

COURT FILE NUMBER 1201-06934

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

Clerk's Stamp

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**
sworn August 23, 2012
(Stay Extension and Expansion of Monitor's Powers)

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: +1 403.267.8222
Fax: +1 403.264.5973

Attention: Howard A. Gorman

File No. 284891

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., 1330075 Alberta Ltd., and Harvest Capital Management Inc. (collectively 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 my affidavits sworn June 5, 2012, July 3, 2012 and August 16, 2012 in the present proceedings (the "**Harvest Proceedings**"), as well as supplemental to the various affidavits I have sworn in Court of Queen's Bench of Alberta Action number 1101-17318 (the "**Legacy Proceedings**"). I swear this affidavit in support of an application by the Applicants for an Order extending the stay of proceedings previously granted by this Honourable Court in the

Harvest Proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, ("**CCAA**"). Capitalized terms used in this Affidavit and not otherwise defined shall have the same meanings as those terms have been given in the affidavits I have previously sworn in the Harvest Proceedings and the Legacy Proceedings.

Stay Extension

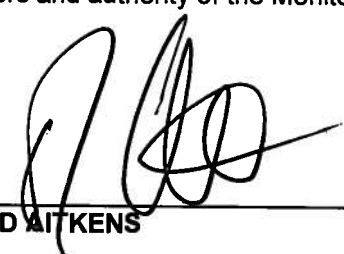
- 3 The Applicants seek a further extension of the stay period which was last extended by Order of this Court dated August 20, 2012 (the "**Stay Extension Order**"), which extended the stay period granted in the June 7, 2012 CCAA Initial Order (the "**Initial Order**") through August 27, 2012. The Applicants believe that circumstances exist that make an extension of the stay period appropriate, and the Applicants have acted and are acting in good faith and with due diligence, recognizing the Applicants' and my limited resources.
- 4 From the date of the Initial Order, the Applicants have cooperated with the Monitor.
- 5 From the date of the Initial Order the Applicants have, in consultation with the Monitor, been taking steps:
 - (a) to determine which of the Applicants' assets might be liquidated for fair market value to free up cash for use on the remaining assets to the benefit of the Applicants' stakeholders;
 - (b) to obtain appraisals which can be used to determine which assets have equity; and
 - (c) to develop a realization and development strategy which would include the orderly realization of certain assets rather than a sales on a forced liquidation basis, and development of a plan to be put to the Applicants' creditors for consideration.
- 6 In the affidavit I swore in these proceedings dated August 16, 2012 I outlined the challenges faced by the Applications, and myself personally, in completing various efforts and initiatives in conjunction with the Monitor to advance the within restructuring proceedings. After discussions with the Monitor, the Applicants have concluded that it would be appropriate to expand and enhance the Monitor's authority in the within proceedings to fully make use of the Monitor's manpower and expertise.
- 7 In this regard, the Applicants and the Monitor are jointly proposing an Order expanding the Monitor's powers to include those generally as set out in the draft Order attached as Exhibit "A" hereto. I am advised by counsel and understand that the proposed enhanced Monitor's powers are consistent with the powers granted to the Monitor in an unrelated, ongoing CCAA proceeding.

- 8 I understand and do verily believe that the Monitor would support the Applicants' request for an extension of the CCAA stay of proceedings through November 30, 2012 should the Court concurrently grant the Applicants' request to expand the Monitor's powers as requested herein.
- 9 I do verily believe that the further extension of the CCAA stay of proceedings and the expansion of the Monitor's powers are in the best interests of the Applicants, their stakeholders and the ongoing conduct and supervision of the within ongoing CCAA restructuring proceedings.
- 10 I make this Affidavit in support of an Application by the Applicants for an Order extending the CCAA stay period in this matter and expanding the powers and authority of the Monitor herein.

SWORN BEFORE ME at Calgary, Alberta, this)
23rd day of August, 2012.)

Commissioner for Oaths in and for the)
Province of Alberta)

HOWARD A. GORMAN
BARRISTER & SOLICITOR



RONALD AITKENS

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LTD., 1330075 ALBERTA LTD. and HARVEST
CAPITAL MANAGEMENT INC.

DOCUMENT

ORDER
(Expansion of Monitor's Powers)

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Norton Rose Canada LLP
3700 Devon Tower
400 Third Avenue SW
Calgary, Alberta T2P 4H2
Telephone: +1 403.267.8222
Fax: +1 403.264.5973
Attention: Howard Gorman / Randal Van de Mosselaer
Email: howard.gorman@nortonrose.com
randal.vandemosselaer@nortonrose.com

THIS IS EXHIBIT "A"
referred to in the Affidavit of
Ronald Aitkens
Sworn before me this 23
Day of Aug. A.D. 2012
A COMMISSIONER OF OATHS
IN AND FOR THE PROVINCE OF ALBERTA

HOWARD A. GORMAN
BARRISTER & SOLICITOR

DATE ON WHICH ORDER WAS
PRONOUNCED August 24, 2012

NAME OF JUSTICE WHO MADE
THIS ORDER The Honourable Madam Justice B.E.C. Romaine

UPON THE APPLICATION of 1252064 Alberta Ltd. ("125"), 1330075 Alberta Ltd. ("133") and Harvest Capital Management Inc. ("HCMI", and 125, 133 and HCMI collectively referred to as the "**Applicants**"); **AND UPON** having read the Affidavit of Ron Aitkens, filed August __ 2012, the Third Report of Ernst & Young Inc., in its capacity as Court-appointed Monitor (the "**Monitor**") of the Applicants, filed __, 2012 (the "**Third Report**"), and the pleadings and proceedings filed herein; **AND UPON** hearing counsel for the Applicants, the Monitor and from any other affected parties that may be present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

Service

1. The time for service of this notice of this Application for this Order is hereby abridged and deemed good and sufficient and this Application is properly returnable today.

Expansion of the Powers of the Monitor

2. Capitalized terms not defined herein shall have the meanings ascribed to them in the Initial Order issued by this Honourable Court in the within proceedings on June 7, 2012, as amended or modified from time to time (the "**Initial Order**").
3. The expansion of the Monitor's powers in respect of the Applicants as set out below is authorized and approved, on the terms and conditions outlined herein. Nothing in this Order shall derogate from the powers of the Monitor as provided for in the Initial Order.
4. The Monitor, continuing as an officer of the Court, shall be and is hereby authorized to exercise the following additional powers and duties in respect of and on behalf of the Applicants and the Property 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 Affidavit of Ron Aitken, sworn June 5, 2012, in the within proceedings) 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 file tax returns on behalf of the Applicants;
 - (p) to exercise any other rights which the Applicants may have; and
 - (q) 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.
5. The Monitor shall not have additional powers and duties beyond those set out in the Initial Order and this Order, and shall not have the power to direct or cause the direction of the management and policies of the Applicants.
6. No provision in this Order is intended to appoint the Monitor as an officer, director or employee of any of the Applicants.

7. 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.
8. No Person shall interfere with the Monitor's exercise of its powers and duties under this Order or any other Order of the Court.
9. The Monitor and counsel to the Monitor shall be paid their reasonable fees and disbursements, in each case incurred at their standard rates and charges, and the Administrative Charge shall secure the payment of such fees and disbursements, both before and after the making of this Order.
10. 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. In addition, all of the protections and security granted to the Monitor in the Initial Order shall apply *mutatis mutandis* for the benefit of the Monitor in respect of its performance, or the exercise of, its additional powers, duties, rights and obligations as provided and set out in this Order.
11. The Monitor shall report to the Court from time to time with respect to its performance, or the exercise of, its additional powers, duties, rights and obligations as provided and set out in this Order.

12. The Applicants and the Monitor are 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 advice, assistance and direction as may be necessary to give full force and effect to, and in carrying out the terms of, this Order.

Justice of the Court of Queen's Bench of
Alberta