

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

BETWEEN:

TRICAP PARTNERS LTD.

Plaintiff

- and -

BIRCH MOUNTAIN RESOURCES LTD.

Defendant

NOTICE OF MOTION

TAKE NOTICE that an Application, pursuant to paragraph 3(l) of the Order of the Honourable Mr. Justice Lovecchio granted herein on November 5, 2008 (the "Appointment Order"), will be made on behalf of Pricewaterhouse Coopers Inc. ("the Receiver"), the Receiver and Manager of Birch Mountain Resources Ltd. ("the Company") before the Honourable Mr. Justice Lovecchio, in Chambers, at the Courthouse at the Calgary Courts Centre, in the City of Calgary, in the Province of Alberta, on Thursday, the 8th day of January, 2009, at the hour of 1:00 pm or so soon thereafter as counsel may be heard, for an Order:

1. Pursuant to Rule 548 of the Alberta *Rules of Court*, abridging the time required for notice of this application to that actually given and declaring that service of the within notice on those parties served herewith is good and sufficient notice of this application;
2. Approving the First Report of the Receiver and the actions of the Receiver as set out therein;
3. Confirming the Receiver's acceptance of an offer letter from Tricap Partners Ltd. dated December 12, 2008, a copy of which is appended to the Receiver's First Report and

approving the sale transaction contemplated in the offer letter (the "Tricap Sale Agreement") for the purchase and sale of all the assets of the Company on the terms and conditions contained therein, or as may subsequently be agreed to between the Receiver and Tricap, or as may be ordered by this Court;

4. Declaring that upon closing of the Tricap Sale Agreement, and upon the filing with the Court of a Receiver's certificate confirming the closing of the Tricap Sale Agreement, all of the Company's right, title and interest in and to the assets described in the Tricap Sale Agreement shall vest absolutely in Tricap, or its nominee/assignee 1439442 Alberta Ltd., free and clear of and from any and all other interests, claims or encumbrances;

5. Authorizing and approving the execution by the Receiver of the Tricap Sales Agreement and any other steps or documents as may be necessary or desirable to complete the Tricap Sale Agreement and to convey the purchased assets to Tricap or its nominee/assignee;

6. If necessary, seeking the Court's advice and direction with respect to further proceedings relating to a builder's lien fund of \$2.2 million dollars, presently being held in trust by the Receiver's counsel;

7. Giving leave to Tricap or its nominee/assignee to reapply to this Court for the purpose of addressing any outstanding issues or priority claims;

8. Such further and other relief as counsel may request and this Court may permit.

AND FURTHER TAKE NOTICE that the grounds upon which the Receiver intends to rely, include the following;

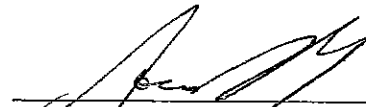
- (a) The Appointment Order empowers and authorizes the Receiver to sell the undertakings, assets and property of the Company, subject to Court approval;
- (b) The assets of the Company have been advertised and marketed through a sales process, as described in the Receiver's First Report;

- (c) The Tricap Sale Agreement is the result of the Receiver's efforts under the sales process and the Receiver is of the view the approval of the Tricap Sale Agreement are in the best interests of the stakeholders of the Company; and
- (d) The provisions of the *Bankruptcy and Insolvency Act* and the *Builder's Lien Act*;
- (e) Section 13(2) of the *Judicature Act*;
- (f) Section 64 and 65 of the *Personal Property Security Act*;
- (g) Rules 16 and 548 of the *Alberta Rules of Court*, and
- (h) such further and other grounds as counsel may advise and this Honourable Court permit.

AND FURTHER TAKE NOTICE that in support of the within Application will be read the First Report of the Receiver Manager dated January 5, 2009, and such further and other material as counsel may advise and this Honourable Court may direct.

DATED this 5th day of January, 2009.

PARLEE MCLAWS LLP



Per: G. Scott Watson
Solicitor for the Court Appointed Receiver,
Pricewaterhouse Coopers Inc.

TO: The Clerk of the Court

TO: Parties on Schedule "A" attached

Schedule "A"

TRICAP Partners Ltd
and Brookfield Bridge Lending Fund Inc.
c/o MacLeod Dixon LLP
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Calgary, AB T2P 4H2
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Mineral Development and SRD
7th Floor, North Petroleum Plaza
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Royal Bank of Canada.
c/o McCarthy Tetrault LLP
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Attention: Sean Collins
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Jim Peplinski's Auto Leasing Ltd.
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Brandt Tractor Ltd.
PO Box 3856, Highway #1 East
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Kenneth Richardson
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Department of Indian and Northern Affairs Canada
c/o Justice Canada
Aboriginal Services, Prairie branch
211 Bank of Montreal Building
10199-101 St.
Edmonton, Alberta T5J 34
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- and -

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CLERK OF THE COURT

JAN - 5 2009

CALGARY, ALBERTA

NOTICE OF MOTION

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File Number: 239-15
