

IN THE MATTER OF  
*THE SECURITIES ACT, 1988, S.S. 1988, c.S-42.2*

AND

IN THE MATTER OF  
EVERETT JOHN KEARLEY

RULING/ORDER  
(Sections 83 and 158)

WHEREAS an application has been received by the Saskatchewan Securities Commission (the “Commission”) from Everett John Kearley (the “Applicant”) for a ruling pursuant to clause 83(1)(a) of *The Securities Act, 1988, S.S. 1988, c.S-42.2* (the “Act”) that the provisions of sections 27 and 58 of the Act shall not apply to the proposed trade (the “Proposed Trades”) of units (the “LP Units”) of limited partnerships promoted by the Applicant (the “Issuers”) to persons or companies:

1. To whom the Issuers would be able to trade pursuant to the provisions of clauses 39(1)(y) and 81(1)(s) of the Act (the “Qualified Investor Exemption”) but for the provisions of subclauses 39(1)(y)(ix) and 81(1)(s)(viii) of the Act;
2. To whom the Issuers would be able to trade pursuant to the provisions of clauses 39(1)(cc) and 81(1)(z) of the Act (the “Close Friends and Close Business Associates Exemption”) but for the provisions of paragraphs 39(1)(cc)(iv)(D) and 81(1)(z)(iv)(D) of the Act; or
3. Who, in a year prior to the year in which the Proposed Trade occurs, purchased LP Units in another Issuer or limited partnership units of a Prior Issuer (as defined below) and who continues to hold such units in such Issuer or Prior Issuer at the time of the Proposed Trade (an “Eligible Investor”);

AND WHEREAS the Commission has assigned to the Director the power to make exemption orders and rulings under the provisions of the Act;

AND WHEREAS it has been represented to the Director that:

1. The Applicant is a professional engineer with over 35 years experience in the development, design, construction and management of a wide variety of buildings and other projects in Saskatchewan and eastern Canada;

2. The Applicant is the President, a director and controlling shareholder of:
  - a. Millennium III Properties Corporation (“Millennium”), a corporation incorporated pursuant to *The Business Corporations Act* (Saskatchewan) (the “SBCA”) on August 14, 1989;
  - b. Fortress Properties Inc. (“Fortress”), a corporation incorporated pursuant to the *SBCA* on October 26, 1995; and
  - c. 35 separate companies incorporated pursuant to the *SBCA*, each of which companies is the general partner of a separate limited partnership (individually a “Prior Issuer” and, collectively, the “Prior Issuers”) established and registered in Saskatchewan in accordance with *The Partnership Act* (Saskatchewan) and *The Business Names Registration Act* (Saskatchewan);
3. Each of the 35 Prior Issuers owns and operates commercial or multi-unit residential real estate property in Saskatoon, Saskatchewan (the “Prior Projects”) which Prior Projects were financed, in part, through the distribution of limited partnership units of the respective Prior Issuers (the “Prior Trades”) to an aggregate of 420 separate persons (the “Previous Investors”) over the period 1981 to 2001;
4. Each of the 35 Prior Projects is currently managed by Fortress;
5. In total the Prior Projects had an aggregate original acquisition cost of over \$60 million of which over \$29 million was raised through the sale of limited partnership units of the Prior Issuers;
6. 166 of the Previous Investors (or approximately 45%) own limited partnership units in two or more Prior Issuers, with 89 Previous Investors holding limited partnership units in at least three Prior Issuers and 58 Previous Investors holding limited partnership units in at least four Prior Issuers;
7. Each of the Issuers will be a limited partnership pursuant to the laws of Saskatchewan and registered in accordance with *The Partnership Act* (Saskatchewan) and *The Business Names Registration Act* (Saskatchewan);
8. The general partner of each Issuer (the “General Partner”) will be a different corporation incorporated pursuant to the laws of Saskatchewan and the Applicant will be the President, sole or controlling security holder and director of each General Partner and each General Partner will carry on no business other than acting as the general partner of the respective Issuers;
9. The Applicant, personally, will be the founding limited partner of each of the Issuers;

10. The sole business of each Issuer will be to acquire and operate a specific commercial property, either an apartment building, condominium complex or commercial property such as a strip mall, warehouse or office building (the “Project”) and the Issuer will carry on no other business;
11. The Project of each Issuer will be completely separate and distinct from the Projects of all other Issuers and from the Prior Projects;
12. None of the Issuers will be reporting issuers within the meaning of the Act and none of the securities of the Issuers will be listed or posted for trading on any stock exchange or over-the-counter market;
13. Each Proposed Trade will be carried out in a manner similar to the Prior Trades of the Prior Issuers in that:
  - a. the Applicant and/or members of his immediate family or companies controlled by the Applicant and/or members of his immediate family and/or other officers of the General Partner will retain an equity ownership interest in the Issuer of not less than 10%;
  - b. prior to an Issuer accepting subscriptions for its securities, Fortress will enter into a management agreement with the Issuer to provide rental and property management services for the Project of the Issuer for a period of at least five years; and
  - c. prior to the Issuer accepting subscriptions for its securities the Applicant, together with Millennium (collectively the “Project Sponsors”), will enter into an agreement or agreements with the Issuer pursuant to which the Project Sponsors commit:
    - i. to obtain financing for the Issuer, through a combination of mortgage financing and equity financing, in an amount sufficient to fully fund all acquisition and start-up costs in respect of the Project and, in that regard, the Applicant will provide such personal guarantees of mortgages or will subscribe for any unpurchased securities of the Issuer offered by the Issuer, as may be necessary to ensure sufficient financing for the Issuer to carry out the Project;
    - ii. to arrange and pay for all legal, accounting and like professional services required by the Issuer in respect of the organization and creation of the Issuer, the acquisition of the Project and the mortgage and/or equity financing for the Project;
    - iii. to provide cashflow loans to the Issuer to ensure that the Issuer is able to make timely payment of all obligations in respect of its acquisition and operation of the Project pending completion of the Proposed Trades and/or receipt of advances on mortgage financing by the Issuer; and

- iv. to provide to the Issuer, during a period of at least three years following the completion of the Proposed Trade, cashflow deficiency loans to the extent required by the Issuer to pay its obligations as they become due in the event that the revenues of the Issuer are insufficient for that purpose, which loans shall be interest free during such three year period and thereafter will be subject to interest at a rate not exceeding the prime rate of the Applicant's principal bankers plus 2%.

The aforesaid commitments shall be direct obligations of the Applicant or, to the extent such commitments may not be granted directly by the Applicant, such commitments shall be personally guaranteed by the Applicant;

- 14. Neither the Applicant, Millennium, Fortress or any of the Prior Issuers is in default of any requirements of the Act or of any other securities or corporate legislation to which they are subject and none are the subject of any enforcement or other administrative or legal proceedings in any jurisdiction with respect to the trading or distribution of securities; and
- 15. The Applicant obtained two prior decisions of the Commission dated December 17, 1990 and August 25, 1998 respectively (the "Prior Decisions") which granted part of the relief requested in the application for this Ruling/Order;

AND WHEREAS the Director is of the opinion that it would not be prejudicial to the public interest to make this decision;

IT IS HEREBY RULED pursuant to clause 83(1)(a) of the Act that the provisions of sections 27 and 58 of the Act shall not apply to the Proposed Trades provided that:

- 1. In the case of trades to persons or companies to whom the Issuers would be able to trade pursuant to the Qualified Investor Exemption but for the provisions of subclauses 39(1)(y)(ix) and 81(1)(s)(viii) of the Act, the trades comply with all of the requirements of the Qualified Purchaser Exemption except sub-clauses 39(1)(y)(ix) and 81(1)(s)(viii) of the Act;
- 2. In the case of trades to persons or companies to whom the Issuers would be able to trade pursuant to Close Friends and Close Business Associates Exemption but for the provisions of paragraphs 39(1)(cc)(iv)(D) and 81(1)(z)(iv)(D) of the Act, the trades comply with all of the requirements of the Close Friends and Close Business Associates Exemption except paragraphs 39(1)(cc)(iv)(D) and 81(1)(z)(iv)(D) of the Act;
- 3. In the case of trades to Eligible Investors:

- a. an offering memorandum similar to the offering memorandum required to be used under the Qualified Investor Exemption is filed with the Commission and provided to investors prior to or contemporaneously with the trade;
  - b. no commissions are paid with respect to the trade;
  - c. a report of trade indicating the name of the investors, their addresses and telephone numbers, the Issuers or Prior Issuers in which the investors held securities and the amount securities purchased and the total purchase price paid by each investor is filed with the Commission within 30 days after the trade; and
  - d. the cumulative amount raised from Eligible Investors by an Issuer does not exceed \$1,000,000;
4. Subject to paragraphs 1 and 2 immediately above, the Proposed Trades comply with all other provisions of the Act:
- a. in the case of Proposed Trades referred to in paragraph 1 immediately above, as if they were being made pursuant to the Qualified Investor Exemption; and
  - b. in the case of Proposed Trades referred to in paragraph 2 immediately above, as if they were being made pursuant to the Close Friends and Close Business Associates Exemption;
5. The first trade of LP Units acquired under this Ruling shall be a distribution unless the conditions in subsections 2.5(2) or (3) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied; and
6. Unless waived in writing by a Director of the Commission, the Proposed Trades and the Issuers, as the case may be, shall conform to the representations made in paragraphs 7, 8, 9, 10, 11, 12 and 13 of the representations to this Ruling/Order;

AND IT IS HEREBY ORDERED pursuant to subsection 158(3) of the Act that the Prior Decisions be revoked.

DATED on June 14, 2002.

“Barbara Shourounis”

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Barbara Shourounis  
Director