

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**IN THE MATTER OF THE RECEIVERSHIP OF  
THE SYMPHONY DEVELOPMENT CORPORATION  
(Referred to as “Symphony” or the “Company”)**

**SUPPLEMENT TO  
RECEIVER MANAGER’S FIRST REPORT TO COURT**

**MARCH 24, 2010**

**THE SYMPHONY DEVELOPMENT CORPORATION**  
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**TABLE OF CONTENTS**

|  |          |
|--|----------|
| <b>1. INTRODUCTION.....</b>                              | <b>1</b> |
| <b>2. STATUTORY FILINGS .....</b>                        | <b>1</b> |
| <b>3. INITIAL RECEIVER CHARGE OF \$100,000 .....</b>     | <b>2</b> |
| <b>4. RECEIVER’S FEES TO MARCH 19, 2010 .....</b>        | <b>3</b> |
| <b>5. REQUEST FOR INCREASE IN RECEIVER’S CHARGE.....</b> | <b>4</b> |
| <b>6. CHOICE OF REALTORS.....</b>                        | <b>6</b> |

**THE SYMPHONY DEVELOPMENT CORPORATION**  
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**MARCH 24, 2010**

**1. INTRODUCTION**

- 1.1 This report is a supplement to the Receiver's first report to the court dated March 9, 2010 and should be read in conjunction with that report. This supplement has been prepared as a result of various materials filed with the Court by stakeholders of Symphony and is intended to inform the Court of further information regarding the issues addressed by the stakeholders.
- 1.2 The purpose of this supplemental report is to:
  - 1.2.1 Outline the reasoning for updating the books and records of the Company and complying with statutory filings which form part of the anticipated costs of the receivership;
  - 1.2.2 Discuss the Receiver's understanding of the history leading to the Receiver's charge of \$100,000;
  - 1.2.3 Present a summary of the Receiver's fees to March 19, 2010;
  - 1.2.4 Discuss an amendment to the Receiver's request for an increase in the administrative charge and borrowing capacity; and,
  - 1.2.5 Discuss the Receiver's choice of realtors for the sale of Spencer's Ridge and Albion Slopes.

**2. STATUTORY FILINGS**

- 2.1 Statutory Requirements:
  - 2.1.1 Pursuant to the *Income Tax Act* ("ITA") and the *Excise Tax Act* ("ETA"), a Receiver of a Company is required to file returns for a corporation in the same manner as the corporation;
  - 2.1.2 As described in the Receiver's first report dated March 9, 2010, the Company's books and records were completed to August 31, 2008, but not beyond that date.
  - 2.1.3 Statutory filings for the Goods & Services Tax ("GST") had been filed to March 31, 2009, but three quarterly filings for the period to December 31, 2009 were outstanding at the time of our appointment.
  - 2.1.4 The Company's fiscal year end is August 31 and the financial statements for the year ended August 31, 2009 had not been

**THE SYMPHONY DEVELOPMENT CORPORATION**  
**SUPPLEMENT TO RECEIVER MANAGER'S FIRST REPORT TO COURT**  
**MARCH 24, 2010**

prepared and the corporate income tax return had not been filed. Accordingly, the corporate income tax return has not been filed and is now overdue; and,

- 2.1.5 The Receiver's estimate of costs contained in its first report includes the cost of preparing the Company's financial records for the year ending August 31, 2009 and to the date of the Receiver's appointment to facilitate the filing of the corporate income tax return and the GST returns.

2.2 Economic Benefit of Filing Returns:

- 2.2.1 The Canada Revenue Agency ("CRA") has issued a notice of assessment relating to the GST accounts for the Company to March 31, 2009 indicating that a refund of GST of approximately \$200,000 is due to the Company. CRA's administrative policy is to withhold all tax refunds until all tax returns (both corporate income tax and GST returns) are filed; and,
- 2.2.2 This refund will be adjusted for any GST collected by the Company or various input tax credits the Company is entitled to claim. However, based on the Receiver's cursory review of the Company's records for the period April 1, 2009 to December 31, 2009, the Receiver anticipates that a significant portion of this GST refund will be recoverable for the benefit of the Company and its stakeholders.

**3. INITIAL RECEIVER'S CHARGE OF \$100,000**

- 3.1 The Receiver was approached by the solicitors for the shareholders of the Company in the fall of 2009 and was requested to provide an estimate of costs for the administration of the Receivership. At that time, the Receiver was advised that the Company was solvent and its primary task, if appointed, would be to sell the Albion Slopes property. The Receiver expressed reservations about providing a cost estimate for the complete administration of the Receivership given that no records or documentation had been provided for its review.
- 3.2 As the appointment of a Receiver for the Company became more likely, the Receiver consented to a charge of \$150,000, with the expectation that should further costs become necessary based on the Receiver's initial review of the Company and its status, the Court could adjust this amount upon an application by the Receiver. The Receiver has reported the results of this initial review and its planning in the first report dated March 9, 2010.

**THE SYMPHONY DEVELOPMENT CORPORATION**  
**SUPPLEMENT TO RECEIVER MANAGER'S FIRST REPORT TO COURT**  
**MARCH 24, 2010**

- 3.3 Representatives of the Receiver were not in attendance at any of the applications for the appointment of the Receiver. At the Court hearing of January 12, 2010, the charge was reduced to \$100,000 in order to facilitate the consent order that was made appointing the Receiver. It is now clear that the Receiver's charge of \$100,000 is inadequate.

**4. RECEIVER'S FEES TO MARCH 19, 2010**

- 4.1 The Receiver has outlined in its report dated March 9, 2010 its activities. In order to assist the Court and the Company stakeholders, the Receiver presents the following summary of its fees for the period January 12, 2010 to March 19, 2010:

| <b>Task</b>                               | <b>Hours</b> | <b>Amount (\$)</b>  |
|---|--------------|---------------------|
| Stakeholder Communication                 | 73.3         | 28,037.50           |
| Books and Records & General Corporate     | 90.9         | 28,979.00           |
| Spencer's Ridge lot sales investigation   | 25.2         | 9,444.00            |
| Other assets                              | 6.6          | 1,820.00            |
| Receiver's due diligence on real property | 83.9         | 26,391.00           |
| Liaising with Realtors & Marketing        | 62.5         | 20,260.00           |
| Court Reporting & Application             | 101.2        | 39,303.50           |
| <b>Total</b>                              | <b>443.6</b> | <b>\$154,235.00</b> |

- 4.2 The Receiver is not seeking approval of its fees at this time, but merely presents this detail to allow all shareholders to better understand the Receiver's activities to date.

**THE SYMPHONY DEVELOPMENT CORPORATION**  
**SUPPLEMENT TO RECEIVER MANAGER'S FIRST REPORT TO COURT**  
**MARCH 24, 2010**

**5. REQUEST FOR INCREASE IN RECEIVER'S CHARGE**

- 5.1 In the Receiver's first report, it was requested that the administrative charge be increased to \$610,000. Details supporting this amount requested are set out in paragraphs 11.2 and 11.3 of the first report.
- 5.2 Subsequent to filing the Receiver's first report, it has become apparent that the stakeholders are not in favour of the Receiver completing the site servicing work required to recover the security deposit of approximately \$236,000 held by Maple Ridge. As outlined in the Receiver's first report, the Receiver had estimates of costs to complete this work in the range of \$125,000 to \$200,000 and had proposed to seek competitive bids to complete the work. Depending upon the value of the bids, there appeared to be equity in the security deposit that would be available to the Company if the site servicing was completed. This estimated equity ranges from \$36,000 to \$111,000.
- 5.3 In the event that the site servicing work is not completed by the Company or its Receiver, Maple Ridge has the option to use the funds it holds as security to complete the work itself.
- 5.4 Based on the strong opposition to the request for the increased charge, the Receiver now proposes that it does not complete the site servicing work for Spencer's Ridge at this time. As a result, it has adjusted its request for an increase in the administrative charge to \$400,000 as outlined below:

| <b>Nature of Cost</b>                             | <b>Original Amount<br/>(\$)</b> | <b>Revised Amount<br/>(\$)</b> |
|---|---------------------------------|--------------------------------|
| Receiver fees                                     | 300,000                         | 290,000                        |
| Legal fees  | 80,000                          | 80,000                         |
| Consulting fees                                   | 10,000                          | 10,000                         |
| Contractor charges to<br>complete Spencer's Ridge | 200,000                         | 0                              |
| Other   | 20,000                          | 20,000                         |
| <b>Total</b>                                      | <b>610,000</b>                  | <b>400,000</b>                 |

**THE SYMPHONY DEVELOPMENT CORPORATION**  
**SUPPLEMENT TO RECEIVER MANAGER'S FIRST REPORT TO COURT**  
**MARCH 24, 2010**

5.5 The Receiver's revised estimate for the Receiver fees is as follows:

| Description of work  | Amount           |
|--|------------------|
| General administration including: initial due diligence and development of sales approaches, updating financial records and preparation of tax returns, communication with stakeholders and court applications | \$150,000        |
| Sale of Spencer's Ridge lots   | \$25,000         |
| Implementation & conclusion of sales approach for Albion Slopes  | \$85,000         |
| Conduct claims process   | \$30,000         |
| <b>Total</b>   | <b>\$290,000</b> |

5.6 The Receiver has reviewed the Notice of Motion filed by Bassi Brothers Framing Ltd. ("Bassi Brothers"), which seeks the discharge of the Receiver and the granting of conduct of sale of the Albion Slopes property to Bassi Brothers. Bassi Brothers seeks the authority to list Albion Slopes for sale and pay a real estate commission of up to 3% of the gross selling price. The Receiver notes that it has already negotiated a listing contract with the realtor that will result in the effective cost of sale being reduced to 2.2% to 2.7%. This translates into a savings in the selling costs of approximately \$100,000 at the sales value that is set out in the Bassi Brothers' material.

5.7 The approach presented by the Bassi Brothers' motion does not address the following issues that are contemplated to be dealt with by the continuation of the receivership:

- 5.7.1 The receivership facilitates the sale of the four remaining Spencer's Ridge lots with proposed list prices totaling \$790,000;
- 5.7.2 The receivership facilitates the compliance with statutory filing requirements and the potential recovery of the GST refund; and,

**THE SYMPHONY DEVELOPMENT CORPORATION**  
**SUPPLEMENT TO RECEIVER MANAGER'S FIRST REPORT TO COURT**  
**MARCH 24, 2010**

- 5.7.3 The receivership allows for the undertaking of a claims process that is consistent with the process outlined in the Bankruptcy & Insolvency Act. The claims process is useful as it will provide better information about the claims that the Court may wish to consider when approving the sale of Albion Slopes. Furthermore, each shareholder has raised concerns regarding the validity of all but the Coast Capital Savings mortgage, registered against the Spencer's Ridge and Albion Slopes properties. The claims process that the Receiver proposes to conduct would facilitate a review of these claims to determine their validity. Without this claims process, any proceeds from the sale of Albion Slopes that is approved pursuant to the Bassi Brothers' approach could be tied up for a lengthy period of time should various stakeholders commence litigation to dispute the validity of the mortgages.

**6. CHOICE OF REALTORS**

- 6.1 The Receiver considered the nature of the properties and the respective markets when developing its proposed sale process for both Spencer's Ridge and Albion Slopes.
- 6.2 The Receiver concluded that the sale of the four building lots in Spencer's Ridge could be best facilitated by an independent local realtor using the multiple listing service to expand the individual realtor's reach within the local market. The likely market for the Spencer's Ridge lots are local independent builders based in the surrounding areas. The Receiver considered issues raised by each shareholder in selecting its proposed realtor.
- 6.3 The Receiver concluded that the sale of the Albion Slopes properties could be best facilitated by engaging Colliers International ("Colliers"), a large commercial realtor with an extensive network and significant resources that could be used to quickly expose the property to a wide reach of potential buyers in a short period of time. The Receiver considered the use of a local realtor to sell Albion Slopes, but dismissed this approach for the following reasons:
- 6.3.1 The Receiver considers the market for Albion Slopes to include major developers who have an interest in the entire Albion Slopes project as well as smaller local developers who have an interest in only purchasing and developing one of the four phases of Albion Slopes. The Receiver believes that having a broad reach will increase the chances of multiple offers being made for



**THE SYMPHONY DEVELOPMENT CORPORATION**  
**SUPPLEMENT TO RECEIVER MANAGER'S FIRST REPORT TO COURT**  
**MARCH 24, 2010**

the property and in turn maximize the value for it. Colliers has pre-established relationships with major developers based in the lower mainland, many of whom are expected to be interested in Albion Slopes. Colliers also intends to access the medium to smaller sized prospective purchasers through a number of sales activities that are outlined in Appendix B of the Receiver's report dated March 9, 2010. The Receiver did not believe that a local realtor would have the same reach as Colliers.

- 6.3.2 Albion Slopes has four phases and the Receiver has proposed to offer the project to the market on a 'piecemeal' basis, but also invite 'en bloc' offers. By offering the project by phase, this will increase the amount of time and effort required of the realtor as it will result in dealing with more prospective purchasers. This time commitment may be significant given that different amounts of due diligence will be required by parties for each phase. This labour intensive process must also be completed in a relatively short period of time as outlined in the Receiver's sales approach. The Receiver did not believe that a local realtor would have sufficient capacity to manage this labour intensive process in the time period proposed by the Receiver. The time period proposed by the Receiver was considered reasonable by Colliers.

This report is respectfully submitted this 24<sup>th</sup> day of March, 2010.

**PricewaterhouseCoopers Inc.**  
**Court Appointed Receiver Manager of**  
**The Symphony Development Corporation**

A blue ink signature of Michael J. Vermette, consisting of stylized cursive letters.

**Michael J. Vermette**  
**Senior Vice President**

A blue ink signature of Neil P. Bunker, consisting of stylized cursive letters.

**Neil P. Bunker**  
**Vice President**