COURT FILE NUMBERS	1201-06934	Clerk's Stamp
COURT	COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
APPLICANT(S)	ERNST & YOUNG INC. IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF 1330075 ALBERTA LTD. AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY	
DOCUMENT	**ELEVENTH REPORT OF THE RECEIVER** **August 31, 2020**	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**<u>RECEIVER</u>** Ernst & Young Inc. 2200, 215 2nd St SW Calgary, Alberta T2P 1M4 Peter Chisholm / Ross Graham Telephone: (403) 206-5061 / (403) 206-5013 Email: peter.chisholm@ca.ey.com ross.graham@ca.ey.com **<u>COUNSEL</u>** McCarthy Tétrault LLP Suite 4000, 421 7th Avenue SW Calgary AB T2P 4K9 Attn: Sean Collins / Walker MacLeod Telephone: (403) 260-3531 / (403) 260-3710 Email: scollins@mccarthy.ca wmacleod@mccarthy.ca	

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APPENDICES

INTRODUCTION

1. On June 7, 2012, 1252064 Alberta Ltd. ("**125**"), 1330075 Alberta Ltd. ("**133**") and Harvest Capital Management Inc. ("**HCMI**") (collectively the "**Companies**") sought and obtained protection from their creditors under the Companies' Creditors Arrangement Act, R.S.C. 1985 c. C-36, as amended, (the "**CCAA**") pursuant to an order of this Honourable Court (the "**Initial CCAA Order**"). Pursuant to the Initial Order, Ernst & Young Inc. was appointed monitor (the "**Monitor**") of 125, 133 and HCMI (the "**CCAA Proceedings**").

2. Ernst & Young Inc. was appointed Receiver and Manager (the "**Receiver**") of the property, assets and undertakings (the "**Property**") of 125, 133 and HCMI pursuant to an Order (the "**Receivership Order**") of this Honourable Court dated September 30, 2013 (the "**Appointment Date**"), in the within proceedings (the "**Receivership Proceedings**").

3. Concurrent with the issuance of the Receivership Order, the CCAA Proceedings were terminated by an order (the "**Termination Order**") of this Honourable Court dated September 30, 2013. The Termination Order provides that the charges in the Initial CCAA Order endure, notwithstanding the termination of the Initial CCAA Order.

4. The Receivership Order authorized the Receiver, among other things, to carry on the business of the Companies, to sell, convey, transfer, lease or assign the Property out of the normal course of business, subject to court approval for transactions in excess of $100,000, and to make such arrangements or agreements as deemed necessary by the Receiver.

5. Pursuant to an order of this Honourable Court on February 5, 2019, the Receiver was discharged from any and all obligations as Receiver of 125 and HCMI. At this time, the Receiver remained appointed as Receiver and Manager of 133.

6. The purpose of this eleventh report (the "**Eleventh Report**") of the Receiver is to provide this Honourable Court with the Receiver's comments on the:

   a) Activities of the Receiver since the tenth report dated January 30, 2019 (the "**Tenth Report**") and to provide a statement of receipts and disbursements (the "**Statement of R&D**") for the period from the Appointment Date to August 31, 2020 (the "**Reporting Period**");

   b) Receiver's request for an Order approving the sale and vesting title of certain lands legally described as Plan 0522859, Block 1, Lots 1 and 2, located near Calmar, Alberta (the

"**Calmar Lands**") to RMC Group of Companies Ltd. ("**RMC**") pursuant to a sale agreement (the "**Sale Agreement**"), attached hereto as Appendix 'A';

c) As Lot 1 and Lot 2 have separate and distinct secured creditors, the Receiver has proposed an allocation of the purchase price and associated charges between Lot 1 and Lot 2 based upon the estimated fair market value of the lots determined from comparable land sales;

d) The Receiver's request for this Honourable Court's approval of the Contractor Services Agreement (the "**Consulting Agreement**") to reimburse Mr. Doug Martenson (the "**Consultant**") for consulting services provided by Mr. Doug Martenson in connection with the Calmar Lands over the period of the Receivership Proceedings. The Consulting Agreement is attached hereto as Appendix 'B';

e) Receiver's request for the authority to issue distributions to certain of the secured creditors of the Calmar Lands; and

f) The Receiver's recommendation with respect to same.

TERMS OF REFERENCE

7. In preparing the Eleventh Report, the Receiver has relied upon unaudited financial information and Company records. The Receiver has not performed an audit, review or other verification of such information that would wholly or partially comply with Canadian Auditing Standards ("**CASs**") pursuant to the Chartered Professional Accountants Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CASs in respect of such information.

8. All references to dollars are in Canadian currency unless otherwise noted.

BACKGROUND

9. The Calmar Lands consists of two parcels of land, "**Lot 1**" is 53.13 acres and "**Lot 2**" is 76.36 acres located in the town of Calmar, Alberta. Lot 1 and Lot 2 have separate and distinct secured creditors. The Calmar Lands have been actively marketed by the Receiver, with the assistance of RE/MAX Commercial Capital (the "Selling Agent").

10. The first position secured creditor on Lot 1 is a mortgage owed to Mr. and Mrs. Hancar (the "**Hancar Mortgage**"). Calmar Lands Ltd. ("**CLL**") has a mortgage registered against Lot 1 ranking subordinate to the Hancar Mortgage.

11. The first position secured creditor on Lot 2 is a combination of 49 undivided interest mortgages (the "**UDI Mortgages**"). The UDI Mortgages were determined to be valid and enforceable per a judgement of this Honourable Court dated July 5, 2016, and hereto attached as Appendix 'C'. CLL and Foundation Mortgage Corporation ("**FMC**") follow in security position.

12. Prior to this Honourable Court determining the validity of the UDI Mortgages, and pursuant to a settlement offer dated October 30, 2014 (the "**Settlement Offer**"), and attached hereto Appendix 'D', a settlement was reached between the Receiver and 81% of voting UDI Mortgages. The Settlement Offer dictated the UDI Mortgages were entitled to 50% of the ultimate distribution available on Lot 2. The remaining 50% was to be distributed and split between FMC and CLL. The Settlement Offer does not apply to any UDI Mortgages who did not respond to the offer or voted a response of 'NO'.

13. Additional background information and other information regarding these Receivership Proceedings and the previous CCAA Proceedings have been posted by the Receiver on its website at: www.ey.com/ca/foundationgroup.

ACTIVITIES OF THE RECEIVER

14. The remaining asset of 133 is the Calmar Lands, considered for sale under the Sale Agreement. Since the Tenth Report, the Receiver, with the assistance of the Selling Agent, has continued to market the Calmar Lands and, with the assistance of the Consultant, undertook activities to enhance the value of the Calmar Lands.

STATEMENTS OF RECEIPTS & DISBURSEMENTS

15. The following is the Statement of R&D during the Reporting Period:

1330075 Alberta Ltd.		Exhibit 1
Statement of receipts and disbursements		
CAD$, unaudited		
September 30, 2013 to August 31, 2020		
	Notes	
Opening cash balance	*a*	10,424
Receipts		
Related party recoveries	*b*	568,995
Sales of assets	*c*	550,859
Receiver's interest collected		25,159
Rental and other income		20,464
Net GST refunded		2,570
Total receipts		**1,168,047**
Cash balance before disbursements		**1,178,471**
Disbursements		
CCAA professional fees	*d*	505,589
Property tax	*e*	102,263
Receiver's fees	*f*	90,316
Legal fees	*g*	84,855
Receiver's legal fees	*h*	42,479
Operating expenses	*i*	37,076
Total disbursements		**862,578**
Cash on hand		**315,893**

16. Notes to the statement of receipts and disbursements:

a) Opening cash balance of $10,424 represents 133's cash balance as at the Appointment Date;

b) 133 collected recoveries on related party loans during these receivership proceedings as follows:

i. Liberty Crossing LP - $516,000;

ii. Foundation Homes Inc. - $44,000; and

iii. Harvest Group GP - $9,000;

c) Net proceeds from the sale of several adjacent parcels of land near Balsam Lake, Ontario (the "**Balsam Lake Property**"). One parcel was a 2.93 acre site with a house and tenant situated on the land. The remaining six parcels were made up of 668 acres and were vacant.

In 2013, an Order of this Honourable Court approved the sale of the Balsam Lake Property for gross proceeds of $605,000;

d) Professional fees incurred in the CCAA proceedings of 133 prior to the Appointment Date. These fees were previously approved by this Honourable Court pursuant to an Order dated October 1, 2013;

e) Property taxes paid to the Town of Calmar on the Calmar Lands for unpaid balances to December 2014.;

f) Receiver's fees paid throughout these Receivership Proceedings;

g) Legal fees paid to company counsel and in relation to the UDI mortgage priority issue;

h) Legal fees incurred by the Receiver's counsel; and

i) Operating expenses include ongoing insurance, appraisals and environmental assessment fees.

CALMAR LANDS SALE PROCESS

17. On July 7, 2013, the Receiver entered into an agreement with a Selling Agent to market the Calmar Lands. This original agreement was entered into to engage Colliers MaCaulay Nicolls Inc. ("**Colliers**") as Selling Agent. On May 1, 2017, the Receiver engaged RE/MAX Commercial Capital Real Estate Services Ltd. ("**RE/MAX**") to replace Colliers as Selling Agent in the sale process. This change was made as certain individuals involved in the process had been transferred to RE/MAX.

18. The Receiver, through the assistance of its Selling Agent, undertook several activities to market the property:

a) Prepared a comprehensive marketing brochure detailing a summary of the key information related to the Property. The Receiver made this brochure available through the Selling Agent's website and the Town of Calmar, Alberta website.

b) Advertised the property on dedicated real estate advertising sites such as Loopnet.com;

c) Periodically contacted a comprehensive list of over 300 potentially interested parties and selling agents in the Province of Alberta;

d) Canvassed the lands as a potential development opportunity with 25 major developers throughout the area of Edmonton, Alberta; and

e) Presented the option of purchasing the lands to the major oil companies who contributed to the Environmental Contamination (defined below), as potentially a more cost-efficient alternative to remediating the properties.

19. Early in the sales process, the Receiver learned that oil wells had previously been drilled on the Calmar Lands by major oil companies including Penn West Petroleum Ltd. ("**Penn West**") and Repsol S.A. ("**Repsol**") and that several of these sites were not sufficiently remediated to comply with current government regulations (the "**Environmental Contamination**"). The costs, efforts and time associated with reclaiming the lands continued to hinder the value of the properties and potential offerings throughout the sale process.

20. The Receiver has compiled details of prior offers to purchase received for the Property in Confidential Appendix 'E'.

21. Throughout the sale process the Receiver, with assistance from the Consultant, advanced efforts to remediate the Environmental Contamination. These activities included:

a) Engaged in continued discussions with major oil companies and government regulatory bodies to complete a satisfactory clean up of the contamination on the Calmar Lands;

b) Notified the Alberta Energy Regulator ("**AER**") of the Environmental Contamination, who advised Repsol to complete a clean up program on certain wells on Lot 2. This clean up program extended over a two-year period starting in 2017, at a cost of $5.0 Million; and

c) Engaged an environmental consultant to complete an assessment of the remaining contaminated wells on the Property. The findings of these assessments were heavily used in the due diligence process by the eventual purchaser, RMC.

22. As the Receiver advanced efforts to complete reclamation work on the properties, the Receiver, through the assistance of its Selling Agent, continued to market the Property.

23. As a result of the marketing efforts, the Receiver received an offer to purchase both Lots 1 and 2, on February 6, 2020. The terms of the Sale Agreement were further negotiated and subjected to a due diligence process. The finalized terms of the Sale Agreement were settled on July 23, 2020, for an aggregated purchase price of $1.25 Million.

SALE AGREEMENT

24. The Receiver has summarized the main terms and conditions of the final Sale Agreement, a copy of which is attached as Appendix 'A':

    a) The Property, described as the Calmar Lands, Lots 1 and 2;

    b) The sale proceeds for the Calmar Lands are $1.25 Million and shall be payable as follows:

        i. Purchase price deposit amount of $250,000, which has been received by a third-party broker, Lizotte and Associates Real Estate Inc. and held with submission of the Sale Agreement to this Honourable Court for approval;

        ii. $1,000,000 to be paid by RMC on the 30th day following the approval of the Sale Agreement by this Honourable Court (the "Closing Date"), and adjusted if applicable for any outstanding taxes, utilities, interest, tenant deposits, and all other incomings and outgoings with respect to the Property;

    c) The Sale Agreement is conditional on this Honourable Court's approval; and

    d) The Sale Agreement contemplates that the Calmar Lands are to be vested free and clear of any encumbrances, except for any permitted non-financial encumbrances.

RECEIVER'S ANALYSIS OF THE SALE AGREEMENT

25. The Receiver was actively involved with considering and approving the Sale Agreement. The Receiver believes that the approval of the Sale Agreement is in the best interest of all stakeholders for the following reasons:

    a) The Calmar Lands have been broadly marketed to a large number of prospective purchasers since 2013. The Sale Agreement was the only offer to purchase the Calmar Lands received during this period that was subject only to Court approval;

    b) The Receiver believes that the Selling Agent acted in good faith and with due diligence in soliciting offers to acquire the Calmar Lands;

    c) The Sale Agreement was negotiated between the parties at arm's length, in good faith, and is commercially reasonable;

d) The Sale Agreement is subject only to the approval of this Honourable Court and the representations and warranties are typical for sales in these circumstances and the sale is on an "as is where is" basis.

26. The Receiver believes that the Property has been adequately exposed to the market through the efforts of the marketing activities, the Selling Agent, and the Consultant. The Receiver further believes that the transaction contemplated in the Sale Agreement is the best and highest offer under the circumstances.

27. Furthermore, the Receiver understands that significant stakeholders such as representatives of the Hancar Mortgage, the first ranking secured creditor on Lot 1, are in support of the Sale Agreement.

28. Accordingly, the Receiver requests this Honourable Court approve of the Sale Agreement and vesting of Property to RMC free and clear of all financial encumbrances on the Closing Date.

CONSULTANT AGREEMENT

29. Pursuant to the Consulting Agreement entered into by the Receiver and the Consultant on June 12, 2020, the Receiver retained the services of Mr. Doug Martenson as a Consultant to assist in undertaking activities to enhance the value of the Calmar Lands. The Consulting Agreement was made effective September 30, 2013 to reflect the period that the Consultant had been assisting the Receiver with respect to the Calmar Lands.

30. The Consultant is a designated professional engineer and project manager, with over 30 years of local and international experience in the oil & gas industry. The Consultant is a related family member of the controlling owners of CLL, the second secured creditor of Lot 1 and 2. His experience with the Calmar Lands started in 2005 when CLL purchased the Property from Mr. and Mrs. Hancar. He has continued to be involved in the administration of the land through the sale of the Property to 133 in 2008, and subsequent CCAA and Receivership Proceedings.

31. Detail of the services rendered by the Consultant through the Receivership Proceedings include:

a) Pursued notifying the AER of the extensive Environmental Contamination on the Calmar Lands and lobbying for remediation to be completed by the polluting oil companies;

b) Successfully negotiating to have Repsol complete a $5.0 Million clean up on certain wells located on Lot 2;

c) Blocking the actions of Penn West to obtain a reclamation certificate on certain wells located on Lot 1 for insufficiently completing a site reclamation;

d) Identified and placed a farming tenant on Lot 1 in the latter half of 2017. The Consultant then negotiated with the Town of Calmar to reassess Lot 1's current use as farmland, resulting in a lower property tax incurrence per annum.

e) Coordinated environmental assessments to be completed on the various contaminated wells on the Property and improved the Receiver's knowledge of the extent of environmental contamination existing on the lands. These environmental assessments were subsequently used by RMC in completing its due diligence procedures for the Sale Agreement.

32. Pursuant to the Consulting Agreement and subject to the approval of this Honourable Court, the Consultant is to receive a consulting fee of $150,000 as compensation for his services provided between September 2013 and closing of a sale of the Calmar Lands for proceeds in excess of $1.0 million.

33. As discussed previously in this report, the Consultant is a family member to the owners of CLL, a secured creditor. Through the Receivership Proceedings, the Consultant has acted as a director of CLL, and as such, much of his work has taken place to maximize the realization on the Property for the secured creditors. The gross proceeds from the Sale Agreement will be insufficient to provide a distribution to CLL under Lot 1 and 2.

34. Representatives of the Hancar Mortgage, the first secured creditor on Lot 1, is supportive of the Consulting Agreement and the compensation to be paid to the Consultant for his services in the sale process.

35. Given the extensive Environmental Contamination, the Receiver is of the view that the value received from the Sale Agreement would not have been achieved without the services provided by the Consultant in the Receivership Proceedings.

36. The Receiver is of the view that the services provided by the Consultant were instrumental in advancing remediation on the Environmental Contamination, identifying the Purchaser, and negotiating the Sale Agreement.

37. The Consulting Agreement is subject to the approval of this Honourable Court and the Receiver is requesting that this Honourable Court approve of the Consulting Agreement and authorize the

Receiver to pay $150,000 from the sales proceeds to be received under the Sales Agreement to the Consultant.

DISTRIBUTION OF SALES PROCEEDS

ALLOCATION OF SALE PROCEEDS

38. Pursuant to the Sale Agreement, the Calmar Lands, including Lot 1 and Lot 2, are being sold to RMC for an aggregate purchase price of $1.25 Million. As Lot 1 and Lot 2 have separate and distinct secured creditors, the Receiver has developed an allocation of the purchase price (the "**Purchase Price Allocation**") to Lot 1 and Lot 2 based upon a determination of the fair value of the lands per comparable real estate transactions. The fair market value of Lot 1 was further adjusted for the estimated oil well reclamation costs.

39. The Receiver identified 20 comparable land transactions in rural Alberta. For a transaction to be comparable, the transaction needed to share characteristics such as involving lands next to a highway for Lot 1 and backing rail lines for Lot 2.

40. Based on this fair value analysis, the Receiver determined a Purchase Price Allocation of 43.2% or $538,792 for Lot 1 and 56.8% or $710,208 for Lot 2. Although, the reclamation costs associated with the oil wells on Lot 1 are the responsibility of the oil & gas companies owning the wells, the Receiver did apply a discount to Lot 1 to account for the additional efforts and time required to deal with the reclamation of the oil wells on Lot 1. A copy of this analysis and the comparable transactions forming the basis of the Purchase Price Allocation is attached hereto as Confidential Appendix 'F'.

41. The Receiver consulted with the Transaction Real Estate group within Ernst & Young Orenda Corporate Finance Inc. ("**EY TRE**") who advised that the comparable land transactions reflected the characteristics of the lots and, that the Receiver's fair value of each lot fell within the range of reasonable values for lots with designated zoning as residential, industrial, or agriculture.

42. The Receiver is of the view the Purchase Price Allocation is a reasonable basis to allocate the sales proceeds and charges amongst Lot 1 and Lot 2 of the Calmar Lands.

PROPOSED PRIORITY PAYMENTS AND DISTRIBUTIONS

43. Exhibit 3.0 provides an overview of the proposed priority payments and distributions to be issued from the purchase proceeds allocated to Lot 1 pursuant to the proposed Purchase Price Allocation:

1330075 Alberta Ltd.			
Priority Payments Allocation - Lot 1		**Exhibit 3**	
Est. August 31, 2020			
			Notes
Purchase Price Allocation - Lot 1		**539,792**	***a***
Less:			
Funds to be distributed/reserved for:			
Selling costs	(16,194)		***b***
Reimbursements to 133 for 2014 property taxes paid	(92,901)		***c***
Reimbursements to 133 for professional fees paid	(112,708)		***d***
Outstanding property taxes	(114,219)		***e***
Consulting fees	(64,775)		***f***
Remaining professional fees	(15,000)	(415,796)	***g***
Net funds remaining to distribute to secured creditors		**123,996**	
Hancar Mortgage Distribution		(123,996)	***h***
Net funds remaining for secured creditors of Lot 1		**-**	

44. The following is are notes to exhibit 3.0 describing the proposed distributions from the Purchase Price Allocated to Lot 1:

a) The portion of the purchase price of $1.25 Million allocated to Lot 1 pursuant to the proposed Purchase Price Allocation;

b) Selling costs are calculated based on 3% of the sales price allocated to each lot, in accordance with the terms set out in the Receiver's agreement with the Selling Agent;

c) In 2014, 133 paid for property taxes owed on the Calmar Lands. Payments are to be made to reimburse 133 for taxes paid of $66,356 on Lot 1 plus interest of 7.0% per annum from December 15, 2014 to present. This arrangement is in accordance with this Honourable Court's order dated December 15, 2014;

d) Reimbursement to 133 for professional fees paid in Receivership Proceedings, and attributable to the sales process and administration of Lot 1;

e) Outstanding property taxes payable to the Town of Calmar, Alberta as at August 20, 2020;

f) Consulting Fee to be allocated to Lot 1 pursuant to the Purchase Price Allocation. The Receiver is seeking this Court's approval of the Consulting Agreement giving rise to the Consulting Fee;

g) Estimated work-in-progress and forecast fees of the Receiver and its legal counsel; and

h) The Hancar Mortgage is the first secured creditor on Lot 1, as evidenced in a Judgement of this Honourable Court attached hereto in Appendix 'C'. The indebtedness owed from 133 to Mr. and Mrs. Hancar secured by the Hancar Mortgage is $516,717 as at August 31, 2020; therefore, Mr. and Mrs. Hancar will incur a shortfall of $387,378.

(collectively, the "**Lot 1 Distributions**").

45. Exhibit 4.0 provides an overview of the proposed priority payments and distributions to be issued from the purchase proceeds allocated to Lot 2 pursuant to the proposed Purchase Price Allocation:

1330075 Alberta Ltd.			
Priority Payments Allocation - Lot 2		**Exhibit 4**	
Est. August 31, 2020			
			Notes
Purchase Price Allocation - Lot 2		**710,208**	***a***
Less:			
Funds to be distributed/reserved for:			
Selling costs	(21,306)		***b***
Reimbursements to 133 for 2014 property taxes paid	(50,156)		***c***
Reimbursements to 133 for professional fees paid	(201,617)		***d***
Outstanding property taxes	(7,119)		***e***
Consulting fees	(85,225)		***f***
Remaining professional fees	(30,000)	(395,424)	***g***
Net funds remaining to distribute to secured creditors of Lot 2		**314,784**	

46. The following is are notes to exhibit 4.0 describing the proposed distributions from the Purchase Price Allocated to Lot 2:

a) The cash portion of the purchase price of $1.25 Million allocated to Lot 2 pursuant to the Proposed Purchase Price Allocation;

b) Selling costs are calculated based on 3% of the sales price allocated to each lot in accordance with the listing agreement with the Selling Agent;

c) In 2014, 133 paid for property taxes owed on the Calmar Lands. Payments are to be made to reimburse 133 for taxes paid of $35,825 on Lot 2 plus interest of 7.0% per annum from

December 15, 2014 to present. This arrangement is in accordance with this Honourable Court's order dated December 15, 2014;

d) Reimbursement to 133 for professional fees paid in Receivership Proceedings, and attributable to the sales process and administration of Lot 2;

e) Outstanding property taxes payable to the Town of Calmar, Alberta as at August 20, 2020;

f) Consulting Fee to be allocated to Lot 1 pursuant to the Purchase Price Allocation. The Receiver is seeking this Court's approval of the Consulting Agreement giving rise to the Consulting Fee; and

g) Estimated work-in-progress and forecast fees of the Receiver and its legal counsel.

(collectively, the "**Lot 2 Distributions**").

47. The Receiver is formulating the distribution to be issued to the secured creditors of Lot 2 and will make a separate application to approve the distribution of the residual funds allocated to Lot 2 in accordance with the priority ranking of secured creditors with claims against Lot 2. As at this time the Receiver is requesting an approval to settle the priority charges Lot 2 as identified in Exhibit 4.0.

48. The net proceeds to be recovered from the sales proceeds allocated to Lot 1 and Lot 2 will not be sufficient to fully repay the indebtedness outstanding to the secured creditors of the Calmar Lands.

SEALING ORDER

49. It is the view of the Receiver that comparable transactions and analysis to prepare the Purchase Price Allocation constitute commercially sensitive information. If made public, this information could negatively impact the monetization of the Property in the event the Receiver is forced to re-market the Property and cause serious and irreparable harm to the Receivership of 133 and its stakeholders.

50. The Receiver is of the view this information remains confidential until the conclusion of the sale and vesting of the Property to RMC, in the event the transaction does not proceed. Therefore, the Receiver is seeking an Order of this Honourable Court (the "**Sealing Order**") sealing the details of the comparable transactions and analysis relied upon to develop the Purchase Price Allocation (attached hereto in Confidential Appendix 'F').

RECEIVER'S RECOMMENDATIONS

51. The Receiver recommends that this Honourable Court approve:

a) Activities of the Receiver during, and the statement of receipts and disbursements for, the Reporting Period;

b) The sale and vesting order of the Property to RMC pursuant to the Sale Agreement;

c) The Consulting Agreement and distributions to the Consultant to be made in accordance with the agreement terms;

d) The Purchase Price Allocation;

e) The Lot 1 Distributions;

f) The Lot 2 Distributions, limited to the priority payments; and

g) The Sealing Order.

Dated at Calgary AB, this 31st day of August 2020.

ERNST & YOUNG INC.
in its capacity as Receiver and
Manager of 1330075 Alberta Ltd.

Peter Chisholm, CPA, CA, CIRP, LIT
Senior Vice-President

Appendix ‘A’

OFFER TO PURCHASE and **INTERIM AGREEMENT (**the **"Offer")**

To: **LIZOTTE AND ASSOCIATES REAL ESTATE INC**.
#1200 10117 Jasper Ave Edmonton, Alberta
Phone: 780-488-0888 Fax: 780-483-2277
Email: jim@lizotterealestate.com www.lizotterealestate.com

Brokerage is representing the Purchaser

RMC GROUP OF COMPANIES LTD. (hereinafter called the "Purchaser") hereby **OFFERS TO PURCHASE** from **1330075 ALBERTA LTD. BY ERNST AND YOUNG INC.,** solely in its capacity as court-appointed receiver and manager of 1330075 ALBERTA LTD., and not in its personal or corporate capacity of 2200, 215-2nd street SW Calgary, Alberta T2P 1M4 (hereinafter referred to as the "Vendor"), the land municipally located at 50 STREET & 50 AVENUE (HWY 39), CALMAR, AB, and legally described as Plan 0522859, Block 1, Lots 1 and 2 of approximately 129 acres, more or less (hereinafter called the "Property"), outlined in red on attached Schedule "A" and shown on Land Titles in Schedule "B".

1. PRICE

The Purchase Price shall be **ONE MILLION, TWO HUNDRED AND FIFTY THOUSAND CANADIAN DOLLARS AND ZERO CENTS ($1,250,000.00)** payable as follows:

$ 250,000.00	Deposit to be paid to Lizotte and Associates Real Estate Inc. with submission of this Offer to Purchase and to be held in Trust, pending Court of Queen's Bench, Alberta approval. Should the Court of Queen's Bench, Alberta not approve the Offer to Purchase, the deposit shall be refunded to to the Purchaser.
$ 1,000,000.00	To be paid by way of certified cheque or solicitor's trust cheque upon the Closing Date to the Vendor.
$ 1,250,000.00	**PURCHASE PRICE**

2. CLOSING

The date of possession and closing shall be at 12:00 ~~p.m. Mountain Standard Time~~noon (Edmonton time) on the 30th day following Court of Queen's Bench, Alberta approval (hereinafter referred to as the "Closing Date"), at the offices of the Purchaser's solicitors, upon which date all taxes, utilities, interest, tenant deposits plus interest (if applicable), and all other incomings and outgoings with respect to the Property shall be adjusted between the Purchaser and the Vendor. Should the above defined Closing Date occur on a day that is not a business day, it is hereby agreed to by all parties to this Offer that the Closing Date shall occur on the earliest following business day. In case the payment gets delayed at the fault of the Purchaser, then the Purchaser will pay interest to the Vendor calculated daily from and including the Closing Date to but excluding the day the Vendor is paid in full, at the rate equal to the prime lending rate of the Royal Bank of Canada at the Closing Date. Payment received after 1:00 pm on any day will be treated as payment on the next business day.

Conveyances are to be prepared at the expense of the Vendor. Registration of the documents at the Land Titles Office for the North Alberta Registration District is to be at the expense of the Purchaser.

3. TITLE

Title to the Property shall be transferred on the Closing Date free and clear of all encumbrances, save and except any non-financial encumbrances such as easements and utility right of ways; these are acceptable to the Purchaser. The Vendor shall pay and discharge any encumbrances which are not by this Offer document specifically assumed by the Purchaser.

4. FAILURE TO COMPLETE

If this Offer is accepted within the time herein limited for acceptance and approval granted by the Court of Queen's Bench, Alberta, and provided the Vendor satisfies all its obligations under this Offer to Purchase document, and the Purchaser subsequently fails to complete the purchase of the Property pursuant to the terms and conditions contained herein, then the total Deposit shall be forfeited to the Vendor and agreed as sole liquidated damages and the Purchaser shall have no interest in the Property and will discharge any Caveat it may have filed against the title to the Property pursuant to this Offer and the Vendor and Purchaser shall have no further claims against each other whatsoever.

5. VENDOR'S REPRESENTATIONS

The Vendor represents that:

a) ~~Between the date of conditional acceptance of this Offer and the Closing Date, the Vendor shall continue to maintain the Property in the best interests of a prudent real property owner;~~The Vendor is, subject to obtaining Court approval, authorized to enter into and complete the transaction contemaplted herein;

~~b) The Vendor has not received notice of, nor is it aware of, any non-compliance with all laws, bylaws and regulations, whether federal, provincial, municipal or otherwise, as it relates to the Property;~~

~~c) The Vendor has not received any work order or other notice from the Town of Calmar or of any agency thereof or from any other governmental authority where under the Vendor is required to cure, repair or rectify any breach or non-compliance of the Property or any use thereof with any applicable statute, by-law, regulation, ordinance or order, which has not been cured, repaired, rectified or which will otherwise remain outstanding at the Closing Date;~~

b) ~~d)~~ Between the Acceptance Date of this Offer and the Closing Date, the Vendor will not enter into any material agreements extending beyond the Closing Date regarding the Property without the written consent of the Purchaser, such consent not to be unreasonably withheld;

~~e) The Vendor is a GST registrant;~~

~~i) There is no legal action outstanding with respect to the Property;~~

~~j) The Vendor is not in breach of any contract with respect to the Property;~~

~~k) The Vendor is not in breach of any obligation to any third party with respect to the Property;~~

~~l) Within the meaning of the Income Tax Act (Canada), the Vendor is not now nor will be on the Completion Day a non-resident of Canada nor an agent or a trustee for any person with an interest in the property who is a non-resident of Canada;~~

~~m) The current use of the property is approved and complies with all Town of Calmar zoning and land use bylaws;~~

~~n) The representations and warranties in this section shall be true at the Closing Date and shall survive the completion of the purchase and sale; and~~

~~o) As of the date of this offer the Vendor has not received notice or had any indication from any government authority in relation to any potential expropriation, road closure, access change or anything else that could affect the Property. If the Vendor is made aware of such thing either by way of notice or any other means, at any time prior to closing date, they will immediately notify the Purchaser.~~

6. CLOSING DOCUMENTATION

Ten (10) business days prior to the Closing Date, the Vendor agrees to deliver to the Purchaser's solicitors the following, in addition to any other closing documentation:

a) Transfer in registrable form of the Property; and

b) A Statement of Adjustments accompanied by an undertaking by the Vendor to readjust any errors, omissions or changes in the Statement of Adjustments, together with an undertaking to turn over to the Purchaser all rents received after the Closing Date which are the property of the Purchaser, and the Purchaser shall deliver a corresponding undertaking to the Vendor.

7. CANADIAN RESIDENT

The Vendor warrants that it is a resident of Canada for all of the purposes under the Income Tax Act (Canada) and in particular with respect to Section 116 of the said Income Tax Act.

8. GOODS AND SERVICES TAX

The Purchaser and Vendor ~~warrant~~agree as follows:

a) The Purchaser shall be responsible for any Goods and Services Tax (the “GST”) payable with respect to the purchase of the Property. If the Vendor is required to remit the GST with respect to the Property by virtue of the fact that the Purchaser is not a registrant pursuant to Subdivision D of Division V of Part IX of The Excise Tax Act for GST purposes, the Purchaser will deliver to the Vendor on the Closing Date a certified cheque or banker’s draft in the amount of GST payable in respect of the purchase by the Purchaser of the Property;

b) If the Vendor and the Purchaser are both registrants and the election is available, the Vendor and the Purchaser ~~agree~~will use commercially reasomable efforts to elect pursuant to Section 167(1) of The Excise Tax Act that no GST shall apply in respect of the supply of the assets dealt with in this Offer; and

c) If requested, the Purchaser shall provide the Vendor, at Closing, with a statutory declaration of an officer of the Purchaser confirming such registration, including the Purchasers registration number.

d) The Purchaser shall execute the Vendor’s form of GST certificate and Indemnity Agreement.

9. NOTIFICATION

The Vendor and Purchaser acknowledge that:

Jim McKinnon (Lizotte and Associates Real Estate Inc.) represents the Purchaser in this transaction, with all notices or information for the Purchaser to be sent to:

Lizotte & Associates Real Estate Inc.
Attn: Jim McKinnon
#1201, 10117 Jasper Avenue, Edmonton, AB T5J 1W8
Email: jim@lizotterealestate.com
Telephone: 780-719-8183

Steven Pearson (REMAX Commercial Capital Edmonton) represents the Vendor in this transaction, with all notices or information for the Vendor to be sent to:

RE/MAX Commercial Capital
Attn: Steven Pearson
#302 10171 Saskatchewan Drive

Edmonton, Alberta T6E 4R5
Email: steven@rcedm.ca
Telephone: 780-701-3287

10. COMMISSIONS

The Vendor acknowledges that it is responsible for (a) any real estate commissions or fees with respect to the within transaction contemplated by this Offer~~.~~ that it has expressly agreed to pay; and (b) Lizotte and Associates Real Estate Inc. (the "Brokerage") and its agent, Jim McKinnon, will receive 50% of the fee as per the Listing Agreement.

11. VENDOR AND PURCHASER AGREE THAT:

a) Time shall be of the essence;

b) This Offer shall enure to the benefit of and be binding upon the heirs, executors, administrators, and the assigns of the parties hereto;

c) The obligations of all parties hereunder shall continue in full force and effect and shall not be deemed to be merged in any conveyance or conveyances to be given to the Purchaser;

d) This Offer constitutes the entire agreement between the Vendor and the Purchaser and there are no representations, warranties, collateral agreements or conditions affecting the Property or the Agreement of Purchase and Sale arising out of acceptance of this Offer, other than as are set forth herein;

e) The Purchaser may assign this Offer to Purchase to another party without consent of the Vendor at any time prior to the Closing Date;

f) This offer shall be governed by the laws of the Province of Alberta;

g) The undersigned for each the Purchaser and Vendor hereby both warrant that they have the power and authority to bind their respective corporations; and

h) Notification by email and facsimile transmission is hereby acceptable.

12. COURT APPROVAL:

The Vendor and Purchaser agree that this Offer to Purchase is subject to approval by the Court of Queen's Bench, Alberta.

DATED BY THE PURCHASER at Edmonton, Alberta as of this 23rd day of July, 2020.

RMC GROUP OF COMPANIES LTD.

Per: ________________________________

DATED BY THE VENDOR at ______________, Alberta as of this _____________________ day of July, 2020.

1330075 ALBERTA LTD. BY ERNST AND YOUNG INC.

Per: ________________________________

Edmonton, Alberta T6E 4R5
Email:
Telephone: 780-701-3287

10. COMMISSIONS

The Vendor acknowledges that it is responsible for any real estate commissions or fees with respect to the within transaction contemplated by this Offer Lizotte and Associates Real Estate Inc. (the "Brokerage") and its agent, Jim McKinnon, will receive 50% of the fee as per the Listing Agreement.

11. VENDOR AND PURCHASER AGREE THAT:

a) Time shall be of the essence;

b) This Offer shall enure to the benefit of and be binding upon the heirs, executors, administrators, and the assigns of the parties hereto;

c) The obligations of all parties hereunder shall continue in full force and effect and shall not be deemed to be merged in any conveyance or conveyances to be given to the Purchaser;

d) This Offer constitutes the entire agreement between the Vendor and the Purchaser and there are no representations, warranties, collateral agreements or conditions affecting the Property or the Agreement of Purchase and Sale arising out of acceptance of this Offer, other than as are set forth herein;

e) The Purchaser may assign this Offer to Purchase to another party without consent of the Vendor at any time prior to the Closing Date;

f) This offer shall be governed by the laws of the Province of Alberta;

g) The undersigned for each the Purchaser and Vendor hereby both warrant that they have the power and authority to bind their respective corporations; and

h) Notification by email and facsimile transmission is hereby acceptable.

12. COURT APPROVAL:

The Vendor and Purchaser agree that this Offer to Purchase is subject to approval by the Court of Queen's Bench, Alberta.

DATED BY THE PURCHASER at Edmonton, Alberta as of this 23rd day of July, 2020.

RMC GROUP OF COMPANIES LTD.

Per: ______________________

DATED BY THE VENDOR at Calgary, Alberta as of this 23rd day of July, 2020.

1330075 ALBERTA LTD. BY ERNST AND YOUNG INC.

Per: ______________________

13. FINAL SIGNING

Final signing of this Offer occurred at 12 a.m./p.m. on July 23 ___, 2020.

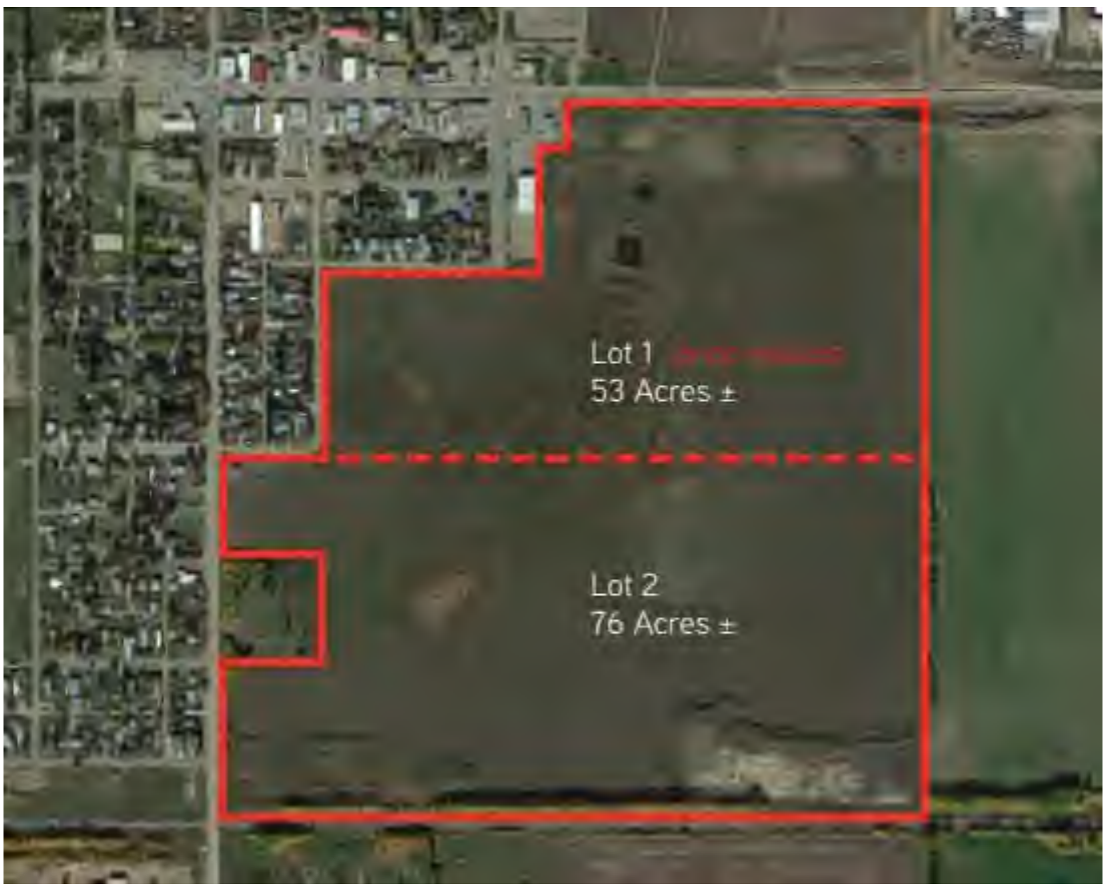
Initials of the person(s) who signed last P C .

SCHEDULE "A"

50 STREET & 50 AVENUE (HWY 39), CALMAR, AB

Legal Description: Plan 0522859, Block 1, Lot 1 and Lot 2

SITE



SCHEDULE "B"

50 STREET & 50 AVENUE (HWY 39), CALMAR, AB

LAND TITLE: Plan 0522859, Block 1, Lot 1

LAND TITLE CERTIFICATE

S

LINC	SHORT LEGAL	TITLE NUMBER
0031 091 854	0522859;1;1	082 416 485

LEGAL DESCRIPTION
PLAN 0522859
BLOCK 1
LOT 1
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 21.5 HECTARES (53.13 ACRES) MORE OR LESS

ESTATE: FEE SIMPLE
ATS REFERENCE: 4;26;49;30;W

MUNICIPALITY: TOWN OF CALMAR

REFERENCE NUMBER: 052 270 580

REGISTERED OWNER(S)

REGISTRATION	DATE(DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
082 416 485	22/09/2008	TRANSFER OF LAND		SEE INSTRUMENT

OWNERS

1330075 ALBERTA LTD.
OF 4, 4002-9 AVENUE
LETHBRIDGE
ALBERTA T1H 6T8

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
912 290 253	23/10/1991	CAVEAT RE : DEFERRED RESERVE CAVEATOR - EDMONTON METROPOLITAN REGIONAL PLANNING COMMISSION. 9TH FLOOR METROPOLITAN PLACE 10303 JASPER AVENUE EDMONTON ALBERTA

(CONTINUED)

ENCUMBRANCES, LIENS & INTERESTS

PAGE 2
082 416 485

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
052 226 325	08/06/2005	CAVEAT RE : DEVELOPMENT AGREEMENT PURSUANT TO MUNICIPAL GOVERNMENT ACT CAVEATOR - THE TOWN OF CALMAR. P.O. BOX 750, CALMAR ALBERTA T0C0V0 AGENT - WILLIAM DAVID DOLMAN
052 270 581	06/07/2005	MORTGAGE MORTGAGEE - AMANDA HANCAR 3132 RIVER ROAD CHEMAINUS BRITISH COLUMBIA V0R1K1 ORIGINAL PRINCIPAL AMOUNT: $557,519 (DATA UPDATED BY: TRANSMISSION OF MORTGAGE 192248394) (DATA UPDATED BY: TRANSFER OF MORTGAGE 192248400)
082 393 027	10/09/2008	CAVEAT RE : VENDOR'S LIEN CAVEATOR - CALMAR LANDS LTD. SUITE 219, 6203-28 AVE EDMONTON ALBERTA AGENT - RON SCHULDHAUS
082 417 093	22/09/2008	MORTGAGE MORTGAGEE - CALMAR LANDS LTD. #126, 11115-9 AVE EDMONTON ALBERTA T6J6E1 ORIGINAL PRINCIPAL AMOUNT: $2,055,452
092 102 805	03/04/2009	AMENDING AGREEMENT AFFECTS INSTRUMENT: 082417093
092 227 357	07/07/2009	MORTGAGE MORTGAGEE - FOUNDATION MORTGAGE CORPORATION. 4, 4002 - 9 AVENUE NORTH LETHBRIDGE ALBERTA T1H6T8 ORIGINAL PRINCIPAL AMOUNT: $2,727,402
102 102 339	30/03/2010	CERTIFICATE OF LIS PENDENS AFFECTS INSTRUMENT: 052270581
112 213 906	14/07/2011	BUILDER'S LIEN LIENOR - WEDLER ENGINEERING LLP. ATTN: BRUCE E. MINTZ

(CONTINUED)

ENCUMBRANCES, LIENS & INTERESTS

PAGE 3
082 416 085

REGISTRATION
NUMBER   DATE (D/M/Y)   PARTICULARS

C/O MINTZ LAW
400 THE DORCHESTER
10357 - 109 STREET
EDMONTON
ALBERTA T5J1N3
AGENT - JASON STREET
AMOUNT: $18,676

112 290 399   14/09/2011 CERTIFICATE OF LIS PENDENS
COURT FILE 1112000313

112 416 834   29/12/2011 CERTIFICATE OF LIS PENDENS
AFFECTS INSTRUMENT: 112213906

122 021 110   19/01/2012 CERTIFICATE OF LIS PENDENS
AFFECTS INSTRUMENT: 082417093

172 091 669   13/04/2017 TAX NOTIFICATION
BY - THE TOWN OF CALMAR.
BOX 750, 4901-50 AVE
CALMAR, ALBERTA
T0C0V0

TOTAL INSTRUMENTS: 013

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 5 DAY OF FEBRUARY, 2020 AT 12:04 P.M.

ORDER NUMBER: 38766373

CUSTOMER FILE NUMBER: Jim

END OF CERTIFICATE

50 STREET & 50 AVENUE (HWY 39), CALMAR, AB

LAND TITLE: Plan 0522859, Block 1, Lot 2

LAND TITLE CERTIFICATE

S

LINC	SHORT LEGAL	TITLE NUMBER
0031 091 861	0522859;1;2	082 416 486

LEGAL DESCRIPTION
PLAN 0522859
BLOCK 1
LOT 2
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 30.9 HECTARES (76.36 ACRES) MORE OR LESS

ESTATE: FEE SIMPLE
ATS REFERENCE: 4;26;49;30;W

MUNICIPALITY: TOWN OF CALMAR

REFERENCE NUMBER: 052 270 604 +12

REGISTERED OWNER(S)

REGISTRATION	DATE(DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
082 416 486	22/09/2008	TRANSFER OF LAND		SEE INSTRUMENT

OWNERS

1330075 ALBERTA LTD.
OF 4, 4002-9 AVENUE
LETHBRIDGE
ALBERTA T1H 6T8
AS TO AN UNDIVIDED 6.50/76.36 INTEREST

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
4591EI	26/10/1931	CAVEAT RE : SEE CAVEAT CAVEATOR - LACOMBE AND NORTHWESTERN RAILWAY COMPANY. C/O SOLICITOR OF THE CANADIAN PACIFIC RAILWAY COMPANY CALGARY

ENCUMBRANCES, LIENS & INTERESTS

PAGE 2
082 416 486

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
		ALBERTA " AFFECTS PART OF THIS TITLE " (DATA UPDATED BY: 132115683)
912 290 253	23/10/1991	CAVEAT RE : DEFERRED RESERVE CAVEATOR - EDMONTON METROPOLITAN REGIONAL PLANNING COMMISSION. 9TH FLOOR METROPOLITAN PLACE 10303 JASPER AVENUE EDMONTON ALBERTA " AFFECTS PART OF THIS TITLE "
052 226 325	08/06/2005	CAVEAT RE : DEVELOPMENT AGREEMENT PURSUANT TO MUNICIPAL GOVERNMENT ACT CAVEATOR - THE TOWN OF CALMAR. P.O. BOX 750, CALMAR ALBERTA T0C0V0 AGENT - WILLIAM DAVID DOLMAN
052 271 397	06/07/2005	MORTGAGE MORTGAGEE - CANADIAN WESTERN TRUST COMPANY. SUITE 2200-666 BURRARD STREET VANCOUVER BRITISH COLUMBIA V6C2X8 ORIGINAL PRINCIPAL AMOUNT: $130,000
082 393 027	10/09/2008	CAVEAT RE : VENDOR'S LIEN CAVEATOR - CALMAR LANDS LTD. SUITE 219, 6203-28 AVE EDMONTON ALBERTA AGENT - RON SCHULDHAUS
082 417 093	22/09/2008	MORTGAGE MORTGAGEE - CALMAR LANDS LTD. #126, 11115-9 AVE EDMONTON ALBERTA T6J6Z1 ORIGINAL PRINCIPAL AMOUNT: $2,055,452
092 102 805	03/04/2009	AMENDING AGREEMENT AFFECTS INSTRUMENT: 082417093
092 227 357	07/07/2009	MORTGAGE MORTGAGEE - FOUNDATION MORTGAGE CORPORATION.

(CONTINUED)

ENCOMBRANCES, LIENS & INTERESTS

PAGE 3
082 416 486

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
		4, 4002 - 9 AVENUE NORTH LETHBRIDGE ALBERTA T1H6T8 ORIGINAL PRINCIPAL AMOUNT: $2,727,402
112 213 906	14/07/2011	BUILDER'S LIEN LIENOR - WEDLER ENGINEERING LLP. ATTN: BRUCE E. MINTZ C/O MINTZ LAW 400 THE DORCHESTER 10357 - 109 STREET EDMONTON ALBERTA T5J1N3 AGENT - JASON STREET AMOUNT: $18,676
112 290 399	14/09/2011	CERTIFICATE OF LIS PENDENS COURT FILE 1112000313
112 416 834	29/12/2011	CERTIFICATE OF LIS PENDENS AFFECTS INSTRUMENT: 112213906
122 021 110	19/01/2012	CERTIFICATE OF LIS PENDENS AFFECTS INSTRUMENT: 082417093
172 091 669	13/04/2017	TAX NOTIFICATION BY - THE TOWN OF CALMAR. BOX 750, 4901-50 AVE CALMAR, ALBERTA T0C0V0

TOTAL INSTRUMENTS: 013

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 18 DAY OF NOVEMBER, 2019 AT 03:39 P.M.

ORDER NUMBER: 38381717

CUSTOMER FILE NUMBER: Jim

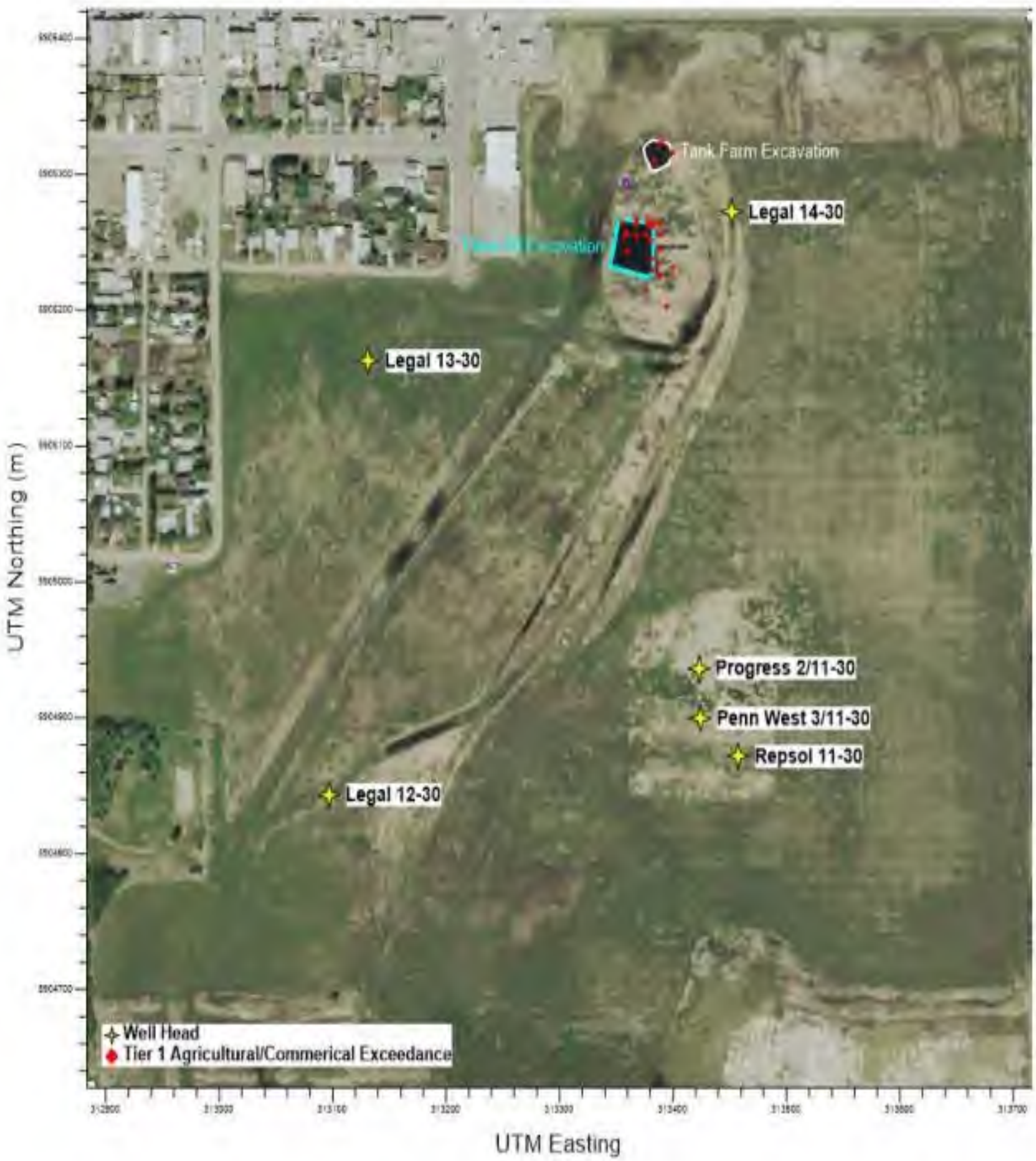
REGISTRAR OF LAND TITLES

END OF CERTIFICATE

SCHEDULE "C"

50 STREET & 50 AVENUE (HWY 39), CALMAR, AB

WELL SITES



Environmental Assessment - The site has six inactive well sites.

Appendix ‘B’

CONTRACTOR SERVICES AGREEMENT

THIS AGREEMENT is made effective as of the 30th day of September, 2013.

BETWEEN:

1330075 ALBERTA LTD., by **ERNST & YOUNG INC.**, solely in its capacity as court-appointed receiver and manager of the **1330075 ALBERTA LTD.** and not in its personal or corporate capacity (the "**Receiver**")

OF THE FIRST PART,

- and -

DOUG MARTENSON or Assignee
(the "**Contractor**")

OF THE SECOND PART,

WHEREAS the Receiver was appointed as receiver and manager of 1330075 Alberta Ltd. pursuant to the Receivership Order;

AND WHEREAS the Receiver desires to engage the Contractor to provide services to the Receiver, and the Contractor agrees to provide such services;

NOW THEREFORE, this Agreement witnesses that, in consideration of the mutual covenants contained herein, including, but not limited to, the Contractor's agreement to provide the Services (as defined herein) and the Receiver's agreement to pay the Fees (as defined herein), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
INTERPRETATION

1.01 Definitions

In this Agreement, including the aforementioned recitals, this Article 1, and any schedules attached hereto, unless the context requires otherwise requires, or unless otherwise defined herein, the following words and phrases shall have the following meanings:

(a) "**Agreement**" means this Contractor Services Agreement;

(b) "**Applicable Laws**" means:

(i) any applicable domestic or foreign law including any statute, subordinate legislation, or treaty; and

(ii) any applicable guideline, directive, rule, standard, requirement, policy, order, judgment, injunction, award, or decree of any Government Authority having the force of law.

(c) "**Company**" means 1330075 Alberta Ltd.;

(d) "**Contractor**" means Doug Martenson;

(e) "**Effective Date**" means the date first written above;

(f) "**Fees**" has the meaning set out in Section 5.1;

(g) "**Governmental Authority**" means any federal, national, provincial, territorial, municipal, or other government, any political subdivision thereof, and any ministry, sub ministry, agency or sub agency, court, board, bureau, office, or department, including any government owned entity, having jurisdiction over any Party, or any of the Services, transactions, or processes contemplated by this Agreement;

(h) "**Lot 1**" means Plan 0522859; Block 1; Lot 1;

(i) "**Lot 2**" means Plan 0522859; Block 1; Lot 2;

(j) "**Property**" means the lands municipally located at 50 Street & 50 Avenue (Hwy 39), Calmar, Alberta and legally described as Plan 0522859; Block 1; Lots 1 and 2;

(k) "**Receiver**" means, Ernst and Young Inc. in its capacity as the court-appointed receiver and manager of the Company, and not in its personal or corporate capacity;

(l) "**Receivership Order**" means, the Order granted under Court File No. 1201-16934 on September 30, 2013 by the Honourable Mr. Justice G.C. Hawco, as subsequently amended, supplemented, or restated, from time to time;

(m) "**Services**" means, any and all services to be performed by the Contractor as reasonably requested by the Receiver to support and advance the sale or transfer of the Property; and

(n) "**Term**" means, the period between the Effective Date and the termination of this Agreement in accordance with Article 3 herein.

1.02 **Rules of Construction**

Unless otherwise stated or the context otherwise requires:

(a) words importing the singular number include the plural and vice versa and words importing the masculine gender include the feminine and neuter genders;

(b) a capitalized derivative of a defined term will have a corresponding meaning;

(c) the words "and" or "or" may be conjunctive or disjunctive as the context may require;

(d) the division of this Agreement into sections and the insertion of headings are for the convenience of reference only and do not affect the construction or interpretation of this Agreement;

(e) the references "hereunder" , "herein" and "hereof" refer to the provisions of this Agreement, and references to "Article", "Section", and "subsection" herein refer to the specified Article, Section or subsection of this Agreement;

(f) whenever there occurs a word of general application or of a general class that is stated to "include" a word or an enumerated list of words with a particular or specific meaning, such particular or specific word or enumerated list of words of particular or specific meaning shall not be interpreted so as to be an exhaustive list of those matters or things falling within the word or general application or of a general class;

(g) all references herein to dollars are references to lawful currency of Canada, unless otherwise specified in this Agreement;

(h) all references in this Agreement to any statute shall extend to and include orders-in-council or regulations passed under and pursuant thereto, of any amendment or re-enactment of such statute, orders-in-council or regulations, or any statute, order-in-council or regulations substantially in replacement thereof; and

(i) except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period.

ARTICLE 2
CONTRACT FOR SERVICES

2.1 The Contractor acknowledges and agrees that the Contractor is an independent contractor and the Contractor acknowledges and agrees that the Contractor is not an employee of the Company or the Receiver and shall not be entitled to any benefits whatsoever from the Company or the Receiver.

2.2 The Contractor shall not and is not entitled, without the prior written and explicit consent of the Receiver, to enter into any contract or commitment in the name of or on behalf of the Company or the Receiver or bind the Company or the Receiver in any respect or manner whatsoever.

2.3 Without limiting Section 2.1 herein, the Contractor acknowledges and agrees that the Contractor, as an independent contractor, has no entitlements to employment insurance, pay in lieu of notice, severance, or any other amounts pursuant to the *Employment Standards Code* (Alberta), or comparable legislation, or the common law during or after termination of this Agreement.

2.4 Nothing contained in this Agreement will be regarded or construed as creating any relationship (employer/employee, dependent contractor, joint venture, partnership, shareholder, etc.) between the parties other than as expressly set forth in this Agreement. The Contractor will not represent that it is an employee, agent, or representative of the Company.

2.5 All Services will be performed by the Contractor.

2.6 The Contractor will be free to provide services to other businesses provided that the provision of such services to other businesses does not create an actual or possible conflict of interest with the business or interests of the Company, and provided that the provision of such services to other businesses does not interfere with the Contractor's provision of services to the Company.

ARTICLE 3
TERM

3.1 This Agreement shall continue from the Effective Date and shall terminate on the earlier of:

(a) the date that the Receiver is discharged as receiver and manager of the Property; or

(b) the date that either the Receiver or the Contractor provides the Party with notice that the other Party has committed a material default or breach of this Agreement;

3.2 Following termination in accordance with Section 3.1, no party hereto will have any further obligations to any of the other party(ies) hereto, except as expressly set out in the Agreement.

ARTICLE 4
PERFORMANCE OF THE SERVICES

4.1 The Contractor covenants and agrees to provide the Services, in accordance with the terms and conditions of this Agreement.

4.2 The Contractor confirms that it has the requisite skills to serve in such a capacity, including monitoring and adherence to any applicable rules and regulations

4.3 The Contractor shall perform the Services in a competent and timely manner and in accordance with the terms of this Agreement, industry standards, and any and all Applicable Laws.

4.4 The Contractor agrees that it will at all times during the currency of the Agreement ensure that it has in place appropriate workers' compensation coverage of and in respect of itself as required by or available at law.

ARTICLE 5
FEES

5.1 For the performance of the Services, and subject to the completion of a transaction that for the Property that generates minimum net sale proceeds for the Company in the amount of ($1,000,000), the Company agrees to pay the Contractor the amount of ($150,000) (the "**Fees**"), which shall be split by allocating **44%** of the Fees to the sale of Lot 1 and **56%** of the Fees to the sale of Lot 2.

5.2 The Fees will be payable within three (three) business days following the completion of a transaction for the Property that generates minimum net sale proceeds for the Company in the amount of ($1,000,000). For greater certainty, neither the Receiver nor the Company shall have any obligation to pay, the Contractor shall not have any obligation to collect, the Fees in the event that there is not a completion of a transaction for the Property that generates minimum net sale proceeds for the Company in the amount of ($1,000,000).

ARTICLE 6
RESPONSIBILITY

6.1 The Contractor will be responsible for deducting, remitting, and paying all insurance, federal and provincial income tax, GST, Canada Pension Plan deductions, employment insurance, and workers' compensation coverage premiums in respect of itself and in respect of any other person working for the Contractor.

6.2 The Contractor will adhere to all applicable policies and procedures of the Company relevant to the Agreement and the performance of the Services.

6.3 The Contractor will abide by all laws including, without limitation, privacy and occupational health and safety laws in the jurisdiction which the Services are performed.

ARTICLE 7
GENERAL

7.1 The obligation of each of the Party to perform their covenants and obligations under this Agreement shall be conditional upon the granting of an order by the Court of Queen's Bench of Alberta that, inter alia, approves this Agreement and authorizes the Receiver to enter into and perform its obligations under this Agreement.

7.2 This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns.

7.3 This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and may not be amended or modified except by written consent executed by all of the parties hereto. No provision of this Agreement shall be deemed waived by any course of conduct unless such waiver is in writing and signed by all parties, specifically stating that it is intended to modify this Agreement.

7.4 The Contractor acknowledges that it had the time and opportunity to obtain independent legal advice with respect to the execution of this Agreement or has waived that opportunity, and that the Contractor has read, understands, and agrees with all of the terms and conditions contained in this Agreement.

7.5 This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the laws of Canada applicable therein but the reference to such laws shall not, by conflict of laws rules or otherwise, require the application of the law of any jurisdiction other than the Province of Alberta. Each party hereto irrevocably attorns to the jurisdiction of the Courts of the Province of Alberta.

7.6 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Such executed counterparts may be delivered by facsimile or other electronic transmission and, when so delivered, shall constitute a binding agreement of the parties hereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the Effective Date.

1330075 ALBERTA LTD., by and through **ERNST & YOUNG INC.**, in its capacity as the court-appointed receiver and manager of **1330075 ALBERTA LTD.**, and not in its personal or corporate capacity

Per: ______________________

Name: Peter Chisholm

Title: SVP

)
)
)
)
)
)
)

CONTRACTOR

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Name:

027052/444385
MT DOCS 20446209v1

Appendix ‘C’

Court of Queen's Bench of Alberta

Citation: Harvest Capital Management (Re), 2016 ABQB 364

Date:
Docket: 1201 06934
Registry: Calgary

In the Matter of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended

And In the Matter of the *Business Corporations Act*, R.S.A 2000, c.B-9

And In the Matter of 1252064 Alberta Ltd., 1330075 Alberta Ltd. and Harvest Capital Management Inc.

Reasons for Judgment
of the
Honourable Mr. Justice D.B. Nixon

I. Introduction

[1] This is an application for Advice and Direction regarding the enforceability of mortgages that underlie an investment which was participated in by 49 individuals (collectively, the "**Investors**").

[2] Calmar Lands Ltd. ("**CLL**") issued mortgages secured by undivided interests in specified real property (the "**UDI Mortgages**") to the Investors in exchange for cash. CLL is now arguing that the Investors cannot enforce the UDI Mortgages because the limitation period has expired.

[3] While only 47 of the 49 Investors are represented in these proceedings, this Court will address matters in respect of all of the Investors. The reason for considering all 49 Investors is because the Court is following a sequence of transactions, and it will be reviewing the flow of funds in the aggregate.

II. The Issue

[4] Are the UDI Mortgages enforceable or are they statute-barred pursuant to the *Limitations Act*, RSA 2000, c.L-12?

III. Facts

A. The Economic Backdrop

[5] There are a variety of parties involved in the transactions that underlie this dispute. The primary participants are Mr. Ronald Aitkens, the Investors, CLL, 1330075 Alberta Ltd. ("**133Co**") and Foundation Mortgage Corporation ("**FoundationCo**").

[6] The relevant transactions include:

a) the steps taken by CLL to raise capital from the Investors;

b) the acquisition of two lots located in Calmar, Alberta (collectively, the "**Calmar Lands**") by CLL from Mr. and Ms. Hancar;

c) the subsequent transfer of the Calmar Lands by CLL to 133Co; and

d) the financing provided by FoundationCo to assist 133Co in the acquisition of the Calmar Lands.

(The aggregate of these transactions will be referred to collectively as the "**Calmar Land Transactions**".)

[7] The directors of CLL are Mr. William J. Martenson and Ms. Jean L. Martenson. They own 53.68% and 46.32% of the voting shares of CLL, respectively.

[8] CLL needed investment capital. Mr. Martenson knew that Mr. Ronald Aitkens had been successful at raising investment capital for real estate. As a result of that knowledge, CLL entered into an arrangement with Mr. Aitkens.

[9] Mr. Aitkens assisted CLL in raising the $1,548,400 that the Investors advanced in exchange for the UDI Mortgages. The assistance of Mr. Aitkens is evidenced by the fact that during the March 2005 to May 2005 period he signed ten "Agreement[s] to Purchase Mortgage & Ownership Units" ("**Investment Agreements**") in a representative capacity.

[10] The ten Investment Agreements that Mr. Aitkens signed with the Investors represented $450,000 of aggregate $1,548,400 mortgage funds raised by CLL. Mr. Aitkens was paid a commission by CLL for his services.

[11] CLL ultimately entered into 49 Investment Agreements. Those Investment Agreements were subsequently transitioned into the 49 UDI Mortgages which the Investors now hold.

[12] On June 17, 2005, CLL purchased the Calmar Lands from Mr. Todd Hancar and Ms. Amanda Hancar for $1,550,000. CLL funded that purchase by paying cash of $992,481 and granting a mortgage to Mr. and Mrs. Hancar in the amount of $557,519 (the "**Hancar Mortgage**"). (The Calmar Lands are comprised of two parcels, which are sometimes referred to as "**Lot 1**" and "**Lot 2**").

[13] On July 6, 2005, Lot 2 was separated into 49 titles and the UDI Mortgages were registered on that date. Each title constituted an undivided interest in the underlying real property.

[14] The 49 UDI Mortgages can be broken out into three classes. The particulars of each of those classes are as follows:

a. Class A UDI Mortgages:

   i. The Class A UDI Mortgages have an annual interest rate of 10%, with interest calculated and paid in quarterly installments.

   ii. There are 11 Class A UDI Mortgages outstanding. The underlying 11 Investors in these mortgages advanced $242,800 to CLL, with $217,800 being in respect of RRSP funds and $25,000 being in respect of non-RRSP funds.

b. Class C UDI Mortgages:

   i. The Class C UDI Mortgages have an annual interest rate of 12%, with 2% of the accrued interest being paid quarterly, and the remaining 10% accruing and compounding quarterly.

   ii. There are 36 Class C UDI Mortgages outstanding. The underlying 36 Investors in these mortgages advanced $1,251,600 to CLL, with $1,201,600 being in respect of RRSP funds and $50,000 being in respect of non-RRSP funds.

c. Class D UDI Mortgages:

   i. The Class D UDI Mortgages have an annual interest rate of 12%, with the full amount of interest accruing and compounding quarterly.

   ii. There are 2 Class D UDI Mortgages outstanding. The underlying 2 Investors in these mortgages advanced $54,000 to CLL, with the entire $54,000 being in respect of non-RRSP funds.

[15] Commencing in 2005, quarterly interest payments were made on the Class A UDI Mortgages and the Class C UDI Mortgages.

[16] On September 3, 2008, CLL sold the Calmar Lands to 133Co for a purchase price of the $7,182,150. That purchase price was funded as follows.

a. 133Co assumed the existing mortgages on the Calmar Lands, in the amount of $2,411,800. This assumption included the UDI Mortgages, which had previously been registered on July 6, 2005.

b. 133Co granted a vendor-take-back mortgage to CLL in the amount of $2,055,452 (the "**Vendor-Take-Back Mortgage**"). The Vendor-Take-Back Mortgage was registered over the Calmar Lands on September 22, 2008.

c. 133Co made a cash payment in the amount of $2,714,898 to CLL. The funds for that cash payment were sourced from a loan that FoundationCo made to CLL.

That loan was secured by a mortgage over the Calmar Lands. The mortgage associated with that loan was registered on July 7, 2009 (the "**Foundation Mortgage**").

[17] The Hancar Mortgage has a first charge over the Lot 1 component of the Calmar Lands. Further particulars of the Hancar Mortgage are as follows.

a. Interest was last paid on the Hancar Mortgage on May 31, 2011.

b. Some principal repayments have been made on the Hancar Mortgage. As at approximately October 31, 2012, the amount due on that mortgage was $375,407. That balance was the aggregate of an outstanding principal amount of $332,162 and accrued interest of $43,245.

c. Pursuant to clause 1(b)(iii) of the Hancar Mortgage document, that mortgage matured, and became due and payable, on December 15, 2015.

[18] The UDI Mortgages have a first charge over the Lot 2 component of the Calmar Lands. Further particulars of the UDI Mortgages are as follows.

a. Interest was last paid on the Class A UDI Mortgages and the Class C UDI Mortgages on March 31, 2011. No interest has ever been paid on the Class D UDI Mortgages, which is consistent with the terms of the underlying argument.

b. No principal repayments have been made on any class of the UDI Mortgages.

c. Pursuant to the terms of the Investment Agreements, and to clause 2(a) of the UDI Mortgage documents, the UDI Mortgages matured, and became due and payable, on December 31, 2010. None of the UDI Mortgages were paid out at that time or thereafter.

[19] The Vendor-Take-Back Mortgage has a second charge over the Calmar Lands. More specifically, that mortgage is registered against both Lot 1 and Lot 2. Further particulars of the Vendor-Take-Back Mortgage are as follows.

a. Interest was last paid on the Vendor-Take-Back Mortgage on May 31, 2011.

b. Some principal payments have been made on the Vendor-Take-Back Mortgage. As at approximately October 31, 2012, the amount due on that mortgage was $1,588,328. That balance is the aggregate of an outstanding principal amount of $1,387,665, accrued interest of $180,663 and legal fees of $20,000.

c. Pursuant to clause 2(c) of the Vendor-Take-Back Mortgage document, that mortgage matured, and became due and payable, on December 21, 2008.

[20] The Foundation Mortgage has a third charge over the Calmar Lands. More specifically, that mortgage is registered against both Lot 1 and Lot 2. Further particulars of the Foundation Mortgage are as follows.

a. The amount of interest paid on the Foundation Mortgage is unknown.

b. The amount of principal that has been repaid on the Foundation Mortgage is unknown. A schedule that was provided in evidence indicated that Foundation Mortgage had advanced an aggregate of $2,737,402 to 133Co as at December 31, 2008. The accrued interest as at that same date was $136,050.43. As a result, the principal and accrued interest owed under the Foundation Mortgage as at December 31, 2008 was an aggregate of $2,873,452. In contrast, the amount that 133Co reports owing under the Foundation Mortgage as at May 31, 2011 is only $2,689,425. This suggests that some component of the principal on the Foundation Mortgage was paid in priority to the UDI Mortgages, but the Court does not have sufficient information to make a finding on that matter.

c. Pursuant to the Promissory Note, and clause 2 of the Foundation Mortgage, that mortgage matured on June 1, 2010.

[21] The UDI Mortgages were administered by CLL until June 30, 2009. This was the case notwithstanding that the UDI Mortgages were assumed by 133Co on September 3, 2008.

[22] The UDI Mortgages were administered by 133Co after June 30, 2009. After that date, 133Co functioned as the mortgage administrator, the borrower and the mortgagor.

[23] Mr. Aitkens issued three letters to the Investors in 2011. Each of those letters provided updates on the development of the Calmar Lands. Those three letters were dated January 6, 2011; June 27, 2011; and December 12, 2011, respectively (collectively, the "**Three Aitkens Letters**"). To the best of its knowledge, 133Co sent the Three Aitkens Letters to all of the Investors.

[24] The January 6, 2011 letter from Mr. Aitkens was framed as an update, and it informed the Investors that their UDI Mortgages would be paid, along with accrued interest, in the first half of 2011, and that during the interim period the interest would continue to be paid into the registered accounts. The January 6, 2011 letter was signed by Mr. Aitkens (the "**First Aitkens Letter**").

[25] The June 27, 2011 letter was framed as an update, and it informed the Investors that 133Co was considering either selling the Calmar Lands or continuing with development. That letter also advised the Investors that quarterly interest payments had ceased, and that the delays in the project were being caused by the global economic crisis. However, that letter went on to state that while "[t]he market has slowed down...once the project gets financed or gets sold your investment amount will be paid to you in full." The June 27, 2011 letter was unsigned, but it had the name of "Ron Aitkens" printed in standard salutation format at the bottom of the letter (the "**Second Aitkens Letter**").

[26] The December 12, 2011 letter was framed as an update, and it informed the Investors that there was a large environmental issue associated with the Calmar Lands which had been caused by oil drilling and related issues. That letter went on to state that 133Co would not have the ability to make interest payments until the situation was rectified. The December 12, 2011 letter was unsigned, but it had the name of "Ron Aitkens" printed in standard salutation format at the bottom of the letter (the "**Third Aitkens Letter**").

[27] Mr. Aitkens was aware that the Second Aitkens Letter and the Third Aitkens Letter had been sent to the Investors. Mr. Aitkens could not explain why these two letters were not signed.

[28] On June 7, 2012, 133Co, 1252064 Alberta Ltd, and Harvest Capital Management Inc. obtained an Order under the *Companies' Creditors Arrangement Act* (the "**CCAA**") protecting them from their creditors (the "**CCAA Order**"). Ernst & Young Inc. was appointed the monitor under the CCAA Order (the "**Monitor**"). To support this initial application under the CCAA, Mr. Aitkens swore and filed an affidavit on June 5, 2012 (the "**Aitkens June 2012 Affidavit**"). The Aitkens June 2012 Affidavit included financial statements for 133Co for the period ended May 31, 2011.

[29] The financial statements for 133Co, dated May 31, 2011, reported each of the UDI Mortgages, the Hancar Mortgage, the Vendor-Take-Back Mortgage and the Foundation Mortgage under the "Long-Term Liabilities" section of balance sheet.

[30] On or about June 13, 2012, the Monitor sent a copy of the CCAA Order to Canadian Western Trust Company ("**CWT**") and posted a copy of that Order on its website. The Monitor did not send a copy of the CCAA Order to the Investors.

[31] On July 5, 2012, FoundationCo and Foundation Mortgage "2" Corporation obtained protection from their creditors under the CCAA. Ernst & Young Inc. was again appointed Monitor.

[32] BTM Advisory Services Inc. and Gary Bentham were appointed chief restructuring officers ("**Foundation Group CRO**") for FoundationCo and Foundation Mortgage "2" Corporation.

[33] In December 2012, Mr. Aitkens provided the Foundation Group CRO with the files concerning the UDI Mortgages. These files contained the Mortgage Agreements, UDI Mortgages, and the Interest Payment Schedule.

[34] On December 11, 2013, a tolling agreement was entered into whereby the operation of any applicable limitation periods respecting the enforceability of the UDI Mortgages was suspended against the Investors (the "**Tolling Agreement**").

[35] As at the date of the Tolling Agreement, there is no evidence that 133Co, in its capacity as the mortgagor in respect of the UDI Mortgages, had given any of the Investors, in their capacity as mortgagees, notice in writing of its intent to repay any of the UDI Mortgages.

[36] The Calmar Lands were appraised on November 6, 2012 at a value of $5,180,000.

[37] The aggregate debt, accrued interest, and liens owing on the Calmar Lands as at July 31, 2013 was an aggregate of $9,741,351. The combined principal and interest owed to each of the creditors as at that date was approximately as follows:

a. UDI Mortgages – $3,305,000, which is composed of a principal balance of $1,548,400 and accrued interest of $1,756,600.

b. Hancar Mortgage – $375,407, which is composed of a principal balance of $332,162 and accrued interest of $43,245.

c. Vendor-Take-Back Mortgage – $1,588,328, which is composed of a principal balance of $1,387,665, accrued interest of $180,663 and legal fees of $20,000.

d. Foundation Mortgage – $4,453,930, which is composed of a principal balance of $2,737,402 (being the aggregate of $2,714,898 used to fund the purchase of the Calmar Land plus additional funds borrowed in the amount of $22,504) and accrued interest of $1,716,528.

e. Wedler Engineering (Builders Lien) – $18,686

[38] The Calmar Lands were listed for sale in August 2013. The Receiver has entered into a conditional Purchase and Sale Agreement for the Calmar Lands. The Receiver will bring an application for approval of the sale when all of the conditions are satisfied.

B. CLL Position

[39] CLL asserts that the limitation periods in respect of the UDI Mortgages expired as follows.

a. On January 1, 2013 in respect of the Class D UDI Mortgages. That date is asserted by CLL on the premise that there was no activity which would have extended the commencement of the limitation period beyond the maturity date of December 31, 2010.

b. On March 31, 2013 in respect of the Class A UDI Mortgages and Class C UDI Mortgages. That date is asserted by CLL on the premise that the last interest payments were made on those mortgages on March 31, 2011.

[40] By July 31, 2013, CLL had realized net cash proceeds of $3,938,604 from the Calmar Land Transactions. That net cash balance is the aggregate of the following three components.

a. The $555,919 that CLL retained in 2005 when it raised funds to finance the acquisition. This is the net amount from the $1,548,400 raised from the UDI Mortgages less the amount of $992,480 that was paid to the Hancar's when the Calmar Land was purchased.

b. The $2,714,898 that CLL received in 2008 when it sold the Calmar Land to 133Co.

c. The $667,787 of principal that CLL has been paid on the Vendor-Take-Back Mortgage since that instrument was issued. This amount is the difference between the original sum of the Vendor-Take-Back Mortgage, which was $2,055,452, and the July 31, 2013 balance, which was $1,387,665.

C. Investors' Position

[41] While there was more than a two year span between: (a) the maturity date stipulated in the UDI Mortgages (being December 31, 2010); and (b) the date of the Tolling Agreement (being December 11, 2013), the Investors submit that they did not know, and, in the circumstances, had no cause to believe that a claim against 133Co had arisen.

[42] In a communication as late as June 27, 2011, the Investors were told that while "[t]he market has slowed down...once the project gets financed or gets sold your investment amount will be paid to you in full." That communication undoubtedly created an expectation, and a sense of financial comfort for the Investors.

[43] It was not until the Third Aitkens Letter dated, December 12, 2011, that the Investors were alerted to an environmental issue that might be cause for concern. In that December 12, 2011 letter, Mr. Aitkens informed the Investors that 133Co had entered into a standstill agreement with both the Hancars and CLL. No further particulars were given in respect of the details concerning the standstill agreement.

D. A Security Review – Priority Levels

[44] The priorities associated with Lot 2 of the Calmar Land Transactions initially had four levels. The first level was with the Investors, who held the UDI Mortgages. The Investors had first priority. The second level was with CLL, which held the Vendor-Take-Back Mortgage. CLL had second priority. The third level was with FoundationCo, which held the Foundation Mortgage. FoundationCo had third priority. The fourth level was with the unsecured creditors, which included 133Co. That level had no security. The unsecured creditors simply took the residual amounts.

[45] While the primary focus in this case is on the UDI Mortgages, the Court will review each of these four levels. Each of those priority levels has attributes that are relevant to this analysis, directly or indirectly.

1. First Priority – The UDI Mortgages

[46] CLL put the UDI Mortgage investment package together. Mr. Aitkens was involved in the arrangement.

[47] Under the arrangement, Mr. Aitkens was to source investors for CLL. The transaction was structured so that investors would loan funds to CLL in exchange for security in the form of an undivided interest first charge mortgage against specified real property. Ultimately, the specified real property was Lot 2 of the Calmar Lands.

[48] The Investors hold the UDI Mortgages. All of the Investors are individuals. As part of the investment process, the Investors participated in a number of steps.

[49] First, the Investors signed an Investment Agreement. In some cases, a particular Investment Agreement was executed by more than one Investor, such as a husband and wife.

[50] Second, each of the Investors was subsequently granted a UDI Mortgage in exchange for cash. Each of the UDI Mortgages was registered against a separate title component of Lot 2.

[51] The two relevant clauses of the UDI Mortgages are as follows:

> 2(a) The whole of the principal sum including any interest thereon, together with all other monies secured by this mortgage, is to be fully paid and is due and payable on DECEMBER 31st, 2010 [(the "**UDI Mortgages Repayment Clause**")].
>
> ...

> 13. If the principal sum or any part thereof, be not paid at maturity, the Mortgagor shall not be at liberty to pay the same, except after six (6) months' notice in writing to the Mortgagee [(the "**UDI Mortgages Non-Payment Clause**")].

[52] The mortgagor on each of the UDI Mortgages was initially CLL. After the sale of the Calmar Lands by CLL to 133Co on September 3, 2008, 133Co assumed the position as the mortgagor of the UDI Mortgages.

[53] CWT was named as the mortgagee on 42 of the UDI Mortgages. In each of those situations, CWT was the mortgagee in trust for the Investor associated with the underlying UDI Mortgage ("collectively, the **CWT UDI Mortgagees**"). Each of the 42 CWT UDI Mortgagees funded their investments in the UDI Mortgages from their registered retirement savings plans ("**RRSP**").

[54] On the other seven UDI Mortgages, the Investors were named as the mortgagees (collectively, the "**Independent UDI Mortgagees**"). Each of the seven Independent UDI Mortgagees funded their investments in the UDI Mortgages from non-RRSP sources.

2. Second Priority – Vendor-Take-Back Mortgage

[55] The Vendor-Take-Back Mortgage was registered over both Lot 1 and Lot 2. That mortgage was ranked second in priority over the aggregate of the Calmar Lands. In particular, it is ranked behind the Hancar Mortgage in respect of Lot 1 and behind the UDI Mortgages in respect of Lot 2.

[56] The two relevant clauses of the Vendor-Take-Back Mortgage are virtually identical to the parallel clauses in the UDI Mortgage document. Those clauses are as follows:

> 2(c) The whole of the principal sum including any interest thereon, together with all other monies secured by this mortgage, is to be fully paid and is due and payable on the December, 21, 2008.
>
> ...
>
> 13. If the principal sum or any part thereof, be not paid at maturity, the Mortgagor shall not be at liberty to pay the same, except after six (6) months' notice in writing to the Mortgagee.

[57] The mortgagor of the Vendor-Take-Back Mortgage is 133Co. The mortgagee under that mortgage is CLL.

3. Third Priority – The Foundation Mortgage

[58] The Foundation Mortgage was registered over both Lot 1 and Lot 2. That mortgage was ranked third in priority in respect of both lots. In particular, it was behind the Hancar Mortgage and the Vendor-Take-Back Mortgage in respect of Lot 1; and behind the UDI Mortgages and the Vendor-Take-Back Mortgage in respect of Lot 2.

[59] The two relevant clauses of the Foundation Mortgage are as follows.

> 2. That the Mortgagor shall pay to the Mortgagee the above sum of ($2,727,402.18) Two million Seven hundred twenty seven thousand Four hundred two and 18/100 Dollars, in lawful money of Canada, at the times and places, in

> the manner, and with interest thereon at the rate provided in the Promissory Note or any extensions or renewals of or substitutions for the Promissory Note.
>
> 8. That in the event of default in the payment of any part of the moneys secured by this Mortgage, or on breach of any covenant, understanding agreement or stipulation expressed or implied herein; or should there be any event of default or breach of covenant under the Promissory Note, or any extensions or renewals thereof were substitutions therefor:
>
> ...
>
> (e) The whole of the moneys hereby secured shall, at the option of the Mortgagee, become due and payable.

[60] The single relevant clause of the Promissory Note to the Foundation Mortgage is as follows.

> 1330075 ALBERTA LTD., the BORROWER, does hereby PROMISE TO PAY ON DEMAND, or, if demand has not earlier been made, on June 1, 2010, to the LENDER, FOUNDATION MORTGAGE CORP., of 4, 4002 – 9 Avenue North, Lethbridge, Alberta T1H 6T8, the sum of $2,727,402.18 together with interest at the rate of 12.00 per cent per annum calculated semi-annually not in advance from the date of advance of funds.

[61] The mortgagor of the Foundation Mortgage is 133Co. The mortgagee under that mortgage is FoundationCo.

[62] Mr. Aitkens is the sole director of FoundationCo. He owns 40% of the voting shares in that corporation.

4. Fourth Level – Unsecured Creditors

[63] One of the unsecured creditors is 133Co. For purposes of this analysis, this is the only unsecured creditor on which the Court will comment.

[64] Mr. Aitkens is the sole director of 133Co. He owns 100% of the voting shares in that corporation.

IV. Analysis

[65] CLL has advanced seven points as to why the UDI Mortgages cannot be enforced. The essence of those seven points can be distilled into two arguments. First, CLL argues that the UDI Mortgages are statute-barred. Second, CLL argues that the doctrine of promissory estoppel is not available to the UDI Mortgagees.

[66] The issue of whether the UDI Mortgages are statute-barred requires careful consideration. The Court turns to an analysis of that question. In contrast, the Court will not address the promissory estoppel argument because of its conclusions on the statute-barred argument.

A. Were CLL and 133Co acting-in-concert in respect of the Investors?

[67] Before the Court considers the law in this case, it is important to understand the background that underlies the relevant business entities, and how the Investors came to be participants in the UDI Mortgages. In particular, the context underlying the Calmar Land Transactions is significant.

[68] The transaction that CLL organized to raise the capital from the Investors was structured so that individuals could use either RRSP funds or unrestricted cash to invest in the real estate project. The use of the mortgage instrument undoubtedly gave the Investors the impression that the investment was secure.

[69] The interest rate that CLL offered on all three UDI Mortgage classes promised potential investors high returns. The combination of a mortgage security and a high interest rate was attractive to the Investors.

[70] Mr. Atkins was very involved in raising the capital that CLL required. Indeed, he raised approximately 30% of the capital that the Investors advanced in respect of the UDI Mortgages.

[71] Mr. Aitkens was paid a commission by CLL for the services that he rendered in raising the capital. The amount of that commission was not disclosed. While there is nothing inappropriate about a commission, the magnitude of the commission could raise questions.

[72] The Calmar Land was sold by CLL to 133Co in September 2008. In that transaction, the UDI Mortgages were assumed by 133Co. However, the UDI Mortgages continued to be administered by CLL for nine months after the September 2008 transfer. There is no evidence that 133Co paid CLL for that administration effort. If CLL did not charge 133Co for its administrative services, that would raise a question as to whether those two corporations were acting-in-concert or of a common mind.

[73] The interest on the UDI Mortgages was paid by 133Co until March 31, 2011. The debtor corporation ceased the interest payments on the UDI Mortgages after that date. In contrast, the interest continued to be paid by 133Co to CLL in respect of the Vendor-Take-Back Mortgage until May 31, 2011.

[74] The payment of the interest by 133Co on the Vendor-Take-Back Mortgage until May 31, 2011 raises a question. The Court queries why 133Co would pay interest on the Vendor-Take-Back Mortgage, which is to the benefit of CLL, in preference to the amounts owed on the UDI Mortgages.

[75] As at May 31, 2011, there is no doubt that the UDI Mortgages were enforceable, and in first priority in respect of Lot 2 of the Calmar Lands. In contrast, the Vendor-Take-Back Mortgage was in second priority. Further, based on the evidence that is before this Court, the Vendor-Take-Back Mortgage had matured on December 21, 2008. The Court queries whether the Vendor-Take-Back Mortgage became statute-barred on or after December 21, 2010.

[76] While that is an interesting question, the current status of the Vendor-Take-Back Mortgage is not known. It is not relevant to the question of whether the UDI Mortgages are enforceable. That being the case, this Court will not further consider the status of the Vendor-Take-Back Mortgage.

[77] The conduct in respect of the Three Aitkens Letters allegedly sent to the Investors also raises a question. The First Aitkens Letter was issued on January 6, 2011. It was signed by Mr.

Aitkens. The Second Aitkens Letter and the Third Aitkens Letter were issued on June 27, 2011 and December 12, 2011, respectively. Neither of those latter two letters was signed.

[78] Mr. Aitkens acknowledges the existence of the Second Aitkens Letter and the Third Aitkens Letter. However, Mr. Aitkens could not explain why those letters had not been signed. To the best of the knowledge of 133 Co, those two letters were sent to the Investors.

[79] CLL now asserts that the Second Aitkens Letter and the Third Aitkens Letter cannot be viewed as notice to the Investors for purposes of extending the limitation period because those letters lacked a signature. CLL also asserts that none of the Three Aitkens Letters can be viewed as acknowledgements which would extend the limitation period because there is no evidence that each of the Investors actually received those letters.

[80] On June 7, 2012, 133Co and other related corporations were granted protection under CCAA. In the CCAA Order, the Monitor was instructed by the Court to post certain materials on its website. However, as at the date of the CCAA Order, the Monitor was not in possession of the names and addresses of the individual CWT UDI Mortgagees. That information was in the corresponding UDI Mortgage files, and those files were not provided by Mr. Aitkens until December, 2012, at which time those files were provided to the Foundation Group CRO. The Court takes this latter point from the Agreed Statement of Facts that were provided during this hearing.

[81] The delayed delivery of those UDI Mortgagee files and information raises a question, particularly when CLL alleges that the Class D UDI Mortgages were statute-barred on January 1, 2013, and the remaining UDI mortgages were statute-barred three months later. Further, supplying those files to the Foundation Group CRO is a substantive concern. While there is a degree of cross ownership by Mr. Aitkens in respect of FoundationCo and 133Co, FoundationCo and Foundation Mortgage "2" Corporation are legal entities that are separate and apart from 133Co and the CCAA Order that applies to it. The relevance of providing the UDI Mortgage files and related information to the Foundation Group CRO was never explained. Indeed, there is no evidence before this Court that the Foundation Group CRO had any obligation to inform the Investors. At a minimum, the consequences of providing the UDI Mortgagee files to the Foundation Group CRO would have resulted in a further delay of the information being provided to the Investors.

[82] The conduct associated with a number of these transactions give rise to the question as to whether the dealings between 133Co and CLL were at arm's-length. Over the years the courts have considered the issue of when a transaction between unrelated persons has features that are in the nature of a non-arm's length transaction.

[83] As a general rule, if unrelated parties are influenced in their bargaining by something other than their own self-interest, those persons would not be considered to be dealing at arm's length. The criteria used by the courts to assess whether a transaction is at arm's length include:

a. whether a common mind is directing the bargaining for both parties to a transaction; or

b. whether the parties to a transaction are acting-in-concert, without separate interests.

[84] A court may consider whether the terms of a transaction between parties reflect ordinary commercial dealings. However, it should do so only to determine the soundness of the conclusions after applying one of the above two tests.

[85] While there is not enough evidence to determine whether the above conduct involving 133Co (which is controlled by Mr. Aitkens) and CLL (which is controlled by Mr. Martenson) was conducted on a non-arm's length basis, the resulting implications are disquieting. This is particularly the case in these circumstances because if the UDI Mortgages are not enforceable, the potential beneficiaries will be one or more of 133Co, CLL, FoundationCo and their respective shareholders.

[86] The inequity is of particular concern in these circumstances because CLL has already realized net cash proceeds of $3,938,604 through the Calmar Land Transactions. That same corporation is now arguing that the Investors are statute-barred from recovering the principal of $1,548,400 which they had collectively invested plus the interest that has been accruing since June, 2005. The inequity is further highlighted in this case because it was the Investors who fully financed CLL in the first instance so that it could purchase the Calmar Lands.

B. Do the Terms of the UDI Mortgages Delay the Commencement of the Limitation Period?

[87] CLL was the initial mortgagor to all of the Investors. The 49 UDI Mortgage documents signed by CLL are identical in all material respects, including clauses 2(a) and 13.

1. Clause 2(a) – Due and Payable

[88] Clause 2(a) of the mortgage documents stipulates that each of the UDI Mortgages was due and payable on December 31, 2010. That type of "due and payable" clause is typical in mortgage documents. Such clauses are one of the reference points for determining when a limitation period commences.

[89] A "due and payable" clause, such as 2(a) of the UDI Mortgages, however, is just one factor in the determination of a limitation period. A limitation period may be extended by a number of other elements, including acknowledgements of the debt and part payments thereon.

[90] Further, other factors can extend a limitation period, such as the terms and conditions embedded in the mortgage document. The provision that is of particular interest to this Court is clause 13 of the UDI Mortgage documents.

2. Clause 13 – Effect of Non Payment at Maturity

[91] Clause 13 of the UDI Mortgages addresses the consequences when the principal is not paid at the maturity date. This provision in the UDI Mortgage documents was not dealt with by the parties in their original submissions. This Court raised a question on the meaning of clause 13 of the UDI Mortgages during the hearing, and submissions were subsequently made on the matter.

[92] In its submission, CLL argued that "[t]he somewhat perplexing phrasing of this clause [13] is... due to the prohibition in s. 8 of the *Interest Act* (Canada) of the imposition of fines, penalties or increases in interest on default of a Mortgagor." CLL further argued that provisions

similar to clause 13 of the UDI Mortgages have been held valid because this type of clause is designed to provide compensation for the additional time required to find alternate investments when payout of the mortgage was delayed. The case of *Mastercraft Properties Ltd v EI EF Investments Inc* (1993), 103 DLR (4^{th}) 759 at para 7 (ONCA) was cited as authority for this proposition.

[93] This Court acknowledges the authoritative statements in *Mastercraft Properties* in the context of the wording that was under review in that case. This Court also notes that the operative phrase in *Mastercraft Properties* is worded as follows (the "**Mastercraft Non-Payment Clause**"):

> ...in the event of non-payment of the said principal moneys at the time or times above provided, [the mortgagor] shall not require the Mortgagee to accept payment of the said principal moneys without first giving three months' previous notice in writing, or paying a bonus equal to three months' interest in advance on the said principal moneys.

[94] This Court acknowledges the judicial comments of the Ontario Court of Appeal in respect of the Mastercraft Non-Payment Clause. That said, this Court is of the view that those comments are not applicable to this case for two reasons.

[95] First, this Court is not considering the validity of clause 13 of the UDI Mortgage in the context of section 8 of the *Interest Act*. That issue is not relevant in this action, and will not be considered.

[96] Second, the wording of the Mastercraft Non-Payment Clause is quite different than that of clause 13 of the UDI Mortgages. This difference in wording requires the Court to consider the UDI Mortgages Non-Payment Clause carefully, and contrast it with the Mastercraft Non-Payment Clause.

[97] In addition to referring to the option of a "...bonus equal to three months' interest in advance...", the Mastercraft Non-Payment Clause is focused on the mortgagee. In particular, that clause provides that if there is non-payment of the principal in that case, the mortgagee is not required to accept payment unless there is a notice in writing for a specified period. The provision says nothing about the obligation of the mortgagor. This Court interprets that to mean that the Mastercraft Non-Payment Clause did not change the obligations of the mortgagor in the *Mastercraft Properties* case. That is, the subject debt in the *Mastercraft Properties* case continued to be due at and after the time that the Mastercraft Non-Payment Clause became operational.

[98] In contrast, the UDI Mortgages Non-Payment Clause is focused on the mortgagor. In particular, that clause provides that if the principal sum (or any part thereof) is not paid at maturity, the mortgagor shall "...not be at liberty to pay..." the same, unless there is a notice in writing for a specified period. There is no option in the UDI Mortgages Non-Payment Clause to pay a bonus amount.

[99] The UDI Mortgages Non-Payment Clause is identical in all 49 of the UDI Mortgages. That being the case, the Court infers that the mortgage documentation was prepared by CLL. That corporation was certainly the mortgagor in the first instance for all 49 of the UDI Mortgages, as evidenced by the fact that CLL signed all of the UDI Mortgage documents.

[100] CLL arranged for the assistance of Mr. Aitkens as part of the capital raising process. The involvement of Mr. Aitkens in respect of the UDI Mortgages is evidenced by the fact that he was a signatory on 11 of the 49 Investment Agreements. Those 11 Investment Agreements raised $450,000 of the $1,548,400 that was secured by the UDI Mortgages.

[101] Most importantly for the purposes of the question before this Court, the terms that CLL included in the UDI Mortgages Non-Payment Clause stipulate if any part of the principal sum is not paid at December 31, 2010, the mortgagor shall not be at liberty to pay the mortgagee, unless there is advanced notice in writing.

[102] In this case, there is no evidence on or after December 31, 2010 that 133Co, in its capacity as the mortgagor in respect of the UDI Mortgages, gave any of the Investors, in their capacity as mortgagees, notice in writing of its intent to repay any of the UDI Mortgages. That being the case, the debt obligation that 133Co has in respect of the UDI Mortgages is not currently due and payable. Its repayment obligation is postponed until that notice is given.

[103] This legal result flows from the language which CLL chose to include in clause 13 of the UDI Mortgage document. Given the text included in UDI Mortgages Non-Payment Clause, 133Co has no duty (or obligation) to pay the Investors until the notice requirement is satisfied. As such, the limitation period in respect of the UDI Mortgages has not commenced.

[104] This finding is dictated by the terminology that CLL included in clause 13 of the UDI Mortgage documents. In particular, the use of the phrase "...the [m]ortgagor shall not be at liberty to pay..." in clause 13 means that 133Co has "no duty" to pay the mortgage balance notwithstanding that December 31, 2010 has passed, unless it gives appropriate notice to the mortgagee.

[105] This is the plain language interpretation of clause 13 of the UDI Mortgages. This interpretation is consistent with the definition of the phrases "liberty not" and "no-duty": see *Black's Law Dictionary*, 10th ed., at pages 1059 and 1209, respectively.

[106] This Court notes that its construction of the UDI Mortgages Non-Payment Clause is also consistent with the disclosure that is presented in the financial statements of the mortgagor as at May 31, 2011. The financial statements of 133Co were disclosed in the Aitkens June 2012 Affidavit, which was part of the initial CCAA application. Such disclosure is a mandatory requirement of the CCAA at the time of the initial application by 133Co for protection from its creditors: see section 10(2)(c) of the CCAA.

[107] The financial statements of 133Co for the period ended May 31, 2011 are significant for two interrelated reasons.

[108] First, the May 31, 2011 preparation date of the financial statements is important because it is subsequent to: (a) the maturity date stipulated the UDI Mortgages Repayment Clause, which was December 31, 2010; and (b) the last interest payment on the UDI Mortgages, which was March 31, 2011.

[109] Second, the classification of the UDI Mortgages in the 133Co financial statements for the period ended May 31, 2011 tells a story. Specifically, the manner in which 133Co reported the UDI Mortgages indicates how the corporation characterized that indebtedness in its capacity as mortgagor.

[110] If 133Co was of the view that the UDI Mortgages were "due and payable" because the maturity date had past and there was no relieving provision, it would have been obligated to record the associated debt in the May 31, 2011 financial statements under "Current Liabilities". It did not do so.

[111] Instead, 133Co recorded the UDI Mortgages in the May 31, 2011 financial statements under "Long-Term Liabilities". That means that 133Co was of the view that the UDI Mortgages were not "current" as at that May 31, 2011 date.

[112] To emphasize the importance of this point, the mortgagor cannot have it both ways. It cannot tell this Court in the Aitkens June 2012 Affidavit that the UDI Mortgages as at May 31, 2011 are "Long-Term Liabilities" and then effectively assert a couple of years later that those same mortgages are "Current Liabilities" as at that same date (or earlier). The only way that this Court would have considered the merits of a change of classification of the UDI Mortgages as at May 31, 2011 from a long-term debt to a current liability would be if that change in accounting was reported appropriately in a subsequent financial statement, and that change in accounting was in accordance with the reporting rules of the day which dealt with changes in respect of accounting errors. In this case, nothing was provided in evidence to suggest that the financial statements of 133Co for the period ended May 31, 2011 have been "corrected".

[113] In summary, this Court finds that the Class D UDI Mortgages were not due and payable on January 1, 2011 and that neither the Class A UDI Mortgages nor the Class C UDI Mortgages were due and payable on April 1, 2011. Further, since there is no evidence that as at the date of the Tolling Agreement that 133Co, in its capacity as the mortgagor in respect of the UDI Mortgages, had given any of the Investors, in their capacity as mortgagees, notice in writing of its intent to repay any of the UDI Mortgages, this Court finds that none of UDI Mortgages were due and payable on December 11, 2013. That being the case, this Court finds the UDI Mortgages enforceable.

[114] This finding is further supported by the fact that Mr. Aitkens is the sole shareholder and director of 133Co. As such, he is the directing mind of that corporation, and the individual responsible for its financial statements. Given his knowledge of the UDI Mortgages, this Court infers that he knew that 133Co as the debtor had "no duty" to pay the mortgage balance because of the combination of the clause 13 terms and the fact that no notice of repayment had been given to the mortgagees. Again, absent that notice, the maturity date applicable to the UDI Mortgages has been displaced by the application of clause 13 of that security document. As such, the limitation period has not been triggered for any of the UDI Mortgages. In closing, 133Co must live by the terms that CLL included in the UDI Mortgage documents.

C. Do the Three Aitkens Letters Delay the Commencement of the Limitation Period?

[115] Notwithstanding that the Court has found that none of the UDI Mortgages are statute-barred because of the terms that CLL embedded in the UDI Mortgages Non-Payment Clause, a second argument is also considered. This argument deals with the communications that were made to the Investors, and whether those communications displaced the statute-barred argument that CLL has advanced.

[116] Section 8(2) of the *Limitations Act* provides that an acknowledgment made prior to the expiry of a limitation period operates to restart that limitation period. Section 9(1) of the

Limitations Act further provides that an acknowledgement under section 8(2) of the *Limitations Act* must be in writing and signed by the person adversely affected.

[117] Section 9(3) of the *Limitations Act* provides that if an acknowledgment is made by or with an agent, it has the same effect as if made by or with the principal. Section 9(4) of the *Limitations Act* states that a person has the benefit of an acknowledgment only if it is made with or to the person.

[118] The Investors submit that notwithstanding the requirement of section 9(1) of the *Limitations Act* that an acknowledgment be in writing and signed, the absence of a signature does not preclude a letter from constituting an acknowledgment of indebtedness. The Investors rely on ***Hustad v 594971 Ltd***, 2008 BCSC 1441 to support this proposition. If there are two letters, only one of which has been signed, courts have held that the two letters can be read together. The lack of a signature on the first letter in *Hustad* was cured by the existence of a signature on the subsequent letter because both letters were sent by the same party and the second letter incorporated in the first letter by reference.

[119] In contrast, CLL submits that without a signature neither the Second Aitkens Letter nor the Third Aitkens Letter meets the requirements of section 9(1) of the *Limitations Act*. CLL submits that *Hustad* is distinguishable on the facts because in that case the court found that the subsequent letter, which was signed, incorporated the acknowledgement that was made in the earlier unsigned letter. Further, the subsequent letter in the *Hustad* case specifically referred to the earlier correspondence, and asked for a reply.

[120] The conflicting position between the Investors and CLL requires the Court to examine the facts carefully. Mr. Aitkens acknowledges that he signed the First Aitkens Letter to the UDI Mortgagees on the status of their mortgages in January 2011. Further, he stated in the First Aitkens Letter that the purpose of the correspondence was to provide the valued Investors with an "update" on their UDI Mortgages.

[121] The evidence was that to the best of the knowledge of 133Co, the First Aitkens Letter was sent to all Investors. Mr. Aitkens is the sole shareholder and director of 133 Co, and this Court infers from the Agreed Statement of Facts that he does not challenge the assertion that the letter was sent.

[122] Notwithstanding technology, sending letters by ordinary mail is still a common business practice. In circumstances such as this, it is appropriate for the Court to apply common sense and its knowledge of common business practices to determine how a letter was conveyed to the addressee.

[123] There is no suggestion in the evidence that the First Aitkens Letter was faxed to the UDI Mortgagees, hand delivered, couriered, or scanned and emailed to them. That being the case, the Court infers that the First Aitkens Letter was "sent" to the UDI Mortgagees through the Canada Post system.

[124] This inference is supported by the Three Aitkens Letters which were provided in evidence. Those letters were addressed in a fashion that would have allowed the addressee to have received them by way of Canada Post. That is, the letters had formal addresses noted thereon.

[125] Further, there are notations on the Three Aitkens Letters that are in evidence. Those notations record the date that they had been received by the addressee. For example, one of the Class C UDI Mortgagees made a notation on the Third Aitkens Letter to the effect that he had received that letter on December 16, 2011.

[126] CLL agrees that the First Aitkens Letter would constitute an acknowledgement which would restart the limitation period as at January 6, 2011, provided that the letter was actually received. Notwithstanding that it was stated in evidence that the First Aitkens Letter was issued, CLL asserts that the letter does not constitute an acknowledgement under the *Limitations Act*. CLL advances this argument on the premise that the UDI Mortgagees did not provide evidence that they actually received the letter. The Court dismisses that argument on the basis that it neglects to consider the laws of general application.

[127] Concerning the issue of what the UDI Mortgagees received, the Court need look no further than the *Canada Post Corporation Act*, RSC 1985, c.C-10 to make a finding on this issue. To reiterate some of the key facts which are stated above, Mr. Aitkens issued the First Aitkens Letter to the Investors on January 6, 2011; the Second Aitkens Letter to the Investors on June 27, 2011; and the Third Aitkens Letter to the Investors on December 12, 2011. Further, to the best of 133Co's knowledge, all three of those letters were sent to the Investors.

[128] In the absence of evidence to the contrary, the Court infers that 133Co sent all three of these letters through the Canada Post system. For the reasons mentioned above, that common business practice is inferred here.

[129] Having accepted that common business practice, this Court finds that each of the Three Aitkens Letters was delivered to the addressees, who are the Investors. This result occurs by operation of law. Specifically, in these circumstances section 2(2) of the *Canada Post Corporation Act* applies. That statutory provision reads as follows:

> 2(2) For the purposes of this Act,
>
> (a) leaving mail at the place of residence or business of the addressee thereof,
>
> (b) <u>depositing mail in a post office lock box</u> or rural mail box or any other receptacle or device provided for the receipt of mail of the addressee, or
>
> (c) leaving mail with the addressee or his servant or agent or with any other person who may reasonably be considered to be authorized to receive mail by the addressee thereof,
>
> according to the usual manner of delivering mail to that addressee, is <u>deemed to be delivery to the addressee</u>.
>
> [Underlining added.]

[130] That statutory provision is a law of general application. On the basis of section 2(2) of the *Canada Post Corporations Act*, this Court finds that each of the UDI Mortgagees is deemed to have received all three letters. In particular, this Court finds that the Investors were all deemed to have received the Third Aitkens Letter.

[131] Given the above analysis, the Court finds that the First Aitkens Letter constituted an acknowledgment for purposes of section 8(2) of the *Limitations Act* because that letter was both signed and deemed received. That being the case, the commencement of the limitation period in

respect of the UDI Mortgages is deferred until at least the date of that acknowledgement, which is January 6, 2011.

[132] The next question is whether that same conclusion applies in respect of the Second and Third Aitkens Letters. This Court has already found that those two letters were deemed to have been delivered to the Investors. The remaining issue concerns the lack of a signature on both the Second Aitkens Letter and Third Aitkens Letter. The narrow issue is whether the absence of a signature on those two letters causes the calculation of the limitation date to commence on January 7, 2011 for the Class D UDI Mortgages and on April 1, 2011 for both the Class A UDI Mortgages and the Class C UDI Mortgages.

[133] This Court finds that the absence of a signature on the Second Aitkens Letter and Third Aitkens Letter does not cause the limitation date to commence on January 7, 2011 for the Class D UDI Mortgages or on April 1, 2011 for both the Class A UDI Mortgages and the Class C UDI Mortgages. The reasons for this finding are twofold.

[134] First, both the Second and Third Aitkens Letters had the name "Ron Aitkens" typed in at the bottom of those respective letters in typical salutation format. Further, Mr. Aitkens does not deny that these two documents are his letters.

[135] This acknowledgement by Mr. Aitkens displaces the submission that CLL made where it quoted Lord Denning, as he had been quoted by the Ontario Court of Appeal in ***Re Welsford***, [1967] 2 O.R. 496. As stated by CLL, Lord Denning made the following comment in ***Goodman v J. Eban LD.***, [1954] 1 QB 550, at 561:

> The virtue of a signature lies in the fact that no two persons write exactly alike, and so it carries on the face of it a guarantee that the person who signs has given his personal attention to the document. A rubber stamp carries with it no such guarantee: because it can be fixed by anyone.

[136] In the above comment by Lord Denning, the concern was that the rubber stamp might have been used by a third party. The concern does not exist here because Mr. Aitkens has never denied that the Second and Third Aitkens Letters were his documents, or that the "Ron Aitkens" salutation is not a reference to him.

[137] In addition to that distinction, there are a couple of substantive reasons why this Court does not accept the position advanced by CLL: (a) While the above quote by Lord Denning is accurate, he was in dissent in *Goodman*. In contrast to Lord Denning's position, the majority in *Goodman* held that since the letter in issue bore a "signature" placed there by the plaintiff solicitor himself by means of a rubber stamp containing a facsimile representation of his own signature, it had been "signed" for the purposes of the relevant legislation that required a signature. (b) The *Welsford* case can also be distinguished. That case dealt with a jurat. A jurat by its very nature requires formality. The evidence required in the proper administration of a solemn oath is of such importance throughout the whole administration of justice that a stamped signature which could have been fixed by anyone is an insufficient guarantee of the identity of the person. In contrast, an information letter by Mr. Aitken to the Investors does not require that formality, particularly where there is no dispute concerning his authorship of the letters in issue.

[138] The finding by this Court that the absence of a formal signature on the Second and Third Aitkens Letters does not cause the limitation date to commence is actually supported by comments of the Ontario Court of Appeal in *Welsford*. In that case, the Court of Appeal stated

that while it was going to challenge the rubber stamp on the jurat, it was not going to challenge the stamp that was placed on the Information. Of particular interest are the following comments of the Justice McGillivray in that case, writing for the majority at para 9:

> There have been many cases where the courts have held that a legislative requirement for a signature did not necessarily require that a signature be in the handwriting of the person signing. In particular instances typed names, stamped names or a man's mark have been accepted. An extensive review of these decisions is to be found in *Goodman v. J. Eban Ld.*, [1954] 1 Q.B. 550, [1954] 2 W.L.R. 581, and in *Regina v. Fox*, supra.
>
> [Underlining added.]

[139] Second, there is sufficient linkage amongst the Three Aitkens Letters that the signature on the First Aitkens Letter is incorporated by reference into both the Second Aitkens Letter and the Third Aitkens Letter. In fairness to CLL, the Court will review its position on this particular point.

[140] CLL submitted that the signature on the First Aitkens Letter cannot be incorporated into the Second and Third Aitkens Letters. CLL also submitted that the Three Aitkens Letters did not incorporate each other by reference, as had been the case in *Hustad*. That being the case, CLL argued that the Three Aitkens Letters cannot be read together.

[141] The Court does not agree with the submissions of CLL on this point. Before the Court addresses the legal analysis, a review of the context is warranted.

[142] It is clear from the Agreed Statement of Facts that Mr. Aitkens was aware that the Second Aitkens Letter and the Third Aitkens Letter had been sent to the Investors. While Mr. Aitkens could not explain why these two letters were not signed, he did acknowledge their existence and that, to the best of 133Co's knowledge, all three of those letters were sent to the Investors. Further, neither 133Co nor Mr. Aitkens challenged the authenticity of the Second Aitkens Letter or the Third Aitkens Letter.

[143] While the approach taken by Mr. Aitkens in respect of the Second Aitkens Letter and the Third Aitkens Letter is different from that in *Hustad*, the net result is the same. In both the *Hustad* case and in this case, the debtors were trying to keep the creditors informed. The strings of communications in both scenarios were linked together by similar threads, albeit the sequences were reversed. In *Hustad*, the last letter in the sequence was signed. In this case, the first letter in the sequence was signed.

[144] The narrative in both the Second Aitkens Letter and the Third Aitkens Letter refers to an update. This "update" terminology links both the Second Aitkens Letter and the Third Aitkens Letter to each other, and also to the First Aitkens Letter. The Court also notes that the First Aitkens Letter referred to it being an "update", and that the Second Aitkens Letter states that "[w]e will seek to keep you informed on what is happening with this project". That statement in the Second Aitkens Letter was giving a positive indication that further communications would be forthcoming. That further communication was in the form of the Third Aitkens Letter.

[145] This Court finds that the collective "update" references are sufficient to link to the signature that was included in the First Aitkens Letter to each of the Second Aitkens Letter and the Third Aitkens Letter. This Court draws on the authority of the *Hustad* case to support this finding. In the *Hustad* case, the lack of a signature on the first letter in that sequence was cured

by the existence of a signature on a subsequent letter because both pieces of correspondence were sent by the same party and the second letter incorporated in the first letter by reference. In the case of the Three Aitkens Letters, the sequence was in the opposite direction. The first letter in the sequence was signed, but the Third Aitkens Letter was not signed. However, all three of the Aitkens letters were sent by the same party and each of those letters referred to, and was linked by, the goal of 133Co to "update" the Investors.

[146] As a final comment, the above facts distinguish the circumstances in this case from ***Shaw v Louie***, [1998] B.C.J. No. 2415 (BCSC), which was cited as authority by CLL for rejecting the unsigned letters. In the *Shaw* case, the BC Supreme Court rejected the argument to extend the limitation period in the context of an unsigned letter, finding that "[t]he letter appears to have been written on the respondent's behalf, but it is unsigned and is therefore ineffective to constitute a confirmation...": at para 19. In contrast to the *Shaw* case, Mr. Aitkens has acknowledged both the Second Aitkens Letter and the Third Aitkens Letter, and there is no suggestion that it was written by a third party on his behalf.

V. Conclusion

[147] The relevant 47 UDI Mortgages are valid and enforceable in accordance with their terms. Accordingly, those mortgages are entitled to participate in the distribution of the net proceeds realized from the sale of Lot 2, subject only to court-ordered charges in priority to those UDI Mortgages.

Heard on the 17nd day of November, 2014.
Dated at the City of Calgary, Alberta this 5th day of July, 2016.

D.B. Nixon
J.C.Q.B.A.

Appearances:

Walker W. Macleod
McCarthy Tetrault LLP

Stephanie A. Wanke
Ogilvie LLP

Robyn Gurofsky
Borden Ladner Gervais LLP

Kelly J. Bourassa and Laura Coffell
Blake, Cassels & Graydon LLP

Appendix ‘D’

SETTLEMENT OFFER

Please note that this is a time sensitive settlement offer.

Please respond by submitting the Settlement Proposal Voting Form on page 5 of this Settlement Offer no later than October 30, 2014 to:

Ernst and Young Inc.
Receiver and Manager, 1330075 Alberta Ltd.
Attn: Jessica Caden
1000, 44 2nd Ave SW
Calgary AB T2P 5E9
Jessica.Caden@ca.ey.com
Fax: 403-206-5075

As you know, there is an upcoming court application to determine the validity of the mortgage that you have registered against certain land in Calmar. Your mortgage is one of a number of undivided interest mortgages (the "UDI Mortgages") registered against Plan 0522859, Block 1, Lot 2 ("Lot 2"). The lands are owned by 1330075 Alberta Ltd. ("1330075") Ernst & Young Inc. is the Receiver and Manager of 1330075.

As Calmar Lands Ltd. ("CLL") has set out in its Brief of Law provided to the Court, it is our view that your mortgage is unenforceable since no action was commenced by you to enforce your mortgage within the appropriate limitation period.

If we are successful in the court application, you will receive nothing from the sale. Instead, that money will go to the subsequent lenders on title, CLL and Foundation Mortgage Corporation ("FMC").

If we lose the court application, you will receive your *pro rata* share of the proceeds of a sale of Lot 2, after taxes, commission and other charges are paid.

The lands have been listed for sale since August of 2013. One potential sale which could have yielded a sale price of approximately $1.8 million on Lot 2, net of costs, fell through due to unresolved environmental issues on the lands. Please see examples of the two scenarios below assuming that Lot 1 sold for $1,750,000:

If UDI Mortgages are Unenforceable:

Sale Price:	$1,750,000

UDIs receive nothing.

If UDI Mortgages are Enforceable:

Sale Price:	$1,750,000
Commission:	- $55,000
Receiver's Charge:	- $100,000
UDI Counsel's Charge	- $40,000
Property Taxes:	- $25,000

Available to distribute to UDI Mortgages: **$1,530,000**

Total amounts due under UDI Mortgages at September 30, 2014:

$3,939,000 (principal and unpaid interest to September 30, 2014)

Pro Rata Recovery for each UDI Mortgagee: **39%**

UDI Mortgagees would each receive **39%** of their mortgage principal and accrued interest due.

Please note that the above calculation is for illustrative purposes only as it is based on a number of estimates and assumptions, most importantly, the estimated sale price. We note that regardless of the sale price, if the UDI Mortgages are unenforceable, you will receive nothing.

We believe that we are more likely than not to be successful in the court application. Nevertheless, all litigation carries risk. In order to mitigate that risk for all parties, CLL and FMC are making you the following settlement offer:

> **You will agree with CLL and FMC that you will receive 50% of your *pro rata* share of the net sale proceeds of Lot 2 and CLL and FMC will receive the other 50%, regardless of whether or not your mortgage is found to be enforceable.**

In the example above, the *pro rata* share for all the UDI Mortgagees was 39%. Using those assumptions, including a sale price of $1,750,000, if your mortgage has $50,000 outstanding, you would be entitled to receive $19,500 from the sale of Lot 2 if your mortgage is held to be enforceable and $0 if your mortgage is not enforceable. If you accept the settlement, you would get $9,750 (after the sale closes) regardless of whether the court decides that your mortgage is enforceable or unenforceable.

Please note that we have included a schedule of our understanding of what is outstanding on your mortgage for your reference.

There are some additional terms to the settlement:

1. At least 20% of the gross dollar amount of the UDI Mortgages need to accept the settlement for the settlement to be binding on CLL and FMC (the "20% Threshold"). If the 20% Threshold is not achieved, the settlement is null and void and all of the UDI Mortgagees will be subject to the Court's decision regarding the enforceability of the UDI Mortgages.

2. If the 20% Threshold is met, CLL and FMC will proceed with the court application. The UDI Mortgagees that voted 'NO' to the settlement will be subject to the Court's decision regarding the enforceability of the UDI Mortgages. Those that voted 'YES' will not.

3. You will only get paid under this Settlement Proposal once the sale closes on Lot 2 and the proceeds are available for distribution. There is presently no offer on Lot 2 and CLL and FMC are not guaranteeing a minimum sale price for those lands.

4. Lot 2 is listed for sale with an adjacent lot (Lot 1) that also has mortgages on it registered by CLL and FMC but the UDI Mortgagees have no claim to that lot. The apportionment of the sale price between the lots has not been determined and nothing in this settlement offer deals with the apportionment issue.

5. This settlement offer is confidential.

Please direct any questions with respect to this settlement offer to:

BTM Advisory Services Inc.
Chief Restructuring Officer, Foundation Mortgage Corporation.
Attn: Gary Bentham
#230, 6125 – 11th Street SE
Calgary AB T2H 2L6
gbentham@btmadvisory.com
Phone: 403-561-7341

In addition, we welcome the UDI Mortgagees to call in to a Town Hall Conference Call hosted by FMC and CLL on October 7th, 2014 at 2:00 p.m. to obtain additional information about the Settlement Proposal from representatives of FMC and CLL. The Settlement Proposal will be explained during the conference call, after which the UDI Mortgagees will have an opportunity to ask questions. The call-in number and participant code for the Town Hall Conference Call on October 7, 2014 at 2:00 p.m. are as follows:

Call-in Number: 1-855-353-9183
Participant Code: 79716#

We ask that the UDI Mortgagees call in by 1:45 p.m. in order that you may register your attendance on the call. You will be greeted by a Telus agent who will welcome you to the call and ask your name. Once you have registered your name with the Telus agent, there will be hold music until the presentation starts.

Once you have decided what you want to do with respect to the settlement offer, please return the enclosed direction to **Ernst and Young Inc.** by **October 30, 2014.**

Regards,

Ogilvie LLP
for Calmar Lands Ltd.

Borden Ladner Gervais LLP
for Foundation Mortgage Corporation

SETTLEMENT PROPOSAL VOTING FORM

Name: ______________________________________

Address: ____________________________________

Phone: ______________________________________

Fax/Email: ___________________________________

Please tick one of the following boxes:

☐ **YES**, I agree to the settlement and that I will receive 50% of my *pro rata* share of the net sale proceeds of Lot 2 regardless of whether my mortgage is found to be enforceable. I further agree that as a result of accepting the settlement, I will not participate in the court application to determine whether the UDI Mortgages are enforceable.

☐ **NO**, I do not agree to the settlement and will participate in the court application to determine whether the UDI Mortgages are enforceable. In refusing the settlement, I acknowledge I will receive $0.00 in the event the Court finds my mortgage to be unenforceable.

DATED at: ____________________________, this ___ day of September, 2014.
(City)

______________________________ ______________________________

Witness **(signature of individual completing form)**

This form must be signed and witnessed.

PLEASE RETURN THIS FORM TO ERNST & YOUNG INC. BY OCTOBER, 30, 2014