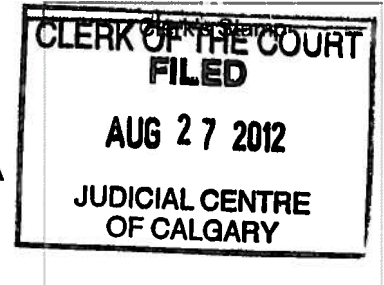


COURT FILE NUMBER 1201-06934
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36

AND IN THE MATTER OF THE BUSINESS CORPORATIONS
ACT, R.S.A. 2000, c. B-9

AND IN THE MATTER OF 1252064 ALBERTA LTD., 1330075
ALBERTA LTD. and HARVEST CAPITAL MANAGEMENT INC.

DOCUMENT **AMENDED AND RESTATED CCAA INITIAL ORDER**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

NORTON ROSE CANADA LLP
400 3rd Avenue SW, Suite 3700
Calgary, Alberta T2P 4H2

Phone: +1 403.267.8196
Fax: +1 403.264.5973

Attention: Randal S. Van de Mosselaer
File No. 284324

I hereby certify this to be a true copy of
the original Order
Dated this 27 day of Aug 2012
[Signature]
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: August 24, 2012

LOCATION OF HEARING OR TRIAL: Calgary, Alberta

NAME OF MASTER/JUDGE WHO MADE THIS ORDER: Madam Justice B.E.C. Romaine

UPON the application of 1252064 Alberta Ltd. ("125"), 1330075 Alberta Ltd. ("133") and Harvest Capital Management Inc. ("HCMI") (125, 133, and HCMI being hereinafter collectively referred to as the "Applicants"); **AND UPON HAVING READ** the Originating Application and the Affidavit of Ronald Aitkens, sworn June 5, 2012 (the "June 5 Aitkens Affidavit") and the Affidavit of Ron Aitkens, sworn August 23, 2012; **AND UPON HAVING READ** the consent of Ernst & Young Inc. to Act as monitor of the Applicants; **AND UPON HAVING BEEN REFERRED** to the pleadings and proceedings filed in Court File Number 1101-17318; **AND UPON HEARING** the submissions of counsel for the Applicants and any other counsel in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this Application on all creditors of the Applicants is hereby dispensed with. Service of notice of this Application, including on all Critical Suppliers (as that term is defined below) is hereby deemed good and sufficient.

APPLICATION

2. The Applicants are companies to which the *Companies' Creditors Arrangement Act* R.S.C. 1985, c. C-36 (the "CCAA") applies.
- 2A. The terms of the Initial Order granted in these proceedings shall be operative and shall continue to govern the period until the granting of this Amended and Restated Initial Order and the terms of the Initial Order are hereby amended and restated by the terms of this Amended and Restated Initial Order from and after the granting of this Amended and Restated Order, provided that any and all actions taken by or on behalf of the Applicants and the Monitor pursuant to and in accordance with the terms of the Initial Orders and prior to the granting of this Amended and Restated Initial Order are hereby validated; and, for greater certainty, the Charges as defined in the Initial Order shall continue to apply with respect to claims and obligations covered by such Charges from the effective time and date of such Initial Orders until the effective time and date of this Amended and Restated Initial Order.

PLAN OF ARRANGEMENT

3. Subject to the provisions of paragraph 28 of this Amended and Restated Initial Order, the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement or plans of compromise or arrangement (hereinafter referred to as the "Plan") in accordance with the CCAA.

POSSESSION OF PROPERTY AND OPERATIONS

4. Subject to the provisions of paragraph 28 of this Amended and Restated Initial Order, the Applicants shall:

- (a) remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, but excluding the Lethbridge Lands (as that term is defined in the June 5 Aitkens Affidavit) and any proceeds or rental revenue therefrom (the "Property");
 - (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of their business (the "Business") and Property; and
 - (c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Amended and Restated Initial Order.
- 5. Subject to the provisions of paragraph 28 of this Amended and Restated Initial Order and to the extent permitted by law, the Applicants shall be entitled but not required to pay the following expenses, incurred prior to or after this Amended and Restated Initial Order:
 - (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses payable on or after the date of this Amended and Restated Initial Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
 - (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.
- 6. Subject to the provisions of paragraph 28 of this Amended and Restated Initial Order and except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Amended and Restated Initial Order, and in

carrying out the provisions of this Amended and Restated Initial Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Amended and Restated Initial Order.

7. Subject to the provisions of paragraph 28 of this Amended and Restated Initial Order, the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of:
 - (i) employment insurance,
 - (ii) Canada Pension Plan,
 - (iii) income taxes,

but only where such statutory deemed trust amounts arise after the date of this Amended and Restated Initial Order, or are not required to be remitted until after the date of this Amended and Restated Initial Order, unless otherwise ordered by the Court;

- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Amended and Restated Initial Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Amended and Restated Initial Order; and

- (c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.
- 8. Subject to the provisions of paragraph 28 of this Amended and Restated Initial Order, until such time as the Applicants repudiate a real property lease in accordance with the CCAA, the Applicants may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicants from time to time for the period commencing from and including the date of this Amended and Restated Initial Order ("Rent"), but shall not pay any rent in arrears.
- 9. Except as specifically permitted in this Amended and Restated Initial Order, the Applicants are hereby directed, until further order of this Court:
 - (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the date of this Amended and Restated Initial Order;
 - (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and
 - (c) not to grant credit or incur liabilities except in the ordinary course of the Business or as otherwise provided by this Amended and Restated Initial Order.

RESTRUCTURING

- 10. Subject to the provisions of paragraph 28 of this Amended and Restated Initial Order and the requirements as are imposed by the CCAA, the Applicants shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction and \$250,000 in the aggregate (or in excess of these amounts with leave of this Court);
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) disclaim or resiliate, on notice given in the prescribed form, any agreement to which the Applicants or any one of them are a party on the date of this Amended and Restated Initial Order;
- (d) repudiate such of their arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicants deem appropriate on such terms as may be agreed upon between the Applicants and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan; and
- (e) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing;

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "Restructuring").

11. Subject to the provisions of paragraph 28 of this Amended and Restated Initial Order, the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further order of this Court upon application by the Applicants on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicants repudiate the

lease governing such leased premises in accordance with section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute, and the repudiation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

12. Subject to the provisions of paragraph 28 of this Amended and Restated Initial Order, if a lease is repudiated by the Applicants in accordance with section 32 of the CCAA, then:
 - (a) during the notice period prior to the effective time of the repudiation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice; and
 - (b) at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

13. Until and including November 30, 2012, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person"), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Amended and Restated Initial Order shall:
- (a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on;
 - (b) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment;
 - (c) prevent the filing of any registration to preserve or perfect a security interest; or
 - (d) prevent the registration of a claim for lien.
15. Nothing in this Amended and Restated Initial Order shall prevent any party from taking an action against the Applicants where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Amended and Restated Initial Order, and notice in writing of such action be given to the Applicants and the Monitor at the first available opportunity.

NO INTERFERENCE WITH RIGHTS

16. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, or seek to replace, challenge, or otherwise dispossess the Applicants of any real estate project or contract in relation to the Business or the Property, except with the written consent of the Applicants and the Monitor, or leave of this Court.

AUTHORIZED EXCEPTIONS TO THE STAY PERIOD

16a. Notwithstanding any other provision of this Amended and Restated Initial Order:

- (a) IMOR Capital Corp. ("IMOR") is authorized to continue to prosecute the foreclosure proceedings previously commenced by IMOR against the Lethbridge Lands (as that term is defined in the June 5 Aitkens Affidavit) in respect of IMOR mortgage Registration Number 101 078 082 (the "IMOR Mortgage") and the associated Assignment of Rents under Court of Queen's Bench of Alberta Action No. 1001-0639, provided that any deficiency judgment which may be obtained by IMOR as a result of the said foreclosure proceedings shall be subject to the Stay Period;
- (b) Any proceedings by IMOR to enforce any other security or debt other than the IMOR Mortgage and the associated Assignment of Rents shall be subject to the Stay Period;
- (a) Notwithstanding any other provision of this Amended and Restated Initial Order, 125 shall remit to IMOR the rental amounts received from tenants of the Lethbridge Lands.

16b. Notwithstanding any other provision of this Amended and Restated Initial Order, Saddle Springs Development Ltd. ("Saddle Springs") and G and J GP Inc. ("G and J") are hereby authorized to continue with the judicial listing obtained in foreclosure proceedings commenced in respect of Saddle Springs mortgage Registration Number 091 158 991 against the Priddis Lands (as that term is defined in the June 5 Aitkens Affidavit) provided that any offer which may be received as a result of such judicial listing shall be brought before this Honourable Court for consideration, and any deficiency judgment which may be obtained by Saddle Springs or G and J as a result of the said foreclosure proceedings shall be subject to the Stay Period.

CONTINUATION OF SERVICES

17. During the Stay Period, all persons having:

- (a) statutory or regulatory mandates for the supply of goods and/or services; or
- (b) oral or written agreements or arrangements with the Applicants, including without limitation all computer software, communication and other data services,

centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicants;

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Applicants or exercising any other remedy provided under such agreements or arrangements. The Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Amended and Restated Initial Order are paid by the Applicants in accordance with the payment practices of the Applicants, or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court. Nothing in this Amended and Restated Initial Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the date of this Amended and Restated Initial Order.

NO OBLIGATION TO ADVANCE MONEY OR EXTEND CREDIT

18. Except as required by paragraphs 19 to 22 hereof, no person shall be prohibited from requiring immediate payment for goods, services use of lease or licensed property or other valuable consideration provided on or after the date of this Amended and Restated Initial Order, nor shall any Person be under any obligation on or after the date of this Amended and Restated Initial Order to advance or re-advance any monies or otherwise extend any credit to the Applicants.

CRITICAL SUPPLIERS' CHARGE

19. Those suppliers listed in Schedule "A" hereto are declared to be critical suppliers (each a "Critical Supplier" and collectively, the "Critical Suppliers") and shall in accordance with paragraphs 19 to 22 hereof, from June 7, 2012, continue to supply goods and services to the Applicants on such terms and conditions as are consistent with the supply relationship existing between the Critical Supplier and the Applicants as of June 7, 2012 (the "Existing Supply Relationship");

20. The Critical Suppliers are hereby granted a charge (the "Critical Suppliers' Charge") as follows:
- (a) All 125 Critical Suppliers with the exception only of Type Three Management (the "**OpCosts Suppliers**"), shall have and are hereby granted a Critical Suppliers' Charge on the Operating Costs (as that term is defined in the June 5 Aitkens Affidavit) which are collected by 125 from its tenants, and such Operating Costs shall be paid to the OpCosts Suppliers from time to time in satisfaction of such Critical Suppliers' Charge;
 - (b) The balance of the Critical Suppliers (the "**Remaining Critical Suppliers**") are hereby granted a Critical Suppliers' Charge on the Property of the Applicants as security for any amounts for which the Applicants become indebted to the Remaining Critical Suppliers for the supply of goods or services after June 7, 2012; and
 - (c) The quantum of the amount owing to Ron Aitkens for the supply of services after June 7, 2012 and the quantum of the resulting critical supplier charge shall be subject to further order of this Court.
21. The Critical Suppliers' Charge shall have the priority set out in paragraph 40 hereof.
22. The Critical Suppliers and the Applicants shall each cooperate in determining the prevailing terms and conditions of their Existing Supply Relationship, and the Critical Suppliers and the Applicants are hereby granted liberty to apply for such further orders or directions as may be necessary to resolve any disputes arising in connection with their supply relationships;

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

23. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 15 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the

Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

24. The Applicants shall indemnify their directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicants, after the date hereof, to make payments of the nature referred to in subparagraphs 6(a), 7(a), 7(b) and 7(c) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with respect to any officer or director, such officer or director has participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.
25. The directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$300,000, as security for the indemnity provided in paragraph 24 of this Order. The Directors' Charge shall have the priority set out in paragraph 40 herein.
26. Notwithstanding any language in any applicable insurance policy to the contrary:
 - (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and
 - (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order.

APPOINTMENT OF MONITOR

27. Ernst & Young Inc. ("E&Y" or the "Monitor") is hereby appointed pursuant to the CCAA as the Monitor, as an officer of this Court, to monitor the Property and the Applicants' conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and the Applicants and their shareholders, officers, directors, and Assistants shall

advise the Monitor of all material steps taken by the Applicants pursuant to this Amended and Restated Initial Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

28. The Monitor, as an officer of the Court and in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to, on behalf of the Applicants and without any personal liability therefor:

- (a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including but not limited to, the changing of locks and security codes, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate and carry on the Business of the Applicants, including the powers to enter into any agreements, incur any obligations in the ordinary course of the Business, to retain or terminate any of the Assistants, to cease to carry on all or any part of the Business, or cease to perform any contracts of the Applicants;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to maintain the Property or continue the operation of the Business;
- (f) to oversee and direct the preparation of the Applicants' cash flow statements and to assist in the dissemination of financial and other information in these proceedings, but only to the extent necessary in the Monitor's judgment to inform this Court and the parties to this proceeding and to facilitate the Transaction;
- (g) to take possession of any of the Applicants' books, records, documents, securities, contracts, orders, corporate and accounting records, and any other

papers, records and information of any kind related to the Business, the Property or the Applicants, including any computer programs, computer tapes, computer disks, or other data storage media containing any such information as may be necessary for the completion of its duties under this Order;

- (h) to receive, collect and take possession of all monies and accounts now owed or hereafter owing to the Applicants, and to exercise all remedies of the Applicants in collecting such monies, including, without limitation, to enforce any security held by the Applicants;
- (i) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any parts thereof and negotiating the terms and conditions of such sale as the Monitor in its discretion may deem appropriate;
- (j) to sell, convey, transfer, lease or assign the Property or any parts thereof:
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate of such transaction does not exceed \$250,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or aggregate purchase price, as the case may be, exceeds the applicable amount as set out in the preceding clause;

and in each such case notice under subsection 60(8) of the Personal Property Security Act, R.S.A. 2000, c. P 7, shall not be required;

- (k) to initiate, prosecute, continue the prosecution of and defend or respond to the Panamanian Litigation (as that term is defined in the June 5 Aitkens Affidavit) and any and all additional proceedings now pending or hereafter instituted with respect to the Applicants or the Property, and to settle or compromise the Panamanian Litigation and any and all additional such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (l) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Applicants or the Property, whether in the Monitor's name or in the

name and on behalf of the Applicants, for any purpose expressly contemplated by this Order;

- (m) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought to be desirable by the Monitor, in the name of the Applicants;
- (n) to report to, meet with and discuss with any Persons the Monitor deems appropriate on any matter relating to the Applicants, the Business or the Property;
- (o) to assume sole conduct and management, in the place and stead of the Applicants, of any and all inter-company accounts receivable and accounts payable as may exist between the Related Entities (as that term is defined in the order issued in the within proceedings on July 5, 2012) including the power to take such steps as the Monitor may deem necessary or advisable to realize on such accounts receivable or effect payment of such accounts payable;
- (p) to file tax returns on behalf of the Applicants;
- (q) to exercise any other rights which the Applicants may have; and
- (r) to perform such other duties or take any steps reasonably incidental to the exercise of the powers and obligations conferred upon the Monitor by this Order or any further Order of this Court.

29. The Applicants and all Persons, including the Applicants' shareholders, officers, directors, employees, agents and representatives shall co-operate fully with the Monitor in the exercise of its powers and discharge of its duties and obligations, including providing the Monitor with access to the Applicants' books, records, assets and premises as the Monitor requires, and no Person shall interfere with the Monitor's exercise of its powers and duties under this Amended and Restated Initial Order or any other Order of the Court.

30. The Monitor shall not have any additional powers and duties beyond those set out in this Amended and Restated Initial Order, and shall not have the power to direct or cause the direction of the management and policies of the Applicants. Nothing in this Amended and Restated Initial Order shall require the Monitor to occupy or to take control, care,

charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Amended and Restated Initial Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation.

31. The Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.
32. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall not incur any liability or obligation as a result of the fulfillment of its duties as set out herein, save and except for any liability or obligation arising from wilful misconduct by the Monitor, and no action or other proceedings may be commenced against the Monitor relating to its appointment or its conduct in these proceedings except with the prior leave of this Court and the posting of security for costs on a solicitor and own client, full indemnity basis, provided further that any liability of the Monitor hereunder shall not in any event exceed the quantum of the fees paid to or incurred by the Monitor in connection herewith. Nothing in this Amended and Restated Initial Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.
33. The Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers in the respective amounts of \$50,000, to be held by them as

security for payment of their respective fees and disbursements outstanding from time to time.

34. The Monitor and its legal counsel shall pass their accounts from time to time.
35. The Monitor, counsel to the Monitor, if any, and the Applicants' counsel, as security for the professional fees and disbursements incurred both before and after the granting of this Amended and Restated Initial Order, shall be entitled to the benefits of and are hereby granted a charge (the "Administration Charge") on the Property of the Applicants, jointly, which charge shall not exceed an aggregate amount of \$450,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraph 39 hereof.

TERMINATION OF INSPECTION ORDER

36. Except as provided below, the powers granted to E&Y and the obligations imposed on the Applicants pursuant to the Consent Order (the "Inspection Order") granted in Court File Number 1101-17318 on March 21, 2012 are hereby terminated, with the fees of E&Y under the Inspection Order up to the date hereof being dealt with in accordance with the terms of the Inspection Order, and the fees of E&Y as of the date hereof being dealt with in accordance with the terms of this Order.
37. Notwithstanding the foregoing, the Monitor is hereby directed to conclude the Sources and Uses Report directed by the Inspection Order.

DIP FINANCING

38. The Monitor shall be permitted to apply for Debtor-in-Possession financing ("DIP Financing") for the Applicants, or any of them, at a later date.
39. If DIP Financing is approved, it shall be used firstly to pay in full any Remaining Critical Suppliers who hold a Critical Suppliers' Charge, and upon payment of such Remaining Critical Supplier the related Critical Suppliers' Charge shall be discharged.

VALIDITY AND PRIORITY OF CHARGES

40. The priorities of the Administration Charge, the Critical Suppliers' Charge, and the Directors' Charge, as among them, shall be as follows:

First Administration Charge (to the maximum amount of \$450,000)

Second Critical Suppliers' Charge; and

Third Directors' Charge (to the maximum amount of \$300,000).

41. The filing, registration or perfection of the Administration Charge, the Critical Suppliers' Charge, and the Directors' Charge (collectively, the "Charges") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
42. Each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall, except as subsequently set out herein, rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person. The Charges shall be subordinate to the mortgage held by IMOR Capital Corp. and registered in the Alberta Lands Titles Office as instrument number 101 078 082.
43. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that ranks in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Financing lender (if any), and the beneficiaries of the Charges.
44. The Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") thereunder shall not otherwise be limited or impaired in any way by:
- (a) the pendency of these proceedings and the declarations of insolvency made in this Order;

- (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;
- (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statutes; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:
 - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof shall create or be deemed to constitute a new breach by the Applicants of any Agreement to which it is a party;
 - (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
 - (iii) the payments made by the Applicants pursuant to this order, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

ALLOCATION

45. Any interested Person may apply to this Court on notice to any other party likely to be affected, for an order to allocate the Charges amongst the various assets comprising the Property.

SERVICE AND NOTICE

46. The Monitor shall, within five business days of the date of entry of this Amended and Restated Initial Order, send a copy of this Amended and Restated Initial Order to their known creditors, other than employees and creditors to which the Applicants owe less than \$1000, at their addresses as they appear on the Applicants' records, and shall promptly send a copy of this Amended and Restated Initial Order:
- (a) to all Persons requesting notice; and
 - (b) to any other interested Person requesting a copy of this Amended and Restated Initial Order.
47. The Applicants and the Monitor shall be at liberty to serve this Amended and Restated Initial Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or e-mail to the Applicants' creditors or other interested Persons at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery, facsimile transmission or e-mail shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing. The Monitor shall post a copy of any or all such materials on its website at www.ey.com/ca/foundationgroup pursuant to section 23(1) of the CCAA.

GENERAL

48. The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.
49. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.
50. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or in Panama, to give effect to this Order and to assist the Applicant, 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 the Applicants 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.

51. Each of the Applicant 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 Amended and Restated Initial Order and for assistance in carrying out the terms of this Amended and Restated Initial Order.
52. The Applicants and the Monitor be at liberty and are 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 Amended and Restated Initial Order.
53. Any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
54. This Amended and Restated Initial Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date hereof.

"B.E.C. Romaine"
Justice of the Court of Queen's Bench of Alberta

Schedule "A"
Critical Suppliers