Relief Sought

1. Investit Financial Inc. ("**Investit**") seeks the following Orders:

   (a) an Order terminating the CCAA proceedings;

   (b) an Order providing for the allocation of the DIP Charge;

   (c) an Order lifting the stay of proceedings, contained in the Initial Order as extended and amended and as provided in the Order made October 8, 2009 appointing Ernst & Young LLP as Receiver, either generally or in respect of the lands and premises subject to the mortgage in favour of Investit;

   (d) an Order limiting the amount to be drawn under the DIP Facility to $920,000; and

   (e) an Order that any amounts drawn on the DIP Facility in excess of $920,000 be secured by a charge that ranks in priority subsequent to all existing mortgages, charges and encumbrances.

2. Similar relief is sought by 1533021 Ontario Inc. ("**153**"), the mortgagee of the Orillia property.

Chronology of Proceeding

3. On August 10, 2009, the Initial Order was granted by Madam Justice Kent. The Initial Order included an order for DIP financing in the amount of $1 million, which financing was to be secured by a charge on all the debtors' assets ranking in priority ahead of existing mortgages, charges and encumbrances.

4. On September 4, 2009, Madam Justice Kent granted an extension of the stay of proceedings to October 2, 2009.

5. On October 2, 2009, Madam Justice Kent granted a brief extension of the stay until October 8, 2009.

6. On October 8, 2009, Mr. Justice LoVecchio made several orders including extending the CCAA stay until December 8, 2009, extending the DIP Facility to $2.5 million and appointing

the Monitor, Ernst & Young Inc., as Receiver-Manager. At the hearing, the Court also dismissed Investit's application to lift they stay in respect of its foreclosure proceeding or alternatively, to allocate the DIP Charge such that it did not prime Investit.

7. On October 16, 2009, Mr. Justice LoVecchio made an Order regarding the notices to be provided by the Receiver.

8. On October 27, 2009, Investit filed a Notice of Appeal in respect of the Orders made on October 8, 2009.

9. On November 4, 2009, Investit applied to the Court of Appeal for a stay of paragraph 4 of the October 8, 2009 Order which extended the DIP Facility to $2.5 million. At the request of the Court and by the consent of the parties, the stay was granted until November 13, 2009 when the stay application was to be heard by the Court.

10. Also on November 4, 2009, Fisgard Capital Corporation ("**Fisgard**") applied to vacate the CCAA proceeding, or alternatively to lift the stay vis-à-vis Bosun's Holdings Ltd. and 0675816 B.C. Ltd. and to declare the that the assets of those companies was not charged by the DIP Facility. Mr. Justice Wilkins granted the alternative relief sought such that there is no stay of proceedings in respect of those companies and DIP Charge does not charge any of the property owned by either of those companies.

11. On November 13, 2009, Madam Justice Paperny heard Investit's application for a stay pending leave to appeal, which application was denied in part in reliance on the table at page 35 to the Monitor's Third Report.

12. Also on November 13, 2009, Mr. Justice Horner varied the Order made on October 8, 2009 so that the DIP Lender had the ability to waive the conditions precedent to the DIP Facility which conditions had not been met.

13. On November 23, 2009, 153 applied for approval of sale of that property for $1.7 million and for an Order that the DIP Charge does not charge that property. The sale required Court approval by November 24, 2009. Madam Justice Kent adjourned the matter until November 26,

2009 at the request of the Receiver on the basis that the subject matter of the purchase contract was ambiguous. The sale fell through such that the continuation of the hearing did not proceed.

14. On November 27, 2009, three applications came before Mr. Justice LoVecchio. The first application was by the debtors and the Receiver/Manager regarding the error discovered in the Third Monitor's Report relied on by His Lordship at the October 8th hearing. The other applications were by Investit and by 153 to terminate the CCAA proceedings, lift the stay, vary the Receivership Order and allocate the DIP Charge. At the suggestion of counsel for Investit, all three matters were adjourned for hearing by Madam Justice Kent on December 4, 2009. In adjourning matters, Mr. Justice LoVecchio ordered the Receiver to continue to hold the DIP funds advanced but not used to repay the previous DIP Lender pending the determination of the December 4th hearing. His Lordship also directed that the matter was to proceed *de novo* before Her Ladyship based on the facts now available.

15. As a result of the order made on November 27, 2009, the parties agreed to adjourn Investit's application for leave to appeal the October 8th orders and for a stay of proceeding if leave is granted, which hearing was scheduled to be heard on December 1, 2009.

Facts

16. The 21 CCAA Applicants are in the business of financing and acquiring lands to be developed by third parties. The business model involved Shire International Real Estate Investments Ltd. ("**Shire**") locating and securing a potential property for acquisition by payment of a deposit for the purchase of the lands. It would then finance the purchase of the property by monies lent to it by mortgage companies such as Investit as well as by monies raised from investors. About $65 million was raised from investors and $19 million from mortgagees. (See Affidavit of C. Couch, sworn on August 7, 2009, paragraphs 4 and 7).

17. A project company 40% owned by Shire was supposed to be used for each project. Notwithstanding the existence of those project companies (the other 20 Respondent companies) and the fact that monies were raised on a segregated basis, the funds were used on a consolidated basis with funds requisitioned between projects as Ms. Couch and the management saw fit. (See Affidavit of C. Couch, sworn on August 7, 2009, paragraphs 9 and 19).

18. The Initial CCAA Order was made on August 10, 2009. The filing was precipitated by an Alberta Securities Commission investigation that resulted in Cease Trade Orders against Shire and by a class action alleging unjust enrichment, breach of contract, breach of trust, breach of fiduciary duty, conversion and conspiracy. As a result, the CCAA Applicants could no longer raise funds and thus could no longer execute their business model. (See Affidavit of C. Couch, sworn on August 7, 2009, paragraphs 15-16).

19. The "restructuring" efforts to date have consisted primarily of an investigation conducted by the Monitor/Receiver and a legal analysis conducted by counsel for the CCAA Applicants to determine:

(a) the source and use of funds by Shire and the project companies;

(b) the potential stakeholders of each company;

(c) the balance of intercompany receivables; and

(d) the assets, their encumbrances and their ownership.

(See Monitor's Third Report, paragraph 240)

20. The requirement in section 3 of the CCAA that the applicant have indebtedness of at least $5 million was presented in respect of the Shire Group as a whole and not in respect of each applicant company. (See Affidavit of C. Couch, sworn on August 7, 2009, paragraph 28).

21. Regarding the DIP Charge, Ms. Couch stated that fairness concerns were addressed by the combination of significant equity in the group's assets coupled with the potential for a secured creditor to be released if the facts so warranted. The relevant extract is set out below:

> "On the basis that Shire, within the last year, paid approximately $70,000,000 for property on which there is approximately $40,00,000 of secured debt, I do not believe that granting a super-priority DIP financing in the amount required will prejudice secured creditors. To the extent that there is such prejudice, I believe that that prejudice is adequately addressed by allowing those creditors the opportunity to appear in court to argue their particular circumstances."

(See Affidavit of C. Couch, sworn on August 7, 2009, paragraph 39)

22. The Monitor's Third Report had a table at page 35 (the **"Table"**) indicating the properties of the Shire Group had equity of approximately \$16.9 million. This calculation was based upon "purchase price/appraised value" of the respective properties, less the amount owing on third party mortgage, less the amount owing on mortgage units. The Table is reproduced below.

Shire Group
Property Summary

	Project analysis				Investors		
Project	Purchase price/appraised value (note 1)	Third party mortgages	Mortgage Units	Purchase price less mortgages	Class B Preferred Bonds	Mortgage Units	Total
	a	b	c	a + b + c	d	e	d+e
Bearspaw	9,000,000	(8,100,000)	-	900,000	20,239,300	-	20,239,300
Chemainus	780,000	-	-	780,000	6,571,300	-	6,571,300
Ft McMoney	7,000,000	(1,900,000)	-	5,100,000	7,762,403	-	7,762,403
Ft McMoney II	9,600,000	-	(6,490,000)	3,110,000	-	6,490,000	6,490,000
Halama Gardens	-	-	-	-	2,216,644	-	2,216,644
Hawaii Fund	-	-	-	-	1,396,500	-	1,396,500
Orillia	2,900,000	(1,900,000)	-	1,000,000	390,100	-	390,100
Shire Capital	-	-	-	-	-	-	-
Skaha Lake	2,500,000		-	2,500,000	8,423,593	-	8,423,593
Tsehum Harbour	3,500,000	(2,900,000)	-	600,000	4,614,349	-	4,614,349
MWS	3,000,000	-	(11,024,900)	-	-	11,024,900	11,024,900
Project Companies	38,280,000	(14,800,000)	(17,514,900)	13,990,000	51,614,189	17,514,900	69,129,089
Shire	6,344,000	(3,635,000)	-	2,709,000			
Total	44,624,000	(18,435,000)	(17,514,900)	16,699,000	51,614,189	17,514,900	69,129,089

Note 1 - Bearspaw estimated value is the mid point in the estimated value as at September 15, 2009 determined by Tony Omura
- Fort McMoney market value as at September 9, 2008 determined by Tony Omura appraisal dated October 10, 2008.
- Fort McMoney II based on conditional purchase and sale agreement

(See Monitor's Third Report)

23. The Monitor cautioned against relying on the Table noting that "the above information is based on the Applicants' books and records and is for illustrative purposes". (See Monitor's Third Report, paragraph 60).

24. At paragraph 6 of the Third Report, the Monitor wrote as follows:

> In preparing this Third Report, the Monitor has relied upon unaudited financial information, the Applicants records and discussions with management of the Applicants. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such information and, accordingly, the Monitor expresses no opinion or other form of assurance in respect of such information contained in this report …

This is Not a Proper Case for CCAA

25. Shire's assets consist of essentially raw undeveloped land.

26. Shire has no ongoing business activity.

27. Shire has only 2 employees.

28. Its management has been entirely supplanted by the appointment of the Monitor as the Receiver of the companies.

29. The companies' main business was raising funds from the public to invest in raw land. Its business has been effectively terminated by Cease Trade Order issued by the Alberta Securities Commission.

30. There is no real compromise or arrangement that is going to be put forward by the Receiver/Monitor. The Receiver/Monitor is simply trying to determine the best method of selling the assets.

31. The use of the CCAA to obtain a stay in the absence of a real plan was disapproved by the British Columbia Court of Appeal in *Cliffs Over Maple Bay v. Fisgard* 2008 BCCA 327 at paragraphs 26 to 31.

32. It is also extremely unlikely that any compromise could be made to first mortgage holders. The first mortgage holders will simply want to assert their priority position to realize on the lands, the subject of their mortgage.

33. In cases such as this, foreclosure proceedings are the appropriate judicial remedy to deal with the sale of these assets. (See *Re Octagon Properties Group Ltd.* 2009 ABQB 500 and *Re Marine Drive Properties Ltd.* 2009 BCSC 1083).

34. The decision of this Honourable Court in *Re Octagon Properties Group Ltd.* is directly on point. The factual similarities are striking. In both cases:

(a) the applicant debtors were in the same business, namely the acquisition and resale of undeveloped properties (see ¶1);

(b) neither had any employees (see ¶7);

(c) some of the properties were in foreclosure at the time of the initial application (see ¶3); and

(d) the applicants suggested there was no prejudice to secured creditors based upon alleged equity in one or more of their properties (see ¶6).

35. The facts in Octagon ought to have been more compelling than those before this Court. The Dip Facility in Octagon would have been used to pay property taxes and arrears owing on the properties (see ¶3) and thus would have potentially benefited secured creditors in the event of a shortfall on the security. By contrast, Investit and the other secured creditors receive no benefit and have no interest in the activities funded by the DIP Facility in this proceeding.

36. In Octagon, the Court agreed that the matter was not appropriate for CCAA and that similar to the Court in *Marine Drive Properties Ltd.* 2009 BCSC 1083 the secured lenders would prefer and ought to be entitled to simply exercise their remedies under their security. In that regard, the Court noted that those proceedings were also supervised by the Court and that the debtors could obtain relief in the foreclosure proceedings if such relief was warranted.

37. Finally, the Court noted that there was "no other reason for CCAA relief such as the existence of a large number of employees or significant unsecured debt in relation to secured debt". Here, there are only 2 employees and no societal or community interest in seeing this CCAA proceedings continued. The proportion of unsecured to secured debt alone, however, does not distinguish Octagon from the facts in this case. The proportion of secured to unsecure debt would be relevant if there was significant equity in the properties and most if not all of the debt was unsecured. In such circumstances, the class of creditors with the real economic stake in the proceeding would be the unsecured creditors and accordingly their interests would be entitled to more attention. Here the secured debt owing to third party mortgagees is significant (approximately $19 million worth) and consumes most if not all of the value of the properties of the debtor companies. As such, the economic interest in this proceeding lies with the secured creditors. This factor thus supports that the CCAA proceedings ought to be terminated if not

supported by the secured creditors, which it isn't. The secured creditors should be entitled to exercise the remedies they bargained for so should they choose to do so.

38. The use of the CCAA to effect a liquidation over the objections of the secured creditors is not supported by case law. (See *Re Fracmaster Ltd.* (1999) 11 C.B.R. 4^{th} 204).

39. The circumstances of this case do not warrant the continuation of the CCAA process:

(a) there are no jobs at risk;

(b) there is no community or societal interest at issue;

(c) there is no prospect of the business being revived;

(d) none of the first mortgage holders would accept any compromise on their first mortgage position;

(e) the interest of Shire can be dealt with in the foreclosure proceeding.

The DIP Facility

40. This case is not appropriate case for the imposition of a priority DIP Financing Charge.

41. The test for DIP financing is set out in *Re United Used Auto & Truck Parts* (1999), 12 C.B.R. (4th) 144 (BCSC) at paragraphs 23-24, 26-29)

42. There must be "cogent evidence" that the benefit of the DIP financing outweighs the potential prejudice to the secured lenders.

43. The "benefit" must relate to maintaining or increasing the value of the business or the assets, i.e. like keeping the lights on, or by financing new inventory and creating receivables. See *1252206 Alberta Ltd. v. Bank of Montreal*, 2009 ABQB 355.

44. This is not the situation here. All of the DIP financing is being used to finance professional fees. The cash flow put forward by the debtor companies shows no revenue. No "value" is being added to the enterprise by virtue of the DIP financing.

45. It is not enough for the Petitioners to simply assert that there is "equity" to protect the secured lenders. That is not the appropriate test. A loss of priority by first mortgagees to a DIP lender, even if there is equity, is a serious prejudice to the secured lender. They lose their priority position for which they bargained (and upon which their lending rates were determined) and are made subject to being foreclosed by the priority DIP lender. In this case the DIP lender would be in a position to enforce its security when it matures in February, 2010. The DIP lender may seek to foreclose on the Bearspaw property putting Investit in the position of having to redeem a property which it may be unable to sell for a protracted period of time.

46. The test the Court must apply requires cogent evidence that the benefit of the DIP to the preservation or enhancement of the assets outweighs any potential prejudice to the secured lenders.

47. There is no evidence of any benefit to the assets in this case.

48. In the absence of a CCAA proceeding and the attendant stay, the underlying raw land will simply be sold by the secured lenders in a Court supervised foreclosure process.

49. The Receivership Order itself is extraordinary.

50. It supplants the management of the Petitioners and appoints the Monitor as the directing mind of the debtor companies. To that end, it puts the Receiver in an intractable conflict.

(a) Due to the comingling of funds between entities, the Receiver will be placed in a position of having to recover monies for the benefit of the creditors of one company and to the detriment of creditors of the other company in circumstances where the receiver owes a duty to act in the best interests of both groups of creditors

(b) While it would not be unheard for a Monitor originally appointed in CCAA proceeding to subsequently be appointed as Receiver once the CCAA proceedings ended, in the unusual circumstance where both proceedings continue concurrently, the Monitor necessarily loses its impartiality derived from it having no stake in the proceeding. The Monitor cannot be asked or expected to monitor and report to the Court on its own conduct.

51. The Receivership Order allows the Receiver to draw down on the CCAA authorized DIP financing to fund the costs of the receivership. The effect of this is to give the Receiver's borrowings priority over the secured lenders. Such a priority is contrary to well-established law and to the provisions of the Model Order. In the notes to the Model Order it states that:

> Pursuant to paragraph 16 of the Alberta Template Receivership Order, the Receiver is granted a Receiver's Charge as a first charge on the Property in priority to all security interests. Pursuant to paragraph 19 the Receiver's Borrowing Charge ranks just behind the Receiver's Charge and in priority to all security interests.
>
> The priority afforded by these provisions in appropriate where the Receiver has been appointed at the request, or with the consent or approval of the holders of all security interests in the Property (see *Robert F. Kowal Investments Ltd. et al*. v. *Deeder Electric Ltd.* (1976), 9 O.R. (2d) 84, 88 (C.A.)) (*"Kowal")*. The priority is also appropriate where the Receiver has been appointed to preserve or realize assets for the benefit of all interested parties, including secured creditors, or where the Receiver has expended money for the necessary preservation or improvement of the Property (*Kowal* at pages 89 and 91, respectively).
>
> If a Receiver has not been appointed at the request or with the consent or approval of the holder of a security interest, and if that security interest does not fall within one of the other exceptions (referred to above) in *Kowal*, then paragraphs 16 and 19 should be modified so that they do not provide for priority over such security interest holder.

52. Kowal involved the receivership of a partnership that owned and operated a carwash. When the partners were unable to agree on how the business was to be managed, one of the partners commenced proceedings to have the partnership dissolved and a receiver appointed, which order was made by consent. The order was subsequently varied to permit the receiver to borrow monies for the purpose of "protecting and preserving and selling the undertaking, property and assets of the partnership and carrying on the business and undertaking and for the purpose of paying presently existing mortgage payment as the fall due". The Receiver's borrowings were secured by a charge on the assets. Of the $25,000.00 borrowed, $24,043.26 was used to make mortgage payments. Upon its application for discharge, the receiver sought to have the $24,043.26 borrowed and paid to the mortgagee secured by a charge ranking in priority

to the mortgage. The chambers judge granted the order sought that ordered that the receiver's borrowings were secured by a charge ranking in priority ahead of the mortgagee. The order was overturned on appeal. The Ontario Court of Appeal held that the receiver's charge must rank subsequent in priority to the mortgage.

53. Similar to the facts in this case, the receivership in *Kowal* was not for the benefit of the secured creditor and was designed to prevent a default that would enable the mortgagee to realize on its security (see ¶11). The benefits of the receiver's efforts accrued entirely to the unsecured creditors of the partnership and the partners themselves. The efforts undertaken by Ernst & Young Inc. are solely for the benefit of the unsecured creditor/investors.

54. *Kowal* is widely cited as establishing the principle that, except in three exceptions, a receiver's charge must rank subsequent in priority to all existing mortgages, encumbrances and charges. Although the Court stated that these exceptions discussed was not an exhaustive list, Investit is not aware of any other exceptions nor do the notes to the model receivership identify any exceptions other than those identified in *Kowal*.

55. The three exceptions in which a receiver's borrowings may be secured by a first ranking charge ahead of mortgages are as follows:

(a) The receiver has been appointed at the request, or with the consent or approval, of the holders of security.

(b) The receiver has been appointed to preserve and realize assets for the benefit of all interested parties, including secured creditors.

(c) The receiver has expended money for the necessary preservation or improvement of the property.

56. None of the above exceptions apply to the facts before the Court.

(a) Investit did not consent or agree to the appointment of the Receiver; it opposed the application.

(b) The Receiver was not appointed to preserve and realize on asset for the benefit of Investit and the other secured creditors. To the contrary, the stay created by the order is frustrating Investit from exercising its rights as a secured creditor to continue its foreclosure proceedings already commenced to realize on its security.

(c) The Receiver has not expended money for the necessary preservation or improvement of property.

57. The funding being provided under the CCAA DIP/Receivership Order is being used to finance the cost of a forensic investigation that has no benefit whatsoever to the secured creditors. It adds no value to the estate. Such an investigation is a benefit to the class action by the unsecured creditors. Indeed the existing Order authorizes the payment of $100,000 to counsel for the unsecured class action creditors. Such an Order is unprecedented and it is submitted without authority under the Court's CCAA jurisdiction.

58. It is submitted that there is no basis in law to prime secured creditors without their consent for the purpose of funding a forensic investigation for the benefit of the unsecured creditors or to fund a liquidating CCAA.

The Equity Argument

59. The reason we are now back before the Court is that the "equity" chart put forward by the Monitor and relied upon the Court in making the October 8, 2009 Orders contained a major error.

60. The Ft. McMoney property value was overstated by $3.6 million.

61. In addition to that error, there have been a number of negative developments and there are a number of other issues with the "equity" chart put forward in the Monitor's Report.

62. The Ft. McMoney II value of $9.6 million was based on a potential sale that was to occur. That sale had certain conditions that had to be removed by November 15, 2009. Those conditions have not been removed and that sale appears to have collapsed. The limited evidence of value as to this property is the dated appraisal that the Monitor had incorrectly referred to in

the table in respect of the Ft McMoney property. By an appraisal dated October 10, 2008, these lands were valued at $7 million.

63. In addition, Investit has had a knowledgeable real estate appraiser review the value of the Skaha Lake property. The indicated value is in the range of $797,000 to $1.4 million as opposed to the $2.5 million set out in the equity chart.

64. In addition the Orillia property appears to have been extensively marketed by the first mortgage holder on that property and the best sale price that could be obtained was for less than the amount owing on that mortgage. That sale recently collapsed.

65. On November 4, 2009, the Tsehum Harbour Lands were removed from these proceedings by Mr. Justice Wilkins.

66. In addition, there are a number of other issues with the equity chart including:

(a) it understates the mortgage debt on the Bearspaw lands by some $400,000;

(b) it values the Bearspaw lands that in excess of recent appraised values obtained by Investit. The recent appraisals on the Bearspaw lands are as follows:

(i) $5.9 to $6.5 million;

(ii) $5.9 to $7.4 million;

(iii) $8 to $10 million (the Petitioner appraisal).

(c) it does not take into account:

(i) accumulating interest on the existing mortgages;

(ii) selling commission costs;

(iii) taxes;

(iv) the likely timeframe which it would take to sell these lands.

67. Further, the Monitor is careful, and properly so, in its report to indicate that the "values" in the chart that it produced are not values that the Monitor is in any way attesting to but only values that have been reported by the company.

68. The equity that is alleged to exist is speculative at best. Every development since the October 8, 2009 Court hearing has been negative and casts doubt on the existence or extent of this equity.

69. Indeed if there truly was $16 million in equity (or $13.5 million taking into account the error identified by the Monitor) then the Petitioners should have been able to obtain DIP financing without having to prime the existing secured lenders. There is no evidence of even an attempt to do so.

The DIP Charge has been Applied Inconsistently

70. One of the properties that was charged by the October 8, 2009 DIP Order (Tsehum Harbour) was subject to a first mortgage in favour of Fisgard.

71. On November 4, 2009, Fisgard applied successfully before Mr. Justice Wilkins in this proceeding to have the DIP Charge removed from its property. Mr. Justice Wilkins did so on the basis that there was no equity in the lands.

72. Investit has no difficulty with being treated in the same manner, namely that the DIP Order only attach to whatever equity exists in the Investit lands. However there would seem to be no rational basis to exclude the Fisgard lands on the basis that there may be no equity in them but to leave the DIP Charge on the Investit lands, which may be in the same situation or indeed to leave the DIP as a primary charge on all the other lands.

Lifting of the Stay

73. Investit wishes to proceed to list the Investit lands for sale in its existing foreclosure proceedings.

74. The listing of the lands will ultimately produce an offer or offers that in turn will establish the real value of the lands. The "equity" debate will be resolved.

75. There is a clear benefit to both Investit and Shire in having the lands marketed for sale now and sold as soon as possible. This will reduce ongoing interest, taxes and other costs.

76. Any sale would have to be subject to the approval of the Court. Shire and its Receiver and the second mortgagee will be able to view any potential sale and make submissions to the Court on whether or not the sale ought to be approved. In addition it would be open to Shire or its Receiver to argue that the sale ought to be delayed should there be circumstances that warranted a delay in the sale.

Allocation of the DIP Charge

77. The DIP Charge should be allocated as follows:

(a) firstly to the unencumbered Project and Shire lands as well as any other personal property belonging to Shire and the Project companies that is unencumbered;

(b) secondly to the extent that there is a shortfall then the DIP should be next allocated to any “equity” that exists in any of the Shire lands or Project lands; and

(c) finally, to the extent of any remaining shortfall, the DIP should be allocated pro rata between the remaining value of the lands.

78. Further, some mechanism needs to be put into place to allow for a marshalling of the Charge depending on which lands sell first. Under the existing terms of the DIP facility, the first property that is sold is to be used to retire the DIP fully. That lender will need some ability to reallocate the DIP across the other assets.

Summary of Investit’s Position

79. This is not an appropriate case for the CCAA. The CCAA proceedings should be terminated and the existing DIP should be allocated as set out above.

80. The Receivership Order should be amended:

(a) such that none of the charges created in that Order rank in priority to the Investit mortgage; and

(b) to lift the stay of proceeding to allow Investit to proceed with its foreclosure action with any sale of the Investit lands to be subject to Court approval.

81. If the CCAA is not terminated, then:

(a) the DIP facility should be capped at the existing $920,000 that has been advanced and any further DIP facility should only be made available by way of a charge ranking subsequent to the existing encumbrances;

(b) the existing DIP should be allocated as set out above; and

(c) the stay of proceeding should be lifted to allow Investit to proceed with its foreclosure action with any sale of the Investit lands to be subject to Court approval.

John I. McLean
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Counsel for Investit Financial Inc.
December 2, 2009

Action No. 0901-11866

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

IN THE MATTER OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36,
AS AMENDED, THE ***JUDICATURE ACT***, R.S.A. 2000, c. J-2, AS AMENDED
AND THE ***BUSINESS CORPORATIONS ACT*****,** R.S.A. 2000, C. B-9,
AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
SHIRE INTERNATIONAL REAL ESTATE INVESTMENTS LTD., SHIRE CAPITAL LTD., HALAMA GARDENS LLC, SHIRE ASSET MANAGEMENT LTD., WINN RIVER RESORT LTD., FORT MCMONEY PROPERTIES II LTD., HALAMA GARDENS LTD., MAPLES AND WHITE SANDS INVESTMENT LTD., FORT MCMONEY PROPERTIES LTD., CHEMAINUS PROPERTIES LTD., SKAHA LAKE DEVELOPMENT LTD., TSEHUM HARBOUR LTD., BEARSPAW AT 144TH AVENUE LTD., BEARSPAW AT 144TH EQUITIES LTD., BEARSPAW AT 144TH BONDS INC., TSEHUM HARBOUR EQUITIES LTD., TSEHUM HARBOUR BONDS LTD. and ORILLIA INVESTMENTS LTD., 0726028 B.C. LTD., 0675816 B.C. LTD. and BOSUN'S HOLDINGS LTD.

CHAMBERS BRIEF

(Hearing: Friday, December 4, 2009)

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