

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

BETWEEN:

THE EQUITABLE TRUST COMPANY

Plaintiff

- and -

**THE LOUGHEED BLOCK INC., NEIL JOHN RICHARDSON,
HUGH DARYL RICHARDSON and HERITAGE PROPERTY CORPORATION**

Defendants

RECEIVER AND MANAGER'S SECOND REPORT

May 5, 2010

Alger & Associates Inc.

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Exhibits

1. Lease agreement with 1486827 Alberta Ltd. (Twardowski) signed on March 19, 2010
2. Unsigned Lease Amendment Agreement
3. Draft Receiver's Certificate No. 2
4. Consent Order Nisi granted October 5, 2009
5. Order for Sale granted March 22, 2010
6. Mortgage Statement to January 31, 2010
7. Land Title of 604 – 1st Street SW, Calgary, AB T2P 1M7
8. Statement of Receipts and Disbursements to April 21, 2010

Introduction

1. Alger & Associates Inc. (the "Receiver") was appointed Receiver on December 17, 2009 pursuant to the Order (the "Order") of the Honourable Madam Justice K.M. Horner of the Court of Queen's Bench of Alberta of all the debtor's right to title and interest in the property legally described as:

Plan A Calgary
Block Forty Three
Lots one (1) to eight (8) inclusive and the most
Westerly five (5) feet in width throughout lot nine (9)
Excepting thereout: the most southerly seventy nine (79)
Feet six (6) inches of the easterly twenty four (24) feet
Six (6) inches of lot four (4) and the most southerly
Seventy nine (79) feet six (6) inches of lots five (5) to eight (8) inclusive

together with all of the Debtor's present and after acquired personal property situate thereon including all proceeds thereof (the "Property").

This property mainly consists of a six story heritage building located on the southeast corner of the intersection of Sixth Avenue and First Street Southwest in downtown Calgary.

2. Paragraph 6(c) of the Order, entitles the Receiver, in part, to enter into leasing agreements.
3. Paragraphs 23 to 25 of the Order empower the Receiver to borrow by way of revolving credit otherwise such monies, from time to time, as it may consider necessary or desirable.

Limitations of Report

4. The information contained in this report has been obtained from the records of the prospective lessee and the Loughheed Block Inc. The Receiver has relied on this information and has not performed an audit, review or other verification of such information.

Twardowski Lease

5. Further to the Receiver's First Report, on March 19, 2010, a lease agreement was entered into with 1486827 Alberta Ltd. (the "Tenant"), Witold Twardowski's nominee company, regarding the main floor and basement pub space. The commencement date for the lease is August 15, 2010 and a copy of the executed lease is attached as Exhibit 1.
6. In order to finance the landlord's required base building work and the tenant improvement allowance of \$25 per square foot, the Receiver has borrowed \$340,000. \$140,000 of this amount has been advanced for base building work, for which the landlord is responsible, including the restoration of flooring, scumbling finish for ceiling trim, improvements to the hydro vac system, electrical panel work and other miscellaneous improvements.

7. The Receiver has entered into a fixed price contract for \$140,000 to complete the base building work and, to date, has paid \$53,328 as work progresses.
8. The Receiver is working with an architect to maintain the Property's historical fabric in order to attempt to obtain a \$100,000 grant from the Province of Alberta to assist in funding these improvements.

Atmac Holdings Ltd. ("Atmac") Litigation (Action No. 0901-09748)

9. In January the Receiver met with both Atmac and The Lougheed Building Inc. ("TLBI") to discuss the litigation between the parties and identify matters which might be dealt with by negotiation. A framework for further discussion has been proposed, which contemplates that the litigation will continue on a parallel track.
10. The statement of defence was filed on February 4, 2010 by counsel for TLBI in conjunction with consultation with the Receiver's counsel.
11. Affidavits of records for both parties have been prepared to meet the filing deadline of May 5, 2010.

Landmark Centre Inc. ("Landmark")

12. Landmark leases the second floor of the Property, which it subleases for an executive office centre and uses offices for itself and related companies. Landmark is in significant rental arrears, although Landmark asserts a significant set-off against arrears and does not deal at arm's length with TLBI. The previous Receiver had been in negotiation with Landmark regarding these arrears and had tentatively struck a deal for arrears and ongoing rent which was to run to March 2010. No agreement had ever been finalized but some payments had been made by Landmark in accordance with the unsigned deal. The Receiver has continued these negotiations with Landmark which has resulted in a lease amendment calling for \$56,000 in outstanding rental arrears to be paid for the period to March 31, 2010 and thereafter \$15,250 per month subject to Court approval which is required in accordance with paragraph 6(c) and 6(g) of the Order.
13. It should be noted that \$71,250 is currently in trust with counsel for the Receiver to be released upon Court approval and that it is a provision of the amendment that the lease may be terminated by a landlord that succeeds the Receiver on 60 days notice. A copy of the Lease Amendment Agreement is attached as Exhibit 2.
14. The Receiver is of the view this lease amendment is commercially reasonable because the configuration of the second floor and the heritage status of the Property make it difficult to reconfigure and re-lease the space in short order, the lease can be terminated on short notice if a new owner takes over. Based on an analysis of Landmark's rent roll, the Receiver would be unlikely to increase the net to the building if sub-tenants were to pay the Receiver directly.

Other Tenant Issues

15. Williams Engineering leases the sixth floor and pursuant to the terms of its lease is required to take up the 1621.50 square foot penthouse effective June 1, 2010. The lease calls for Williams to receive a tenant improvement allowance of \$75 per square foot (total \$121,612.50) and, additionally, there is some base building work to complete for the penthouse which is estimated to cost \$25,000.
16. The Receiver has tentatively made arrangements to borrow the \$150,000 required to fund the base building and tenant improvement allowance from TCC Mortgage Holdings Inc. on the same terms as the borrowings approved by the Court on January 22, 2010 and to rank pari-passu with such borrowings. Accordingly, the Receiver seeks the Court's approval for this further borrowing as outlined in the draft Receiver's Certificate which is attached as Exhibit 3.
17. The Receiver is currently in the process of receiving information regarding the year-end triple net cost reconciliation from Barclay from the date of their Receivership, June 26, 2009 to year end, December 31, 2009. This information will need to be reviewed and combined with information from TLBI for the pre-receivership period of January 1 to June 25, 2009 in order to provide tenants with a cost reconciliation for the year.
18. The Receiver is currently in the process of negotiating a short term lease for an ultra high definition video display to advertise in one of the interior windows at the Loughheed Building for a four week time period.

Offers to Lease

19. The Receiver, by Barclay, accepted an offer to lease for the remaining 1,266 square feet of main floor space, which was formerly occupied by Smith & Kang. This offer has now collapsed as the offeror was unable to provide a lease deposit. Since then, another party became interested in the space. The Receiver followed up on the credit worthiness and reputation of the offeror. Unfortunately, recently this second offer was withdrawn and the space is now back on the market.

Status of Foreclosure (Action No. 0901-08221)

20. On October 5, 2009 the Mortgagee, Equitable Trust Company, obtained a Consent Order Nisi with a redemption period to March 1, 2010. On March 22, 2010 an Order for Sale was made in the foreclosure action which provided that CB Richard Ellis list the property for a period of 90 days at a listing price of \$36,000,000. Copies of the Consent Order Nisi and the Order for Sale are attached as Exhibit 4 and Exhibit 5 respectively.
21. The Receiver is aware that appraisals have been obtained in conjunction with the foreclosure action, however these appraisals are confidential and have not been filed on the Court record.

Mortgage

22. The Receiver has inquired as to the balance of the first mortgage and, in this regard, has been provided with a mortgage statement, attached as Exhibit 6, which indicates a balance due of \$34,911,933 as at February 1, 2010.
23. TLBI disputes the balance due based on the default interest rate increase to 25% which it contests. In this regard, TLBI has commenced an application to determine the issue, but the parties have agreed to defer having the issue determined for the time being.
24. A copy of the title to the property as of May 5, 2010 is attached as Exhibit 7.

Receipts and Disbursements (with supporting documentation from Barclay)

25. Attached as Exhibit 8 is a Statement of Receipts and Disbursements from the date of Receivership to April 21, 2010. The Receiver has received \$820,000 from Barclay. It should be noted that the supporting Barclay Statement of Receipts and Disbursements only shows payments made up to March 31 and does not include the payment of \$115,000 made to the Receiver on April 21, 2010.
26. The Receiver's Certificate for \$140,000 represents the amount the Receiver borrowed for base building work, as previously discussed in paragraph 6 of this report. The table below represents the cash on hand as shown in Exhibit 8, including the costs for the base building renovations to date.

Cash on hand	<u>\$ 87,644</u>
(net receipts with base building work)	
Portion of cash on hand for base building work	
Receiver's certificate	\$ 140,000
Base building costs to date	<u>(53,328)</u>
	<u>\$ 86,672</u>

27. Receiver's fees paid, in the amount of \$33,221.85, are for services rendered to March 31, 2010. Legal fees of \$38,535.01 are for services rendered to February 28, 2010 with respect to counsel for the Receiver. Receiver and legal fees are subject to Court approval and taxation.
28. Construction expenses have been previously discussed in paragraphs 6 and 7 and are as per the lease agreement with 1486827 Alberta Ltd.
29. A current rent roll for the month of March 2010 has been provided to the mortgagee and further rent information will be made available to potential purchasers on a confidential basis in accordance with the sale procedures established under the foreclosure action.

The Lougheed Block Inc.
Receiver and Manager's Second Report
Alger & Associates Inc.
May 5, 2010

Conclusion

30. The Receiver submits this report to update the Court on its activities to date, to recommend Court approval of the Receiver's borrowings in the amount of \$150,000 and for Court approval for the compromise arrangement entered into with Landmark as attached Exhibit 2.

Respectfully submitted this 5th day of May, 2010.

Alger & Associates Inc., Receiver and Manager



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**RECEIVER AND MANAGER'S
SECOND REPORT
ALGER & ASSOCIATES INC.**

May 5, 2010

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