

**NOTICE OF RECEIVER AND RECEIVER'S STATEMENT**  
**(Subsection 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*)**

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**IN THE MATTER OF THE RECEIVERSHIP OF**  
**3 EAU CLAIRE DEVELOPMENTS INC.**

## Background

3 Eau Claire Developments Inc. ("3 Eau Claire" or the "Company") was incorporated as a real estate development company for the purpose of building an approximately 652,000 square foot mixed-use condominium project located at 633 3rd Avenue SW in Calgary, Alberta (the "Lands").

On April 11, 2014, 3 Eau Claire filed a Notice of Intention to Make a Proposal (the "NOI") under Section 50.4(1) of the *Bankruptcy and Insolvency Act* (the "BIA"). Deloitte Restructuring Inc. consented to act as Trustee under the NOI.

3 Eau Claire was granted an initial 30-day stay of proceedings (the "Initial Stay") pursuant to Section 69(1) of the BIA. The Company was required to file a proposal (a "BIA Proposal") within the Initial Stay or within any further extension of that period granted by the Court of Queen's Bench of Alberta (the "Court"). The Court granted five Orders extending the stay of proceedings with the most recent order being granted on August 15, 2014 (the "August 15 Order") and extending the stay of proceedings until September 29, 2014.

The August 15 Order further appointed Deloitte as receiver (the "Receiver"), without security, over all of 3 Eau Claire's current and future assets, undertakings and properties of every nature and kind whatsoever and wherever situate, including all proceeds thereof (the "Property"). Pursuant to the August 15 Order, 3 Eau Claire remained in possession of the Property with the Receiver being appointed for the limited purpose of negotiating the terms of a BIA Proposal (which could be done pursuant to a joint venture) or the outright sale of the Lands.

The activities of the Receiver subsequent to the granting of the August 15 Order are further described in the First Report of the Receiver dated September 22, 2014 (the "Receiver's First Report").

At a hearing on September 25, 2014 (the "September 25 Hearing"), the Court granted a further Order (the "Expanded Receivership Order"), which expanded Deloitte's powers as Receiver granted pursuant to the August 15 Order to those available under the Alberta model template Receivership Order.

Subsequently, on September 30, 2014, 3 Eau Claire was deemed to have made an assignment in bankruptcy and Deloitte was appointed as Trustee of the estate of the bankrupt.

Further information on the NOI, Receivership and Bankruptcy proceedings, including the Receiver's First Report, can be accessed on Deloitte's website at [www.insolvencies.deloitte.ca](http://www.insolvencies.deloitte.ca).

# Assets

## The Lands

On September 25, 2014, the Receiver took possession of the Property, including the Lands.

The Trustee's First, Second, Third and Fourth Reports in the NOI proceedings were respectively dated May 5, 2014, June 20, 2014, July 15, 2014 and August 13, 2014 (the "Trustee's Reports"). Information on the marketing process that was undertaken with respect to the Lands in both the NOI and Receivership proceedings is included in the Trustee's Reports and the Receiver's First Report.

In addition to the Expanded Receivership Order, the Court granted the following relief at the September 25 Hearing:

- Authorizing the Receiver to enter into an agreement of purchase and sale (the "APS") with Bentall Kennedy (Canada) LP ("Bentall"), or its assignee, and approving the APS and the transfer of the Lands and vesting title in the Lands to Bentall free and clear of all encumbrances upon closing of the APS and declaring that the transaction contemplated in the APS (the "Transaction") is commercially reasonable; and
- Authorizing and directing the Receiver to execute and deliver the APS to Bentall and to proceed with the Transaction and to take all steps necessary to complete the Transaction substantially in accordance with the terms of the APS, subject to such amendments as Bentall and the Receiver may agree to which do not materially and adversely alter the Transaction or the APS and approving the sale of the Lands pursuant to paragraph 3(l) of the Expanded Receivership Order.

The APS includes a total purchase price of \$39.6 million (the "Purchase Price") for the Lands. The Transaction is still subject to due diligence, which is set to expire on October 27, 2014, with the closing date being 10 days thereafter. The Purchase Price is subject to all usual adjustments relating to similar sale transactions of vacant land in Alberta, including realty taxes and utilities, as further described in the APS.

3 Eau Claire previously entered into a management agreement with Imperial Parking Canada Corporation ("Impark", the "Impark Agreement") whereby Impark operates a parking lot on the Lands. Pursuant to the Impark Agreement, 3 Eau Claire receives monthly parking revenue of approximately \$35,000. The Receiver intends to allow Impark to continue to operate the parking lot on the Lands until such time as the Transaction has been completed.

## Other Assets

At the date of Receivership, 3 Eau Claire held the following additional assets (the "Other Assets"):

Asset Description	Estimated Realizable Value
Cash held in financial institutions	\$ 200
Office and show home furniture and appliances	NIL
Leased vehicle	NIL
Total	<u>\$ 200</u>

The Receiver notes as follows with respect to the Other Assets:

- 3 Eau Claire held a bank account with CIBC, which is estimated to have a balance of \$200 at the date of Receivership. The Receiver has requested that CIBC close the account and that all funds contained therein be forwarded to the Receiver;
- The Company leased an office located at 102, 615 3<sup>rd</sup> Avenue SW (the "Sales Office"), which contained various office and show home furniture and appliances (the "Furniture"). The Receiver solicited the input of two auction companies, both of whom advised that, taking into account the moving costs, any potential recovery from the Furniture would be nominal. In addition, the Receiver would have incurred ongoing costs to maintain the Sales Office while the Furniture was being removed. As such, the Furniture was determined not to have any realizable value for the estate and has been abandoned by the Receiver.
- 3 Eau Claire was party to a full disclosure lease with purchase option for a 2014 Ford Explorer (the "Vehicle") through Ford Credit Canada Leasing, a Division of Canadian Road Leasing Company ("Ford"). Following their review of a proof of claim filed by Ford, the Receiver determined that there was no equity in the vehicle. The Receiver subsequently disclaimed its interest in the Vehicle and returned it to Ford.

## Liabilities

### Priority Claims

On May 8, 2014, the Court granted an Order approving a charge in the amount of \$50,000 as security for professional fees and disbursements of the Trustee and the Company's legal counsel (the "Administrative Charge"). The Administrative Charge formed a first charge over the Property. On July 31, 2014, the Court granted a further Order approving an increase in the Administrative Charge from \$50,000 to \$100,000, together with an increase in the scope of the Administrative Charge to include the reasonable fees and expenses of the Trustee's legal counsel, Blake Cassels & Graydon LLP ("Blakes").

3 Eau Claire was being managed by three individuals, who were believed to have been retained by the Company on a contract basis. Following the Receiver's review of 3 Eau Claire's books and records, it appears that one of these individuals (the "Employee") had been retained pursuant to an employment agreement with the Company dated



January 1, 2014. 3 Eau Claire had not been remitting any payroll source deductions on behalf of the Employee and, as such, it is anticipated that Canada Revenue Agency will have a deemed trust claim for the employee portion of those payroll source deductions that should have been remitted by the Company. It is currently believed that the Employee was acting in a managerial capacity and that his responsibilities would preclude his eligibility to make a claim under the *Wage Earner Protection Program*.

The Company has indicated that there are outstanding property taxes due on the Lands in the amount of approximately \$163,000, which will be adjusted for upon the closing of the Transaction.

## Secured Mortgage Holders

As at September 25, 2014, the Company listed creditors with claims totaling \$50.6 million, of which approximately \$48.3 million related to claims by the following seven secured mortgage holders.

Mortgage Holder	Amount ('000)
Korea Exchange Bank of Canada ("KEB")	\$ 8,500
Computershare Trust Company of Canada (the "Computershare")	30,200
Shorebrook Capital Inc. ("Shorebrook")	326
Bosa Properties (Eau Claire) Inc.	4,767
MMP Structural Engineers Ltd.	646
PM Rec Holdings Inc.	450
1713744 Alberta Ltd.	3,400
Total	<u>\$ 48,289</u>

At the Receiver's request, Blakes is in the process of completing a review of the security held by KEB, Computershare (Korea Deposit Insurance Corporation is the beneficiary of Computershare's registered mortgage) and Shorebrook.

Two additional creditors filed builders' liens on the Lands totaling approximately \$538,500.

## Unsecured Creditors

3 Eau Claire listed two preferred unsecured creditors, one for rental arrears of which the preferred portion is estimated to be approximately \$12,000 and one for wages of which the preferred portion is estimated to be approximately \$2,000.

In addition to the above, 3 Eau Claire listed claims of ordinary unsecured creditors totaling approximately \$1.4 million, a breakdown of which is included in the attached "Schedule A".

## Plan of Action

As described above, the Court has approved the sale of the Lands to Bentall as contemplated in the APS (defined above as the Transaction). The Receiver intends to complete the Transaction. Once the Transaction has been completed and all administrative matters have been finalized, the Receiver will be seeking an Order to distribute the net realizations and to be discharged.

There are not anticipated to be any funds available for distribution to the unsecured creditors.

## Contact Information

The contact information for the Receiver is as follows:

**Deloitte Restructuring Inc.**  
700, 850 – 2nd Street SW  
Calgary, AB T2P 0R8  
**Attention: Vanessa A. Allen**

Tel: (403) 298-5955  
Fax: (403) 718-3681  
Email: vanallen@deloitte.ca

Dated at Calgary, Alberta, this 3<sup>rd</sup> day of October, 2014.

**DELOITTE RESTRUCTURING INC.**  
In its sole capacity as Receiver and Manager of  
3 Eau Claire Developments Inc. and not in its personal  
capacity



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Jeff Keeble, CA, CIRP, CBV  
Senior Vice-President

## **SCHEDULE "A"**

### **Unsecured Creditors**

<b>Name</b>	<b>Amount</b>
1520897 Alberta Ltd.	\$122,366.25
Altus Group	1,950.60
Andrew Seong Jin Lee	7,447.23
Bunt & Associates Engineering	5,508.74
Canadian Mortgage Strategies & Investments	40,000.00
CANLink	94,281.08
Century 21 Bravo Realty	2,084.25
CIR Realty	1,747.60
Clark Builders	398,099.04
Colliers International	6,751.50
Computershare Trust Co of Canada	5,315.62
David Warkentin	3,243.50
Dentons	3,202.66
Discover Real Estate Ltd.	5,205.39
Elite Realty Specialists Inc., Brokerage	2,119.69
Enmax	829.98
Gage Building Systems Ltd.	2,441.25
Gradient Microclimate Engineering Inc.	47,775.00
INOSOL Marketing Corp	68,999.67
Irene Saki Okwara	1,114.23
James Jeong-Myung Kang	60,140.67
Petrifond Foundation Company Ltd.	85,000.00
Portico Design Group	9,214.18
Read Jones Christoffersen	55,906.24
Real Estate Professionals Inc.	1,773.19
Reinbold Engineering Group	185,143.88
Remax House of Real Estate	1,702.31
Remax Realty One Inc.	16,161.80
Residential One Real Estate	1,706.25

Royal LePage	1,729.88
Scatliff Miller Murray Inc.	2,100.00
Sing Tao	8,400.00
Starnes Consulting	78,750.00
Stewart & Stewart	730.25
TD Canada Trust Visa	9,260.61
The City of Calgary, Corporate Properties & Buildings	12,029.85
The Real Estate Company	1,712.16
Treadstone Services	23,544.15
Tronnes Survey	23,299.50
Woodruff Sweitzer	50,945.81
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