

April 12, 2013

**Headnote**

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - National Instrument 51-102, s. 13.1 *Continuous Disclosure Obligations* - BAR - An issuer requires relief from the requirement to include certain financial statements in a business acquisition report – The issuer is a real estate investment trust or limited partnership that acquired individual real estate properties; the issuer has been unable to obtain the information needed to prepare the required financial statements; the BAR will contain sufficient alternative information about the significant acquisition, which is consistent with industry practices and standards in real estate acquisitions

**Applicable Legislative Provisions**

National Instrument 51-102, ss. 8.4 and 13.1 *Continuous Disclosure Obligations*

In the Matter of  
the Securities Legislation of  
British Columbia and Ontario  
(the Jurisdictions)

and

In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
Churchill 11 Real Estate Limited Partnership  
(the Filer)

Decision

**Background**

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer from the requirement in section 8.4 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-

102) to include certain financial statements in a business acquisition report (BAR) (the Exemption Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the British Columbia Securities Commission is the principal regulator for this application,
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, and Ontario, and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

### **Interpretation**

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. the Filer was formed on January 28, 2011, under the *Partnership Act* (British Columbia) pursuant to a limited partnership agreement dated January 18, 2011 between Churchill 11 Partners Inc., as general partner, and CIPC First Partner Corp., as the founding limited partner;
  - 2. the Filer's head office is located in Vancouver, British Columbia;
  - 3. the Filer's primary business is the acquisition and operation of a portfolio of investment properties in Canada (or interests in such properties);
  - 4. the Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, and Ontario;
  - 5. the Filer is in default of its continuous disclosure obligations with regard to the requirement to file a BAR under Part 8 of NI 51-102, but the Filer is not otherwise in default of the securities legislation in any jurisdiction;
  - 6. the Filer is authorized to issue 50,000 limited partnership units (the LP Units), one founding limited partner unit and one general partner unit; as of the date hereof, the

Filer has 18,367 LP Units issued and outstanding and one general partner unit issued and outstanding;

7. the Filer, together with Churchill 11 Debenture Corp. (the Debenture Corp.), filed a final prospectus (the Final Prospectus) dated April 6, 2011, and was issued a receipt for the Final Prospectus on April 7, 2011;
8. the Filer, together with the Debenture Corp., filed an amendment No. 1 to the Final Prospectus dated June 28, 2011 (the Amendment) and was issued a receipt for the Amendment on July 4, 2011;
9. from April 29, 2011 to July 22, 2011, the Filer and the Debenture Corp. completed an aggregate distribution under the Final Prospectus and the Amendment of 18,367 LP Units and debentures with a principal amount of \$18,367,000 (the Debentures);
10. neither the LP Units nor the Debentures are listed on any stock exchange;
11. on December 9, 2011, the Filer completed the purchase of an income producing property located at 100 Ranch Market, Strathmore, Alberta (the Property) from Rencor Developments (Strathmore) Inc. and United Acquisitions II Corp. (the Vendors); the purchase price was \$27,100,000 and was funded through a combination of cash and a first mortgage loan in the amount of \$15,600,000 (the Acquisition);
12. the Acquisition was a “significant acquisition” for the Filer under the significance tests in section 8.3 of NI 51-102 and, under the requirements of section 8.2 of NI 51-102, the Filer was required to file a BAR relating to the Acquisition;
13. under section 8.4 of NI 51-102, the BAR must include:
  - (a) annual financial statements for the Property for its two most recently completed financial years ended on or before the date of the Acquisition; the financial statements for the most recently completed financial year prior to the Acquisition must be audited;
  - (b) unaudited interim financial statements for the Property for its most recently completed interim period ended before the date of the Acquisition, and the comparable period in the preceding financial year; and
  - (c) pro forma financial statements of the Filer giving effect to the Acquisition;
14. the Vendors are privately owned companies; the Vendors advised the Filer in writing that audited financial statements for the Property were never prepared and the Vendors would not provide any further financial information;

15. the Filer has made bona fide attempts and has exhausted every reasonable effort to obtain access to the historical accounting records of the Property, and such efforts have been unsuccessful;
16. as the books, records, and other justificatory documents pertaining to the Property are not available, it is impracticable to provide the financial statements required under section 8.4 of NI 51-102;
17. the Filer obtained an appraisal report made as of October 1, 2011 (the Appraisal Report) on the Property:
  - (a) the Appraisal Report was prepared by a qualified third-party independent appraiser designated as an Accredited Appraiser by the Appraisal Institute of Canada;
  - (b) the Appraisal Report was prepared in accordance with the Canadian Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Institute of Canada; and
  - (c) the Appraisal Report was provided to the Filer's mortgage lender;
18. the Appraisal Report contains an analysis of expected cash flows and operating expenses for the next 10 years commencing October 1, 2011;
19. the Filer also obtained a building condition report made as of October 11, 2011 (the BCR) on the Property; the BCR was prepared by a qualified independent third party;
20. the Filer formed its decision to purchase the Property, in part, on the information contained in the Appraisal Report and the BCR;
21. the Filer proposes to include the following alternative information in the BAR:
  - (a) a statement of assets acquired and liabilities assumed at the date of the Acquisition, prepared in accordance with the basis of presentation described in the notes schedule, with an audit report thereon from the Filer's independent auditor;
  - (b) the Appraisal Report, redacted to exclude certain proprietary information of the appraiser and market sensitive information to the Filer;
  - (c) a summary of the information redacted from the Appraisal Report; and

(d) a summary of expected capital expenditures for the Property taken from the BCR

(collectively, the Alternative Information);

22. as provided in paragraph 8.4(5)(a)(i) of NI 51-102, the Filer is not required to include a *pro forma* balance sheet in the BAR because the Acquisition has been reflected in the Filer's most recent annual balance sheet for the year ended December 31, 2011; and

23. the Filer acknowledges that any right of action available to any person, company or securities regulatory authority against the Filer for failure to file the BAR by the filing deadline of February 22, 2012, is not terminated or altered as a result of this decision.

### **Decision**

¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Makers to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted in respect of the BAR for the Acquisition provided that the Filer includes the Alternative Information in the BAR and otherwise complies with applicable BAR requirements.

Peter Brady  
Director, Corporate Finance  
British Columbia Securities Commission