

COURT FILE NUMBER

1201 - 05843

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

203154

JUDICIAL CENTRE

CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 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 "UBG GROUP OF COMPANIES")

DOCUMENT

CONSENT ORDER

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

BENNETT JONES LLP
Barristers and Solicitors
4500, 855 - 2nd Street S.W.,
Calgary, Alberta T2P 4K7

Attention: Chris Simard
Tel No.: 403-298-4485
Fax No.: 403-265-7219
Client File No. 76797.1

**DATE ON WHICH ORDER WAS
PRONOUNCED:**

FEB 09 2021
_____, 2021

**LOCATION WHERE ORDER WAS
PRONOUNCED:**

Calgary, Alberta

**NAME OF JUSTICE WHO MADE THIS
ORDER:**

M. DAVID GATES

UPON THE APPLICATION of Deloitte Restructuring Inc., the Court-appointed Monitor of UBG 4500 Calgary Limited Partnership and UBG 4500 Calgary Inc., and the Court-Appointed Receiver and Manager of UBG Builders Inc. ("Deloitte"); AND UPON noting the consent hereto of counsel for Deloitte, Deerbridge Plumbing ("Deerbridge") and 1381056 Alberta Inc. ("138");

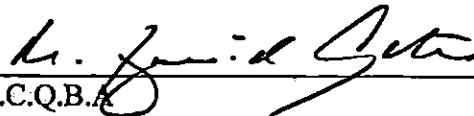
AND UPON NOTING THAT:

- (a) UBG 4500 Calgary Inc. is the General Partner of UBG 4500 Calgary Limited Partnership. Both of those entities are applicants in the present proceedings in this action pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA Proceedings");
- (b) the limited partners of UBG 4500 Calgary Limited Partnership are UBG Builders Inc. (as to 75%) and 138 (as to 25%);
- (c) UBG 4500 Calgary Inc. owned certain real property municipally described as 4522 and 4528 – 112 Avenue S.E., Calgary, Alberta (the "Property");
- (d) Deerbridge as a tenant in the Property and contributed to the expenses of the Property during the CCAA Proceedings;
- (e) this Honourable Court approved the sale of the Property in Action No. 1801-12821, upon the application of Business Development Bank of Canada, the mortgagee of the Property ("BDC"); and
- (f) BDC has paid into Court the net proceeds of sale, in the amount of \$610,948.72 (the "Proceeds of Sale"); and

- (g) on September 30, 2020, Deloitte, 138 and Deerbridge have entered into a Settlement Agreement and Mutual Release, a true copy of which is attached hereto as Schedule "A" (the "Agreement") in which they have agreed, among other things, on the distribution of the Proceeds of Sale.

IT IS HEREBY ORDERED AND DECLARED THAT:


1. The Agreement is hereby approved.
2. The Clerk of the Court of Queen's Bench of Alberta is hereby directed to pay the following amounts from the Net Proceeds being held by the Clerk for the credit of Action No. 1801-12821:
 - (a) \$293,608.94 plus any interest accrued thereon, to MLT Aikins LLP, attention: Ariel Breitman;
 - (b) \$79,334.94 plus any interest accrued thereon, to Mergen Law LLP, attention: Gregory J. Kaladeen; and
 - (c) \$238,004.84 plus any interest accrued thereon, to Bennett Jones LLP, attention: Chris Simard.
3. This Order may be consented to in counterparts and transmitted electronically.
4. There shall be no costs associated with this Order.



J.C.Q.B.A.

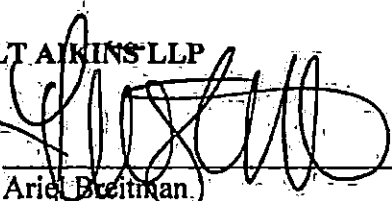
CONSENTED TO:

BENNETT JONES LLP

Per: 

Chris Simard
Counsel for Deloitte Restructuring
Inc., the Court-appointed Monitor of
UBG 4500 Calgary Limited
Partnership and UBG 4500 Calgary
Inc., and the Court-Appointed
Receiver and Manager of UBG
Builders Inc.

MLT AIKINS LLP

Per: 

Ariel Breitman
Counsel for Deerbridge Plumbing

MERGEN LAW LLP

Per: 

Gregory J. Kaladeen
Counsel for 1381056 Alberta Inc.

CONSENTED TO:

BENNETT JONES LLP

Per: _____

Chris Simard
Counsel for Deloitte Restructuring
Inc., the Court-appointed Monitor of
UBG 4500 Calgary Limited
Partnership and UBG 4500 Calgary
Inc., and the Court-Appointed
Receiver and Manager of UBG
Builders Inc.

MLT AIKINS LLP

Per: _____

Ariel Breitman
Counsel for Deerbridge Plumbing

MERGEN LAW LLP

Per: _____

Gregory J. Kaladeen
Counsel for 1381056 Alberta Inc.

SCHEDULE "A"

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

BETWEEN:

**DELOITTE RESTRUCTURING INC., in its capacity as
Court-appointed Monitor of UBG 4500 Calgary Limited
Partnership and UBG 4500 Calgary Inc., and in its capacity as
Receiver and Manager of UBG Builders Inc., and not its
personal capacity.**

(hereinafter referred to as the "Receiver")

- and -

**DEERBRIDGE PLUMBING, a corporation incorporated
pursuant to the laws of Alberta**

(hereinafter referred to as "Deerbridge")

- and -

**1381056 Alberta Inc., a corporation incorporated pursuant to
the laws of Alberta**

(hereinafter referred to as "138")

(collectively, the "Parties")

RECITALS:

- A. UBG 4500 Calgary Limited Partnership ("UBG 4500 LP") is a partnership registered in the Province of Alberta. The general partner of UBG 4500 LP is UBG 4500 Calgary Inc. ("UBG 4500 Inc.") The limited partners of UBG 4500 LP are UBG 4500 Inc. (which holds 75% of the limited partnership units) and 138 (which holds 25% of the limited partnership units).
- B. UBG Builders Inc. owns 100% of the shares of UBG 4500 Inc.
- C. UBG 4500 Inc., as general partner of UBG 4500 LP, owned a condominium property municipally described as 4522 and 4528 – 112 Avenue S.E., Calgary, Alberta (the "Property").
- D. At all material times, Deerbridge was a tenant of the Property.

E. On May 9, 2012, the Court of Queen's Bench of Alberta (the "Court") granted an initial order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") with respect to UBG Builders Inc., UBG 4500 LP, UBG 4500 Inc., and a number of affiliated corporations and partnerships (the "UBG Group").

F. Ernst & Young Inc. was appointed as the Monitor of the UBG Group. On August 10 2016, the Court granted an order substituting Deloitte Restructuring Inc. ("Deloitte") as the Monitor of the UBG Group, in place of Ernst & Young Inc.

G. On December 12, 2017 (the "Receivership Date"), the Court granted a Receivership Order (the "Receivership Order") appointing Deloitte as Receiver and Manager of UBG Builders Inc. The Receivership Order did not apply to UBG 4500 LP or UBG 4500 Inc. and, after December 12, 2017, those entities remained subject to the CCAA proceedings.

H. In or about July, 2019, the Property was sold pursuant to foreclosure proceedings commenced by Business Development Bank of Canada, the mortgagee of the Property. Thereafter, the sum of \$610,948.72 was paid into Court, representing the net proceeds of the sale of the Property (the "Net Property Proceeds").

I. There is a dispute between Deloitte, in its capacity as the Monitor of UBG 4500 LP and UBG 4500 Inc., and the Receiver and Manager of UBG Builders Inc., Deerbridge and 138 with respect to the Property and the Net Property Proceeds, including but not limited to the following issues:

- i. the respective entitlement of UBG 4500 Inc. and 138, as the limited partners of UBG 4500 LP, to the Net Property Proceeds;
- ii. the obligation of Deerbridge to pay rent for occupation of the Property during the CCAA proceedings;
- iii. whether Deerbridge should receive credit, and if so in what amount, with respect to the payments it made respecting the Property during the CCAA proceedings, in respect of condominium fees, maintenance costs and property taxes

(collectively, the "Disputes").

J. The Parties wish to fully and finally resolve the Disputes consensually, pursuant to the terms of this Settlement Agreement and Mutual Release.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, THE PARTIES AGREE AS FOLLOWS:

1. The recitals set out above are accurate and form part of this Settlement Agreement and Mutual Release.
2. The Net Property Proceeds shall be distributed as follows (the "Distribution"):
 - (a) \$293,608.94 to Deerbridge;
 - (b) \$79,334.94 to 138; and
 - (c) \$238,004.84 to Deloitte, in its capacity as Receiver and Manager of UBG Builders Inc.
3. The Parties shall consent to an order to be granted by the Court of Queen's Bench of Alberta, approving this Settlement Agreement and Release, and authorizing the Distribution.
4. In consideration for the agreements and covenants set out herein, including the Settlement Payment, the receipt and sufficiency of which consideration is hereby acknowledged, each of the Parties, for themselves and on behalf of each of their respective present and former agents, servants, employees, shareholders, directors, officers, solicitors, insurers, affiliates, partners, predecessors, successors, assigns and representatives, forever releases and discharges each other Party and each other Party's present and former agents, servants, employees, shareholders, directors, officers, solicitors, insurers, affiliates, partners, predecessors, successors, assigns and representatives, of and from any and all actions, causes of action, claims, demands, damages, costs and expenses whatsoever at law or in equity, that it had, now has, or may have in the future, by reason of or arising out of any cause, matter or thing whatsoever with respect to the Property, the Net Property Proceeds and the Disputes.

5. The Release in paragraph 4 hereof shall become effective upon the completion of the Distribution.
6. Each Party hereby covenants and agrees not to institute, maintain, prosecute or otherwise bring any action, claim (including any future claims which exist or may accrue), suit, or other proceedings against any other person or persons, company, partnership or other legal entity which might claim contribution or indemnity from any other Party in respect of matters which are the subject of this Settlement Agreement and Mutual Release and further covenants and agrees to indemnify and save harmless any such other Party in respect of any such third party claim, which indemnity shall include payment of any legal or other costs incurred by another Party, on a solicitor and own client basis.
7. Each Party agrees that the terms of this Settlement Agreement and Mutual Release are accepted voluntarily and not influenced by any representations of any kind made by any of the parties, except such representations as are outlined in this Settlement Agreement and Mutual Release. This Settlement Agreement and Mutual Release is being entered to terminate controversy and no admissions of liability are made by either Party.
8. This Settlement Agreement and Mutual Release is governed by and shall be construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein, and the Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Alberta.
9. The Parties shall from time to time do such further acts and execute such further documents as shall be reasonably required to fully perform and carry out the terms, spirit and intent of this Settlement Agreement and Mutual Release.

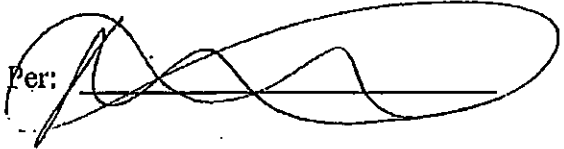
10. The Parties agree that this Settlement Agreement and Mutual Release may be executed in any number of counterparts and by facsimile and email.

Dated this 30 day of September, 2020.


DELOITTE RESTRUCTURING INC., in its capacity as the Monitor of UBG 4500 Calgary Inc. and UBG 4500 Calgary Limited Partnership and in its capacity as the Receiver and Manager of UBG Builders Inc., and not in its personal capacity

Per: 

DEERBRIDGE PLUMBING

Per: 

DELOITTE RESTRUCTURING INC., in its capacity as the Monitor of the UBG Group of Companies, and not in its personal capacity

Per: 

1381056 Alberta Inc.

Per: 