

Clerk's stamp: **CLERK OF THE COURT
FILED
AUG 05 2014
JUDICIAL CENTRE
OF CALGARY**

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")

I hereby certify this to be a true copy of the original ORDER

Dated this 5 day of August 2014
[Signature]
for Clerk of the Court

DOCUMENT

Order
(re: ABC US)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

DENTONS CANADA 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

August 5, 2014

LOCATION WHERE ORDER WAS PRONOUNCED

Calgary Courts Centre, Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER

Honourable Justice Horner

ORDER
(re: ABC US)

UPON the application of the Applicants in these proceedings (collectively, "**UBG**"); AND UPON having read the Application of the Applicants, dated July 30, 2014, the Report of the Monitor in Respect of American Builders Capital (US) Inc., dated July 30, 2014, the Affidavit of Rosie Cooney, dated August 5, 2014 (the "**Service Affidavit**"), and such other material in the pleadings and proceedings as deemed necessary; AND UPON hearing counsel for UBG, counsel for Valiant Trust Company ("**Valiant**"), 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) "**ABC US**" means American Builders Capital (US) Inc.
- (b) "**ABC US Property**" means all of UBG's estate, right, title, interest, claim and demand in and to the Heritage Homes Facility, the Spring Creek Facility and the Lots and all benefits and obligations thereunder or to be derived therefrom;
- (c) "**Borrowers' Cost**" means the specified sum(s) set out in paragraph 4 hereof to be paid by Valiant 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 and the Lots;
- (d) "**Heritage Homes Facility**" means the loan facility entered into between ABC US and Heritage Homes, Inc. and includes all loan documentation and security appurtenant thereto including, without limitation, the Loan Agreement dated December 22, 2011, the Deed of Trust dated December 22, 2011, the Promissory Note dated December 22, 2011, and all related and ancillary documents, registrations and insurance policies in respect thereof;
- (e) "**Lots**" means the lands legally described as:

Lots 1-4, Lots 6, 8 and 9, Lots 12-14, Lots 18-20, all in Block 16

Lots 1-3, all in Block 17

Banning Lewis Ranch Filing No. 7, according to the recorded plat thereof recorded September 15, 2006, at Reception No. 206712422,
County of El Paso, State of Colorado

and

Lots 42 through 119, inclusive, and Lots 123 through 142, inclusive,
Dublin Terrace Filing No. 1A, in the City of Colorado Springs,
County of El Paso,
State of Colorado;

- (f) **“Monitor”** means Ernst & Young Inc., in its capacity as the Court-appointed monitor in these proceedings;
- (g) **“Spring Creek Facility”** means the loan facility entered into between ABC US and Spring Creek Construction, LLC and includes all loan documentation and security appurtenant thereto including, without limitation, the Loan Agreement dated August 16, 2010, the Deed of Trust dated August 16, 2010, the Promissory Note dated August 16, 2010 and all related and ancillary documents, registrations and insurance policies in respect thereof;
- (h) **“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; and
- (i) **“Valiant”** means Valiant Trust Company, as trustee under and in relation to the Trust Indenture, dated July 15, 2010, providing for the issuance of debenture units by ABC US.

Approval of Assignment and Vesting of the Property

- 3. Subject to paragraph 4 hereof, the assignment and transfer of the ABC US Property from ABC US to Valiant is hereby authorized and approved, and:
 - (a) ABC US is directed to forthwith transfer all documents and records comprising the ABC US Property to Valiant;
 - (b) the ABC US Property shall be vested in the name of Valiant 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 ABC US Property;
 - (c) UBG and all persons who claim by, through or under UBG in respect of the ABC US Property shall release and stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental, and equity of redemption of the ABC US Property and, to the extent that any such person remains in possession or control of any of the ABC US Property, they shall forthwith deliver the same to Valiant; and
 - (d) for greater certainty, the Stay will no longer apply to the ABC US Property.
- 4. Upon receiving the ABC US Property, Valiant shall:
 - (a) report to ABC US and the Monitor from time to time respecting the status of each Lot and Valiant’s efforts to realize on the Lots, including all revenues received by Valiant and costs incurred by Valiant (the **“Accounting”**); and
 - (b) upon the completion of the sale of each Lot, forthwith pay to the Monitor an amount equivalent to 3% of the gross sale price of each Lot sold in respect of the Borrowers’

Cost associated with such Lot and shall not be entitled to set off, net against or otherwise allocate or apply these amounts, in part or at all, in any manner other than in payment of the Borrowers' Cost to the Monitor.

5. Upon the completion of the sale of all of the Lots, Valiant shall provide a final Accounting to ABC US and the Monitor.
6. Valiant, 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 ABC US Property and carry out the terms of this Order.

Miscellaneous

7. Any conveyance or transfer of the ABC US 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 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) the transaction contemplated hereby shall not create or be deemed to constitute a breach by any of the Applicants of any Third Party Agreement to which they are a party; and
 - (b) Valiant 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.
8. 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 Applicants, 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 Applicants 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.
9. UBG, the Monitor, Valiant, 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.


Aid and Recognition

10. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist UBG, Valiant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to UBG and Valiant, and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

11. Each of UBG, Valiant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

General

12. 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