

COURT FILE NUMBER 1201-06934

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 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 APPLICATION

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

McCARTHY TÉTRAULT LLP
Barristers & Solicitors
Sean Collins / Walker MacLeod
Suite 3300, 421 - 7 Avenue S.W.
Calgary, AB T2P 4K9
Phone: 403-260-3531/ 403-260-3710
Fax: 403-260-3501
Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca

NOTICE TO RESPONDENT(S)

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

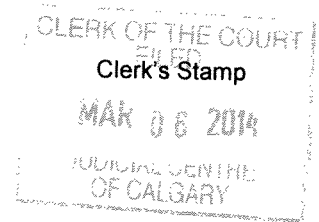
You have the right to state your side of this matter before the master/judge.

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

Date: March 13, 2014
Time: 2:00 pm
Where: Calgary Courts Center (Commercial List)
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"), in its capacity as court appointed receiver and manager of 1252064 Alberta Ltd., 1330075 Alberta Ltd. and Harvest Capital Management Inc. (collectively, the "Debtors") pursuant to the order issued by Justice G.



C. Hawco in the within proceedings on September 30, 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 and the third report of the Receiver, dated March 5, 2014 (the "**Third Receiver's Report**"), is abridged, if necessary, the Application is properly returnable today, that service of the Application and the Third Receiver's Report on the service list is validated, good and sufficient and that no persons other than those on the service list are entitled to service of the Third Receiver's Report or the Application.
2. Approving and declaring that the charges granted in the Receivership Order as against the property, assets and undertakings of the Debtors (collectively, the "**Charges**") rank in priority to any claim advanced or alleged by Legacy Communities Inc. ("**Legacy**") to the property, assets and undertakings of the Debtors.
3. Such further and other grounds as counsel for the Receiver may advise.

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

4. The Receiver was appointed as receiver and manager of the Debtors pursuant to the Receivership Order.
5. 1252064 Alberta Ltd. ("**125 Alberta**") advanced approximately USD \$5.228 million to a third party in respect of a real estate joint venture in Panama (the "**Panama Investment**"). The Receiver has taken preliminary steps in Panama to seek recognition of the Receivership Order and effect recoveries on the Panama Investment for the benefit of 125 Alberta and its creditors.
6. Legacy is a significant creditor of 1252064 Alberta. Legacy advanced approximately USD \$4.664 million of the total of USD \$5.228 million used by 125 Alberta in respect of the Panama Investment to 125 Alberta. On previous occasions Legacy has disputed the priority of the Charges as established in the Receivership Order.
7. The Receiver is unwilling to initiate further proceedings in Panama and incur obligations to third parties without the assurance that it will have sufficient funding to meet such obligations through the priority of the Charges. The Receiver has sought such confirmation from Legacy and Legacy has refused or neglected to provide such confirmation.
8. 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 evidence:

9. The Third Receiver's Report.
10. Such further and other evidence as counsel for the Receiver may advise.

Applicable Rules:

11. Rule 6.3(1) and 6.9 of the *Alberta Rules of Court*.
12. Such further and other rules as counsel for the Receiver may advise.

Applicable Acts and Regulations:

13. The *Companies' Creditors Arrangement Act* (Canada).
14. Such further and other acts and regulations as counsel for the Receiver may advise.

Any Irregularity Complained of or Objection Relied On:

15. There are no irregularities complained of, or objections relied on.

How the Application is Proposed to be Heard or Considered:

16. 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 applicants.

SCHEDULE "A"

Clerk's Stamp

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DOCUMENT ORDER

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

McCARTHY TÉTRAULT LLP
Barristers & Solicitors
Sean Collins / Walker W. MacLeod
Suite 3300, 421 - 7th Avenue S.W.
Calgary AB T2P 4K9
Phone: 403-260-3531/ 403-260-3710
Fax: 403-260-3501
Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED: **March 13, 2014**

LOCATION OF HEARING OR TRIAL: **Calgary, Alberta**

NAME OF MASTER/JUDGE WHO MADE THIS ORDER: **Justice J. Strekaf**

UPON THE APPLICATION of Ernst & Young Inc. (the "**Receiver**"), in its capacity as court appointed receiver and manager of 1252064 Alberta Ltd., 1330075 Alberta Ltd. and Harvest Capital Management Inc. (collectively, the "**Debtors**") pursuant to the order issued by Mr. Justice G. C. Hawco in the within proceedings on September 30, 2013 (the "**Receivership Order**"); **AND UPON** having read the third report of the Receiver, dated March 5, 2014 (the "**Third Receiver's Report**"); **AND UPON** having read the Affidavit of Service of ●, sworn March ●, 2014 (the "**Service Affidavit**"); **AND UPON** hearing counsel for the Receiver, and counsel present for other parties;

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 Receivership Order.
2. The time for service of the corresponding 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 Service Affidavit is validated, good and sufficient and no other persons are entitled to service of the Third Receiver's Report or the Application.
3. Each of the Receiver's Charge and the Receiver's Borrowing Charge constitute a first charge on the Property and rank in priority to any security interests, trusts, liens, charges and encumbrances, statutory or otherwise, advanced or alleged by Legacy Communities Inc. ("**Legacy**") to the Property. For greater certainty, the Receiver's Charge and the Receiver's Borrowing Charge shall stand and rank in priority to any trust or tracing argument to the Property that is advanced or alleged by Legacy.
4. Nothing herein shall alter or affect any term of the Receivership Order including, without limitation:
 - (a) The priority of the Receiver's Charge and the Receiver's Borrowing Charge in respect of the claim of any other Person;
 - (b) The right of the Receiver and its counsel to pass their accounts from time to time or apply reasonable amounts, out of the monies in its hands, against its fees and disbursements and the fees and disbursements of its counsel; and
 - (c) The right of Legacy or any other Person to seek an allocation in respect of the Receiver's Charge or the Receiver's Borrowing Charge.
5. Service of this Order by email, facsimile, registered mail, courier or personal delivery to the persons listed on the service list shall constitute good and sufficient service of this Order, and no persons other than those listed on the service list are entitled to be served with a copy of this Order.

J.C.Q.B.A.