

NO. S148656  
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

**NOTICE OF APPLICATION**

**NAME OF APPLICANT:**

Pretty Estates Ltd.

**To:**

All parties on the Service List maintained by G. Powroznik Group Inc., the Court-Appointed Monitor

TAKE NOTICE that an application will be made by the Applicant at the courthouse at **800 Smithe Street, Vancouver, B.C.** on **Wednesday, December 10, 2014**, at **10:00 a.m.** for the order(s) set out in Part 1 below.

**PART 1: ORDER(S) SOUGHT**

1. An order substantially in the form attached as Schedule "A" to this Notice of Application:
  - (a) confirming the relief granted in the Order pronounced November 10, 2014 (the "**Initial Order**") and extending the stay of proceedings in the Initial Order until June 15, 2015; and

- (b) increasing the DIP Lender's Charge on the Property, as such capitalized terms are defined in the Initial Order, to \$750,000.00.

## **PART 2: FACTUAL BASIS**

2. By Order pronounced on November 10, 2014, the Initial Order was pronounced under the *Companies Creditors' Arrangement Act* granting, among other things, a stay of proceedings until 11:59 p.m. on December 10, 2014. Capitalized terms used and not otherwise defined herein have the meaning set out in the Initial Order.

3. Since pronouncement of the Initial Order, the Petitioner has acted with due diligence and good faith, and fully cooperated with the Monitor in respect of its reporting obligations and obligations as set out in the Initial Order, the particulars of which are described in the Monitor's First Report to be filed in support of this application.

4. In summary, since the Initial Order was pronounced, the Petitioner has:

- (a) Implemented various implement cost containment measure;
- (b) Reduced the number of employees to essential levels;
- (c) Continued to negotiate with various parties with respect to potential refinancing or sale of the Property; and
- (d) Continued to work with the Monitor to consider terms by which a Plan of Arrangement can be presented to their creditors.

### ***DIP Financing***

5. The Initial Order authorized a DIP facility of \$750,000.00 and granted a DIP Lender's Charge of \$250,000.00 to secure the amount of the Petitioner's cash flow requirement for the 30 days following the commencement of these proceedings. The DIP facility was approved at \$750,000.00 on the basis of the cash flow projections for the 12 month period following ending October 31, 2015 (the "**Twelve Month Cash Flow Statements**") which were included in the

report of Integrated Hospitality Management Ltd. ("IHM") relied on in support of the Initial Order.

6. A summary financial statement for Resort operations for the month ending November 30, 2014 is described in the report of IHM dated December 5, 2014, a copy of which is attached to the Monitor's First Report.

7. Based on the three weeks IHM has actively been managing the Resort, the actual operating results achieved for November 2014, and the expected financial impact of the changes that are being introduced, IHM is confident that the financial projections for the operations and cash flow of the Resort, presented in November 2014, are still achievable in total over the balance of the year ending October 31, 2015.

8. The Monitor acknowledges that the Petitioner is generally on pace with forecasted cash flows, except that the opening cash balance on November 1, 2014 was approximately \$44,000 lower than what was originally projected.

9. Nothing has come to the Monitor's attention to suggest that the assumptions originally used by the Petitioner in developing the Twelve Month Cash Flow were incorrect or have changed materially except that there was insufficient budget for interest of approximately \$3,500 per month on average which represents approximately 4% of total budgeted expenses.

10. Furthermore, the Monitor reports that, in all material respects, the Petitioner appears to be on pace compared to its forecasted cash flows. Therefore, the Monitor is of the opinion that the Twelve Month Cash Flow remains appropriate for use in this CCAA proceeding.

11. Since the date of the Initial Order, the Petitioner requested and received a draw of \$170,000 with respect to the DIP Loan, and has made a second request for a further draw of \$60,000.

12. The terms of the agreement between the DIP Lender and the Petitioner limit the advances available to the Petitioner to the amount of the DIP Lender's Charge. The Petitioner therefore seeks an Order increasing the DIP Lender's Charge to \$750,000.00.

13. Without access to the full amount of the DIP facility, the Petitioner will be unable to continue its ordinary business operations and will be forced to cease operating, with consequent losses in going-concern value that the Petitioner seeks to preserve for the benefit of its creditors, and detrimental effects to other stakeholders including employees and local businesses that rely on the Petitioner to draw business to the area.

***Extension Order:***

14. IHM is a very experienced operator of resort properties with restructuring expertise. Based on IHM's experience, it will take 2 to 3 months to fully implement and entrench the extent of operational changes required at the Resort; and a further 2 to 3 months to fully document and prove the financial impacts going forward.

15. IHM is of the opinion that the Resort will be in a position to realistically assess the restructuring alternatives (refinancing, business partnerships, or realization), after the financial results for May 2015 (the beginning of the seasonal upswing) are known.

16. The Petitioner is currently considering the following two most significant options in its restructuring:

- a) **Re-financing the debt.** RDR Financial Services Inc. has expressed preliminary interest in this option. The Monitor expects that over time, other third parties will consider this option as well. The likelihood of a re-financing by any party will be largely dependent on the ability of IHM and the Petitioner to achieve the improved financial results resulted from IHM's recommended operational improvements and cost containment measures. The full result of these measures will not become evident for a period of several months; or
- b) **Sale of the Resort.** IHM has advised the Monitor that, in its professional opinion, from its experience with hospitality and resort properties the optimal time to realize the best recovery for the creditors and other stakeholders is to potentially offer the Resort for sale is at such time the Company can show the impact of the operational changes that IHM is making. IHM anticipates that the impact of the improvements will be more visible sometime in the late spring or late summer of 2015. Therefore, assuming the Petitioner's restructuring plan is not based on a refinancing, the optimal time to offer the Resort for sale is in the June to August 2015 period. The Petitioner and the Monitor support this approach. The timing of the expected initial impact of operations improvements coincides with the Petitioner's requested length of extension for the stay of proceedings.

17. Therefore, by June 15, 2015, the Petitioner expects to be in a position to file a Plan of Arrangement with the Court to be considered by its creditors.

### **PART 3: LEGAL BASIS**

#### **Extension Order**

18. 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 relief sought by the Petitioner so that it may present a Plan of Arrangement to its creditors.

#### **Increase in DIP Lender's Charge**

19. The evidence before the court indicates that there is sufficient equity in the Lands to such that a DIP Lender's Charge of \$750,000.00 will not prejudice either of the first or second mortgage holders.

20. However, even if the DIP Lender's Charge may pose a risk to full recovery under the second mortgage, such a risk is outweighed by the adverse effect on creditors that would result from the failure of the Petitioner's business. The increase in the DIP Lender's Charge should therefore be approved.

*Humber Valley Resort Corporation (Re)* 2008 NLTD 160, at para. 20  
*White Birch Paper Holding Co., Re*, 2010 QCCS 1176, at para. 33

21. Furthermore, the court may grant DIP financing even in the face of material prejudice to the secured creditors, since this factor is but one of the factors to be considered by the court and it is to be considered in equal measure with the other factors listed in s.11.2(4) of the CCAA.

*Re Pacific Shores Resort & Spa Ltd.*, 2011 BCSC 1775, at para. 49(f)

22. The Petitioners will rely upon the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. 36, as amended, and the Inherent Jurisdiction of this Honourable Court.

### **PART 4: MATERIAL TO BE RELIED ON**

23. Initial Order pronounced November 10, 2014;

24. Affidavit #1 of Betty Ann Faulkner sworn November 5, 2014;
25. Affidavit #2 of Betty Ann Faulkner sworn November 5, 2014;
26. Preliminary Report of G. Powroznik Group Inc. of G-Force Group in its capacity as the proposed monitor filed November 10, 2014; and
27. Monitor's First Report dated December 5, 2014.

The applicant(s) estimate(s) that the application will take **90 minutes**.

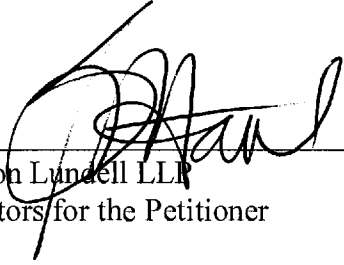
☒ This matter is **not** within the jurisdiction of a Master

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 8 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 12 business days after service of this Notice of Application.

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed Application Response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated at the City of Vancouver, in the Province of British Columbia, this 5<sup>th</sup> day of December, 2014.

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

This Notice of Application is filed by Bonita Lewis-Hand 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 Notice of Application

☐ with the following variations and additional terms:

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

Date:

Signature of ☐ Judge ☐ Master



## APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

### THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ **Other – CCAA**

NO. S148656  
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

---

NOTICE OF APPLICATION

---



Barristers and Solicitors  
1600 Cathedral Place  
925 West Georgia Street  
Vancouver, British Columbia  
V6C 3L2

Phone: (604) 685-3456

Attention: Bonita Lewis-Hand