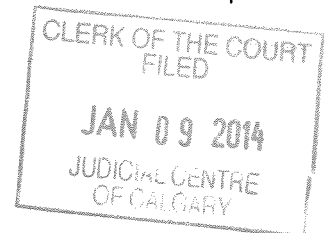


**Form 27**

[Rules 6.3 and 10.52(1)]

Clerk's Stamp



COURT FILE NUMBER 1301-08518

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT(S) ERNST & YOUNG INC. IN ITS CAPACITY AS COURT APPOINTED MONITOR OF 1252064 ALBERTA LTD., AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

RESPONDENT(S) BENCHMARK CAPITAL CORPORATION AND 1211951 ALBERTA INC.

DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
McCARTHY TÉTRAULT LLP  
Barristers & Solicitors  
Sean F. Collins / Pantelis Kyriakakis  
Suite 3300, 421 – 7th Avenue SW  
Calgary, AB T2P 4K9  
Phone: 403-260-3531/403-260-3536  
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**NOTICE TO RESPONDENT(S)**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

|             |                       |
|-------------|-----------------------|
| Date        | January 20, 2014      |
| Time        | 11:00 a.m.            |
| Where       | Calgary Courts Center |
| Before Whom | Justice J. Strekaf    |

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:** Ernst & Young Inc. (the "**Receiver**") is the court appointed receiver and manager of the property, assets and undertakings (the "**Property**") of Benchmark Capital Corporation ("**Benchmark**") and 1211951 Alberta Inc. ("**121 Alberta**" collectively Benchmark and 121 Alberta are collectively referred to as, the "**Applicants**" or the "**Debtors**") pursuant to the order issued in Court File No. 1301-08518 (the "**Receivership Proceedings**") on August 13, 2013 (the

"**Receivership Order**") applies for an order substantially in the form attached as Schedule "**A**" hereto:

1. Declaring that the time for service of this application (the "**Application**"), and the third report of the Receiver, dated January 8, 2014 (the "**Third Receiver's Report**") is abridged, that the Application is properly returnable on January 20, 2014, that service of the Application and the Third Receiver's Report on the Service List is good and sufficient and that no persons other than those on the Service List are entitled to service of the Third Receiver's Report, the Application or any order arising therefrom.
2. Approving the Receiver's final statement of receipts and disbursements as described in paragraphs 17-18 of the Third Receiver's Report (the "**Final Statement of Receipts and Disbursements**").
3. Approving the interim and final accounts of the Receiver and its legal counsel, as summarized in paragraphs 20-21 of the Third Receiver's Report.
4. Approving and ordering the Receiver to make the final distribution of the Receiver in accordance with paragraphs 22-24 and Appendix "A" to the Third Receiver's Report (the "**Final Distribution**").
5. Authorizing and empowering the Receiver to destroy any and all any documents, accounting records and other papers, records and information related to the business or affairs of the Debtors if not collected by any of the current directors of the Debtors by February 14, 2014.
6. Declaring that, as of the date of the Third Receiver's Report and based on the evidence that is currently before the Court:
  - (a) the Receiver has acted honestly and in good faith, and has dealt with the Property (as defined herein and in the Receivership Order) in a commercially reasonable manner;
  - (b) the actions and conduct of the Receiver are approved and the Receiver has satisfied all of its duties and obligations as receiver and manager of the Property;

- (c) the Receiver shall not be liable for any act or omission including, without limitation, any act or omission pertaining to the discharge of the Receiver's duties as receiver and manager of the Property, save and except for any liability arising out of fraud or wilful misconduct on the part of the Receiver; and,
- (d) any and all claims against the Receiver arising from, relating to, or in connection with, the performance of the Receiver's duties and obligations as receiver and manager of the Property, save and except for claims based on fraud or wilful misconduct on the part of the Receiver, shall be forever barred and extinguished.

7. Ordering that, upon the Order sought by the Receiver on this Application being filed with this Honourable Court, the Receiver shall be discharged as receiver and manager of the Property and relieved of all further duties and obligations in respect of the Debtors and the Property.

8. Declaring that, notwithstanding the discharge of the Receiver, the Receiver remains empowered with residual jurisdiction to perform any act necessary or incidental to the conclusion of the receivership of the Debtors or the Property.

9. Declaring that no action or proceeding arising from, relating to, or in connection with, the performance of the Receiver's duties and obligations as receiver and manager of the Property may be commenced, or continued, without the prior leave of this Honourable Court, on notice to the Receiver, and on such terms as this Honourable Court may direct.

10. Such further and other relief as counsel may advise and as this Honourable Court may permit.

**Grounds for Making this Application:** The grounds for the Application are as follows:

11. The Receiver was appointed as receiver and manager of the Property pursuant to the Receivership Order.

12. In accordance with the Receivership Order, the Receiver conducted an appraisal of 121's beneficial interest (the "**Beneficial Interest**") in a condominium in Edmonton, Alberta and subsequently commenced to market the Beneficial Interest (the "**Realization Process**").

13. Pursuant to the Realization Process and the Receivership Order, the Receiver sold the Property of the Debtors (the "**Transaction**"), being the Beneficial Interest, to EMG Holdings Inc. (the "**Purchaser**"). The Transaction was approved, and the Beneficial Interest vested in the Purchaser, in accordance with the order issued by the Honourable Justice R.G. Stevens on November 15, 2013.

14. Pursuant to a claims process order issued by the Honourable Justice G.C. Hawco on October 4, 2013, the Receiver established a claims process in order to determine the various creditors and stakeholders of the Debtors and in order to properly administer and distribute the Property and/or any resulting proceeds.

15. The administration of the estate of the Debtors is complete and it is appropriate for distribution to creditors to be made and for the Receiver to be discharged on the terms set forth herein.

16. Such further and other grounds as counsel for the Receiver may advise.

**Material or Evidence to be Relied On:** The Receiver will rely on the following:

17. The Third Receiver's Report.

18. Such further and other material and evidence as counsel for the Receiver may advise.

**Applicable Rules:**

19. Rule 6.3 and 6.9 of the *Alberta Rules Of Court*, Alta. Reg. 124/2010.

20. Such further and other rules as counsel for the Receiver may advise.

**Applicable Acts and regulations:**

21. The *Bankruptcy and Insolvency Act* (Canada).

22. Such further and other acts and regulations as counsel for the Receiver may advise.

**Any irregularity complained of or objection relied on:**

23. There are no irregularities complained of or objections relied on.

**How the application is proposed to be heard or considered:**

24. The Receiver proposes that the Application be heard in person with one, some or all of the parties present.

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

**SCHEDULE "A"**

Clerk's Stamp

|                                                                                          |                                                                                                                                                                                                                                                                                                                                                              |
|------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT FILE NUMBER                                                                        | 1301-08518                                                                                                                                                                                                                                                                                                                                                   |
| COURT                                                                                    | COURT OF QUEEN'S BENCH OF ALBERTA                                                                                                                                                                                                                                                                                                                            |
| JUDICIAL CENTRE                                                                          | CALGARY                                                                                                                                                                                                                                                                                                                                                      |
| APPLICANT(S)                                                                             | ERNST & YOUNG INC. IN ITS CAPACITY AS<br>COURT APPOINTED MONITOR OF 1252064<br>ALBERTA LTD., AND NOT IN ITS PERSONAL OR<br>CORPORATE CAPACITY                                                                                                                                                                                                                |
| RESPONDENT(S)                                                                            | BENCHMARK CAPITAL CORPORATION AND<br>1211951 ALBERTA INC.                                                                                                                                                                                                                                                                                                    |
| DOCUMENT                                                                                 | <b>ORDER DISCHARGING RECEIVER</b>                                                                                                                                                                                                                                                                                                                            |
| ADDRESS FOR<br>SERVICE AND<br>CONTACT<br>INFORMATION OF<br>PARTY FILING THIS<br>DOCUMENT | McCARTHY TÉTRAULT LLP<br>Barristers & Solicitors<br>Sean F. Collins / Pantelis Kyriakakis<br>Suite 3300, 421 – 7th Avenue SW<br>Calgary, AB T2P 4K9<br>Phone: 403-260-3531/403-260-3536<br>Fax: 403-260-3501<br>Email: <a href="mailto:scollins@mccarthy.ca">scollins@mccarthy.ca</a> / <a href="mailto:pkiriakakis@mccarthy.ca">pkiriakakis@mccarthy.ca</a> |

|                                                      |                  |
|------------------------------------------------------|------------------|
| <b>DATE ON WHICH ORDER WAS PRONOUNCED:</b>           | January 20, 2014 |
| <b>JUDICIAL DISTRICT WHERE ORDER WAS PRONOUNCED:</b> | Calgary, Alberta |
| <b>NAME OF JUDGE WHO MADE THIS ORDER:</b>            | Justice Strekaf  |

**ORDER**

**UPON** the application of the Receiver in its capacity as receiver and manager of the Property of the Debtors pursuant to the Receivership Order; **AND UPON** reading the Third Receiver's Report; **AND UPON** reading the Affidavit of Service of ●, sworn ●, 2014 (the "**Affidavit of Service**"); **AND UPON** hearing from counsel for the Receiver and counsel for any other persons present;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

1. All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the corresponding application filed in the within proceedings on January 9, 2014 (the "**Application**").
2. The time for service of the Application and the Third Receiver's Report is abridged, the Application is properly returnable today, service of the Application and the Third Receiver's Report on the Service List, in the manner described in the Affidavit of Service, is good and sufficient and no other persons are entitled to service of the Third Receiver's Report or the Application.
3. The Receiver's Final Statement of Receipts and Disbursements, as outlined in paragraphs 17-18 of the Third Receiver's Report, be and is hereby approved.
4. The interim and final accounts of the Receiver and its legal counsel, as summarized in paragraphs 20-21 of the Third Receiver's Report, be and is hereby approved.
5. The Receiver's Final Distribution, as set out in paragraphs 22-24 and attached as Appendix "A" to the Third Receiver's Report, be and is hereby approved, and the Receiver is expressly authorized and empowered to distribute the funds as set out in the Third Receivers Report.
6. The Receiver is authorized and empowered to destroy any and all any documents, accounting records and other papers, records and information related to the business or affairs of the Debtors if not collected by any of the current directors of the Debtors by February 14, 2014.
7. As of the date of the Third Receiver's Report and based on the evidence that is currently before this Honourable Court:
  - (a) the Receiver has acted honestly and in good faith, and has dealt with the Property in a commercially reasonable manner;
  - (b) the actions and conduct of the Receiver are approved and the Receiver has satisfied all of its duties and obligations as receiver and manager of the Property;
  - (c) the Receiver shall not be liable for any act or omission including, without limitation, any act or omission pertaining to the discharge of the Receiver's duties as receiver and manager of the Property, save and except for any liability arising out of fraud or wilful misconduct on the part of the Receiver; and,

- (d) any and all claims against the Receiver arising from, relating to, or in connection with, the performance of the Receiver's duties and obligations as receiver and manager of the Property, save and except for claims based on fraud or wilful misconduct on the part of the Receiver, shall be forever barred and extinguished.

8. Upon the filing of this Order, the Receiver shall be discharged as receiver and manager of the Property and relieved of all further duties and obligations with respect to the Debtors and the Property.

9. Notwithstanding the discharge of the Receiver in accordance with this Order, the Receiver remains empowered to perform any act necessary or incidental to the conclusion of the receivership of the Debtors or the Property.

10. No action or proceeding arising from, relating to, or in connection with, the performance of the Receiver's duties and obligations as receiver and manager of the Property may be commenced or continued without the prior leave of this Honourable Court, on notice to the Receiver, and on such terms as this Honourable Court may direct.

11. Service of this Order on the persons listed on the service list shall be by any of email, facsimile, courier, registered mail, regular mail, or personal delivery, and no persons other than those on the service list are entitled to be served with a copy of this Order.

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**J.C.Q.B.A.**