

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

HSBC BANK CANADA

Applicant

- and -

THE CEDAR RUN CORPORATION AND INDIAN BROOK CORP.

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF *THE BANKRUPTCY AND INSOLVENCY ACT*, R.S.C 1985, c. B-3 AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O 1990, c. C. 43, AS AMENDED

FIRST REPORT OF BDO CANADA LIMITED, IN ITS CAPACITY
AS COURT APPOINTED RECEIVER OF THE CEDAR RUN CORPORATION
AND
INDIAN BROOK CORP.

June 15, 2015

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INTRODUCTION AND BACKGROUND

Introduction

1. By Order of the Honourable Madam Justice Conway of the Ontario Superior Court of Justice (the "Court") dated April 2, 2015 (the "Receivership Order") BDO Canada Limited was appointed as receiver ("BDO" or the "Receiver") of the assets, properties and undertakings of The Cedar Run Corporation ("Cedar Run") and Indian Brook Corp. ("Indian Brook") pursuant to the application of HSBC Bank Canada ("HSBC"). A copy of the Receivership Order is included hereto as **Appendix A**.

Purpose of this Report

2. The purposes of this report dated June 15, 2015 (the "First Report") are to:
- a) inform the Court and seek its approval of the Receiver's activities and conduct to date, in particular with respect to the marketing and sale process being proposed by the Receiver;
 - b) seek the Court's approval to list the Properties (defined below) for sale with Cushman & Wakefield at a list price of \$5.95 million.
 - c) seek the Court's approval for: i) the Receiver to Quitclaim its interest in one of the four parcels comprising the Hwy 26 Lots (defined below) being PT LT 35 Con 10 Collingwood PT 35 16R3168 which is legally owned by Indian Brook (the "Indian Brook Parcel") but which appears to be held in trust for Wakefield Design Services Inc. ("Wakefield"); and ii) approving the sale of the Indian Brook Parcel by way of a vesting order;
 - d) request an order sealing **Confidential Appendices 1, 2 and 3** to this First Report, in order to preserve the integrity of the proposed marketing and sale process for the Properties; and

- e) seek the Court's approval of the Receiver's fees and disbursements as set out herein.

Disclaimer

3. This First Report is prepared solely for the use of the Court, for the purpose of assisting the Court in making a determination whether to approve the marketing and sale of the Properties, and other relief being sought.

4. Unless otherwise stated, all monetary amounts contained in this First Report are expressed in Canadian dollars.

Background

5. Cedar Run is an Ontario corporation which operated the horse park called the Cedar Run Equestrian Centre. The Cedar Run Equestrian Centre has been shut down since the end of the 2014 equestrian riding season.

6. The Receiver understands that Indian Brook, also an Ontario corporation, owns 25% of the common shares of Cedar Run and Wakefield owns 75% of the common shares of Cedar Run. Indian Brook is 100% owned by Flora Wendling who also owns Wakefield.

7. Cedar Run and Indian Brook (referred to collectively hereinafter as the "Companies") own adjoining properties comprising approximately 238 acres (9 acres of roadways are owned by The Town of Blue Mountains and are excluded from the land measurement) in The Town of Blue Mountains which were used by the Cedar Run

Equestrian Centre. The Companies were controlled by the late Peter Lush who was a land developer with a plan to develop the properties into a premier equestrian centre. Mr. Lush died on June 27, 2014 and Mr. Lush's widow, Flora Wendling, is the trustee of his estate.

8. Cedar Run owns 4 distinct parcels of land municipally known as 324 Clark Street and 496818 Grey Rd. 2, The Blue Mountains, ON (the "**Cedar Run Properties**"). Indian Brook owns the property municipally known as 496842 Grey Rd. 2, The Blue Mountains, ON. (the "**Indian Brook Property**"). The Cedar Run Properties and the Indian Brook Property are referred to collectively as the "**Properties**".

9. There is one farm house located on the Cedar Run Properties and a second farm house located on the Indian Brook Property. Currently there are tenants leasing the farm houses at a monthly rental rate of \$1,200 per house. The Receiver has been advised by the current tenants that they are entitled to sizeable set-offs from the rent payable to the Receiver for the cost of various tenant funded repairs to their respective houses and for unpaid wages for maintaining the horse park. The Receiver is currently gathering information to confirm the tenant statements.

10. On November 4, 2014, prior to the receivership proceedings, the Properties together with an adjoining property that "horseshoes" the horse park comprising approximately 2.25 acres owned by Wakefield (the "**Homestead Property**"), were listed for sale for \$10 million with a local commercial real estate agent, Royal LePage Locations North, Brokerage located in Thornbury ("**Royal LePage**"). The sale price was subsequently reduced to \$8.75 million on December 10, 2014 and the Properties together with the Homestead Property currently remain listed for sale by Royal LePage at the same price.

11. The Homestead Property owned by Wakefield includes a house that was used as the Cedar Run Equestrian Centre head office and the roadway from 318 Clark Street is the main entrance to the horse park. On April 21, 2015 CIBC Mortgage Inc. ("CIBC") initiated power of sale proceedings over the Homestead property. The Receiver has contacted CIBC's counsel, Chaitons LLP, to explore the possibility of selling the Homestead Property together with the Properties to maximize value for all stakeholders. CIBC's counsel has not yet responded to this proposal. A copy of the Notice of Sale Under Charge/Mortgage of Land for the Homestead Property is attached hereto as **Appendix B**.

12. The Receiver has not seen an appraisal for the Homestead Property, however, the Receiver has obtained evidence from Royal LePage showing that the Homestead Property was purchased for \$245,000 in 2005. The Homestead Property represents 2.5 acres out of 238 acres currently offered for sale and roughly 3% in dollars of the overall list price. Accordingly, the Receiver concludes that the Properties represent between \$8.25 million to \$8.5 million of the \$8.75 million current list price. A copy of the MLS listing reporting the sale of the Homestead Property in 2005 is included hereto as **Appendix C**.

13. An aerial overview together with the parcel descriptions, municipal addresses and associated PIN's of the Cedar Run Properties (red and orange coloured boxes in the aerial photograph), Indian Brook Property (blue coloured box in the aerial photograph) and the Homestead Property (green coloured box in the aerial photograph) are appended hereto as **Appendix D**.

14. Indian Brook and another Peter Lush controlled company, 127284 Ontario Limited ("127"), own a series of four adjacent parcels comprising approximately 13.34 acres on Highway 26, Thornbury, ON, near Lora Bay (the "Hwy 26 Lots"). The Hwy 26 Lots are charged with a mortgage in favour of V.W.R. Capital Corp. which is currently owed approximately \$537,000. A copy of the V.W.R. Capital Corp. Mortgage and diagram of the Hwy 26 Lots is appended hereto as **Appendix E**.

15. HSBC is the senior secured creditor of Cedar Run and Indian Brook which have defaulted on their obligations to HSBC ultimately leading to the receivership proceedings. At February 27, 2015, Cedar Run was indebted to HSBC in the amount of \$3,391,753 in respect of credit facilities extended by HSBC and guaranteed by Indian Brook and by Peter Lush personally.

16. As security for its advances, HSBC was granted and registered first mortgages in the amount of \$3.5 million against the Properties. HSBC also obtained General Security Agreements and General Assignments of Rents from the Companies which are registered under the *Personal Property Security Act* (Ontario).

17. In addition, E.M.E. Management Inc. ("EME") has a second registered mortgage from Cedar Run and Indian Brook in the amount of \$250,000. This company is controlled by Bill Wallace who is the late Peter Lush's son-in-law.

18. Further background information leading up to the receivership proceedings is included in the affidavit of John Borch sworn March 16, 2015 (the "**Borch Affidavit**") attached as **Appendix F**.

ACTIVITIES OF THE RECEIVER

19. Pursuant to the Receivership Order the following are the activities of the Receiver:

- (a) corresponding with various parties to take possession of the available books and records of the Companies;
- (b) preparing and issuing the prescribed Notices and Statements of the Receiver pursuant to sections 245 (1) and 246 (1) of the *Bankruptcy and Insolvency Act*, which were forwarded to the Office of the Superintendent of Bankruptcy and the Companies' creditors;
- (c) setting up a case website at www.bdo.ca/cedarrun; a screen print out of the Receiver's case website page is attached hereto as **Appendix G**;
- (d) touring the Properties with representatives from the current listing agent, Royal LePage;
- (e) holding discussions with and reviewing marketing reports from Royal LePage to determine what marketing efforts have been undertaken with regard to the Properties and to determine the level of interest in the Properties generally at the current list price of \$8.75 million;
- (f) extending the current commercial real estate listing agreement with Royal LePage to June 25, 2015 so that the Receiver could obtain a real estate appraisal and investigate other marketing and sale options while continuing to expose the Properties to the market;
- (g) arranging to insure the Properties and the machinery and equipment located on the Properties;
- (h) contacting the tenants living in the farm houses and advising of the receivership proceedings and discussing rental payment arrangements;

- (i) arranging for an appraisal of the Properties from Colliers International Realty Advisors Inc.;
- (j) arranging for an appraisal from Canam-Appraiz Inc. of the machinery and equipment located at the horse park;
- (k) obtaining listing proposals from four commercial real estate brokers to list the Properties for sale;
- (l) arranging for maintenance of the horse park grounds;
- (m) arranging for the preparation of the Companies' corporate income tax and other statutory government returns to be completed;
- (n) arranging for audits of the payroll and HST accounts to be completed by Canada Revenue Agency;
- (o) reviewing documentation from planning and development consultants on the official plan and zoning status of the Properties;
- (p) holding discussions, reviewing appraisals and other sources of information to better understand the nature of the Properties; and
- (q) arranging with HSBC to borrow money under Receiver's Certificates at the same rate of interest as is being charged to Cedar Run to fund receivership administrative expenses.

PROPOSED MARKETING AND SALE PROCESS

20. Among the powers set out in the Receivership Order, the Receiver is empowered and authorized in Paragraph 3(j) to carry out a marketing and sale process with respect to the assets, properties and undertakings of the Companies. Pursuant to its duties, the Receiver considered the merits of the following options: i) a marketing and sale process conducted by the Receiver with pre-determined terms and conditions

of sale and a set deadline date for the submission of offers; and ii) continuing to list the Properties for sale with a commercial real estate broker.

21. Given the following: i) the possible value that may be attributable to the special zoning of the Cedar Run Properties; ii) the possible buyer being from the equine industry or a commercial developer; and iii) the possible timeframe required to attract a buyer for this type of real estate opportunity in a rural area, the Receiver has concluded that listing the Properties for sale with a commercial broker is likely the best option to maximize recovery from the Properties for the creditors. Commercial real estate brokers will expose the Properties to the public on MLS and ICX, have experience selling equestrian properties and have a network of developer contacts and other clientele to expose this real estate opportunity to.

22. Further to this end, the Receiver has obtained four listing proposals from the following commercial brokers:

- i. Royal LePage (the current listing agent);
- ii. Cushman & Wakefield;
- iii. Colliers International; and
- iv. CBRE Limited.

Each of the above listing proposals contain a suggested list price based on a property comparable analysis, sale commission structure, proposed marketing efforts and relevant experience. A table summarizing the salient details of the listing proposals together with copies of the proposals is included hereto as **Confidential Appendix 1**.

23. There is a wide range of suggested list prices and assessed values for the Properties contained in the brokers' listing proposals. This is due, in part, to the unique zoning associated with Parcel 1 that is owned by Cedar Run. Parcel 1 is approximately 80 acres and is outlined in red in the attached Appendix D. The current zoning on Parcel 1 permits up to 300 commercial resort units and a maximum of 1,300 square meters (approximately 14,000 sq. ft.) of retail commercial space to be developed if "accessory to the horse park" as set out in Amendment No. 10 to the Official Plan of The Town of Blue Mountains. The Properties may be attractive to developers that believe that the current Recreational/Commercial zoning may be permitted for uses other than with a horse park or to developers that are prepared to keep a horse park as part of future development.

Alternatively, if the current zoning is only permissible with a horse park or there are no developers interested in a development with a horse park component, then the zoning will likely revert back to the original Industrial/Commercial zoning which could have a negative impact on value. Notwithstanding that the 'highest and best use' for the Cedar Run Properties may be considered a horse park, all of the commercial real estate brokers consulted by the Receiver believe there is a very low probability of finding a buyer willing to operate the equestrian facility as originally envisioned by Peter Lush.

24. The Receiver has obtained an independent real estate appraisal dated May 22, 2015 from Colliers International Realty Advisors Inc. to ascertain the Properties' potential value. Additionally, the Receiver has been provided with an appraisal completed by Consolidated Appraisal dated February 12, 2015 for the Properties from

the first mortgagee, HSBC. Copies of the 2015 real estate appraisals are included hereto as **Confidential Appendix 2**. In addition, the Receiver also reviewed earlier appraisals commissioned by the Companies dated 2008 and 2011, however, given the age of those appraisals they factored significantly less than recent appraisals in the Receiver's decision on a proposed list price for the Properties.

25. The Properties together with the Homestead Property have been listed for sale (the "**Real Estate Opportunity**") for over 7 months without any real interest from potential buyers; 3 months of which have been during the Spring which is typically when interest in commercial and development properties increases.

26. Attached as **Appendix H**, are Royal LePage's marketing activity reports since they were engaged as listing broker. The Royal LePage agents have completed the following marketing efforts with respect to the Real Estate Opportunity including:

- i. listing it for sale on MLS and ICX;
- ii. "For Sale" signs are mounted on the Properties;
- iii. posting it with the Toronto Real Estate Board (TREB);
- iv. preparing a comprehensive Confidential Information Package ("**CIM**") for interested parties willing to sign a confidentiality agreement;
- v. preparing an Executive Summary Marketing Package accessible by the general public on Royal LePage's website;
- vi. exposing it via email flyer to an internal referral database containing over 400 commercial realtors, developer, building and investor groups on two separate occasions including after the list price was reduced to \$8.75

million; Royal LePage claims there was 41% open-rate to the latter email blast;

- vii. exposing it to various parties that had shown interest in Craighleith Village also listed for sale by Royal LePage;
- viii. profiling it in Royal LePage's Winter Newsletter distributed to 2,085 subscribers on March 5, 2015; and
- ix. advertising it twice in the February and April 2015 editions of Horse Sport magazine and once in the 2015 Spring edition of Rider magazine.

27. Notwithstanding that there has been general interest in the Real Estate Opportunity when measured by "views" and "hits" on websites and "open-rates" of email blasts, only four parties have enquired about the CIM and only one of those parties actually signed a confidentiality agreement and received the CIM sometime ago. Furthermore, the Receiver received an email from Royal LePage dated June 8, 2015, indicating that there is only one party that has expressed some level of interest in the Real Estate Opportunity but the party is delayed because of international travel.

28. Given the appraised values of the Properties, the listing proposals received and the comprehensive marketing campaign which has generated no serious interest to date, the Receiver is of the view that the list price of \$8.75 million, of which we estimate that \$8.25 million to \$8.5 million relates to the Properties, is too high in the current market.

29. After careful consideration of the listing proposals received and taking into account the values reported in the real estate appraisals, the Receiver recommends listing the Properties for sale with Cushman & Wakefield at an initial list price of \$5.95 million which the Receiver will periodically review as necessary. Overall, the Cushman & Wakefield proposal appears to be the most favourable proposal and the listing agent advised that he has a database of contacts in the equestrian market. In particular, the Receiver has considered the following in selecting Cushman & Wakefield:

- (a) Cushman & Wakefield's commission is very competitive and lower than the other brokers;
- (b) Cushman's proposed advertising plan; and
- (c) The capabilities and qualifications of the listing agent which demonstrate a strong reputation and a high degree of competence.

SALE OF THE HWY 26 LOTS

30. Jacob Wilson, the counsel for EME, Flora Wendling and the Respondents notified the Receiver about the potential sale of the Hwy 26 Lots. As stated earlier, although Indian Brook legally owns the Indian Brook Parcel which is one of four parcels that make up the Hwy 26 Lots, the Receiver was advised by Mr. Wilson that this parcel of land is held in trust for Wakefield.

31. Mr. Wilson provided to the Receiver's counsel, Baker and McKenzie LLP ("**Baker**"), a copy of a Declaration of Trust dated June 10, 2010, and a Reporting Letter dated May 1, 2012 from Paul Dixon from Keesmaat, Dixon, Kranjc, Lewis & Kovacs. It appears that the declaration of trust was made prior to any of HSBC's

advances. Copies of the Declaration of Trust that Baker has advised appears to be valid and enforceable and the May 1, 2012 Reporting Letter from Paul Dixon are attached hereto as **Appendix I**.

32. In addition, the Hwy 26 Lots are subject to a mortgage in favour of V.W.R. Capital Corp. The Receiver has been advised by Mr. Wilson that approximately \$537,000 is due on the mortgage which is secured against the Hwy 26 Lots and the personal residence of Flora Wendling.

33. Mr. Wilson has requested the Receiver's assistance in facilitating the sale of the Indian Brook Parcel along with the other parcels. Attached as **Confidential Appendix 3** is the Agreement of Purchase and Sale for the Hwy 26 Lots as signed back by the Receiver together with an appraisal of the Hwy 26 Lots prepared by HG Appraisers Inc. dated April 13, 2011. Additionally, the Receiver has been asked to Quitclaim its interest in any proceeds from the sale of the Indian Brook Parcel, in the form of the redacted Waiver and Quitclaim Agreement attached hereto as **Appendix J**.

34. In light of the fact that the Indian Bay Parcel appears to be held in trust and there is no equity in the property in any event, the Receiver recommends this Honourable Court approve the Waiver and Quitclaim Agreement and grant a vesting order authorizing the transfer of the Indian Bay Parcel.

FEES AND DISBURSEMENTS

35. Pursuant to the Receivership Order, the Receiver has provided services and incurred disbursements which are more particularly described in the affidavit and detailed invoices attached hereto as **Appendix K**.

36. The detailed time descriptions contained in the invoices provide a fair and accurate description of the services provided and the amounts charged by BDO as Receiver. Included with the invoices is a summary of the time charges of partners and staff, whose services are reflected in the invoices, including the total fees and hours billed.

37. The Receiver respectfully requests that the Court approve its interim accounts from January 5, 2015 to June 1, 2015 in the amount of \$76,787.02, inclusive of HST of \$8,408.11.

38. Additional time will be required to complete the Receiver's mandate.

SUMMARY AND RECOMMENDATIONS

39. Based on the foregoing, the Receiver recommends that the Court:
- a) approve this First Report of the Receiver, and the activities and conduct of the Receiver set out herein;
 - b) approve the marketing and sale process proposed by the Receiver, specifically to list the property with Cushman & Wakefield at a list price of \$5.95 million;

- c) approve the sale of the Indian Brook Parcel and authorize the Receiver to Quit Claim its interest in the Indian Brook Parcel;
- d) seal Confidential Appendices 1, 2 and 3 in order to preserve the integrity of the marketing and sale processes until further Order of this Honourable Court; and
- e) approve the professional fees and disbursements of the Receiver as set out herein.

All of which is respectfully submitted this 15th day of June, 2015.

**BDO CANADA LIMITED Court Appointed Receiver of
The Cedar Run Corporation and Indian Brook Corp.**
Per:



Name: Gary Cerrato, CIRP
Title: Vice-President