

Court File No.: CV-21-00669445-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF MCEWAN ENTERPRISES INC.

**SUPPLEMENT TO THE SECOND REPORT OF THE MONITOR  
ALVAREZ & MARSAL CANADA INC.**

**NOVEMBER 1, 2021**

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## APPENDICES

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## 1.0 INTRODUCTION

- 1.1 This report is a supplement (this “**Supplement**”) to the Second Report dated October 14, 2021 (the “**Second Report**”) of Alvarez & Marsal Canada Inc., in its capacity as Court appointed Monitor (in such capacity, the “**Monitor**”) of McEwan Enterprises Inc. (“**MEI**” or the “**Applicant**”).
- 1.2 This Supplement should be read in conjunction with: (i) the Second Report; (ii) the Affidavit of Dennis Mark McEwan sworn on September 27, 2021 (the “**McEwan Affidavit**”), and filed in support of the Applicant’s application for relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) ; and (iii) the Affidavit of Dennis Mark McEwan sworn on October 1, 2021 (together with the McEwan Affidavit, the “**McEwan Affidavits**”), and filed in support of the Approval and Vesting Order (as defined below).<sup>1</sup>
- 1.3 The proceedings commenced by the Applicant under the CCAA are referred to herein as the “**CCAA Proceedings**”. Capitalized terms used and not defined in this Supplement have the meanings given to them in the Second Report.
- 1.4 On October 15, 2021, the Court heard the Applicant’s motion for an Order (the “**Approval and Vesting Order**”), among other things:

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<sup>1</sup> The Second Report, the McEwan Affidavits and other Court-filed documents in the CCAA Proceedings are available on the Monitor’s case website at [www.alvarezandmarsal.com/McEwanEnterprises](http://www.alvarezandmarsal.com/McEwanEnterprises).

- (i) approving the Proposed Transaction and the purchase agreement dated September 27, 2021 between the Applicant and a new entity formed by MEI's current shareholders (the "**Purchaser**");
  - (ii) approving the Transaction Deposit and the related Transaction Deposit Charge; and
  - (iii) extending the Stay Period to December 17, 2021.
- 1.5 On November 1, 2021, the Court issued written reasons dismissing the relief requested by the Applicant in the Approval and Vesting Order. Accordingly, the Stay Period was not extended as proposed by the Applicant and remains set to expire on November 1, 2021.
- 1.6 As the Applicant considers its available alternatives, it is requesting an extension of the Stay Period to and including November 12, 2021.
- 1.7 The purpose of this Supplement is to provide the Court with information, and where applicable, the Monitor's views on:
- (i) the Applicant's cash flow results for the four-week period ended October 22, 2021;
  - (ii) the Applicant's updated cash flow forecast for the three-week period ending November 12, 2021;
  - (iii) the proposed Interim Funding and corresponding Interim Funding Lender's Charge (each as defined and described below) on the Applicant's Property (as defined in the Amended and Restated Initial Order); and
  - (iv) the proposed extension of the Stay Period to November 12, 2021.

## 2.0 TERMS OF REFERENCE AND DISCLAIMER

2.1 In preparing this Supplement, A&M, in its capacity as Monitor, has been provided with, and has relied upon unaudited financial information and the books and records prepared by MEI, and has had discussions with management of MEI and its legal counsel (collectively, the “**Information**”). Except as otherwise described in this Supplement in respect of the Applicant’s cash flow forecast:

- (i) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the *Chartered Professional Accountants Canada Handbook* (the “**CPA Handbook**”) and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
- (ii) some of the information referred to in this Supplement consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the CPA Handbook, has not been performed.

2.2 Future oriented financial information referred to in this Supplement was prepared based on MEI management’s estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

2.3 While this Supplement considers certain of the potential future impacts of the COVID-19 pandemic on MEI’s business and operations, such impacts cannot be fully determined at this time.

2.4 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars (“CAD”).

### 3.0 CASH FLOW RESULTS RELATIVE TO FORECAST

3.1 Actual receipts and disbursements for the four-week period September 25 to October 22, 2021 (the “Reporting Period”), as compared to the cash flow forecast attached as Appendix “A” to the Pre-Filing Report, are summarized in the following table:

Cash Flow Results		CAD\$000's	
	Budget	Actual	Variance
<b>Receipts</b>	<b>2,654</b>	<b>3,405</b>	<b>751</b>
<b>Disbursements</b>			
Vendors	(1,917)	(2,301)	(384)
Employee wages	(804)	(910)	(106)
Rent	(486)	(446)	40
Other SG&A	(151)	(252)	(101)
RBC principal, lease payments & interest	(30)	(18)	12
Restructuring professional Fees	(452)	(414)	38
<b>Net Cash Flow</b>	<b>(1,186)</b>	<b>(936)</b>	<b>250</b>
Cash balance, opening	930	1,138	208
Net Cash Flow	(1,186)	(936)	250
Revolving Facility draws	225	5	(220)
Transaction Deposit	250	-	(250)
<b>Ending Cash Balance</b>	<b>219</b>	<b>207</b>	<b>(12)</b>

3.2 During the Reporting Period:

- (i) total receipts were approximately \$751,000 greater than forecast, attributed primarily to higher than projected sales at certain of MEI's restaurant locations;
- (ii) total disbursements were approximately \$501,000 greater than forecast, attributed to: (a) increased vendor purchases to restock inventory associated with higher sales; and (b) certain timing variances that are expected to reverse in future weeks;
- (iii) disbursements for restructuring professional fees totalling approximately \$414,000 reflect amounts paid to the Monitor and the Monitor's counsel. Since the commencement of the CCAA Proceedings, the Applicant's legal counsel has not been paid for amounts invoiced to date. The Monitor understands that the Applicant's legal counsel has agreed to defer its fees until after the current Stay Period extension or until alternative financing is arranged; and
- (iv) overall, MEI experienced a positive net cash flow variance of approximately \$250,000.

3.3 As at October 22, 2021, MEI's available liquidity was approximately \$957,000, comprised of: (i) approximately \$207,000 cash on hand; and (ii) \$750,000 available under the Revolving Facility.

#### Yonge & Bloor Rent Reserve

3.4 As described in the First Report, a dispute has arisen between the Applicant and the Yonge & Bloor Landlord in respect of the Applicant's payment of rent. Until this dispute is resolved, the Applicant has agreed to fund all disputed amounts to the Monitor in trust.

- 3.5 The disputed amount in respect of October rent was funded by the Applicant and received by the Monitor on October 7, 2021. The disputed amount in respect of November rent was funded by the Applicant and received by the Monitor on October 29, 2021.

Pre-Filing Payments

- 3.6 In accordance with paragraph 7(e) of the Initial Order (as amended by the Amended and Restated Initial Order), the Applicant is entitled to pay, with the consent of the Monitor, amounts owing for goods and services supplied prior to the Filing Date, if in the opinion of the Applicant, such payment is necessary or desirable to avoid disruption to the operations of the business or the Applicant during the CCAA Proceedings. The Applicant set out in its materials filed in support of the Initial Order that it intended to provide payment to all trade suppliers in the normal course, subject to the terms of the Initial Order, in order to protect its ongoing business.
- 3.7 As at October 22, 2021, the Applicant has issued, with the consent of the Monitor, pre-filing payments totaling approximately \$1.4 million to third-party suppliers in respect of goods and services provided prior to the Filing Date. Each such payment was made with the consent of the Monitor in accordance with the Initial Order.

**4.0 UPDATED CASH FLOW FORECAST**

- 4.1 The Applicant, with the assistance of the Monitor, has prepared an updated cash flow forecast (the “**Updated Cash Flow Forecast**”) for the three-week period from October 23, 2021 to November 12, 2021 (the “**Cash Flow Period**”). A copy of the Updated Cash Flow Forecast, together with the Notes and Summary of Assumptions, is attached hereto as **Appendix “A”**.

4.2 The following table provides a summary of the Updated Cash Flow Forecast:

Updated Cash Flow Forecast	CAD\$000's
	<b>3-Week Period</b>
	<i>Nov-12</i>
	<hr/>
<b>Receipts</b>	<b>2,253</b>
<b>Disbursements</b>	
Vendors	(1,667)
Employee wages	(690)
Rent	(450)
Other SG&A	(267)
RBC principal, lease payments & interest	(74)
Restructuring professional Fees	(317)
	<hr/>
<b>Net Cash Flow</b>	<b>(1,212)</b>
	<hr/>
Cash balance, opening	207
Net Cash Flow	(1,212)
Revolving Facility draws	600
Interim Funding	600
	<hr/>
<b>Ending Cash Balance</b>	<b>195</b>
	<hr/>

4.3 The Monitor notes that during the requested Stay Period extension to November 12, 2021, net cash flows are projected to be negative approximately \$1.2 million. These negative cash flows are projected to be financed by a combination of: (a) cash on hand of approximately \$207,000; (b) draws on the Revolving Facility of approximately \$600,000; and (c) interim funding to be provided by the Interim Lender (as defined below) in the amount of up to \$600,000 (the “**Interim Funding**”)

## **5.0 THE INTERIM FUNDING AND INTERIM FUNDING LENDER'S CHARGE**

5.1 As described above, the Applicant projects that it requires additional financing of approximately \$600,000 to continue the CCAA Proceedings through the requested Stay Period extension of November 12, 2021.

5.2 The Purchaser in connection with the Proposed Transaction, a subsidiary of Fairfax and McEwan Holdco Inc., 2864785 Ontario Corp. (the "**Interim Lender**"), has agreed to provide MEI with the Interim Funding of up to \$600,000 to fund its near term liquidity requirements on substantially the same terms as it previously offered to provide the Transaction Deposit. Fairfax is providing funding to the Interim Lender to fund the Interim Funding to MEI.

5.3 The form of debenture pursuant to which the proposed Interim Funding will be provided is attached hereto as **Appendix "B"**. The key terms of the Interim Funding include that:

- (i) the Interim Funding can be drawn in one or more installments on two (2) Business Days' notice;
- (ii) no fees or interest will be payable in connection with the Interim Funding;
- (iii) any amounts outstanding under the Interim Funding will be immediately due and payable upon the earlier of: (a) the completion of a sale transaction outside of the ordinary course of business by or involving MEI; and (b) MEI obtaining any interim financing from any party other than the Interim Lender; and

(iv) provision of the Interim Funding is subject to the Court's approval of a charge (the "**Interim Funding Lender's Charge**") to secure the repayment of the Interim Funding.

5.4 The proposed Interim Funding Lender's Charge, if approved, will rank in priority to all other secured creditors, other than statutory-priority deemed trust and liens for unpaid employee source deductions or taxes, but subordinate to the RBC Security and the other Charges granted pursuant to the Amended and Restated Initial Order.

5.5 Subject to the foregoing, the contemplated priorities of the Charges are as follows:

- (i) First – Administration Charge (to the maximum amount of \$350,000);
- (ii) Second – Directors' Charge (to the maximum amount of \$1.45 million); and
- (iii) Third – Interim Funding Lender's Charge (to the maximum amount of \$600,000).

5.6 The Monitor supports the approval of the Interim Funding and corresponding Interim Funding Lender's charge given that: (i) the proposed Interim Funding will provide the Applicant with the necessary liquidity through the requested Stay Period extension so that it may consider and advance matters in the CCAA Proceedings for the benefit of MEI's business and its stakeholders; (ii) the proposed Interim Funding will not increase the cost of the CCAA Proceedings as there are no fees or interest contemplated to be paid in connection with the Interim Funding; and (iii) the proposed Interim Funding and Interim Funding Lender's Charge are not expected to materially prejudice any of the Applicant's creditors.

## **6.0 EXTENSION OF THE STAY PERIOD**

6.1 Pursuant to the Amended and Restated Initial Order, the current Stay Period expires on November 1, 2021. As previously noted, the Applicant is seeking an extension of the Stay Period to and including November 12, 2021.

6.2 The Monitor supports the Applicant's request to extend the Stay Period for the following reasons:

- (i) as set out in the Updated Cash Flow Forecast, the Interim Funding is projected to provide the Applicant with sufficient liquidity through the extended Stay Period;
- (ii) the proposed extension will provide the Applicant with the stability required to continue its ordinary course business operations, which is in the best interests of MEI's stakeholders; and
- (iii) the Applicant has acted, and continues to act, in good faith and with due diligence to advance the CCAA Proceedings and its restructuring efforts.

## **7.0 CONCLUSIONS AND RECOMMENDATIONS**

7.1 For the reasons set out in this Supplement, the Monitor respectfully recommends that the Court grant the relief requested by the Applicant.

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All of which is respectfully submitted to the Court this 1<sup>st</sup> day of November, 2021.

**Alvarez & Marsal Canada Inc., solely in its capacity as  
Monitor of McEwan Enterprises Inc.,  
and not in its personal or corporate capacity**

Per:

  
\_\_\_\_\_  
Greg Karpel  
Senior Vice-President

**APPENDIX A**  
**UPDATED CASH FLOW FORECAST**

See attached.

McEwan Enterprises Inc.  
Updated Cash Flow Forecast  
For the three-week period ending November 12, 2021  
(Unaudited, in 000s CAD)

Week ending		<i>Week 1</i>	<i>Week 2</i>	<i>Week 3</i>	<i>3 Week</i>
		<b>Oct 29</b>	<b>Nov 05</b>	<b>Nov 12</b>	<b>Total</b>
<b>Receipts</b>	<b>(1)</b>	<b>751</b>	<b>751</b>	<b>751</b>	<b>2,253</b>
<b>Disbursements</b>					
Vendors	(2)	(575)	(606)	(486)	(1,667)
Employee wages	(3)	(236)	(227)	(227)	(690)
Rent	(4)	(180)	(270)	-	(450)
Other SG&A (incl. HST remittances)	(5)	(163)	(52)	(52)	(267)
<b>Total Disbursements</b>		<b>(1,154)</b>	<b>(1,155)</b>	<b>(765)</b>	<b>(3,074)</b>
<b>Operating Net Cash Flow</b>		<b>(403)</b>	<b>(404)</b>	<b>(14)</b>	<b>(821)</b>
RBC principal, lease payments & interest	(6)	(52)	(22)	-	(74)
Restructuring professional fees	(7)	(147)	(20)	(150)	(317)
<b>Net Cash Flow</b>		<b>(602)</b>	<b>(446)</b>	<b>(164)</b>	<b>(1,212)</b>
<b>Beginning Cash</b>		<b>207</b>	<b>205</b>	<b>359</b>	<b>207</b>
Net Cash Flow		(602)	(446)	(164)	(1,212)
Interim Funding	(8)	-	600	-	600
Change in Revolving credit line		600	-	-	600
<b>Ending Cash</b>		<b>205</b>	<b>359</b>	<b>195</b>	<b>195</b>
<b><u>RBC Credit Line</u></b>					
Revolving credit line limit		850	850	850	850
Revolving credit line drawn		(700)	(700)	(700)	(700)
<b>Revolving credit line available</b>		<b>150</b>	<b>150</b>	<b>150</b>	<b>150</b>

## McEwan Enterprises Inc. (“MEI”)

Updated Cash Flow Forecast

Notes

### Disclaimer

*In preparing this cash flow forecast (the “Forecast”), MEI has relied upon unaudited financial information and has not attempted to further verify the accuracy or completeness of such information. The Forecast includes assumptions discussed below with respect to the requirements and impact of a filing under the Companies’ Creditors Arrangement Act (“CCAA”). Since the Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Forecast period will vary from the Forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized. The Forecast is presented in thousands of Canadian dollars.*

### Assumptions

#### 1) Receipts

Receipts include sales from MEI’s restaurant, grocery, catering and events businesses, inclusive of sales tax. The projections are based on management’s estimates of near-term sales, taking into consideration recent sales experience and expectations with respect to ongoing social distancing measures, capacity restrictions and other COVID-19 related impacts on the business.

#### 2) Vendors

Consists primarily of disbursements to purchase produce, meat, seafood and other food & groceries used in MEI’s restaurant, grocery and catering businesses. The Forecast includes the payment of both pre-filing and post-filing obligations to vendors in accordance with the Initial Order.

#### 3) Employee wages

Salaries, wages, remittances and employee benefits for salaried and hourly employees.

#### 4) Rent

Disbursements include the payment for post-filing monthly rent obligations at each of MEI’s locations.

#### 5) Other SG&A

Consists primarily of packaging, logistics, IT, facility management and other miscellaneous costs and monthly HST remittances. Forecast includes the payment of both pre-filing and post-filing obligations in accordance with the Initial Order.

#### 6) RBC principal, lease payments & interest

Forecast includes principal and interest payments owing to RBC for mortgages, equipment leases and the Secured Credit Facilities. The Secured Credit Facilities consist of: (i) a revolving credit facility with cumulative maximum availability of \$850,000 (the “**Revolving Facility**”); (ii) credit cards with a cumulative maximum availability of \$360,000; and (iii) a \$90,000 letter of credit, as well as the equipment leasing arrangements.

#### 7) Restructuring professional fees

Disbursements include forecast payments to the Monitor and the Monitor’s legal counsel. The Forecast does not include any forecast payments to MEI’s legal counsel.

#### 8) Interim Funding

A subsidiary of Fairfax and McEwan Holdco Inc., 2864785 Ontario Corp. (the “**Interim Lender**”) has agreed to provide MEI with Interim Funding of up to \$600,000 to fund MEI’s near-term liquidity requirements.

**APPENDIX B**  
**FORM OF DEBENTURE**

See attached.

**DEBENTURE  
(the “Debenture”)**

**\$600,000**

●, 2021

**ARTICLE 1  
INTERPRETATION**

**1.1 Defined Terms**

As used herein the following expressions will have the following meanings:

“**Business Day**” means any day other than Saturday, Sunday or a day on which chartered banks are closed for business in Toronto, Ontario.

“**Corporation**” means McEwan Enterprises Inc., an Ontario corporation, and its legal successors and permitted assigns.

“**Debenture**” means this debenture.

“**Holder**” means 2864785 Ontario Corp., and its legal successors and permitted assigns.

“**Interim Transaction Funding Approval Order**” means an order of the Ontario Superior Court of Justice (Commercial List), in form and substance acceptable to the Corporation and the Holder, approving this Debenture and the funding to be provided by the Holder to the Corporation hereunder, and approving the Interim Transaction Funding Charge.

“**Interim Transaction Funding Charge**” has the meaning assigned to such term in the Interim Transaction Funding Approval Order.

“**Principal Amount**” means the principal amount advanced pursuant to Section 2.1 of this Debenture and outstanding under this Debenture from time to time, as evidenced on the grid schedule attached hereto as Schedule A.

“**Repayment Event**” has the meaning assigned to such term in Section 2.2.

**1.2 Interpretation**

- (1) “**This Debenture**”, “**hereto**”, “**hereby**”, “**hereunder**”, “**herein**”, and similar expressions refer to the whole of this Debenture and not to any particular Article, Section, paragraph or other portion hereof.
- (2) Words importing the singular number only include the plural and vice versa and words importing gender will include all genders.

- (3) The division of this Debenture into Articles and Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Debenture.
- (4) References to sums of money herein are to Canadian dollars.
- (5) If any date on which any action is required to be taken hereunder is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day.
- (6) Time is of the essence hereof.
- (7) Where the word “**including**” or “**includes**” is used in this Debenture, it means “**including (or includes) without limitation**”.

### **1.3 Governing Law**

This Debenture is governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

## **ARTICLE 2 TERMS**

### **2.1 Principal Amount**

The Holder shall advance amounts to the Corporation under this Debenture upon two (2) Business Days’ prior written request therefor, up to an aggregate principal amount not to exceed \$600,000 at any time. For value received, the Corporation promises to pay upon the occurrence of the Repayment Event to the order of the Holder the Principal Amount outstanding under this Debenture in lawful money of Canada at the office of the Holder set forth in Section 3.4(a), or such other place as the Holder may designate. The Corporation and the Holder agree that the Holder’s record of the Principal Amount, as evidenced on Schedule A of this Debenture shall be conclusive evidence of the Principal Amount outstanding under this Debenture from time to time, absent manifest error. The Principal Amount shall not bear interest.

### **2.2 Repayment**

The Principal Amount outstanding under this Debenture will be immediately due and payable upon the earlier of:

- (a) the completion of a sale transaction outside of the ordinary course of business by or involving the Corporation; and
- (b) the Corporation obtaining any interim financing from any party other than the Holder

(each a “**Repayment Event**”).

### **2.3 Security**

The Principal Amount will be secured by the Interim Transaction Funding Charge granted pursuant to the Interim Transaction Funding Approval Order.

## **ARTICLE 3 GENERAL**

### **3.1 Termination**

The Holder covenants and agrees with the Corporation that, if the Corporation pays the Principal Amount outstanding under this Debenture and satisfies all of its other obligations under this Debenture, this Debenture shall be and become fully ended and terminated and all covenants and agreements of the Corporation hereunder shall be at an end and the Holder, upon the request of the Corporation, shall execute such instruments, discharges or re-assignments and give such notification or assurances as the Corporation may properly require to fully release, discharge and cancel this Debenture in the circumstances.

### **3.2 Waiver**

No act or omission by the Holder in any manner whatsoever will extend to or be taken to affect any provision hereof or any subsequent breach or default or the rights resulting therefrom. A waiver of default will not extend to, or be taken in any manner whatsoever to affect the rights of the Holder with respect to, any subsequent default, whether similar or not. The Corporation waives every defence based upon any or all indulgences that may be granted by the Holder.

### **3.3 Holder May Remedy Default**

If the Corporation fails to do anything hereby required to be done by it, the Holder may, but will not be obliged to, do such thing and all reasonable sums thereby expended by the Holder will be payable forthwith by the Corporation, but no such performance by the Holder will be deemed to relieve the Corporation from any default hereunder.

### **3.4 Notices**

Any notice, direction or other communication to be given under this Debenture will be in writing and given by delivering it or sending it by facsimile or other similar form of recorded communication addressed:

(a) to the Holder at:

2864785 Ontario Corp.  
38 Karl Fraser Road  
Toronto, Ontario M3C 0H7

Attention: Dennis Mark McEwan  
Email: [dennismmcewan@gmail.com](mailto:dennismmcewan@gmail.com)

(b) to the Corporation at:

c/o Goodmans LLP  
333 Bay Street  
Suite 3400  
Toronto, Ontario M5H 2S7

Attention: Robert J. Chadwick / Caroline Descours  
Email: [rhadwick@goodmans.ca](mailto:rhadwick@goodmans.ca) / [cdescours@goodmans.ca](mailto:cdescours@goodmans.ca)

Any such communication will be deemed to have been validly and effectively given (i) if personally delivered, on the date of such delivery if such date is a Business Day and such delivery was made prior to 4:00 p.m. (Toronto time) and otherwise on the next Business Day, or (ii) if transmitted by electronic mail on the Business Day following the date of transmission. Any party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice will be sent to such party at its changed address.

### **3.5 Invalidity of any Provisions**

Any provision of this Debenture which is prohibited by the laws of any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining terms and provisions hereof or thereof and no such invalidity will affect the obligation of the Corporation to repay the amounts due under this Debenture.

### **3.6 Indemnification**

The Corporation agrees to indemnify the Holder from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits and reasonable costs, expenses or disbursements which may be imposed on, incurred by, or asserted against the Holder in connection with this Debenture and arising by reason of any action (including any action referred to herein) or inaction or omission to do any act legally required of the Corporation under this Debenture. In addition to the foregoing, the Corporation agrees to reimburse the Holder for all reasonable legal or other expense incurred in connection with investigating, defending or participating in any action or other proceeding relating to any such losses or liabilities arising from any such action, inaction or omission.

### **3.7 Assignment**

This Debenture may not be assigned by the Corporation or the Holder without the prior written agreement of the other party in its sole discretion, provided that any assignment by the Holder to a party that is not an affiliate of Fairfax Financial Holdings Limited shall require the consent of the Monitor (as defined in Interim Transaction Funding Approval Order).

### **3.8 Enurement**

This Debenture and all its provisions enures to the benefit of the Holder, its successors and permitted assigns and will be binding upon the Corporation, its successors and permitted assigns. Presentment, notice of dishonour, protest and notice of protest hereof are hereby waived.

### **3.9 Amendments**

This Debenture may only be amended by a written agreement of the Corporation and the Holder.

### **3.10 Further Assurances**

The Holder and the Corporation will do, execute and deliver or will cause to be done, executed and delivered all such further acts, documents and things as may be reasonably required for the purpose of giving effect to the transactions contemplated under this Debenture.

### **3.11 Counterparts and Delivery**

This Debenture may be executed in separate counterparts and delivered electronically, each of which when so executed and delivered will be deemed to be an original and all of such counterparts will together constitute one and the same instrument. Any party may execute this Debenture by facsimile signature.

**[signature pages follow]**

**IN WITNESS WHEREOF** the parties have executed this Debenture as of the date first written above.

**MCEWAN ENTERPRISES INC.**

Per: \_\_\_\_\_

Name: Dennis Mark McEwan

Title: President

**2864785 ONTARIO CORP., as Holder**

Per: \_\_\_\_\_

Name: Dennis Mark McEwan

Title: President



**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED** Court File No.:CV-21-00669445-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
MCEWAN ENTERPRISES INC.**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**SUPPLEMENT TO THE  
SECOND REPORT OF THE MONITOR**

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Counsel for Alvarez & Marsal Canada Inc., solely in its capacity as the Monitor and not in its personal or corporate capacity