

APR 26 2019

S-194951

No. _____
VANCOUVER REGISTRY



IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF SECTION 99 OF THE BRITISH COLUMBIA SOCIETIES ACT,
S.B.C. 2015, C.18, AS AMENDED

AND

IN THE MATTER OF A PROPOSED ARRANGEMENT INVOLVING
PANORAMA RESORT INTERVAL OWNERS' ASSOCIATION

PANORAMA RESORT INTERVAL OWNERS' ASSOCIATION,
PANORAMA RESORT TIMESHARE INC. and RICHARD WILLIAMS

PETITIONERS

PETITION TO THE COURT

This proceeding has been started by the petitioner(s) for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner(s)
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s),

- (a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed petition was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed petition was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is:	800 Smithe Street Vancouver BC V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the petitioner(s) is:	Miller Thomson LLP 400 – 725 Granville Street Vancouver BC V7Y 1G5 Attention: Chantelle Rajotte
	Fax number address for service (if any) of the petitioner(s):	604.643.1200
	E-mail address for service (if any) of the petitioner(s):	crajotte@millerthomson.com
(3)	The name and office address of the petitioner's(s) lawyer is:	Miller Thomson LLP 400 – 725 Granville Street Vancouver BC V7Y 1G5 Attention: Chantelle Rajotte

Claim of the Petitioner(s)

PART 1 - ORDER(S) SOUGHT

1. The petitioners, Panorama Resort Interval Owners' Association (the "**Association**"), Panorama Resort Timeshare Inc. ("**PRTI**") and Richard Williams apply to this Court pursuant to sections 80, 99 and 100 of the *Societies Act*, S.B.C. 2015, c. 18, as amended or superseded (the "**Societies Act**"), Rules 16-1, 4-4, 4-5 and 2-1(2)(b) of the *Supreme Court Civil Rules* and the Inherent Jurisdiction of the Court for:
 - (a) an order (the "**Interim Order**") in the form attached as Schedule "A" to this Petition;
 - (b) an order (the "**Final Order**") in the form attached as Schedule "B" to this Petition; and
 - (c) such further and other relief as counsel for the petitioners may advise and the Court may deem just.

PART 2 - FACTUAL BASIS

1. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the draft management information circular attached as Exhibit "I" to the Affidavit #1 of Richard Williams, sworn April 26, 2019 (the "**Information Circular**") filed in this proceeding.

The Petitioners

2. The Association is a society incorporated under the laws of British Columbia on August 8, 1984.
3. PRTI is a company incorporated under the laws of Alberta on February 21, 1980 and extraprovincially registered in BC on May 20, 1980. PRTI is a wholly owned subsidiary of the Association.

4. Richard Williams has been a member of the Association since 1983. Mr. Williams has been on the Association's board of directors (the "**Board**") since 2003 and President of the Association since 2008. Mr. Williams is also a director of PRTI.

The Association

5. On behalf of its members, the Association administers a timeshare located at Panorama Resort, known as "Panorama Vacation Retreat at Horsethief Lodge". Panorama Resort is a ski and golf resort west of Invermere, in the East Kootenay region of British Columbia. The timeshare operates year-round.
6. The timeshare is part of Strata Corporation N83, which is comprised of 260 strata lots, most of which are residential.
7. There are 53 strata lots in the timeshare (the "**Strata Lots**"). The ownership and right to use each of the 53 Strata Lots is divided into 51 timeshare intervals, each representing one week of the calendar year. One week is set aside for maintenance of the Strata Lots.
8. As more particularly set out below, the timeshare is structured so that each interval owner is a member of the Association. Accordingly, the Association has a maximum of 2,703 members (53 Strata Lots x 51 timeshare intervals per Strata Lot).
9. The number of current members in the Association is 2,036, i.e. not 53 x 51 (the "**Members**"). One reason why the actual number of Members is less than 2,703 is because some interval owners own more than one week in one or more of the Strata Lots. In addition, the Association owns 150 1/51st fractions dispersed among 50 of the Strata Lots.
10. The purposes of the Association as set out in its Constitution include, among other things, protecting the interests of the timeshare owners of the Association and, through a third party manager, coordinating the maintenance, operation and use of the Strata Lots.
11. The Association operates on a non-profit, cost recovery basis, and does not carry on any other business.

The Current Title-Based Timeshare Structure

12. The timeshare program operated by the Association is currently structured as a title-based system.
13. Except for the 124 Right to Purchase Holders (as defined below), each timeshare participant is the registered owner of an undivided 1/51st fee simple interest in their Strata Lot for each one week period of use.
14. Each timeshare participant's fee simple interest is encumbered by a head lease (the "**Head Lease**") granted or assigned to PRTI. PRTI does not carry on any business other than acting as landlord of the Vacation Interval Leases, as outlined below.
15. There are a total of 14 different Head Leases, the material terms of which are substantially the same.

16. Under the terms of each Head Lease, PRTI agrees, among other things, to pay the costs of ownership of the Strata Lot, such as property taxes and strata fees, and to grant a sublease in the form of the Vacation Interval Lease to each owner of an undivided interest in the Strata Lot for a one week period for each 1/51st undivided interest owned.
17. The timeshare began in 1981 and was constructed in four phases. The term of the Head Lease for the first phase of development is 40 years, with an expiry date of June 30, 2021. The Head Leases for the subsequent phases of development have shorter terms, with all Head Leases coordinated to expire on June 30, 2021.
18. Each timeshare participant holds a registered sublease from PRTI (the "**Vacation Interval Lease**") which grants to the timeshare participant the exclusive right to use their Strata Lot for one or more particular weeks in each calendar year.
19. Under the Vacation Interval Lease, the interval owner is obligated to be a member of the Association and accept the Association's bylaws. Correspondingly, under the Association's bylaws, a "Member" is defined as "any person who is either the sole lessee of a Strata Lot under a Vacation Interval Lease or, if there is more than one lessee under a Vacation Interval Lease, then any one of these lessees, as designated in writing by all such lessees".
20. The material terms of each Vacation Interval Lease are substantially the same. Under the Vacation Interval Lease, the interval owner agrees, in return for the exclusive use of the Strata Lot for their designated week, to pay their proportionate share of the costs of management, maintenance and operation of the Strata Lot (the "**Operating Costs**"), including, among other things:
 - (a) the monthly strata fees assessed against the Strata Lot;
 - (b) the administration costs of managing the timeshare program;
 - (c) property taxes and insurance; and
 - (d) cleaning, maintenance and refurbishment costs.
21. The terms of each Vacation Interval Lease expire on June 29, 2021, i.e. the expiry of the Head Leases and Vacation Interval Leases is coordinated.
22. The Association adopts an operating budget at its annual general meeting each year and the Operating Costs are paid by each interval owner by way of an annual assessment for each Strata Lot. Each Member's proportionate share of the Operating Costs is dependent upon the type of strata lot in which they own a timeshare interval and the number of interval weeks that they own. The 2019 Operating Costs assessed against each of the Strata Lots ranged from \$415.33 - \$987.55 for one interval week.
23. Under the Vacation Interval Lease, if an interval owner defaults in payment of their Operating Costs, then their right to occupy the Strata Lot is suspended until the Operating Costs are paid in full. In addition, under the Association's bylaws, a Member who fails to pay the Member's share of the Operating Costs may not vote at any general meeting.

Background to the Arrangement

24. As noted above, the Head Leases and Vacation Interval Leases will expire in a little over two years, in June 2021.
25. If nothing is done, upon expiry of the Head Leases and the Vacation Interval Leases there will be no legal mechanism in place for the owners to coordinate the maintenance, operation and use of, and payment of expenses relating to, the Strata Lots. There will be 51 owners of a fractional fee simple interest in each of the 53 Strata Lots, and no contractual arrangement as between the owners setting out each owner's rights and responsibilities in relation to the Strata Lot.
26. There is a requirement in the Association's bylaws for the Association to plan for the expiry of the leases. Under section 12.00 of the Association's bylaws, the directors must call an extraordinary general meeting no later than 2019 "for the purpose of determining whether to continue occupancy under a Vacation Interval Lease arrangement, and if so, under what terms and conditions, and if not, to assess what other future use should be made of the Strata Lots."
27. Beginning in 2012, the Board conducted a strategic review to identify all reasonable alternatives to address the expiry of the lease structure establishing the timeshare program at the Association.

The Lease Extension Strategy

28. One option that was investigated by the Board in significant depth, and upon which the Board obtained multiple legal opinions and tax advice, was to attempt to extend the term of the Head Leases and Vacation Interval Leases through a combination of a special resolution and proceeding in the BC Supreme Court by way of Petition (the "**Lease Extension Strategy**").
29. Under the Lease Extension Strategy, the first step was for the Members to pass a special resolution extending the terms of the Head Leases and Vacation Interval Leases. If the special resolution passed, the second step was to commence a legal proceeding seeking a declaration from the court that there is an enforceable agreement among the interval owners to be bound by the special resolution and a court order directing the BC Registrar of Land Titles to extend the term of the Head Leases and Vacation Interval Leases.
30. An extraordinary general meeting was held on May 28, 2016, for the Members to vote on the Lease Extension Strategy. A total of 400 Members were represented at the meeting in person or by proxy, representing a total of 624 weeks. At the meeting the Members voted on a resolution to authorize and approve the Association to extend the leases on the Strata Lots for a period of 20 years with an automatic renewal term of another 20 years, unless prior to the expiry of the first 20 year term the Members pass a special resolution to not renew the leases. With 624 votes cast, 474 votes, or 76% of the votes, were cast in favour of the special resolution.
31. Following the meeting, the Board took steps towards implementing the decision of the Members. In late 2016, however, the legal advice to the Board about the likely success of the Lease Extension Strategy changed. By late 2016, the legal advice to the Board was that the Lease Extension Strategy was not likely to be successful.

32. In addition, in late 2016, the Board was advised by the Association's legal counsel that under the Lease Extension Strategy there would be a requirement to file Property Transfer Tax forms for each of about 2,700 Vacation Interval Lease extensions, and that each Property Transfer Tax form would require citizenship information, residency information, social insurance numbers and original signatures for all lessees. That is, all lessees of all Vacation Interval Leases would need to be located and would need to agree to provide the required information and signatures for the Property Transfer Tax forms.
33. As a practical matter, this posed an insurmountable obstacle to successful registration of the Head Lease and Vacation Interval Lease extensions. The register of members of the Association contains a current registered address for 85% of the Members. For the remaining 25%, or 311 Members, it is either uncertain whether the registered address is current or it is known that the registered address is not current. The Association has no means by which to obtain the personal information and signatures for these Members. In addition, for the Members that the Association has contact information, the Association cannot compel the Members to provide the required information or signatures.
34. Further, even if the court application was successful, the success of which was not likely, the Lease Extension Strategy did not provide any structural solution for the issues created by the title-based timeshare. The interval owners will face the same legal issues again, when the extended Head Leases and Vacation Interval Leases again expire.
35. In addition, the Lease Extension Strategy did not provide a way for Members wishing to exit the timeshare to do so.
36. By late 2016, the Board decided that the Lease Extension Strategy was not in the best interests of the Members and needed to be abandoned. Throughout 2017 and 2018 the Board undertook a significant communication effort to communicate to the Members the difficulties with the Lease Extension Strategy and continued to investigate other potential solutions to the expiry of the leases.

The Partition and Sale Strategy

37. A second option that was considered by the Board was for one or more interval owners in each Strata Lot to seek a court order for the sale of the Strata Lot and the distribution of the proceeds among all owners under the BC *Partition of Property Act* (the "**Partition and Sale Strategy**").
38. The Partition and Sale Strategy would contemplate putting the Strata Lots on the market for sale. Unless the owners coordinated themselves and funded the purchase the Strata Lots, the likely result of the Partition and Sale Strategy was that the timeshare would be wound-up. At the May 28, 2016 extraordinary general meeting, however, 76% of the Members voted in favour of extending the leases, i.e. carrying on with the timeshare. Accordingly, the Board concluded that the Partition and Sale Strategy was not likely to achieve a result that was consistent with the wishes of the majority of Members.
39. In addition, the Board is of the view that flooding the market with 53 Strata Lots all listed for sale at or around the same time would have a material negative impact on the marketability of the Strata Lots and the sale prices that could be achieved for the

Strata Lots. The Board also recognized that flooding the market with the 53 Strata Lots would depreciate the value of the other strata lots in Strata Corporation N83.

40. Finally, as a practical matter, the Partition and Sale Strategy would require 53 separate Petitions to be filed with the BC Supreme Court, with all interval owners for each Strata Lot to be named as parties to the proceeding. The Association is not able to fund the anticipated legal fees and disbursements that would be required to carry out the Partition and Sale Strategy for all 53 Strata Lots.
41. Ultimately, the Board concluded that the Partition and Sale Strategy was not in the best interests of the Members.

The Coordination Failure Strategy

42. A third option considered by the Board was to allow the Head Leases and Vacation Interval Leases to expire, i.e. do nothing (the "**Coordination Failure Strategy**").
43. Under the Coordination Failure Strategy, as of June 30, 2021, there will be 51 owners of an undivided fractional fee simple interest in each Strata Lot without any legal mechanism in place to coordinate the use, occupation, maintenance and payment of expenses for each Strata Lot.
44. The owners will still be responsible for payment of strata fees, property taxes and village amenities fees, all of which are currently included in the Operating Costs. On an annual basis, these fees total between approximately \$6,072.00 and \$14,345.00 per Strata Lot.
45. If the leases are allowed to expire under the Coordination Failure Strategy, the most predictable outcome is that in 2021 the strata fees, property taxes and village amenities fees will not be paid and the Strata Corporation will initiate foreclosure proceedings.
46. The Board is of the view that the Coordination Failure Strategy is not in the best interest of the Members.

Conversion of the Title-Based System to a Membership-Based System

47. A fourth option considered by the Board, and ultimately determined to be in the best interest of the Members, is conversion of the title-based timeshare structure to a membership-based timeshare structure through the within Plan of Arrangement. The details of the Arrangement are outlined below.

The Arrangement

48. Under the terms of the Arrangement, the Association will be renamed "Panorama Vacation Association at Horsethief Lodge". The Association will amend the purposes in its Constitution and replace its Bylaws, which will provide that its members are those persons entering into a Subscription and Vacation Interval Agreement (the "**Subscription Agreement**") with the Association.
49. All current Members of the Association who are in good standing upon paying their share of the Operating Costs for 2020 will have the right to enter into a Subscription Agreement pursuant to which the Member, referred to as a "Subscriber" in the Subscription Agreement, continues to be a participant in the timeshare enterprise, as

reorganized pursuant to the Arrangement. Any current Member of the Association who chooses to enter into the Subscription Agreement before December 31, 2019 will be a "Charter Member" under the Bylaws.

50. The Subscription Agreement will structure the timeshare enterprise. The Association will grant a license to the Subscriber to use, occupy and rent out the Strata Lots. The Subscriber will appoint the Association as their agent for the purposes of organizing the timeshare enterprise and dealing with the manager that will manage the timeshare enterprise.
51. The Subscription Agreement will grant the subscriber the right to use a particular week period for a particular Strata Lot each year. The Association intends to grant each subscriber who was a former member a Subscription Agreement for their current week period and Strata Lot, unless the subscriber would like to change to another week period and Strata Lot, in which case the Association will facilitate changes, depending on availability.
52. The Subscription Agreement will set out a Subscriber's obligation to pay their proportionate share of Operating Costs. The right of a Subscriber to use and occupy a Strata Lot will be conditional on the Subscriber being in good standing under the Subscription Agreement.
53. The term of the Subscription Agreement will be for five years, and will renew for consecutive five year terms unless either party provides prior written notice of their intention not to renew. The Association may only give notice of its intention to not renew the Subscription Agreement if the Subscriber is in default under the Subscription Agreement or the Association's bylaws.
54. As long as the Subscriber is not in default under the Subscription Agreement, the Subscriber may, on receipt of the written consent of the Association which shall not be unreasonably withheld, assign the Subscriber's interest in the Subscription Agreement.
55. The registered and beneficial ownership of the Strata Lots, currently held by the timeshare participants in 1/51st fractions corresponding to the 1/51st interval subleases, will be vested in the Association, to be administered in accordance with the *Societies Act*, the Association's new Bylaws, and the Subscription Agreement.
56. The Head Leases and Vacation Interval Leases currently registered as charges against the Strata Lots and which structure the timeshare enterprise will be cancelled and discharged from title by Court order.
57. Any current Member of the Association who no longer wishes to participate in the timeshare enterprise may exit the timeshare by simply not entering into a Subscription Agreement. With the Vacation Interval Lease cancelled and discharged from title, the Member's contractual obligation to pay their proportionate share of future Operating Costs will cease.
58. The Association will issue debentures to certain former registered owners of the Strata Lots and Right to Purchase Holders (defined below), referred to as a "Creditor" in the debenture. In order to receive a debenture, the former owner or Right to Purchase Holder must, as at December 31, 2019, either be in good standing

(i.e. Operating Costs paid in full) or have Operating Costs arrears that do not exceed the maximum amount of sale proceeds that may be issued under the debenture.

59. The debenture will grant the Creditor the right to payment of \$1.00 for the Creditor's fractional interest in the Strata Lot. In addition, if the Creditor's former Strata Lot is disposed of, the Creditor is entitled to a 1/51st share in 60% of the net sale proceeds, with the sale proceeds capped at the value of the 2019 property assessment of the Strata Lot, on the terms and conditions set out in the debenture.

The Value of the Timeshare Intervals

60. The 2019 BC Assessment values for the Strata Lots as of July 1, 2018 range from \$73,600 - \$230,600.
61. Timeshare intervals are typically resold in a secondary market directly by timeshare participants who list the interval for sale either privately or through a timeshare interval reseller.
62. The value of a particular interval generally depends on the size of the unit, the desirability of the calendar week associated with that interval, and the annual maintenance or administration fee that must be paid by the owner of the interval.
63. Since at least 2012, the uncertainty resulting from the expiry of the leasing structure that establishes the timeshare program at the Association has impacted the marketability of the timeshare units.
64. In 2017 and 2018 there were 105 sales of interval weeks for which the Association's manager, LaTour Group Management Canada Inc. ("LaTour"), has a copy of the registered Form A Freehold Transfer. Of these transactions, 94, or 90%, had consideration of less than \$30.00 per interval week listed on the Form A.
65. LaTour maintains a list of interval owners trying to sell, or in some cases give away, their timeshare interval. There are 338 interval weeks listed for sale on the resale list. 204 of these, i.e. 60%, are listed for sale with a price of "free", "\$1.00", "\$10.00" or "best offer".
66. Beginning in 2018, the Association initiated a buyback program whereby the Association purchases fractional interests in the Strata Lots from timeshare participants who wish to exit the timeshare program. Since January 2018, the Association has purchased approximately 73 fractional 1/51st interests, each at a purchase price of \$10.00.
67. In addition, on two occasions in the recent past the Association obtained court orders providing for the sale of the fractional fee simple interests owned by timeshare participants who were significantly in arrears of Operating Costs.
68. The first order for sale of nine 1/51st fractional interests was made in June 2015. The Association was the only bidder and purchased the nine fractional interests at a purchase price of \$1.00 each.
69. The second order for sale of twenty-one 1/51st fractional interests was made in October 2018. The Association was the only bidder and purchased the twenty-one fractional interests at a purchase price of \$2.00 each.

70. The Board is of the view that the value of the timeshare intervals is decreasing as the date of expiry of the Head Leases and Vacation Interval Leases approaches and that, if the Plan of Arrangement is not approved, the timeshare intervals will have little to no marketable value as at June 30, 2021. Without a legal mechanism in place for the owners to coordinate the maintenance, operation and use of, and payment of expenses relating to, the Strata Lots, an undivided 1/51st fee simple interest in the Strata Lot not only has little to no value, it becomes a liability as the strata fees, property taxes and village amenities fees must still be paid.

Operating Costs Arrears

71. Many Members and estates of deceased Members have abandoned the timeshare without transferring title, i.e. the Member stops paying the Operating Costs and using the timeshare but remains on title.
72. If a Member does not pay their proportionate share of the Operating Costs, then the shortfall must be made up by the other Members who are in good standing because the property taxes, strata fees and other costs must be fully paid each year. The average increased cost to owners in 2019 caused by the non-payment of Operating Costs by defaulting owners in 2018 is approximately \$170.00 per 1/51st fraction.
73. Under the Vacation Interval Lease, if a Member defaults in payment of their Operating Costs, then their right to occupy the Strata Lot is suspended until the Operating Costs are paid in full. However, the Association cannot resell the interval week of a Member who has abandoned the timeshare without a court order.
74. In an attempt to reduce the financial burden on the Members in good standing that results from some Members not paying their Operating Costs, LaTour, on behalf of the Association, attempts to rent out the Strata Lots on a nightly basis during weeks owned by Members who are not in good standing.
75. It is much easier to find renters in the Summer and Winter, during the golf and ski seasons. In the Spring and Fall there is little to no demand and the units typically sit empty during the weeks owned by Members who are not in good standing.
76. The Vacation Interval Lease provides that 20% of the rental income for an interval week is retained by LaTour to recover the costs associated with renting out the unit and 80% of the rental income is applied against the Operating Costs arrears for the interval week.
77. As at March 31, 2019, 681 Members, or 33% of all Members, have Operating Costs arrears. 327 Members, or 16% of all Members, have Operating Costs arrears greater than \$1,500.00, indicating that more than one year of fees is outstanding. The total Operating Costs arrears for all of the Strata Lots combined is \$2,206,374.64, with \$1,912,271.43, or 86.67%, aged over 90 days.
78. Under the Vacation Interval Leases, an interval owner's interest is subject to a lien for unpaid assessed Operating Costs.

Reasons and Support for the Arrangement

79. After careful consideration, the Board determined that the Arrangement is in the best interests of the Members of the Association and is fair to the Members.

80. The Board has recommended that the Members vote in favour of the Arrangement.
81. In making its recommendation, the Board considered a number of factors (as set out in the Information Circular), including:
- (e) *The Association's Ability to Fulfill its Purposes:* If the Arrangement is not approved and implemented, upon the expiry of the Head Leases and the Vacation Interval Leases, the Association will not be able to continue to protect the interests of the owners or coordinate the maintenance, operation and use of the Strata Lots.
 - (f) *Timeshare Administration:* The Arrangement will preserve and stabilize the administration of the timeshare enterprise so that it can continue after the expiry of the leases on substantially similar business terms as currently exist. If the Arrangement is not approved and implemented, there will be no legal basis for the continuation of the timeshare enterprise after June 30, 2021.
 - (g) *Potential for Rationalization of the Timeshare Enterprise:* The Arrangement will provide the opportunity for Members who wish to exit to do so without liability for future operating costs, and the ability for the Association to place any Strata Lots that are surplus to the operating requirements of the timeshare enterprise on the market for sale in an orderly fashion. If the Arrangement is not approved and implemented, the owners of each Strata Lot will be unable, as a practical matter, to place their Strata Lot on the market as a whole unit without taking proceedings under the *Partition of Property Act* (British Columbia), at their own expense.
 - (h) *A Superior Proposal is Unlikely:* Given the state of title of the Strata Lots and the limited time available before expiry of the Head Leases and Vacation Interval Leases, there are no other avenues available that both maintain the viability of the timeshare enterprise past June 30, 2021 and provide the means for an orderly rationalization and potential exit by members desiring to do so.
 - (i) *Approval Opportunity, Thresholds and Procedures:* The Board considered the fact that the Arrangement Resolution must be approved by special resolution to be protective of the rights of Members. The Arrangement must also be approved by the Court, which will consider the support of Interested Persons (defined below) and the fairness of the Arrangement to all Members and Interested Persons, thereby adding another protection.

Interested Persons

82. There are some people who may have an interest in one or more of the Strata Lots but who are not Members of the Association.
83. Pursuant to the terms of the draft Interim Order, the Association proposes to send the Meeting Materials and Court Materials (as defined in the Interim Order) to Members and to any person who will be affected by the Arrangement who is not a Member but has an interest on title, or of which the Association otherwise has notice, in one or more of the Strata Lots ("**Interested Persons**"). Some different categories of Interested Persons are outlined below.

Mayfair Intervals

84. Mayfair Place Ltd. ("**Mayfair**") was the original developer of the timeshare. Mayfair experienced financial difficulty and went out of business in the mid-90s. Mayfair was a company amalgamated pursuant to the laws of Alberta on November 19, 1987, and extraprovincially registered in BC on December 14, 1987. Mayfair was struck from the Alberta Register of Companies on May 1, 1997, and its registration in BC was cancelled on May 22, 1998.
85. According to the Association's records, Mayfair is still the registered owner of 124 fractional 1/51st fee simple interests dispersed across the Strata Lots (the "**Mayfair Intervals**"). Mayfair is not the registered holder of any Vacation Interval Leases.
86. All of the Mayfair Intervals have a right to purchase registered on title (the "**Rights to Purchase**" and "**Right to Purchase Holders**"). The Right to Purchase Holders were also granted a Vacation Interval Lease, which was registered on title.
87. As at March 31, 2019, six of the Right to Purchase Holders are Members of the Association in good standing, i.e. have no Operating Costs arrears.
88. The Association proposes to send the Meeting Materials and the Court Materials to all Right to Purchase Holders. The Right to Purchase Holders are lessees under a Vacation Interval Lease and therefore Members under the Association's bylaws. Any Right to Purchase Holder who has fully paid their Operating Costs will be entitled to vote as a Member at the Meeting (defined below) pursuant to the Association's bylaws.
89. The Association also proposes to send the Meeting Materials and the Court Materials to the Escheats Office as an Interested Person. The Province of British Columbia may have an interest in the Mayfair Intervals pursuant to the BC *Escheat Act*.

Deceased Members

90. There are some individuals who have passed away but who are still registered on title to a Strata Lot as the owner or one of the owners of a fractional fee simple interest and a corresponding Vacation Interval Lease.
91. The estates of deceased Members may have an interest in a Strata Lot, but are not Members of the Association. The Association proposes to send the Meeting Materials and the Court Materials to these parties as Interested Persons.

Judgments

92. There are five judgments registered on title to the Strata Lots (the "**Judgments**").
93. Each of the Judgments is registered against a fractional 1/51st interest in one Strata Lot. Collectively the Judgments are registered as against a 0.002% interest in the Strata Lots (5 fractional interests of the total 2,703 fractional interests).
94. Three of the Judgments were registered or renewed over two years ago and the registration has not since been renewed.

95. The fourth Judgment is registered in favour of the Bank of Montreal. On January 12, 2018, the Bank of Montreal registered a Judgment on Strata Lot 38 as to the interest of Robert Dressler in W20349. Robert Dressler and Marian Ruth Dressler, as joint tenants, have a Vacation Interval Lease registered on Strata Lot 38 under registration number W20349.
96. The fifth Judgment is registered in favour of Capital One Bank (Canada Branch). On April 17, 2013, Capital One Bank (Canada Branch) registered a Judgment on Strata Lot 66 as to the interest of Stephen Wesley Bradford in Lease XC6740, which registration Capital One Bank (Canada Branch) renewed on March 24, 2015, March 9, 2017 and February 27, 2019.
97. The registered holders of the Judgments may have an interest in a Strata Lot but are not Members of the Association. The Association proposes to send the Meeting Materials and the Court Materials to all five Judgment holders as Interested Persons, and to any other person who has a registered judgment on title to the Strata Lots as at the Record Date (as defined in the Interim Order).

Mortgage and Assignment of Rents

98. There is one mortgage and one assignment of rents registered on title to the Strata Lots, both held by 0871425 B.C. Ltd.
99. On February 25, 2010, 0871425 B.C. Ltd. registered a mortgage and an assignment of rents on Strata Lots 14 and 33, which were modified on July 16, 2012 and April 15, 2014.
100. 0871425 B.C. Ltd. may have an interest in Strata Lots 14 and 33 but is not a Member of the Association. The Association proposes to send the Meeting Materials and the Court Materials to 0871425 B.C. Ltd. as an Interested Person, and to any other person who has a mortgage registered on title to the Strata Lots as at the Record Date.

Crystalized Floating Charge

101. There is one crystalized floating charge registered on title to a number of the Strata Lots on March 31, 1993, in favour of the Metropolitan Trust Company of Canada.
102. Metropolitan Trust Company of Canada may have an interest in some of the Strata Lots but is not a Member of the Association. The Association proposes to send the Meeting Materials and the Court Materials to Metropolitan Trust Company of Canada as an Interested Person.

Proposal to Seek the Approval of the Members and Interested Persons

103. The Association proposes to hold a special general meeting (the "**Meeting**") of Members and Interested Persons (collectively, the "**Parties**") to consider the Arrangement Resolution approving the Arrangement.
104. The Interim Order which the Association seeks includes, among other things, directions for the notice to the Parties, the fixing of quorum requirements and the requisite majority for approval of the Arrangement.

105. The Meeting is to be held on September 28, 2019, at Panorama Mountain Resort, Copper Crown Room, located at 2030 Summit Drive, in Panorama, British Columbia, at 1:15 pm Mountain time.
106. For the purposes of calling and holding the Meeting, the Association proposes that:
- (a) each Member who is in good standing as at the commencement of the Meeting and therefore entitled to vote pursuant to the Association's bylaws is entitled to only one vote, notwithstanding s. 5.18 of the Association's bylaws;
 - (b) if there is more than one lessee of a Vacation Interval Lease, then the lessee who votes shall certify in writing that they have been designated by all such lessees as the Member to cast the vote with respect to such Vacation Interval Lease;
 - (c) the requisite and sole approval required to pass the Arrangement Resolution shall be the affirmative vote of at least two-thirds of the votes cast by the voting Members at the Meeting present in person or represented by proxy (excluding from the count of total votes cast any spoiled, illegible and/or defective ballots and abstentions);
 - (d) each Member who is not, as at the commencement of the Meeting, in good standing pursuant to the Association's bylaws, and therefore not entitled to vote pursuant to the Association's bylaws, and each Interested Person, may cast one vote at the Meeting in person or by proxy, which votes the Association will report to the Court for any application for a Final Order, but which votes will not be counted for purposes of the approval required to pass the Arrangement Resolution.
 - (e) A quorum at the Meeting shall be three Members entitled to vote that are present in person or represented by proxy, as per the Bylaws.

PART 3 - LEGAL BASIS

Statutory and Other Bases for Jurisdiction

Societies Act

1. The *Societies Act* allows a society to propose any form of arrangement, without limitation. Section 99(1) of the *Societies Act*, provides that a society may, "...propose any arrangement that it considers appropriate...".
2. Section 99(1) also provides that the arrangement that the society considers appropriate may include, without limitation, an arrangement that includes one or more of the following elements:
 - (a) an alteration to the constitution and bylaws of the society;
 - (b) a transfer of all or any part of the property or liabilities of the society to another corporation; and
 - (c) a dissolution or a liquidation and dissolution of the society.

Societies Act, ss. 99(1) (a), (d) and (f)

3. Section 99(2) of the *Societies Act* provides that before an arrangement proposed can take effect, the arrangement must be approved by:
 - (a) special resolution of the society; and
 - (b) a court order under section 100 of the *Societies Act*.
4. Section 100 of the *Societies Act* provides that, on the application of a society, the court may make an order approving an arrangement as proposed by the society, either on the terms presented in the application, or substantially on those terms, or may refuse to approve the arrangement. If the court approves the arrangement, it may make any ancillary or consequential orders it considers necessary to ensure that the arrangement is fully and effectively carried out.
5. The *Societies Act* also provides the court with broad jurisdiction to make orders respecting a society's general meetings. Section 80 of the *Societies Act* provides that, on the application of a member or director of a society, the court may order that a general meeting be called, held and conducted on the notice, on the date, at the time, at the location or in the manner the court directs, for any reason the court considers appropriate.
6. With respect to the right to vote, section 84 of the *Societies Act* provides that a member of a society has the right to vote, and that each voting member of a society has only one vote. However, the *Societies Act* also provides that the bylaws of a society may restrict the voting rights of a voting member who is not in good standing within the meaning of the bylaws. As noted above, the Association's bylaws impose such a restriction on voting rights of its members.
7. Section 85 of the *Societies Act* allows a voting member to appoint, in writing, a proxy holder, if permitted by the bylaws of the society. As noted above, the Association's bylaws permit proxies.
8. Further, s. 85 of the *Societies Act* also provides that, unless limited in the appointment, a proxy holder stands in the place of the voting member appointing the proxy holder and can do anything that member can do, including propose and second resolutions, participate in the discussion and vote.

Land Title Act

9. Under section 284 of the *Land Title Act*, the court may,
 - (a) on the application of a person interested in land, or
 - (b) on application made on behalf of the owner of a future or contingent interest,make an order prohibiting dealing with that land.
10. Section 284 also permits the court to annex to the order terms and conditions it may consider proper, including an expiry date. The order may be lodged with the registrar of land titles and, if so, the registrar of land titles must deal with it in the same manner as a caveat.
11. Under section 215 of the *Land Title Act*, a person who has commenced or is a party to a proceeding, and who is

- (a) claiming an estate or interest in land, or
- (b) given by another enactment a right of action in respect of land,

may register a certificate of pending litigation against the land in the same manner as a charge is registered.

12. For the purpose of a vesting order, section 34 of the *Land Title Act* provides that the registrar of land titles must not register an indefeasible title in favour of a person under a direction contained in an order of the court unless the order declares that it has been proved to the satisfaction of the court on investigation that the title of the person designated in the direction is a good, safe holding and marketable title.

Law and Equity Act

13. Section 37 of the *Law and Equity Act* provides that, where the court has authority to order the execution of a deed, conveyance, contract, transfer or assignment of any property, the court may by order vest the property in the person and in the manner and for the estates as would be done by that deed, conveyance, contract, assignment or transfer if it were executed.

Supreme Court Civil Rules

14. The Petitioners plead and rely upon the following Supreme Court Civil Rules:
- (a) Rule 1-2 (3) and (4), regarding the authority to commence the proceeding by Petition and to waive the application of the Rules;
 - (b) Rule 2-1 (2) (b), regarding the authority to commence the proceeding by Petition;
 - (c) Rule 4-4 regarding alternative methods of service;
 - (d) Rule 4-5, regarding service outside British Columbia;
 - (e) Rule 10-1, regarding the authority of the Court to make an order for the preservation of property; and
 - (f) Rule 16-1, regarding the formalities of a Petition and the Court's ability to apply any other Rules to a Petition.
15. The Petitioners also rely upon the inherent jurisdiction of this Honourable Court.

Interim Order

16. As described below, interim orders are commonly made in corporate arrangement proceedings. However, there are no reported cases on the arrangement provisions of the *Societies Act*, and the *Societies Act* does not expressly require the making of an interim order.
17. When the *Societies Act* was being considered as a replacement to the former *Society Act*, the Ministry of Finance produced a "White Paper", which was stated to be a discussion paper describing the policy intent behind the provisions of the new *Societies Act*. The Minister stated that, "...specific provisions of the [*Business*

Corporations Act] and other corporate legislation (e.g. administrative restoration, court remedies) have been selected and simplified for use by societies.”

18. Specifically with respect to arrangements, the White Paper stated as follows:

“This new Division provides a framework to allow societies to apply to court for approval of an “arrangement”. An arrangement is a proposal to bring about a reorganization of a society or achieve other corporate outcomes that may not otherwise be clearly provided for in the Act. An arrangement must be approved by the voting members by special resolution, and then must be ratified by the court.

The British Columbia Law Institute’s 2008 Report recommended against inclusion of arrangement provisions, on the grounds they are unnecessary in the non-profit context. It is indeed highly unlikely that a society will ever need to use these provisions. However, the arrangement process is standard in corporate law, and is available to other corporations under both for-profit and non-profit corporate statutes across Canada. The involvement of the Court in approving all arrangements both provides a cost deterrent to using the remedy where it is not really needed, and ensures protection of minority interests. Therefore, very limited arrangement provisions are proposed for the new Act.”

19. As noted in the White Paper, the *Business Corporations Act* contains more extensive provisions with respect to arrangements by corporations, and are set out in Division 5 of Part 9 of the British Columbia *Business Corporations Act*.
20. Section 291 of the *Business Corporations Act* provides, in subsection 2, that the court may, in respect of a proposed arrangement, make any order it considers appropriate, including orders determining notice, orders requiring the company to call, hold and conduct meetings of the persons the court considers appropriate, and separate voting of the persons the court considers appropriate at such meeting. Such orders may be made on the court’s own motion, on application of the company, or on application of a shareholder, creditor or party with whom the arrangement is proposed.
21. The *Canada Business Corporations Act* also contains provisions for corporate arrangements in the Federal corporate jurisdiction. Section 192 of the *Canada Business Corporations Act* provides that the court may make any interim or final order it thinks fit in connection with an application to approve an arrangement proposed by the corporation. Section 192(4) provides that the court may make orders determining the notice to be given to any interested person, and requiring a corporation to call, hold and conduct a meeting of certain persons in such manner as the court directs.
22. The petitioners submit that, given the
- (a) evident policy concerns of the Minister of Finance in enacting the *Societies Act*;

- (b) the absence of any reported cases on section 99-100 of the *Societies Act*;
- (c) the complexity of the Arrangement proposed by the Association, a sophisticated business enterprise that happens to be a society;
- (d) the directly analogous corporate arrangement provisions of the *Business Corporations Act* and the *Canada Business Corporations Act*; and
- (e) the need for fairness, inclusion and transparency in the process for the Members and Interested Persons to consider the Arrangement;

the corporate model for the court's direction by way of an interim order is appropriate to consider for the purpose of the Arrangement.

23. Should the Association proceed with its arrangement process without an interim order, the expense, time and commitment of the Association, its members and the interested persons would be jeopardized by their preparation of materials and attendance at the Meeting without the confidence that such a process and meeting was appropriate to consider the arrangement in the circumstances. Even if the Meeting indicated broad approval of the Arrangement, the absence of advance direction as to the process would create unnecessary uncertainty at the time the court's approval of the Arrangement was sought. Therefore, even though the *Societies Act* does not expressly contemplate an interim order for societies' arrangements, it is nonetheless appropriate to follow the corporate model in these circumstances.
24. In the analogous corporate process, an interim order is merely procedural in nature:
- (a) under the *Canada Business Corporations Act*, this court, in *Re Pacifica Papers Inc.*, 2001 BCSC 701, held that section 192(4) of the *Canada Business Corporations Act* contemplates a three step process for approval of an arrangement. The first step is for an interim order providing directions on the procedural steps and notice for the meeting to consider the arrangement, which is without notice due to the administrative burden of notifying the shareholders. The second step is the meeting, and the third step is the application for court approval. This Court also held that it is not incumbent upon the judge being asked to grant the interim order to carry out a detailed examination of the information circular which is to be distributed to the shareholders in order to assess its sufficiency. Such considerations are better left to the application for final approval.
 - (b) under the British Columbia *Business Corporations Act*, Fitzpatrick J., in *Mason Capital Management LLC v. Telus Corporation*, 2012 BCSC 1582, cited *Pacifica Papers*, and likewise held that the granting of an interim order is the first of three steps in the approval of an arrangement under the *Business Corporations Act* (at paragraph 30). Fitzpatrick J. held that the purpose of the first step, the interim order, is to "set the wheels in motion for the application process relating to the arrangement and to establish the parameters for the holding of shareholder meetings to consider approval of the arrangement in accordance with the statute". After review of further authorities, she noted as follows:

“These cases clearly demonstrate that the interim order is preliminary in nature...”, and

“...simply sets into motion the process by which the arrangement, as proposed by the company, is to be considered by both the shareholders and the court.”
(paragraphs 31, 36)

25. Mr. Williams is included as a petitioner specifically for the limited purpose of engaging section 80 of the *Societies Act*. Section 80 permits the court to order that the Meeting be called, held and conducted on the notice, on the date, at the time, at the location or in the manner the court directs, for any reason the court considers appropriate. The court may make such an order on the application of a member or director of a society. Mr. Williams is a director of the Association.
26. In *Re United Flower Growers Cooperative Association*, 2015 BCSC 1169, Brown J. endorsed the incorporation of a company for the purpose of meeting certain statutory requirements of section 288 of the *Business Corporations Act* in order to initiate an arrangement (paragraph 34). In a petition filed in this court by Kodiak Oil & Gas Corp. and James P. Henderson (Vancouver Registry S-148129) Mr. Henderson, the chief financial officer and a shareholder of the company proposing the arrangement, was a petitioner for the express purpose of qualifying Kodiak Oil & Gas Corp., which was to be continued into British Columbia pursuant to the proposed arrangement, to seek the orders sought as a shareholder before that continuation occurred. The interim order was made in that proceeding.
27. Under Rule 4-4, the court is entitled to make an order for substituted service granting permission to use an alternative method of service where, “it is impracticable to serve a document by personal service”.
28. Given the number of Members and Interested Persons to whom the Meeting Materials and Court Materials should be delivered, and the status of current addresses or other means by which notice may be given, the Petitioners submit that personal service is impracticable in these circumstances.
29. The order sought under s. 284 of the *Land Title Act* is required as a practical necessity of freezing the titles pending the consideration of the Meeting Materials and the holding of the Meeting. PRTI has a direct interest in each of the Strata Lots by virtue of being a party to the Head Lease and each Vacation Interval Lease, and the Association has an indirect interest on the basis that PRTI is its wholly owned subsidiary. In the alternative, the Petitioners seek a certificate of pending litigation under s. 215 of the *Land Title Act*.

The Arrangement

30. Section 99 of the *Societies Act* permits a society to propose “any arrangement that it considers appropriate”. The nature of the specific arrangement a society may propose is, therefore, couched in the broadest terms possible.
31. The corporate arrangement provisions are similarly broad. Section 288 of the British Columbia *Business Corporations Act* provides that a company may propose an arrangement with various parties, and may, in that arrangement, “make any proposal it considers appropriate”.

32. In an early consideration of the Ontario *Corporations Act* arrangement provisions, the Ontario High Court held that, "...the word "arrangement" is to be given its widest character, the only limitation being that the arrangement is not to be contrary to any of the sections of the company law or contrary to the general law".

Re West Humber Apartments Ltd., [1969] 1 OR 229.

33. In 1993, Blair J., of the Ontario Court (General Division), held that corporate arrangements should be considered with a flexible and broad approach:

"In the end, "arrangements", flexibly incorporating whatever tools and mechanisms of corporate law the ingenuity of their creators bring to the particular problem at hand."

Re Olympia & York Developments Ltd. (1993), 102 DLR (4th) 149, at para. 48

34. Blair J.'s endorsement of a broad interpretation of the arrangement provisions has been quoted in numerous subsequent cases, including the following:

- i) *Re Fairmont Hotels & Resorts Inc.* 2006 CanLII 57092, at para. 5;
- ii) *Re Masonite International Inc.* (2009), 56 CBR (5th) 42, at para 20;
- iii) *Re Invest Real Estate Investment Trust*, 2010 ONSC 4292, at para. 48; and
- iv) *Re Concordia*, 2017 ONSC 6357, at para. 27.

35. Even under the *Canada Business Corporations Act*, which lists specific sorts of transactions to qualify as arrangements, the courts have held that the definition of "arrangement" is not limited to such enumerated transactions. It is, essentially, a change that the statute does not otherwise provide the appropriate mechanism to carry out:

"The essential characteristic of an arrangement is a 'fundamental change which could not be otherwise achieved under the [statute].'"

Re Concordia, 2017 ONSC 6357, at para 26.

36. In any event, the final determination as to whether the Arrangement is an "arrangement" within the meaning of the *Societies Act* is to be determined at the comeback hearing, when the final order is applied for on notice to all interested parties: *Mason Capital Management LLC v. Telus Corporation*, 2012 BCSC 1582 at paragraph 32.

Final Order

37. The leading case setting out the principles applicable for the approval of a corporate arrangement is *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 ("BCE").
38. The Supreme Court of Canada set out the following basic test in BCE:

- (a) the statutory procedures must have been met;
- (b) the application for approval of the arrangement must have been put forward in good faith; and
- (c) the arrangement must be fair and reasonable. There are two prongs to this element of the test:
 - (i) the arrangement must have a valid business purpose; and
 - (ii) the objections of those whose legal rights are being arranged must be resolved in a fair and balanced way.

Statutory Procedures Have Been Met

- 39. Because section 99 of the *Societies Act* does not set out any specific notice, voting or other procedural requirements, the only statutory requirement to be satisfied is establishing that the Arrangement constitutes an “arrangement” under the *Societies Act*.
- 40. However, it would also be appropriate to consider whether compliance with the notice and other requirements set out in the Interim Order have been met.
- 41. Of the corporate arrangement processes, only the *Canada Business Corporations Act* requires the applicant to establish that it is not practicable to effect the proposed arrangement under other provisions of that statute.

The Application Has Been Put Forward in Good Faith

- 42. The Petitioners must establish that its application for approval of the arrangement has been put forward in good faith.
- 43. The Association has, prior to the Meeting, consulted with its Members and many of the Interested Persons, has held meetings and town hall discussions, and sought legal and financial advice with respect to the Arrangement.
- 44. The Association’s motives in proposing the arrangement emanate from its desire to solve practical problems confronting its members.
- 45. Accordingly, the Association has acted in good faith, and will continue to do so. Therefore, it anticipates establishing that it will bring the application for approval of the arrangement in good faith.

The Arrangement Must be Fair and Reasonable

- 46. Although the court in BCE set out two separate prongs for the fair and reasonable requirement – a valid business purpose and resolution of objections in a fair and equitable way – the court also held that many of the same factors would be relevant to both aspects of this test.

Valid Business Purpose

- 47. BCE holds that the analysis of whether the arrangement has a valid business purpose requires that the applicant show a positive value to the corporation to offset

the fact that rights are being altered. The arrangement must further the interests of the corporation as an ongoing concern, and is invariably fact-specific.

48. An important factor to consider is if the arrangement is necessary for the continued operations of the corporation. Indicia of necessity include the existence of alternatives and market reaction to the plan.

BCE paragraphs 145-146.

Fair and Reasonable

49. BCE provides that the focus of the fair and reasonable test is whether the objections of those whose rights are being arranged are being resolved in a fair and balanced way. An important factor to consider is the outcome of the vote to approve the arrangement. Although the outcome of a vote is not determinative of whether the plan should receive the court's approval, courts properly place considerable weight on this factor, since voting results offer a key indication of whether those affected by the plan consider it to be fair and reasonable.

BCE paragraphs 147-150.

50. The Supreme Court of Canada ultimately noted, in BCE, that the standard for applicants to meet is not perfection:

“As has frequently been stated, there is no such thing as a perfect arrangement. What is required is a reasonable decision in light of the specific circumstances of each case, not a perfect decision.”

BCE paragraph 155.

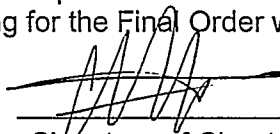
51. Arrangements have been approved where they compromise or extinguish rights of third parties.
52. Corporate examples of compromising third party rights under arrangements are found in *Protiva Biotherapeutics Inc. v. Inex Pharmaceuticals Corp.*, 2007 BCCA 161, and *Canadian Real Estate Investment Trust (Re)* 2018 ONSC 2519.
53. The jurisdiction of the court to make such orders is found in section 100(2) of the *Societies Act* and, with respect to the vesting of real estate interests, section 37 of the *Law and Equity Act* and section 34 of the *Land Title Act*.

PART 4 - MATERIAL TO BE RELIED ON

1. For the hearing of the application for the Interim Order:
 - (a) Affidavit #1 of Richard Williams, sworn April 26, 2019;
 - (b) Affidavit #1 of Andrea Hopkins, sworn April 21, 2019; and
2. Such further affidavits and other documents as counsel for the Petitioners may advise.

The Petitioners estimate that the hearing of the petition for the Interim Order will take 90 minutes, and the time estimate for the hearing for the Final Order will be advised.

Dated: April 26, 2019



Signature of Chantelle Rajotte

Lawyer for Petitioners

Miller Thomson LLP
400 – 725 Granville Street
Vancouver BC V7Y 1G5

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this notice of this petition

with the following variations and additional terms:

Date: _____

Signature of Judge Master

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Petitioners claim the right to serve this petition on persons outside British Columbia on the ground that there is a real and substantial connection between British Columbia and the facts on which this proceeding is based, and on the basis of sections 10(a) and (e)(i) of the *Court Jurisdiction and Proceedings Transfer Act*: this proceeding is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in property in British Columbia that is immovable or movable property; and this proceeding concerns contractual obligations, and the contractual obligations, to a substantial extent, were to be performed in British Columbia.

SCHEDULE "A"

No. S- _____
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF SECTION 99 OF THE BRITISH COLUMBIA SOCIETIES ACT,
S.B.C. 2015, C.18, AS AMENDED

AND

IN THE MATTER OF A PROPOSED ARRANGEMENT INVOLVING
PANORAMA RESORT INTERVAL OWNERS' ASSOCIATION

PANORAMA RESORT INTERVAL OWNERS' ASSOCIATION,
PANORAMA RESORT TIMESHARE INC. and RICHARD WILLIAMS

PETITIONERS

ORDER MADE AFTER APPLICATION
(INTERIM ORDER)

BEFORE)
) JUSTICE _____)
))

ON THE APPLICATION of the Petitioners, Panorama Resort Interval Owners' Association (the "**Association**"), Panorama Resort Timeshare Inc. ("**PRTI**") and Richard Williams, without notice, for an Interim Order in connection with an arrangement under section 99 of the *Societies Act*, S.B.C. 2015, c. 18, as amended (the "**Societies Act**"), coming on for hearing at 800 Smithe Street, Vancouver, British Columbia on April 30, 2019, and on hearing Gordon Plottel and Chantelle Rajotte, counsel for the Petitioners, and upon reading Affidavit No. 1 of Richard Williams sworn on April 26, 2019 (the "**Williams Affidavit**") and Affidavit No. 1 of Andrea Hopkins sworn on April 21, 2019 (the "**Hopkins Affidavit**");

THIS COURT ORDERS that:

DEFINITIONS

1. As used in this Order, unless otherwise defined, terms beginning with capital letters shall have the respective meanings set out in the notice of special meeting of members and interested persons (the "**Notice**") and accompanying information circular of the Association (the "**Information Circular**"), attached as Exhibit "I" to the Williams Affidavit.

SPECIAL MEETING

2. Pursuant to section 80 of the *Societies Act*, the Association is authorized and directed to call, hold and conduct a special meeting (the "**Meeting**") of the members of the Association (the "**Members**") and any person who will be affected by the

Arrangement (defined below) who is not a Member but has an interest on title, or of which the Association otherwise has notice, in one or more of the 53 strata lots (the "**Strata Lots**") identified in Schedule "A" attached hereto (the "**Interested Persons**") (collectively, the "**Parties**") at Panorama Mountain Resort, Copper Crown Room, located at 2030 Summit Drive, in Panorama, British Columbia, on September 28, 2019 at 1:15 pm Mountain time to, *inter alia*, consider and, if deemed advisable, to pass, with or without variation, a special resolution (the "**Arrangement Resolution**") approving and adopting an arrangement under Section 99 of the *Societies Act* (the "**Arrangement**") substantially as contemplated in the plan of arrangement (the "**Plan of Arrangement**") referred to in the Arrangement Resolution, a draft of which special resolution is attached as Appendix "B" to the Information Circular.

3. The Meeting shall be called, held and conducted in accordance with the *Societies Act*, the Notice, the Information Circular and the bylaws of the Association, subject to the terms of this Interim Order and any further Order of this Court, and the rulings and directions of the Chair of the Meeting, such rulings and directions not to be inconsistent with this Interim Order, and to the extent of any inconsistency, this Interim Order shall govern.

AMENDMENTS

4. The Association is authorized to make such amendments, modifications or supplements to the Arrangement, the Plan of Arrangement and the Notice as it may determine without any additional notice to or authorization of the Parties or further orders of this Court. The Arrangement, the Plan of Arrangement and the Notice as so amended, modified or supplemented, shall be the Arrangement, the Plan of Arrangement and the Notice to be submitted to the Parties at the Meeting, as applicable, and the subject of the Arrangement Resolution.

ADJOURNMENTS AND POSTPONEMENTS

5. Notwithstanding the provisions of the *Societies Act* and the bylaws of the Association, the board of directors of the Association (the "**Board**") by resolution shall be entitled to adjourn or postpone the Meeting on one or more occasions without the necessity of first convening the Meeting or first obtaining any vote of the Members respecting the adjournment or postponement, and without the need for approval of this Court. The Association shall provide notice of any such adjournment or postponement by notice sent to the Parties by one of the methods specified in paragraph 9 of this Interim Order, as determined to be the most appropriate method of communication by the Board.

RECORD DATE

6. The record date for determining the Parties entitled to receive the Notice, the Information Circular and the form of proxy for use by the Parties (collectively, the "**Meeting Materials**") shall be the close of business on May 10, 2019 (the "**Record Date**").
7. The Record Date will not change in respect of any adjournments or postponements of the Meeting.

NOTICE OF SPECIAL MEETING

8. The Information Circular is hereby deemed to represent sufficient and adequate disclosure to the Parties to form a reasoned judgment with respect to the Arrangement, and the Association shall not be required to send to the Parties any other or additional statement with respect to the Arrangement.
9. The Meeting Materials, with such amendments or additional documents as counsel for the Association may advise are necessary or desirable, and as are not inconsistent with the terms of this Interim Order, shall be sent, published or posted at least thirty (30) days prior to the date of the Meeting, excluding the date of delivery:
 - (a) to Members who have an email address or mailing address recorded in the Association's register of Members that the Board reasonably believes is current, by either email or prepaid ordinary mail addressed to the Member at his, her or its address as it appears in the Association's register of Members as at the Record Date;
 - (b) to Members who do not have an email or mailing address recorded in the Association's register of Members that the Board reasonably believes is current, by:
 - (i) prepaid ordinary mail addressed to the Member at his, hers or its address as it appears in the Association's register of Members as at the Record Date, if any, or if no address is recorded in the Association's register of Members, then by prepaid ordinary mail addressed to the Member at his, her or its address as it appears on title to the Strata Lots, if any;
 - (ii) on at least two occasions before May 31, 2019, publishing an advertisement substantially in the form attached as Exhibit "CC" to the Williams Affidavit, in a newspaper of general circulation in Canada; and
 - (iii) posting the Meeting Materials on the Association's website (www.panoramavacationretreat.com);
 - (c) to Interested Persons by:
 - (i) prepaid ordinary mail addressed to the Interested Person at his, her or its address as it appears in the Association's register of Members, if any, or if no address is recorded in the Association's register of Members, then by prepaid ordinary mail addressed to the Interested Person at his, her or its address as it appears on title to the Strata Lots, if any, or the address of the Interested Person's registered office, if any; and
 - (ii) on at least two occasions before May 31, 2019, publishing an advertisement substantially in the form attached as Exhibit "CC" to the Williams Affidavit, in a newspaper of general circulation in Canada;

and substantial compliance with this paragraph shall constitute good and sufficient notice of the Meeting.

10. Accidental failure of or omission by the Association to give notice to any one or more Parties, or the non-receipt of such notice, or any failure or omission to give such notice as a result of events beyond the reasonable control of the Association (including, without limitation, any inability to use postal services) shall not constitute a breach of this Interim Order or a defect in the calling of the Meeting and shall not invalidate the Arrangement Resolution or any other resolution passed or proceeding taken at the Meeting, but if any such failure or omission is brought to the attention of the Association, then it shall use commercially reasonable efforts to rectify it by the method and in the time most reasonably practicable in the circumstances.

DEEMED RECEIPT OF NOTICE

11. The Meeting Materials and any amendments, modifications, updates or supplements to the Meeting Materials and any notice of adjournment or postponement of the Meeting, shall be deemed to have been received 48 hours after it is sent, published or posted in accordance with this Interim Order.

UPDATING MEETING MATERIALS

12. Notice of any amendments, modifications, updates or supplements to any of the information provided in the Meeting Materials may be communicated, at any time prior to the Meeting, by notice sent, published or posted by any of the means set forth in paragraph 9, as determined to be the most appropriate method of communication by the Board.

SOLICITATION OF PROXIES

13. The Association is authorized to use the forms of proxy in substantially the same form as is attached as Exhibit "BB" to the Williams Affidavit, subject to the Association's ability to insert dates and other relevant information in the final form thereof and to make other non-substantive changes and changes legal counsel advise are necessary or appropriate. The Association is authorized, at its expense, to solicit proxies directly and through its officers, directors and employees, and through such agents or representatives as it may retain for that purpose and by mail, telephone or such other form of personal or electronic communication as it may determine.
14. The procedures for the use of proxies at the Meeting and revocation of proxies shall be as set out in the Notice and the Information Circular.
15. The Association may in its discretion generally waive the time limits for the deposit of proxies by Parties if the Association deems it advisable to do so, such waiver to be endorsed on the proxy by the initials of the Chair of the Meeting.

QUORUM AND VOTING

16. At the Meeting, the votes shall be taken on the following bases:
 - (a) each Member who is in good standing as at the commencement of the Meeting and therefore entitled to vote pursuant to the Association's bylaws is entitled to only one vote, notwithstanding s. 5.18 of the Association's bylaws;
 - (b) if there is more than one lessee of a Vacation Interval Lease, then the lessee who votes shall certify in writing that they have been designated by all such

lessees as the Member to cast the vote with respect to such Vacation Interval Lease;

- (c) the requisite and sole approval required to pass the Arrangement Resolution shall be the affirmative vote of at least two-thirds of the votes cast by the voting Members at the Meeting present in person or represented by proxy (excluding from the count of total votes cast any spoiled, illegible and/or defective ballots and abstentions);
- (d) each Member who is not, as at the commencement of the Meeting, in good standing pursuant to the Association's bylaws, and therefore not entitled to vote pursuant to the Association's bylaws, and each Interested Person, may cast one vote at the Meeting in person or by proxy, which votes the Association will report to the Court for any application for a Final Order, but which votes will not be counted for purposes of the approval required to pass the Arrangement Resolution under paragraph 16(c) above.

17. A quorum at the Meeting shall be three Members entitled to vote that are present in person or represented by proxy.

SCRUTINEER

18. The scrutineer for the Meeting shall be a representative of the Association's manager LaTour Group Management Canada Inc. The duties of the scrutineer shall include:
- (a) reviewing and reporting to the Chair on the deposit and validity of proxies;
 - (b) reporting to the Chair on the quorum of the Meeting;
 - (c) reporting to the Chair on the polls taken or ballots cast, if any, at the Meeting; and
 - (d) providing to the Association and to the Chair written reports on matters related to their duties.

APPLICATION FOR FINAL ORDER

19. The Association shall include in the Meeting Materials, when sent in accordance with paragraph 9 of this Interim Order, a copy of the Petition herein, the Notice of Application for Final Order in substantially the form attached as Exhibit "DD" to the Williams Affidavit, and this Interim Order (collectively, the "**Court Materials**"), and such Court Materials shall be deemed to have been served at the times specified in accordance with paragraph 11 of this Interim Order, whether such persons reside within British Columbia or within another jurisdiction.
20. The form of Notice of Application for Final Order attached as Exhibit "DD" to the Williams Affidavit is hereby approved as the form of notice for the hearing of the application for the Final Order.
21. The sending of the Meeting Materials and the Court Materials in the manner contemplated by paragraph 9, shall constitute good and sufficient service and no other form of service need be effected and no other material need be served on such persons in respect of these proceedings, except with respect to any person who shall:

- (a) file a Response to Petition, in the form prescribed by the Supreme Court Civil Rules, together with any evidence or material which is to be presented to the Court at the hearing of the Application; and
- (b) deliver the filed Response to Petition together with a copy of any evidence or material which is to be presented to the Court at the hearing of the Application, to the Association's counsel at:

Miller Thomson LLP
400 – 725 Granville Street
Vancouver, BC V7Y 1G5
Attention: Chantelle Rajotte

by or before 4:00 p.m. (Pacific time) on October 4, 2019.

22. Upon the approval by the Members of the Arrangement Resolution, in the manner set forth in this Interim Order, the Association may apply to this Court (the "**Application**"):

- (a) pursuant to section 100(1) of the *Societies Act*, for an Order approving the Arrangement; and
- (b) pursuant to section 100(2) of the *Societies Act*, for any ancillary or consequential Orders that are necessary to ensure that the Arrangement is fully and effectively carried out

(collectively the "**Final Order**"),

and the hearing of the Application will be held on October 10, 2019 at 9:45 a.m. (Pacific time) at the Courthouse at 800 Smithe Street, Vancouver, British Columbia or as soon thereafter as the Application can be heard or at such other date and time as this Court may direct.

23. In the event that the hearing of the Application is adjourned, then only those persons who filed and delivered a Response to Petition in accordance with paragraph 21, need be served and provided with notice of the adjourned hearing date.

FREEZE OF TITLES

24. Pursuant to section 284 of the *Land Title Act*, R.S.B.C. 1996, c. 250, from and after the Record Date until further Order of this Court, the Strata Lots identified in **Schedule "A"** attached hereto shall not be dealt with by any person, and for this purpose the Association and PRTI are declared to be applicants under s. 284(2) of the Act.
25. This Court directs that this Interim Order shall be lodged with the Registrar of Land Titles pursuant to s. 284(4) of the Act.
26. Any party affected by paragraphs 24 and 25 of this Interim Order may, on five days' written notice to the Petitioners at their address for delivery, apply to this Court to set those terms aside.

VARIANCE

27. The Petitioners shall be entitled, at any time, to apply to vary or seek directions with respect to this Interim Order. Any person affected by this Order shall be entitled to

apply to vary this Interim Order upon five days' written notice to the Petitioners at their address for delivery.

28. Rules 8-1 and 16-1 (3), (8) – (12) of the Supreme Court Civil Rules will not apply to any further applications in respect of this proceeding, including the application for the Final Order and any application to vary this Interim Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Lawyer for the Petitioners
Chantelle Rajotte

BY THE COURT

Deputy Registrar

SCHEDULE "B"

DRAFT

No. S- _____
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF SECTION 99 OF THE BRITISH COLUMBIA SOCIETIES ACT, S.B.C.
2015, C.18, AS AMENDED

AND

IN THE MATTER OF A PROPOSED ARRANGEMENT INVOLVING
PANORAMA RESORT INTERVAL OWNERS' ASSOCIATION

PANORAMA RESORT INTERVAL OWNERS' ASSOCIATION,
PANORAMA RESORT TIMESHARE INC. and RICHARD WILLIAMS

PETITIONERS

ORDER MADE AFTER APPLICATION
(FINAL ORDER)

BEFORE) THE HONOURABLE JUSTICE)
) _____) October 10, 2019
))

ON THE APPLICATION of the Petitioners coming on for hearing at 800 Smithe Street, Vancouver, British Columbia, on this day, and UPON HEARING Gordon G. Plottel and Chantelle Rajotte, counsel for the Petitioners; and no one appearing in person or on behalf of any member of the Petitioner Panorama Resort Interval Owners' Association (the "**Association**"), or any other person to whom notice was ordered to be given pursuant to the Interim Order made herein on April 30, 2019 (the "**Interim Order**"), or any other person affected by the Arrangement referred to in the Interim Order (the "**Arrangement**"); or the Registrar of Land Titles, AND UPON READING the Petition to the Court herein dated April 26, 2019; AND UPON READING the Interim Order; AND UPON READING Affidavits #1 and #2 of Richard Williams made April 26, 2019, and _____, and Affidavit #1 of Andrea Hopkins made April 21, 2019;

AND UPON IT APPEARING that notice of the time and place of the hearing of this application was duly given in accordance with the Interim Order to the Members and Interested Persons, both as defined in the Interim Order; and the Registrar of Land Titles, AND UPON the requisite approval of the Members having been obtained at the special general meeting of the Association held on September 28, 2019 (the "**Meeting**"); AND UPON CONSIDERING the result of the votes of the Interested Persons at the Meeting and the procedural and substantive fairness to the parties affected by the terms and conditions of the Arrangement as set out in the Plan of Arrangement attached hereto as **Schedule A** (the "**Plan of Arrangement**"), including, without limitation, those Members and Interested Persons holding registered interests in the Lands as listed in **Schedule B** hereto (the "**Lands**");

THIS COURT DECLARES that:

1. service of the Meeting Materials and the Court Materials, as defined in the Interim Order, on the Members and the Interested Persons, including, without limiting the generality of the foregoing, the owners of the registered interests in the Lands as listed on Schedule B hereto, has been duly made in accordance with the terms of the Interim Order;
2. the Meeting was duly called, held and conducted, in accordance with the Interim Order and the bylaws of the Association;
3. the Arrangement Resolution, as defined in the Interim Order, was duly passed by the Members as a Special Resolution of the Association;
4. pursuant to the provisions of the British Columbia *Societies Act*, S.B.C. 2015, .c. 18, (the "**Act**"), the Arrangement as provided for in the Plan of Arrangement, including the terms and conditions thereof, is procedurally and substantively fair and reasonable to the Members and the Interested Persons;

AND THIS COURT ORDERS that;

5. the Arrangement as provided for in the Plan of Arrangement be and hereby is approved pursuant to the provisions of s. 100 (1) of the Act;

6. upon the Petitioners filing with this Court a certificate substantially in the form attached hereto as **Schedule C**, all right, title and interest of the Members and Interested Persons in and to any portion of the Lands shall vest absolutely in the Association in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Charges**"), including, without limiting the generality of the foregoing, (i) any encumbrances or charges created by the Interim Order, (ii) those Charges set out and listed on **Schedule D** hereto, but the term "Charges" shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule E** hereto (the "**Permitted Encumbrances**"), and for greater certainty, this Court orders that all of the Charges are hereby expunged and discharged as against the Lands.

7. Upon presentation for registration in the Land Title Office for the Land Title District of Nelson of a certified copy of this Order, together with a letter from Miller Thomson LLP, solicitors for the Association, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:
 - (a) discharge from title to each of the Lands, the Order made in paragraph 24 of the Interim Order, preventing dealings with the Lands;

 - (b) enter the Association as the owner of the Lands, together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Lands, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Association in and to the Lands is a good, safe holding and marketable title, and directs the British Columbia Registrar to register indefeasible title in favour of the Association as aforesaid; and

(c) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Lands all of the Charges except for the Permitted Encumbrances.

8. The Association, shall be entitled at any time to seek leave to vary this Order, to seek the direction of this Court as to the implementation of this Order or to apply for such further order or orders as may be appropriate.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Lawyer for Petitioners
Chantelle Rajotte

BY THE COURT

Deputy Registrar