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Via E-mail and Facsimile

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Re: In re SCOTIA DEVELOPMENT, LLC, et al., Bankr. Case No. 07-20027-C-11
(Jointly Administered)

Dear Counsel:

As you know, this law firm represents The Bank of New York Mellon Trust Company, N.A., as Indenture Trustee (the "Indenture Trustee") for the Timber Notes. This letter is written on behalf of the Indenture Trustee in reference to the "Judgment and Order (I) Confirming First Amended Joint Plan of Reorganization for the Debtors, as Further Modified, with Technical Amendments, Proposed by Mendocino Redwood Company, LLC, Marathon

Structured Finance Fund, L.P., and Official Committee of Unsecured Creditors, (II) Denying Confirmation of the Indenture Trustee Plan, (III) Denying Motion to Appoint a Chapter 11 Trustee” (the “Confirmation Order”). Capitalized terms not otherwise defined in this letter have the same meaning as defined in the Confirmation Order or in the MRC/Marathon Plan, as applicable.

As you know, there is presently in effect a stay of the Confirmation Order. If and when all stays shall have expired, the express terms of the MRC/Marathon Plan unequivocally provide that the “Effective Date” of the Plan will nevertheless not occur so long as any appeal from the Confirmation Order remains pending.

Specifically, the “Effective Date” of the MRC/Marathon Plan is defined in “Appendix A to MRC/Marathon First Amended Plan, As Further Modified, with Technical Modifications” (the “Plan Appendix”), as follows:

Effective Date means the date specified by the Plan Proponents in a notice filed with the Bankruptcy Court as the date on which this Plan shall take effect, and which occurs **after** (i) **the Confirmation Order becomes a Final Order; and** (ii) each of the conditions precedent to the Effective Date provided for in Article XI of the Plan have been satisfied or waived.

Plan Appendix p. 4 (emphasis added). Thus, based upon the plain language of the Plan Appendix, which is incorporated into the MRC/Marathon Plan, the Effective Date will occur only after **both** (i) the Confirmation Order becomes a “Final Order” **and** (ii) all Article XI conditions have been satisfied or waived. Although part (ii) of the definition apparently permits the Article XI conditions to be waived, there is **no** provision permitting the requirement of a “Final Order” (set forth in clause (i) of this conjunctive provision) to be waived.

The requirement for a “Final Order” is absolute; there is nothing either in the “Effective Date” definition or in the MRC/Marathon Plan itself that permits or contemplates the possibility of waiver. This is in stark contrast to Section 11.2 of the MRC/Marathon Plan, which expressly permits the waiver of any conditions set forth in Section 11.1. Because the “Final Order” requirement is not a condition contained in Section 11.1, Section 11.2 does not operate to permit the “Final Order” requirement to be waived.

“Final Order,” in turn, is defined in the Plan Appendix as follows:

Final Order means an order of a court: (a) as to which the time to appeal, petition for writ of certiorari, or otherwise seek appellate review or to move for reargument, rehearing, reconsideration or stay has expired and **as to which no appeal, petition for writ of certiorari, or other appellate review, or proceedings for reargument, rehearing, reconsideration or stay shall then be pending;** or (b) as to which any right to appeal, petition for certiorari, or move for reargument, rehearing or stay shall have been waived in writing by all parties with

such right; or (c) in the event that an appeal, writ of certiorari, or other appellate review or reargument, rehearing, reconsideration or stay thereof has been sought, which order shall have been affirmed by the highest court to which such order was appealed or from which writ of certiorari or other appellate review or reargument, rehearing, reconsideration or stay was sought, and as to which the time to take any further appeal, to petition for writ of certiorari, to otherwise seek appellate review, and to move for reargument, rehearing, reconsideration or stay shall have expired; *provided, however*, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure or under section 1144 of the Bankruptcy Code, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not cause such order not to be a Final Order.

Plan Appendix p. 5 (emphasis added). Thus, based upon the plain language of the Plan Appendix, the Confirmation Order cannot be a “Final Order” if any appeal is pending. There is no provision (whether in the definition of “Effective Date” or “Final Order” or in the MRC/Marathon Plan itself) that qualifies, or permits a waiver of, that requirement.

Accordingly, so long as any appeals from the Confirmation Order are pending, the confirmation order is not a “Final Order,” and the “Effective Date” therefore cannot then occur. As you are aware, the Indenture Trustee and other interested parties have filed Notices of Appeal with respect to the Confirmation Order (the “Confirmation Appeals”), and those appeals remain pending. Indeed, the Court of Appeals has this day granted the Indenture Trustee’s Petition for leave to appeal under 28 U.S.C. § 158(d), to be heard on an expedited basis.

Please be advised that, so long as the Confirmation Appeals remain pending, the Indenture Trustee would regard any attempt by any entity to consummate the MRC/Marathon Plan, or to take any actions that under the MRC/Marathon Plan are to occur on the Effective Date, as improper and contrary to law, including without limitation Bankruptcy Code sections 362 and 549. In particular, no deeds, no bills of sale, and no other documents of transfer shall be executed or delivered, and no distributions under the MRC/Marathon Plan shall be made, unless and until all Confirmation Appeals have been resolved and the Effective Date has occurred. The Indenture Trustee reserves all of its rights and remedies.

Very truly yours,



Toby L. Gerber