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COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

PLAINTIFF

RIDGE DEVELOPMENT CORPORATION

DEFENDANT

1324206 ALBERTA LTD.

DOCUMENT

**FIRST REPORT OF ALVAREZ & MARSAL  
CANADA INC., IN ITS CAPACITY AS COURT  
APPOINTED RECEIVER OF 1324206 ALBERTA  
LTD.**

**NOVEMBER 21, 2014**

**ADDRESS FOR SERVICE  
AND CONTACT  
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**ALVAREZ & MARSAL**

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## INTRODUCTION AND BACKGROUND

1. Alvarez & Marsal Canada Inc. was appointed Receiver (the “**Receiver**” or “**A&M**”) of all of the assets, undertakings and properties of 1324206 Alberta Ltd. (“**132**”) pursuant to an order of Honourable Justice D.R.G. Thomas (the “**Receivership Order**”) granted on November 13, 2013 (the “**Receivership Date**”). Pursuant to the Receivership Order, the Receiver was appointed, as Receiver and Manager, without security, of all the current and future assets, undertakings and properties (the “**Property**”) of 132.
2. Prior to the Receivership, A&M was engaged as a consultant to 132 regarding its primary business, the development of a condominium complex, commonly referred to as Whitemud Heights (the “**Whitemud Heights Project**” or the “**Project**”). As a consultant on the Project A&M had the authority to report directly to Royal Bank of Canada, the senior lender to 132 (“**RBC**”). That engagement commenced on September 1, 2011. At that time, A&M replaced KPMG Inc. as the consultant to maintain the continuity of Tim Reid, who joined A&M at that time. Prior to that KPMG Inc. was the consultant commencing October 26, 2009.
3. 132 was established in May 2007 to primarily finance, develop, construct, operate and sell units in the Whitemud Heights Project, a one hundred and twenty-three (123) unit residential housing project on a portion of lands comprising the Stony Plain Indian Reserve No. 135 (being the lands occupied by the Enoch Cree Nation 440) (the “**Lands**”).
4. At the Receivership Date, 132 had no employees. The Project was managed by Ridge Developments Ltd. (“**Ridge**”) and critical expenses for operations were funded by RBC.
5. Effective February 21, 2008, 132 entered into a lease of the Lands for 49 years with Her Majesty the Queen in Right of Canada as represented by the Minister of Indian and Northern Affairs (the “**Crown**”). The lease is attached to the November 4, 2013 Affidavit of John Barath filed in these proceedings (the “**Lease**”). The Lands were controlled by Mr. Dean Alexander by way of a Certificate of Possession issued by the Enoch Cree Nation (the “**CP Holder**”). An agreement had previously been entered into with the CP Holder to lease the lands to Prairie Western Development Corporation, the

initial project manager and one of the shareholders of 132 (“**Prairie**”). Under that agreement the CP holder was paid \$2.4 million as full prepayment of the Lease.

6. 132 was subsequently incorporated to enter into the Lease. The shareholders of 132 were and continue to be Prairie, Ridge (the Applicant in the Receivership Proceedings) and White Castle Realty Investments Ltd. Prairie was originally the Project manager, but was replaced prior to the Receivership by Ridge.
7. Prior to the Receivership the Project was approximately 80% presold to individuals (“Presale Purchasers”) and deposits of approximately \$1.8 million lodged with Prairie.
8. The Project was substantially completed in late 2009, however, it could not be occupied as sewer and water services were not available (the “**Services**”). Accordingly none of the Presale Purchasers took possession and deposits were not returned. Prairie advised that the deposits were utilized to fund construction of the Project.
9. The Services were to be provided by Enoch Utilities Ltd (“**EUL**”), an entity owned by Enoch Cree Nation (“**Enoch**”). An agreement with Enoch was finally negotiated and executed by EUL and 132 in late 2011 (the “**Services Agreement**”). The Services Agreement also contained terms regarding occupancy conditions and the taxation rights of EUL in addition to the provision of the Services. The Services Agreement contained a number of conditions precedent, which included the payment of \$852,000 to EUL and lodging of letters of credit by 132. It was not until late 2013 that all conditions precedent, except payment of the \$852,000, and lodging of the letters of credit, were finalized. 132 did not have funds to make that payment of \$852,000.
10. EUL indicated it would not provide Services until the \$852,000 payment was made and the two letters of credit aggregating \$81,000 were lodged with EUL.
11. Further background to this matter is contained in the affidavits filed by the Plaintiff, which, along with a copy of the Receivership Order, are posted on the Receiver’s website at [www.alvarezandmarsal.com/whitemud](http://www.alvarezandmarsal.com/whitemud) (the “**Receiver’s Website**”).
12. Capitalized terms not defined in this first report of the Receiver (the “Receiver’s Report”) are as defined in the Receivership Order.
13. All references to dollars are in Canadian currency unless otherwise noted.

## **TERMS OF REFERENCE**

In preparing the Receiver's Report, the Receiver has relied upon unaudited financial information, company records and discussions with management of 132. The Receiver has not performed an audit, review or other verification of such information. An examination of the financial forecast as outlined in the Canadian Institute of Chartered Accountants ("CICA") Handbook has not been performed. Future oriented financial information relied upon in this Report is based on management's assumptions regarding future events and actual results achieved will vary from this information and the variations may be material.

## **PURPOSE OF REPORT**

14. The Receiver's Report is intended to provide this Honourable Court with information with respect to the following matters:
- i. the activities of the Receiver since the Receivership Date and the Receiver's future course of action;
  - ii. the sales process initiated by the Receiver to solicit offers for the purchase of the Whitemud Heights Project; and
  - iii. the Receiver's request for an Approval and Vesting Order pursuant to the Application.

## **RECEIVER'S ACTIVITIES**

15. The Receiver's initial activities since the Receivership Date include the following:
- a) securing possession and preparing an inventory of the capital assets, which consist primarily of the Project and various appliance located therein;
  - b) securing possession of and preforming a preliminary review of the books and records of 132;
  - c) reviewing the Lease and ownership claims on the Property;
  - d) corresponding with Ridge and the sole director of 132 regarding operating matters;

- e) attending to insurance matters including a review of insurance coverage; arranging and paying for the insurance and adding the Receiver as named insured and loss payee under the applicable insurance policies;
- f) engaging full time maintenance and security personnel for the Project;
- g) arranging the continuation of utilities and ongoing payment of those utilities;
- h) continuing negotiations of an offer existing at the Receivership Date and subsequently organizing and monitoring the marketing and sale of the Project;
- i) negotiating the sale of the Project and Court approval thereof;
- j) communicating with RBC with respect to the Receiver's borrowing powers and the issuance and funding of a Receiver's Certificate;
- k) arranging and attending various meetings with legal counsel and RBC;
- l) responding to various creditor enquiries; and
- m) attending to various statutory notices and other duties of the Receiver pursuant to the Receivership Order and the *Bankruptcy and Insolvency Act* ("BIA").

#### **RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS**

- 16. Pursuant to the Receivership Order filed November 14, 2014, the Receiver is empowered to borrow up to \$1,800,000 (or such greater amount as the Court may by further Order authorize) for the purpose of funding the powers and duties conferred upon the Receiver.
- 17. The Receiver has issued three Receiver's Certificates to date for \$915,000 which were funded by RBC. The Receiver's Statement of Receipts and Disbursements from the date of Receivership is as follows:

Whitemud Heights Ltd. Statement of Receipts and Disbursements For The Period from November 13, 2013 to November 17, 2014	
	Total
<b>Receipts</b>	
Receiver's borrowings	\$ 915,000
<b>Total Receipts</b>	<b>915,000</b>
<b>Disbursements</b>	
Contractor services	21,716
Utilities and services	125,361
Insurance	230,078
Security	141,600
Site supervision	71,500
Fence rental	5,684
Bank charges	77
Professional fees	127,140
Other disbursements	168
Receiver's borrowings repayment	-
<b>Total Disbursements</b>	<b>\$ 723,324</b>
<b>Net Cash Flow</b>	<b>\$ 191,676</b>
<b>Cash Position</b>	
Opening Cash Position	-
<b>Closing Cash Position</b>	<b>191,676</b>

- a. The Receiver has incurred obligations in respect of Receivership fees, legal fees, and other commitments that have not yet been paid and are not reflected in the Receipts and Disbursements. The Receiver will also incur additional costs prior to the closing of the proposed sale of the Property.
- b. There are no other sources of funds available to the estate.
- c. The Receiver intends to repay the funds it has borrowed with the proceeds from the sale of the Property.

## THE SALE PROCESS

### *Receiver's Powers Regarding the Sale Process*

18. Pursuant to section 3 of the Receivership Order, the Receiver is empowered, among other things, to:

*“3. . . . (k) to market any and all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;*

*(l) to sell, convey, transfer. Lease or assign the Property or any part or parts thereof out of the ordinary course of business,*

*(i) without the approval of this Court in respect of any transaction not exceeding \$10,000.00 provided that the aggregate consideration for all such transactions does not exceed \$100,000.00; and*

*(ii) with the approval of the Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,*

*and in each such case notice under subsection 60(8) of the PPSA shall not be required;*

*(m) to apply for any vesting order or other such orders necessary to convey the Property or and part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property; . . .”*

#### ***Sale Process***

19. Prior to the Receivership, 132 was in negotiations with a potential purchaser of the Property. Immediately prior to the Receivership 132 received an offer for the purchase of the Property, which was not accepted. The Receiver continued negotiations with the potential purchaser, including drafting and negotiating an unconditional offer to purchase. It was a requirement of the offer by the Receiver for the potential purchaser to lodge a \$1.0 million deposit with the Receiver. It became apparent in early January 2014 that the potential purchaser could not provide the deposit, and negotiations were terminated.

20. After negotiations were terminated with the potential purchaser, the Receiver considered the various options available to sell the property, which included:

- i. a sale by way of invitation for offers on an “as is where is” en bloc basis;
- ii. a sale on an enbloc basis after firstly completing the Property and leasing it;
- iii. a sale of individual units to end users; and
- iv. a sale by engaging the services of a commercial realtor.

After considering the available options, the Receiver chose to engage the services of a commercial realtor to market the property on an enbloc “as is where is” basis.

21. The Receiver contacted approximately ten national commercial realtors and requested proposals. The Receiver received five proposals after conducting tours of the property and interviewing the Commercial Realtors. The proposals included the Realtor’s suggested listing and sale price as well as their marketing plans. After reviewing the five separate commercial real estate firm proposals, CBRE Limited (“**CBRE**”) was selected as the listing agent.
22. CBRE has a solid record in the industry for selling large complexes, like the Project, and displayed a good understanding of the marketplace to be solicited. The Receiver negotiated CBRE’s commission to keep sales expenses as low as possible and retained their services in this sales process (the “**Sale Process**”).
23. CBRE’s marketing brochure is attached hereto as Appendix “A”. Their report on their marketing effort is included in Confidential Appendix “B”. CBRE’s marketing efforts included:
  - i) sending a mass market email to over 3000 approved investors and outside commercial realtors; and
  - ii) the placement of ads on their website and on Loopnet, a website for the marketing of commercial real estate.
24. CBRE received positive initial interest in the Property and showed the Property to numerous prospective purchasers. However, no offers were generated at, or near, the listing price. CBRE did generate the offer sought to be approved as well as four additional offers. The four additional offers were not accepted because they contained lower offers, unacceptable sale conditions, or could not provide the required deposit. All of the offers received were much lower than anticipated by CBRE.

***Offer Accepted Subject to Court Approval and Summary of Offers Received***

25. Attached as Confidential Appendix “B” is a summary and analysis of the various offers received.

26. After review, analysis and clarification of certain terms of the offer and related matters, the Receiver accepted, subject to the Court's approval, the offer of 1845351 Alberta Ltd., which is attached hereto as Confidential Appendix "C" (the "**Sale Agreement**").
27. The Sale Agreement is from a company that is wholly owned by the same individual as Ridge, the Applicant in these proceedings, and is the former Project manager.

***Confidential Appendices and Temporary Sealing Order***

28. Confidential Appendices "B" and "C" contain information of a commercial nature which, if disclosed to third parties prior to the closing of the sale, could materially jeopardize the sale, or, if the sale does not close, could materially jeopardize the value that could be subsequently obtained from another sale. Accordingly, the Receiver is respectfully of the view that it is appropriate for this Honourable Court to grant an Order temporarily treating as confidential, sealing and not forming part of the public record Confidential Appendices "B" and "C". In the Receiver's view, the Confidential Appendices indicate that the Sale Agreement is a commercially reasonable offer, which, of the offers with acceptable closing conditions and deposit requirements, was the highest and best offer received in the Sale Process.

***Receiver's Consideration in Proceeding with the Sale Agreement***

29. The Receiver considered the following in proceeding with the Sale Agreement:
  - i. the extent to which the purchase price in the Sale Agreement (the "**Purchase Price**") is consistent with independent appraisals available to A & M during the Receivership;
  - ii. the overall execution risk associated with closing the transaction with the prospective purchaser;
  - iii. the extent to which the purchaser complied with the Sale Process;
  - iv. the receipt of a \$1.0 million non-refundable deposit from the prospective purchaser; and
  - v. the fact that, of the offers with acceptable closing conditions and deposit requirements, the Sale Agreement was the highest and best offer received in the Sale Process.

30. RBC is the senior secured creditor of 132 and although the Receiver has not at this time received a legal opinion on RBC's security, they appear to have valid security which is in priority to other creditors. The Receiver is advised by RBC that they support the sale.

***Receiver's Proposed Sale***

31. Based on the above analysis and the considerations contained in Confidential Appendices "B" and "C", the Receiver accepted, subject to the Court's approval, the Sale Agreement on an "as is where is" basis and believes the Purchase Price is reasonable in the circumstances as outlined in Appendix "A".
32. The Receiver believes that the Purchase Price is reasonable in the circumstances and the offer should be approved by the Court given:
- i. the Purchase Price is in all cash;
  - ii. The Sale Agreement is on an "as is where is" basis and has no closing conditions other than Court approval and consent of the Crown to the assignment of the Lease;
  - iii. the Receiver, subject to Court approval, is specifically authorized to market and sell the Property pursuant to the Receivership Order;
  - iv. the Offer contains the highest price of the offers with acceptable closing conditions and deposit requirements; and
  - v. RBC, the senior secured creditor of 132, supports the sale.
33. Accordingly, the Receiver is applying to this Honourable Court to approve the Sale Agreement and an Approval and Vesting Order vesting the Project in the name of the purchaser on the terms and conditions outlined below.

**ORDER APPROVING SALE AND VESTING ORDER AND TEMPORARY SEALING ORDER**

34. As contained in the Application, the Receiver is seeking the approval of the Sale Agreement set forth in the recommendations (the "**Approval and Vesting Order**"). The form of the Approval and Vesting Order contains, among other things:

- i. an Order abridging the time for service and deeming service good and sufficient upon all interested parties;
- ii. an Approval and Vesting Order substantially in the form attached as Schedule “A” to the Receiver’s Application, or on such further and other terms as this Honourable Court may direct;
- iii. an Order temporarily treating as confidential, sealing and not forming part of the public record Confidential Appendix “B” and Confidential Appendix “C” to the First Report of the Receiver until the earlier of (i) the closing of the Sale Agreement (as subsequently defined), (ii) May 28, 2015, and (iii) such later date as may be ordered further by this Honourable Court;
- iv. An Order authorizing the Receiver (as subsequently defined) to distribute the proceeds of the transaction contemplated in the Sale Agreement in repayment of the Receiver’s Borrowings Charge together with interest and charges thereon (as defined in the Receivership Order), and that the Receiver shall hold the remaining proceeds until further order of this Honourable Court; and
- v. such further and other relief as this Honourable Court may grant.

#### **RECEIVER’S CONCLUSIONS AND RECOMMENDATIONS**

- 35. The Receiver is of the view that it has made commercially reasonable efforts to obtain the highest realization for the Property which has been the subject of the Sale Process. The Sale Agreement is, in the opinion of the Receiver, fair and commercially reasonable.
- 36. The Receiver is satisfied that the interests of 132’s stakeholders have been considered during the course of the Sale Process and the Receivership.
- 37. The Receiver is of the view that the expedited timing and execution of the Sale Process was appropriate in the circumstances to mitigate or avoid on-going holding costs.
- 38. The Receiver is of the view that that the Sale Process was efficient, effective and that the integrity of the process has been maintained throughout.
- 39. The Receiver is satisfied that the Sale Process was inherently fair and has been conducted in a manner such that no parties to the process have experienced preferential or unfair treatment.

40. The Receiver recommends and respectfully requests that this Honourable Court grant:
- i. an Order abridging the time for service and deeming service good and sufficient upon all interested parties;
  - ii. an Approval and Vesting Order substantially in the form attached as Schedule "A" to the Receiver's Application, or on such further and other terms as this Honourable Court may direct;
  - iii. an Order temporarily treating as confidential, sealing and not forming part of the public record Confidential Appendix "B" and Confidential Appendix "C" to the First Report of the Receiver until the earlier of (i) the closing of the Sale Agreement (as subsequently defined), (ii) May 28, 2015, and (iii) such later date as may be ordered further by this Honourable Court;
  - iv. An Order authorizing the Receiver (as subsequently defined) to distribute the proceeds of the transaction contemplated in the Sale Agreement in repayment of the Receiver's Borrowings Charge together with interest and charges thereon (as defined in the Receivership Order), and that the Receiver shall hold the remaining proceeds until further order of this Honourable Court; and
  - v. such further and other relief as this Honourable Court may grant.

\*\*\*\*\*

All of which is respectfully submitted to this Honourable Court this 21st day of November, 2014.

**Alvarez & Marsal Canada Inc.,  
in its capacity as Receiver and Manager of  
1324206 Alberta Ltd.**



Tim Reid, Senior Vice President