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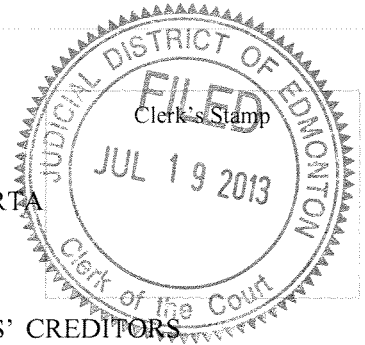
COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

APPLICANTS

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



AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGMENT OF ARMAC INVESTMENTS LTD.  
(AB), LAKE EDEN PROJECTS INC. (AB), 1204583  
ALBERTA INC. (AB), 1317517 ALBERTA INC. (AB),  
WESTRIDGE PARK LODGE DEVELOPMENT CORP  
(AB), and WESTRIDGE PARK LODGE AND GOLF  
RESORT LTD. (AB), HALF MOON LAKE RESORT  
LTD. (AB), NO. 50 CORPORATE VENTURES LTD.  
(BC), FISHPATH RESORTS CORPORATION (BC),  
ARMAC INVESTMENT LTD. (BC), OSTROM ESTATES  
LTD. (BC), HAWKEYE MARINE GROUP LTD. (BC),  
JUBILEE MOUNTAIN HOLDINGS LTD. (BC), GIANT  
MOUNTAIN PROPERTIES LTD. (BC), and CHERRY  
BLOSSOM PARK DEVELOPMENT CORP (BC)  
(collectively, the "Purdy Group" or the "Applicants")

DOCUMENT

**THIRTEENTH REPORT OF THE MONITOR**

**JULY 19, 2013**

ADDRESS FOR SERVICE AND  
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## INTRODUCTION

1. On December 1, 2011, the Purdy Group sought and obtained protection from its creditors under the Companies' Creditors Arrangement Act, R.S.C. 1985, c.C-36, as amended (the "CCAA") pursuant to an order of the Court of Queen's Bench of Alberta ("Court") (the "Initial Order").
2. Pursuant to the Initial Order, Alvarez & Marsal Canada Inc. was appointed monitor of the Purdy Group (the "Monitor").
3. The purpose of this Thirteenth report of the Monitor (the "Thirteenth Report") is to provide the Court with an update in respect of the following:
  - a) operational and restructuring activities since the eleventh report of the Monitor (the "Eleventh Report");
  - b) the claims process since the Eleventh Report of the Monitor;
  - c) the actual to forecast cash flow results for the period from May 4, 2013 to July 12, 2013 (the "Reporting Period");
  - d) the revised cash flow projections (the "Updated Forecast") from July 13, 2013 through October 25, 2013 (the "Forecast Period");
  - e) the Purdy Group's request for an extension to the current stay period until, and including October 25, 2013 ; and
  - f) the Monitor's recommendations.
4. Capitalized terms not defined in this Thirteenth Report are as defined in the Initial Order, the First Report, the Second Report, the Third Report, the Fourth Report, the Fifth Report, the Sixth Report, the Seventh Report, the Eighth Report, the Ninth Report, the Tenth Report, the Eleventh Report, the Twelfth Report, the Claims Procedure Order and the Dispute Procedural Order.

5. The style of cause has either an (AB) or (BC) after each of the corporate Applicant company names. The Monitor understands this was done to indicate in which province the corporate applicants are located, and that those letters do not form a part of the legal name of the company. There are two different corporate entities with the name Armac Investments Ltd, one is a British Columbia (“B.C.”) corporation and the other is an Alberta corporation (“AB”).
6. All references to dollars are in Canadian currency unless otherwise noted.

## **TERMS OF REFERENCE**

7. In preparing this Thirteenth Report, the Monitor has relied upon unaudited financial information, company records and discussions with management of the Purdy Group. The Monitor has not performed an audit, review or other verification of such information. An examination of the financial forecast as outlined in the Canadian Institute of Chartered Accountants (“CICA”) Handbook has not been performed. Future oriented financial information relied upon in this report is based on management’s assumptions regarding future events and actual results achieved will vary from this information and the variations may be material.

## **BACKGROUND**

8. The Purdy Group is a group of privately-held companies engaged in the business of property acquisition, development and sale in the provinces of Alberta and British Columbia, as well as the management of operating businesses on the lands. The primary assets are geographically located mainly on the West Coast of Vancouver Island, British Columbia and in or around Edmonton, Alberta.
9. The Purdy Group entities are owned 100% by its sole owner, director and officer, Mr. John (Jack) Kenneth Purdy (“Jack Purdy”), either directly or through holding companies, legally and beneficially. Jack Purdy is operating under the proposal provisions of the BIA and has presented a proposal to his creditors. Alvarez and

Marsal Canada Inc. is also the Proposal Trustee. The meeting of creditors to consider the proposal was held on June 22, 2012 and the meeting was adjourned to October 9, 2012. At that meeting, the creditors voted to further adjourn the meeting to January 25, 2013 at the same time and place and at this meeting the creditors again adjourned the meeting for further investigation into the affairs of Jack Purdy to February 20, 2013 at 10:00 am at the offices Dentons Canada LLP (“Dentons”), formerly Fraser Milner Casgrain LLP. Lastly, the February 20, 2013 meeting was further adjourned until May 16, 2013 at 4:00 pm at the offices of Dentons. The May 16, 2013 meeting was adjourned to within ten days of the next stay extension expiry of July 26, 2013 at 10:00 am at the offices of Dentons. The Trustee has scheduled the next meeting of creditors at 10:00 am on July 26, 2013 at the offices of Denton.

10. Further background to the Purdy Group and its operations and description of the Purdy Group properties are contained in the materials filed relating to the Initial Order including the various affidavits of Jack Purdy and in the previous ten reports of the Monitor. These documents, together with other information regarding this CCAA proceeding, have been posted by the Monitor on its website at: [www.amcanadadocs.com/purdy](http://www.amcanadadocs.com/purdy).

## **OPERATIONAL UPDATE**

### ***Fishpath Resorts Corporation (“Fishpath Resort”) & Armac Investments Ltd. (BC) (“Armac BC”) (collectively, the “Hawkeye Group Properties”)***

#### **LBVR Agreement**

11. As previously reported, on September 17, 2012 (the “Effective Date”), LBVR took over management responsibility for the Hawkeye Group Properties. The assets of the Hawkeye Group Properties consist of three properties in Port Alberni, B.C. and 16 properties in Bamfield, B.C. (as are fully described in Schedule A to the Management Agreement, included as an appendix to the Seventh Report).

12. Since the Eleventh Report, LBVR was advanced a further \$78,000 by the Applicants (the “Advance”), which together with previous advances aggregates to a total advance since the Effective Date of \$728,000 (the “Set Aside Funds”). The Monitor was advised that the Advance was funded by the Applicants receiving a loan on June 25, 2013 from the purchaser of the three properties owned by Armac BC, Giant Mountain properties Ltd. (“Giant”) and Jubilee Mountain Holdings Ltd. (“Jubilee”) (collectively, the “Giant Mine Properties”) located on Giant Mine Road, in Invermere, British Columbia (the “Giant Mine Loan”). The loan will be applied to the purchase price of \$278,000 on closing, which the Applicants advised should occur within the next two weeks. There are no further funds in the Monitor’s trust account reserved for LBVR pursuant to the Management Agreement. To purchase fuel inventory for and facilitate the completion of the high pressure fuel system the Applicants committed to advance a further \$200,000 to LBVR as funds become available from the sale of redundant and/or non-core properties. The Advance reduces that commitment to \$122,000. The \$122,000 is expected to be funded from the sale of the Giant Mine Properties. Funding for the remaining improvements are expected to come from operating profits generated by the Hawkeye Group Properties and supplemented, as necessary, from funding to be obtained through the implementation of a plan of arrangement by the Purdy Group to its creditors and stakeholders.
13. Any operating costs, LBVR management fees and property taxes for the Hawkeye Group Properties must be funded from its operations and any surplus cash flow will be utilized by LBVR for further capital improvements. Accordingly, no receipts and disbursements respecting the Hawkeye Group Properties are included in the actual to forecast cash flows attached as Appendix A.
14. To date, the monies advanced to LBVR have been utilized to fund operating costs, LBVR management fees, acquire fuel and store inventory and to improve the operations and the infrastructure of the Hawkeye Group Properties, which in particular includes upgrading the Bamfied Trails Hotel and Hawkeye Pub, the Kingfisher Marina and fuel system and resurrecting and finishing the marina and

road-side fuel stations at the Ostrom's property that became fully operational on or around April 11, 2013. An analysis of the funds advanced has been provided by LBVR to the Monitor to June 30, 2013 and are summarized in Appendix B to this report.

15. The draft business plan provided by LBVR forecast cash flow from operations before LBVR management fees and other administrative costs such as insurance and property tax in the range of \$600,000 based on revenue of approximately \$1.9 million during the 2013 calendar year. While it is expected that the majority of this cash flow would be generated during the operating season of May through October it does not appear, based on the receipts to June 30 as set out in Appendix B, that the Hawkeye Properties will generate the cash flow or revenue projected in the draft business plan. The Applicants and the Monitor will be following up with LBVR on the likely results for the balance of the 2013 calendar year and for 2014 calendar year.

***Half Moon Lake Resort Ltd. ("Half Moon")***

16. Half Moon opened on the May long weekend in 2013. As previously reported, Half Moon was closed through 2011 due to an Executive Officer's Order issued by Alberta Health ("EOO") and various Orders of the Court (the "Closure Orders"). The Closure Orders were rescinded pursuant to a June 15, 2012 Consent Order of the Court ("June Order"). The resort opened for the 2012 season under the June Order which allowed the resort to operate for the duration of the 2012 season under a pump and haul waste system as the required permanent waste water system was not in place.
17. The Monitor was advised by the Purdy Group that although the EOO has not been vacated, the Applicants are of the view that all requirements of the EOO have been satisfied. The Applicants advise that they have met with Alberta Health at Half Moon and that Alberta Health is aware that Half Moon is open and operating in the normal course and have not raised any objections. Alberta Health is aware of the CCAA proceedings and the Monitor has not received any correspondence

from Alberta Health indicating that the resort should not be operating. The Applicants intend to pursue Alberta Health to vacate the EOO at the end of the operating season in September.

18. The Monitor understands that Half Moon sold one of its lots and received proceeds from this sale of \$52,500 (including GST). The Monitor requested from the Applicants a copy of the purchase and sale agreement and just recently receive the agreement from the Applicants. The Monitor understands that the proceeds were utilized to pay the 2012 property tax arrears for Half Moon of approximately \$43,000 and for other general operating purposes.
19. Projected operating revenue and expenses are included in the Updated Forecast attached as Appendix C. The Updated Forecast indicates net positive operating cash flow of approximately \$30,000 for Half Moon during the Forecast Period.
20. The 2012 property taxes have now been paid leaving the 2013 property taxes of approximately \$40,000 still due and outstanding. Payment of these property taxes has not been included in the Updated Forecast as funds from operations are not sufficient to pay the property taxes and no other sources of funds are currently available. The Applicants intend to fund payment of the property taxes through the refinancing it is seeking to sponsor a plan to its creditors.

***Professional Fees and Administration Charge***

21. As reported in the Twelfth Report, the Monitor, its counsel and counsel to the Applicants (the “CCAA Professionals”) have unpaid invoices and unbilled accounts of approximately \$525,000 up to June 30, 2013 and professional fees continue to accrue. These fees have been outstanding since March 2013 and were previously forecast to be paid from the proceeds from the Non Core For Sale Properties. However, the Applicants have not been successful in disposing of the Non Core For Sale Properties and the fees remain outstanding.



22. Consequently, on application to the Court on July 4, 2013 the Monitor requested an increase in the Administration Charge by \$300,000. The Court granted an increase of \$125,000 and adjourned until July 26, 2013 the request for the remaining \$175,000. The Monitor will be requesting the Administration Charge be increased by the \$175,000 to \$800,000.
23. The Applicants have committed to bringing the CCAA Professionals fees current through the sale of the Non Core For Sale Properties and the Half Moon lots. The forecast includes payment of CCAA Professionals fees of \$250,000, which will still leave arrears of approximately \$350,000 as of July 19, 2013. The Applicants advise they are committed to selling the Non Core For Sale Properties and are hopeful that additional sales of Non-Core For Sale Properties will be completed during the next proposed stay extension period and the proceeds are to be utilized to bring the CCAA Professionals fees current. However, they have not included any such sales in the Updated Forecast as they are not confident of the exact timing and have been unsuccessful in meeting projected property sales previously.
24. The Monitor believes that the CCAA Professionals are not stakeholders in these CCAA proceedings. While understanding the cash flow requirements of the Applicants have limited the Applicants ability to pay the CCAA Professionals fees, the Monitor believes that the CCAA Professionals should not be placed into a position where their outstanding fees continue to be deferred and unpaid indefinitely. It appears from the information available to the Monitor that the Applicants will not have any ability to pay the professional fees until the Plan is implemented.
25. Accordingly, the Monitor, on behalf of the CCAA Professionals will be making an application to the Court to authorize the Monitor to sell, in the name of the Applicants, the Non Core For Sale Properties, the Giant Mine Properties and/or the “ocean front property” to generate sufficient proceeds to pay the arrears of professional fees as of July 31, 2013 (estimated to be in the range of \$600,000), if the Applicants have not paid or made arrangements (suitable to the Monitor in the

Monitor's sole discretion) to pay the arrears of CCAA Professional fees. A listing of the Non Core For Sale Properties, Giant Mine Properties and the "ocean front" property is attached as Appendix E.

## **RESTRUCTURING UPDATE**

### ***Status of Plan of Arrangement***

26. At the last stay extension application, the Court granted an extension of the stay to July 26, 2013. The Order granted also required the Monitor to return to Court by the expiry of the stay to update the Court on the restructuring efforts of the Applicants and if required, the Monitor's intended course of action in the event a draft plan of arrangement or compromise (the "Plan") was not prepared and submitted to the Monitor by June 7, 2013. The Court also requested the Monitor provide a status report on July 4, 2013.
27. As requested by the Court, the Monitor prepared its Twelfth Report and was present in Court on July 4, 2013 to provide an update on the Applicants' restructuring efforts and Plan. Interested parties to this CCAA proceeding are referred to the Twelfth Report for further information on the Plan.
28. As discussed in the Twelfth Report, prior to the Applicants circulating a Plan, the Monitor was of the view that the required financing to fund the Plan should be in place and the two main creditors, Axxess and CRA should be engaged in the development of the Plan to ensure they are agreeable to the concept of having their proven claims be paid out over a certain period of time.
29. The Monitor was previously advised by the Applicants that they expected to obtain a financing commitment from an interested party by May 17, 2013. As of the date of this Thirteenth Report, the Monitor is not aware of any financing commitment being in place.
30. On July 18, 2013, the Monitor met with representatives of the Applicants, Axxess and CRA and their respective counsel to discuss a number of matters including a

detailed review of the concept and payment options available to them as contemplated by the Applicants under the Plan. After a detailed discussion, the Monitor was advised by both representatives by both CRA and Axxess and their respective counsel that they will require more time to consider the Plan and seek direction from their decision makers on whether to support the Plan. Further, both parties advised the Applicants and the Monitor that in order to seek approval of the Plan they would require the Plan be in substantially final form.

31. CRA and Axxess requested the Applicants apply for a 90-day extension of the stay which they believed would be the time required to prepare the Plan for CRA and Axxess and to have CRA and Axxess consider whether they will support the Plan.
32. The Applicants agreed that they would , with the assistance of the Monitor, prepare a draft of the Plan for CRA and Axxess by no later than September 6, 2013. Axxess and CRA committed to communicate their respective positions to the Applicants and the Monitor no later than October 25, 2013, the proposed date for the next extension of the stay.
33. The Monitor's Twelfth Report reported that the Applicants expected to be in a position to circulate the Plan by early August. That timing still appears appropriate; however, was dependent on the support of the two most significant creditors and the financing to be in place. As that has not occurred and will not likely occur until October, moving the date back to September 6, 2013 is does not seem unreasonable to the Monitor.
34. The Monitor is of the view that a 90-day extension may be longer than necessary to finalize the financing and the Plan and return to court for approval by this Court to circulate the Plan. If a 90-day extension is granted, the Monitor suggests that the Applicants file the Plan with the court on September 6 and return to Court in September to update the Court on the status of the financing and the Plan.

## ***Outstanding Restructuring Matters***

### Litigation with The County of Strathcona

35. The County of Strathcona has been disputing the Applicants right to enter into 35 year leases and has taken the position that the leases previously authorized by Court Order were diminishing leases and all expired in August 2037. That matter has been before this Court for some time and that matter was heard by the Court on June 4 and 5, 2013. Justice Burrows rendered his decision on July 18, 2013. A copy of the decision is attached as Appendix D. In summary, Justice Burrows decided that Half Moon was entitled to enter into new leases with a term of 35 years commencing on the day the new lease was granted. Justice Burrows also decided that options to renew were not to be allowed as part of the lease terms.

### Final Hawkeye Business Plan

36. As previously reported, in September of 2012, LBVR was engaged to take over the continued development and management of the Hawkeye Group Properties. In December 2012, the Purdy Group and the Monitor received a draft business plan from LBVR. The draft business plan included annual forecasts, sales, a marketing plan for the assets and a capital plan for the maintenance and development of those properties capable of generating operating cash flow. The Monitor and the Purdy Group reviewed the draft LBVR business plan and have provided their collective comments to LBVR. LBVR has been executing on parts of its business plan and has completed most of what can be accomplished with the funding that has been available. The Applicants and LBVR are now working together to finalize the business plan for the continued development of the properties, much of which will not occur until after a plan is in place.

### Shore Leases

37. The Monitor previously reported that the Applicants engaged McManus Development Planning Inc. (“McManus”) to make an application to the Ministry

of Environment, Lands and Parks (Province of BC) (“MELP”) to renew the five shore leases previously cancelled and to assist with other development activities of the Applicants’ in Bamfield. The Monitor was advised by the Purdy Group that the application and the appropriate application fee have now been submitted to MELP and that McManus does not foresee there being any issue in obtaining the approvals on these leases.

38. On July 18, 2013, the Monitor received a phone call from the MELP confirming the status of the CCAA proceedings. The Monitor was advised by the MELP that the application for the shore leases were received last month and that the average wait time to have the application approved is approximately 1 year (due to shortage of staff at the MELP). The MELP also advised the Monitor that use of the unleased waters, without proper licenses in place, is not allowed. The Monitor has advised the Applicants of the comments of the MELP.

#### Non-Core For Sale Properties

39. These properties were listed with Colliers MacAulay Nicolls Inc. (“Colliers” or the “Listing Agent”) on June 22, 2012. The listing agreement was extended several times and expired on May 30, 2013. A listing of the properties and the most recent listing price is included in the Tenth Report. The listing has not been renewed and the Applicants have made little to no further attempts to sell these properties.

#### Giant Mine Properties

40. As discussed above and as disclosed in the Second Report (Appendix A), the Applicants (Armac BC, Giant and Jubilee), own three redundant parcels (225 acres) of land in Invermere, BC (i.e the Giant Mine Properties). The Applicants have received and accepted an offer to purchase the Giant Mine Properties for \$278,000. The offer is subject to financing and the Applicants advise the purchaser has confirmed it has been approved for the financing. As previously discussed, Counsel to the Applicants held a \$78,000 deposit in trust for the

purchase of the Giant Mine Properties (the “Deposit”). The Monitor is advised by the Applicants that the deposit was returned to the purchaser and the purchaser loaned the Deposit to the Applicants. The Monitor is further advised that the Deposits was received by the Applicants and paid to LBVR, as discussed above.

### ***Alberta Properties in Foreclosure***

41. As discussed in prior reports, the remaining Alberta property which had been in foreclosure since the commencement of the CCAA proceedings is the property at 15625 Stony Plain Road (the “Stony Plain Property”).
42. The Stony Plain Property continues to be listed for sale with Trikon Properties. As discussed in the Eleventh Report, the Purdy Group previously received an offer to purchase this property, but the conditions were not fulfilled by the offeror. It is unlikely there will be any equity over the first mortgage on this property. The Monitor has been advised by the Applicants that Axxess may still take the property through completion of its foreclosure proceeding commenced prior to the CCAA proceedings.

## **UPDATE ON CLAIMS PROCESS**

### **Overview**

43. During the CCAA proceedings, 201 filed POC’s totalling (in aggregate) approximately \$191.9 million, many of which were considered duplicative in nature. The Eighth Report outlined all the POC’s that were being contested and the process that the Monitor understood to be utilized by this Honourable Court to determine the claims in dispute during the Claims Hearing Date.
44. Since the Eleventh Report, the accepted value of claims has been reduced by approximately \$2.3 million due to Axxess’ foreclosure on the Westridge Property, as discussed in the Eleventh Report. This foreclosure reduced one of its originally filed claims from approximately \$4.5 million to \$2.3 million.

45. A breakdown of the claims received and the current status of these claims is summarized in the chart below:

<b>Purdy Companies Claims Summary Breakdown July 19, 2013</b>			
	<b>Values</b>	<b>Claims Filed</b>	<b>% of total filed claim</b>
<u>Accepted claims by Monitor and/or Court</u>			
Accepted claims in full	\$ 5,714,301.24	20	2.98%
Revised (not disputed by the claimant)	693,910.40	14	0.36%
Revised (court)	34,788.50	2	0.02%
	6,443,000.14	36	3.36%
<u>Outstanding claims to be determined</u>			
Disallowed (disputed)*	55,000.00	1	0.03%
Revised (disputed)*	67,584.50	2	0.04%
Claims under review**	5,280,255.51	31	2.75%
	5,402,840.01	34	2.81%
<u>Disallowed claims by Monitor and/or Court</u>			
Disallowed (not disputed by the claimant)	9,400,946.91	66	4.90%
Disallowed (court)	161,067,836.89	58	83.89%
	170,468,783.80	124	88.79%
<u>Intercompany / shareholder claims</u>	9,678,772.37	7	5.04%
<b>Proof of Claims Filed</b>	<b>191,993,396.32</b>	<b>201</b>	<b>100%</b>
*3 notices of dispute filed by claimants with respect to their claim being either revised or disallowed by the Applicants. These claims will either be brought before this Honourable Court to be resolved or it will be resolved between the claimants and the Applicants.			
**30 of the 31 remaining claims to be reviewed relate to CRA claims.			

46. The chart above indicates that of the approximate \$191.9 million POC's that were filed, the Monitor and/or the Court has accepted approximately \$6.4 million, disallowed approximately \$170.4 million and are currently deciding upon the validity of approximately \$5.40 million of 3rd party creditor claims. These claims do not take into consideration the remaining \$9.67 million in intercompany and/or

shareholder claims that were filed by the Applicants that the Monitor is also currently reviewing. In addition to the filed POC's, there is an Administration Charge of \$625,000, \$2.1 million in Interim Financing and unpaid 2013 property taxes that are in priority to all other claims.

47. The Applicants continue to review the remaining outstanding claims (the majority of which are outstanding CRA claims as discussed below) and should be completed once all of the corporate tax returns have been completed by McCallum & Company ("McCallum") (outsourced accounting firm), as discussed further below.
48. The description of the claims categories in the above chart has been fully described in the Tenth Report.

#### **ACTUAL TO FORECAST RESULTS – MAY 4, 2013 TO JULY 12, 2013**

##### ***Actual to Forecast Summary Results***

49. The actual to forecast cash flow presented at Appendix A to this report for the Reporting Period contains the actual cash receipts and disbursements relating to the Purdy Group as compared to the cash flow forecasts previously provided to this Court in the Eleventh Report (the "Eleventh Report Forecast").
50. The Applicants advise that its former manager and bookkeeper at Half Moon no longer works for the Applicants and as a result the accounting records are not up to date. Despite multiple requests made by the Monitor to obtain the actual receipt and disbursement information on a periodic basis, it was not until the week of July 8, 2013, that the Monitor received an envelope full of receipts from the Applicants for the period May 4 to July 12, 2013. On July 18, 2013, the Monitor received the majority of the documentation relating to the transactions that occurred during the Reporting Period, but has not been able to do a fulsome review on this information as at the date of this report.



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51. Consequently, the actual results disclosed in the chart below is a summary of transactions in the Applicant's bank account and the Monitor has not yet been able nor attempted to sort through these receipts to determine the nature of the receipts or expenditures or to explain the variance over the forecast amounts. The Monitor warns the reader of this Thirteenth Report that the financial information below may be incomplete as there may be certain cash transactions during the Reporting Period that may have been collected and/or paid for by the Applicants, which are not reflected in the statement in Appendix A.

<b>Purdy Group</b>	<b>May 4/13 to</b>	<b>May 4/13 to</b>	<b>May 4/13 to</b>
<b>Actual to Budget Cash Flow Results</b>	<b>July 12/13</b>	<b>July 12/13</b>	<b>July 12/13</b>
	<b>Budget</b>	<b>Actual</b>	<b>Variance</b>
Receipts	\$ 97,000	\$ 369,471	\$ 272,471
Funds from Monitor's trust account	374,500	35,370	\$ (339,130)
Total receipts	<u>\$ 471,500</u>	<u>\$ 404,841</u>	<u>\$ (66,659)</u>
Disbursements	339,500	433,668	(94,168)
Restructuring professional fees	150,000	-	150,000
Total disbursements	<u>\$ 489,500</u>	<u>\$ 433,668</u>	<u>\$ 55,832</u>
Net change in Applicant cash	\$ (18,000)	\$ (28,827)	\$ (10,827)
Applicant cash balance, opening	28,944	28,944	-
Applicant cash balance, ending	<u>10,944</u>	<u>117</u>	<u>(10,827)</u>
<b>FUNDS HELD IN TRUST BY MONITOR</b>			
Trust Opening Cash	\$ 100,675	\$ 100,675	\$ -
Collection of funds - other	50,000	52,500	2,500
Non Core Property Sale Receipts	335,000	-	(335,000)
Half Moon Lake Lot Sale Receipts	-	-	-
Release of funds to Applicants (LBVR)	(200,000)	-	200,000
Release of funds to Applicants (for operations)	(174,500)	(35,370)	139,130
	<u>10,500</u>	<u>17,130</u>	<u>6,630</u>
Trust Ending cash	<u>\$ 111,175</u>	<u>\$ 117,805</u>	<u>\$ 6,630</u>
<b>TOTAL AVAILABLE CASH</b>			
Applicant ending cash balance	\$ 10,944	\$ 117	\$ (10,827)
Trust cash balance	111,175	117,805	6,630
Less: cash not available per Court Order	(100,000)	(100,000)	-
Less: cash held for LBVR	-	-	-
	<u>11,175</u>	<u>17,805</u>	<u>6,630</u>
Available Cash	<u>\$ 22,119</u>	<u>\$ 17,922</u>	<u>\$ (4,197)</u>

52. Receipts, including the release by the Monitor of previously received Interim Financing and other funds to the Applicant, for the Reporting Period totaled \$404,841, representing a negative variance of \$66,659 from the receipts set out in the Eleventh Report Forecast. This variance was primarily due to:
- a) a positive variance of approximately:
    - i. \$141,971 relating mainly to higher than expected receipts from seasonal bookings and other receipts;
    - ii. \$52,500 relating to the sale of one Half Moon lake lot that was not previously forecast; and
    - iii. \$78,000 relating to a loan to the Applicants as previously discussed above; and
  - b) a negative timing variance of approximately \$339,130 relating primarily to funds not received from the Monitor's trust account with respect to the collection of the sale of 3203-2<sup>nd</sup> Avenue property in Port Alberni (as discussed in the Eleventh Report) and the sale of the Giant Mine Properties;
53. Operating disbursements for the Reporting Period totaled \$433,668 representing a negative variance of \$94,168. This variance was primarily due to a:
- a) negative permanent variance of approximately \$246,700 for higher than expected operating costs in Half Moon and insurance payments;
  - b) negative permanent variance of approximately \$13,156 relating to an extra insurance payment made from the Monitor's trust account for the Hawkeye Group properties that was not previously forecast. On a go-forward basis, all monthly insurance premium payments on these properties will be paid directly by LBVR;

- c) positive variance of approximately \$43,700 relating to the timing of management, capital cost and contingency fee payments; and
  - d) positive timing variance of approximately \$122,000 relating to lower than expected payments made to LBVR than previously forecast;
- 54. Restructuring fees of \$150,000 were not paid for professional services rendered during the Reporting Period, due to the Purdy Group's cash constraints in these CCAA proceedings.
- 55. The sale of Non Core For Sale Properties of approximately \$335,000 did not occur in the Reporting Period; however, the Applicants advise that these sales are imminent and will be completed in the Forecast Period;
- 56. The Applicant's ending cash balance as at July 12, 2013 was \$117 compared to the forecast cash balance amount of \$10,944, for the reasons discussed above. The combination of the ending available cash balance in the Monitor's trust account of \$17,805 and the Applicants' ending cash balance above, results in an overall ending available cash balance of \$17,922.
- 57. As previously disclosed, the Monitor has not had an opportunity to review the supporting documentation for most of the above transactions in the Reporting Period, as this information was not provided to the Monitor by the Applicant in a timely manner.

#### **UPDATED CASH FLOW FORECAST THROUGH OCTOBER 25, 2013**

- 58. The Purdy Group, with the assistance of the Monitor, has prepared an Updated Forecast for the Forecast Period based on the most current information available, which is attached as Appendix C.
- 59. The table below summarizes cash flow for the Forecast Period:

<b>Purdy Group</b>		<b>July 13/13 to</b>
<b>Projected Cash Flow Summary</b>		<b>October 25/13</b>
		<b>Forecast</b>
Operating receipts	\$	223,000
Funds from Monitor's trust account		352,000
Total receipts	\$	575,000
Operating disbursements		202,000
Release of funds to LBVR		122,000
Restructuring professional fees		250,000
Total operating disbursements	\$	574,000
Net change in Applicant cash	\$	1,000
Applicant cash balance, opening		117
Applicant cash balance, ending		1,117
<b>FUNDS HELD IN TRUST BY MONITOR</b>		
Trust Opening Cash	\$	117,805
Collection of funds - other		-
Collection of funds - sale of non-core properties		335,000
Release of funds to Applicants		(352,000)
		(17,000)
Trust Ending cash	\$	100,805
<b>TOTAL AVAILABLE CASH</b>		
Applicant ending cash balance	\$	1,117
Trust cash balance		100,805
Less: cash not available per Court Order		(100,000)
Less: cash held for LBVR		-
		805
Available Cash	\$	1,922

60. As summarized above, the Purdy Group is projecting:
- a) total operating cash receipts from Half Moon Lake Resort at approximately \$223,000. All Hawkeye Group Property receipts are retained by LBVR for use in operating and upgrading the Hawkeye properties as previously discussed.
  - b) funds distributed from the Monitor's trust account to be used in its operations of approximately \$352,000;
  - c) cash disbursements for operations and release of funds to LBVR of approximately \$202,000 and \$122,000, respectively; and
  - d) partial payment of outstanding restructuring fees and costs of approximately \$250,000.
61. The above results in a net increase in cash of the Applicants' cash balance of approximately \$1,000 during the Forecast Period. The net increase in cash from the Applicants' bank account will increase the Applicants' ending cash position to approximately \$1,117. The combination of the ending available cash balance in the Monitor's trust account of approximately \$805, results in an overall estimated ending available cash balance of approximately \$1,922. The Monitor has reviewed the assumptions supporting the Updated Forecast with Purdy Group management and believes the assumptions to be reasonable.
62. Significant assumptions made by Purdy Group management with respect to the Updated Forecast are:
- a) LBVR is operating the Hawkeye Group Properties and has completed an operating budget for the 2013 operating season that the Monitor is currently reviewing as part of the LBVR business plan. As discussed above, any operating costs, including payment of LBVR management fees, property taxes and insurance payments for the Hawkeye Group Properties must be funded from its own operations and any surplus

cash flow will be utilized by LBVR for further capital improvements. Accordingly, no operating receipts or disbursements for the Hawkeye Group Properties are included in the Updated Forecast.

- b) lease fee collection and rental RV receipts from Half Moon Lake is approximately \$123,000 and the estimated sale of lease lots is forecast at \$100,000;
- c) operating costs relating to Half Moon of approximately \$93,000, which does not include the payment of Half Moon's outstanding property taxes of approximately \$40,000;
- d) management fees and consultant fees of approximately \$23,000 relating to management fees paid to Purdy and McCallum (as discussed below) of approximately \$18,000 and \$5,000, respectively;
- e) contingency costs are approximately \$1,000;
- f) the Purdy Group is projecting to advance an additional \$122,000 to LBVR. The funds will come from the sale of one of the Non Core For Sale Properties and other redundant property sales (as described below) and it is expect the funds will be utilized to improve the Hawkeye Group Properties and fund inventory purchases.
- g) restructuring costs for the Monitor, its counsel and the Applicants' counsel are based on the cash flow available and are not indicative of the outstanding fees as discussed above;
- h) anticipated sale of the Giant Mine Properties and the 3203-2<sup>nd</sup> Avenue property that are expected to recover net proceeds of approximately \$335,000, as discussed previously in this report.

63. Based on the Purdy Group's limited assumptions, the Updated Forecast indicates that the Purdy Group will continue to have sufficient available cash to meet its

current operating obligations through the Forecast Period but not to pay its entire outstanding and unbilled professional fees. The CCAA Professionals have an Administration Charge of \$625,000 to secure their fees. This, along with the forecast payment to these fees in the Updated Forecast and the proposed increase in the Administration Charge (as discussed above), is currently sufficient to cover the outstanding fees incurred (but not paid) to date. As discussed above, the Purdy Group advised the Monitor that it is hopeful that it will sell some of its remaining Non Core For Sale Properties in the Forecast Period to pay the outstanding invoices of the CCAA Professionals, but was reluctant to include this in the Updated Forecast due to it being uncertainty whether it could sell these properties.

64. The Monitor remains of the view that the Purdy Group's ability to continue its restructuring efforts will depend on its ability to meet or exceed the cash flow outlined in the Updated Forecast. The Monitor will continue to review the progress of the Applicants with respect to its cash flows and will advise this Honourable Court forthwith if there is a material adverse change to the cash flow statements that would significantly impair the Purdy Group's ability to continue within these CCAA proceedings.

## **REGULATORY FILING REQUIREMENTS**

65. As previously discussed in the Eleventh Report, McCallum continues to finalize the 47 outstanding tax returns and two personal tax returns of the Applicants and Purdy, respectively, and anticipates to have this completed in the coming weeks and will likely require an additional \$10,000 (on top of its retainer of \$7,500) to settle its outstanding invoices for these services. The completion of these outstanding tax returns will be critical in evaluating the 30 proof of claims filed by CRA.



## **THE PURDY GROUP'S REQUEST FOR AN EXTENSION OF THE STAY PERIOD**

66. Pursuant to the Initial Order, the Purdy's Group's stay period expires at midnight on July 26, 2013 (the "Stay Period"). The Purdy Group, with the support of its two main creditors Axxess and CRA, is seeking an extension of the Stay Period until and including October 25, 2013 (the "Proposed Stay Extension").
67. The Proposed Stay Extension will give the Purdy Group adequate time to address the outstanding restructuring matters, draft the Plan for CRA and Axxess and complete outstanding corporate tax returns so the review of the CRA claims can be finalized.
68. In the Monitor's view, the Purdy Group is in a position to put forward a Plan to its creditors, but has now been asked to defer doing so by its two main creditors as they require time to consider whether they wish to support the Plan as outlined in the Twelfth Report. Notwithstanding this delay, the Purdy Group is acting in good faith and with due diligence during this CCAA proceeding and no creditor will be materially prejudiced by an extension of the stay. The Monitor is of the respective view that an extension of the stay is appropriate in the circumstances, although 90 days may be longer than necessary.
69. The Monitor is requesting the Applicants to provide more timely, accurate and relevant accounting information for the Monitor to properly fulfill its duties of reviewing the receipts and disbursements of the Applicants. If the accounting information is not provided in a timely manner satisfactory to the Monitor, the Monitor will advise the Court accordingly and seek further advice and direction.

## **RECOMMENDATION**


70. The Monitor recommends that this Honourable Court approve an extension of the stay.

All of which is respectfully submitted this 19<sup>th</sup> day of July, 2013.

**ALVAREZ & MARSAL CANADA INC.,  
in its capacity as court-appointed Monitor of  
the Purdy Group**

A handwritten signature in black ink, appearing to read 'Tim Reid', with a stylized flourish at the end.

Tim Reid, CA•CIRP  
Senior Vice-President

A handwritten signature in black ink, appearing to read 'Orest Konowalchuk', with a large, sweeping flourish at the end.

Orest Konowalchuk, CA•CIRP  
Director

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# APPENDIX A

**Purdy Group of Companies**  
**Actual to Forecast Results**  
**For the period of May 4, 2013 to July 12, 2013 (the "Forecast Period")**  
**(in CDN dollars)**

	<b>Forecast</b>	<b>Actual</b>	<b>Variance</b>
	<b>Week 77 to</b>	<b>Week 77 to</b>	<b>Week 77 to</b>
	<b>Week 86</b>	<b>Week 86</b>	<b>Week 86</b>
	<b>May 4 to July 12, 2013</b>		
<b>Operating receipts</b>			
Hawkeye Group Properties sales and rental receipts	-	-	-
Half Moon Lake Resort receipts	97,000	238,971	141,971
Sale of Half Moon Lake lots	-	52,500	52,500
Advances received	-	78,000	78,000
<i>Total receipts</i>	97,000	369,471	272,471
<b>Funds from Monitor's Trust Account</b>	374,500	35,370	(339,130)
<b>Total receipts</b>	<b>471,500</b>	<b>404,841</b>	<b>(66,659)</b>
<b><u>Operating Disbursements</u></b>			
Hawkeye Group Properties expenses	7,000	20,156	(13,156)
Half Moon Lake expenses	64,000	310,736	(246,736)
Management fees, wages and consultants	31,500	9,000	22,500
Half Moon Lake Capital costs	25,000	15,776	9,225
Contingency	12,000	-	12,000
	139,500	355,668	(216,168)
<b>LBVR Management agreement disbursements</b>			
Release of funds to LBVR	200,000	78,000	122,000
<i>Total operating &amp; LBVR disbursements</i>	339,500	433,668	(94,168)
<b><u>Restructuring professional fees</u></b>			
- Monitor	70,000	-	70,000
- Company Counsel	40,000	-	40,000
- Monitor Counsel	40,000	-	40,000
<i>Total restructuring professional fees</i>	150,000	-	150,000
<b>Total disbursements</b>	<b>489,500</b>	<b>433,668</b>	<b>55,832</b>
<b>Net change in Applicant cash</b>	<b>(18,000)</b>	<b>(28,827)</b>	<b>(10,827)</b>

<b>APPLICANT CASH BALANCE</b>			
Opening cash	28,944	28,944	-
Net change in operating cash	(18,000)	(28,827)	(10,827)
Ending Cash	10,944	117	(10,827)

(continued...)

<b>FUNDS HELD BY MONITOR</b>			
Opening Cash	100,675	100,675	-
Collection of funds - other	50,000	52,500	2,500
Non Core Property Sale Receipts	335,000	-	(335,000)
Half Moon Lake Lot Sale Receipts	-	-	-
Release of funds to Applicants (LBVR)	(200,000)	-	200,000
Release of funds to Applicants (for operations)	(174,500)	(35,370)	139,130
	10,500	17,130	6,630
Ending cash	111,175	117,805	6,630

<b>TOTAL AVAILABLE CASH FOR GENERAL RESTRUCTURING</b>			
Applicant ending cash balance	10,944	117	(10,827)
Total Funds held by Monitor	111,175	117,805	6,630
Less: Funds held for LBVR Agreement	-	-	-
Cash held in trust per Court Order	(100,000)	(100,000)	-
	11,175	17,805	6,630
Cash available for general restructuring	<b>22,119</b>	<b>17,922</b>	<b>(4,197)</b>

  
 Jack Purdy, President  
 Purdy Group

*Jul 17/2013*  
 Date

# APPENDIX B

LBVR (Hawkeye Group Properties)  
**Actual Cash Flow**  
the period of September 8, 2012 to June 30, 2013  
(in CDN dollars)

	9 month										Total
	Sept 8 - Oct 31/12	Nov 1 - Nov 30/12	Dec 1 - Dec 31/12	Jan 1 - Jan 31/13	Feb 1 - Feb 28/13	Mar 1 - Mar 31/13	Apr 1 - Apr 30/13	May 1 - May 31/13	June 1 - June 30/13		
<b>Operating receipts</b>											
Funds received from the Purdy Group	\$ 150,000	\$ 100,000	\$ -	\$ 100,000	\$ 140,000	\$ 60,000	\$ 100,000	\$ -	\$ 78,000	\$ 728,000	
Fishpath sales and rental receipts	4,069	4,948	(2,660)	(1,886)	(801)	4,319	4,718	27,226	45,168	85,102	
Other miscellaneous receipts	546	442	2,763	4,266	2,343	1,295	2,809	2,450	4,430	21,334	
<b>Total operating receipts</b>	<b>\$ 154,615</b>	<b>\$ 105,389</b>	<b>\$ 103</b>	<b>\$ 102,370</b>	<b>\$ 141,542</b>	<b>\$ 65,614</b>	<b>\$ 107,527</b>	<b>\$ 29,676</b>	<b>\$ 127,598</b>	<b>\$ 706,838</b>	
<b>Operating Disbursements</b>											
Management fees	\$ 33,300	\$ 16,650	\$ 16,650	\$ 16,650	\$ 16,650	\$ 16,650	\$ 16,650	\$ 16,650	\$ 16,650	\$ 166,500	
Restaurant food and beverage inventory	4,906	1,604	4,260	2,937	5,480	29,904	3,044	8,722	2,513	63,370	
Operations labour	4,319	4,051	7,889	8,630	6,857	9,078	12,502	8,750	14,353	76,430	
Utility costs	4,738	1,976	7,215	12,021	7,400	11,531	5,252	3,993	6,389	60,516	
Fuel inventory	-	-	-	6,904	-	-	29,739	-	16,579	53,223	
Travel expenses	2,835	4,644	1,858	1,510	(433)	5,553	3,713	1,472	2,893	24,045	
Office, pub and cleaning supplies	2,350	252	2,544	8,144	3,170	1,651	6,478	854	3,076	28,520	
Other misc	298	458	(106)	86	654	440	139	184	3,135	5,287	
Bank service charges and other permit costs	184	319	231	191	298	1,360	463	541	511	4,096	
<b>Total operating disbursements</b>	<b>\$ 52,931</b>	<b>\$ 29,954</b>	<b>\$ 40,541</b>	<b>\$ 57,073</b>	<b>\$ 40,075</b>	<b>\$ 76,166</b>	<b>\$ 77,981</b>	<b>\$ 41,166</b>	<b>\$ 66,101</b>	<b>\$ 415,886</b>	
<b>Capital costs</b>											
Furniture and equipment purchases	\$ 3,974	\$ -	\$ 25,446	\$ 13,521	\$ 63,737	\$ 2,330	\$ 4,712	\$ -	\$ 34,289	148,008	
Repairs and maintenance	11,472	3,030	13,233	27,788	42,625	8,891	36,816	7,325	9,940	161,121	
<b>Total capital costs</b>	<b>\$ 15,446</b>	<b>\$ 3,030</b>	<b>\$ 38,680</b>	<b>\$ 41,309</b>	<b>\$ 106,362</b>	<b>\$ 11,221</b>	<b>\$ 41,528</b>	<b>\$ 7,325</b>	<b>\$ 44,230</b>	<b>\$ 264,900</b>	
<b>Total operating and capital costs</b>	<b>\$ 68,377</b>	<b>\$ 32,983</b>	<b>\$ 79,220</b>	<b>\$ 98,381</b>	<b>\$ 146,437</b>	<b>\$ 87,387</b>	<b>\$ 119,509</b>	<b>\$ 48,491</b>	<b>\$ 110,330</b>	<b>\$ 791,116</b>	
<b>Net change in cash</b>											
Opening cash	\$ 86,239	\$ 72,406	\$ (79,117)	\$ 3,989	\$ (4,895)	\$ (21,773)	\$ (11,981)	\$ (18,815)	\$ 17,268	\$ 43,320	
Ending Cash	<b>\$ 86,239</b>	<b>\$ 158,645</b>	<b>\$ 79,528</b>	<b>\$ 83,517</b>	<b>\$ 78,622</b>	<b>\$ 56,849</b>	<b>\$ 44,867</b>	<b>\$ 26,052</b>	<b>\$ 43,320</b>	<b>\$ 43,320</b>	

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# APPENDIX C





Purdy Group of Companies  
Updated Forecast Cash Flow  
For the period of July 13 to October 25, 2013 (the "Forecast Period")  
(in CDN dollars)

Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	TOTAL
Week 87	Week 88	Week 89	Week 90	Week 91	Week 92	Week 93	Week 94	Week 95	Week 96	Week 97	Week 98	Week 99	Week 100	Week 101	Week 102	Week 103	Week 104	Week 105	Week 106	Forecast Week 87 to 101
19-Jul-13	26-Jul-13	2-Aug-13	9-Aug-13	16-Aug-13	23-Aug-13	30-Aug-13	6-Sep-13	13-Sep-13	20-Sep-13	27-Sep-13	4-Oct-13	11-Oct-13	18-Oct-13	25-Oct-13	31-Oct-13	7-Nov-13	14-Nov-13	21-Nov-13	28-Nov-13	101
117	6,117	1,117	7,617	60,117	58,617	11,617	15,617	14,617	8,617	7,617	7,617	7,617	7,617	7,617	7,617	7,617	7,617	7,617	7,617	1,117
117,805	117,805	100,805	100,805	100,805	100,805	100,805	100,805	100,805	100,805	100,805	100,805	100,805	100,805	100,805	100,805	100,805	100,805	100,805	100,805	100,805
(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)
17,805	17,805	805	805	805	805	805	805	805	805	805	805	805	805	805	805	805	805	805	805	805
17,922	23,922	1,922	8,422	60,922	59,422	12,422	16,422	15,422	9,422	8,422	8,422	8,422	8,422	8,422	8,422	8,422	8,422	8,422	8,422	1,922

**TOTAL AVAILABLE CASH FOR GENERAL RESTRUCTURING**

Applicant ending cash balance

Total Funds held by Monitor

Less: Funds held for LBVR Agreement

Cash held in trust per Court Order

Cash available for general restructuring



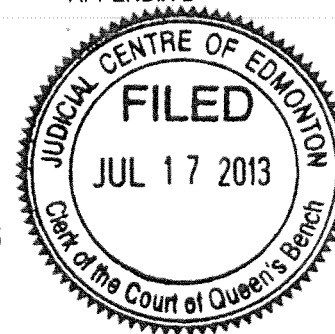
Jack Purdy, President  
Purdy Group

Date

July 18/2013

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# APPENDIX D



## Court of Queen's Bench of Alberta

**Citation: Strathcona County v. Half Moon Lake Resort Ltd., 2013 ABQB 405**

**Date:**

**Docket:** 9903 22441, 1203 09399

**Registry:** Edmonton

IN THE MATTER OF the *Municipal Government Act*, S.A. 1994, c. M-26.1  
 AND IN THE MATTER OF the *Land Titles Act*, R.S.A. 1980, c. L-5  
 AND IN THE MATTER OF the Lands within the South East Quarter of  
 Section 6, Township 52, Range 21, West of the Fourth Meridian,  
 and within the Boundaries of Strathcona County

Between:

**Docket:** 9903 22441

Strathcona County

Applicant/Respondent

- and -

Half Moon Lake Resort Ltd., Apple Auction Corporation  
 operating a business under the firm name and style of Apple Auction Ltd.,  
 and Brian Lovig

Respondents/Applicants

- and -

Armac Investments Ltd.,  
 Jack Purdy also known as John Purdy and John Kenneth Purdy,  
 Registrar of Land Titles

Respondents

And Between:

**Docket:** 1203 09399

Registrar of Land Titles

Applicant

- and -

Half Moon Lake Resort Ltd., Armac Investments Ltd.,  
 Jack Purdy also known as John Purdy,  
 Strathcona County

Respondents

Page: 2

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**Reasons for Judgment  
of the  
Honourable Mr. Justice Brian R. Burrows**

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[1] There are three applications. They all arise out of a consent order granted in this action on January 15, 2002.

[2] The first application, filed on May 31, 2012, in action 9903 22441, was brought by Half Moon Lake Resort Ltd. and seeks a declaration that certain changes proposed by Half Moon to a form of "Campsite Rental Agreement", which was approved in the consent order, are not prohibited by the terms of that order. As required by the consent order, Half Moon seeks a court order permitting it to enter campsite rental agreements with the changed provisions.

[3] The second application, filed on June 13, 2012, also in action 9903 22441, was brought by Strathcona County seeking a declaration that leases of campsites granted by Half Moon Lake in a form that differs from the form which was approved in the consent order are invalid and that Half Moon, Armac Investments Ltd., Jack Purdy, and the Registrar of Land Titles are in contempt of court for failing to comply with the terms of the consent order.

[4] The third application, filed on June 20, 2012, in action 1203 09399, was brought by the Registrar of Land Titles seeking directions as to the obligations imposed on the Registrar by the consent order.

[5] The lengthy history of this litigation began in 1999. Two of the original respondents, Apple Auction Corporation, operating a business under the firm name and style of Apple Auction Ltd., and Brian Lovig, are no longer involved. They have been replaced by Mr. Purdy and Armac Investments Ltd.

[6] The same facts are in the background of all three applications.

[7] Half Moon Lake Resort is a 139 acre unsubdivided parcel of land abutting Half Moon Lake in Strathcona County. Half Moon has created 216 campsites for recreational use on this parcel. The development of the campsites on the land and the building of washroom facilities in relation to the campsites were approved in development permits issued by Strathcona County in 1990, 1998 and 2002.

[8] In 1999 Half Moon serially attempted four methods of conveying title-like interests in individual campsites to purchasers. Strathcona County successfully applied for orders prohibiting Half Moon from using each of the first three methods on the basis that conveyance of

Page: 3

campsites by each of the three methods amounted to unapproved subdivision of the title. The first and second methods, outright sale and perpetual lease, were held invalid by Agrios J. in June 1999 in an unreported decision. The third method, a form of 35 year lease, was declared invalid by Ritter J. in May 2000.

[9] Ritter J.'s Reasons for Judgment in this Court and Hunt J.A.'s Reasons in the Court of Appeal, which upheld the decisions of Agrios and Ritter JJ., set out the history of the litigation and relevant legal principles in helpful detail: (2000) 83 Alta LR (3d) 334, [2001] 1 WWR 727, 264 AR 189 (Alta Q.B.); (2001) 197 DLR (4<sup>th</sup>) 700, [2001] 6 WWR 611, 89 Alta LR (3d) 203, 281 AR 103 (Alta C.A.).

[10] On October 30, 2001, Half Moon applied for permission to lease "an interest in the Lands" pursuant to the terms of a fourth form of instrument which was attached to its Notice of Motion. Half Moon stated in its application that it had drafted the proposed form in order to comply with the requirements set out in the Court of Appeal decision relating to its previous attempts.

[11] Half Moon's application was resolved by a consent order. On November 16, 2001, Strathcona County and the original Respondents, Half Moon and Lovig, consented to an order which permitted the Respondents to lease campsites using a form of campsite rental agreement which was attached to the order.

[12] The form of campsite rental agreement attached to the order was different from the form that had been attached to the notice of motion in 4 respects. None of the differences have significance to the issues in the applications before the Court except perhaps one difference, detailed below, in the provision setting out the term of the rental agreement.

[13] The consent order provided in part:

UPON HEARING THE APPLICATIONS made on behalf of Half Moon Lake Resort and Brian Lovig; AND UPON HEARING references from the Affidavits of Donald Phillips and Brian Lovig filed in this action; AND UPON noting the consent of counsel for the parties, IT IS HEREBY ORDERED THAT:

1. The Respondents are permitted to lease an interest in the Lands pursuant to the terms of the Campsite Rental Agreement attached hereto as Schedule "A".
- ...
3. The Respondents are prohibited from selling or leasing any other interest in the Lands without prior Court Order upon notice to the County.
- ...
5. The Registrar of the North Alberta Land Registration District shall:

Page: 4

- (a) except as follows not accept for registration any instrument that has the effect of transferring *any interest in land respecting the Lands* without a prior court order authorizing the same. However, any instrument relating to the lease referred to in paragraphs 1 and 2 above shall be accepted for registration;

...

I have italicized words in paragraph 5(a) which were changed in an amended consent order described below. Counsel for Half Moon and Lovig consented only to paragraphs 1 to 4 of this consent order.

[14] The form of campsite rental agreement attached to the order contained this provision:

1. Term

The term of this Agreement shall be for a period of Thirty-Five (35) years, more or less, expiring on August 31, 2037.

In the form of rental agreement attached to Half Moon's notice of motion the date in this provision had been "August 31, 2036" – 35 years after 2001, the year in which the notice of motion was filed.

[15] In January 2002, Strathcona County, the original Respondents and Alberta Justice consented to an "Amended and Restated Consent Order". This is the consent order to which all three current applications relate as mentioned at the commencement of these Reasons. The only changes were to the recitals and paragraph 5 of the order, both of which I set out below. I have italicized the words that were different from the words in the original consent order:

UPON HEARING THE APPLICATIONS made on behalf of Half Moon Lake Resort Ltd. and Brian Lovig; AND UPON HEARING references from the Affidavits of Donald Phillips and Brian Lovig filed in this action; AND UPON noting the consent of the counsel for the parties *and the Registrar of the Titles;* *AND UPON being satisfied that Part 17 of the Municipal Government Act does not apply in that the attached lease does not have the effect of subdividing a parcel of land; IT IS HEREBY ORDERED THAT:*

...

5. The Registrar of Titles shall:

- (a) except as follows not accept for registration any instrument that has the effect of transferring *any interest of the Registered Owner respecting the Lands* without a prior court order or written consent of the County authorizing the same. However, any lease referred to in paragraphs 1 and 2 above shall *only* be accepted for

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registration if a Plan of Survey referencing the Plan in Paragraph 2 has been registered; and

- (b) register this Order against the Certificates of Title for the Lands, notwithstanding the requirements of s. 191 of the *Alberta Land Titles Act*, R.S.A. 2000, C. L-4, formerly s. 180.1. The Order may be discharged upon further court order or a request from the County.

[16] The form of campsite rental agreement attached to the January 2002 consent order was the same as the form attached to the November 2001 consent order. It provided in paragraph 1 that, "The term of this Agreement shall be for a period of Thirty-Five (35) years, more or less, expiring on August 31, 2037."

[17] All parties agreed to a further consent order in February 2003. It increased the total number of campsites available for lease from 159 to 216. Strathcona County had issued a development permit authorizing this expansion to 216 campsites.

[18] Of the 216 campsite areas available for rent, a total of 72 have current campsite rental agreements. Of these 72 rental agreements, 32 are in the form approved in the consent order. In one case, a campsite rental agreement entered on April 29, 2004, the provision relating to the term has been amended to read, "The term of this Agreement shall be for a period of Thirty-Five (35) years, more or less, expiring on August 31, 2039." The remaining 39 campsite rental agreements contain a renewal option provision which reads:

Providing that this lease is in good standing, the lessee shall have the option to renew this lease for two additional further periods of 35 years upon giving written notice one year before the expiration of the term of this lease and the second term. The lease rate shall be established by the Owner.

In some of the leases the renewal option provision is worded as follows:

Provided that this lease is in good standing, the Lessee shall have the option to renew this lease for two (2) additional further periods of 35 years upon giving written notice one year before the expiration of the term of this lease and the second term. The lease rate shall be by mutual agreement, failing which it is to be determined by arbitration under the Arbitration Act of Alberta.

[19] The form of lease approved in the consent order did not contain a renewal option clause.

[20] In 27 of the 39 campsite rental agreements with renewal option clauses, the lessee is Armac Investments Ltd. which has common management with Half Moon. The lessees in the remaining 12 leases with renewal option clauses are individuals.



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[21] In the context of the second application listed at the start of these Reasons, Strathcona County submits that by entering the one lease with a different end date and the 39 leases with renewal option clauses without first obtaining court approval on notice to Strathcona County, Half Moon violated the consent order.

[22] In the first application mentioned at the start of these Reasons, Half Moon seeks court approval of a form of campsite rental agreement where:

- a. The term would be 35 years more or less expiring on August 31 of the year 35 years after the year in which the rental agreement is entered, and
- b. A renewal option worded as follows:

**Option/Right of First Refusal to Re-Rent**

Provided that the Renter has strictly and continuously performed all of the Renter's obligations under this Agreement and any renewal thereof, the Renter shall have the option/right of first refusal to re-rent the Campsite for two (2) additional further periods of Thirty-Five (35) years upon giving written notice to the Owner prior to the expiration of the term of this Agreement and the second term. Any such re-rent of the Campsite for an additional term shall be on the same terms and conditions as this Agreement, save and except that the Rental Rate payable for the renewal term(s) shall be negotiated between the Owner and the Renter based upon fair market rental value, and failing agreement in the matter shall be resolved in accordance with the *Arbitration Act* of Alberta, provided however that the Rental Rate payable by the Renter for any renewal term shall not in any event be greater than \$\_\_\_\_\_. This Option/Right of First Refusal to Re-Rent is contractual only and is not intended to bind or create an interest in land.

[23] In the third application, the Registrar of Land Titles seeks:

- a) directions as to whether the consent order imposed on the Registrar the obligation to ensure that campsite rental agreements submitted for registration complied with the consent order,
- b) amendment of the consent order to remove that obligation if it was imposed, and

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- c) directions as to what the Registrar should do about campsite rental agreements which were registered though they did not comply with the order, if there are any.

[24] Prior to the hearing of these applications, notice was given to third parties (the renters under campsite rental agreements) whose rights could be affected by the applications. The notice advised the parties served as to what they should do if they wished to participate in the applications. I am advised that though some of the parties served replied to the notice, none indicated a desire to participate.

[25] Access Capital Partners Inc. has a mortgage security interest against several rental agreements of which Armac Investments is the renter. It filed an affidavit and was represented by counsel at the application.

### *The Issues*

[26] There are two issues central to the determination of all three applications. The first concerns the "term" provision in the form of rental agreement which was attached to the consent order. In Strathcona's application the issue in relation to that provision is whether it amounted to a breach of the consent order for Half Moon to enter the one lease which changed the words "August 31, 2037" to "August 31, 2039". In Half Moon's application, the issue in relation to that provision is whether, in future, leases which change "August 31, 2037" to a date 35 years after the year in which the lease is granted, should be permitted. In the Registrar's application, the issue is what to do about agreements registered in the past or submitted for registration in the future where the end date is 35 years after the year of entry into the agreement and not August 31, 2039.

[27] The second issue is in relation to the renewal option provision. In Half Moon's application, the issue is whether the Court should permit Half Moon to enter into leases containing the renewal option provision Half Moon proposes. In Strathcona's application, it is whether the leases entered to date which contain a renewal option provision offend the consent order. In the Registrar's application, the issue is what to do about agreements registered in the past or submitted in the future that contain a renewal option provision.

### *The Term Provision: 35 years, more or less, ending August 31, 2037*

[28] As noted, the form approved in the consent order says that the agreement will have a term of "35 years, more or less, ending August 31, 2037". That wording makes clear sense for a lease entered in 2002, the year of the consent order. But for any lease entered after 2002 it does not. Either the "35 years more or less" or the "August 31, 2037" cannot be accurate in a lease entered after 2002. For any lease entered after 2002, the wording of the provision defining the duration of the term of the lease is ambiguous.

[29] Strathcona suggests that the words mean that all leases regardless of when entered will end no later than August 31, 2037. That interpretation requires that the words "35 years more or

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less” be ignored. No evidentiary or circumstantial justification for ignoring them exists. The ambiguity persists.

[30] The affidavit evidence before the Court, as to the parties’ intention at the time they agreed to the consent order approving the form of rental agreement attached to it, provides little assistance.

[31] Affidavit materials filed with Half Moon’s notice of motion of October 30, 2001 exhibit correspondence between counsel for Half Moon and Strathcona which gives some insight into the dispute that was resolved by the consent order. The correspondence indicates that one of several sticking points was the length of the lease, Strathcona taking the position that a 35 year lease was unacceptable. The correspondence does not, however, give any insight as to how the dispute came to be resolved. The idea of a diminishing term and common expiry date – that though leases granted in 2002 would be for a 35 year term, leases in subsequent years would be for less than that, and that all leases would expire no later than August 31, 2037 – is not mentioned.

[32] Strathcona submits that the following evidence contained in the April 2013 affidavit of one of its officers, who was not involved at the time of the consent order, is evidence as to Strathcona’s intention in 2001 when the inclusion of the words “ending August 31, 2037” in the lease was agreed to:

Paragraph 1 of the form of Campsite Rental Agreement approved in the Consent Orders imposed a fixed end date for all Campsite Rental Agreements by stipulating that the term of the agreement expires on August 31, 2037. Having a fixed end date for all Campsite Rental Agreements allows the Applicant an opportunity to evaluate, from a planning perspective, the continued suitability of the current arrangements on the Lands.

[33] I note that this evidence does not say anything about Strathcona’s 2001 intention regarding the inclusion of “ending August 31, 2037” in the form of agreement. It does no more than suggest the effect the officer thinks those words have.

[34] I find it difficult to accept that the ambiguous wording under consideration would have been chosen if in fact Strathcona intended a common ending date for all rental agreements. The ambiguous wording would certainly not communicate that intention to anyone else. There is certainly no suggestion in Strathcona’s officer’s evidence or anywhere else that the wording was chosen to express a mutual intention of both Half Moon and Strathcona.

[35] The filed evidence is of little assistance in resolving the ambiguity. Nevertheless, in my view, consideration of the circumstances surrounding the agreement between Half Moon and Strathcona which was memorialized in the consent order renders the parties’ intention clear and removes the ambiguity.

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[36] In their decisions, both Ritter J. in this Court and Hunt J.A. in the Court of Appeal noted that Half Moon's goal was to enter into long term leases of the campsites which gave to the lessees rights approaching as closely as possible those of a fee simple title holder without effecting an unapproved subdivision of the title. Both decisions recognized that Half Moon had the right to achieve its goal.

[37] Half Moon's first three attempts to reach the goal failed. In Strathcona's challenges to those attempts, the Courts identified the features of the instruments Half Moon had used in those attempts which crossed the line into subdivision. Half Moon and the County then agreed to a form of lease that the County acknowledged did not cross the line.

[38] In my view, Strathcona acted reasonably in agreeing to the consent order and conceding that the form of campsite rental agreement attached to it did not constitute a sale. The features of the previous form of campsite rental agreement which the Court of Appeal had held made the lease an instrument of subdivision had been removed. In particular, the Court of Appeal had held that under the previous form, Half Moon retained virtually no control over the land leased. All conventional lessor's rights had been assigned to a Tenants' Association. There was significant risk that Half Moon's total relinquishment of control could give rise to enforcement problems for planning authorities during the term of the lease.

[39] But the form of campsite rental agreement accepted by Strathcona in the consent order contained no reference to a Tenants' Association. Half Moon retained significant ongoing control over the land. Any improvement proposed by a lessee would require Half Moon's approval. Half Moon itself would exclusively deal with Strathcona or any regulatory body if planning or other approval was required for a proposed improvement. Half Moon itself, and not a Tenants' Association or the lessees in combination, would be responsible for enforcement of the agreement.

[40] Assessing the previous form of rental agreement, the Court of Appeal had held that, "Neither the lengthy term of the lease nor payment of the rent by way of lump sum, by themselves, would necessarily lead to the conclusion that the lease is really a sale." (para. 44) It was that Half Moon retained virtually no control over the lands, that was critical. In the form approved in the consent order, however, ongoing control had been retained by Half Moon. The term was still lengthy and the rent was still to be paid at the start, but there was little prospect that the Court would find those characteristics rendered the lease in substance a sale when the Court of Appeal had not fixed on those features to so conclude when considering the previous form of agreement.

[41] It was therefore, in my view, reasonable for the parties to resolve their dispute as they did. Their agreement and the form of lease was recorded in the consent order.

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[42] The only goal in reaching a resolution which was common to both the County and Half Moon was to establish a form of long term lease that would not effect a subdivision. They clearly agreed that a lease with a term of 35 years and the other provisions of the form attached to the consent order was acceptable. They agreed that the 35 year term would not cause the lease to be in fact a sale. Such a lease would not constitute an unapproved subdivision.

[43] The only mutual goal and intention of the parties to the consent order was achieved when the County agreed to be bound by the conclusion that a 35 year lease, in the context of the other terms in the approved form, would not effect a subdivision. Strathcona's acceptance of that conclusion cannot have depended on the lease commencing in 2002. That such a 35 year lease would not subdivide would have to be as accurate a conclusion for a 35 year lease starting in 2005 and ending in 2040 as it was for a 35 year lease starting in 2002 and ending in 2037. Stating the end date of the rental agreement as August 31, 2037 was entirely superfluous to the parties' mutual goal and intention concerning avoiding subdivision.

[44] I do not accept that anyone, including Strathcona, intended that there be a fixed end date for all leases so that Strathcona on that date could review such planning issues as might then exist. As noted, the County had issued development permits to Half Moon which permitted it to create 216 campsite areas on its land. There is no suggestion that Half Moon has not complied with the terms of the development permits in developing the land. If Half Moon's permission to develop its land was limited, the limitation would be stated in the development permit. This would include any limitation on the duration of the development permission, to the extent that Strathcona County's land use bylaw provides for such limitation: *Municipal Government Act*, RSA 2000, c. M-26, s. 640(2)(c)(v). Though the evidence states that development permits were issued to Half Moon, the permits themselves are not in evidence.

[45] In my view, if Strathcona wanted to ensure that it would be in a position to review Half Moon's development after 35 years, the proper method of so ensuring would be by conditions in the development permit, to the extent that such conditions are authorized by the bylaw governing development permits. Perhaps there were other means of accomplishing the same end. But any means used would have to involve clear communication to Half Moon that such a limitation was being imposed. The ambiguous description of the term in the approved form of rental agreement falls far short of such clear communication.

[46] In the context of Half Moon's application, I am satisfied that a campsite rental agreement which differs from the form attached to the consent order only in that the term is described as 35 years, more or less, ending on August 31 of the 35<sup>th</sup> year after the year in which the lease is granted, does not effect a subdivision of the title. Exercising the authority granted by the parties in paragraph 3 of the consent order, I grant Half Moon leave to enter such campsite rental agreements.

[47] In the context of Strathcona's application, I am satisfied that the parties intended that the date in the provision setting out the term of the rental agreement would be August 31 of the 35<sup>th</sup>

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year following the year in which the agreement was entered. It did not constitute a breach of the consent order for Half Moon to enter a rental agreement in 2004 which stated it was for a term of 35 years more or less ending on August 31, 2039. Entry of that agreement did not constitute a breach of the consent order or contempt of court on the part of Half Moon, Armac or Purdy. Registering it did not constitute a breach of the consent order or contempt of court on the part of the Registrar of Land Titles.

[48] In the context of the Registrar's application, in light of the conclusions just stated, no specific direction is required. Later in these Reasons I will give directions concerning the Registrar's ongoing role in relation to the registration of future campsite rental agreements.

***Option to Renew: Two further terms of 35 years each***

[49] Strathcona's position is that the renewal option provisions, both those actually used and proposed, have the effect of making the term of the lease, potentially at least, 105 years and that a lease of that duration effects a subdivision which requires prior approval.

[50] Half Moon's position is that the proposed renewal option provision is an entirely *in personam* contractual right and is not an interest in land. The option to renew would not run with the land and is therefore unobjectionable. Further, given that Half Moon has the right to enter 35 year leases in the form approved in the consent order, it would, upon the expiry of one 35 year lease, have the right to enter another. The effect of the renewal option provision is simply to require Half Moon to continue to accept the same lessee rather than lease to someone else when the first or second 35 year term expires, if the original lessee wishes to continue as lessee. Half Moon notes that under the proposed renewal option, the lessee would be required to pay a new lump sum rental at the time of the renewal. In the proposed renewal option provision, failing agreement as to the amount of the rent, it would be determined by arbitration.

[51] I do not accept Half Moon's position. In my view, the proposed provision would create a lease arrangement indistinguishable from a 105 year lease where the rent was payable every 35 years. In his decision Ritter J. observed that for natural persons, a very lengthy lease term is practically the same as a perpetual lease. Clearly the primary intention is that Half Moon's lessees would be individuals. In my view, if the renewal option provision were permitted, the lease would effectively separate the campsite area leased from the parcel of land for which title was issued. It would effect a subdivision.

[52] I reject Half Moon's submission that only features of the proposed instrument which amount to an interest in land are relevant in determining whether the lease effects a subdivision. In several previous cases, in assessing whether a lease effected a subdivision, Alberta Courts have focussed on the duration of the term of the lease as important to the issue. A lease interest is no doubt an interest in land, but the duration of the term is not the feature that makes it an interest in land. Characteristics of the transaction, other than its character as a conveyance of an

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interest in land, are clearly relevant, and indeed fundamental, in determining whether it effects a subdivision.

[53] In *Otan Developments Ltd. v. Kuropatwa* (1978) 94 DLR (3d) 37 (Alta S.C.A.D.), Morrow J.A. focussed on the 49 year term of the lease of a 1 acre portion of a 3.9 acre parcel in determining that it was, in the circumstances, an attempt to subdivide. He said (para. 30):

... But here, in my opinion, the position is almost akin to attempting to obtain the benefits of a subdivision under the guise of calling it a lease but without having to within the foreseeable future comply with the applicable [subdivision] legislation. The whole purport, particularly with the term being placed at 49 years, could almost be termed colourable. In my view, therefore, the lease “may have the effect of subdividing” the parcel so must be held to be bad.

[54] In *McDonald's Restaurant of Canada Ltd. v. North Alberta (Registrar of Land Titles)* (1982) D.L.R. (3d) 203, Miller J. (later A.C.J.) of this Court considered the lease of a portion of a shopping centre parking lot intended to be used for a McDonald's Restaurant. The term of the lease was to be 40 years with a 10 year renewal option. Miller J. (at para. 14) noted that the length of the term was a feature which tended to support a finding that the lease effected a subdivision. He found, however, that there were *bona fide* commercial reasons for the lengthy term and other features of the transaction which outweighed the conclusion which the length of the term suggested.

[55] In *Robinson v. Guthrie and Guthrie* (1984) 6 DLR (4<sup>th</sup>) 256 (Alta C.A.) Stevenson J.A. considered a 99 year lease of a 10 acre portion of a titled quarter section of land. The length of the term, the fact that the rent was paid by a single advance payment, and the fact that the lessee was required to pay half of the annual taxes on the land drove the conclusion that the lease had the effect of subdividing the parcel.

[56] In the present case, as I have concluded, the effect of the renewal option is to make the campsite rental agreements essentially 105 year leases. Rental is payable only every 35 years and, in the proposed renewal option clause, the determination of the amount of the second and third rental payments is not ultimately in the control of Half Moon – failing agreement it is determined by arbitration. The lease also requires the lessee to pay an annual pro-rata share of common area costs which are described as including property taxes.

[57] In the context of Half Moon's application, I decline to approve the proposed renewal option provision. I direct that Half Moon not include a renewal option provision in future campsite rental agreements.

[58] In the context of Strathcona's application the issue is whether the inclusion of a renewal option provision in the 39 campsite rental agreements offends the consent order and constitutes contempt of court on the part of Half Moon, Armac and Purdy and whether the registration of the

agreements against the title constituted a breach of the consent order and contempt of court on the part of the Registrar.

[59] Half Moon argued that on a close parsing of the words of paragraphs 1 and 3 of the consent order, entering campsite rental agreements which contained renewal options did not breach the order. Paragraphs 1 and 3 of the consent order provide:

1. The Respondents [Half Moon] are permitted to lease an interest in the Lands pursuant to the terms of the Campsite Rental Agreement attached hereto as Schedule "A".
- ...
3. The Respondents are prohibited from selling or leasing any other interest in the Lands without prior Court Order upon notice to the County.

[60] Half Moon noted that the prohibition in paragraph 3 of the order is against selling or leasing an "interest in the Lands". It argued that the inclusion of the renewal option provision in the 39 campsite leases did not offend this prohibition because the renewal option granted is contractual only. It is not an "interest in the Lands".

[61] I reject this submission. In my view, the prohibition was not limited as Half Moon submits. The term of legal art used to refer to an interest which runs with the land in contrast to an interest which does not, is generally "interest in land" not "interest in the Lands". Both terms were used in the original consent order (the latter in paragraphs 1 and 3, the former in paragraph 5). That something broader than that which is normally called an "interest in land" was actually intended is indicated by the fact that in the amended consent order, in paragraph 5, the term "interest in land" in the original order was replaced by "interest of the Registered Owner respecting the Lands". Whether or not the impugned renewal option was an "interest in land" is not therefore determinative. In my view the intended prohibition was of any provision not in the approved form which would arguably cause the rental agreement to effect a subdivision. In my view, the renewal option was such a provision and was prohibited.

[62] Further, in the recital added to the amended consent order, the parties recorded their agreement that, "Part 17 of the Municipal Government Act [the part which governs planning and development including subdivision] does not apply in that the attached lease does not have the effect of subdividing a parcel of land." The clear intention was that the attached form and only the attached form would be used, that there was no acknowledgement that any other form would not effect a subdivision, and that whether or not any other form did effect subdivision would require judicial assessment. Half Moon clearly violated the order by entering campsite rental agreements with renewal option provisions without first obtaining a court order on notice to Strathcona.



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[63] I declare that the renewal option provisions contained in the campsite rental agreements entered since the date of the consent order are invalid. In that regard I note that the terms and conditions of the campsite rental agreements provide:

15. Every provision of this Agreement is intended to be severable. If any term or provision contained in this Agreement is declared to be illegal or invalid for any reason whatsoever such illegality shall not affect the validity of the remainder of the Agreement. . . .

I also note, as previously mentioned, that all of the lessees under campsite rental agreements containing renewal option provisions were given notice of this application, which included notice that the declaration I have granted was being sought, and the opportunity to participate. None chose to do so.

[64] In its application Strathcona sought an order imposing such penalty on Half Moon as a consequence of its contempt as the Court deemed appropriate. In its written brief it appears to suggest that an order for solicitor/client costs would be an appropriate penalty. Nothing was said about penalty at the presentation of the application.

[65] In my view the appropriate penalty is a fine of \$1000 which I direct Half Moon pay to the Clerk of the Court by August 31, 2013.

[66] I do not think solicitor/client costs are appropriate because Strathcona's original allegation of contempt included allegations that many other differences between registered leases and the consent order form of lease amounted to contemptuous breaches of the order – see Exhibit P to the affidavit of Kevin Stone filed with the application. Only two of these were pursued in the application as presented before me. Only one of those two was found to be a breach and contempt of the order.

[67] Strathcona sought declarations that Armac Investments Ltd., which has common management with Half Moon, and Jack Purdy, who is the principal of both corporations, were also in contempt of court for, in effect, facilitating Half Moon's breach of the order and contempt. I cannot see that any purpose would be served by granting such a declaration. Neither Armac nor Mr. Purdy is a party to the litigation. Neither was involved at the time of the consent order. I accept that the human agency behind the conduct I have found to be in breach of the order was Mr. Purdy, but the legal actor and the legal party that consented to the consent order subsequently breached was Half Moon. I decline to find Armac or Mr. Purdy in contempt.

[68] As to the Registrar, counsel who appeared for the Registrar submitted that the consent order was unclear as to the obligation imposed upon the Registrar. The instructions given to the Registrar in the consent order were these:

5. The Registrar of Titles shall:

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- (a) except as follows not accept for registration any instrument that has the effect of transferring any interest of the Registered Owner respecting the Lands without a prior court order or written consent of the County authorizing the same. However, any lease referred to in paragraphs 1 and 2 above shall only be accepted for registration if a Plan of Survey referencing the Plan in Paragraph 2 has been registered; and
- (b) register this Order against the Certificates of Title for the Lands, notwithstanding the requirements of s. 191 of the Alberta Land Titles Act, R.S.A. 2000, C. L-4, formerly s. 180.1. The Order may be discharged upon further court order or a request from the County.

[69] The instructions appeared to require the Registrar to determine whether an instrument submitted for registration had the effect of transferring an interest of the Registered Owner respecting the lands other than the interest transferred by the approved form.

[70] There is evidence filed by Half Moon (the affidavit of Norman W. Simons filed April 23, 2013) that when a campsite rental agreement containing a renewal option was first submitted for registration in May 2007 the Registrar rejected it. The rejection notice is exhibited. It said:

This instrument is not registerable in its current form. It can be registered by way of caveat.

[71] Mr. Simons swears:

Shortly after this rejection I believe I attended upon Land Titles Office Examiner Gordon Hamilton who I recall was the Chief Examiner. We specifically reviewed the issue of the options to renew as shown in paragraph 8 of the Campsite Agreement. Mr. Hamilton agreed that the option to renew *did not* constitute an interest in land and *did not* offend the Court Orders. Mr. Hamilton agreed to accept registration and I asked him for a letter confirming same, which was received.

[72] Mr. Simons continues that the letter was sent back to the Land Titles Office with a renewed request for registration. He exhibits a copy of his letter to the Registrar which refers to the enclosed letter of Mr. Hamilton. Unfortunately, no copy of that letter was retained. The Land Titles Office has not been able to find it.

[73] I agree that the instructions to the Registrar contained in the consent order appeared to assign to the Registrar the task of judging whether an instrument offered for registration by Half Moon effected the transfer of an interest not conveyed in the approved form. The language used

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was capable of misinterpretation. Contrary to the interpretation which I have concluded is accurate, it was possible to understand that the Registrar was required to judge whether an interest not in the approved form was an interest in land. It was possible for the Registrar to conclude that the renewal option was not an interest in land and that the campsite rental agreement containing it was registerable. I am satisfied that the Registrar was acting in good faith and within what he reasonably thought were the requirements of the consent order when he accepted the instrument for registration. No contempt has been shown.

[74] I observe that the *Land Titles Act* has many provisions that require the Registrar to form a judgment before acting. The possibility that the Registrar may make an error in exercising such judgment always exists. There is, however, no suggestion in the *Land Titles Act* that where the Registrar makes an error, he is in violation of the Act. I am doubtful, therefore, that the Registrar should ever be held in contempt when he makes an error in carrying out instructions contained in a court order like the consent order. Indeed where someone believes the Registrar has made an error, the *Land Titles Act* in s. 184 provides a process for the issue to be referred to the Court. That process would have been available to Strathcona in this instance.

[75] In my view, Strathcona's application for a declaration that the Registrar was in contempt was poorly advised. The application served no purpose. The remedy of a declaration that the campsite rental agreements containing option renewal clauses were invalid was entirely sufficient.

[76] I dismiss Strathcona's application for a declaration that the Registrar of Land Titles was in contempt of court.

***The Registrar's Application: Order to replace the Consent Order***

[77] As previously indicated, as I have found that the term in the agreed form of campsite rental agreement was 35 years ending on August 31 of the 35<sup>th</sup> year following the date of the agreement, the Registrar will require no directions concerning the registration of agreements where the end date was not August 31, 2037.

[78] Neither, in my view, does the Registrar require directions as to what to do about registered campsite rental agreements containing an option renewal clause. I have declared those clauses invalid. The formal order should declare that the option renewal clauses are deemed severed from the agreement. The remaining terms of the agreement which are in the approved form are valid as is the registration of the instrument recording them.

[79] The Registrar also sought directions as to his ongoing obligations. In my view, it is appropriate to require the Registrar to ensure that any campsite rental agreement is in the form approved in the court order. It is not, however, appropriate to require the Registrar to assess the merits of any deviation from that exact form.

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[80] In my view, the wording of the order governing campsite rental agreements should be clarified. The obligations of the Registrar should be simplified. And express reference should be made to the process to be employed should a dispute involving the Registrar arises.

[81] I therefore direct that the following order be substituted for the consent orders now in force.

### ORDER

On the Court's own motion and in the context of applications made by Half Moon Lake Resort Ltd., and Strathcona County in Action 9903 22441 and by the Registrar of Land Titles in Action 1203 09399.

And having found that existing Consent Orders granted in Action 9903 22441 which govern the granting and registration of Campsite Rental Agreements in relation to the Lands require clarification.

It is hereby ordered:

1. In this order:

(a) "Lands" shall mean:

All that portion of the southeast quarter of Section six (6), Township fifty-two (52), Range twenty-one (21) west of the fourth meridian, not covered by any of the waters of Lake No. 1 and Lake No. 2 as shown on a plan of survey of the said township signed at Ottawa on the 13<sup>th</sup> day of May, A.D. 1901 containing 56.3 hectares (139 acres) more or less, excepting thereout all mines and minerals.

(b) "Campsite Areas" shall mean the 216 areas on the Lands comprised of:

- i. the 141 areas shown within Detail "A" as indicated on Survey Plan 022 4824
- ii. the 57 areas shown within Detail "B" as indicated on Survey Plan 022 4824
- iii. the 18 areas as approved by Strathcona County on October 1, 2002 abutting the easterly boundary of Detail "A" on Survey Plan 022 4824

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all as depicted on Schedule "A" to this Order.

2. Half Moon Lake Resort Ltd. which is the current registered owner of the Lands, and any subsequent registered owners of the Lands, may enter into Campsite Rental Agreements in respect of individual Campsite Areas in the form attached to this order as Schedule "B".
3. Any sale or lease of a Campsite Area not in the exact form of Campsite Rental Agreement attached to this order as Schedule "B" shall be invalid.
4. The Registrar of Land Titles shall register a Campsite Rental Agreement in the exact form attached to this order as Schedule "B" against the title to the Lands but shall not register any other instrument relating to a Campsite Area unless registration is authorized by further order.
5. If any party or any other interested person is dissatisfied with the determination of the Registrar of Land Titles made pursuant to this Order concerning the registration of any instrument relating to a Campsite Area, that party or other interested person may invoke the procedure set out in the *Land Titles Act*, RSA 2000, c. L-4, s. 184.
6. The Registrar of Land Titles may refer any question arising in relation to the requirements of this order to the Court using the procedure set out in the *Land Titles Act*, RSA 2000, c. L-4, s. 185.
7. The Campsite Rental Agreement attached to this order as Schedule "B" may be amended by further order sought on notice to Strathcona County.
8. The following Consent Orders are deemed replaced by this Order and to have ceased to be in force upon the entry of this Order:
  - a) The Consent Order of E. D. McCallum J. granted and entered on Friday, November 16, 2001 in Action 9903 22441,
  - b) The Amended and Restated Consent Order of R. P. Belzil J. granted and entered on Tuesday, January 15, 2002 in Action 9903 22441.
  - c) The Consent Order of A.T. Cooke J. granted and entered on Thursday, February 6, 2003 in Action 9903 22441.
9. The Registrar of Land Titles shall register this Order against the Certificate of Title for the Lands notwithstanding the requirements of s. 191 of the

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Land Titles Act, RSA 2000, c. L-4. The orders listed in paragraph 8 of this Order shall be discharged from the title to the Lands. This Order may be discharged upon further order or a request to the Registrar from the County.

Schedule "A" to this order will be the document which is Schedule "A" to the Consent Order of A.T. Cooke J. Schedule "B" will be the Campsite Rental Agreement which is Schedule "A" to the Consent Order of R.P. Belzil J. except that paragraph 1 shall be amended to read:

1. **Term**

The term of this Agreement shall be for a period of Thirty-Five (35) years, more or less, expiring on August 31, \_\_\_\_\_ *(this blank shall be filled with the year 35 years after the year the Campsite Rental Agreement is entered.)*

[82] It may be that counsel have suggestions for the improvement of the wording of this order. If so I invite them to contact my office to arrange a procedure for the suggestions to be advanced and assessed. I intend the order set out above to be separate and in addition to the formal order arising from these Reasons.


**Costs**

[83] Both Half Moon and Strathcona have had some success in their respective applications and in opposing each other's applications. Each shall bear their own costs.

[84] The Registrar of Land Titles has successfully opposed Strathcona's application. It is entitled to costs as against Strathcona. I fix those costs at \$2500 plus disbursements.

Heard on the 4<sup>th</sup> day of June 2013.

**Dated** at the City of Edmonton, Alberta this 17<sup>th</sup> day of July 2013.

  
for **Brian R. Burrows**  
**J.C.Q.B.A.**

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**Appearances:**

A. R. Kosak  
for Strathcona County

C. J. Taylor  
for Half Moon Lake Resort Ltd., Armac Investments Ltd., and  
Jack Purdy also known as John Purdy and John Kenneth Purdy

S. J. MacDonald  
for the Registrar of Land Titles

A. K. Maciag  
for Axxess Capital Partners Inc.

The Respondents Apple Auction Corporation Operating a Business Under the Firm Name and Style of Apple Auction Ltd., and Brian Lovig did not participate in the application.

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# APPENDIX E



**PURDY GROUP OF COMPANIES & JACK PURDY**  
**PROPERTY LISTING**  
**July 19, 2013**

Legal Description	Notes	Registered Owner	Mortgagor, Amount and Date	Other encumbrances
<b><u>NON CORE FOR SALE PROPERTIES</u></b>				
5611 Culverton Rd.	Parcel: 003 851 168 Lot 1; Sec.8, Range 6, Sahtlam District; Plan 12309 Duncan Rural	Cherry Blossom Park Development Corp.	1) Armac Investments Ltd.; April 16, 2004 2) Tarmac Management Ltd. (Feb.9/05)	1) Esquimalt and Nanaimo Railway Company - registered owner charge
	Roll: 03 765 03588.055			
3425 River Road, Chemainus	Parcel: 001-160-141; Plan 31422; Lot 2; Sections 14 & 15; Range 3; Chemainus district Roll: 16472-000	Armac Investments Ltd (BC)	Tarmac Management Ltd; February 9, 2005	1) Esquimalt and Nanaimo Railway Company - registered owner charge 2) Her Majesty the Queen in the Right of BC (May 26/88) 3) Easement (April 8/99) 4) Crown in the Right of Canada - Judgement (Aug.20/03) 5) Kim Galavan - CPL (Sept.19/06) 6) Ronald Durrance - bulider's lien (Nov.24/09) 7) Crown of BC - property tax charge (Mar.9/10) 8) B.Loewen - Judgement (July 13/10)
3620 3rd Ave. Port Alberni	000-522-546 000-522-538 Part of Lot 1; Alberni District, Plan 795r Roll: 04-223-990/0101-00 00	Retail Store & Land 19,218 sq.ft. (land) 10,000 sq.ft (building size) Armac Investments Ltd (BC)	1) John Purdy (May 14/99) 2) Crown in the Right of Canada (Aug.22/02)	1) Alberni Land Company Limited and Esquimalt and Nanaimo Railway Company - undersurface rights 2) Crown in the Right of Canada - Judgement - interest in Jack Purdy (May 23/03); 3) Kim Galavan - CPL (Sept.19/06); 4) Crown of BC - Property Transfer Tax charge (March 9/10) 5) Byron Loewen - Judgement (Apr.23/10)

**PURDY GROUP OF COMPANIES & JACK PURDY**  
**PROPERTY LISTING**  
**July 19, 2013**

Legal Description	Notes	Registered Owner	Mortgagor, Amount and Date	Other encumbrances
3203-3211 2nd Ave. Port Alberni				
Parcel:				
009-278-923	Land - 12,375 sq. ft.	Armac Investments Ltd (BC)	1) Crown in the Right of Canada (Aug.22/02)	1) Alberni Land Company Limited and Esquimalt and Nanaimo Railway Company;
009-278-940				2) City of Port Alberni - restrictive covenant (June 13, 1996)
009-278-966	Storage			3) Crown of Canada - Judgement (Aug.20/03)
Lot 13-15, Block 74,	Warehouse			4) Kim Galavan - CPL (Sep.19/06)
District Lot 1; Plan 197;	33 x 125 ft (1,600 sq ft)			5) Crown of BC - property tax transfer (Mar.9/10)
Alberni District				6) B.Loewen - Judgement - (Apr.23/10)
Roll: 04-223-001/0916-00				
00				
Roll: 04-223-001/0917-00				
00				

**PURDY GROUP OF COMPANIES & JACK PURDY**  
**PROPERTY LISTING**  
**July 19, 2013**

Legal Description	Notes	Registered Owner	Mortgagor, Amount and Date	Other encumbrances
<b><u>OCEAN FRONT PROPERTY</u></b>				
200 South Bamfield Road	Parcel: 001-018-507; Plan 38260; Lot 1; Section 18; Township 1; Barclay district	WaterFront Lots - Armac Investment Ltd. 38.53 acres (value undivided 1/2 interest) \$2,872,000 BC assessments)	1) Crown in the Right of Canada (Aug.22/02)	1) Her Majesty the Queen in the Right of the Province of BC & Regional District of Alberni-Clayoquot (April 30/87) 2) Crown in the Right of Canada - Judgement (Oct.5/2000) 3) CPL - Kim Galavan (Sept.19/06) 4) CPL - Crown in the Right of Canada (Dec.9/09) 5) Property Transfer Tax charge - Crown of BC (Mar.9/10)
	Roll: 05 770 02771.000			
200 South Bamfield Road	Parcel: 001-018-507; Plan 38260; Lot 1; Section 18; Township 1; Barclay district	WaterFront Lots - Ostrom Estates Ltd. (undivided 38.53 acres (value 1/2 interest) \$2,872,000 BC assessments)	1) Crown in the Right of Canada (Aug.22/02)	1) Her Majesty the Queen in the Right of the Province of BC & Regional District of Alberni-Clayoquot (April 30/87) 2) Crown in the Right of Canada - Judgement (Nov.6/1998) 3) CPL - Kim Galavan (Sept.19/06) 4) CPL - Crown in the Right of Canada (Dec.9/09) 5) Property Transfer Tax charge - Crown of BC (Mar.9/10)
	Roll: 05 770 02771.000			

**PURDY GROUP OF COMPANIES & JACK PURDY**  
**PROPERTY LISTING**  
**July 19, 2013**

Legal Description	Notes	Registered Owner	Mortgagor, Amount and Date	Other encumbrances
<b><u>GIANT MINE PROPERTIES</u></b>				
4070 Giant Mine Rd. Invermere	Parcel: 012-778-362; District Lot 8199; Kootenay of giant #1 of #3 District Blg - 1,468 sq.ft  Roll: 29 704 05450.000	Armac Investment Ltd. (BC)		1) Baroid Corporation of Canada Ltd. - undersurface rights (Sept.30/60) 2) Baroid Corporation of Canada Ltd. - undersurface rights (Aug. 15/89) 3) Crown of BC - Property Tax Charge (Nov.6/08) 4) Crown in the Right of BC - Crown Debt - (Jan.28/10)
Giant Mine Rd. Invermere	Parcel: 014-571-943; District Lot 136; Kootenay District  Roll: 29 704 02102.000	Giant Mountain Properties Ltd.		1) Baroid Corporation of Canada Ltd. - undersurface rights (Aug. 15/89)
Giant Mine Rd. Invermere	Parcel: 012-778-338; District Lot 1109; Kootenay District  Roll: 29 704 03107.000	Jubilee Mountain Holdings Ltd.		