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JUDICIAL CENTRE
OF CALGARY

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COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFF

HILLSBORO VENTURES INC.

DEFENDANTS

**BAHADUR GAIDHAR also known as BOB
GAIDHAR, YASMIN GAIDHAR, AND CEANA
DEVELOPMENT WESTWINDS INC.**

DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT

Dentons Canada LLP
Bankers Court
15th Floor, 850 - 2nd Street S.W.
Calgary, Alberta T2P 0R8

Attention: Derek Pontin / John Regush
Ph. (403) 268-6301 / 7086 Fx. (403) 268-3100
File No.: 559316-3

NOTICE TO DEFENDANTS

You are being sued. You are a defendant.

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

Statement of facts relied on:

Parties

1. The Plaintiff, Hillsboro Ventures Inc. ("**Hillsboro**" or the "**Plaintiff**"), is a corporation registered pursuant to the laws of Alberta and has offices in the Calgary, Alberta.
2. The Defendant, Ceana Development Westwinds Inc. ("**Westwinds**"), is a corporation incorporated pursuant to the laws of Alberta and carrying on business and having offices in Calgary, Alberta.
3. The Defendant, Bahadur Gaidhar also known as Bob Gaidhar ("**Bahadur**") is an individual ordinarily resident in Calgary, Alberta.

4. The Defendant, Yasmin Gaidhar ("**Yasmin**", collectively with Westwinds and Bahadur the "**Defendants**" and each a "**Defendant**"), is an individual ordinarily resident in Calgary, Alberta.

The Sunridge Loans and Mortgages

5. On the application of Cean Development Sunridge Inc. ("**Sunridge**") the Plaintiff agreed to extend to Sunridge three mortgage loan facilities:

- (a) a Formal Loan Commitment dated January 2, 2017 providing for a loan with maximum principal of \$3,000,000 at a rate of 18% per annum ("**Facility 1**");
- (b) an Additional Loan Commitment dated July 5, 2017 providing for a loan with maximum principal of \$2,000,000 at a rate of 18% per annum ("**Facility 2**");
- (c) an Additional Loan Commitment dated October 9, 2017 providing for a loan with maximum principal of \$1,500,000 with interest thereon of 18% per annum for twelve months and 30% per annum for the thirteenth month and thereafter ("**Facility 3**");

(collectively, the "**Loan Agreements**").

6. To secure the due payment and discharge of all present and future indebtedness and liability of Sunridge to the Plaintiff for the Loan Agreements, Sunridge executed three Mortgages in favour of the Plaintiff.
7. Facility 1 is secured with a mortgage dated January 6, 2017 in principal amount \$3,000,000 accruing interest at a rate of 18% per annum ("**Mortgage 1**") charged against the lands legally described as:

Plan 9811891
Block 8
Lot 1
Excepting Thereout All Mines And Minerals

(the "**Lands**");

8. Facility 2 is secured with a mortgage dated July 28, 2017 in principal amount \$2,000,000 accruing interest at a rate of 18% per annum ("**Mortgage 2**") charged against the Lands; and
9. Facility 3 is secured with a mortgage dated November 1, 2017 in principal amount \$1,500,000 accruing interest at a rate of 18% per annum from October 10, 2017 to October 8, 2018 and thereafter 30% per annum ("**Mortgage 3**", collectively with Mortgage 1 and Mortgage 2, the "**Mortgages**") charged against the Lands.

The Guarantees

10. To secure the due payment and discharge of all present and future indebtedness and liability of Sunridge to the Plaintiff, Bahadur, Yasmin, and Westwinds (collectively, the "**Guarantors**" and each a "**Guarantor**") executed the following guarantees in favour of the Plaintiff:
 - (a) on or about March 1, 2017, Bahadur guaranteed the payment, on demand, of the present and future obligations of Sunridge to the Plaintiff under Mortgage 1 (the "**First Bahadur Guarantee**");
 - (b) on or about July 28, 2017, Bahadur guaranteed the payment, on demand, of the present and future obligations of Sunridge to the Plaintiff under Mortgage 2 (the "**Second Bahadur Guarantee**");
 - (c) on or about November 1, 2017, Bahadur guaranteed the payment, on demand, of the present and future obligations of Sunridge to the Plaintiff under Mortgage 3 (the "**Third Bahadur Guarantee**"), collectively with the First Bahadur Guarantee and Second Bahadur Guarantee, the "**Bahadur Guarantees**";
 - (d) on or about November 1, 2017, Yasmin guaranteed the payment, on demand, of the present and future obligations of Sunridge to the Plaintiff under Mortgage 1 (the "**Yasmin Guarantee**"); and
 - (e) on or about June 6, 2018 the Defendant, Westwind, guaranteed the payment, on demand, of all present and future debts and liabilities of Sunridge to the Plaintiff with interest thereon at a rate of 18% (the "**Westwind Guarantee**", collectively with the Bahadur Guarantees and Yasmin Guarantee, the "**Guarantees**" and each a "**Guarantee**").
11. It is a term of each of the Guarantees that:
 - (a) the Guarantor guarantees repayment of all charges, expenses, and costs, including legal fees on a solicitor client full indemnity basis, of the Plaintiff incurred in association with realizing on the Guarantees or security;
 - (b) the Guarantee shall be governed by the law of the Province of Alberta; and
 - (c) any action or proceeding arising out of the Guarantee may be instituted in the Province of Alberta.

The Security

12. To secure their obligations to the Plaintiff, Bahadur and Yasmin jointly provided the Plaintiff with:

- (a) a Mortgage dated November 1, 2017 (the "**Gaidhar Mortgage 1**") charging the property legally described as:

Plan 01127110

Lot 1

Excepting Thereout All Mines and Minerals

(the "**Gaidhar Lands**").

securing repayment of amounts owing under the First Bahadur Guarantee up to the principal sum of \$3,000,000 plus interest and all costs, charges and expenses, including legal fees and disbursements as between a solicitor and his own client on a full indemnity basis as set out in the Gaidhar Mortgage 1; and

- (b) a Mortgage dated November 1, 2017 charging the Gaidhar Lands ("**Gaidhar Mortgage 2**", together with the Gaidhar Mortgage 1, the "**Gaidhar Mortgages**") securing repayment of amounts owing under the Third Bahadur Guarantee and Yasmin Guarantee up to the principal sum of \$1,500,000 plus interest and all costs, charges and expenses, including legal fees and disbursements as between a solicitor and his own client on a full indemnity basis as set out in the Gaidhar Mortgage 2.

13. To secure its obligations to the Plaintiff, Westwinds provided the Plaintiff with a Mortgage dated June 6, 2018 (the "**Westwinds Mortgage**") charging the property legally described as:

Plan 951298

Block 3

Lot 8

Excepting Thereout All Mines and Minerals.

(the "**Westwinds Lands**")

securing repayment of amounts owing under the Westwinds Guarantee up to the principal sum of \$8,500,000.00 plus interest and all costs, charges and expenses, including legal fees and disbursements as between a solicitor and his own client on a full indemnity basis as set out in the Westwinds Mortgage.

14. Pursuant to various agreements with the Plaintiff, each of the Guarantors have assigned and postponed to the Plaintiff all indebtedness owing to each of them by Sunridge and all related

security (collectively, the “**Assignments and Postponements**”, collectively with the Gaidhar Mortgages and Westwinds Mortgage, the “**Security**”).

Default and Demands

15. On or about early 2018, Sunridge was in default of its agreements with the Plaintiff, including but not limited to by failing to make required payments of interest and principal (the “**Event of Default**”).
16. On or about May 16th, 2018, the Plaintiff entered into an agreement with Sunridge and the Defendants to forbear upon the exercise of its rights and remedies, subject to Sunridge and the Defendants satisfying certain conditions, which agreement has been amended and extended from time to time (the “**Forbearance Agreement**”).
17. Pursuant to the terms of the Forbearance Agreement, the Defendants have, among other things:
 - (a) agreed to the validity and enforceability of the Loan Agreement, the Mortgages, the Guarantees, and the Security; and
 - (b) agreed they are each indebted to the Plaintiff pursuant to the terms of these documents and the Forbearance Agreement.
18. Sunridge and the Defendants have failed to satisfy the conditions of the Forbearance Agreement and additionally the Forbearance Agreement has expired through the effluxion of time. As such, the terms of the Forbearance Agreement are presently enforceable.
19. On or about November 26, 2018 the Plaintiff issued demands for payment to the Defendants in respect of their liabilities under their respective Guarantees and issued a Notice of Intention to Enforce a Security on Westwinds.
20. The Defendants have failed or refused, and continue to fail or refuse, to pay, in whole or in part, their liabilities to the Plaintiff, which are fully due, owing and payable.

Indebtedness Owing

21. There is due and owing to the Plaintiff as of January, 2019:
 - (a) by Bahadur:
 - (i) \$3,757,427 plus all plus all accruing interest and all outstanding and accruing interest, fees, and expenses pursuant to the First Bahadur Guarantee;

- (ii) \$2,477,775 plus all plus all accruing interest and all outstanding and accruing interest, fees, and expenses pursuant to the Second Bahadur Guarantee; and
- (iii) \$1,763,602 plus all plus all accruing interest and all outstanding and accruing interest, fees, and expenses pursuant to the Third Bahadur Guarantee; and
- (b) by Yasmin \$3,757,427 plus all plus all accruing interest and all outstanding and accruing interest, fees, and expenses pursuant to the Yasmin Guarantee; and
- (c) by Westwinds \$7,998,804 plus all plus all accruing interest and all outstanding and accruing interest, fees, and expenses pursuant to the Westwinds Guarantee.

Foreclosure

- 22. Under the Gaidhar Mortgages, Bahadur and Yasmin covenanted to pay the principal sum, interest, charges, and fees owing to the Plaintiff.
- 23. Under the Gaidhar Mortgages it is provided that if default is made in any of the covenants or agreements, expressed or implied, the whole of the money secured by each of the Gaidhar Mortgages shall at the option of the Plaintiff become due and payable. The Plaintiff has exercised and hereby exercises that option.
- 24. The Plaintiff says that the default herein of Bahadur and Yasmin has not been due to causes beyond Bahadur and Yasmin's control and that having regard to the amount outstanding on the Gaidhar Mortgages and the value of the Plaintiff's security, the period of redemption in the judgment in this action should be shortened to one day.
- 25. Under the Westwinds Mortgage, Westwinds covenanted to pay the principal sum, interest, charge, and fees owing to the Plaintiff.
- 26. Under the Westwinds Mortgage it is provided that if default is made in any of the covenants or agreements, expressed or implied, the whole of the money secured by the Gaidhar Mortgage shall at the option of the Plaintiff become due and payable. The Plaintiff has exercised and hereby exercises that option.
- 27. The Plaintiff says that the default herein of Westwinds has not been due to causes beyond Westwinds' control and that having regard to the amount outstanding on the Westwinds Mortgage and the value of the Plaintiff's security, the period of redemption in the judgment in this action should be shortened to one day.

Service

28. The Guarantees and Security at issue were created in connection with the acquisition and operation of lands located in Alberta.
29. Westwinds is an Alberta company with registered offices and operations in Alberta.
30. Bahadur and Yasmin are individuals ordinarily resident in Alberta.
31. The Gaidhar Lands and Westwinds Lands are located in Alberta.
32. The Guarantees and Security were breached in Alberta.
33. The Plaintiff asserts a real and substantial connection of this claim to Alberta. The Plaintiff relies on these facts, and such others as may be proven, as grounds for service of this Statement of Claim on any Defendants not presently residing in Alberta.

Remedy sought:

34. The Plaintiff respectfully seeks:
 - (a) a declaration that the Guarantees and Security held by the Plaintiff are valid and enforceable against the Defendants;
 - (b) a declaration that Bahadur, Yasmin, and Westwinds are in default of their obligations to the Plaintiff under their respective Guarantees;
 - (c) judgment against each of the Guarantors for the maximum amounts under their respective Guarantees, plus interest thereon as set forth in the Guarantees or, in the alternative, as set forth in the *Judgment Interest Act*, RSA 2000, c J-1, as amended;
 - (d) a declaration as to the amounts owing under the Gaidhar Mortgages and Westwinds Mortgage with interest according to the terms of the Gaidhar Lands and Westwinds Lands and, in default of payment, sale or foreclosure and possession of the Gaidhar Lands and Westwinds Lands;
 - (e) an order for possession of the Gaidhar Lands and Westwinds Lands;
 - (f) an order for appointment of a receiver or receiver and manager over the Gaidhar Lands and Westwinds Lands;
 - (g) an order granting a period of redemption of one day or such other period as this Honourable Court may direct with respect to the Gaidhar Lands and Westwinds Lands;

- (h) an order allowing the Plaintiff or its duly authorized agent to be at liberty to enter the Gaidhar Lands and Westwinds Lands for the purposes of doing any and all things necessary to preserve the property, and for an order that the Plaintiff shall not be considered a mortgagee in possession or trespasser;
- (i) costs of this action on a solicitor and own client full indemnity basis or such other basis as this Honourable Court may deem just and appropriate in the circumstances;
- (j) waiver of the requirement for the parties to engage in a dispute resolution process as contemplated by Rule 4.16 of the *Alberta Rules of Court*, Alta Reg 124/2010; and
- (k) such further and other relief as this Honourable Court may deem just.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.