Form 49
[Rule 13.19]

COURT FILE NUMBER	1201-06934	Clerk's Stamp
COURT	COURT OF QUEEN'S BENCH OF ALBERTA	CLERK OF THE COURT FILED JUN - 5 2012 JUDICIAL CENTRE OF CALGARY
JUDICIAL CENTRE	Calgary	
APPLICANTS	**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended** **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	**AFFIDAVIT OF RONALD AITKENS**	

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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Attention: Randal Van de Mosselaer

File No. 284470

I, Ronald Aitkens, of the City of Lethbridge, in the Province of Alberta, Businessman, SWEAR AND SAY THAT:

1 I am the sole director and shareholder of each of 1252064 Alberta Ltd. ("**125**"), 1330075 Alberta Ltd. ("**133**"), and Harvest Capital Management Inc. ("**HCMI**") (125, 133, and HCMI being periodically referred to in this Affidavit collectively as the "**Applicants**"), and I have been a director of these corporations since their inception. As such, I have personal knowledge of the matters and facts deposed to herein except where it is stated to be based on information and belief and where it is so stated I do verily believe the same to be true.

2 I swear this affidavit supplemental to the various affidavits I have sworn in Court of Queen's Bench of Alberta Action number 1101-17318 (the "**Legacy CCAA Action**"), including the affidavit I swore in the Legacy CCAA Action on December 20, 2011 (the "**December 20 Affidavit**"), and I swear this affidavit in support of an application by the Applicants for an Order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

3 Each of the Applicants are corporations duly incorporated pursuant to the laws of the Province of Alberta, and have business offices in Calgary and in Lethbridge, Alberta. Attached as **Exhibits "A", "B" and "C"** to this my Affidavit are Alberta Corporate Registry searches for 125, 133 and HCMI, respectively.

4 125 and 133 are in the business of purchasing properties which have the potential for future development and then syndicating those developments to retail investors. HCMI is in the business of providing necessary management functions to 125, 133, and other related companies.

Financial Statements

5 The last available financial statements for the Applicants are for the year ending May 31, 2011 (in the case of 125 and 133) and September 30, 2011 (in the case of HCMI). Attached as **Exhibits "D", "E" and "F"** to this my Affidavit are copies of the financial statements for 125, 133 and HCMI, respectively. Financial statements for the 2012 year-ends for 125 and 133 are currently being prepared, and will be provided if they are available by the return date of this application.

6 The HCMI financial statements do not include the First Note and the Second Note (as both terms are defined below), but I note that both the First Note and the Second Note (which total in excess of $7.6 million) are issued and executed by HCMI.

7 With respect to secured creditors shown in the financial statements:

(a) **125** - The "Braun Mortgage", which is shown on the financial statement, was foreclosed on and is no longer on 125's books. Two additional mortgages which are not reflected in these financial statements (because they did not exist when these financial statements were prepared) have been granted by 125 against certain lands in the City of Lethbridge standing under certificate of title number 121 077 843 +1 (the "**Lethbridge Lands**"). These mortgages are:

(i) A $5 million mortgage to IMOR Capital Corp. ("**IMOR**"); and

(ii) A $300,000 mortgage to Prism Real Estate Investment Corporation.

Attached as **Exhibit "G"** is a true copy of the certificate of title for the Lethbridge Lands showing these mortgages. Attached as **Exhibit "H"** is a true copy of certificate of title number 121 077 843, against which the above-described IMOR mortgage is also registered. (As is discussed further below, IMOR also had registered this same blanket mortgage against the Highfield Properties, as that term is defined below. But the sale of the Highfield Properties has now closed and the Lethbridge Lands are the sole remaining security under this IMOR mortgage);

(b) **133** - There are various mortgages shown on 133's financial statements, specifically:

(i) Saddle Springs Development Ltd. has a $7 million vendor-take-back mortgage ("**VTB**") over certain lands near Priddis, Alberta standing under certificates of title number 091 158 990, 091 158 990 +1, 091 158 990 +2, and 091 158 990 +3 (collectively the "**Priddis Lands**"). Attached as **Exhibit "I"** is a true copy of the certificates of title for the Priddis Lands;

(ii) G and J GP Inc. has a $4 million VTB over certain lands near Priddis on Fish Creek standing under certificate of title number 081 326 527 (the "**Fish Creek Lands**"). Attached as **Exhibit "J"** is a true copy of the certificate of title for the Fish Creek Lands. This same mortgage is registered against the Priddis Lands as collateral security;

(iii) Foundation Mortgage Corporation (a related company) holds mortgages over the Fish Creek Lands and over certain lands near Calmar, Alberta standing under certificate of title numbers 082 416 485 and 082 416 486 (the "**Calmar Lands**") and over the Priddis Lands. Attached as **Exhibit "K"** are true copies of the certificates of title for the Calmar Lands;

(iv) Foundation Mortgage Corporation also holds a mortgages over the Calmar Lands ($2.7 million) and the Fish Creek Lands ($1.1 million);

(v) Calmar Lands Ltd. holds a VTB (originally valued at $2.055 million but now paid down to $1.3 million) over the Calmar Lands;

(vi) Todd and Amanda Hancar hold a $557,519 mortgage over the Calmar Lands;

(vii) The certificate of title number 082 416 486 also shows a $130,000 mortgage in favour of Canadian Western Trust Company. I do not presently know what this mortgage might relate to;

(viii) The financial statement indicates a $2.0 million "UDI Mortgage" against the Calmar Lands. This is a syndicated mortgage that was syndicated by Calmar Lands Ltd. prior to 133's purchase of the Calmar Lands, and it is owed to approximately 25 individual investors. As I recall 133 had agreed to assume this mortgage when it purchased the Calmar Lands in September 2008. However, Calmar Lands Ltd. neglected to register this mortgage against title and no payment has been made on this mortgage since September 2010.

(c) **HCMI** - The only mortgage is a mortgage to the Royal Bank of Canada ("**RBC**") with an outstanding balance of approximately $121,000 which RBC holds over certain lands owned by HCMI (the "**HCMI Lands**"). Attached as **Exhibit "L"** is a true copy of the certificate of title for the HCMI Lands.

8 Attached as **Exhibits "M", "N" and "O"** are Alberta Personal Property Registry searches for 125, 133, and HCMI, respectively.

Legacy CCAA Action

9 HCMI, 125 and 133 collectively received approximately $9.3 million of the funds raised through the Legacy OM's (as that term is defined in the December 20 Affidavit). The funds were paid by Legacy to HCMI, 125 and 133 in order to be reinvested. Four separate promissory notes (collectively, the "**Notes**") were executed in connection with the payment of those funds by Legacy.

10 The Notes can be summarized as follows:

(a) A Note (the "**First Note**") dated September 24, 2007 in the amount of $4,924,880.00 issued by HCMI to Legacy, bearing simple interest at 7% or 20% of the net profits gained from the investment after expenses, whichever is greater. The funds were to be invested in a property located on Isla del Rey, Panama. Notwithstanding the amount of the First Note and the debtor named in the First Note, in actuality $4,664,880.00 was paid to 125. The funds were wired by 125 to a law firm in Panama. A copy of the First Note is attached to this my Affidavit as **Exhibit "P"**;

(b) A Note (the "**Second Note**") dated December 20, 2007 in the amount of $2,723,000.00 issued by HCMI to Legacy, bearing simple interest at 7% or 20% of the net profits gained from the investment after expenses, whichever is greater. Notwithstanding that the Second Note was, on its face, issued by HCMI, the funds represented by the Second Note were forwarded by Legacy to a law firm in Ontario, and were then used to purchase a property in Ontario known as Balsam Lake, which was put into the name of 133. A copy of the Second Note is attached to this my Affidavit as **Exhibit "Q"**;

(c) A Note (the "**Third Note**") dated June 27, 2007 in the amount of $1,350,000.00 issued by 125 to Legacy, bearing simple interest at 7% or 20% of the net profits gained from the investment after expenses, whichever is greater. The funds were invested in a shopping center known as Liberty Crossing in Red Deer, Alberta. A copy of the Third Note is attached to this my Affidavit as **Exhibit "R"**;

(d) A Note (the "**Fourth Note**") dated June 27, 2008 in the amount of $590,000.00 issued by 125 to Legacy, bearing simple interest at 7% or 20% of the net profits gained from the investment after expenses, whichever is greater. The funds were invested in a shopping center known as Liberty Crossing in Red Deer, Alberta. A copy of the Fourth Note is attached to this my Affidavit as **Exhibit "S"**.

11 The approximately $9.3 million dollars in which Legacy invested with HCMI, 125 and 133, as described above, is not currently accessible as the investments in which it was placed are illiquid. Moreover, with respect to the investment made pursuant to the First Note, the underlying assets have become the subject of litigation in Panama (the "**Panamanian Litigation**") and it is therefore unclear when the First Note might be repayable. The Panamanian Litigation is discussed more fully below.

Insolvency

12 The Notes refer to a maturity date of December 31, 2011. However, this maturity date refers to the bonds issued to Legacy's investors (as discussed in the Legacy CCAA Action). In any event, since the Applicants are unable to repay the amounts owing under the Notes and their other debts, the Applicants are insolvent.

IMOR Capital Corp.

13 In March 2010, 125 granted a $5,000,000 blanket mortgage over various properties to IMOR. The properties which were subject to this mortgage were the Lethbridge Lands and certain lands legally described as Condominium Plan 0712941, Units 9 and 10 (the "**Highfield Properties**"). On May 7, 2012, 125 entered into an agreement to sell the Highfield Properties to Highfield Stock Farms Inc. (or nominee) for $1,500,000. Attached as **Exhibit "T"** is a true copy of the Offer to Purchase, Condition Waiver/Satisfaction Agreement, Consent to Partial Discharge, and Amending Agreement (collectively the "**Highfield PSA**").

14 IMOR consented to this sale of the Highfield Properties and consented to discharge its mortgage from the Highfield Properties upon closing in exchange for the proceeds of sale of the Highfield Properties. This sale closed by June 1, 2012.

15 The sale price of $1,500,000 is consistent with an appraisal of the Highfield Properties obtained by IMOR. Attached as **Exhibit "U"** is a copy of an appraisal for the Highfield Properties. 125 therefore believes that the sale price was fair and reasonable in the circumstances.

Panamanian Litigation

16 As noted above, in September 2007, $4,664,880 was advanced by Legacy to 125. As part of a joint venture with other partners, these funds were forwarded by 125 to the law firm of Castro & Berguido International Inc. ("**CBI**") in Panama. A total of approximately USD $7 million was paid by the joint venture partners to CBI with the intention that these funds would be used to purchase, subdivide and develop a property located on Isla del Rey in Panama.

17 These funds were to remain in trust with CBI until certain conditions were met. However, the funds were paid out by CBI without these conditions having been met and without the consent of 125 or the other investors. Title to the lands in question was never transferred as intended by the investors, including 125.

18 The Panamanian Litigation was commenced in 2010 by the other investors in the project. 125 joined in the litigation in mid-2010 and has retained and instructed counsel in Panama in that regard. 125, though its Panamanian counsel, has been attempting to gain control of the Panamanian company that holds title to the property in question, or gain control of the property itself. 125 also intends to pursue an action against CBI.

19 125 is presently waiting for a decision by the Panamanian courts in response to an appeal that was filed by the defendants in that action, following which the next steps in the Panamanian Litigation will need to be considered. For this reason, I believe that the timing is appropriate for the Monitor (as that term is defined below) to assume co-management responsibility for the Panamanian Litigation alongside 125. Moreover, in view of the fact that the funds in question were advanced by Legacy to 125, and that Legacy and 125 have common management and are affiliates, I believe that it is appropriate that the Monitor be involved as a co-manager with respect to the Panamanian Litigation.

DIP Financing and Critical Suppliers

20 The Applicants are not currently applying for Debtor in Possession ("**DIP**") financing. However, the Applicants anticipate that DIP financing may be required in the event a stay extension is sought.

21 In the event the Applicants apply for DIP financing, the Applicants propose that the Monitor (as that term is defined below) assume responsibility for bringing an application for DIP financing on behalf of the Applicants, on such terms as this Court may deem appropriate.

22 125 and HCMI do not have sufficient cash flow to meet their obligations in the period of the initial stay or on ongoing basis. In fact, given their circumstances, 125 and HCMI have not been able to

pay their ongoing obligations for several months, and have relied upon cash infusions from related companies to cover these ongoing costs.

23 Without meeting their obligations for necessary goods and services in the short term, 125 and HCMI will be incapable of performing any of the functions that are essential to their day-to-day operations.

24 Specifically, as reflected on the cash flow statements attached hereto as **Exhibit "V"**, 125 and HCMI have ongoing cash requirements in order to meet their monthly operating obligations. Attached as **Exhibit "W"** to this my Affidavit is a listing of those suppliers (the "**Critical Suppliers**" or, individually, "**Critical Supplier**") of goods or services, together with the nature of the goods or services supplied, and the approximate monthly amount which such Critical Supplier charges for such goods or services.

<u>125</u>

25 125 has leased the Lethbridge Lands to two tenants, who pay a combined base rent of $15,000 per month to 125, as well as operating costs ("**Operating Costs**") of approximately $8,000 to $10,000 per month for services such as utilities, building maintenance, and garbage collection.

26 125 has agreed to pay the $15,000 per month base rent to IMOR under its security.

27 The Operating Costs are, for 125, simply a flow-through of the costs of providing these services. 125 collects these amounts from the tenants and pays them directly to the appropriate Critical Supplier in order to pay for the costs of the services provided to the tenants. All of the Critical Suppliers for 125 which are shown on **Exhibit "W"** (with the sole exception of Type Three Management, which is the building manager) are paid for by the Operating Costs which are paid by 125's tenants.

28 Without being able to provide the goods and services which are provided by these Critical Suppliers, 125 will not be able to continue to operate the Lethbridge Lands as a rental property and will lose the $15,000 per month in rental income. It is therefore proposed that 125's Critical Suppliers (excluding Type Three Management) be declared to be critical suppliers and be granted a critical suppliers' charge over the proceeds of the Operating Costs which are paid by 125's tenants in order that these proceeds can be directly paid to these Critical Suppliers.

29 With respect to Type Three Management, it is proposed that this property manager be declared a critical supplier and that the fees associated with such property management be secured by a critical suppliers' charge.

HCMI

30 As HCMI is the management company responsible for providing management services to 125, 133, and all related companies, it is the only company in the group which has employees. HCMI does not have cash flow with which to meet the necessary costs of operating, including salaries for three employees (one of which is part-time).

31 It should be noted that, in light of HCMI's current financial circumstances, some of HCMI's employees have gone several months without taking any salary. The salaries which HCMI is obliged to pay, but has not recently paid, are as follows:

(a) Ron Aitkens - President - $15,000 per month;

(b) Mike McCarthy - Accountant - $7,000 per month;

(c) Donna Petiot - Accounting and general administration - $3,000 per month.

32 Unless HCMI is in a position to secure payment to these employees and the other charges set out in the attached Critical Suppliers' list, HCMI will not be able to proceed with this restructuring.

33 While some of the properties owned by the Applicants do not have any available equity after the mortgages which are registered against those properties, it is my belief that a number of the properties owned by various of the Applicants do have equity which would support various of the Charges being sought in the Initial Order. Specifically, I believe that the properties described in the financial statements as Balsam Lake and Kimberly have equity, as do the Calmar Lands, the Fish Creek Lands, and the Priddis Lands.

Monitor

34 Ernst & Young Inc. ("**E&Y**" or the "**Monitor**") has consented to act as monitor of the Applicants in these proceedings. Attached hereto and marked as **Exhibit "X"** is a copy of a Consent to Act as Monitor executed by Neil Narfason of E&Y.

Cash Flow Statements

35 E&Y, with the assistance of the Applicants, has prepared cash flow statements on a go forward basis to June 30, 2012 for each of the Applicants, which cash flow statements are attached hereto and marked as **Exhibit "V"**.

Conclusion

36 I make this affidavit in support of an Order pursuant to the *Company's Creditors Arrangement Act*, including a stay proceedings, for the purposes of allowing the Applicants an opportunity to restructure their affairs and develop a plan of arrangement for the benefit of their creditors.

SWORN BEFORE ME at Calgary, Alberta, this 5 day of June, 2012.	)	
Commissioner for Oaths in and for the Province of Alberta	)	**RONALD AITKENS**

Justin D. Doll
Barrister & Solicitor