



COURT FILE NUMBER 1201-10692

COURT COURT OF QUEEN'S BENCH OF ALBERTA

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 1357686 ALBERTA LTD.

DOCUMENT **AFFIDAVIT OF GARY L. BENTHAM**
SWORN April 25, 2013

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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Attention: Howard A. Gorman
Randal S. Van de Mosselaer

File No. 284891

I, Gary L. Bentham, of the City of Calgary in the Province of Alberta, Chartered Accountant,
SWEAR AND SAY THAT:

- 1 I am the president of BTM Advisory Services Inc. ("BTM"), which has been appointed as the Chief Restructuring Office (the "CRO") of the Applicant 1357686 Alberta Ltd. ("135") pursuant to an Order granted in the within action on August 24, 2012 (the "Initial Order") and as such I have personal knowledge of the matters and facts hereinafter deposed to, except where stated to be based on information and belief and where so stated, I verily believe the same to be true.
- 2 135 sought and obtained creditor protection under the *Companies' Creditors Arrangement Act* (the "CCAA") pursuant to the Initial Order. The stay of proceedings granted in the Initial Order currently expires on December 19, 2012.

135 Update

- 3 As CRO of 135 I have continued to work diligently to better assess restructuring opportunities available to the Applicant. In doing so, I have been working closely with Noel Winter, the real estate professional who has been assisting 135 and certain other related entities with their restructuring efforts, with a view to determining how best to preserve and maximize value for 135's stakeholders.
- 4 The primary asset of 135 is 298 acres of development land located in Rocky View County immediately west of Calgary and adjacent to the Calaway Park amusement facility south of the Trans-Canada highway, which are known as the Calaway Lands (as that term is defined in the affidavit sworn in this action by Ronald Aitkens on August 23, 2012) .
- 5 In December 2012, 135 commenced the Property Marketing Process which was approved by Order of this Honourable Court on December 19, 2012. Avison Young was appointed 135's Marketing Agent. In accordance with that Process:
 - (a) Avison Young has advertised the Calaway Lands locally and nationally and has been in direct contact with and provided information to at least sixty-five potential purchasers;
 - (b) A March 28, 2013 deadline was established for interested parties to submit proposals to purchase the Calaway Lands, after which it was intended that a short list of bidders would be identified and the sale process completed.
- 6 We did not receive any acceptable proposals for the sale of all of the Calaway Lands by the March 28, 2013 deadline. Accordingly, with the agreement of the Monitor, we have decided not to proceed with the bidding arrangements contemplated in the Property Marketing Process. We did receive written and verbal communication from interested parties that they were interested in purchasing parts but not all of the Calaway Lands and we received interest from parties wishing to jointly develop the Calaway Lands with 135.
- 7 In consultation with the Monitor, and on the basis of the information received as a result of the Property Marketing Process and the interest expressed in the Calaway Lands by interested parties during the Property Marketing Process, I believe it would be in the best interests of the creditors to pursue the sale and joint venture opportunities for the Calaway Lands that have been identified through the Property Marketing Process. It is therefore my

intention to pursue these opportunities and, if negotiations progress to a satisfactory stage, to seek Court approval of any prospective transaction.

DIP Financing

- 8 On September 24, 2012 this Honourable Court approved a DIP lending facility with a DIP Lender (as that term is defined in the September 24, 2012 Order in the within Action). It was a term of the agreement with the DIP Lender that the DIP facility provided by the DIP Lender would mature on July 31, 2013. That facility may be extended for an additional six months at the sole option of the DIP lender. It had been hoped that the Property Marketing Process would identify a transaction which would result in a sale of the Calaway Lands and a repayment of the DIP Lender by July 31, 2013.
- 9 For the reasons set out above, this has turned out not to be the case. In order to be in a position to pursue the sale and joint venture opportunities for the Calaway Lands that are discussed above, it will likely be necessary to request a renewal of the DIP facility for at least two months. The DIP Lender has advised that their decision to renew the DIP facility, if requested, will be considered in light of the progress of the sale process at that time.

Administration Charge

- 10 The Administration Charge granted in the Initial Order does not extend to the fees and charges of the CRO in this action. This was rectified on December 14, 2012 in the related action number 1201-10693 when this Honourable Court granted an Order granting the CRO the benefit of the Administration Charge in that action, but through oversight a similar extension was not granted in the within action. The CRO therefore seeks a similar extension of the Administration Charge protection in the within action, and understands that this request is supported by the Monitor.
- 11 In addition, the CRO has retained Winman Ltd. and its principle, Noel Winter, to assist the CRO in the restructuring of 135. Mr. Winter's continued involvement in this restructuring is critical to a successful resolution, and I anticipate that it may be necessary to conclude a sale or other transaction involving the Calaway Lands before Winman Ltd., and the other professionals involved in this restructuring, will be able to be paid. It is therefore appropriate that Winman Ltd. similarly be provided with the benefit of the Administration Charge in this action. I understand that this request is also supported by the Monitor.

Extension of Stay Period

- 12 The Applicant has been working diligently and in good faith with its advisors and the Monitor toward identifying the nature and value of its assets and is at the preliminary stages of developing a plan for presentation to its creditors. As such, the Applicant seeks an extension of the stay period granted in the Initial Order up to and including September 30, 2013.

Relief Requested

- 13 I make this Affidavit in support of applications by the Applicant for an order of this Honourable Court extending the stay of proceedings up to and including September 30, 2013.

SWORN BEFORE ME at Calgary, Alberta, this)
25 day of April, 2013.)

Commissioner for Oaths in and for the Province
of Alberta)

ROBYN GUROFSKY
BARRISTER & SOLICITOR

GARY L. BENTHAM