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| COURT | COURT OF QUEEN'S BENCH OF ALBERTA | CLERK OF THE COURT FILED DEC - 5 2014 JUDICIAL CENTRE OF CALGARY |
| JUDICIAL CENTRE | CALGARY | |
| APPLICANT(S) | ERNST & YOUNG INC. IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF 1252064 ALBERTA LTD., 1330075 ALBERTA LTD. AND HARVEST CAPITAL MANAGEMENT INC. AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY | |
| DOCUMENT | **FIFTH REPORT OF THE RECEIVER**<br><br>**DECEMBER 5, 2014** | |
| ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT | <u>RECEIVER</u><br><br>Ernst & Young Inc.<br>1000, 440 - 2nd Avenue SW<br>Calgary, Alberta T2P 5E9<br>Attention: Neil Narfason / Nick Purich<br>Telephone: 403-206-5067 / 403 206-5170<br>Fax: 403-206-5075<br>Email: Neil.Narfason@ca.ey.com<br>Nick.JB.Purich@ca.ey.com<br><br><u>COUNSEL</u><br><br>McCarthy Tétrault LLP<br>Suite 3300, 421 7th Avenue SW<br>Calgary AB T2P 4K9<br>Attn: Sean Collins / Walker MacLeod<br>Telephone: 403-260-3531 / 403-260-3710<br>Email: scollins@mccarthy.ca<br>wmacleod@mccarthy.ca | |

TABLE OF CONTENTS OF THE FIFTH REPORT

INTRODUCTION

1. On June 7, 2012, 1252064 Alberta Ltd. ("125"), 1330075 Alberta Ltd. ("133") and Harvest Capital Management Inc. ("HCMI") sought and obtained protection from their creditors under the Companies' Creditors Arrangement Act, R.S.C. 1985 c. C-36, as amended, (the "CCAA") pursuant to an order of this Honourable Court (the "Initial CCAA Order"). Pursuant to the Initial Order, Ernst & Young Inc. was appointed monitor (the "Monitor") of 125, 133 and HCMI (the "CCAA Proceedings").

2. Ernst & Young Inc. was appointed Receiver and Manager (the "Receiver") of the property, assets and undertakings (the "Property") of 125, 133 and HCMI pursuant to an Order (the "Receivership Order") of this Honourable Court dated September 30, 2013.

3. Concurrent with the issuance of the Receivership Order, the CCAA Proceedings were terminated by an order (the "Termination Order") of this Honourable Court dated September 30, 2013. The Termination Order provides that the charges in the Initial CCAA Order endure, notwithstanding the termination of the Initial CCAA Order.

4. The Receivership Order authorized the Receiver, among other things, to carry on the business of the Company, to sell, convey, transfer, lease or assign the Property out of the normal course of business, subject to court approval for transactions in excess of $100,000, and to make such arrangements or agreements as deemed necessary by the Receiver.

5. The purpose of this fifth report (the "Fifth Report") of the Receiver is to provide this Honourable Court with the Receiver's comments on:

    a) The progress towards selling certain lands owned by 133 near Calmar, Alberta (the "Calmar Lands");

    b) Issues which have arisen with respect to property taxes owing on the Calmar Lands; and

    c) The Receiver's requested relief.

6. Capitalized terms not defined in this Fifth Report are as defined in the Receivership Order.

7. All references to dollars are in Canadian currency unless otherwise noted.

## TERMS OF REFERENCE

8. In preparing this Fifth Report, the Receiver has relied upon unaudited financial information and Company records. The Receiver has not performed an audit, review or other verification of such information.

## BACKGROUND

9. The Calmar Lands consist of two parcels of land, "Lot 1" (Block 1 Lot 1 Plan 0522859) is 53.13 acres and "Lot 2" is 76.36 acres. Lot 1 and Lot 2 each have different secured creditors.

10. Additional background information and other information regarding these receivership proceedings have been posted by the Receiver on its website at: www.ey.com/ca/foundationgroup.

## SALE PROGRESS

11. 133 entered into an agreement with Colliers MacAulay Nicholls Inc. ("Colliers") on July 7, 2013 to market the Calmar Lands (the "Marketing Agreement").

12. Since entering into the Marketing Agreement, only one offer on the Calmar Lands has been received. The purchaser did not clear the conditions of the offer due to potential environmental concerns.

13. No additional offers have been received on the Calmar Lands to date.

## PROPERTY TAXES

14. On January 14, 2014, the Town of Calmar advised 133 that property taxes totalling $55,533.82 were outstanding on the Calmar Lands. The town further advised that, pursuant to the Municipal Government Act ("MGA"), it intended to proceed with tax recovery by way of public auction on or after March 31, 2014.

15. The Receiver disputed the town's ability to take enforcement auction under the MGA in light of the receivership proceedings.

16. In an effort to minimize costs associated with the town's intended actions, the Receiver reached an agreement with the town in June, 2014 whereby the town agreed not to take enforcement action against the Calmar Lands until December 31, 2014 and the Receiver agreed that it would not oppose enforcement action by the town after December 31, 2014 if the property taxes remained unpaid.

17. As the Calmar Lands are likely to have not been sold by December 31, 2014, they are scheduled to be publicly auctioned on or after January 15, 2015. The Receiver believes that a public auction of lands of this nature will not maximize their value in the circumstances.

18. 133 has sufficient funds on hand to pay the property taxes that are owed by it to the Town of Calmar. 133 also has a significant number of unsecured creditors. The Receiver anticipates that, due to the lack of recoveries into the estate of 133, distributions to the unsecured creditors of 133 will be significantly less than amounts owed to them.

19. Given the amount of the secured indebtedness against the Calmar Lands, 133 does not anticipate receiving any proceeds from the sale of the Calmar Lands. In such circumstances 133 is only willing to pay the outstanding property taxes if it has security allowing it to recover such amounts so that the interests of the unsecured creditors of 133 are not otherwise compromised.

20. The outstanding property tax balance on the Calmar Lands as of the date of this Report is $102,219.62. The increase in the tax balance is a result of current year property tax charges and certain charges related to obligatory maintenance on the property.

21. The Receiver has advised the secured creditors of its intention to pay the outstanding property taxes and to seek a Court ordered priority charge ranking ahead of them for such payment.

22. The Receiver will charge interest of 12% per annum on the property tax amount paid (i.e. $102,219.62) as that is the interest rate currently charged by the Town of Calmar.

RECEIVER'S REQUESTED RELIEF

23. The Receiver is requesting that this Honourable Court grant an order confirming that any funds paid by 133 (the "133 Funds") to the Town of Calmar in respect of property taxes owed on the Calmar Lands and the interest charged on the 133 Funds rank in priority to all other charges and encumbrances on the Calmar Lands but subordinate to the Receiver's Charge.

Dated at Calgary AB, this 5th day of December, 2014.

**ERNST & YOUNG INC.**
**in its capacity as Receiver and**
**Manager of 1252064 Alberta Ltd., 1330075 Alberta Ltd.**
**and Harvest Capital Management Inc.**

Neil Narfason, CA•CIRP, CBV
Senior Vice-President