

British Columbia Securities Commission

BC Instrument 45-512

The British Columbia Securities Commission, considering that to do so would not be prejudicial to the public interest, orders that effective September 28, 2009, BC Instrument 45-512 entitled *Real Estate Securities*, dated June 5, 2005, is revoked and the attached BC Instrument 45-512 *Real Estate Securities* is made.

September 21, 2009

Brent W. Aitken
Acting Chair

(This part for administrative purposes only and is not part of the Order)

Authority under which Order is made:

Act and sections:- *Securities Act*, sections 48(1), 76(1) and 171

Other (specify):-

Real Estate Securities

Order under Sections 48 and 76 of the *Securities Act*

Definitions

1. In this Instrument

“audited annual financial statements” means comparative financial statements for a rental pool prepared in accordance with sections 4.1 and 4.2 of National Instrument 51-102 *Continuous Disclosure Obligations*, as if the rental pool were a reporting issuer that is a venture issuer, together with an auditor’s report on the comparative financial statements prepared in accordance with National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;

“developer” has the same meaning as given in the *Real Estate Development Marketing Act*;

“disclosure document” means any disclosure statement, prospectus, offering memorandum, summary disclosure statement or financial statements relating to an optional rental pool security or a resort security;

“eligible holder” means a person, other than a developer, that acquired title to an eligible real estate security under an agreement of purchase and sale entered into before November 1, 1996;

“eligible seller” means a seller, other than a developer or an agent acting on a developer’s behalf and includes an eligible holder;

“eligible real estate security” means an investment contract comprised of a direct interest in real property with a rental pool agreement or rental management agreement and includes optional rental pool security and resort security;

“financial information” means,

(a) for a rental pool, the

- (i) audited annual financial statements for the most recent financial year, which include financial statements for the prior comparative year, and
- (ii) interim financial statements for any interim periods after the most recent financial year end, and

(b) for a rental management agreement, quarterly statements of revenues and expenses for the property under the rental management agreement for the two-year period preceding the entering into of the agreement of purchase and sale

for that property, if the property was subject to a rental management agreement during that two-year period,

if the developer or manager has delivered, or is required to have delivered under this order, those statements to a holder of an optional rental pool security or a resort security;

“interim financial statements” means interim financial statements for the rental pool prepared in accordance with sections 4.3 and 4.4 of National Instrument 51-102 *Continuous Disclosure Obligations* as if the rental pool were a reporting issuer;

“manager” means any manager or operator under a rental pool agreement or rental management agreement;

“marketing” means any sales communication, excluding providing any disclosure document;

“optional rental pool security” means an investment contract

- (a) that is comprised of a direct interest in real property and an option to enter into a rental pool agreement for that property,
- (b) that does not include, or purport to include, any rental or cash flow guarantee, or other financial commitment on the part of any person connected with the offering,
- (c) under which the rental pool agreement is entered into at the sole discretion of the owner and is terminable by the owner at any time at the owner’s sole discretion, with reasonable notice or on other reasonable conditions, and
- (d) under which the owner has the right to occupy the property at any time, with reasonable notice;

“rental management agreement” means an agreement, other than a rental pool agreement, under which a person manages the generation of revenue from real property for another person;

“rental pool” for a particular property means an arrangement under which revenues derived from, and/or expenses relating to, that property and other properties are pooled and shared among the owners of the properties in accordance with their proportionate interests in the pool;

“rental pool agreement” means the agreement or agreements creating or giving rise to a rental pool;

“resort security” means either a Type A resort security or a Type B resort security;

“sales communication” means communication, including advertising, by an issuer, developer, vendor, promoter or manager, or an agent acting on behalf of any of the foregoing persons, to a prospective purchaser of an eligible real estate security with

the intention or effect of inducing the purchase by a prospective purchaser of the eligible real estate security;

“summary disclosure statement” means,

- (a) for a rental pool, a summary of the rental pool arrangement that includes
 - (i) items 1, 2(1), 5, 6, 7, 8(1), (2), (3) and (4), 9(b) and 15 of BC Form 45-906F with respect to the offering, modified as necessary to reflect the operation of the rental pool and the form of disclosure, and
 - (ii) items 11(2), (3) and (4) of BC Form 45-906F with respect to the manager under the rental pool agreement, modified so that the period of disclosure runs from the date of the certificate attached to the summary;

and is certified by the developer or manager in the form of certificate required under item 18 of BC Form 45-906F, and

- (b) for a rental management agreement,
 - (i) the rental management agreement, and
 - (ii) a summary of the rental manager’s past experience that includes items 11(2), (3) and (4) of BC Form 45-906F with respect to the manager under the rental management agreement, modified so that the period of disclosure runs from the date of the certificate attached to the summary, and is certified by the developer or manager in the form of certificate required under item 18 of BC Form 45-906F;

“Type A Resort Property” means real property

- (a) that is located in a ski resort area,
- (b) that is subject to a restrictive covenant or other restriction on the owner’s right to occupy the property, in favor of the Province, a municipality or other government authority (other than a zoning restriction), that is registered against the title of the property,
- (c) for which the restrictive covenant or other restriction does not restrict the number of days during a year, season or other period that the owner may occupy the property, and
- (d) for which the restrictive covenant or other restriction requires that when the property is not occupied by the owner, the property must be available for rent to the general public;

“Type A Resort Security” means an investment contract

- (a) that is comprised of a direct interest in a Type A Resort Property with either a rental pool agreement or rental management agreement for that property,

- (b) that does not include, or purport to include, any rental or cash flow guarantee, or other financial commitment on the part of any person connected with the offering, and
- (c) under which the owner has the right to occupy the property at any time, with reasonable notice;

“Type B Resort Property” means real property

- (a) that is located in a ski resort area,
- (b) that is subject to a restrictive covenant or other restriction on the owner’s right to occupy the property, in favor of the Province, a municipality or other government authority (other than a zoning restriction), that is registered against the title of the property,
- (c) for which the owner’s right to occupy is limited by the restrictive covenant or other restriction to a stipulated maximum number of days per annum or season or other period (the “occupancy period”), and
- (d) for which the occupancy period stipulated by the restrictive covenant or other restriction is, in any case, not less than 30 days per annum; and

“Type B Resort Security” means an investment contract

- (a) that is comprised of a direct interest in a Type B Resort Property with either a rental pool agreement or rental management agreement for that property,
- (b) that does not include, or purport to include, any rental or cash flow guarantee, or other financial commitment on the part of any person connected with the offering, and
- (c) under which the owner has the right to occupy the property for the entire occupancy period stipulated by the restrictive covenant or other government-imposed restriction, with reasonable notice or on other reasonable conditions.

Interpretation

2. Unless otherwise defined in this Instrument, terms used in this Instrument that are defined or interpreted in the *Securities Act* or *Securities Rules* should be read in accordance with the *Securities Act* or *Securities Rules*.

Registration and Prospectus Exemption for Trades of Eligible Real Estate Securities

- 3 (1). An intended trade by a developer, or an agent acting on its behalf, of an optional rental pool security or a resort security is exempt from the requirements of sections 34 (a) and 61 of the *Securities Act* provided that
 - (a) the developer has filed with the Superintendent of Real Estate, under Part 2 of the *Real Estate Development Marketing Act*, and delivered to the purchaser before an agreement of purchase and sale is entered into, a disclosure statement

or prospectus in the form required by BC Form 45-906F, excluding items 7, 8(5) and 17,

- (b) financial forecasts or projections are not used in any communications, except in the disclosure document,
- (c) where any financial forecasts or projections are included in the disclosure document, these are prepared in accordance with section 4250 of the CICA Handbook and are audited in accordance with the *Assurance and Related Services Guidelines* of the CICA Handbook entitled “AuG-6 Examination of a Financial Forecast or Projection Included in a Prospectus or Other Public Offering Document”,
- (d) where there is a rental pool, the rental pool agreement imposes an irrevocable obligation on the developer or the manager to send to a holder of the securities audited annual financial statements for the rental pool on or before the 140th day after the end of each financial year of the rental pool,
- (e) where there is a rental pool, the rental pool agreement imposes an irrevocable obligation on the developer or the manager to send to a holder of the securities interim financial statements on or before the 60th day after the date to which they are made up,
- (f) where there is a rental management agreement, the agreement imposes an irrevocable obligation on the developer or the manager to send to a holder of the securities quarterly statements of revenues and expenses for the property subject to the rental management agreement on or before the 60th day after the date to which they are made up,
- (g) in the case of a Type B Resort Security, the rental pool agreement or rental management agreement imposes an irrevocable obligation on
 - (i) the developer to deliver to any subsequent prospective purchaser, upon reasonable notice of an intended sale by the holder of the security, before an agreement of purchase and sale is entered into, if a subsequent trade by a holder of a Type B Resort Security occurs within 12 months of, or prior to, the issuance of permission to occupy the property, the disclosure statement or prospectus filed in accordance with subsection 1(a), and
 - (ii) the developer or the manager to deliver to any subsequent prospective purchaser, upon reasonable notice of an intended sale by the holder of the security, before an agreement of purchase and sale is entered into, if a subsequent trade by a holder of a Type B Resort Security occurs after 12 months from the date of the issuance of permission to occupy the property, a summary disclosure statement,
- (h) the rental pool agreement or rental management agreement imposes an irrevocable obligation on the developer or the manager to deliver to a subsequent prospective purchaser, upon reasonable notice of an intended sale

by the holder of the security, financial information before an agreement of purchase and sale is entered into,

- (i) there is no marketing of the expected economic benefits of the rental pool agreement or rental management agreement to a prospective purchaser, and
 - (j) the rental pool agreement or rental management agreement imposes an irrevocable obligation on a holder of the security to notify
 - (i) the developer or the manager about an intended trade prior to selling the optional rental pool security or resort security, and
 - (ii) subsequent prospective purchasers of their right to obtain from the developer or the manager financial information and, in the case of a Type B Resort Security, the applicable disclosure document.
- (2) An intended trade by an eligible holder, or an agent acting on the eligible holder's behalf, in an eligible real estate security not including an optional rental pool security or a resort security is exempt from the requirements of sections 34(a) and 61 of the *Securities Act* if the eligible holder, or any agent acting on the eligible holder's behalf, does not advertise the expected economic benefits of any rental pool agreement or rental management agreement to a prospective purchaser.

Resale restrictions for subsequent trades in eligible real estate securities

4. A subsequent trade in an eligible real estate security is exempt from the requirements of sections 34(a) and 61 of the *Securities Act* if
- (a) the seller is an eligible seller, and
 - (b) the seller, or an agent acting on the seller's behalf, does not advertise the expected economic benefits of the rental pool agreement or rental management agreement to a subsequent prospective purchaser.