



Clerk's Stamp

COURT FILE NUMBER 1201-10692

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, RSC 1985, c C-36

AND IN THE MATTER OF 1357686 ALBERTA LTD.

APPLICANT

1357686 ALBERTA LTD.

DOCUMENT

ORDER

(Calaway Land Sale Approval and Vesting Order)

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

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Attention: Randal S. Van de Mosselaer

File No. 01024427-0001

DATE ON WHICH ORDER WAS PRONOUNCED: April 30, 2014

LOCATION OF HEARING: Calgary, Alberta

NAME OF JUDGE WHO MADE THIS ORDER: Madam Justice K. M. Eidsvik

UPON the application of 1357686 Alberta Ltd. ("135" or the "Applicant"); **AND UPON** **HAVING READ** the Affidavit Gary L. Bentham sworn April 24, 2014 and the Confidential Supplemental Affidavit of Gary L. Bentham sworn April 24, 2014 (the "Confidential Affidavit"); **AND UPON HAVING READ** the Seventh Report of Ernst & Young Inc. (the "Monitor") in its capacity as Monitor (the "Monitor's Report"); **AND UPON HEARING** the submissions of counsel for the Applicants and any other counsel in attendance; **AND UPON HAVING READ** the pleadings and proceedings herein, including the August 24, 2012 Initial Order (the "Initial Order") in the within Action;

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 to be good and sufficient and this Application is properly returnable today.

APPROVAL OF TRANSACTION:

- 2 The Purchase and Sale Agreement (the "PSA") between 1808464 Alberta Inc. (the "Purchaser") and 135, which PSA is attached as Exhibit "A" to the Confidential Affidavit (as amended by the Amending Agreement which is attached as Exhibit "B" to the Confidential Affidavit), including the purchase and sale of those lands (the "Lands") defined in the PSA as the "Property" and the issuance of Shares (as that term is defined in the PSA) by the Purchaser to the Applicant (or its nominee), is hereby approved and ratified. Any other offers with respect to the Property are hereby rejected and all deposits received from any other offerors shall forthwith be returned.
- 3 The CRO (as that term is defined in the Initial Order) is hereby authorized to conclude the transaction contemplated by the PSA (the "Transaction") and to take all such steps and execute all such documents as may reasonably be necessary to complete the transactions contemplated therein substantially in accordance with its terms, subject to such amendments as the parties thereto and the Monitor may approve which do not materially and adversely alter the Transaction.

VESTING OF LANDS

- 4 Upon closing of the Transaction, all of 135's right, title and interest, in and to the Lands shall, without further instrument of transfer or assignment, vest in the Purchaser as contemplated by the PSA, absolutely and forever, free and clear of and from any and all claims by, through, or under 135, and any and all estate, right, title, interest, and liens, including but not limited to, claims, hypothecs, mortgages, charges, liens (whether contractual, statutory or otherwise), security interests, assignments, actions, levies, taxes, judgments, writs of execution, trusts or deemed trusts (whether contractual, statutory or otherwise), options, agreements, disputes, debts, encumbrances or other rights, limitations or restrictions of any nature whatsoever including, without limitation, any rights or interests of any creditors of 135 whether or not they have attached or been perfected, registered or filed, whether secured or unsecured or otherwise, whether

liquidated, unliquidated or contingent (all of the foregoing being collectively referred to hereinafter as "the Claims") whether such Claims came into existence prior to, subsequent to, or as a result of any previous order of this Court, by or of all persons or entities of any kind whatsoever, including, without limitation, all individuals, firms, corporations, partnerships, joint ventures, trusts, unincorporated organizations, governmental and administrative bodies, agencies, authorities or tribunals and all other natural persons or corporations, whether acting in their capacity as principals or as agents, trustees, executives, administrators or other legal representatives (collectively, the "Claimants") including for greater certainty and without limiting the generality of the foregoing: (i) the Claims held by or in favour of the individuals and entities served (either directly or through their solicitors) with this Application; and (ii) the beneficiary of any Claims created or provided for pursuant to any previous Order of this Court in these proceedings.

- 5 The Purchaser shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever to any Claimants in respect of any Claims they may have against 135.
- 6 The Transaction shall not be void or voidable at the instance of Claimants and shall not constitute nor shall be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other challengeable or reviewable transaction under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "BIA") or any other applicable federal or provincial legislation, and the Transaction, or any actions taken in connection therewith, shall not constitute conduct meriting an oppression remedy.
- 7 Any legislation affecting sales in bulk in all jurisdictions does not apply to the Transaction, and the Transaction may be completed without compliance with: (a) the provisions of section 60 of the *Personal Property Security Act*, RSA 2000, c P-7, as amended, and any similar provisions in personal property security legislation in force in any province in which 135 carries on business; and (b) section 244 of the BIA.
- 8 Upon closing of the Transaction, the Purchaser is entitled to obtain vacant possession of the Lands.
- 9 Nothing in this Order shall prejudice any person's *in personam* claim against 135.

10 The CRO is hereby authorized and directed to:

- a) perform the covenants in the PSA substantially in accordance with its terms, subject to such amendments as the CRO, Monitor, and the Purchaser may approve which do not materially and adversely alter the Transaction;
- b) execute all deeds and documents, and to take all such steps as may be necessary or advisable in his sole discretion to consummate the Transaction;

11 Upon delivery of a certified copy of this Order to the Registrar of the Alberta Land Titles Office ("the Registrar") and a written request from 135 or 135's counsel to do so, the Registrar is hereby authorized, requested, and directed to cancel the existing Certificate of Title against the Lands located in Rocky View County in the Province of Alberta and standing under certificates of title numbers 081 085 609 and 081 085 609 +1 and legally described as:

MERIDIAN 5 RANGE 3 TOWNSHIP 24
SECTION 32
QUARTER SOUTH EAST
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
EXCEPTING THE NO. 1 HIGHWAY ON PLAN 3850JK CONTAINING 10.64
ACRES MORE OR LESS
EXCEPTING THEREOUT ALL MINES AND MINERALS

("Lot 1")

MERIDIAN 5 RANGE 3 TOWNSHIP 24
SECTION 33
QUARTER SOUTH WEST
CONTAINING 64.7 HECTARES (160 ACRES), MORE OR LESS
EXCEPTING THOSE PORTIONS OF THE FOLLOWING PLAN:
PLAN NO. ACRES MORE OR LESS HECTARES MORE
OR LESS
#1 HIGHWAY 3850JK 10.78 4.366
EXCEPTING THEREOUT ALL MINES AND MINERALS AND THE RIGHT TO
WORK SAME

("Lot 2")

(Lot 1 and Lot 2 being referred to collectively in this Order at the "Lands") and to issue new Certificates of Title for the Lands in the name of the Purchaser, namely, • (or nominee as specifically set out in the said written request) (the "New Titles"), which New

Titles shall be subject only to those encumbrances ("the Permitted Encumbrances") listed on Schedule "A" hereto.

- 12 The Registrar shall perform the steps specified in paragraph 11 of this Order notwithstanding the requirements of section 191(1) of the *Land Titles Act*, RSA 2000, c L-4.
- 13 Upon the Registrar completing the steps identified in paragraphs 11 and 12 of this Order, the Registrar shall forthwith make available to the Purchaser's counsel a certified copy of the New Titles.
- 14 This Order shall be registered by the Registrar notwithstanding that the appeal period in respect of this Order has not elapsed, which appeal period is expressly waived.

SALE PROCEEDS

- 15 Subject to paragraph 17 hereof, the CRO or 135's counsel shall hold the total proceeds paid to it arising out of the PSA (including the Vendor Mortgage and any Shares issued to 135 pursuant to the PSA, as those terms are defined in the PSA) less closing costs including real estate commissions, taxes, conveyancing costs of the CRO, and other usual closing costs (the "Net Proceeds") pursuant to and in accordance with the terms of this Vesting Order.
- 16 The Net Proceeds shall stand in the place and stead of the Lands and all Claims shall attach solely to such Net Proceeds with the same validity, priority and in the same amounts and subject to the same defences that were or may have been available immediately prior to the closing of the Transaction as if the Lands had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the closing of the Transaction.
- 17 The CRO is hereby authorized and directed to disburse the Net Proceeds as follows:
 - (a) First, on account of the \$200,000 break fee payable pursuant to the March 4, 2014 Agreement between 135 and Krita Investments Ltd. for the purchase and sale of the Lands;
 - (b) Second, on account of those professional fees and disbursements entitled to the benefit of the Administration Charge (as that term is defined in the Initial Order);

- (c) Third, on account of the credit facility provided by the DIP Lender (as that term is defined in the September 24, 2012 Order in the within proceedings); and
 - (d) Fourth, on account of the administrative and operational costs incurred by 135 after the date of the Initial Order as described in paragraphs 43(c) and 44 of the Monitor's Report.
- 18 The balance of the Net Proceeds remaining after disbursement of the amounts set out in the preceding paragraph (the "Remaining Distributable Funds") shall be held by 135's counsel pending further Order of this Court.
- 19 For purposes of paragraph 17 hereof, the costs and expenses, sale proceeds, and any Court ordered Charges shall be allocated between Lot 1 and Lot 2 on the basis of a 40.02% allocation to Lot 1 and a 59.98% allocation to Lot 2 (the "Allocation").

FEES ASSOCIATED WITH THE ISSUANCE OF NEW TITLES

- 20 All costs, fees and disbursements of the Registrar associated with the steps outlined in paragraphs 11, 12 and 13 of this Order shall be for the account of the Purchaser.

MISCELLANEOUS

- 21 Presentment to the Registrar of the certified copy of this Order and a written request from 135 or 135's counsel as set out in paragraph 11 shall be the Registrar's sole and sufficient authority for cancellation of the said titles, issuance of the New Titles and discharge of all encumbrances except for the Permitted Encumbrances from the New Titles.
- 22 Service of this Order is dispensed with except upon those parties present at the hearing of this Application, and any parties who were provided with notice of this Application.
- 23 This Honourable Court hereby requests the aid and recognition of any court or administrative body in any province of Canada, the Federal Court of Canada, any administrative tribunal or other court constituted pursuant to the Parliament of Canada or any of its provinces or territories and any federal or state court or administrative body in the United States of America or any other foreign courts to act in aid of and to be complimentary to this Court in carrying out the terms of this Order.

- 24 135 and the Monitor shall be at liberty to reapply for further advice, assistance and direction as may be necessary to give full force and effect to the terms of this Order.



Justice of the Court of Queen's Bench of Alberta

SCHEDULE "A" TO THE APRIL 30, 2014 ORDER OF
MADAM JUSTICE K. M. EIDSVIK

Permitted Encumbrances

- Order 6618GW.
- Utility Right of Way 5943IK.
- Zoning Regulations 761 141 577
- Caveat 881 142 254