

# Terra Firma Development Corporation Limited

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Trustee's Report to the Creditors on the Preliminary Administration

Directive No. 30

November 12, 2020

District of: Nova Scotia  
Division No.: 01-Halifax  
Court No.: 44436  
Estate No.: 51-126302



# Contents

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Notice and Disclaimer .....	2
Background and Structure.....	3
Trustee’s Preliminary Evaluation of Assets and Details of Security Interests.....	4
Books & Records.....	6
Conservatory & Protective Measures.....	6
Claims .....	7
Legal Proceedings, Reviewable Transactions and Preference Payments.....	7
Third-Party Deposit.....	7
Trustee acting for secured creditors - s.13.4(1.1) disclosure .....	8
Projected Distribution .....	8

District of: Nova Scotia  
Division No.: 01-Halifax  
Court No.: 44436  
Estate No.: 51-126302



## Notice and Disclaimer

In preparing this Report, the Trustee has relied upon the limited information and records available from Terra Firma Development Corporation Limited and from third parties, such as media report archives, court documents and land registry documents. The Trustee's review of this information does not constitute an audit of the financial position or operating results of the Company as hereinafter defined. In addition, any financial information presented by the Trustee is preliminary and the Trustee is not yet in a position to project the outcome of the administration of the bankrupt estate.

District of: Nova Scotia  
Division No.: 01-Halifax  
Court No.: 44436  
Estate No.: 51-126302



## Background and Structure

Terra Firma Development Corporation, (“TFDC” or the “Company”) was registered and incorporated in Nova Scotia on February 8, 2007. The Company was the Development agent for Forest Lakes Country Club, (“FLCC”) a planned premium, four-season residential resort style community centered upon a Jack Nicklaus designed golf course, the first for Nova Scotia, in Ardoise, a small community in the district of West-Hants approximately 50km or 45 minutes from the capital city of Halifax, (the “Development”).

TFDC used a variety of unique strategies to finance the Development, chief among them being the promotion to retail investors to instruct the formation of one of 31 different Delaware Limited Liability Corporations as their vehicle for investment and ownership of land within the development. Each Delaware LLC (“DLLC”) purchased a certain amount of land within the Development and made a loan to TFDC. Various international sales and marketing agencies solicited investment from individual retail investors around the world, who organised for each investor to sign the relevant paperwork, including the instruction to form their DLLC and through membership of the DLLCs each investor owned their corresponding percentage of their DLLC’s assets, (being the land and the loan).

An investor’s ownership within the DLLC’s was also identified by Land Units in which each Land Unit represented 1m<sup>2</sup> of the land owned by a DLLC and was respective of the individual’s level of investment.

### Lot sales funding

Other investors entered into agreements to purchase undeveloped building lots (“Plot Purchase Agreements”) directly from TFDC by paying a deposit to TFDC. The investor would have the option to complete the purchase by paying the balance due or withdraw from the purchase after 2-3 years and receive a return of the deposit and additional benefits.

### Other investments

There were a number of fund managers and professional international real estate investors who invested directly or on behalf of other investors. Companies such as SEED Global Investment, Steiner and Company, S+C Treuhandgesellschaft MBH and Resort Invest International.

The underlying premise surrounding these investments was that as demand for ownership within the Development increased, so too would the value of the Land Units held by investors.

Excitement surrounding the new Development waned during the financial crisis in 2008 and the following years as the crisis continued. The surge in demand for building lots did not materialize as expected in the years thereafter and more than ten years after the start of the Development, the Company began to experience pressure from investors, lenders and contractors over the lack of revenues and progress. Lawsuits started piling up at the beginning of 2019 and with the death of the president and sole director late in 2019 the Company continued to operate on a care and maintenance basis into early 2020 before ceasing daily operations in early 2020.

The Company is wholly owned by Matzam Holdings Ltd.LLC (“Matzam”), a Maltese registered company. Matzam is owned jointly by a Cyprus corporation, Solveto 66.6% and Sandycrest Corporation 33.3%. The individuals behind these corporations are deceased. TFDC AsiaCorp Berhad, a Malaysia registered

District of: Nova Scotia  
Division No.: 01-Halifax  
Court No.: 44436  
Estate No.: 51-126302



corporation, is a wholly owned subsidiary of TFDC. Presently there are no directors, principals or officers of TFDC.

On September 22, 2020, on application of creditor S+C Treudhandgellschaft GMBH the Supreme Court of Nova Scotia declared the Company bankrupt and named MNP LTD as the Trustee.

## **Trustee's Preliminary Evaluation of Assets and Details of Security Interests**

There are several major landowners within the Development, and other creditors who have controlling security interests over significant portions of land. A summary of these stakeholders is discussed below. It is the Trustee's view that a coordinated and collaborative effort between these landowners and secured creditors is essential to maximizing recoveries.

### **TFDC**

TFDC owns some 96 different parcels of land within the Development which are identified on the Statement of Affairs ("SOA") by PID number. The values assigned to each PID on the SOA are a mixture of figures reported in Company records and figures reported in the Nova Scotia registry of deeds for taxation purposes. Actual market values of the PIDs are not known and can vary considerably from the taxation values. It is suspected that market values will be difficult to ascertain as there are no similar developments within close proximity to the FLCC Development from which to draw comparisons.

We believe that municipal property taxes may be in arrears on these parcels. If so, we will seek instruction from creditors as to whether or not they will provide funding to the Trustee to pay the tax arrears in order to avoid losing control of the properties.

### **DLLCs**

The DLLCs collectively own 31 parcels of land within the Development. All of the DLLCs, with the exception of DLLC 4 & 5, are managed by AV Corporate Services, ("AVCS"). DLLC 4 is believed to be wholly owned by Mr. James Whelan and DLLC 5 is believed to be wholly owned by Mr. Edward Slatterly. AVCS collects a fee from the membership of the DLLC and uses the fee in part to pay the property taxes due to the Municipality of West Hants and to pay the annual fees due to the corporate registry in Delaware, USA. We are advised by AVCS that the municipal taxes are paid up to date on all the lands owned by the DLLCs. We are further advised by AVCS that collection of the membership dues has been declining, understandably due to the large degree of uncertainty surrounding the future of the Development. The trustee would like to caution the DLLC investors that should the DLLCs be struck from the corporate registry for non-payment of annual dues, or if the Municipality of West Hants does not receive its property tax levy, the DLLCs may lose control over their properties. If this were to occur, it would become much more difficult to coordinate a joint effort of TFDC, through the Trustee, and the other property owners within the Development to liquidate the properties for maximum value.

District of: Nova Scotia  
Division No.: 01-Halifax  
Court No.: 44436  
Estate No.: 51-126302



### **Resort Invest International GmbH (“RII”)**

RII has recorded mortgages on 17 PIDs. Certificates of Lis Pendens have been filed against certain of these PIDs by S+C Treuhandgesellschaft MBH. (“S+C”). S+C claims that the funds provided to TFDC in relation to the mortgages came from S+C and RII was intended to act as an intermediary but instead has improperly recorded the mortgages for its own benefit. In March 2020, RII initiated a private receivership in an attempt to realize on certain of TFDC’s property, PwC is the receiver.

It is the Trustee’s view that RII and S+C and any other creditor claiming a security interest in TFDC property, must provide proof of their claim together with proof of their security to the Trustee before taking further actions against property owned by TFDC.

### **Steiner & Co GmbH (“Steiner”)**

Steiner is a German fund manager that TFDC borrowed \$3 million plus interest from. Approximately \$2,493,750 remains outstanding. They are a secured creditor and have approximately a 25-acre parcel of land with PID number 45394814 as security for the loan.

### **TFDC AsiaCorp Berhad**

TFDC AsiaCorp (a wholly owned subsidiary of TFDC) own one parcel of land (PID#45382728).

TFDC AsiaCorp had a similar purpose to that of the DLLCs in that it acted as a vehicle for international investors to participate in the Development. Individual investors would invest in TFDC Asia and TFDC Asia would then loan the investment funds to TFDC (Canada). TFDC Canada is believed to owe some \$7,884,806 to TFDC Asia and its underlying investors. TFDC Asia is believed to hold mortgages over PIDs 45405552 and 45405560 as security for this debt in addition to ownership of PID 45382728.

My Premier Trustee is the contact for individuals who have invested in TFDC Asia.

### **Project Forest Lakes Ptd. Ltd.**

Project Forest Lakes Pte .Ltd. (“PFL”)owns four parcels of land within the Development, PID 45407459 (the boat house), PID 45402518 (Martock & sites), PID 45401957 (LOT MH-1), and PID 45382736 (BLOCK RL-X (PORTION OF) (Phase 2A)) and has a mortgage recorded against PID 45401965. PFL is unrelated to TFDC and is the Nova Scotia affiliate of Singapore real estate investment management firm, SEED Global Investment who provided funding to TFDC by way of promissory notes and took security in the form of collateral mortgage(s). When the promissory notes fell into default, PFL sought and received Orders for Foreclosure and Sale in respect of the noted PIDs, with the exception of PID 45401965 which remains, at the date of this report, registered in the name of TFDC. We are advised that a number of individuals have paid significant deposits to reserve their purchase of a condo unit but have not received title.

District of: Nova Scotia  
Division No.: 01-Halifax  
Court No.: 44436  
Estate No.: 51-126302



### **Cochran Landing Limited Partnership / Cochran Landing GP Inc.**

In August or September 2018 TFDC sold a 28-acre parcel of land known as the Cochran Landing Lands to a company that it has a 10% interest in. We are in the process of seeking additional information on this transfer and the value of TFDC's 10% interest.

### **JW Lindsay Construction Ltd. ("Lindsay's")**

Lindsay's owns PID 45396892 (the Welcome Lodge). Lindsay agreed to finance the construction costs of the build of the Lodge and TFDC offered the Lodge as collateral. Lindsay was granted an Order for Foreclosure and Sale on February 19, 2020.

### **Signallia Group DMCC**

Signallia is a UAE Dubai based firm and owns PIDs 45404548, 45404613, 45404621, 45404704, 45404902 (the Woodlands Condominium). Signallia provided financing to TFDC in 2017 and was secured by the noted PIDs. On September 27, 2019 TFDC conveyed the noted PIDs to Signallia by way of Warranty Deed.

### **Investment Lots**

Several investors had converted their land units to specific building lots and are registered owners of building lots within the Development, the ones that we are aware of are as follows:

Manfred Gaß –	PIDs 45398799, 45403292 & 45404555
Mohamed Messaoudi –	PID 45398823
MGP Enterprises Ltd -	PID 45398864
Siegfried and Adelheid Gaß –	PID 45403300

We are advised that there are others who may have fully paid their plot purchase agreements, but didn't complete the purchase transaction by taking title as they intended to resell to the retail market and avoid paying HST and deed transfer tax. Other members of this group were granted mortgages over the specific lot they exchanged land units for and we are still gathering further details on these exchanges.

### **Books & Records**

The Trustee has requested the books and records from a former officer of the Company and have been provided with some preliminary information that we have used in this report and in the SOA. We are continuing to search for and assemble TFDC's records.

### **Conservatory & Protective Measures**

The Trustee has not taken any conservatory or protective measures. The TFDC estate in bankruptcy

District of: Nova Scotia  
Division No.: 01-Halifax  
Court No.: 44436  
Estate No.: 51-126302



presently has no funds from which to operate, or to pay for expenses such as property taxes, insurance, road maintenance, garbage removal, or to pay professionals such as appraisers, accountants, or solicitors.

## Claims

A claim's register will be tabled at the meeting.

## Legal Proceedings, Reviewable Transactions and Preference Payments

In 2018 and 2019 the Company granted a number of creditors security over its assets, or transferred assets in exchange for repayment of debts. We have not yet had an opportunity to review all of these transactions, for their purpose of validity. TFDC was subject to a number of lawsuits this year and last. The majority of which were for builder's liens and judgements to certify unsecured debts, others are applications to the court for orders of foreclosure sale and possession in relation to mortgages recorded by individuals who are subject to plot purchase agreements. The only current or ongoing action we are aware of is the matter of Issa Mohamad Mohamad Matar and Sahar Ismail Issa Ayyash who have filed a notice of foreclosure with the Supreme Court of Nova Scotia Hfx No. 499019 on November 5, 2020. The hearing is set for November 30, 2020 at 9:30am AST. The TFDC property being foreclosed includes a house, land and premises described as PID 45403276 and PID 45398914. It appears as though Matar and Ayyash advanced funds on an unsecured basis and pursuant to a plot purchase agreement to TFDC in 2016. In 2018 Matar and Ayyash requested security for their prior advances and TFDC provided them with collateral mortgages which are being relied on for their application for Orders for Foreclosure and Sale. We have not had an opportunity to fully review the security for its validity.

We are advised that in 2018 TFDC transferred the golf course assets to RII, or another entity controlled by RII, or its principals. The agreement which effected the transfer contained a clause that provided that holes 10-18 would be playable on or before March 31, 2020. The failure to have holes 10-18 playable by March 31, 2020 would be a default of the agreement which would require RII to transfer the golf course assets back to TFDC at no cost. We are in the process of reviewing this transaction as to whether the terms of this agreement have been complied with and the status of TFDC's rights related to the golf course.

Cochran Landing Limited Partnership / Cochran Landing GP Inc.

In August or September 2018 TFDC sold a 28-acre parcel of land known as the Cochran Landing Lands to a company that it has a 10% interest in. We are in the process of seeking additional information on this transfer and the value of TFDC's 10% interest.

## Third-Party Deposit

MNP LTD has received a deposit from S+C in consideration for the Trustee's acceptance to act as Trustee in the matter of the TFDC bankruptcy. The deposit is to guarantee the costs of the administration of the



District of: Nova Scotia  
Division No.: 01-Halifax  
Court No.: 44436  
Estate No.: 51-126302



Trustee should the realization from other sources be insufficient to cover said costs. The funds deposited with the Trustee by S+C are not considered funds belonging to the estate of TFDC in bankruptcy as they have not been derived from any of TFDC's property. Upon completion of the administration of the bankruptcy any balance left of the deposit will be returned to S+C. The primary responsibility for the payment of the Trustee's fees and disbursements lies with the estate of TFDC and the deposit is only an accessory covering any unpaid portion of the primary obligation.

## **Trustee acting for secured creditors - s.13.4(1.1) disclosure**

At this time, the Trustee has not agreed to act for any secured creditor. However, as noted throughout this report, all creditors of TFDC may benefit from a collaborative effort coordinated by the Trustee to market the Development as a whole for sale and the Trustee welcomes the opportunity to discuss options and ideas with creditors further. Pursuant to subsection 13.4(1) of the Bankruptcy and Insolvency Act, ("BIA"), the Trustee is prohibited from acting for, or assisting secured creditors to assert a claim against the estate, to realize or otherwise deal with a security that the secured creditors holds, unless the Trustee has obtained a written opinion from independent legal counsel that the security is valid and enforceable against the estate.

## **Projected Distribution**

It is widely known that the FLCC is a failed development and therefore we suspect very little interest in purchasing individual building lots within the Development from local individual buyers. It is the Trustee's view that the assets of TFDC would realize the highest value if the Development and all its assets as a whole were offered for sale. It is further of the Trustee's view that the completion of the golf course would likely increase demand for lots and have a considerable effect on the value of the Development overall.

A coordinated and collaborative effort between landowners and secured creditors will be essential to maximizing recoveries

At this time, the estate has no funds from which to hire property appraisers or property development experts to provide their opinions on possible values. Accordingly, the Trustee is not able to offer any opinions on projected distributions.

**MNP LTD**

**In its capacity as Trustee for the estate of Terra Firma Development Corporation, in bankruptcy**

A handwritten signature in black ink, appearing to read 'J. Eric Findlay'.

J. Eric Findlay, CPA, CIRP, LIT  
Senior Vice President