

District of Alberta
Division No: 01-Edmonton
Court/Estate No: 24-115112

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON
IN BANKRUPTCY**

**IN THE MATTER OF THE RECEIVERSHIP OF
GUILD DEVELOPMENTS INC. AND 702348 ALBERTA LTD.**

RECEIVER'S FOURTH REPORT TO THE COURT

INTRODUCTION AND PURPOSE OF REPORT

1. Pursuant to an Order of the Court of Queen's Bench of Alberta (the "Court") granted November 19, 2008, Meyers Norris Penny Limited was appointed as Receiver Manager (the "Receiver") of all of the current and future assets, undertakings and property (the "Property") of Guild Developments Inc. ("Guild") and 702348 Alberta Ltd. ("702348").
2. Guild operated as a commercial construction developer. Its sole business pertained to the construction of a multi-unit, four (4) building commercial condominium complex located at 9420 – 51 Avenue, Edmonton, Alberta (the "Development"). Guild acted as its own general contractor and project manager for the Development. As best as the Receiver can determine, this was Guild's first development of this nature. The Development was not complete as at the date of the Receiver's appointment. The land upon which the Development was situated was registered in the name of 702348.
3. By an Offer to Purchase and subsequent Asset Purchase Agreement dated effective April 16, 2009 (the "APA") and approved by the Court of Queen's Bench pursuant to an Order dated April 24, 2009 (the "Sale Order"), a majority of the assets of Guild and 702348, including the partially completed Development, were sold to 1460518 Alberta Ltd. (the "Purchaser").
4. The purpose of this Report is to provide an update to the Court with respect to the following matters:
 - Receiver's activities subsequent to the Receiver's Second Report;
 - Status of remaining assets;
 - Status of Lease and Purchase Contracts;
 - Status of on-going litigation;
 - Status of Builders Liens;
 - Status of Insurance Claims;
 - Review of various priority interests in the Property of Guild; and
 - Receiver's Interim Statement of Receipts and Disbursements.
5. This Report constitutes the Receiver's Fourth Report to the Court.

RECEIVER'S ACTIVITIES

6. The Receiver has prepared a Third Report solely for the purpose of seeking advice and direction on funds held in trust by the Receiver representing the deposit of Midwest

Surveys Inc. ("Midwest") and did not address the Receiver's activities subsequent to the Second Report.

7. Subsequent to the Receiver's Second Report dated April 21, 2009 the Receiver continued to protect and preserve the Development, fixed assets (eg. tools and equipment) and inventory (eg. construction supplies and materials) up until the end of May, 2009 being the time that the Purchaser took full possession of the assets it purchased.
8. Temporary heating, utilities, security and insurance were maintained up until the time that the Purchaser had arranged to replace the existing services or coverage.
9. The Receiver continues to maintain insurance coverage over the assets of Guild still in the Receiver's possession which are described in greater detail in paragraph 14 of this Report.
10. The Receiver terminated its contract with the project management company, Pivotal Projects Incorporated on May 13, 2009 as the services were no longer required.
11. Receiver's Certificates in the amount of \$1,500,000 advanced to the Receiver by Canadian Western Bank ("CWB") throughout the administration of the Receivership were repaid to CWB on May 12, 2009. In addition to the principal balance, interest had accrued on the loan in the amount of \$1,602.74 for a total payment to CWB of \$1,501,602.74.
12. At the request of the Receiver, an independent review of the security of RIC New Brunswick Inc. ("Romspen"), was obtained from the Receiver's counsel on September 17, 2009. The opinion provided that Romspen has a valid and enforceable secured charge over the assets of Guild by way of its Second Mortgage and General Security Agreement ("GSA").

FIXED ASSETS AND MATERIALS

13. Pursuant to the APA and the Sale Order, in addition to the partially completed Development, a majority of the fixed assets and materials were sold to the Purchaser for \$36,000 plus GST. Subsequent to the granting of the Sale Order the Purchaser elected to purchase the remaining fixed assets and materials from the Receiver at an appraised value of \$11,550 plus GST. The Receiver was authorized to conduct this sale pursuant to paragraph 2 (m) of the November 19, 2008 Court Order. As such, the total value of the fixed assets purchased by the Purchaser was \$47,550 plus GST which reconciles to the Receiver's Interim Statement of Receipts and Disbursements (see Schedule "A"). Attached as Schedule "B" is a listing of the additional fixed assets and materials that were purchased. The fixed assets were listed on the books and records of Guild.
14. Attached as Schedule "C" is a listing of the fixed assets that remain in the possession of the Receiver subsequent to granting of the Sale Order. The remaining assets are pledged as security to CAT Finance ("CAT") and the Receiver's solicitor has provided an opinion that CAT's security is valid and enforceable as against the Receiver. The security is in the nature of equipment leases.
15. Based upon the appraised value of the assets and corresponding debts outstanding the Receiver has determined that the equipment holds no equity for the benefit of the estate. The equipment is insured by the Receiver and is currently stored at the location of the Development for safe-guarding.

16. Given the existence of Canada Revenue Agency's ("CRA") Deemed Trust Claim in Guild, the Receiver sought a release letter from CRA with respect to their interest in the remaining equipment but CRA has not provided a sufficient release letter to date. As such, CRA may still claim an interest in the remaining equipment.

LEASE AND PURCHASE CONTRACTS

17. Pursuant to the APA, the Purchaser assumed the Receiver's interest in certain Leases and Offers to Purchase contracts as outlined in Schedule 2.3 in the APA. In addition to these interests, the Purchaser had the option of assuming certain Lease and Offer to Purchase contracts (the "Optioned Contracts") within sixty (60) days of the closing date.
18. The Purchaser elected to assume the following Optioned Contracts within the sixty (60) day period:
- Dr. Avtar Rai;
 - Rondeep Singh;
 - Dhillon Investments Ltd.;
 - Sarbjit Singh Sangha;
 - After Eight Holdings Ltd. ;
 - Siyaguna and Sujatha Fernando;
 - Grace Derkach;
 - Vaughn Beakhouse;
 - Daryl B. Becker Professional Corporation;
 - Rob Gillrie, Kin Gillriem Chris Fix;
 - Caterpillar Financial Services Limited Lease dated September 19, 2007 for Unit SJ1113226 Serial Number 27000995 Skyjack Scissorlift;
 - Caterpillar Financial Services Limited Lease dated September 19, 2007 for Unit SJ1113226 Serial Number 27000994 Skyjack Scissorlift; and
 - Caterpillar Financial Services Limited Lease dated September 5, 2007 for Unit 242B Serial Number CAT0242BABXM03847 Skidsteer.
19. The Purchaser elected not to assume certain contracts as listed below:
- Bern and Donna Kotelko;
 - Jagdev Singh Rai;
 - Recreation Vehicle Deals Association of Alberta;
 - Tarolochan Kalkat;
 - Inderjit Randhawa;
 - Pho Hoa/Hai Hong;
 - Prithar Jaswant;and
 - All remaining equipment leases with Caterpillar Financial Services Ltd.
20. Initial deposits were returned to parties with the un-assumed contracts prior to the date of Receivership, with the exception of Pho Hoa/Hai Hong. As the Purchaser elected not to take up this contract the Receiver issued a termination letter to Pho Hoa/Hai Hong and returned the initial deposit of \$79,500.00 on September 30, 2009.
21. Pursuant to the terms of the APA and the Sale Order, the Receiver assigned its interest in the Purchase Contract of Midwest to the Purchaser. Midwest was occupying the premises under contract upon the date of Receivership but they have since elected to vacate the premises, however, certain deposits remain in trust with the Receiver's Counsel. The Receiver has no interest in these funds. The Receiver has prepared a Third

Report to the Court and will be seeking advice and direction from the Court (in a separate application from the ones contemplated under the below heading "conclusion and Recommendations.") regarding disposition of these proceeds as each of Midwest and the Purchaser lay claim to the funds. That dispute is now in litigation between the Purchaser and Midwest.

Prior to the entering into the APA and the granting of the Sale Order, Alberta Treasury Branches ("ATB") and Telecommunications Research Laboratories ("TR Labs") each brought an application to the Court to terminate their lease arrangements with Guild given, among other things, construction delays. Justice Yamauchi granted the applications pursuant to Reasons for Decision dated May 4, 2009. Notwithstanding that, pursuant to the terms of the APA and the Sale Order, the Receiver did assign its interest in the Lease Agreements of each of ATB and TR Labs to the Purchaser. ATB did not have an initial deposit. TR Labs had placed a deposit with its realtor, The Staubach Company in Calgary. The Receiver has no interest in these funds. It is the understanding of the Receiver that the Purchaser has appealed the decision of Justice Yamauchi. The Receiver is not participating in the appeal.

22. Pursuant to the terms of the APA and the Sale Order, the Receiver also assigned its interest in Lease Agreement between Guild and Meyers Norris Penny LLP ("MNP") and 1244914 Alberta Ltd. ("124") to the Purchaser. Initial deposits in relation to each of those leases are held in trust with Avison Young. The Receiver maintains no interest in those funds and the Purchaser is left to deal with them.
23. Pursuant to the terms of the Sale Order, the Receiver assigned its interest in the Purchase Agreement of Corporate Copy Inc. ("Corporate Copy") to the Purchaser. The Receiver was advised by former management of Guild that Corporate Copy had never paid any rental proceeds since taking possession, nor have they paid any rent since to the Receiver. The Receiver has no further interest in the matter.
24. The Receiver was advised by Omnus Financial Group Ltd. ("Omnus") that Omnus had provided Guild with a deposit of \$27,000 (\$5,000 initial deposit plus \$22,000 after removal of conditions) for the purchase of Unit #11 in Building #1 prior to the date of Receivership. The books and records of Guild provided no evidence of either a contract or monies held in trust for this purpose. Upon further investigation by the Receiver, it was determined that the unit had also been sold to After Eight Holdings Ltd. ("After Eight"). The sale to After Eight is supported by both a contract and an accounting of monies held in trust and was one of the Optioned Contracts assumed by the Purchaser. As such, the Receiver has concluded that Omnus' claim has no bearing on the Receivership and remains an issue as solely between Omnus and Guild.

LITIGATION

25. At the commencement of the Receivership, Guild was involved in a number of lawsuits, the majority of which related entirely to the Development and involved disputes with suppliers and trades including disputes over builders' lien claims. What follows is a brief summary of those outstanding litigation matters and a report on what steps have been taken to address those matters.

(a) *John Clarke v. Guild Developments Inc*, Action Number 0803 06372

The Plaintiff is a former project manager for Guild. In this action he sought a declaration that he had an interest in land or proceeds by way of a constructive

or resulting trust and claims salary and commissions are owing to him from Guild arising from his employment.

Mr. Clarke alleges he was terminated from his employment on May 2, 2008 without cause.

The Plaintiff did file a Certificate of Lis Pendens on title. The Certificate of Lis Pendens was filed subsequent to all of the mortgage security against the Development. The Development was sold on notice to Mr. Clarke and would appear from the Receiver's perspective that in relation to any claims against the Development, those claims are now practically moot as there were insufficient funds to retire the two mortgage debts.

With respect to the balance of the claim, the claims are unsecured against the assets under the Receiver's administration. There was a counterclaim brought by Guild alleging that the Plaintiff intentionally misrepresented his qualifications and Guild incurred damages in the sum of \$2,750,000.00. It is not the Receiver's intention to pursue this claim as there is insufficient information available to support it.

Accordingly, the Receiver proposes to do nothing in relation to this action.

(b) *702348 Alberta Ltd. v. Scott A. MacMullin*, Action Number 0803 01731

Mr. MacMullin filed a builders' lien claiming the sum of \$2,228.71. Funds have been paid into Court to cover these amounts. Mr. McMullan filed his lien against the Development but was fired from his employment. His claim for lien does not appear to have any validity. Mr. MacMullin was terminated from his employment on November 30, 2007. He filed his lien on January 17, 2008 outside of the 45 day time limit and has not filed a Statement of Claim in relation to his termination or his pay notwithstanding the Receivership Order would allow him to do so to preserve the limitation. The limitation has now expired.

The Receiver seeks the Court's order that the funds paid into Court in Action Number 0803 01731 be paid to the Receiver.

(c) *Royal Stucco Ltd. v. Guild Developments Inc.*, Action Number 0803 03499

The Plaintiff filed an action for breach of contract in relation to the Development. It alleges there was an agreed commencement date and that the project did not commence on time. It further alleges that costs were incurred in preparing to fulfill its obligations under the Agreement.

Guild has filed a defence and counterclaim in which it alleges that Royal Stucco Ltd. ("Royal") was to provide evidence of general liability insurance, WCB clearance and a bond for the work to be performed on the project before the start date. It alleges that Royal failed to do so.

From the material on the file it appears that Royal did provide the evidence of general liability insurance and WCB clearance. The parties were unable, however, to agree on the terms of a bond. The subcontract between Guild and Royal stipulates that the bond is not mandatory, may be required by Guild and was to be in an amount satisfactory to Guild.

There are both liability issues and damage amount issues. If Guild is correct, then it would be entitled to damages for the increased costs of obtaining stucco

for the completion of the project. From the Receiver's perspective, that will be difficult to quantify as the project was not completed at the start of the Receivership.

If Royal is correct, then its claim is completely unsecured as against Guild.

The key issue is whether or not the bond was to be required and at what amount. Counsel's view is that the lawsuit is not economically worth pursuing from the Receiver's perspective. The primary witness will be Mr. Clarke who is, himself, a claimant against Guild.

- (d) *Guild Developments Inc. v. Rock Solid Drilling Ltd.*, Action Number 0703 15369 and 0701 13408

This is a builders' lien action in relation to the Development. The sum of \$217,266.00 was paid into Court on December 2, 2007 to secure discharge of the builders' lien. The amount claimed by Rock Solid Drilling Ltd. ("Rock Solid") is \$197,514.30. The amount paid into Court includes an amount for interest and costs.

Rock Solid's work involved drilling, fabricating pipe, new bends and grouting geothermal holes for the geothermal heating system.

At issue is the question of the number of holes drilled by Rock Solid. The file material indicates that Rock Solid may have drilled five less holes than claimed (i.e. five holds were already drilled) however it appears they did continue to fabricate pipe and new bends and grout of geothermal holes. The difference is approximately \$30,000.00.

The recommended course of action will be addressed under the next heading "Builders' Lien Claims".

- (e) *A & H Steel Ltd. v. Guild Developments Inc.*, Action Number 0803 11192

This is a completely unsecured claim brought against Guild by A & H Steel Ltd. No builders' lien. The Receiver does not intend to defend or participate in this action.

- (f) *Alberta Fuel Distributors Inc. v. Guild Developments Inc. and Harman Kullar*, Action Number 0803 17058

Again, this is a completely unsecured claim. The Receiver does not intend to defend or participate in this action.

- (g) *Extreme Trenching Ltd. v. Guild Developments Inc. and 702348 Alberta Ltd.*, Action Number 0703 14862, 0703 12630 and 0703 10821

This is a lien action. Funds in the amount of \$452,210.66 including security for costs have been paid into Court to secure two liens in the amount of \$121,339.27 and \$289,761.60.

The position of Guild has been that the second lien largely claims for a loss of profit as a result of Extreme Trenching Ltd.'s ("Extreme") inability to sell soil to a third party purchaser. However, the evidence also discloses that the soil testing upon which Extreme relied in making its bid to Guild was not undertaken in all areas. In particular, the area of the parkade which was excavated was severely

contaminated with buried concrete and asphalt and building piles from a former building. Most of this material was removed and placed, at the direction of John Clarke, on lands adjacent to the Development. Extreme's quote specifically excluded the cost of removing contaminated soil.

The Receiver's recommendation in relation to this is a matter that will be discussed below under the heading "Builders' Lien Claims".

- (h) *Bally Developments Inc. v. Tri-National Investments Inc.*, Action Number 0703 10911, 0703 16079 and 0803 14943

This action involved a failed Purchase Agreement in relation to lands other than the Development lands. The Receiver has entered into a settlement in relation to this matter receiving the sum of \$21,000.00 from Tri-National and has agreed to discontinue the claim of Guild. A third party company, Bally Developments Ltd. ("Bally") was also involved. Discontinuance of Action on a without costs basis have been exchanged with Bally and with Tri-National. Since these proceeds are clearly Guild proceeds, they are likely payable to CRA.

BUILDERS' LIENS

26. During the course of the construction in the Development, a number of builders' liens were placed. Prior to the Receivership sums of money were paid into Court to secure the discharge of certain builders' liens. Very few of those issues were resolved prior to Receivership but some of them were. At present, there is standing in Court to the credit of various actions the total sum of \$679,567.72 as follows:
- (a) Rock Solid Actions - \$217,266.00;
 - (b) Extreme Actions - \$133,472.90 and \$318,737.76;
 - (c) DMI Services - \$7,862.35;
 - (d) Scott MacMullin - \$2,228.71;
- Total - \$679,567.72.
27. As noted in respect of the narrative under the previous section of this Report, the Rock Solid and Extreme matters are ongoing matters which have not been resolved by agreement or the Court. In relation to the DMI Services matter, it appears that those funds were paid out of Court pursuant to a Consent Order obtained by Attia Reeves on November 28, 2008. Discussions with Mr. Attia's office indicate that the application was made inadvertently, and the funds remain in trust at Attia Reeves. We have requested that they be immediately paid over to the Receiver. In relation to Scott MacMullin, the limitation has expired and the Receiver seeks a direction that those funds be paid to it.
28. In addition to the foregoing liens which were secured off by payment of funds into Court, there are approximately \$1,600,000.00 worth of liens which were registered on title before and after the appointment of the Receiver. There were no funds available to those lien holders arising from the sale process. As noted in previous reports, there does not appear to be an issue of priority as between the mortgage lenders and the builders' lien claimants. The mortgage lenders did not advance in the face of liens.
29. With respect to the Rock Solid and Extreme liens, those matters have not yet been resolved. To the extent they are resolvable, and there are surplus funds available, they may be retrievable by the Receiver.
30. However, it is to be noted that Guild was the contractor under the terms of the contracts with each of Rock Solid and Extreme. The lands, however, stood in the name of 702348. From the Receiver's review of books and records maintained by each of Guild and

702348, 702348 did not appear to maintain its own bank account and it also appears that those funds paid into Court were paid by Guild as is reflected in the May 31, 2008 financial statements of Guild.

31. The Receiver has been advised by its counsel that this gives rise to a number of issues:
- (a) CRA is asserting a deemed trust priority claim in Guild in the amount of \$417,960.36 for unremitted employee source deductions. In addition to that, Workers' Compensation Board ("WCB") and Service Canada for claims under the *Wage Earner Protection Program Act* ("WEPPA") also have claims. All of them and each of them may be able to assert a claim of priority to these funds held in Court if the funds were Guild's as the funds were paid into Court only in substitution for the land as security for the lien;
 - (b) In addition to the foregoing, counsel for the Receiver has advised the Receiver that there is case law from the Alberta Court of Appeal to suggest that funds paid into Court to secure a lien did not necessarily secure a lien for all purposes and can be substituted for a lien fund when the project is completed and the contractor is in a position to establish a lien fund. If that is the case, these funds may well be accessible to other lien claimants in addition to those for whom the funds were paid into Court to secure off their liens;
 - (c) There has also not been a claims procedure established with respect to the lien claimants and any potential claims that they might have.
32. In order to bring some conclusion to this matter, the Receiver seeks direction from this Court to establish hearings for the purpose of determining the following:
- (a) Whether CRA, WCB or Service Canada, or any of them, have priority to the funds paid into Court in relation to secure off the builders' liens and if so in what amounts?
 - (b) After a determination of that priority issue, or in relation to the balance of the funds paid into Court, are the funds available for all of the lien claimants or merely the claimants whose liens were secured off through the payment of funds into Court?
 - (c) If the funds are established for the benefit of all lien claimants, an Order directing that a claims procedure be established for a determination of same.

INSURANCE CLAIMS

33. As outlined in the Receiver's Second Report, at the time of the commencement of the Receivership, Guild had brought action against its insurer, Royal & SunAlliance ("Royal") for \$1,754,000 respecting damages incurred by Guild arising from a water main break and resulting flood damage to two (2) buildings, Buildings 3 and 4 in the Development. A copy of the Statement of Claim showing Guild as the sole Plaintiff as against Royal is attached as Schedule "D". The claim was originally commenced by solicitors for Guild, Messrs. Miller Thomson LLP and, with the blessing of the Receiver, under the guidance of counsel for the Receiver, instructed Miller Thomson LLP to continue in negotiations with Royal with a view to possibly settling the claim. That claim was settled for the sum of \$1,200,000.00 and funds are being maintained in the trust account of Miller Thomson LLP pending direction of the Court ("Flood Claim Proceeds").
34. With respect to the insurance claim itself, it is noted that:

- (a) The insurance policy was originally taken out in the name of Guild and this was the policy which was in the hands of Miller Thomson LLP at the time of commencement of the claim against Royal and at the time of settlement;

- (b) The Proof of Loss was submitted by the Receiver on behalf of Guild. The Receiver was advised by Miller Thomson LLP that the insurer would not accept the Proof of Loss jointly with 702348 nor on behalf of 702348;
- (c) The second mortgagee, Romspen, has placed the Receiver and Miller Thomson LLP on notice of the fact that it holds a loss payee direction under the policy of insurance which contained the standard mortgage clause.;
- (d) Subsequent to settlement, Romspen has provided the Receiver with a copy of the renewal insurance policy which shows that at renewal the policy was taken out on behalf of both Guild and 702348, not merely Guild alone.

Attached as Schedules "E", "F", "G", and "H", are copies of the insurance policy in the hands of Miller Thomson LLP at the time of commencement of the action and settlement, a copy of the Proof of Loss submitted by the Receiver, notification received from Romspen and a copy of the renewal policy received from Romspen.

- 35. The issue of entitlement has some relevance given the existence of CRA's Deemed Trust Claim along with other potential priority claims. If the funds are the property of 702348 the proceeds would appear to be secured by Romspen. If the standard mortgage clause is operative, the proceeds may be the property of Romspen by virtue of an independent contract of insurance between Royal and Romspen. If the funds are the property of Guild and not otherwise subject to the standard mortgage clause and loss payable endorsement, they may be utilized to answer for the CRA Deemed Trust Claim and other priority claims. The balance in excess of CRA's Deemed Trust Claim is certainly secured to Romspen.
- 36. Royal has also commenced a subrogated claim against EPCOR for damages in the amount of approximately \$2,300,000.00. Attached and marked as Schedule "I" is a copy of the Statement of Claim. If Royal chooses to serve the claim on EPCOR, any funds awarded in excess of \$1,200,000.00 will be available to Guild, 702348 and/or their creditors. It is anticipated that if that matter is not resolved prior to the Receiver applying for its discharge that it will simply seek the Court's direction to assign any residual aspects of that claim to Romspen pursuant to their security.
- 37. The Receiver's Second Report also stated that the Receiver would assign its interest in the claim against Midwest, the project's developer, for an error in the initial surveying of the land to the Purchaser. Upon further review, it was determined that the best course of action was for the Receiver to settle this matter and then seek Court approval to disburse the proceeds. Subsequently, the Receiver filed a Statement of Claim against Midwest in the amount of \$560,952. It is anticipated that upon resolution of the litigation, any net proceeds realized by the Receiver will be forwarded to Romspen pursuant to their security.

PRIORITY INTERESTS

Deemed Trust Claim

- 38. As outlined in the Receiver's Second Report, CRA issued a Deemed Trust Claim in the amount of \$417,960.36, representing un-remitted employee source deductions of Guild Developments Inc.
- 39. In the Receiver's Second Report, the Receiver advised that CRA may enjoy a priority to mortgage draws advanced by CWB and Romspen in the period of April 1 - June 2008 as that is the period in which the Deemed Trust arose. Upon further investigation, it was determined that the un-remitted source deductions pertained to employee's of Guild

Developments Inc. specifically and are not source deductions owing by 702348 Alberta Ltd., the entity to which the mortgage draws were advanced. As such, CRA's Deemed Trust Claim does not attach to these funds.

40. Also as stated in the Receiver's Second Report, prior to the Receivership Guild had paid \$679,566.96 into Court as a result of various litigated matters discussed in greater detail above under the heading "Builders' Lien Claims". CRA may enjoy a claim to priority over all, a portion or none of these funds but with the creation of a lien holder's fund CRA can assert their claim as against this fund as they deem fit.
41. As outlined in paragraph 13, the Purchaser purchased \$11,550.00 (plus GST) of the fixed assets of Guild Developments Inc. (subsequent to the APA) in addition to the \$36,000 (plus GST) of assets purchased pursuant to the Asset Purchase Agreement for a total of 47,550.00 (plus GST). CRA will enjoy a priority to these proceeds pursuant to their Deemed Trust Claim.
42. As noted earlier in this Report, CRA's Deemed Trust Claim relates specifically to Guild Assets. CRA's claim will be partially paid from the proceeds arising from the sale of fixed assets. It is also possible, depending on Court determinations, that funds paid into Court to satisfy the builder's lien claims and the Flood Claim Proceeds can be used to answer CRA's claim if it is determined that these monies are the property of Guild.

Workers Compensation Board ("WCB")

43. As of August 6, 2009 WCB notified the Receiver of a current balance outstanding, inclusive of interest, of \$30,955.63. WCB has registered a charge against all present and after acquired property pursuant to the Workers Compensation Act, Section 129. WCB's claim relates specifically to Guild Assets. The only possible avenue for satisfaction of their claim rests with the Flood Claim Proceeds. If, however, it is determined that the Flood Claim Proceeds are not the property of Guild and should be paid to Romspen through their loss payee endorsement, WCB's claim will not be satisfied.

Service Canada

44. The Receiver filed a total of eleven (11) claims with Service Canada under WEPPA. As at the date of this Report, the Receiver has received confirmation from Service Canada that seven (7) employees, for whom the Receiver filed a WEPPA claim, have themselves filed a claim with Service Canada. Service Canada has since paid the claims of these employees based on the maximum allowable value under WEPPA resulting in an amount payable to Service Canada for payment of wage claims totalling \$10,074.50. Service Canada's claim relates specifically to Guild Assets. The only possible avenue for satisfaction of their claim rests with the Flood Claim Proceeds. If, however, it is determined that the Flood Claim Proceeds are not the property of Guild and should be paid to Romspen through their loss payee endorsement, Service Canada's claim will not be satisfied.

Alberta Employment Standards

45. The Receiver has received three (3) Orders of Officer from Alberta Employment Standards ("Employment Standards") totalling \$11,225.70 for claims of vacation pay and pay in place of notice of termination of three (3) employees of Guild that were terminated prior to the date of Receivership. The Receiver was informed on October 2, 2009 that the limitation of action period relevant to two (2) of these claims was extended to October 6, 2010, however, as the Employment Standards claim attaches only to the proceeds realized from the sale of Guild Assets, the only possible avenue for satisfaction of their

claim rests with the Flood Claim Proceeds. If, however, it is determined that the Flood Claim Proceeds are not the property of Guild and should be paid to Romspen through their loss payee endorsement, Employment Standard's claim will not be satisfied.

46. As outlined in the Receiver's Second Report, a former employee, Ranjit Deol had submitted a complaint and claim to wages to Employment Standards in the amount of \$62,941.46. The Receiver was notified by Alberta Labour Standards that they have extended the limitation of action regarding this claim to November 20, 2009 based on an appeal brought forth by Mr. Deol. Even if the appeal is successful, the wage claim attaches only to the proceeds realized from the sale of Guild Assets, the only possible avenue for satisfaction of their claim rests with the Flood Claim Proceeds. If, however, it is determined that the Flood Claim Proceeds are not the property of Guild and should be paid to Romspen through their loss payee endorsement, Mr. Deol's claim will not be satisfied.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

47. The Receiver's Interim Statement of Receipts and Disbursements for the period November 19, 2008 to April 6, 2010 is attached hereto as Schedule "A".

CONCLUSIONS AND RECOMMENDATIONS

48. The Receiver presently has funds available for distribution in its trust account or in the trust account of Miller Thomson LLP in excess of \$1,700,000.00. The Receiver recommends and seeks the following directions and declarations:
- (a) A direction and declaration that it remit to CRA from the fixed asset sales the sum of \$47,550.00 as partial payment in relation to CRA's Deemed Trust Claim;
 - (b) A declaration that Romspen otherwise has priority to the proceeds of the sale of the assets of 702348 and a direction to the Receiver to remit to Romspen the sum of \$457,029.92 arising from the sale of the lands and buildings (Note: the remaining proceeds were held back for Receiver and Receiver's legal fees and the balance of the CRA Deemed Trust Claim after partial payment of \$47,550);
 - (c) That a hearing be directed to determine:
 - a) Specifically in relation to the builders' lien claimants and the funds in Court, a hearing to determine priority as outlined in paragraph 32 hereof;
 - b) Whether the Flood Claim Proceeds are properly the property of 702348 or Guild or are subject to the standard mortgage clause and Romspen's loss payee endorsement and therefore form no part of the Guild Estate and are not subject to any priority claims;
 - c) Order authorizing the Receiver to receive the Flood Claim Proceeds from Miller Thomson LLP and thereafter, without prejudice to the position of any party in relation to the potential priority or other claim to such proceeds; Distribute to Romspen in care of its solicitors Witten LLP, after deduction of a reasonable amount for anticipated costs (Miller Thomson LLP), the balance of the CRA Deemed Trust Claim (after partial payment of \$47,550) and the claims of WCB, Service Canada, and Alberta Employment Standards, the sum of \$695,322.79;

- d) That a hearing be directed for a determination of priority to the balance of the Flood Claim Proceeds, that the Receiver will be holding, until either an agreement is reached among the parties or further direction is received from the Court; and
- e) That the \$2,228.71 of funds paid into Court in Action 0803 01731 regarding Scott MacMullin be released to the Receiver.

All of which is respectfully submitted this 21 day of April, 2010.

Meyers Norris Penny Limited
In its capacity as Receiver-Manager of
Guild Developments Ltd. and 702348 Alberta Ltd.
And not in its personal capacity

A handwritten signature in black ink, appearing to read 'G. Bazian', written over a horizontal line.

Grant Bazian, CIRP, Trustee
President