

**COURT OF QUEEN'S BENCH
OF ALBERTA**

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
PARAGON CANADA ALEXIS, ULC; ALEXIS/PARAGON LIMITED PARTNERSHIP;
PARAGON TAMARACK ALEXIS GENERAL PARTNERSHIP and PARAGON ALEXIS
HOLDINGS, INC.**

AFFIDAVIT OF TIMOTHY LAVELLE

(sworn January 6, 2014)

I, Timothy Lavelle, of the City of Louisville, in the State of Kentucky, MAKE OATH AND SAY:

I. INTRODUCTION

1. I am an employee of Silver Point Capital, L.P., which is the managing member of Silver Point Finance, LLC. Silver Point Finance, LLC and SPCP Group, LLC are referred to collectively herein as "**Silver Point**". I am authorized by Silver Point to swear this affidavit.

2. I have the primary responsibility for overseeing the administration of the first-ranking secured loan made by Silver Point to Paragon Canada Alexis, ULC ("**PCA**" or the "**Borrower**") and guaranteed by Alexis/Paragon Limited Partnership ("**APLP**"), Paragon Alexis Holdings, Inc. ("**PAHI**") and Paragon Tamarack Alexis General Partnership ("**PTA**") (collectively, the "**Guarantors**") pursuant to a Credit Agreement originally dated September 11, 2007 and amended and restated on October 30, 2009 (the "**Credit Agreement**"). As such, I have knowledge of the matters herein, except where stated to be on information and belief, in which case I have stated the

source of my information and believe such information to be true. The Borrower and the Guarantors are referred to herein collectively as the “**Debtors**”.

II. OVERVIEW

3. As of December 31, 2013, the Debtors jointly and severally owe Silver Point \$81,607,424.59, inclusive of principal and interest but exclusive of legal expenses and other fees, costs and charges. Such amounts are owed in respect of a credit facility that Silver Point made available to the Borrower pursuant to the Credit Agreement (the “**Credit Facility**”). The Debtors used the proceeds of the Credit Facility to fund the development of the Eagle River Casino and Travel Plaza (the “**Eagle River Project**”), which is located on the reserve lands of the Alexis Nakota Sioux Nation (the “**Nation**”) northwest of the town of Whitecourt, Alberta. The Eagle River Project is owned and operated jointly by the Debtors and entities owned and controlled by the Nation (the “**Alexis Entities**”). The amounts owing by the Debtors in respect of the Credit Facility are referred to herein collectively as the “**Indebtedness**”.

4. The Credit Facility matured and the Indebtedness became due and payable on September 12, 2012. The Indebtedness remains overdue and unpaid over fifteen months after its maturity, and interest continues to accrue on the Indebtedness.

5. Silver Point holds a first-ranking security interest in all of the property and assets of each of PCA, APLP and PTA (collectively, the “**Property**”) as security for the obligations of those entities to repay the Indebtedness. Silver Point also holds a first-ranking security interest in the shares of PCA owned by PAHI as security for PAHI’s obligation to repay the Indebtedness. The details of these security arrangements are described more fully below.

6. Despite the substantial amounts that remain overdue and unpaid, Silver Point has been patient with the Debtors and has given the Debtors ample opportunity to repay, restructure or refinance the Indebtedness. Silver Point engaged in good faith discussions with the Debtors and their representatives at various times, both before and after the maturity of the Credit Facility, regarding the repayment, refinancing or restructuring of the Indebtedness. Ultimately, the Debtors have not been able to refinance or restructure the Indebtedness, and the Indebtedness remains unpaid.

7. It is now apparent that, even in the most optimistic circumstances, the Debtors will not be able to repay the Indebtedness and Silver Point will suffer a very substantial shortfall on the amounts owed to it. Silver Point therefore holds the residual economic interest in the Property.

8. On December 19, 2013, the Debtors declared themselves to be insolvent and filed Notices of Intention (“**NOIs**”) to make a proposal under the *Bankruptcy and Insolvency Act* (Canada), R.S.C., 1985, c. B-3, as amended (the “**BIA**”). These actions were taken unilaterally, without the support of Silver Point, the Alexis Entities or the Nation. The NOIs were filed by the Debtors despite express warnings from Silver Point and its counsel that such actions could have serious adverse consequences for the Debtors’ business and stakeholders and the Eagle River Project generally.

9. As described in further detail below, the NOIs appear to have been filed after the agreed deadline that needed to be met to stay Silver Point’s rights as a secured creditor. The Debtors nevertheless take the position that Silver Point’s rights are stayed for a period of thirty days from the date the of NOIs (the “**NOI Period**”) as if the NOIs had been filed prior to the deadline.

10. The filing of the NOIs has put the business in serious jeopardy. I am advised by the Alexis Entities that the Alberta Gaming and Liquor Commission (the “**AGLC**”), which is the primary

governmental regulator in respect of the Eagle River Project, expressed serious concerns about the licenses needed to operate the business even before the filing of the NOIs, and that those licenses are at risk of being revoked or cancelled at any time as a result of the insolvency of the Debtors. In addition, the AGLC has only extended the Borrower's license to supply gaming workers to the Eagle River First Nations Casino until January 20, 2014 (the business operations of the First Nations Casino are referred to herein as the "**Casino**"). If that license is not renewed, the Borrower will be unable to continue managing the Casino as part of the business. These factors create very serious risks that the operations of the Eagle River Project will be interrupted or discontinued and that there will be a further erosion in the value of the business.

11. There is no possibility of a viable bankruptcy proposal in the circumstances. Silver Point is by far the largest creditor of the Debtors and is, to my knowledge, the only material secured creditor. No bankruptcy proposal can be completed without the support of Silver Point. At this stage, Silver Point has lost all confidence in the Debtors, both in terms of their ability to reverse the fortunes of the business and in their willingness to act with a view to the best interests of the business. The Debtors have had over fifteen months since the maturity of the Indebtedness to put forward a reasonable proposal and have not done so. In the circumstances, and given the risks noted above, the Debtors are not in a position to put forward a proposal that would be supported by Silver Point.

12. In addition, as further described below, the Debtors' operating entity, APLP, will not be able to enter into a proposal with its creditors as a result of its inability to achieve the consent of its limited partner, Alexis Trustee Corp. ("**ATC**"), in the circumstances. Consequently, APLP cannot put forward a viable proposal.

13. The Debtors have filed the NOIs without the support of the Alexis Entities, the Nation or Silver Point, which has the remaining economic interest in the Debtors' business, and they have put the business at serious risk even though they cannot put forward a viable bankruptcy proposal. There could be only one purpose for the Debtors to conduct themselves in this manner, which is to create negotiating leverage to enable their out-of-the-money controlling shareholders, Paragon Gaming Inc. ("**Paragon Gaming**") and Tamarack Fund Alexis Limited Partnership ("**Tamarack Fund**"), to obtain value that they are not entitled to receive given the Debtors' payment priorities. This is despite the fact that the Debtors are manifestly and admittedly insolvent, Silver Point will suffer a substantial loss as the first-ranking secured creditor, and Paragon Gaming and Tamarack Fund no longer have any remaining economic interest in the Debtors.

14. At this time, Silver Point believes it has no viable path forward other than to pursue the enforcement of its rights under the Credit Agreement and the related guarantees and security. To this end, Silver Point is requesting that this Honourable Court terminate the NOI Period and appoint Alvarez & Marsal Canada ULC ("**Alvarez & Marsal**") as the court-appointed receiver and manager of PCA, APLP and PTA (the "**Receiver**") to take possession and control of the Property and to carry-on the business operations of PCA, APLP and PTA (the "**Business**") on a going concern basis pending completion of a sale of the Property and the Business.

15. Silver Point believes that the appointment of the Receiver is necessary and appropriate at this time for a number of reasons, which are discussed more fully below, and which include the following:

- (a) the Debtors owe Silver Point approximately \$82 million, which matured on September 12, 2012 and which remains unpaid over fifteen months after maturity;
- (b) interest on the Indebtedness continues to accrue at levels that cannot be sustained by the Business (approximately \$1,214,000 per month);

- (c) Silver Point has given the Debtors ample opportunity to refinance, restructure or repay the Indebtedness, but the Debtors have not been able to achieve a restructuring or refinancing of the Credit Facility and the Indebtedness remains unpaid;
- (d) the Debtors are definitively insolvent, as evidenced by the filing of the NOIs;
- (e) there is no reasonable prospect that the Debtors will be able to generate sufficient cash flow from their operations to repay the Indebtedness; in fact, the cash flow budget filed by the Debtors (which has not been reviewed for reasonableness or confirmed by Silver Point) shows that the operations of the Debtors are cash flow negative, even without making required interest payments on the Credit Facility;
- (f) the aggregate value of the Property and the Business is not sufficient to repay the very large, and growing, amount of the Indebtedness, and Silver Point expects to suffer a significant shortfall on the amounts owed to it;
- (g) the Debtors granted Silver Point a first-ranking security interest in all of the Property to secure the Debtors' obligations to repay the Indebtedness;
- (h) the security agreements granted by the Debtors in favour of Silver Point expressly provide for the appointment of a receiver in circumstances such as these;
- (i) Silver Point is by far the largest creditor of each of the Debtors and is, to my knowledge, the only material creditor with an economic interest in the Debtors;
- (j) Silver Point is concerned that the Debtors are not acting in the best interests of the Business or the stakeholders with an economic interest in the Business;
- (k) Silver Point has lost confidence in the Debtors;
- (l) the Debtors cannot put forward a viable proposal in the circumstances;
- (m) the Business is in serious jeopardy and any further delay in the realization of the Property could significantly erode the value of the Property even further, including as a result of the possible revocation of licenses needed to operate the Business due to the Debtors' insolvency and their limited and deteriorating available cash;
- (n) time is of the essence to preserve the Business for Silver Point and other stakeholders who benefit from its continued operation; and
- (o) there are a number of complicating factors that necessitate the appointment of a Court officer with the attendant oversight, authority, protection and transparency of a Court-supervised process, including the regulatory requirements affecting the

operation of the Eagle River Project and the fact that the Business is located on First Nations reserve lands.

16. I believe that the value of the Property and the Business will be maximized if the Property and the Business are sold as a going concern enterprise. I believe that the appointment of the Receiver at this time provides the best opportunity to maintain the Business as a going concern enterprise and to achieve an expeditious going concern sale of the Property and the Business. A going concern sale would benefit not only Silver Point, but also other stakeholders who depend on the ongoing operation of the Business, including employees, members of the Nation and residents of the broader Whitecourt community.

17. For reasons described more fully below, the support of the Nation and the Alexis Entities is crucial to the continued operation of the Business and the sale of the Business on a going concern basis. In particular, the Property and the Business form an integral part of the overall Eagle River Project and cannot be separated from the Eagle River Project. The Eagle River Project is located on a portion of the reserve lands of the Nation and includes the Casino, which is a designated First Nations Casino that is owned by certain Alexis Entities and managed by the Borrower as part of the Business. Pursuant to applicable government regulations, only entities wholly owned and controlled by the Nation are permitted to hold the Provincially-issued licenses required to own and operate the Casino. Due to the highly integrated nature of the Eagle River Project, its financial prospects rise and fall as one commercial enterprise despite the division in ownership between the Debtors' Business and the Casino. For these reasons, any going concern sale or restructuring of the Business will require the full support, approval and involvement of the Nation and the Alexis Entities.

18. I am advised by representatives of the Alexis Entities that they also believe the termination of the NOI Period and the commencement of a Court-supervised receivership at this time is in the best interests of the Eagle River Project.

19. The Alexis Entities have made it clear to Silver Point that they will not support the sale of the Business to a third party without their prior consent. In the circumstances, Silver Point believes that a going concern sale of the Business to the Alexis Entities in a Court-supervised receivership process represents the best available alternative for stakeholders with a remaining interest in the Business.

20. Silver Point has reached agreement with the Alexis Entities on the general terms of a proposed transaction pursuant to which the Alexis Entities (or a related entity) would acquire the Business and the Property on a going concern basis. The general terms of the proposed transaction are described more fully below. I understand from Alvarez & Marsal that, if it is appointed as Receiver, it expects to be in a position to consider and, if it deems it appropriate, seek Court approval of the proposed transaction within a short time frame.

21. In light of the foregoing, Silver Point believes that the immediate appointment of the Receiver is necessary and appropriate to maintain stability, preserve value, facilitate the ongoing operation of the Eagle River Project and, if approved by this Honourable Court on a subsequent motion, to carry out a going concern sale of the Business to the Alexis Entities as expeditiously as possible. The alternative is to allow the Business to languish under the spectre of bankruptcy and risk further diminution in value in circumstances where the Debtors cannot put forward a viable proposal, just so that parties with no remaining economic interest can attempt to obtain value for themselves at the expense of other stakeholders.

III. THE EAGLE RIVER PROJECT AND THE BUSINESS

22. The Eagle River Project is located on the reserve lands of the Nation at the intersection of Highway 43 and Highway 32, northwest of the town of Whitecourt, Alberta. Based on my prior knowledge of the Eagle River Project, a review of the information available on the website of the Business and information provided by representatives of ATC, I am aware that the Eagle River Project consists of the following major components:

- (a) a restaurant and lounge operated as Timbers Bar & Grill;
- (b) a full service travel centre which includes a convenience store and a gas bar with gasoline and diesel fuel islands;
- (c) a conference facility, including the Whistling Eagle Conference Room and surrounding lobby, which is used for business conferences, company meetings, and other events;
- (d) the Casino, which features 250 slot machines, table games such as blackjack, poker and roulette, and off-track betting;
- (e) a hotel pad, which is an area that has been prepared for the possible construction of a hotel on the Eagle River Project site; and
- (f) a waste water lagoon and treatment facility.

23. In general terms, the Property and the Business of PCA, APLP and PTA consist of all elements of the Eagle River Project other than the rights to own the Casino. Those rights are held by Alexis Casino Limited Partnership (“**ACLP**”) and the Northern Isga Foundation (“**the Isga Foundation**”) (which are entities wholly owned and controlled by the Nation) pursuant to a casino facility license (the “**Casino Facility License**”) and a casino license (the “**Casino License**”), respectively, issued by the AGLC. The Borrower, PCA, manages the Casino on a day-to-day basis as part of the Business pursuant to a Casino Management Agreement dated September 2, 2003 (the

“Casino Management Agreement”). As noted above, the Business and the Casino are integrally tied together into one commercial enterprise.

24. Based on information provided by representatives of the Alexis Entities, I am aware that the Eagle River Project employs approximately 81 individuals, many of whom are members of the Nation or are from the broader Whitecourt community.

25. For the year ended December 31, 2012, the latest period for which full year financial information is available, PCA and APLP reported combined revenues of \$10,556,844 in respect of the operation of the Business and suffered a net loss of \$12,190,525. However, as described below, the Nation is eligible to receive government grants from the First Nations Development Fund (**“FNDF”**) provided by the Government of Alberta, which amounts may be applied to certain portions of the Business’ expenses, subject to certain restrictions. Even with the application of \$5,809,732 in FNDF funding, the Business reported a loss of \$6,380,793 for the year ended December 31, 2012.

26. The financial performance of the Business has not improved in 2013. For the nine-month period ending September 30, 2013, the Business reported a net loss of approximately \$9 million (without factoring in FNDF grants) or approximately \$5 million (including the application of FNDF grants).

27. A copy of the first page of the financial reports of the Business for the periods ended December 31, 2012 and September 30, 2013 are attached hereto and marked as Exhibits “A” and “B”, respectively, with the balance of the statements to be provided at the direction of the Court.

28. I am informed by Tim Reid, a Senior Vice President of Alvarez & Marsal, and do verily believe that, if appointed as Receiver, Alvarez & Marsal intends to provide its views on the range of

values that could reasonably be achieved from the sale of the Property and the Business in the circumstances. Based on my own investigations of the Eagle River Project and its financial situation on behalf of Silver Point, and having regard to the fact that the Alexis Entities must support any sale to a third party (as the ultimate holders and beneficiaries of the Casino Facility License and Casino License), I believe that the overall value of the Property and Business is significantly less than the amounts owed to Silver Point in respect of the Indebtedness.

IV. CORPORATE STRUCTURE

29. A corporate organizational chart of the various corporate entities with an interest in the Eagle River Project is attached hereto and marked as Exhibit “C”. Summaries of corporate searches performed in respect of each of the Debtors are attached hereto and marked as Exhibit “D”. My knowledge of the corporate structure of the Eagle River Project, as outlined in this section of the affidavit, is based on my review of certain relevant credit and security documents entered into in connection with the Credit Agreement as well as information provided to me by Silver Point’s counsel, Goodmans LLP, based on their review of such documents and corporate searches performed by them.

30. Both Silver Point Finance, LLC and SPCP Group, LLC are Delaware limited liability companies and have their principal place of business in Greenwich, Connecticut. Silver Point is the first-ranking secured lender and has no equity or other ownership interest in the Eagle River Project.

31. The other entities shown on the corporate organizational chart, other than APLP and Silver Point, can be classified into the Alexis Entities and the **“Paragon/Tamarack Entities”**. The Alexis Entities consist of entities wholly owned, directly or indirectly, by the Nation, including ATC, Alexis Casino Corp. (**“ACC”**), ACLP, Alexis Land Management Corp. (**“ALMC”**), and the Isga

Foundation (which does not appear on the organizational chart). The Paragon/Tamarack Entities consist of Paragon Gaming and Tamarack Fund, and entities owned by them, including PAHI, PTA and PCA. Paragon Gaming, Tamarack Fund and the Nation are, indirectly, the original equity sponsors of the Eagle River Project.

32. APLP is the primary operating entity for the non-gaming portions of the Business. APLP, is jointly owned by certain of the Paragon Entities and certain of the Alexis Entities. APLP is a limited partnership pursuant to the *Partnership Act* (Alberta). The Borrower, PCA, is the general partner of APLP, and acts as agent for a 40% interest in APLP beneficially owned by PTA. The limited partner of APLP is ATC, which has a 60% beneficial interest in APLP.

(a) The Paragon Entities

33. Paragon Gaming is a corporation incorporated pursuant to the laws of Nevada. PAHI is a corporation incorporated pursuant to the laws of Nevada and is a wholly-owned subsidiary of Paragon Gaming. PCA is an unlimited liability corporation incorporated in the Province of Nova Scotia and is a wholly-owned subsidiary of PAHI. Tamarack Fund is a limited partnership pursuant to the *Partnership Act* (Alberta). PTA is a partnership pursuant to the *Partnership Act* (Alberta). PCA has a 72.5% beneficial interest in PTA and the remaining 27.5% beneficial interest in PTA is held by Tamarack Fund.

(b) The Alexis Entities

34. Each of ACC, ALMC and ATC is a corporation incorporated pursuant to the laws of Alberta and is wholly owned by the Nation. As noted above, ATC holds the Nation's interest in APLP.

35. The Nation is the holder of 100% of the equity in the Isga Foundation. I am advised by representatives of the Alexis Entities that the Isga Foundation is a charitable foundation administered by the Nation for the benefit of the members of the Nation.

36. ACLP is a limited partnership pursuant to the *Partnership Act* (Alberta). The general partner of ACLP is ACC, which holds a 1% interest in the units of ACLP. The limited partner of ACLP is ATC, which holds a 99% interest in the units of ACLP.

(c) Contractual Arrangements Governing the Eagle River Project

37. Pursuant to a Crown Land Lease with Her Majesty the Queen in Right of Canada (the “**Crown Lease**”), ALMC is the lessee of certain lands located on the reserve lands of the Nation (the “**Project Lands**”). ALMC has, in turn, sub-leased the Project Lands to APLP pursuant to a Project Sublease dated October 11, 2006. The Eagle River Project is situated on the Project Lands.

38. The Isga Foundation holds the Casino License issued by the AGLC, which permits the operation of the Casino as a component of the Eagle River Project. ACLP holds the Casino Facility License issued by the AGLC, which permits ACLP to operate a casino gaming facility on First Nations reserve land in the Province of Alberta. ACLP and APLP have entered into a facility sublease (the “**Casino Facility Sublease**”) pursuant to which ACLP sub-leases from APLP the space needed for the Casino.

39. ACLP and PCA are parties to the Casino Management Agreement, pursuant to which PCA operates the Casino and all support facilities relating to the gaming carried on in the Casino, for and on behalf of ACLP.

40. As noted above, PCA is the Borrower, and APLP, PTA, and PAHI are Guarantors in respect of the Indebtedness. In addition, ALMC is a limited recourse guarantor, with recourse limited to its interest in the premises subject to the Crown Lease.

V. INVOLVEMENT OF THE NATION AND THE ALEXIS ENTITIES IN THE EAGLE RIVER PROJECT

41. The involvement and support of the Nation was essential to the creation of the Eagle River Project and is essential to its continued existence. As noted above, the Eagle River Project is located on the Whitecourt reserve lands of the Nation and, more particularly, on the Project Lands leased by the Nation pursuant to the Crown Land Lease. I am informed by representatives of the Alexis Entities and do verily believe that the Nation originally conceived of the Eagle River Project as a means to improve the employment opportunities and economic support to the approximately 1700 members of the Nation.

42. The Casino, which is operated by the Borrower pursuant to the Casino Management Agreement with ACLP, is a “First Nations Casino” pursuant to the casino terms and conditions of the AGLC and the Alberta First Nations Gaming Policy (the “**Policy**”). I am advised by Silver Point’s counsel, Witten LLP, and do verily believe, that under the Policy, licensed First Nations Casinos must be situated on First Nations reserve lands and each of the Casino Facility License and the Casino License must be held by an entity wholly owned and controlled by the host First Nation. As a result of these regulations, the Casino, which is an integral part of the Eagle River Project, must be situated on the Nation’s reserve lands, and an entity solely controlled by the Nation must be the holder of the Casino Facility License and the Casino License. Without an entity controlled by the Nation holding the Casino Facility License and the Casino License, the Casino cannot operate. Presently, ACLP and the Isga Foundation, both of which are Alexis Entities and are wholly

controlled by the Nation, are the holders of the Casino Facility License and Casino License, respectively. ACLP outsources the management of the Casino to the Borrower pursuant to the Casino Management Agreement. I am advised by representatives of the Alexis Entities and do verily believe that the Isga Foundation employs all of the charity workers at the Casino, including the bankers, cashiers, chip-runners and count room supervisors.

43. I understand from Silver Point's counsel, Witten LLP, and do verily believe that revenues derived from slot machines, table games, and off-track betting at the Casino provide funding to a variety of First Nations and government programs, pursuant to a formula prescribed by the AGLC, in the following manner:

- (a) ACLP receives 15% of net slot revenue, 75% of table games revenue and 4% of off-track betting revenue;
- (b) the Isga Foundation receives 15% of net slot revenue and 25% of table games revenue, which are used to fund community programs on the Nation's reserve, including housing and other social programs and services;
- (c) the AGLC retains 30% of net slot revenue, which the AGLC uses for business operations and distributions to the Alberta Lottery Fund;
- (d) the AGLC collects and remits 40% of net slot revenue to the First Nation Development Fund Grant Program, which is managed by Alberta Aboriginal Relations and is used for economic, social and community development projects, including addiction programs, education, health and infrastructure on the following basis:
 - (i) 75% of the FNDF proceeds which are generated at the Casino are reserved for the sole and exclusive use of the Nation; and
 - (ii) 25% of the FNDF proceeds which are generated at the Casino are placed in a pool of funds for the sole and exclusive use of the 42 Alberta First Nations which do not have casinos.

44. The Eagle River Project relies on the receipt and application by the Nation of FNDF grants from the Government of Alberta to fund certain permitted non-gaming aspects of the Eagle River

Project. The Nation receives FNDF funding on a quarterly basis and those proceeds are to be used in connection with the non-gaming portions of the Eagle River Project. In fiscal year 2012, the Nation received approximately \$5.8 million in FNDF funding. The Business and the Eagle River Project generally would not be able to continue in operation without the benefit of the FNDF grants being applied to the non-gaming portions of the Eagle River Project.

45. In addition, as noted above, ATC, which is wholly owned and controlled by the Nation, is the limited partner of the operating entity of the Business, APLP. Although PCA, which is the general partner, is responsible for the general management and operations of APLP, certain decisions and actions by APLP can only be taken with the consent of ATC. In particular, pursuant to APLP's governing limited partnership agreement, certain actions of APLP must be authorized by a Special Resolution, which requires 66-2/3 % of the unit holders of APLP to vote in favour of such actions. ATC is the holder of 60% of the units in APLP, meaning its consent is required for a Special Resolution to pass. A Special Resolution is required to authorize APLP to agree to a compromise or arrangement with its creditors or the equity holders of the general partner. This means that no restructuring of APLP can take place without the consent of ATC.

46. For all of the foregoing reasons, the Eagle River Project, and therefore the Business of the Debtors, is integrally connected to and dependent upon the Nation and the Alexis Entities. The Business and the Eagle River Project cannot be practicably or profitably separated from the Alexis Entities, and the continued existence of the Business is dependent upon the ongoing support and involvement of the Nation and the Alexis Entities. Accordingly, any sale or restructuring of the Property and the Business as a going concern requires the full support and cooperation of the Nation and Alexis Entities.

VI. THE CREDIT FACILITY

47. My knowledge of the Credit Agreement, guarantees, security documents and other agreements referenced in this section of the affidavit is based on my review of certain of such documents as well as information provided to me by counsel to Silver Point, Goodmans LLP, based on their review of such documents.

(a) The Credit Agreement

48. Pursuant to the terms of the Credit Agreement, originally executed on September 11, 2007, Silver Point agreed to make loans available under the Credit Facility to PCA in an aggregate amount not to exceed \$45 million. PCA borrowed the full \$45 million. Interest on the Credit Facility is presently payable at a floating rate equal to Prime (with a 4% floor) plus 14.10% per annum. The Final Maturity Date of the Credit Facility was September 12, 2012.

49. The Credit Agreement was amended by the First Amendment to the Credit Agreement, dated November 16, 2007 and the Second Amendment to the Credit Agreement dated November 20, 2008. The impact of these amendments was to, among other things, amend the financial covenants in the Credit Agreement to allow the Debtors more flexibility with respect to the operation of the Business at the time. The Credit Agreement was subsequently amended and restated pursuant to an Amended and Restated Credit Agreement dated October 30, 2009. A copy of the Credit Agreement, as amended and restated, is attached hereto and marked as Exhibit "E".

(b) Guarantees in Respect of the Credit Facility

50. Pursuant to the Credit Agreement, each of APLP and PTA executed a Guaranty dated September 11, 2007, pursuant to which they absolutely, irrevocably and unconditionally guaranteed,

jointly and severally, to pay in full all obligations under the Credit Facility when due. A copy of the Guaranty is attached hereto and marked as Exhibit “F”.

51. The obligations under the Credit Agreement are also guaranteed by PAHI and ALMC, each of which executed a limited recourse guarantee of the obligations under the Credit Agreement dated September 11, 2007. Copies of such limited recourse guarantees are attached hereto and marked as Exhibit “G” and Exhibit “H”, respectively.

(c) Security in Respect of the Credit Facility

52. The Borrower and each of the Guarantors have granted a first-ranking security interest in favour of Silver Point to secure their obligations in respect of the Credit Facility (the “**Security**”). A summary of the documents and instruments constituting the Security (collectively, the “**Credit Documents**”) is attached hereto and marked as Exhibit “I”.

53. Pursuant to general security agreements dated September 11, 2007 (the “**General Security Agreements**”), each of PCA, PTA, and APLP have pledged to Silver Point, in its capacity as collateral agent under the Credit Agreement (in such a capacity, the “**Collateral Agent**”), a first-ranking security interest in all of the Property. Copies of each of the General Security Agreements are attached hereto and marked as Exhibits “J”, “K”, and “L”.

54. The General Security Agreements permit the Collateral Agent to appoint a receiver upon the occurrence, and during the continuation, of any Event of Default (as such term is defined in the Credit Agreement) and authorize the receiver to take possession of the Property and to sell or otherwise dispose of the Property.

55. APLP also executed a debenture in favour of the Collateral Agent dated September 11, 2007 (the “**APLP Debenture**”), pursuant to which the Collateral Agent was granted a first-ranking

security interest in all of APLP's right, title, estate, benefit and interest, both present and future, in and to the Charged Premises (as such term is defined in the APLP Debenture). Charged Premises include, among other things, all real and immovable property, both freehold and leasehold, of APLP; all fixtures, chattels, machinery, and equipment; amounts due to APLP pursuant to various contracts; all goodwill of APLP relating to the Eagle River Project; and the rights of APLP under various leases and subleases. A copy of the APLP Debenture is attached hereto and marked as Exhibit "M".

56. APLP also assigned to the Collateral Agent all of APLP's right, title, estate and interest in and to the Casino Facility Sublease. Under the terms of the agreement (the "**Specific Assignment of Casino Sublease**"), the Collateral Agent was granted, among other things, all right and title to all rents, issues and profits then due or which would become due under the Casino Facility Sublease. A copy of the Specific Assignment of Casino Sublease is attached hereto and marked as Exhibit "N".

57. The limited recourse guarantee granted by PAHI authorizes the Collateral Agent, upon the occurrence of any Event of Default (as such term is defined in the Credit Agreement) to realize on certain collateral (the "**Pledged Collateral**") pursuant to a pledge agreement dated September 11, 2007. The Pledged Collateral consists of all of the then-existing or after acquired shares, or rights to acquire such shares, of PCA owned by PAHI, as well as all dividends, income or distributions in respect of such shares. A copy of the pledge agreement is attached hereto and marked as Exhibit "O".

58. The limited recourse guarantee executed by ALMC and the debenture executed by ALMC in favour of the Collateral Agent provide that the recourse of the Collateral Agent against ALMC is limited to certain "Charged Premises" as such term is defined in the debenture.

59. In addition, as a condition to the parties executing the Credit Agreement, the Collateral Agent, the Borrower and APLP entered into a collateral assignment agreement dated September 11, 2007 (the “**Collateral Assignment Agreement**”). The Collateral Assignment Agreement gives the Collateral Agent the option, upon an Event of Default (as defined in the Credit Agreement), to exercise all rights, powers, authorities and directions of either the Borrower or APLP (in such capacity, the “**Project Company**”) in respect of the following agreements (each a “**Project Agreement**” and collectively, the “**Project Agreements**”):

- (a) the Casino Facility Sublease;
- (b) the Casino Management Agreement;
- (c) the cooperation agreement between the Nation, APLP, and ALMC dated September 26, 2003; and
- (d) the non-competition agreement between the Borrower, ATC, the Nation, and ALMC dated July 19, 2007.

60. Upon an Event of Default (as such term is defined in the Credit Agreement) Silver Point may elect to exercise such Project Company’s rights under such Project Agreements and may amend, waive, terminate, grant consents under, and enforce all remedies under the Project Agreements. A copy of the Collateral Assignment Agreement is attached hereto and marked as Exhibit “P”.

61. I am advised by Silver Point’s counsel, Witten LLP, and do verily believe that the Security is perfected by the required registrations under the *Personal Property Security Act* (Alberta) and in the Indian Lands Registry System. Summaries of these registrations are attached hereto and marked as Exhibit “Q”.

62. For clarity, the Collateral Agent is not seeking to enforce its Security against PAHI or ALMC at this time. The enforcement remedies being sought in the within application relate to the Security granted by the Borrower, APLP and PTA.

VII. OTHER KNOWN CREDITORS

63. The NOIs filed by the Debtors attach lists of creditors of each of the Debtors as of December 19, 2013. The creditors lists attached to the NOIs filed by APLP, PTA and PAHI were deficient and incorrect in at least one respect in that they did not list Silver Point as a creditor in respect of the Indebtedness owed by those entities as Guarantors, all of which is due and owing by each of the Guarantors. In addition, the creditors lists attached to the NOIs are inconsistent in certain respects with the financial statements that the Debtors regularly provided to Silver Point pursuant to the Credit Agreement (most recently for the period ended September 30, 2013). PwC has confirmed that the creditors lists have now been updated to reflect Silver Point as a creditor of each of the Borrower and the Guarantors, but I have not yet received the updated creditors lists.

64. For completeness, I have provided below information regarding other known creditors derived from my review of, and discussions with Silver Point's counsel, Goodmans LLP regarding, certain credit documents, the financial statements pertaining to the Business and PPSA registrations made by other creditors. Since I do not have full insight into the finances and operations of the Debtors, I am not in a position to explain the inconsistencies between the creditors lists attached to the NOIs and these other sources of information.

(a) Junior Subordinated Note

65. Pursuant to a junior unsecured subordinated note dated November 20, 2008, PCA became indebted to PAHI in the amount of US\$7,500,000. As at October 30, 2009, the junior unsecured

subordinated note had been fully funded by PAHI and had accrued but unpaid interest in the amount of US\$1,443,879. The junior unsecured subordinated note was amended and restated on October 30, 2009 (“**the Junior Subordinated Note**”) to include prior cash advances made to PCA in the amount of US\$1,233,090. According to the recitals of the Junior Subordinated Note, the total amount outstanding under the Junior Subordinated Note on October 30, 2009 (the last date on which the Junior Subordinated Note was amended and restated) was US\$10,176,969.

66. On the combined balance sheet of the Business as at September 30, 2013, the total liability of PCA in respect of the Junior Subordinated Note is reported as \$19,630,442. The Junior Subordinated Note matured on September 12, 2013 and bears payment-in-kind interest at a rate of prime plus 15% per annum. The repayment of the Junior Subordinated Note is unconditionally subordinated to the prior payment, in full in cash, of all obligations owed to Silver Point under the Credit Agreement, and no payment of any amount due under the Junior Subordinated Note can be made prior to 91 days following the payment, in full in cash, of all obligations under the Credit Agreement. In the event that PAHI receives any payment in respect of the Junior Subordinated Note, such payment must be held in trust for the benefit of, and must be paid immediately to, Silver Point for application against the amounts outstanding in respect of the Credit Facility. The Junior Subordinated Note is unsecured and junior and subordinated to the obligations owed to Silver Point in respect of the Credit Facility.

(b) Mirror Loan

67. Pursuant to an unsecured intercompany loan agreement dated September 11, 2007, PCA loaned to APLP the \$45 million of proceeds that PCA borrowed under the Credit Facility (the “**Mirror Loan**”). The Mirror Loan matured at the same time as the Credit Facility. The balance sheet of APLP as at September 30, 2013 lists the Mirror Loan as a long-term liability in the amount

of \$71,644,050. The Mirror Loan is unsecured and therefore junior to the obligations owed to Silver Point in respect of the Credit Facility. Since the lender of the Mirror Loan, PCA, is the Borrower of the Indebtedness to Silver Point, any recovery of the Mirror Loan by PCA would be for Silver Point's benefit in any event.

(c) PPSA Registrants

68. Based upon a security registration search conducted by Silver Point's counsel, Goodmans LLP, I am aware of three claims which have been registered against certain Property of the Debtors under the *Personal Property Security Act* (Alberta) (the "**PPSA Registrations**"). In particular, these registrations consist of:

- (a) a registration against PCA by Husky Oil in relation to what appears to be equipment pertaining to the gas station;
- (b) a registration against PCA by GE VFS Canada Limited Partnership in relation to what appears to be a lease of photocopiers; and
- (c) a registration against APLP by Access Cash General Partnership in relation to what appears to be automated teller banking machines.

(d) Other liabilities disclosed on the financial statements

69. The balance sheet of the Business as at September 30, 2013 reports total current liabilities of \$923,181. The current liabilities appear to consist primarily of accounts payable, accrued expenses, and the current portion of amounts due under the Credit Facility. As the operator of the Eagle River Project pursuant to the Casino Management Agreement, PCA appears to owe certain other unsecured amounts in respect of ordinary course trade debts, employment contracts, service contracts and the like.

(e) Position of the Indebtedness Owed to Silver Point

70. Based on my review of certain relevant credit and security documents and information provided to me by Silver Point's counsel, Goodmans LLP, based on their review of the relevant credit and security documents and security registration searches, I believe that, subject only to the possible exception of the PPSA Registrations (the validity and priority of which have not been confirmed by Silver Point), Silver Point is the first-ranking senior secured creditor of all of the Debtors.

71. According to the creditors lists that the Debtors attached to the NOIs (the accuracy of which I have not confirmed), and assuming the creditors lists have been corrected to properly list Silver Point as a creditor of each of the Borrower and the Guarantors in the full amount of the Indebtedness, as noted above, the Indebtedness owed to Silver Point represents approximately:

- (a) 86% of the indebtedness of PCA;
- (b) 92% of the indebtedness of APLP;
- (c) 100% of the indebtedness of PTA; and
- (d) 100% of the indebtedness of PAHL.

VIII. DEFAULT UNDER THE CREDIT AGREEMENT

72. By the Final Maturity Date of the Credit Facility on September 12, 2012, there had been multiple Events of Default under the Credit Agreement, including, without limitation, the following:

- 7.1(a) – failure to pay when due the principal, premium, and interest on the Credit Facility;
- 2.4(d) – failure to make cash interest payments when and as due on the interest payment dates;

- 5.1(c) – failure to provide audited financial statements that include an unqualified, going concern opinion;
- 6.7(a) – failure to satisfy the Interest Coverage Ratio (as defined in the Credit Agreement);
- 6.7(b) – failure to satisfy the Fixed Charge Coverage Ratio (as defined in the Credit Agreement);
- 6.7(c) – failure to satisfy the Leverage Ratio (as defined in the Credit Agreement); and
- 6.7(d) – failure to satisfy the Consolidated Adjusted EBITDA requirement (as defined in the Credit Agreement).

73. In addition, the Borrower was required to repay all obligations owing pursuant to the Credit Agreement on September 12, 2012, the Final Maturity Date of the Credit Facility. Now, over fifteen months after the Final Maturity Date, the amounts owing to Silver Point remain unpaid, and amount to approximately \$82 million as of December 31, 2013, inclusive of principal and interest but exclusive of legal expenses and other fees, costs and charges. Interest continues to accrue on the outstanding obligations.

IX. RESTRUCTURING DISCUSSIONS WITH THE DEBTORS

74. Given the financial difficulties of the Business and the prolonged inability of the Borrower to meet its obligations under the Credit Agreement, Silver Point has pursued good faith discussions with both the Debtors (and certain other Paragon Entities) and the Alexis Entities regarding the Indebtedness and the impaired financial circumstances of the Business. Although Silver Point has reached an agreement with the Alexis Entities, Silver Point has been unable to reach a reasonable consensual resolution with the Debtors.

75. In late 2012, representatives of the Debtors, Silver Point and the Alexis Entities participated in discussions regarding the possible framework of a restructuring of the Eagle River Project. As

part of those discussions, the Debtors made a restructuring proposal to Silver Point and the Alexis Entities. Silver Point duly considered and discussed that proposal with the Debtors and the Alexis Entities; however, Silver Point ultimately determined that the proposal was not acceptable to Silver Point.

76. Intermittent discussions among the parties continued in the following months both by telephone and in person. In particular, in July of 2013 the Debtors had insufficient cash to continue to operate the Business. At that time, the Debtors requested that Silver Point agree to an arrangement that would provide needed short-term liquidity to the Business after the equity sponsors refused to fund the cash shortfall themselves. A similar arrangement was entered into in October 2013 when the Business once again lacked sufficient cash to operate and the equity sponsors again refused to fund the cash shortfall. Periodically, representatives of Silver Point participated in discussions with the Debtors about the prospects of a consensual restructuring transaction. In each case, the Debtors were not prepared to offer any proposals materially different from the proposals that had previously been declined by Silver Point in late 2012. As a result, the discussions did not advance.

X. SERIOUS IMPENDING RISKS TO THE BUSINESS

77. Silver Point is very concerned about various impending risks to the Business that could erode the value of the Business and/or result in a termination of the operation of the Business and the Eagle River Project.

78. I am advised by representatives of the Alexis Entities and do verily believe that:

- (a) the primary government regulator of the Eagle River Project, the AGLC, has expressed serious concerns about the Eagle River Project and the various licenses issued by the AGLC that are required to operate the Eagle River Project;

- (b) in early 2012, the AGLC imposed a condition on the Casino Facility License requiring a business review to be conducted as a result of concerns about the management and financial circumstances of the Eagle River Project;
- (c) in the fall of 2012, given the precarious financial position of the Eagle River Project, the AGLC required that a \$300,000 letter of credit be posted as security to address the risk that revenues derived from the slot machines would be not be remitted to AGLC;
- (d) the AGLC has only been prepared to extend the Casino License and the Casino Facility License in short increments and on a conditional basis;
- (e) the AGLC recently extended the Casino Facility License and the Casino License to June 30, 2014 on a provisional basis and these licenses can be revoked by the AGLC in its discretion at any time; and
- (f) prior to granting this extension, the AGLC expressed serious reservations about the extension of the licenses as a result of, among other things, the financial uncertainty surrounding the Business.

79. Silver Point is very concerned that the declaration of insolvency and the filing of the NOIs by the Debtors, without the support of the Debtors' key stakeholders, without any viable plan forward and with limited and deteriorating cash, could result in the revocation or suspension of the Casino License and/or the Casino Facility Licenses.

80. Subsequent to the filing of the NOIs, I was informed by representatives of the Alexis Entities and do verily believe that the Borrower's license to supply registered gaming workers, which is required in order for the Borrower to manage the Casino, was only extended until January 20, 2014. On this basis, it appears to me that the AGLC is now giving the Borrower very little breathing room in light of their insolvency filing. If the AGLC does not extend this license upon its expiry, the Debtors will have no ability to manage the Casino as part of the Business and the value of the Business will be very seriously impaired.

81. In addition to these regulatory risks, the cash flow budget filed by the Debtors in respect of their NOIs (which has not been reviewed for reasonableness or confirmed by Silver Point) shows a negative cash flow from the Debtors' operations, even without making required payments on the Credit Facility. Silver Point's counsel, Goodmans LLP, posed a number of questions and concerns regarding the cash flow budget to the Debtors' counsel and the Debtors' bankruptcy trustee, PricewaterhouseCoopers LLP ("**PwC**"), on January 5, 2014. A copy of that letter is attached hereto and marked as Exhibit "R".

82. Silver Point is concerned that these impending risks will impair the Business and its viability going forward.

XI. THE NOI FILING BY THE DEBTORS

(a) Security Enforcement Notices

83. By letters dated December 5, 2013, copies of which are attached hereto and marked as Exhibit "S", counsel to Silver Point, Goodmans LLP, sent a notice to each of the Borrower, APLP, PTA, and PAHI and their counsel pursuant to section 244(1) of the BIA notifying each of them of Silver Point's intention to enforce its security.¹ Before the enforcement notices were sent, I contacted Scott Menke, President of the Debtors' primary controlling shareholder, Paragon Gaming, to explain Silver Point's position, to notify him that enforcement notices were being delivered and to make another attempt to achieve a consensual resolution regarding the Indebtedness owed by the Debtors. Silver Point's counsel, Goodmans LLP, has advised me that they also engaged in discussions with counsel to the Debtors on December 9, 2013.

¹ The amount of \$71,971,839.05 listed on Silver Point's Notices of Intention to Enforce Security dated December 5, 2013, and other materials delivered to the Debtors did not include the full amount of accrued interest owed in respect of the Credit Facility. The full amount of the Indebtedness, inclusive of principal and interest but exclusive of legal expenses and other fees, costs and charges, is listed in paragraph 3 of this affidavit.

84. By December 13, 2013, one business day before the statutory ten-day standstill period in respect of the enforcement notices would elapse (the “**Notice Period**”), neither Silver Point nor its counsel had received any further response from the Debtors or their counsel despite further efforts by Silver Point to contact the principal of the Debtors and Paragon Gaming. Silver Point became concerned that the Debtors would take unilateral actions to benefit the interests of Paragon Gaming and Tamarack Fund at the expense of the Business and other stakeholders, including Silver Point. Accordingly, on December 13, 2013, counsel to Silver Point, Goodmans LLP, sent a letter to counsel to Paragon Gaming, Tamarack Fund and the Debtors explaining, among other things, that:

- (a) Silver Point believed it would be beneficial to the Debtors and their stakeholders if the Debtors’ financial problems and obligations to Silver Point were resolved consensually and without the need for debt enforcement proceedings;
- (b) Silver Point had voluntarily refrained from enforcing its debt and security for over fifteen months, during which the Debtors had ample opportunity to pursue a restructuring, refinancing or repayment of the Indebtedness. During that time, the Debtors did not propose or advance any viable restructuring or refinancing of the Indebtedness and the Indebtedness still remained unpaid;
- (c) at present, it was clear that any filings or proceedings taken by the Debtors to hinder or delay the rights of Silver Point for the benefit of Paragon Gaming and Tamarack Fund, which are out-of-the-money parties, could materially prejudice Silver Point and put the Debtors’ business at risk; and
- (d) any steps, actions, filings or proceedings taken unilaterally by the Debtors without the prior support of Silver Point, the Nation and the applicable government regulators could adversely affect Silver Point’s recovery of the Indebtedness and have significant adverse consequences for the members of the Nation and the other stakeholders of the business.

A copy of the December 13, 2013 letter from Goodmans LLP is attached hereto and marked as Exhibit “T”.

(b) Extension of the Notice Period by Silver Point

85. On December 16, 2013, the day on which the original ten-day Notice Period elapsed, counsel to the Debtors and Paragon Gaming contacted Silver Point's counsel, Goodmans LLP, to request that Silver Point extend the Notice Period to facilitate discussions on a consensual resolution. As a matter of good faith, and in the spirit of trying to reach a consensual resolution, Silver Point agreed to extend the Notice Period until 5:00 p.m. Eastern Time / 3:00 p.m. Mountain Time on December 19, 2013.

86. During the extended Notice Period, Silver Point, the Debtors, Paragon Gaming and their representatives engaged in discussions regarding the possibility of a consensual resolution to the Debtors' Indebtedness. Unfortunately, Silver Point, the Debtors and Paragon Gaming could not reach agreement.

(c) Filing of the NOIs by the Debtors

87. On December 19, 2013, the Debtors declared themselves insolvent and filed NOIs under the BIA. I am advised by Silver Point's counsel, Goodmans LLP, and do verily believe that the filing of an NOI by a debtor company prior to the expiry of the statutory ten-day Notice Period imposed by section 244(2) of the BIA results in a stay of proceedings against the creditors of the debtor company; however, that stay of proceedings does not apply to a secured creditor if that secured creditor gave notice of its intention to enforce security under section 244 of the BIA more than ten days before the NOI was filed. In other words, I understand that a secured creditor is only stayed by the NOI filing if the debtor files the NOI prior to the expiry of the statutory ten-day Notice Period.

88. In this case, the ten day Notice Period originally expired on December 16, 2013 and was extended by agreement until 3:00 p.m. Mountain Time on December 19, 2013. It expired automatically at that time by agreement of the parties.

89. On December 20, 2013, Silver Point's counsel, Goodmans LLP, asked PwC and counsel to the Debtors to confirm whether NOIs had been filed prior to the 3:00 p.m. Mountain Time deadline. On December 24, 2013, representatives of PwC provided Silver Point's counsel with copies of Acknowledgments of Transmission from the Office of the Superintendent of Bankruptcy indicating that the NOIs had been filed on December 19, 2013. However, the Acknowledgments of Transmission are time stamped shortly after 3:00 p.m. Mountain Time. I am advised by Alvarez & Marsal and do verily believe that these time stamps show the time at which the NOIs were electronically filed with the Office of the Superintendent of Bankruptcy. On this basis, it appears that the NOIs were filed after the expiry of the Notice Period. Copies of the Acknowledgments of Transmission are attached hereto and marked as Exhibit "U".

90. The Debtors nevertheless take the position that Silver Point is stayed from enforcing its rights as a result of the filing of the NOIs.

(d) Purpose and Impact of NOIs

91. The Debtors have filed the NOIs without the support of the Alexis Entities, the Nation or Silver Point, which has the remaining economic interest in the Business, and they have put the Business at serious risk even though they cannot put forward a viable bankruptcy proposal. There is a serious risk that the continuation of the NOI Period will materially prejudice the Business.

92. As noted above, the filing of the NOIs raises the risk that the conditions of the Casino License and the Casino Facility License will not be satisfied and the licenses will be suspended or

revoked by the AGLC. Also as described above, the Debtors' license to supply gaming workers to manage the Casino has been extended only to January 20, 2014 and is at serious risk of not being renewed. The Debtors' cash flow forecasts also show that the Business is cash flow negative, even without the payment of interest on the Indebtedness.

93. There could be only one purpose for the Debtors to file the NOIs and put the Business at risk in the present circumstances, which is to create negotiating leverage for the Debtors' out-of-the-money controlling shareholders, Paragon Gaming and Tamarack Fund, so that they can obtain value that they are not entitled to receive given the Debtors' payment priorities. The NOIs put pressure on Silver Point by raising the prospect that a protracted and expensive court process will erode the value of Silver Point's security even further and that the material risks noted above will imperil the ongoing viability of the Business and Silver Point's recovery.

94. Ultimately, the filing of the NOIs comes at the risk and expense of Silver Point, the members of the Nation and other stakeholders who depend on the ongoing operation of the business. This is despite the fact that the Debtors are manifestly and admittedly insolvent, Silver Point will suffer a substantial loss as the first-ranking secured creditor, and Paragon Gaming and Tamarack Fund no longer have any remaining economic interest in the Debtors.

(c) No Viable Bankruptcy Proposal

95. Despite the filing of the NOIs, the Debtors cannot put forward a viable bankruptcy proposal in the circumstances. No bankruptcy proposal can be completed without the support of Silver Point given that it is the first-ranking secured creditor and the stakeholder with the remaining economic interest in the Debtors. The Debtors have had over fifteen months since the maturity of the Indebtedness to make a proposal that would be acceptable to Silver Point and still have not come

forward with a proposal that Silver Point considers to be reasonable, nor have they made any proposals or entered into any further discussions with Silver Point since the filing of the NOIs.

96. At this stage, Silver Point has lost all trust and confidence in the Debtors. Silver Point has no confidence that the Debtors can effectively manage and reverse the fortunes of the Business, or that the Debtors, Paragon Gaming or Tamarack Fund will act with a view to the best interests of the Business and its remaining stakeholders. In the circumstances, and given the risks and conduct of the Debtors noted above, the Debtors are not in a position to put forward a proposal that would be supported by Silver Point. The Debtors are not in a financial position to make a proposal that would be considered objectively reasonable by a creditor in Silver Point's position in any event.

97. In addition, as noted above, an entity controlled by the Nation, ATC, is the limited partner of APLP and must vote in favour of a Special Resolution to authorize APLP to agree to any compromises or arrangements with its creditors or shareholders. I understand from representatives of the Alexis Entities and do verily believe that ATC is not prepared to support any bankruptcy proposal or other restructuring put forward by the Debtors that:

- (a) does not satisfactorily reduce the indebtedness of the Business to levels that show a prospect of profitability;
- (b) does not address the outstanding Indebtedness to Silver Point's satisfaction; and
- (c) includes Paragon Gaming in the ongoing management or operations of the Eagle River Project in any way.

98. The Debtors have no ability to address the Indebtedness owed to Silver Point, so, as a matter of corporate governance, APLP will not be able to enter into or complete a bankruptcy proposal.

99. For these reasons, the NOI Period should be terminated immediately so that the parties with an economic interest can stabilize the Business and proceed with an expeditious going concern sale of the Business under a Court-supervised receivership process.

XII. THE NEED FOR A RECEIVER AND MANAGER

(a) The Debtors are Insolvent

100. The Credit Facility matured over fifteen months ago, and the Debtors have been unable to make any substantial payments in respect of the Indebtedness, all of which remains due and owing. The amount of Indebtedness stands at approximately \$82 million and is continuously increasing as a result of the accrual of interest.

101. As at September 30, 2013, the balance sheet of the Business shows a negative value for shareholders' equity, also known as a shareholders' deficit, which is an admission by PCA and APLP that their combined liabilities exceed their combined assets. In my view, the shareholders' deficit shown on the balance sheet does not reflect the full extent of the deterioration in the market value of the Property, so the real economic shareholders' deficit is even greater than what is shown on the balance sheet.

102. There is no reasonable expectation that the Debtors, in the near term, will be able to generate sufficient cash flow through their operations to repay the existing Indebtedness. The aggregate value of the Property is not sufficient to enable the Debtors to repay the very large, and growing, amount of the Indebtedness. This is reinforced by the fact that Silver Point, which is a commercially sophisticated lender, is prepared to accept a loss of approximately \$48 million on the Indebtedness as part of the Proposed Transaction with the Alexis Entities (as defined and described below).

103. The Debtors have also declared themselves to be “insolvent persons” in the NOIs.

104. Based on my review of these factors, I believe the Debtors are insolvent.

(b) Court-Appointed Receiver is Necessary and Appropriate in the Circumstances

105. Silver Point has a first-ranking interest in all of the Property. Silver Point is by far the largest creditor of the Debtors and, to my knowledge, is the only significant creditor with a remaining economic interest in the Property and Business. The fact that Silver Point expects to recover less than half of the total Indebtedness owed to it demonstrates the extent to which the Property has already diminished in value. Any further delay in the realization of the Property could significantly erode the value of the Property even further.

106. As noted above, I understand that the financial circumstances of the Business have put the Casino License and the Casino Facility License in jeopardy and that there is a serious risk that the Debtors’ license to supply gaming workers to the Casino will not be renewed. The Casino is one of the central components of the Eagle River Project and is integral to the ongoing existence of the Business. If any of these licenses are not further renewed or extended or if the licenses are revoked, suspended or cancelled, the Casino would not be able to operate and the value of the Business would be very seriously impaired. As a result, I believe it is necessary and appropriate to proceed with a court-supervised receivership process and to achieve sale of the Business as soon as possible to minimize uncertainty surrounding the licenses required to operate the Casino.

(c) The Credit Documents Provide for the Appointment of a Receiver

107. The Credit Documents executed by the Debtors expressly contemplate the appointment of a receiver over all of the Property in circumstances such as these. In particular, the Debtors have consented to the appointment of a receiver by the Collateral Agent upon the occurrence, and during

the continuance of, an Event of Default (as defined in the Credit Agreement) pursuant to the following:

- (i) section 7.1 of the General Security Agreement executed by PCA;
- (ii) section 7.1 of the General Security Agreement executed by APLP;
- (iii) section 4.1 of the Specific Assignment of Casino Sublease executed by APLP;
- (iv) section 8 of the APLP Debenture; and
- (v) section 6.1 of the General Security Agreement executed by PTA.

108. The General Security Agreements provide that any receiver appointed thereunder shall have wide-ranging powers, including the power to take possession of all collateral, to carry on the Business, and to sell, lease, or otherwise dispose of collateral as the receiver considers to be commercially reasonable. The General Security Agreements expressly provide that the receiver will have the authority to enter upon, use and occupy all premises owned or occupied by the Debtors to the exclusion of all others, including the Debtors. All proceeds received by the receiver in carrying out its appointment are to be received in trust and paid over to Silver Point in its capacity as Collateral Agent.

109. In addition to the rights noted above, upon the occurrence of an Event of Default under the Credit Agreement, Silver Point has the right (but not the obligation) under the Collateral Assignment Agreement to exercise all rights, powers authorities and discretions of PCA and APLP under any Project Agreements, including the right to amend, waive, terminate, or enforce remedies under Project Agreements. In order to continue operating the business of the Debtors as a going concern, it may be necessary to exercise these rights. A Court-appointed Receiver would be best placed to exercise these rights and deal with Project Agreements under the supervision of the Court.

(d) The Nature of the Eagle River Project and the Property

110. The circumstances at hand involve a number of complicating factors which necessitate the appointment of a Court officer with the attendant oversight, authority, protection and transparency of a Court-supervised process. In particular, the Receiver would be required to enter onto and manage the business of the Eagle River Project on the Nation's reserve lands. Although the Nation has indicated its willingness to allow Silver Point to enforce against the Debtors on the Nation's reserve lands, any party carrying out that enforcement process is likely to require the authority and guidance of the Court before enforcing security on reserve lands.

111. In addition, since the Borrower is the day-to-day operator of the Casino, any enforcement process that preserves the Eagle River Project as a going concern will require the consent and permission of the AGLC to the ongoing management and operation of the Casino. I am advised by Silver Point's counsel, Witten LLP, and do verily believe that any security enforcement process initiated by Silver Point would require the proposed operator of the Casino to be designated by the AGLC as a registered supplier of gaming workers. I am advised by representatives of Alvarez & Marsal and do verily believe that they have been working cooperatively with the AGLC to obtain the required approvals.

(e) Alvarez & Marsal has Consented to act as Receiver

112. Alvarez & Marsal has consented to act as Court-appointed Receiver in respect of the Property and the Business. A copy of Alvarez & Marsal's consent is provided in the Application Record. I am aware that Alvarez & Marsal is a global professional services firm with extensive experience in corporate restructuring and that certain of its personnel have experience in the management of casino operations. Alvarez & Marsal operates throughout Canada and has offices in Alberta, British Columbia, and Ontario. Tim Reid, a Senior Vice President in the Alberta office of

Alvarez & Marsal, has agreed to lead the mandate of Alvarez & Marsal in respect of the Business. Mr. Reid is a highly-regarded professional with more than twenty (20) years of experience acting in statutory restructuring appointments and court-sanctioned mandates in Canada, including formal insolvency appointments under the BIA. I am advised by Mr. Reid and do verily believe that he is a trustee licensed by the Office of the Superintendent of Bankruptcy and that he is not aware of any conflicts that would prevent him from acting in the capacity of Receiver of the Debtors.

(f) Notices of Intention to Enforce Security

113. As noted above, Silver Point's counsel, Goodmans LLP, sent to the Debtors and their counsel the required notices of intention to enforce security pursuant to section 244(1) of the BIA, notifying each of the Debtors of Silver Point's intention to enforce its security.

(g) Maintaining the Eagle River Project as a Going Concern

114. I believe that the appointment of Alvarez & Marsal as Receiver pursuant to a Court-supervised receivership offers the best opportunity to preserve and protect the Business as a going concern, without jeopardizing the Eagle River Project's operations through delay and interruption.

115. The Eagle River Project is an employer of Nation residents and an important commercial enterprise on the Nation's reserve lands. As noted above, the Eagle River Project was originally conceived of by the Nation as an opportunity to provide employment and economic opportunities to members of the Nation and to generate revenues for the Isga Foundation for important social purposes. Consequently, a going concern sale of the Business would benefit a number of stakeholders of the Business, including customers, suppliers, employees and the members of the Nation and the broader Whitecourt community who benefit from the ongoing operation of the Eagle River Project.

116. For the reasons noted above, it is imperative that a receivership be commenced and a sale of the Business be completed expeditiously, with minimal disruption to the Business. I believe that the immediate appointment of a Court-appointed Receiver is necessary to preserve and protect the Property and to effectuate the sale of the Business in an orderly and expeditious manner. I also believe that the appointment of a Court-appointed Receiver is necessary to ensure that the Receiver has the authority and oversight of the Court for all steps taken in the proceedings, particularly given the complex regulatory environment surrounding the Eagle River Project.

(h) Potential Sale of the Business pursuant to the Proposed Transaction

117. For all of the reasons described earlier in this affidavit, Silver Point recognizes that any going concern restructuring or sale of the Business will require the consent, support and co-operation of the Alexis Entities and the Nation. Accordingly, and in light of the Debtors' inability to repay, refinance or restructure the Indebtedness, Silver Point has engaged in discussions with the Alexis Entities with a view to determining whether it could achieve a going concern transaction on terms acceptable to them.

118. After extensive arms' length negotiations, Silver Point and the Alexis Entities have reached an agreement on the general terms of a going concern sale of the Business to the Alexis Entities (the **"Proposed Transaction"**).

119. The Proposed Transaction provides the opportunity to reposition the Business by reducing the interest expenses and eliminating third-party management costs, with the goal of protecting the value of the Business in order to repay amounts owed to Silver Point and making the Business (and the Eagle River Project generally) economically viable going forward. I understand from Alvarez & Marsal that, if it is appointed as Receiver, it expects to be in a position to consider and, if it deems appropriate, seek Court approval of the proposed transaction within a short time frame.

120. If approved and implemented, the Proposed Transaction would result in an acquisition of all of the Property and Business on a going concern basis by either the Alexis Entities or a newly created related entity (as applicable, the “**Purchaser**”) in exchange for the following:

- (a) the assumption by the Purchaser of \$29.5 million of the Borrower’s Indebtedness (the “**Assumed Debt**”) (of which \$5 million would be interest-free); and
- (b) a cash payment or distribution of \$4.5 million, which will be used to pay down the Indebtedness of the Borrower in part and to purchase from Silver Point a portion of the Indebtedness.

If the Proposed Transaction is implemented, the Debtors would have no further ownership or other interest in the Business.

121. Completion of the Proposed Transaction is conditional upon the satisfaction or waiver of certain conditions, including:

- (a) the receipt of all governmental authorizations necessary to complete the Proposed Transaction and to enable the Eagle River Project to continue operating on a going concern basis following the Proposed Transaction;
- (b) the issuance of all required Court approvals, including sale approval and vesting orders;
- (c) the confirmation by Alberta Aboriginal Relations, on terms satisfactory to Silver Point, that funding provided to the Nation pursuant to the existing FNDF Grant Agreement (or in the alternative, funding provided pursuant to a revised FNDF Grant Agreement) may be used by the Nation for the purpose of servicing the Assumed Debt in an amount satisfactory to Silver Point;
- (d) the completion and execution of all definitive documentation in respect of the Proposed Transaction; and
- (e) the delivery by the Purchaser of all required consents, approvals, authorizations and agreements required in connection with the assumption of the Assumed Debt.

122. Under the Proposed Transaction, Silver Point would suffer a shortfall of over \$48 million and Silver Point would not receive any equity upside in the restructured Business. Based on this

shortfall, it is clear that Silver Point believes that the value of the Property and the Business and the amounts that it will be able to recover from the Debtors are significantly less than the Indebtedness owed to it. Accordingly, Silver Point believes that there is no value left in the Property of the Business for junior creditors or equity holders. Nevertheless, I understand that, in the event the Proposed Transaction is completed, the Alexis Entities intend to assume certain of the liabilities of the Business to trade creditors and employees to ensure the continuity of operations and preserve the goodwill of the Business.

123. Silver Point was hopeful that the Proposed Transaction could be completed consensually outside of a court-supervised insolvency process. In an effort to avoid disruption to the operations of the Business and the significant professional costs associated with an insolvency process, Silver Point discussed with the Debtors whether it would be possible to achieve a consensual transaction without the need for an insolvency process. The Debtors have not, to date, been prepared to agree to a consensual resolution on terms that Silver Point considers reasonable. At this stage, Silver Point believes it is left with no choice other than to pursue its enforcement rights in a receivership process.

124. For the reasons noted earlier in this affidavit, I believe it is vital to the survival of the Eagle River Project that the receivership be commenced and the Proposed Transaction be completed as expeditiously as possible.

XIII. CONCLUSION


125. The Debtors owe approximately \$82 million to Silver Point under the Credit Facility. Silver Point has been patient with the Debtors, and has given them ample opportunity to improve their

financial results and meet their obligations under the Credit Agreement or to refinance or restructure the Indebtedness.

126. Silver Point cannot continue indefinitely to forbear on its rights to recover the Indebtedness when there is clearly no reasonable prospect of repayment. Silver Point believes it is vital to enforce its security rights at this time to stabilize the Business in a Court-supervised process and to move forward with the Proposed Transaction to ensure that the Eagle River Project continues as a going concern for the benefit of its various stakeholders.

127. I swear this affidavit in support of the within applications and for no improper purpose.

SWORN before me in the City of
Louisville, in the State of Kentucky, on
January 6, 2014.


A Commissioner for taking affidavits
Name: Whitney Puckett


Name: TIMOTHY LAVELLE

