

COURT FILE NUMBER

**1201-05843**

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, c-36, AS AMENDED AND IN THE MATTER OF UBG BUILDERS INC., ALBERTA BUILDERS CAPITAL INC., ALPINE HOMES (2006) INC., AMERICAN BUILDERS CAPITAL (US) INC., EGewater AT GRIESBACH INC., ELITE HOMES (2006) LTD., EVOLUTION BY GREENBORO INC., GREENBORO COMMUNITIES (2006) INC., GREENBORO ESTATE HOMES (2006) LTD., GREENBORO HOMES (2006) LTD., GREENBORO LUXURY HOMES INC., HIGH POINTE INC., MOUNTAINEERS VILLAGE (2006) INC., MOUNTAINEERS VILLAGE II INC., ORIGINS AT CRANSTON INC., SOUTH TERWILLEGAR VILLAGE INC., THE BRIDGES MANAGEMENT INC., THE LEDGES INC., TIMBERLINE LODGES (2006) INC., TODAY'S COMMUNITIES (2006) INC., TODAY'S HOMES (2006) INC., TUSCANY DEVELOPMENTS (2006) INC., UBG ALBERTA BUILDERS (2006) INC., UBG ALPINE HOMES (2006) LTD., UBG BRIDGES INC., UBG BUILDERS (USA) INC., UBG COMMERCIAL INC., UBG LAND INC., UBG LOT DEPOSIT CORP., UBG 4500 CALGARY INC., UBG 75 CANMORE INC., UBG 808 CALGARY INC., UNITY INVESTMENTS (2012) INC., VALMONT AT ASPEN STONE INC., VALOUR PARK AT CURRIE INC., VILLAGE AT THE HAMPTONS INC., VILLAGE ON THE PARK INC., WILDERNESS HOMES BY RIVERDALE INC., WILDERNESS RIDGE AT STEWART CREEK INC. (COLLECTIVELY, THE "UBG GROUP OF COMPANIES")

DOCUMENT

THIRD REPORT OF ERNST &amp; YOUNG INC. AS CCAA MONITOR OF THE UBG GROUP OF COMPANIES

ADDRESS FOR SERVICE  
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## INTRODUCTION

1. On May 9, 2012, the Court of Queen's Bench of Alberta ("Court") issued an order ("Initial Order") granting the UBG Group of Companies ("UBG" or the "Company") protection pursuant to the *Companies' Creditors Arrangement Act* ("CCAA") (the "CCAA Proceedings"). Ernst & Young Inc. ("EY") was appointed monitor ("Monitor") under the Initial Order.
2. Pursuant to a Court Order made on June 15, 2012 the stay of proceedings under the Initial Order was extended to September 14, 2012.
3. The primary purposes of the CCAA Proceedings are to protect UBG's business and operations, to allow UBG an opportunity to realize value from its construction and development projects and to facilitate a restructuring of its credit facilities, all under a court-supervised process.

### Purpose of this Report

4. The purpose of this report (the "Third Report") is to:
  - a) Provide a status update on certain of the Company's development projects;
  - b) Summarize the proposed terms of the memorandums of understanding with:
    - Alberta Treasury Branches ("ATB") in respect of Greenboro Homes Limited Partnership ("Greenboro Homes Projects") (the "ATB Protocol") such that the Greenboro Homes Projects can proceed; and
    - Bank of Nova Scotia ("Scotiabank") in respect of South Terwillegar Village Limited Partnership ("Terwillegar Project") and Valmont at Aspen Stone Limited Partnership ("Valmont Project") (the "Scotiabank Protocols") such that the Terwillegar Project and the Valmont Project can proceed.
  - c) Respectfully recommend that this Honourable Court make an order approving the interim financing arrangements in respect of:
    - i) The ATB Protocol; and
    - ii) The Scotiabank Protocols;

### Terms of Reference

5. In developing this Report, the Monitor has relied upon unaudited financial information prepared by the Company's management, the Company's books and records and discussions with its management. The Monitor has not performed an audit or other verification of such information. An examination of the Company's financial forecasts as outlined in the *Canadian Institute of Chartered Accountants Handbook* has not been performed. Future-oriented financial information relied upon in this Report is based on management's assumptions regarding future events. Actual results achieved may vary from this information and these variations may be material, and as such the Monitor expresses no opinion or other form of assurance with respect to the accuracy

of any financial information presented in this Report, or relied upon by the Monitor in preparing this Report.

### **Currency**

6. Unless otherwise noted, all currency references in this Report are in Canadian dollars.

### **BACKGROUND**

#### **Overview**

7. UBG is a real estate development group overseeing various homebuilder companies. UBG is involved in residential and commercial real estate development in Alberta, and real estate investment through its investment arms.
8. More detailed background information including a description of the corporate structure and an extensive summary of the divisions and projects within UBG can be found in the May 8, 2012 affidavit of Robert Friesen (the "Friesen Affidavit") and the Monitor's Second Report.

### **COMPANY'S ACTIVITIES**

9. The Company has been focused on stabilizing its operations since the date of the Initial Order as described in the First Report and the Second Report. Those efforts continue and include:
- a) Continuing to market all projects (excluding UBG USA). In that regard, UBG, has accepted 41 offers on existing or under-construction Residential Units since the date of the Initial Order;
  - b) Continuing to close Residential Units. UBG has closed 41 homes since the date of the Initial Order;
  - c) Ongoing meetings with certain Company lenders;
  - d) Holding investor calls;
  - e) Reached an agreement with The Toronto-Dominion Bank ("TD") that funds from recent closings, currently held in trust at Fraser Milner Casgrain LLP, can be used to discharge certain post May 9, 2012 trade creditors ("Trades") for materials and services provided on presold properties in Greenboro Estate Homes Limited Partnership ("Greenboro Estates") (as described more fully in the Second Report); and certain warranty expenses.
  - f) Worked closely with the Monitor to develop financial analyses and cash flows in respect of each of its various projects;
  - g) Negotiated with the assistance of the Monitor continued funding arrangements ("Protocols") with ATB and Scotiabank; and
  - h) Continuing to negotiate with TD to establish a funding Protocol in respect of Greenboro Estates.

## FUNDING PROTOCOLS

### Alberta Treasury Branches

10. ATB provides funding on all Greenboro Homes Projects. Details of each of these projects are contained in the May 8<sup>th</sup> Friesen Affidavit and in the Monitor's Second Report.
11. ATB is owed approximately \$8.34 million and holds security in undeveloped lots and work in progress in Edmonton, Alberta.
12. On May 28, 2012, ATB advised the Monitor that it would continue to fund Greenboro Homes Projects and pay post May 9, 2012 amounts owed to Trades in respect of the pre-sold homes so that construction on the homes could continue, subject to obtaining a budget and margining considerations in respect of pre-sold homes and a business plan in respect of unsold product. The mechanism to provide the funding was also subject to establishing a protocol and obtaining Court approval of same.
13. The Monitor advised the Trades of ATB's approval in respect of the pre-sold homes in writing on May 28, 2012. Many Trades are not continuing to provide goods and services in connection with the Greenboro Homes Projects until such time as the ATB funding is confirmed.
14. UBG with the assistance of its legal counsel and the Monitor has developed the ATB Protocol which will provide for, among other things, funding from ATB to continue construction at the seven Greenboro Homes Projects. The Protocol is intended to achieve the following:
  - a) ATB would be provided with a charge in its favour ranking in priority to the Administration Charge and the Directors' Charge (all defined in the Initial Order) on the Greenboro Homes assets for all future advances in respect of the Greenboro Homes Projects; and
  - b) Establish a mechanism to i) distribute the sales proceeds from sales of homes that have closed; ii) fund and complete construction of homes under construction; iii) close the sales of homes that are under contract for sale; iv) market and sell, and to the extent required complete construction thereon, the remaining properties; v) pay Trades amounts owed to them for materials and services provided both prior to and subsequent to May 9, 2012 (with such prior to May 9, 2012 trade amounts claimed subject to being proved in accordance with the Claims Procedure Order); and vi) repay the secured indebtedness to ATB on as timely a basis as possible.
15. The ATB Protocol, which remains subject to Court approval, was executed on July 5, 2012. A copy of the ATB Protocol is attached to the July 6, 2012 affidavit of Robert Friesen (the "July 6<sup>th</sup> Friesen Affidavit").
16. The Monitor supports the ATB Protocol and respectfully recommends that this Honourable Court make an order approving the ATB Protocol for the following reasons:
  - a) Selling homes in the ordinary course will maximize recoveries in the Greenboro Homes Projects;

- b) Trades will be confident that they will be paid for materials and services provided on an ongoing basis;
- c) A mechanism has been established to pay amounts owed to Trades pre May 9, 2012 (subject to proven claims pursuant to the Claims Procedure Order);
- d) Other lenders and stakeholders who have no involvement with Greenboro Homes Projects will not be prejudiced; and
- e) The terms of the ATB Protocol are supported by the Greenboro Homes Projects key stakeholders.

### **Bank of Nova Scotia**

17. Scotiabank is providing financing on three projects:

- a) Valmont at Aspenstone LP ("Valmont"). This is a four phase condominium project located in south west Calgary on which Scotiabank is currently owed approximately \$4.3 million. Valmont comprises a total of 257 units in four buildings. It is being built under the Today's Communities brand. Buildings "A" and "B" are complete, Building "C" is currently under construction. Construction on Building "D" has not yet commenced. Costs to complete Building "C" are estimated at \$4.9 million. Building "C" contains 50 units. There are 32 pre-sold units. UBG is actively marketing the remaining units. Construction on Building "C" is expected to be completed by December 31, 2012. Closings are expected to commence in November 2012. UBG is actively seeking pre-sales on proposed units in building "D". There are 39 pre-sales in Building "D",
- b) South Terwillegar Village LP ("South Terwillegar"). A two phase 112 unit town home complex located in Edmonton, Alberta being built under the Greenboro Communities Brand. Scotiabank is currently owed approximately \$3.25 million. Phase 1 is complete and all units have been sold and closed. Phase 2 is under construction and comprises 42 units of which 25 units are pre-sold. Costs to complete are estimated to be \$5.8 million; and
- c) Village on the Park LP ("VOP"). This is a 3 phase 243 unit condominium complex comprising 3 buildings located in Edmonton, Alberta and also being built under the Greenboro Communities brand. Scotiabank is currently owed approximately \$3.1 million. Building "A" is complete and all units have been sold and closed. Building "B" is also completed and 69 of the 82 units have been sold and closed. Building "C" is currently under construction and will be completed by June 30, 2012. It comprises 79 units. 50 units have been sold and closings are ongoing. 29 units remain available for sale. The Company is actively marketing for sale the unsold units. Additional funding from Scotiabank is not required on this project as sufficient funds are held in trust from closed sales to retire Scotiabank's VOP loan. Trades will be paid amounts owed to them subject to the timing of closing additional unit sales and the Claims Procedure Order.

18. Further details of each of Valmont, South Terwillegar and VOP are contained in the May 8<sup>th</sup> Friesen Affidavit and in the Monitor's Second Report.

19. UBG, with the assistance of its legal counsel and the Monitor has developed the Scotiabank Protocols in respect of the Valmont Project and the South Terwillegar Project which will provide for, among other things, funding from ATB to continue construction at Valmont and South Terwillegar. The Protocol is intended to achieve the following:
- a) Scotiabank would be provided with a charge in its favour ranking in priority to the Administration Charge and the Directors' Charge (all defined in the Initial Order) on each of the Valmont and South Terwillegar assets for all future advances in respect of the Valmont Project and the South Terwillegar Project; and
  - b) Establish a mechanism to i) distribute the sales proceeds from sales of homes that have closed; ii) fund and complete construction of homes under construction; iii) close the sales of homes that are under contract for sale; iv) market and sell, and to the extent required complete construction thereon, the remaining properties; v) pay Trades amounts owed to them for materials and services provided both prior to and subsequent to May 9, 2012 (with such prior to May 9, 2012 trade amounts claimed subject to being proved in accordance with the Claims Procedure Order); and vi) repay the secured indebtedness to Scotiabank on as timely a basis as possible.
20. The Scotiabank Protocols were executed on July 6, 2012. Copies of the Scotiabank Protocols are attached to the July 6<sup>th</sup> Friesen Affidavit.
21. The Monitor is in support of the Scotiabank Protocols and respectfully recommends that this Honourable Court make an order approving the Scotiabank Protocols for the following reasons:
- a) Selling homes in the ordinary course will maximize recoveries in the Valmont and South Terwillegar projects;
  - b) Trades will be confident that they will be paid for materials and services provided on an ongoing basis;
  - c) A mechanism has been established to pay amounts owed to Trades pre May 9, 2012 (subject to proven claims pursuant to the Claims Procedure Order);
  - d) Other lenders and stakeholders who have no involvement with Valmont or South Terwillegar will not be prejudiced; and
  - e) The terms of the Scotiabank Protocols are supported by Valmont and South Terwillegar's key stakeholders.

## **MONITOR'S ACTIVITIES**

22. In addition to the activities referenced in this Report, the Monitor's activities since the Second Report include:
- Continuing its review of the Company's financial information;
  - Preparing detailed financial analyses of the Company's Projects;
  - Meeting with and corresponding with the Company's lenders;

- Reviewing the Company's cash flow;
- Regular communications with creditors and stakeholders;
- Participating in twice weekly conference calls with investors;
- Posting documents filed in these proceedings on its website;
- Corresponding with FMC and Bennett Jones; and
- Preparing this Report.

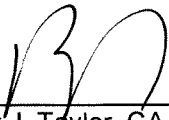
## **CONCLUSION AND RECOMMENDATION**

23. The Monitor supports the Company's request for the relief detailed in Paragraph 4 (c) of this Report for the following reasons:
- a) The Company is acting in good faith and with due diligence in its restructuring efforts; and
  - b) The Protocols will enable construction to continue on several projects allowing UBG to continue its operations.
24. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed in Paragraph 4 c) of this Report.

\* \* \*

All of which is respectfully submitted this 8<sup>th</sup> day of July 2012.

**ERNST & YOUNG INC.  
IN ITS CAPACITY AS CCAA MONITOR OF  
THE UBG GROUP OF COMPANIES  
AND NOT IN ITS PERSONAL CAPACITY**

Per:   
Robert J. Taylor, CA, CIRP