

COURT FILE NUMBER

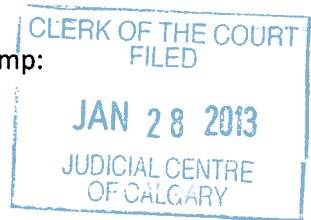
1201-05843

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

Clerk's stamp:



**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
BANK., EVOLUTION BY GREENBORO INC., GREENBORO COMMUNITIES
(2006) INC., GREENBORO ESTATE HOMES (2006) LTD BANK.,
GREENBORO HOMES (2006) LTD BANK., 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 BANK., 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

APPLICATION

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT

FRASER MILNER CASGRAIN LLP
Bankers Court
15th Floor, 850 - 2nd Street S.W.
Calgary, Alberta T2P 0R8
Attention: David W. Mann / Derek M. Pontin
Ph. (403) 268-7097/6301 Fx. (403) 268-3100
File No.: 549362-1

NOTICE TO RESPONDENT(S)

This application is made on behalf of the Applicants in the above noted proceedings. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date January 29, 2013
Time 10:00 a.m.
Where Court of Queen's Bench of Alberta
Calgary Courts Centre
601 – 5th Street S.W.
Calgary, AB T2P 5P7
Before Whom The Honourable Madam Justice Horner

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. The Applicants ("**UBG**") respectfully seek the following relief:
 - (a) an Order, in substantially the form attached hereto as Schedule "A", approving the return of twenty one (21) units in the project known as the Timberline Lodges Project, in Canmore, Alberta (the "**Timberline Units**"), from Timberline Lodges Limited Partnership, by its general partner, Timberline Lodges (2006) Inc. (collectively, "**Timberline**") to Bank of Montreal ("**BMO**"); and
 - (b) such further and other relief as may be sought by the Applicants and granted by this Honourable Court.

Grounds for making this application:

Return of Units in Timberline to BMO

2. Timberline has determined there is no equity in the Timberline Units, which partially comprise the Timberline Project. By Court Order, dated December 14, 2012, ten units in the Timberline Project were directed to be returned to Canada ICI Capital Corporation, as the primary secured creditor in respect of those units. The remaining units comprise the Timberline Units and are secured by BMO.
3. The Timberline Units are legally described as:

Condominium Plan 0810854, Units 26-31, 33, 56-59, 61, 62, 65, 66, 70, 71, 77, 79, 80, 84
4. A first mortgage against the Timberline Units has been granted by Timberline to BMO and BMO has requested that the Timberline Units be transferred to it.
5. UBG believes that transfer of the Timberline Units to BMO is in the best interests of UBG and its stakeholders.
6. Therefore, Timberline is seeking an Order directing:
 - (a) Timberline to enter a Quit Claim arrangement in respect of the Timberline Units being returned to BMO in full and final satisfaction of all amounts owing by Timberline to BMO in respect of the Timberline Project;

- (b) BMO will make a Borrower's Costs payment, to be paid in the sum of \$8,500 per Timberline Unit as each Timberline Unit is sold to a purchaser, to Timberline totalling \$178,500 in respect of the effort, fees, and disbursements expended by UBG in connection with the preservation, marketing, and conveyance of the Timberline Units to, to the benefit of UBG's stakeholders in these proceedings and in keeping with the Order of this Honourable Court, dated June 15, 2012; and
- (c) A Borrower's Costs Charge to be registered against the Timberline Units as security for the payment of the Borrower's Costs.

7. The Monitor supports the transfer of the Timberline Units to BMO as contemplated above.

Material or evidence to be relied on:

- 8. The Monitor's Eighth Report, dated January 25, 2013.
- 9. The Affidavit of Robert Friesen, dated January 25, 2013.
- 10. Such further and other materials as counsel for the Petitioners may advise and this Honourable Court may deem necessary.

Applicable Rules:

- 11. The *Alberta Rules of Court*, AR 124/2010.

Applicable Acts and regulations:

- 12. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended, and the regulations thereunder.
- 13. *Land Titles Act*, RSA 2000, c L-4, as amended, and the regulations thereunder.
- 14. Such further and other acts and regulations as counsel for the Applicants may advise and this Honourable Court may deem necessary.

How the application is proposed to be heard or considered:

- 15. In person before the Honourable Madam Justice K.M. Horner in Chambers.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

Schedule A

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 Timberline 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: Timberline/BMO)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

FRASER MILNER CASGRAIN LLP
Bankers Court
15th Floor, 850 - 2nd Street S.W.
Calgary, Alberta T2P 0R8
Attention: David W. Mann / Derek M. Pontin
Ph. (403) 268-7097/6301 Fx. (403) 268-3100
File No.: 549362-1

DATE ON WHICH ORDER WAS PRONOUNCED

January 29, 2013

LOCATION WHERE ORDER WAS PRONOUNCED

Calgary Courts Centre, Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER

Madam Justice K.M. Horner

ORDER
(re: Timberline)

UPON the application of the Applicants in these proceedings (collectively, "**UBG**"); AND UPON having read the Application of the Applicants, dated January 25, 2013, the Application of Condominium Corporation No. 0810854 (the "**Condo Corp.**"), dated December 10, 2012, the Eighth Report of the Monitor, dated January 25, 2013, the Affidavit of Anna Collister, dated January _____, 2013 (the "**Service Affidavit**"), and such other material in the pleadings and proceedings as deemed necessary; AND UPON hearing counsel for UBG, counsel for Bank of Montreal ("**BMO**"), counsel for the Condo Corp, 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**"), and the following terms shall have the following meaning:
 - (a) "**Borrower's Costs**" means the specified sum(s) to be paid by BMO to the Monitor in keeping with the Order of this Honourable Court on June 15, 2012 and in respect of the effort, fees, and disbursements expended by the Monitor and UBG in connection with the preservation, marketing, and conveyance of the Property;
 - (b) "**Lands**" means the lands legally described as:

Condominium Plan 0810854, Units 26-31, 33, 56-59, 61, 62, 65, 66, 70, 71, 77, 79, 80, 84;
 - (c) "**Property**" means all of UBG's right, title and interest in and to the Lands;
 - (d) "**Stay**" means the stay of proceedings granted by the Initial Order, dated May 9, 2012, in this Action, as has been and may continue to be extended from time to time;
 - (e) "**Timberline**" means Timberline Lodges Limited Partnership, by its general partner, Timberline Lodges (2006) Inc.;
 - (f) "**Timberline Obligations**" means all amounts owing by Timberline to BMO, including all principal, interest, and costs (which costs shall include all of BMO costs and expenses related to the preservation, marketing, and sale of the Units after the date of this Order); and
 - (g) "**Unit**" means each or any of the condominium units comprising the Lands.

Approval of Conveyance and Vesting of the Property

3. Subject to paragraph 4 hereof, Timberline is hereby ordered and directed to forthwith transfer the Property to BMO.
4. Upon receiving title to the Property, BMO shall: (a) report to Timberline and the Monitor from time to time respecting the status of each Unit and BMO's efforts to realize on the Units in satisfaction of the Timberline Obligations, including all revenues received by BMO, and costs incurred by BMO (the "**Accounting**"); and (b) upon the sale of each Unit, forthwith pay to the Monitor the sum of \$8,500 in respect of Borrower's Costs associated with such Unit.
5. Upon the completion of the sale of all of the Units, BMO shall provide a final Accounting to the Monitor and either: (a) remit to the Monitor all funds remaining with BMO after all Timberline Obligations have been repaid, or (b) file an amended Proof of Claim with the Monitor setting forth the revised amount of the Timberline Obligation following the realization of all of the Units.
6. BMO, UBG and the Monitor are hereby authorized and directed to execute all deeds, documents, and agreements, and to do all things reasonably necessary to complete the conveyance of the Property and carry out the terms of this Order.
7. Upon the Monitor delivering a certificate (the "**Monitor's Certificate**") certifying that the transfer of the Property has occurred in favour of BMO, then:
 - (a) the Property shall be vested in the name of BMO free of all estate, right, title, interest, royalty, rental, and equity of redemption of UBG and all persons who claim by, through or under UBG in respect of the Property whose interests are subordinate to those of BMO by virtue of its security on the Property, subject only to the permitted encumbrances outlined in Schedule "A" of this Order (the "**Permitted Encumbrances**");
 - (b) UBG and all persons who claim by, through or under UBG in respect of the Property, save and except the Permitted Encumbrances, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental, and equity of redemption of the Property and, to the extent that any such person remains in possession or control of any of the Property, they shall forthwith deliver possession of same to BMO or its nominee;
 - (c) BMO shall be entitled to enter into and upon, hold and enjoy the Property for its own use and benefit without any interference of or by UBG, or any person claiming by or through or against UBG, save and except as expressly permitted in this Order;
 - (d) the Registrar of the Land Titles Office of Alberta shall discharge all encumbrances in respect of the Lands, save and except the Permitted Encumbrances, and shall register the Property in the name of BMO; and
 - (e) for greater certainty, the Stay will no longer apply to the Property.
8. UBG is authorized and empowered, in respect of the Property, to execute and deliver: (a) such additional, related and ancillary documents and assurances governing or giving effect to the

conveyance of the Property, which, in UBG's discretion are reasonably necessary or advisable to conclude the transactions contemplated in or in furtherance of the transfer of the Property and/or this Order; and (b) any and all instruments and documents in respect of the Property as may be required by the Registrar of the Land Titles Office of Alberta or deemed necessary by UBG, and the Registrar is hereby directed, notwithstanding any restrictions in the *Land Titles Act* (Alberta) (the "LTA"), including but not limited to s. 191(1) of the LTA, to effect registration of any such instrument or document so executed by UBG or its solicitors.

9. Upon the filing of the Monitor's Certificate, the Monitor may discharge, or authorize the discharge of, any security registration or registrations in the Personal Property Registry of the Province where the Property is located as may be required to properly convey clear title of the Property to BMO.

Miscellaneous

10. Any conveyance or transfer of the Property made pursuant to the provisions of this Order shall be valid and enforceable and not be rendered invalid or unenforceable 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) ("BIA") in respect of any of the Petitioners; 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 Petitioners (a "Third Party Agreement"), and notwithstanding any provision to the contrary in any Third Party Agreement:
 - (a) the transaction contemplated hereby shall not create or be deemed to constitute a breach by any of the Petitioners of any Third Party Agreement to which they are a party; and
 - (b) BMO 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, execution, delivery or performance of any transaction contemplated hereby.
11. Notwithstanding (i) the pendency of these proceedings and the declaration of insolvency made herein, (ii) any Bankruptcy Order sought or issued pursuant to the BIA in respect of any of the Petitioners, and (iii) the provisions under the BIA, or any other applicable federal or provincial legislation or common law, the transactions contemplated herein shall constitute legal, valid and binding obligations of the Petitioners enforceable against them in accordance with the terms thereof, and no transaction contemplated herein will be void or voidable at the instance of creditors and claimants and do not constitute nor shall they be deemed to constitute settlements, fraudulent preferences, assignments, fraudulent conveyances, oppressive conduct, or other reviewable transactions under the BIA, or any other applicable federal or provincial legislation or common law.
12. UBG, the Monitor, BMO, or any interested party may apply to this Court for advice and direction on notice to any party likely to be affected by the Order sought or on such notice as this Court directs.

General

13. UBG 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 affected as aforesaid shall be good and sufficient service.

Justice of the Court of Queen's Bench of Alberta

**Schedule A
Permitted Encumbrances**

All encumbrances that, at law, exist in priority to the mortgage of Bank of Montreal, as well as the following:

Registration Number	Date (D/M/Y)	Encumbrances, Liens & Interests
081 066 220	21/02/2008	Utility Right of Way
121 092 715	20/04/2012	Caveat
121 090 971	19/04/2012	Caveat
121 090 972	19/04/2012	Caveat
121 123 908	23/05/2012	Certificate of Lis Pendens
121 123 914	23/05/2012	Certificate of Lis Pendens
121 090 969	19/04/2012	Caveat
121 123 919	23/05/2012	Certificate of Lis Pendens
121 090 973	19/04/2012	Caveat
121 123 903	23/05/2012	Certificate of Lis Pendens
121 090 959	19/04/2012	Caveat
121 090 690	19/04/2012	Caveat
121 123 909	23/05/2012	Certificate of Lis Pendens
121 090 958	19/04/2012	Caveat
121 123 911	23/05/2012	Certificate of Lis Pendens
121 090 954	19/04/2012	Caveat
121 123 901	23/05/2012	Certificate of Lis Pendens