

Clerk's stamp:



COURT FILE NUMBER 1201-05843
COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
RSC 1985, c 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., EDGEWATER 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 "APPLICANTS")

DOCUMENT

Order
(re: CWB Protocol)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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File No.: 549362-1

DATE ON WHICH ORDER WAS PRONOUNCED

October 17, 2012

LOCATION WHERE ORDER WAS PRONOUNCED

Calgary Courts Centre, Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER

The Honourable Justice K.D. Yamauchi

ORDER

(re: CWB Protocol)

UPON the application of the Applicants in these proceedings (collectively, "**UBG**"); **AND UPON** having read the Application of the Applicants, dated October 12, 2012, the Affidavit of Robert Friesen, dated October 12, 2012 (the "**Friesen Affidavit**"), the Sixth Report of the Monitor, dated October 15, 2012, the Affidavit of Anna Borger, dated October 17, 2012 (the "**Service Affidavit**"), and such other material in the pleadings and proceedings as deemed necessary; **AND UPON** hearing counsel for UBG, counsel for Canadian Western Bank ("**CWB**"), counsel for the Monitor, and other interested parties; **IT IS HEREBY ORDERED AND DECLARED THAT:**

Service

1. The time for service of notice of this application is abridged to the time actually given and service of the Application and supporting material as described in the Service Affidavit is good and sufficient, and this hearing is properly returnable before this Honourable Court today and further service thereof is hereby dispensed with.
2. All capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Initial Order granted in these proceedings on May 9, 2012 (the "**Initial Order**").

Approval of the CWB Interim Financing Agreement

3. The loan agreement among Valour Park at Currie Limited Partnership, by its general partner, Valour Park at Currie Inc. (the "**Borrower**"), UBG Alberta Builders Limited Partnership, by its general partner UBG Alberta Builders (2006) Inc., and Valour Park at Currie Inc., as guarantors, and CWB, dated October 4, 2012, attached as Exhibit "B" to the Friesen Affidavit (the "**CWB Interim Financing Agreement**") providing for the funding, completion, sale of and distribution of proceeds from the development, construction and sale of Units in Phase 1 of the Project (as defined in the CWB Interim Financing Agreement) is hereby approved.
4. The Borrower, the guarantors and the Monitor are hereby authorized and directed to do all things reasonably necessary to implement and perform all of their respective obligations under the CWB Interim Financing Agreement.

Approval of the CWB Charge

5. As security for monies advanced and to be advanced by CWB to the Borrower pursuant to the CWB Interim Financing Agreement and the Credit Facilities described therein, a charge is hereby granted on all of the undertaking, property, and assets of the Borrower in favour of CWB (the "**CWB Charge**"), which charge shall rank in priority to all claims against the Borrower, including the Administration Charge and the Directors' Charge, but shall be subject to the distribution scheme set forth in the CWB Interim Financing Agreement.
6. For greater certainty, but without limiting the enforceability or first priority of the CWB Charge, the Administration Charge and the Directors' Charge are hereby subordinated to the security granted by the Borrower to CWB pursuant to the Credit Facilities including but not limited to the two Land Mortgages granted by the Borrower to CWB over, *inter alia*, the Project, each dated September 30, 2011 and in the principal amounts of \$10,000,000 and \$18,000,000 respectively.

7. The proceeds from the sale of the Units (as defined in the CWB Interim Financing Agreement) shall be distributed:
 - (a) to CWB as set forth in the CWB Interim Financing Agreement; and
 - (b) to any other party, as set forth in the CWB Interim Financing Agreement, subject to the consent of the Monitor and compliance with any applicable claims procedures established in these proceedings.

Miscellaneous

8. The CWB Interim Financing Agreement and the CWB Charge shall be valid and enforceable and the rights and remedies of the parties thereto shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declaration of insolvency made herein; (ii) any Bankruptcy Order sought or issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") in respect of any of the Applicants or any assignment in bankruptcy made or deemed to be made in respect of any of the Applicants; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing agreement, lease, sub-lease, offer to lease or other arrangement which binds any of the Applicants (a "Third Party Agreement"), and notwithstanding any provision to the contrary in any Third Party Agreement:
 - (a) neither the creation of the CWB Interim Financing Agreement, the creation of the CWB Charge, nor the execution, delivery or performance of the CWB Interim Financing Agreement shall create or be deemed to constitute a breach by any of the Applicants of any Third Party Agreement to which it is a party; and
 - (b) the parties to the CWB Interim Financing Agreement shall not have liability to any person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CWB Charge or the execution, delivery or performance of the CWB Interim Financing Agreement.
9. Notwithstanding the pendency of these proceedings and the declaration of insolvency made in these proceedings, the CWB Interim Financing Agreement and the CWB Charge shall constitute legal, valid and binding obligations of the Applicants and the payments made by the parties pursuant to this Order, the CWB Interim Financing Agreement, or the CWB Charge do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law, and shall not constitute advances under the *Builders' Liens Act* (Alberta) nor be subject to any builder's lien registered at the date of this Order or thereafter.
10. Except as specifically set forth in this Order, the rights and remedies of the parties under the CWB Interim Financing Agreement shall be subject to the terms of this Order, the Initial Order, including the stay of proceedings, and all other Orders made in these proceedings.
11. No action or proceeding may be commenced against a party to the CWB Interim Financing Agreement by reason of any such party having entered into the CWB Interim Financing Agreement or having performed the obligations thereunder without leave of this Court having been obtained on seven days' notice to the Applicants, CWB, and the Monitor.

12. The Applicants, CWB and the Monitor or any other party to the CWB Interim Financing Agreement are at liberty to apply for such further advice, assistance and direction as may be necessary to give full force and effect to the terms of this Order, the CWB Interim Financing Agreement and the Credit Facilities described therein.

General

13. The Applicants shall serve, by courier, facsimile transmission, e-mail transmission, or ordinary post, a copy of this Order on all parties present at this application and on all parties who received notice of this application or who are presently on the service list established in these proceedings, and service on any or all other parties is hereby dispensed with. Service effected as aforesaid shall be good and sufficient service.
14. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to UBG, the Monitor, and CWB and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



Justice of the Court of Queen's Bench of Alberta