignable interest in all rents owing by such tenants with respect to the Lands and falling due subsequent to the date service of such notice, subject to the encumbrances, referred to in Schedule D.
4. The Security creates valid Security Interests in favour of the Lender as described in that security under the laws of the Opinion Province in any Collateral to which the PPSA applies, to secure payment and performance of the obligations secured by the Security.
5. Registration has been made in all public offices provided for under the laws of the Opinion Province where registration is necessary to perfect the Security Interests in favour of the Lender, and those Security Interests effective against the trustee and the estate in bankruptcy of the Borrower.

Qualifications and Limitations

The opinions in the letter are subject to the following qualifications and limitations:

1. Title to the Lands and the Mortgages, are subject to statutory exceptions to title (including leases or agreements for lease for a term not exceeding three years where there is actual occupation thereunder, rights of expropriation, and the right of a person to show fraud in which the registered owner has participated) and may also be subject to aboriginal land rights.
2. The Mortgages may rank subsequent in priority to liens, charges and claims arising pursuant to legislation and not requiring registration.
3. Either or both of the Mortgages may rank subsequent in priority to: (a) a later registered mortgage or judgment to the extent that any such Mortgage secures advances made after the Lender received written notice of the later registration; and/or (b) a builder's lien to the extent that either or both of the Mortgages secures liabilities (e.g. interest, guarantees, letters of credit, bankers' acceptances, etc.) other than money advanced prior to registration of the lien; and/or (c) a caveat, lis pendens, certificate of pending litigation or similar interest to the extent that any such Mortgage secures advances made after registration of the competing interest or after the Lender's receipt of actual notice of the competing interest.
4. The Mortgages may, with respect to Goods that become Fixtures after the Mortgages have been executed, be subject to: (a) any Security Interests in such Fixtures that attach before or at the time the Fixtures are affixed; and (b) any Security Interests in such Fixtures that attach after the Fixtures have been affixed if (i) the Lender consented to such Security Interest, (ii) the Lender disclaimed an interest in the Fixtures, (iii) the Lender entered into an agreement under which a person is entitled to remove the Fixtures, or (iv) the Lender is otherwise precluded from preventing the mortgagor from removing the Fixtures. The charge of the Mortgages made on Crops may be subject to Security Interests therein except to the extent the Lender made advances under either or both of the Mortgages prior to the

competing Secured Party registering in the LTO an appropriate Notice of Security Interest. (Capitalized terms used in this paragraph 4 not defined elsewhere in this opinion shall have the meaning given to such terms in the PPSA).

5. We express no opinion on the enforceability of provisions of the Security which:
 - (a) creates an obligation to pay interest (as defined in the *Criminal Code* (Canada)) in an amount or at a rate prohibited by the *Criminal Code* (Canada);
 - (b) have the effect of increasing the charge on any arrears of principal and interest beyond the rate of interest payable on principal money not in arrears contrary to section 8 of the *Interest Act* (Canada);
 - (c) grant an irrevocable power of attorney in favour of the Lender;
 - (d) purport to exculpate a person or its agent from liability in respect of acts or omissions which may be illegal, fraudulent or involve wilful misconduct;
 - (e) are inconsistent with or contrary to any provision of the Commitments Letters dated October 24, 2006, made, *inter alia*, between Carlisle Capital Structures Corporation ("Carlisle"), as lender, as assigned by Carlisle to the Lender, and the Borrower.
6. We express no opinion as to the enforceability of any provision of the Security which stipulates that the Lender or its agent shall not be deemed to be a mortgagee in possession or have obligations under any leases, agreements, documents or instruments included in the Collateral where the Lender or its agent has taken steps to enforce the Security in respect thereof. A court may deem the Lender or its agent to be in care, control and management of such Collateral notwithstanding the absence of clear and unequivocal action by the Lender or its agent depriving the Borrower of such care, control and management and assuming the same by the Lender or its agent.
7. The legality, validity, binding effect and enforceability of the Security are subject to and may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, winding-up, liquidation, moratorium, preference and other similar laws of general application affecting the enforcement of creditors' rights generally.
8. The enforceability of the obligations of the Borrower under the Security is subject to general equitable principles, including those relating to the conduct of parties such as reasonableness and good faith in the exercise of discretionary powers, to laws relating to laches, undue influence, unconscionability, duress, misrepresentation and deceit, estoppel and waiver, and to the powers of courts to stay proceedings before them, to stay the execution of judgments, to relieve from penalties or the consequences of default (particularly if the default is minor or non-substantive) and to grant relief against forfeiture, and the principle that equitable remedies such as injunctive relief and specific performance are only available in the discretion of the court.

9. A secured creditor may be required to give a debtor reasonable time to satisfy any demand for payment or performance of its obligations under any of the Security before exercising any rights or remedies under it.
10. We express no opinion regarding the existence of, or the right, title or interest of the Borrower in and to, any personal property. There is no title registry system in the Opinion Province with respect to personal property, and no office of public record in which the title to personal property situate in the Opinion Province may be examined.
11. We express no opinion regarding the ranking or priority of the Security Interests or other interests expressed to be created by the Security.
12. We express no opinion as to whether the provisions of Part VII of the *Financial Administration Act* (Canada) have been complied with. An assignment of federal Crown debts which does not comply with that Act is ineffective as between the assignor and assignee and as against the Crown. Consequently, the Lender would not have a valid security interest in federal Crown debts unless that Act is complied with.
13. The federal laws of Canada require or permit notices, filings or registrations to be made or other steps or actions to be taken in order to preserve, perfect or protect security interests in certain types of property, including, without limitation, rolling stock, vessels registered under the *Canada Shipping Act, 2001*, patents, trade-marks and copyrights. To the extent that security interests are created by the Security in any of that property, then notices, filings or registrations under those laws may be necessary or desirable in order to preserve, perfect or protect those security interests. We have not searched for the existence of any interests or rights against that property under any of those federal laws, and accordingly we express no opinion as to the creation of security interests in that property.
14. The PPSA imposes certain obligations on secured creditors which cannot be varied by contract and which may also affect the enforcement of certain rights and remedies contained in the Security to the extent that those rights and remedies are inconsistent with or contrary to the PPSA.
15. We express no opinion as to the enforceability of any provision of the Security which requires the Borrower to pay, or to indemnify the Lender for, the costs and expenses of the Lender in connection with judicial proceedings, since those provisions are subject to the discretion of the court to determine by whom and to what extent those costs should be paid.
16. We express no opinion on any provision in the Security which:
 - (a) purports to restrict the access to, or waive the benefit of, statutory, legal or equitable rights, remedies or defences;
 - (b) limits rights of set-off otherwise than in accordance with applicable law;

- (c) states that amendments or waivers of or with respect to the Security that are not in writing will be ineffective;
 - (d) purports to bind or affect, or confer a benefit upon, persons who are not parties to the Security;
 - (e) purports to exculpate a party from a liability or duty otherwise owed by it to another party; or
 - (f) provides that a certificate or a similar document will be treated as conclusive, final or binding.
17. The enforceability of any provision in the Security which:
- (a) purports to sever any provision which is invalid or unenforceable under applicable law without affecting the validity or enforceability of the remainder of the relevant Security;
 - (b) stipulates or limits the level of damages to which a party is entitled;
 - (c) selects the jurisdiction whose laws are to apply or where a dispute is to be resolved;
- is subject to the discretion of a court.
18. We express no opinion as to licences, permits or approvals that may be required in connection with the enforcement of the Security by the Lender or by a person on its behalf, whether such enforcement involves the operation of the business of the Borrower or a sale, transfer or disposition of their respective property and assets.
19. We express no opinion as to any Security Interests with respect to any property of the Borrower that is transformed in such a way that it is not identifiable or traceable, or any proceeds of property of the Borrower that are not identifiable or traceable.
20. We express no opinion as to any Security Interests in any of the circumstances described in section 4 of the PPSA, in respect of which the PPSA is stated to have no application.
21. We express no opinion as to the validity of the Security Interests: (i) in any Collateral consisting of a receivable, license, approval, privilege, franchise, permit, lease or agreement (collectively, "**Special Property**") to the extent that the terms of the Special Property or any applicable law prohibit its assignment or the granting of security interests in it, or require, as a condition of such assignment or grant, a consent, approval or other authorization or registration which has not been made or given, (ii) in permits, quotas or licenses which are held by or issued to the Borrower, or (iii) in growing crops.
22. If the GSA, as defined in Schedule A, creates a mortgage, charge or security interest in or against real property or leases of real property or in property which is now or may become a

- fixture, or in a right to payment under a lease, mortgage or charge of real property, the enforceability of that mortgage, charge or security interest may be adversely affected by the failure of the Lender to register the GSA, that mortgage, charge or security interest or other notices in respect of them against title to the property of the Borrower in the appropriate land registry, land titles or land title office.
23. The enforceability of the Security Interests in accounts or chattel paper as against an account debtor of the Borrower is subject to notice of the Security Interest and a direction to pay to the Lenders being given to that account debtor, the terms of the contract between the Borrower and that account debtor and any defence or claim arising out of the contract or a closely connected contract, and any other defence or claim of that account debtor against the Borrower accruing before the account debtor has knowledge of the Security Interest. Further, the Security Interests will not be binding on that account debtor to the extent that the debt or account is paid or otherwise discharged before notice of the Security Interests is given to that account debtor, together with a direction to pay the account or debt to the Lender.
 24. Notwithstanding that the Security Interests have been perfected by registration under the PPSA, the Security Interests in:
 - (a) investment property, as that term is defined in the PPSA, will be defeated by certain claimants obtaining control of that property in the circumstances described in the PPSA or in the *Securities Transfer Act* (British Columbia)];
 - (b) instruments, chattel paper, documents of title or money, as those terms are defined in the PPSA, will be defeated by certain claimants obtaining possession of that property in the circumstances described in the PPSA or the *Bills of Exchange Act* (Canada); and
 - (c) goods (as defined in the PPSA) will be defeated by certain claimants to whom the Borrower sells or leases those goods in the ordinary course of business in the circumstances described in the PPSA.
 25. The enforceability of the Security Interests in accounts or chattel paper as against each account debtor ("**Account Debtor**") of the Borrower is subject to notice of those Security Interests and a direction to pay to the Lender being given to each Account Debtor, the terms of the contract between the Borrower and the Account Debtor and any defence or claim arising out of the contract or a closely connected contract and any other defence or claim of the Account Debtor against the Borrower accruing before the Account Debtor has knowledge of the Security Interest. Further, the Security Interest will not be binding upon the Account Debtor to the extent that the debt or account is paid or otherwise discharged before notice of the Security Interest is given to the Account Debtor, together with a direction to pay the debt or account to the Lender.
 26. The financing statements registered under the PPSA to perfect the Security Interests do not list serial numbered goods (as that term is defined in the PPSA and regulations under the

PPSA) by serial number (as that term is defined in the PPSA), and accordingly a buyer or lessee of any of those goods which are classified as equipment (as defined in the PPSA) will take them free of the Security Interests if the buyer or lessee bought or leased them without knowledge of the Security Interests.

This opinion is solely for the benefit of its addressees in connection with the Security. This opinion may not be relied upon in any manner by any other person and may not be disclosed, quoted, filed with a governmental agency or otherwise referred to without our prior written consent.

Yours truly,

Gowling Lafleur Henderson LLP

SCHEDULE A

SECURITY

Borrower Security

First Loan Security

1. \$25,360,000.00 Form B Mortgage and Assignment of Rents executed by the Borrower, as mortgagor, and Kingsway Arms Management Services Inc., Kingsway Arms Holdings Inc., Kingsway Arms Holdings B.C. Ltd., Patrick Byrne, Graham Parker, Chaplin Ventures Ltd., Colter Investments (GP) Ltd., Colter Investments LP and 0780293 B.C. Ltd., as the covenantors (collectively, the "**Covenantors**") in favour of the Lender and registered in the LTO on February 7, 2007 under registration numbers BB465267 and BB465268 against the title to the Lands (the "**First Mortgage**").
2. General Security Agreement (the "**First Loan GSA**") dated January 17, 2007 made by the Borrower, as debtor, in favour of the Lender, as secured party.
3. An Assignment of Rights Under Contracts from the Borrower in favour of the Lender executed by the Borrower on January 17, 2007 in respect of those Rights, Plans and Contracts (as defined therein).
4. A Deposit Agreement dated January 17, 2007 from the Borrower in favour of the Lender in respect of the \$260,000.00 Deposit (as defined therein) held by the Lender.
5. A Cost Overrun and Completion Agreement from the Borrower and each of the Covenantors in favour of the Lender in respect of any Cost Overruns (as defined therein), dated January 19, 2007.
6. An Assignment of Licences and Health Authority Agreements dated January 17, 2007 from the Borrower in favour of the Lender in respect of certain Health Authority Agreements (as defined therein).

Second Loan Security

7. \$3,700,000.00 Form B Mortgage and Assignment of Rents executed by the Borrower, as mortgagor, and the Covenantors in favour of the Lender and registered in the LTO on February 7, 2007 under registration numbers BB465270 and BB465271 against title to the Lands (the "**Second Mortgage**", which together with the First Mortgage are together the "**Mortgages**").
8. General Security Agreement (the Second Loan GSA, and together with the First Loan GSA are together the "**GSA**") dated January 17, 2007 made by the Borrower, as debtor, in favour of the Lender, as secured party.

9. An Assignment of Rights Under Contracts from the Borrower in favour of the Lender executed by the Borrower on January 17, 2007 in respect of those Rights, Plans and Contracts (as defined therein).
10. A Deposit Agreement dated January 17, 2007 from the Borrower in favour of the Lender in respect of the \$86,000.00 Deposit (as defined therein) held by the Lender.
11. A Cost Overrun and Completion Agreement from the Borrower and each of the Covenantors in favour of the Lender in respect of any Cost Overruns (as defined therein), dated January 19, 2007.
12. An Assignment of Licences and Health Authority Agreements dated January 17, 2007 from the Borrower in favour of the Lender in respect of certain Health Authority Agreements (as defined therein).

SCHEDULE B**THE LANDS**

Parcel Identifier: 017-490-146

Lot A Section 20 Township 17 New Westminster District Plan LMP1741

SCHEDULE C

PPSA SEARCH RESULTS

Secured Party	Date of Registration/ Base Registration Number/ Expiry Date	Brief Description of Collateral
The Lender	Date of Registration: January 31, 2007 (amended January 17, 2011 under Reg. No. 956248F and renewed January 17, 2011 under Reg. No. 956264F) Base Registration No.: 479041D Expiry Date: January 31, 2017	All presently owned and after acquired personal property of the Borrower situate on or used in connection with or arising from or out of the Lands and Proceeds. A deposit in the principal sum of \$260,000.00 plus interest thereon pledged to the Secured Party and proceeds therefrom. All rights under all contracts, including building permits, construction contracts and contracts for the provision of services relating to the development of the Lands and all licences and operating funding agreements relating to the independent living facility operated on the Lands.
The Lender	Date of Registration: January 31, 2007 Base Registration No.: 479136D Expiry Date: January 31, 2017	All presently owned and after acquired personal property of the Borrower situate on or used in connection with or arising from or out of the Lands and Proceeds. A deposit in the principal sum of \$86,000.00 plus interest thereon pledged to the Secured Party and proceeds therefrom. All rights under all contracts, including building permits, construction contracts and contracts for the provision of services relating to the development of the Lands and all licences and operating funding agreements relating to the independent living facility operated on the Lands.

SCHEDULE D

TITLE SEARCH

The Borrower is the registered owner of the Lands.

(a) **LEGAL NOTATIONS:**

PERSONAL PROPERTY SECURITY ACT NOTICE, SEE BB465269, EXPIRES: N/A

PERSONAL PROPERTY SECURITY ACT NOTICE, SEE BB465272, EXPIRES: N/A

THIS TITLE MAY BE AFFECTED BY A PERMIT UNDER PART 26 OF THE LOCAL GOVERNMENT ACT, SEE BV66362 EXPIRES 2005/02/21

THIS TITLE MAY BE AFFECTED BY A PERMIT UNDER PART 26 OF THE LOCAL GOVERNMENT ACT, SEE BX311528 EXPIRES 2007/02/17

HERETO IS ANNEXED EASEMENT BE285794 (SEE BE247061) OVER (PLAN LMP1762) LOT B PLAN LMP1741

(b) **CHARGES, LIENS AND INTERESTS:**

STATUTORY RIGHT OF WAY BE76277

REGISTERED OWNER OF CHARGE: DISTRICT OF MISSION

COVENANT BE76280

REGISTERED OWNER OF CHARGE: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

COVENANT BE76282

REGISTERED OWNER OF CHARGE: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

EASEMENT BE24706

APPURTENANT TO LOT B PLAN LMP1741

COVENANT BN43344

REGISTERED OWNER OF CHARGE: DISTRICT OF MISSION

EASEMENT BR308003

APPURTENANT TO THE COMMON PROPERTY OF STRATA PLAN LMS311 AND STRATA LOTS 1 TO 68 STRATA PLAN LMS311

COVENANT BA598187

REGISTERED OWNER OF CHARGE: HOMEOWNER PROTECTION OFFICE

MORTGAGE BB465267
REGISTERED OWNER OF CHARGE: THE LENDER

ASSIGNMENT OF RENTS BB465268
REGISTERED OWNER OF CHARGE: THE LENDER

MORTGAGE BB465270
REGISTERED OWNER OF CHARGE: THE LENDER

ASSIGNMENT OF RENTS BB465271
REGISTERED OWNER OF CHARGE: THE LENDER

PRIORITY AGREEMENT BB373501
GRANTING BB465267 PRIORITY OVER BB465270 AND BB465271

PRIORITY AGREEMENT BB373502
GRANTING BB465268 PRIORITY OVER BB465270 AND BB465271

STATUTORY RIGHT OF WAY BB849135
REGISTERED OWNER OF CHARGE: SHAW CABLESYSTEMS LIMITED

JUDGMENT BB1293106
REGISTERED OWNER OF CHARGE: THE CROWN IN RIGHT OF CANADA

CERTIFICATE OF PENDING LITIGATION BB1933889
REGISTERED OWNER OF CHARGE: THE LENDER

No. H110166
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

1397225 ONTARIO LIMITED

PETITIONER

AND:

682202 B.C. LTD., KINGSWAY ARMS MANAGEMENT SERVICES INC., KINGSWAY ARMS HOLDINGS INC., KINGSWAY ARMS HOLDINGS B.C. LTD., PATRICK BYRNE also known as PATRICK CHARLES BYRNE, GRAHAM PARKER also known as GRAHAM M. PARKER also known as GRAHAM MELTON PARKER, CHAPLIN VENTURES LTD., MICHAEL CHAPLIN also known as MICHAEL R. CHAPLIN, COLTER INVESTMENTS (GP) LTD., COLTER INVESTMENTS LP also known as COLTER INVESTMENTS LIMITED PARTNERSHIP, 0780293 B.C. LTD. and HER MAJESTY THE QUEEN IN RIGHT OF CANADA

RESPONDENTS

AFFIDAVIT

GOWLING LAFLEUR HENDERSON LLP

Barristers & Solicitors
Bentall 5, Suite 2300,
550 Burrard Street
Vancouver, BC V6C 2B5

Tel. No. 604.683.6498
Fax No. 604.683.3558

File No. V37590

JIM/msh