

NO.  
VANCOUVER REGISTRY

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36**

**AND**

**IN THE MATTER OF THE BUSINESS CORPORATIONS ACT, S.B.C. 2002, c. 57**

**AND**

**IN THE MATTER OF  
PRETTY ESTATES LTD.**

PETITIONER

**PETITION TO THE COURT**

**ON NOTICE TO:**

ENVISION CREDIT UNION  
JAMES YOUNG  
700256 B.C. LTD.

**This proceeding has been started by the Petitioner for the relief set out in Part 1 below.**

If you intend to respond to this Petition, you or your lawyer must

- (a) file a Response to Petition in Form 67 in the above-named registry of this court within the time for Response to Petition described below, and
- (b) serve on the Petitioner
  - (i) 2 copies of the filed Response to Petition; and
  - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.**

### **Time for Response to Petition**

A Response to Petition must be filed and served on the Petitioners,

- (a) if you were served with the Petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Petition anywhere in the United States of America, within 35 days after that service
- (c) if you were served with the Petition anywhere else, within 49 days after that service, or
- (d) if the time for Response has been set by order of the court, within that time.

The address of the Registry is:

800 Smithe Street  
Vancouver, British Columbia V6Z 2E1

The ADDRESS FOR SERVICE of the Petitioner is:

c/o Lawson Lundell LLP,  
1600 – 925 West Georgia Street  
Vancouver, British Columbia V6C 3L2

Fax number for delivery is: (604) 694-2959

The name and office address of the Petitioner's solicitor is:

Lawson Lundell LLP  
1600 - 925 West Georgia Street  
Vancouver, British Columbia, V6C 3L2  
(Attention: Bonita Lewis-Hand)

### **CLAIM OF PETITIONER**

#### **Part 1: ORDERS SOUGHT**

1. an Order substantially in the form of the draft Order attached hereto as Schedule "A" (the "Initial Order").

#### **Part 2: FACTUAL BASIS**

##### **A. THE PETITIONER**

2. The Petitioner is a privately held company constituted under the laws of British Columbia, having its head office in British Columbia at 14282 Morris Valley Rd, Harrison Mills, B.C., and its registered and records office at Suite 2300, 550 Burrard Street, Vancouver BC.
3. Betty Anne Faulkner ("**B.A. Faulkner**") is the sole director and officer of the Petitioner and holds all of its voting shares.
4. The Petitioner is in the hospitality business and is the sole owner and operator of the SandPiper Golf Course (the "**Golf Course**"), the River's Edge Restaurant (the "**Restaurant**"), and Rowena's Inn on the River (the "**Inn**") (the Golf Course, Restaurant and Inn are collectively referred to as the "**Resort**").
5. The Petitioner has owned and operated the Resort for the past 19 years.
6. The Resort is located on 160 acres of river-front property owned by the Petitioner in Harrison Mills, British Columbia (the "**Lands**"). The Lands have been owned by B.A. Faulkner's family since 1924.

***B. THE PETITIONER'S ASSETS:***

7. In summary, the Petitioner's assets are the Lands and improvements thereon and the equipment and inventory associated with the Resort. In particular, the primary assets of the Petitioner include:
  - (a) the Restaurant, which seats approximately 100 guests inside and outside and is also used as a catering facility for special events at the Resort (mostly weddings);
  - (b) the Inn, which consists of five (5) single bedroom units housed in a restored heritage building with antique furnishings, four (4) luxury cottages, and a gatehouse with a full kitchen;
  - (c) the Golf Course, which is a 18-hole, par 72 public course, 6500 yards in total; and
  - (d) the structures and equipment associated with the Golf Course, including a pro shop (the "**Pro Shop**"), golf carts, maintenance equipment, irrigation and lawn care supplies, etc.

Additional assets include vehicles, accounts receivable, contracts for weddings, and inventory for the Pro Shop.

***C. THE PETITIONER'S BUSINESS OPERATIONS***

8. The Resort operates year round and relies predominately on the operation of the Golf Course to generate revenue and demand for the services provided at the Inn and the Restaurant. An average of 20,606 rounds have been played on the Golf Course each year

for the last 3 years. The Golf Course accounts for approximately 36% of the revenue generated by the Resort in 2014.

9. In the off-season, from November 1 to April 1, the Golf Course is open weather-dependant and the Resort relies primarily on the Inn, the Restaurant, and event rentals for revenue. Lower room rates are offered in the Inn to reflect decreased demand and special deals and events are offered at the Restaurant to attract customers.
10. In recent years, the Resort has been developing a book of business hosting weddings and has hired a full time wedding planner. From the beginning of this year to date, 42 weddings have been hosted at the Resort. There are 2 weddings planned before the end of December, 2014 and there are a further 2 scheduled between January 1, 2015 and March 31, 2015.
11. The Resort also hosts corporate events, golf tournaments and Christmas parties. The number of events hosted at the Resort has been increasing in recent years. Approximately 18% of the Resort's revenue in 2014 has been derived from hosting weddings and special events.
12. The Restaurant accounted for 33% of the Resort's revenue in 2014.
13. The Inn accounted for 13% of the Resort's revenue in 2014.
14. The Petitioner employs a total of approximately 13 full-time employees, 17 part-time employees and 40 seasonal employees in the following business operations:

*Golf Course operations:*

- (a) On a permanent basis, 2 full-time and 3 part-time employees; and
- (b) During its peak season (from June 1 to September 30), 10-15 full-time and 4-8 part-time employees.

*Restaurant Operations:*

- (a) On a permanent basis, 7 full-time and 10 part-time employees; and
- (b) During its peak season (from June 1 to September 30), 10-15 full-time and 15-20 part-time employees.

*Inn Operations:*

- (a) On a permanent basis, 2 full-time and 5 part-time employees; and
- (b) During its peak season (from June 1 to September 30), 2 full-time and 5-8 part-time employees.

*Wedding Planning Operations:*

- (a) On a permanent basis, 1 full-time employee; and
- (b) During its peak season (from June 1 to September 30), 4-10 employees on a part-time basis.

**D. THE RESORT'S FINANCIAL DIFFICULTIES**

15. Prior to 2008, the Petitioner operated profitably due to the success of the Golf Course. The Petitioner made significant investments in the Golf Course and expanded the services directed towards golfers, including building the Pro Shop and increasing the capacity of Restaurant, on the expectation that demand for these services would continue to increase.
16. Unfortunately, this investment did not bring about the expected returns. The golf industry has been in a state of decline in recent years, and revenues generated from the Golf Course, Restaurant, and Pro Shop have all decreased accordingly. A report published September 12, 2012 by the National Allied Golf Associations entitled *Canadian Golf Consumer Behaviour Study*, which outlines the decline in golf rounds being played across the country, is attached as **Exhibit "F"** to the Affidavit #1 of B.A. Faulkner. The Petitioner was also affected by the general downturn in the economy since 2008, which has resulted in a decline in spending on accommodation rentals at the Resort.
17. The Petitioner continued to invest in the Inn, Restaurant, and Golf Course with the intention of increasing the value of the Resort and maintaining a high level of service and customer satisfaction.
18. The Petitioner also made efforts to adapt to the declining demand in the golf and vacation rentals sectors by expanding the use of the Resort as a venue for special events, in particular weddings. As mentioned above, the Petitioner hired a full-time wedding planner and expanded the capacity of the Restaurant to host large groups for formal events. The number of weddings held at the Resort has increased from 15 in 2008 to 37 in 2013. Weddings have become a significant source of revenue for the Resort.
19. B.A. Faulkner has funded the Resort's losses by advancing shareholder loans to the Petitioner. She has advanced a total of approximately \$1,338,689 to the Petitioner since 2009.
20. B.A. Faulkner is unable to continue supporting the Petitioner financially. The Petitioner is having difficulty funding wages, payroll remittance obligations, and other supplier obligations, including utilities.
21. The Petitioner expects that sometime in November, 2014, it will have insufficient financial resources required to pay wages unless an order is made approving of debtor-in-possession financing ("**DIP Financing**"). If DIP Financing is not granted then the Petitioner expects its Resort will have to forthwith cease operations and this will have a significant negative affect on the ability of creditors to recover the amounts owing to them.

22. Review engagement financial statements for the Petitioner's fiscal year ending October 31, 2013 are attached as **Exhibit "B"** to the Affidavit # 1 of B.A. Faulkner.
23. Internal financial statements for the Petitioner for the period between September 30, 2013 to September 30, 2014 are attached as **Exhibit "C"** to the Affidavit #1 of B.A. Faulkner (the "**Interim Financial Statements**").

***E. RECENT EFFORTS TO ADDRESS THE FINANCIAL DIFFICULTIES***

24. During the past 11 years, Chris Lepine, a nephew of B.A. Faulkner, has managed the overall day-to-day operations of the Resort, although each department (i.e. golf course, food & beverage, inn, and wedding planning) has a separate manager. B.A. Faulkner is involved in an oversight role and assists with certain operations on a part-time basis.
25. The Petitioner has recognized the need to institute changes in management and stabilize its operations so that the operations are more marketable, and to maximize value for the benefit of all creditors and stakeholders.
26. In or about August, 2014, the Petitioner engaged Ralph Miller of Integrated Hospitality Management Ltd. ("**IHM**") to review the Resort's operations and to prepare a report on the various initiatives that could be put in place to reduce the operating costs and increase the revenues generated by the Resort (the "**IHM Report**"). The IHM Report is attached as **Exhibit "G"** to the Affidavit #1 of B.A. Faulkner.
27. The Petitioner intends to hire IHM to (i) manage the Resort, (ii) implement the suggestions of the IHM Report during the restructuring process, and (iii) assist in the negotiation and formulation of a plan of arrangement for creditors.

***F. PETITIONER'S LIABILITIES***

***Secured Creditors***

28. The Petitioner's third party secured creditors are Envision Credit Union ("**Envision**") and James Young ("**J. Young**") which are owed the following amounts:

|          |  |
|----------|--|
| Envision | \$1,708,082.71 (as at October 31, 2014)        |
| J. Young | <u>\$2,523,841.69</u> (as at November 3, 2014) |
| Total    | \$4,231,924.40                                 |

29. The mortgage registered on the Lands in favour of Envision (the "**Envision Mortgage**") matured on May 28, 2012 and was renewed for an indefinite term. Interest accrues at following rates under the various amounts secured by the Envision Mortgage:

5.5% on the balance of \$1,259,825.00

4% on the balance of \$310,156.91

5% on the balance of \$138,100.80

30. The mortgage registered on the Lands in favour of J. Young (the "**J. Young Mortgage**") matured on July 28, 2014 and was not renewed. The Petitioner is therefore in default under the J. Young Mortgage. Interest accrues at 3% on the J. Young Mortgage.
31. The Petitioner also has secured non-interest bearing debt to related parties in the following amounts as at September 30, 2014:
 

|                   |                |
|-------------------|----------------|
| 0700256 B.C. Ltd. | \$2,422,106.94 |
| B.A. Faulkner     | \$179,169.00   |
32. B.A. Faulkner is the sole director and shareholder of 0700256 B.C. Ltd.
33. Copies of title searches to the Lands showing registered charges in favour of Envision, J. Young, 0700256 B.C. Ltd, and B.A. Faulkner are attached as **Exhibit "D"** to the Affidavit #1 of B.A. Faulkner.
34. There are several other secured creditors that have registered charges on the vehicles owned by the Petitioner, which secure total debts of approximately \$208,557.00. A copy of Personal Property Registry search of the Petitioner is attached as **Exhibit "E"** to the Affidavit #1 of B.A. Faulkner.
35. Therefore, the Petitioner's total secured debt is approximately \$7,041,757.34.

#### ***Unsecured Creditors***

36. As at October 30, 2014, the Petitioner owed approximately \$185,584.56 to suppliers and other trade creditors.
37. The Petitioner is in arrears of approximately \$88,055.52 for source deductions to the Receiver General as at October 30, 2014.
38. The Petitioner also has unsecured debt of approximately \$1.77 million to the following related parties as at October 30, 2014:

|                    |                |
|--------------------|----------------|
| B.A. Faulkner      | \$1,667,019.13 |
| Charlotte Faulkner | \$104,812.50   |

#### ***Total Indebtedness***

39. In accordance with the above, the Petitioner's total liabilities are approximately as follows:

|                    |                |
|--------------------|----------------|
| Secured Creditors: | \$7,041,757.34 |
|--------------------|----------------|

|                          |                |
|--------------------------|----------------|
| Unsecured creditors:     | \$1,957,416.19 |
| CRA (Source deductions): | \$88,055.52    |
| Total:                   | \$9,087,229.05 |

***G. PETITIONER'S CURRENT FINANCIAL SITUATION AND THE NEED FOR DEBTOR IN POSSESSION FINANCING ("DIP FINANCING")***

40. The Petitioner is insolvent in that it is unable to meet its obligations as they generally become due.
41. On or about October 24, 2014, counsel for J. Young delivered a letter demanding for payment of the amount owing with respect to the J. Young mortgage. Attached as **Exhibit "I"** to Affidavit #1 of B.A. Faulkner is a copy of the demand letter.
42. The Petitioner believes that the value of the Resort can be maximized for the benefit of all stakeholders by preserving the going concern value. To preserve the going concern value, DIP financing is required for the following:
  - a. to undertake the costs associated with maintenance for the Golf Course and operations to ensure it is ready for beginning of the 2015 golf season;
  - b. to fulfil the existing 10 reservations for wedding and corporate events planned between November 2014- March 2015;
  - c. to complete the steps required to rezone the 7.9 acre parcel of land for development of a hotel/conference center; and
  - d. to pay all ongoing obligations, including without limitation, wages, payroll and GST remittances, contractual obligations and suppliers.
43. Based on the projections set out in the IHM Report and the cash flow statements attached as Exhibits thereto, the Petitioner expects it will require DIP financing in an amount of \$725,000.00 to fund the above matters during the off-season before it can return to a profitable position in summer 2015.
44. Crest Capital has offered to provide DIP financing for this purpose (the "**DIP Financing**"). A copy of the terms of the proposed DIP financing is attached to the Affidavit # 1 of Kimberley Manderson filed herein.

***H. PROPOSED PLAN OF ARRANGEMENT***

45. The Petitioner seeks a stay of proceedings in order to enter into negotiations with the major stakeholders about the terms of a plan of arrangement.



46. The Petitioner has identified the following options that could form the basis of a plan of arrangement. However, there may be other options available for a plan of arrangement that will become apparent once the Petitioner engages in negotiations with the major stakeholders:
- a. To explore the timing for listing the Resort for sale as a going concern. The Petitioner delayed listing the Resort for sale to allow time to see whether an existing expression of interest for \$12 million would result in a binding offer for purchase and sale. The Petitioner intends to continue negotiations with the party on terms that would see all creditors of the Petitioner paid in full, a return of capital for the shareholder, and a continuation of the existing operations of the Resort (including all employment);
  - b. To explore a possible joint venture or partnership with third parties that might include refinancing or restructuring of existing indebtedness and new working capital. The Petitioner has been approached by two Asian parties who have expressed interest in acquiring an interest in the Resort;
  - c. To implement other changes to the operations of the Resort that will improve the overall financial performance of the Resort and which would allow for new financing or a restructuring of the existing indebtedness; and
  - d. To explore options for utilizing the Petitioner's significant tax losses of \$3,167,573 for the benefit to its creditors.
47. It is anticipated that a plan of arrangement will be formulated based upon the introduction of a joint venture partner to the operations of the Resort, or a sale of the Resort as a going concern, which in either case would involve payment to the secured creditors of 100 cents on the dollars of their claims. Such recovery may not be realized in a foreclosure proceeding or a distressed sale under a receivership. Liquidation of the Petitioner's assets would also result in a significant loss of value from the Petitioner's tax attributes, which may otherwise be preserved for the benefit of unsecured creditors.

## ***I. MONITOR***

48. G. Powroznik of G-Force Group has consented to act as Monitor in these proceedings (the "**Monitor**"). A copy of the consent is attached as **Exhibit "J"** to the Affidavit #1 of B.A. Faulkner.
49. The Monitor has filed a pre-filing Report that indicates, *inter alia*, that the Petitioner will not be able to proceed with the proposed restructuring unless the Petitioner is granted an Order granting priority for the DIP Financing in the amount of \$725,000 (the "**DIP Charge**"), priority for professional fees, including the fees of the Petitioner's counsel, the Monitor, and the Monitor's counsel in the amount of \$25,000 (the "**Administration Charge**"), and a charge for indemnification of the Petitioner's sole director and officer in the amount of \$50,000 (the "**D&O Charge**").

**Part 3: LEGAL BASIS** The Supreme Court of Canada has held that reorganization serves the public interest by facilitating the survival of companies supplying goods and services to the health of the economy or saving large numbers of jobs:

*Ted Leroy Trucking Ltd., Re*, 2010 SCC 60 at para. 18

51. The purpose of the *Companies' Creditors Arrangement Act* ("CCAA") is to maintain the *status quo* for a period to provide a structured environment in which an insolvent company can continue to carry on business and retain control over its assets while the company attempts to gain the approval of its creditors for a proposed arrangement that will enable the company to remain in operation for the future benefit of the company and its creditors.

*Quintette Coal Ltd. v. Nippon Steel Corp.* (1990) 2 C.B.R. (3d) 303 (B.C.C.A.) at para 10

*Hongkong Bank of Canada v. Chef Ready Foods* (1990) 4 C.B.R. (3d) 311 (B.C.C.A.) at para 10

52. By permitting the debtor to continue to carry on business, where possible, the CCAA avoids the social and economic costs of liquidating the debtor's assets.

*Ted Leroy Trucking Ltd., Re, supra*, at para. 15

53. The Petitioner currently anticipates that it will formulate a plan of arrangement based on reorganized business plan. However, in the event that the Petitioner determines that it is in the best interests of stakeholders to sell the assets as a going concern, such a plan could also be authorized by the court.

*Anvil Range Mining Corp.* (2001), 25 C.B.R. (4th) 1

*Re Lehndorff General Partner Ltd.* (1993), 17 C.B.R. (3d) 24 at para. 7

*Re Olympia & York Developments Ltd.* (1995), 34 C.B.R. (3d) 93 at para. 18

54. A CCAA liquidation is consistent with the purposes and policies of the CCAA where the assets are sold on an operating basis to the benefit of a wider constituency.

*Fairmont Resort Properties Ltd. (Re)* 2012 ABQB 39, at para. 22

55. A successful restructuring under the CCAA invariably requires the services of various professionals to assist the debtor to navigate the process and develop a Plan that is acceptable to its creditors. The debtor also benefits from the continued involvement of its directors throughout the restructuring process, as their knowledge of the debtor's operations and causes of financial difficulty provides invaluable insight as to what is required to return the debtor to a position as a viable business.

56. To ensure the debtor has access to professional services and retains directors that may otherwise resign to avoid facing personal liability, the CCAA makes specific provision for orders granting priority for Administration and D&O Charges.

CCAA, s. 11.51

CCAA, s. 11.52

57. In *Timminco Limited (Re)*, 2012 ONSC 506 ("*Timminco*") Morawetz J. described the commercial reality underpinning requests for Administration and D&O Charges in CCAA proceedings:

In my view, in the absence of the court granting the requested super priority and protection, the objectives of the CCAA would be frustrated. It is not reasonable to expect that professionals will take the risk of not being paid for their services, and that directors and officers will remain if placed in a compromised position should the Timminco Entities continue CCAA proceedings without the requested protection. The outcome of the failure to provide these respective groups with the requested protection would, in my view, result in the overwhelming likelihood that the CCAA proceedings would come to an abrupt halt, followed, in all likelihood, by bankruptcy proceedings.

58. Priority charges for interim financing are also specifically provided in the CCAA. The factors to be considered in granting a DIP Charge are set out in s. 11.2(4):

**Factors to be considered**

(4) In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the company is expected to be subject to proceedings under this Act;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.

59. Additional factors to consider in granting a DIP Charge are whether the secured creditors have been given notice of the debtor's intention to apply for a DIP Charge, whether the DIP financing is necessary having regard to the cash flow statements, and the reasonableness of the DIP financing terms.

*Re Canwest Global Communications Corp.*, [2009] O.J. No. 4286

60. The Petitioner submits that, on the basis of the facts set out above, it is appropriate and in the best interests of the stakeholders to grant the remedies sought by the Petitioner so that it may present a Plan of Arrangement to its Creditors.
61. The Petitioner will rely upon:

- (a) *Companies Creditors Arrangement Act*, R.S.C. 1985, c. 36, as amended;
- (b) *Business Corporations Act*, S.B.C. 2002, c. 57, as amended;
- (c) *Law and Equity Act*, R.S.B.C. 1996 c. 253; and
- (d) Rules 2-1(2), 4-4, 8-1, 8-2, 16-1, and 22-1 of the *Supreme Court Civil Rules* and the Inherent Jurisdiction of this Honourable Court.

**Part 4: MATERIAL TO BE RELIED ON**

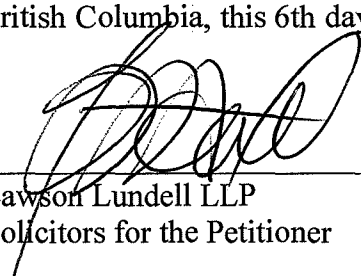
62. Affidavit #1 of B.A. Faulkner sworn November 5, 2014

63. Affidavit #2 of B.A. Faulkner sworn November 5, 2014

64. Affidavit #1 of K. Manderson sworn November 6, 2014

The Petitioner estimates that the hearing of the Petition will take 60 minutes.

Dated at the City of Vancouver, in the Province of British Columbia, this 6th day of November, 2014.

  
 \_\_\_\_\_  
 Lawson Lundell LLP  
 Solicitors for the Petitioner

This Petition to the Court is filed by the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

**To be completed by the court only:**

Order made

☐ in the terms requested in paragraphs \_\_\_\_\_  
 of Part 1 of this Petition

☐ with the following variations and additional terms:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

|       |   |
|-------|---|
| <hr/> |   |
| Date: | Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master |

**IN THE MATTER OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36**

**AND**

**IN THE MATTER OF THE BUSINESS  
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**AND**

**IN THE MATTER OF**

**PRETTY ESTATES LTD.**

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**PETITION TO THE COURT**

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Barristers & Solicitors  
1600 Cathedral Place  
925 West Georgia Street  
Vancouver, British Columbia  
V6C 3L2  
Phone: (604) 685-3456  
Attention: Bonita Lewis-Hand

File No. 30404-124090