

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

**IN THE MATTER OF THE RECEIVERSHIP OF
2423402 ONTARIO INC.**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2423402 ONTARIO INC.

Respondent

**MOTION RECORD
(Amended and Restated Receivership Order)
(Returnable July 17, 2019)**

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Lawyers for Bank of Montreal

Court File No. CV-18-610233-00CL

ONTARIO**SUPERIOR COURT OF JUSTICE****COMMERCIAL LIST****IN THE MATTER OF THE RECEIVERSHIP OF
2423402 ONTARIO INC.**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2423402 ONTARIO INC.

Respondent

INDEX

Tab	Description
1	Notice of Motion
2	Supplement to Report of Ernst & Young Inc. in its Capacity as Court-Appointed Monitor of Bondfield dated July 10, 2019
3	Draft Order
4	Blackline of Amended and Restated Receivership Order to Original Receivership Order

TAB 1

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

**IN THE MATTER OF THE RECEIVERSHIP OF
2423402 ONTARIO INC.**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2423402 ONTARIO INC.

Respondent

**NOTICE OF MOTION
(Amended and Restated Receivership Order)
(Returnable July 17, 2019)**

Bank of Montreal, in its capacity as the administrative agent (the “**Administrative Agent**”) pursuant to the credit agreement dated as of August 28th, 2014 (as amended, the “**Credit Agreement**”) among 2423402 Ontario Inc. (“**Project Co**”), each of the financial institutions and other entities from time to time parties thereto (the “**Lenders**”) and the Administrative Agent, will make a motion at a 9:30 appointment on July 17, 2019 before a judge of the Ontario Superior Court of Justice (Commercial List) at 330 University Avenue, Toronto Ontario.

THE MOTION IS FOR:

1. An order, substantially in form attached to the Motion Record at Tab 3 (the “**Proposed Order**”):

- (a) abridging and validating the time for service of this Notice of Motion so that the motion is properly returnable on July 17, 2019 and dispensing with further service thereof;
- (b) amending and restating the December 6, 2018 order (“**Appointment Order**”) in which Alvarez & Marsal Canada Inc. was appointed receiver (in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties of Project Co., substantially in the form attached as Schedule “AA” to the Proposed Order (the “**Amended and Restated Appointment Order**”) to, among other things:
 - (i) increase the Receiver’s Borrowing Charge (as defined in the Appointment Order) by \$2,377,076.24 (the total available under the credit facility pursuant to the Credit Agreement (the “**Credit Facility**”) to interim completion); and
 - (ii) authorize and direct the Receiver to make certain payments as set out therein to Zurich Insurance Company Ltd. (the “**Surety**”), on behalf of Bondfield Construction Company Limited (“**Bondfield**”); and
- (c) granting such other relief as this Honourable Court may allow.

THE GROUNDS FOR THE MOTION ARE:

1. On December 6, 2018, the Court made the Appointment Order appointing the Receiver, on a limited basis, over all of the assets, undertakings and properties of Project Co.

2. On July 12, 2019, the Agent proposed, as a gesture of good faith and without prejudice to the positions and arguments being advanced by the Lenders at a motion to be heard on August 1, 2019, that it would fund certain amounts to the Receiver from amounts available under the Credit Facility to interim completion to be used to pay the Surety on behalf of Bondfield the following amounts:

- (a) \$651,761, which is comprised of i) \$340,301 that has been certified pursuant to Bondfield billing applications #44 to 55 (after defaults arose); and ii) \$311,460 that has apparently not been paid from ProjectCo to Bondfield in respect of Bondfield billing applications #1 to 43; and
- (b) The remainder of the \$2,377,076.24 in respect of amounts that are certified as payable from ProjectCo to Bondfield under the Construction Contract dated August 28, 2014 between Bondfield and ProjectCo going forward.

3. The implementation of the proposal requires certain amendments to the Appointment Order to increase the Receiver's borrowing powers; to provide clarity to the Receiver as to when amounts are certified as payable going forward; to provide that such payments reduce, in a corresponding amount the available funding under the Credit Facility and the amounts payable to both Bondfield and Zurich; and to authorize and direct the Receiver to make such payments.

4. The Agent relies upon the following:

- (a) Section 243 of the *Bankruptcy and Insolvency Act* (Canada) and the inherent and equitable jurisdiction of this Court;
- (b) Sections 97 and 101 of the *Courts of Justice Act* (Ontario);
- (c) Rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (d) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1. Supplement to Report of Ernst & Young Inc. in its capacity as Court-appointed Monitor of Bondfield, Among Others dated July 10, 2019; and
- 2. Such further and other materials as counsel may advise and this Court may permit.

July 16, 2019

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Lawyers for the applicant, Bank of Montreal,
in its capacity as administrative agent under the
Credit Agreement and agent under the
Performance Bond.

TO: THE SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Amended and Restated
Receivership Order)
(Returnable July 17, 2019)**

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19391797

TAB 2

Court File No. CV-18-610233-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE RECEIVERSHIP OF 2423402 ONTARIO INC.

BETWEEN:

BANK OF MONTREAL

APPLICANT

AND

2423402 ONTARIO INC.

RESPONDENT

**SUPPLEMENT TO REPORT OF ERNST & YOUNG INC. IN ITS CAPACITY AS
COURT-APPOINTED MONITOR OF BONDFIELD CONSTRUCTION COMPANY
LIMITED, AMONG OTHERS**

**RE: THE CAMBRIDGE MEMORIAL HOSPITAL CAPITAL
REDEVELOPMENT PROJECT**

July 10, 2019

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE RECEIVERSHIP OF 2423402 ONTARIO INC.

BETWEEN:

BANK OF MONTREAL

APPLICANT

AND

2423402 ONTARIO INC.

RESPONDENT

SUPPLEMENT TO REPORT OF ERNST & YOUNG INC. IN ITS CAPACITY AS
COURT-APPOINTED MONITOR OF BONDFIELD CONSTRUCTION COMPANY
LIMITED, AMONG OTHERS

RE: THE CAMBRIDGE MEMORIAL HOSPITAL CAPITAL
REDEVELOPMENT PROJECT (THE "PROJECT")

July 10, 2019

INTRODUCTION

- 1 On May 31, 2019, Ernst & Young Inc. in its capacity as court-appointed Monitor (the "**Monitor**") of Bondfield Construction Company Limited ("**BCCL**"), among others, served a report (the "**CMH Report**").
- 2 The CMH Report was served to provide the Court and interested parties with certain financial information with respect to BCCL's involvement in the Project, including as a result of the request of Zurich for such information to respond to the motion brought by Bank of Montreal in its capacity as the administrative agent (the "**Administrative Agent**") for the lenders (the "**Lenders**") to 2423402 Ontario Inc. ("**Project Co**") in this proceeding.

- 3 Subsequent to the issuance of the CMH Report, the Monitor has had further discussions with Zurich, the Administrative Agent and their advisors, and has received additional information in connection with the Project.
- 4 This Supplement to the CMH Report (the “**Supplemental Report**”) is served to provide certain additional financial information based on these discussions as well as a review of the information made available to the Monitor.
- 5 All capitalized terms used herein and not otherwise defined have the meanings given to them in the CMH Report.

TERMS OF REFERENCE AND DISCLAIMER

- 6 In preparing this Supplemental Report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records prepared by the Bondfield Group, discussions with management of the Bondfield Group (“**Management**”), and information from other third party sources (collectively, the “**Information**”). Except as described in this Supplemental Report:
- (a) 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 such information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards (“**GAAS**”) pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information; and
 - (b) some of the information referred to in this Supplemental Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.
- 7 Unless otherwise indicated, the Monitor’s understanding of factual matters expressed in this Supplemental Report concerning the Bondfield Group and their business is based on the Information, and not independent factual determinations made by the Monitor.

- 8 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

CONSTRUCTION CONTRACT - UNPAID CERTIFIED PAYMENT APPLICATIONS

- 9 As of May 28, 2019, BCCL has issued certified progress billing applications #1 to #55 to Project Co for a total amount of \$130,067,993, and has recorded payments from Project Co totaling \$127,576,071 toward these payment applications. Set out in **Appendix “A”** is a summary of BCCL progress billing applications #1 to #55 and the payments applied based on BCCL’s financial records.
- 10 As described in the CMH Report, BCCL’s financial records show it was owed \$2,491,922 from Project Co in respect of certified progress billing applications (the “**Progress Billing A/R**”) as at May 28, 2019.
- 11 In addition, BCCL’s financial records show it was owed \$1,243,844 related to unpaid extra billings (also known as “change orders”) (the “**Change Order A/R**”) also as at May 28, 2019. For ease of reference, the list of the outstanding payment applications according to BCCL’s financial records set out in Appendix “C” to the CMH Report is reproduced as **Appendix “B”** attached hereto.
- 12 As at May 28, 2019, the total amounts owing to BCCL according to its records are:
- | | | |
|-----|----------------------|--------------------|
| (a) | Progress Billing A/R | \$2,491,922 |
| (b) | Change Order A/R | \$1,243,844 |
| | Total | \$3,735,767 |

LENDER DISPUTE

- 13 The Lenders dispute that the above amounts are owing to BCCL based on their review of Project Co’s financial records. The Lenders’ position is that only \$340,301 is owed by Project Co to BCCL with respect to the Progress Billing A/R. This is the amount included in the Progress Billing A/R in respect of BCCL payment applications #44 to #55. These

billing applications were certified by the Lenders' technical advisor after defaults under Project Co's credit facility were caused by the registration of the first construction lien on April 25, 2018.

- 14 Based on the investigation by the Monitor, there is a difference of \$1,840,320 with respect to the Progress Billings A/R between the Lenders' position and BCCL's financial records, as further discussed below. In addition, there is a \$311,461 shortfall comparing payments by Project Co based on its banking records to the total amount per BCCL payment applications. The Monitor understands that the Lenders are continuing to investigate this difference of \$311,461. Set out below is a summary of the Monitor's understanding of the sources of these differences.

Progress Billings A/R			
Payment Application #	Prior to #43	#44 to #55	Total
Progress Billings A/R - BCCL books and records	\$ 2,151,621	\$ 340,301	\$ 2,491,922
Progress Billing A/R - Lenders' calculations	311,461 *	340,301	651,762
Difference - Progress Billings A/R	\$ 1,840,160	A \$ -	\$ 1,840,160
* Represents an identified shortfall that remains subject to the Lenders' investigation.			
Sources of difference re payments from Project Co			
Project Co cheque payments that are not recorded by BCCL	\$ 1,000,000		
Project Co payments to BCCL but not applied against payment applications	119,594		
Project Co payments for certain advisor fees	720,350		
Unreconciled difference	216		
	\$ 1,840,160	A	

- 15 Financial records of Project Co and BCCL reflect the \$1,840,160 difference regarding the Progress Billing A/R is related to payments by Project Co as described below:

- (a) \$1,000,000 - Project Co issued several cheques, of which \$1,000,000 is not reflected on any BCCL payment applications, and was not recorded by BCCL according to its financial records;
- (b) \$119,594 - Of the payments from Project Co to BCCL, \$119,594 was not recorded by BCCL according to its financial records;
- (c) \$720,350 - The Lenders advanced this amount to Project Co, which then paid certain advisors to the Lenders and BCCL on August 28, 2014 as part of the closing of the Project Credit Facility as follows:

i)	McCarthy Tetrault LLP	\$194,360.00
ii)	Osler, Hoskin & Harcourt LLP	\$154,433.20
iii)	Rocklynn Capital Inc.	\$339,000.00
iv)	Pelican Woodcliff Inc.	\$32,557.11

(d) An unreconciled difference of \$216.

At the time of this Supplemental Report, the Monitor continues to review backup and BCCL's bookkeeping in connection with the above transactions.

- 16 With respect to the Change Order A/R in the amount of \$1,243,844 owing to BCCL, Counsel to the Lenders has advised that Cambridge Memorial Hospital alleges set-off against the entire Change Order A/R.
- 17 With respect to the timing of payments from Project Co, the Monitor confirms that payments were made by Project Co to BCCL after October 2017 totalling \$3,524,815. Per BCCL's financial records, such payments (with the exception of \$119,594 as described in paragraph 14 (b)) were applied to billing applications dated prior to October 2017.
- 18 The Monitor has worked with Zurich and the Lenders to identify the sources of the difference between the Lenders and BCCL's financial records on a factual basis as to the amounts owing to BCCL. The Monitor believes that those sources are now essentially understood, as described above.

All of which is respectfully submitted this 10th day of July, 2019.

ERNST & YOUNG INC.

Solely in its role as Court-appointed Monitor
of the Bondfield Group, and not in its personal capacity

Per: 

Alex Morrison, CPA, CA

Senior Vice President

Appendix “A”

Bondfield Construction Company Limited
The Cambridge Memorial Hospital Project
Payment Applications

Inv.No.	Inv Date.	Progress Billing Amount, incl HST	Amount Applied	Outstanding Payable
000001	Aug31 2014	12,204,000.00	12,204,000.00	0.00
000002	Sep30 2014	648,356.34	648,356.34	0.00
000003	Oct31 2014	313,712.49	313,712.49	0.00
000004	Nov30 2014	2,178,852.07	2,178,852.07	0.00
000005	Dec31 2014	1,148,577.11	1,148,577.11	0.00
000006	Jan31 2015	669,889.41	669,889.41	0.00
000007	Feb28 2015	700,421.40	700,421.40	0.00
000008	Mar31 2015	1,240,897.85	1,240,897.85	0.00
000009	Apr30 2015	2,192,635.87	2,192,635.87	0.00
000010	May31 2015	2,709,740.61	2,709,740.61	0.00
000011	Jun30 2015	2,874,509.48	2,874,509.48	0.00
000012	Jul31 2015	3,728,252.74	3,728,252.74	0.00
000013	Aug31 2015	3,791,202.48	3,791,202.48	0.00
000014	Sep30 2015	3,833,475.90	3,833,475.90	0.00
000015	Oct31 2015	5,241,163.69	5,241,163.69	0.00
000016	Nov30 2015	5,511,769.17	5,511,769.17	0.00
000017	Dec31 2015	3,297,067.30	3,297,067.30	0.00
000018	Jan31 2016	4,083,604.18	4,083,604.18	0.00
000019	Feb29 2016	4,198,081.87	4,198,081.87	0.00
000020	Mar31 2016	3,882,778.34	3,882,778.34	0.00
000021	Apr30 2016	4,247,460.18	4,247,460.18	0.00
000022	May31 2016	4,104,807.21	4,104,807.21	0.00
000023	Jun30 2016	3,413,209.97	3,413,209.97	0.00
000024	Jul31 2016	3,686,264.10	3,686,264.10	0.00
000025	Aug31 2016	4,336,191.50	4,336,191.50	0.00
000026	Sep30 2016	5,607,878.70	5,607,878.70	0.00
000027	Oct31 2016	5,303,112.67	5,303,112.67	0.00
000028	Nov30 2016	4,537,524.40	4,537,524.40	0.00
000029	Dec31 2016	3,838,689.78	3,838,689.78	0.00
000030	Jan31 2017	5,030,645.02	5,030,645.02	0.00
000031	Feb28 2017	5,129,328.76	5,129,328.76	0.00
000032	Mar31 2017	1,477,518.53	1,477,518.53	0.00
000033	Apr30 2017	2,841,979.62	2,841,979.62	0.00
000034	May31 2017	3,318,417.31	3,318,417.31	0.00
000035	Jun30 2017	2,608,913.78	2,608,913.78	0.00
000036	Jul31 2017	1,300,819.09	1,300,819.09	0.00
000037	Aug31 2017	1,001,236.16	1,001,236.16	0.00
000038	Sep30 2017	1,341,821.18	1,308,117.82	33,703.36
38 HB	Sep30 2017	34,968.57	34,968.57 Note 1	0.00
000039	Oct31 2017	601,800.25	0.00	601,800.25
000040	Nov30 2017	591,626.90	0.00	591,626.90
000041	Dec31 2017	432,459.81	0.00	432,459.81
000042	Jan31 2018	304,204.07	0.00	304,204.07
000043	Feb28 2018	187,826.17	0.00	187,826.17
000044	Mar31 2018	27,704.55	0.00	27,704.55
000045	Apr30 2018	45,993.95	0.00	45,993.95

Bondfield Construction Company Limited
The Cambridge Memorial Hospital Project
Payment Applications

Inv.No.	Inv Date.	Progress Billing Amount, incl HST	Amount Applied	Outstanding Payable
000046	May31 2018	60,087.56	0.00	60,087.56
000047	Jun30 2018	46,125.22	0.00	46,125.22
000048	Jul31 2018	17,309.05	0.00	17,309.05
000049	Aug31 2018	22,412.04	0.00	22,412.04
000050	Sep30 2018	47,366.78	0.00	47,366.78
000051	Oct31 2018	17,576.18	0.00	17,576.18
000052	Nov30 2018	5,807.84	0.00	5,807.84
000053	Dec31 2018	14,205.86	0.00	14,205.86
000054	Jan31 2019	1,017.00	0.00	1,017.00
000055	Feb28 2019	34,694.93	0.00	34,694.93
		\$ 130,067,992.99	\$ 127,576,071.47	\$ 2,491,921.52

Notes

Note 1 - This payment was received directly from CMH and was applied against the holdback of Payment Application #38.

Appendix “B”

Bondfield Construction Company Ltd.
The Cambridge Memorial Hospital Project
Unpaid Certified Payment Applications as at May 28, 2019

Billing Application Number	Billing Submission Date	Billing Approval / Certification Date	Outstanding Billing Amount (CDN\$) (incl. HST)
Regular Progress Billings			
38	Sep 30-2017	Oct 19-2017	\$33,703 (Note 1)
39	Oct 31-2017	Nov 11-2017	601,800
40	Nov 30-2017	Dec 13-2017	591,627
41	Dec 31-2017	Jan 15-2018	432,460
42	Jan 31-2018	Feb 20-2018	304,204
43	Feb 28-2018	Mar 9-2018	187,826
44	Mar 31-2018	April 13-2018	27,705
45	Apr 30-2018	May 8-2018	45,994
46	May 31-2018	June 8-2018	60,088
47	June 30-2018	July 10-2018	46,125
48	July 31-2018	Aug 13-2018	17,309
49	Aug 31-2018	Sept 21-2018	22,412
50	Sept 30-2018	Oct 11-2018	47,367
51	Oct 31-2018	Nov 15-2018	17,576
52	Nov 30-2018	Dec 17-2018	5,808
53	Dec 31-2018	Jan 21-2019	14,206
54	Jan 31-2019	Feb 21-2019	1,017
55	Feb 28-2019	Mar 28-2019	34,695
Total Regular Progress Billings			\$2,491,922
Extra billings			
X-009	Sep 30-2017	Oct 24-2017	\$213,506
X-010	Oct 31-2017	Nov 21-2017	7,006
X-011	Dec 31-2017	Jan 29-2018	17,099
X-012	Jan 31-2018	Feb 22-2018	219,368
X-013	Feb 28-2018	Mar 15-2018	80,004
X-014	Mar 31-2018	April 23-2018	52,346
X-015	Apr 30-2018	May 23-2018	49,416
X-016	June 30-2018	July 17-2018	192,119
X-017	July 31-2018	Aug 13-2018	29,980
X-018	Aug 31-2018	Sept 20-2018	24,508
X-019	Sept 30-2018	Oct 18-2018	84,549
X-020	Oct 31-2018	Dec 7-2018	26,060
X-021	Nov 30-2018	Jan 7-2019	45,303
X-022	Dec 31-2018	Jan 28-2019	30,870
X-023	Jan 31-2019	Feb 19-2019	27,487
X-024	Feb 28-2019	Mar 28-2019	21,277
X-025	Mar 31-2019	Apr 22-2019	31,338
X-026	Apr 30-2019	May 15-2019	91,609
Total Extras Billings			\$1,243,844
Total Outstanding Billings (Regular and Extra)			\$3,735,767

Note 1 – \$1,308,118 was collected in respect of Payment Application #38 in the amount of \$1,341,821, leaving an unpaid balance of 33,703 (incl. of HST).

Note 2 – The schedule is based on BCCL's monthly submitted and certified payment applications.

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

Court File No. CV-18-6102} 3-00CL

IN THE MATTER OF THE RECEIVERSHIP OF 2423402 ONTARIO INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**SUPPLEMENT TO REPORT OF ERNST &
YOUNG INC., AS COURT-APPOINTED
MONITOR OF THE BONDFIELD GROUP**

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Lawyers for Ernst & Young Inc.,
Court-Appointed Monitor of Bondfield Construction
Company Limited, among others

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	WEDNESDAY, THE 17 th
)	
JUSTICE HAINEY)	DAY OF JULY, 2019

**IN THE MATTER OF THE RECEIVERSHIP OF
2423402 ONTARIO INC.**

BANK OF MONTREAL

Applicant

- and -

2423402 ONTARIO INC.

Respondent

ORDER
(Amending and Restating Receivership Order)

THIS MOTION made by Bank of Montreal, in its capacity as administrative agent (the “**Administrative Agent**”), for an order amending and restating the December 6, 2018 order (the “**Appointment Order**”) in which Alvarez & Marsal Canada Inc. was appointed receiver (in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties of 2423402 Ontario Inc., to, among other things, increase the Receiver’s borrowing charge and authorize and direct the Receiver to make payments as set out therein, was heard this day at 330 University Avenue, Toronto, Ontario.

ON HEARING the submissions of counsel for the Administrative Agent, the Receiver, Zurich Insurance Company Ltd., and such other parties as were present,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

AMENDED & RESTATED ORDER

2. THIS COURT ORDERS AND DECLARES that the Appointment Order is hereby amended and restated in the form attached hereto as Schedule "AA".

Schedule "AA"

Court File No. CV-18-610236-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE MR.

)

THURSDAY, THE 6th

JUSTICE HAINEY

)

DAY OF DECEMBER, 2018

)

**IN THE MATTER OF THE RECEIVERSHIP OF
2423402 ONTARIO INC.**

BANK OF MONTREAL

Applicant

- and -

2423402 ONTARIO INC.

Respondent

**AMENDED & RESTATED ORDER
(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Alvarez & Marsal Canada Inc. ("**A&M**") as receiver (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and properties of 2423402 Ontario Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Eden Orbach sworn December 5, 2018 and the Exhibits thereto (collectively, the "**Affidavit**") and on hearing the submissions of counsel for each of the Applicant, A&M, Cambridge Memorial Hospital ("**CMH**"), Infrastructure Ontario ("**IO**"), Zurich

Insurance Company Ltd. (the “**Surety**”), and the Debtor, and on reading the consent of A&M to act as the Receiver,

SERVICE

3. THIS COURT ORDERS that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

4. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, A&M is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the “**Property**”) for the sole purpose of carrying out the terms of this Order and without taking possession or control of such Property.

RECEIVER’S POWERS

5. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property without taking possession or control of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized, but not obligated, to do any of the following where the Receiver considers it necessary or desirable:

- (a) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (b) with the consent of the Applicant in consultation with CMH and IO, to enter into any agreements for and on behalf of the Debtor or cease to perform, repudiate or disclaim any contracts of the Debtor; and
- (c) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

6. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, (iii) Bondfield Construction Company Limited ("**Bondfield**"), and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, and shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

7. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure. The Receiver is authorized and empowered to access and make, retain and take away copies of the Records of the Debtor located at the offices of Bondfield and Bondfield shall cooperate and shall provide reasonable assistance to the Receiver with respect to such Records and information contained in such Records with respect to the Property, including the Project (as defined in the Affidavit).

8. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give

unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

INTERIM FUNDING PAYMENTS

9. THIS COURT ORDERS that, notwithstanding anything else contained herein, the Receiver is authorized and directed to borrow from the Lenders pursuant to paragraph 24 hereof, hold and pay to the Surety the following amounts (collectively the **"Interim Funding Payments"**):

- (a) \$651,761, which the Receiver is authorized and directed to: (i) borrow from the Lenders pursuant to paragraph 24 hereof following this Order being issued and entered; and (ii) pay to the Surety within 5 business days of receipt of such funds by the Receiver. Such amount shall be deemed to be comprised of i) \$340,301 in respect of Base Progress Payments (as defined in the Construction Contract dated August 28, 2014 between Bondfield and the Debtor (the **"Construction Contract"**)) pursuant to Bondfield billing applications #44 to 55; and ii) \$311,460 in respect of Bondfield billing applications #1 to 43; and
- (b) Each Certified Amount (defined below) up to an aggregate total additional amount of \$1,725,315.24, which the Receiver is authorized and directed to (i) borrow from the Lenders pursuant to paragraph 24 hereof upon receipt of a Consultant Certificate (defined below) setting out the Certified Amount; and (ii) pay to the Surety within 5 business days of receipt of such Certified Amount by the Receiver.

10. THIS COURT ORDERS that each Consultant Certificate:

- (a) Must arise from an application for payment made by Bondfield (or the Surety acting on Bondfield's behalf to the extent it has been so authorized) pursuant to sections 4.4 and 4.5 of the Construction Contract that is delivered to the Lender's Consultant (as defined in the Construction Contract);
- (b) Must be signed by the Lender's Consultant and contain the certifications set out in the form attached hereto as **Schedule "B"** (the "**Consultant Certificate**"); and
- (c) Shall set out the amount certified by the Lender's Consultant (the "**Certified Amount**").

11. THIS COURT ORDERS that the Receiver shall be authorized and entitled to rely on each Consultant Certificate received by it from the Lender's Consultant in borrowing and making payments of any Certified Amount up to an aggregate total amount of \$1,725,315.24 pursuant to paragraph 9(b) hereof without further enquiry (including, without limitation, inquiring as to whether such Consultant Certificate has arisen from an application made by Bondfield or the Surety acting on behalf of Bondfield) and without any liability or responsibility whatsoever for any errors or omissions contained therein.

12. THIS COURT ORDERS that all Interim Funding Payments made by the Receiver to the Surety pursuant to this Order:

- (a) are deemed to be received by the Surety on behalf of Bondfield without any further step or action by the Receiver;
- (b) automatically reduce, by a corresponding amount, (I) the Available Commitment as defined in the Credit Agreement made as of August 28, 2014 as amended, restated, supplemented or otherwise modified from time to time, between the Debtor, each of the financial institutions and other entities from time to time parties thereto and the Administrative Agent; and (II) the amounts payable by the Debtor (i) to Bondfield pursuant to the Construction Contract; and (ii) to the Surety on account of the Balance of the Construction Contract Price under the Contractor Bonds (defined below); and

- (c) are without prejudice to the rights of the Debtor, the Administrative Agent, the Lenders and the Surety with respect to the issues in dispute among them, including the Lenders' position that the Debtor is entitled to set-off pursuant to the Construction Contract.

NO PROCEEDINGS AGAINST THE RECEIVER

13. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a **"Proceeding"**), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

14. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court. Nothing in this Order shall limit or restrict the rights of the Applicant to take action against Bondfield or to enforce any security granted by Bondfield in favour of the Applicant.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, (iv) prevent the registration of a claim for lien; or (v) prevent Cambridge Memorial Hospital from asserting set-off rights against the Debtor arising under the Project Agreement, if any.

NO INTERFERENCE WITH THE RECEIVER

16. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement,

licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtor.

EMPLOYEES

18. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor and not of the Receiver. The Receiver shall not be liable for any employee-related responsibilities or liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA.

LIMITATION ON ENVIRONMENTAL LIABILITIES

19. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in

Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

20. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, and it shall have no obligations or liability (i) under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, the *Construction Act* (Ontario) or any other applicable legislation, or (ii) in respect of any of the Debtor's obligations or Property, including, without limitation, the Construction Agreement attached as Exhibit "F" to the Affidavit or the Project Agreement attached as Exhibit "G" to the Affidavit. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation. Unless further ordered by the Court, the Receiver will not be and shall not be deemed to be, in possession and control of any Property, including, without limitation, for the purposes of the BIA, the *Wage Earner Protection Program Act*, the *Construction Act* (Ontario) or any other applicable legislation.

RECEIVER'S ACCOUNTS

21. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to the benefit of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

23. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its

fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

24. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to: (a) with the consent of the Applicant to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2,577,076.24 consisting of \$200,000 plus \$2,377,076.24 in respect of the Interim Funding Payments (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order; and (b) open one or more new accounts to hold any amounts borrowed pursuant to foregoing paragraph (a). The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the **"Receiver's Borrowings Charge"**) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, construction liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

25. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

26. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule **"A"** hereto (the **"Receiver's Certificates"**) for any amount borrowed by it pursuant to this Order.

27. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

28. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<https://www.alvarezandmarsal.com/CMH>’.

29. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, electronic or facsimile transmission to the Debtor’s creditors or other interested parties and their advisors at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

30. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. THIS COURT ORDERS that nothing in this Order shall:

- (a) prevent the Receiver from acting as a trustee in bankruptcy of the Debtor;

- (b) constitute or be deemed to constitute an exercise of “step-in rights” by the Applicant under Section 7 of the Lender’s Direct Agreement (as such term is defined in the Affidavit); or
- (c) prevent the Applicant from appointing the Receiver as its Appointed Representative (as such term is defined in the Lender’s Direct Agreement) or taking steps pursuant to the Lender’s Direct Agreement.

32. THIS COURT ORDERS that nothing in this Order, including the Interim Funding Payments and related borrowings, shall affect the Debtor’s ability to perform its obligations under the Construction Contract or alter, amend or otherwise affect the liability of the Surety to any Person pursuant to Performance Bond No. 6342957 (the “**Performance Bond**”), Labour and Materials Payment Bond No. 6342957 or Demand Bond No. 6342958 (collectively, the “**Contractor Bonds**”) issued by the Surety.

33. THIS COURT ORDERS that the Receiver shall make a demand under the Performance Bond for and on behalf of the Debtor as soon as reasonably practical and shall be empowered and authorized to execute, issue and endorse any agreements or documentation for and on behalf of the Debtor as the Receiver considers necessary or advisable to facilitate making such demand. The Receiver shall not take or consent to any actions that would compromise recovery under the Contractor Bonds without written consent of the Applicant.

34. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

35. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

36. THIS COURT ORDERS that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid from the Debtor's estate with such priority and at such time as this Court may determine.

37. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$_____

1. THIS IS TO CERTIFY that ALVAREZ & MARSAL CANADA INC., the receiver (in such capacity and not in its personal or corporate capacity, the "**Receiver**") of the assets, undertakings and properties 2423402 ONTARIO INC. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 6th day of December, 2018 (the "**Order**") made in an action having Court file number ____-CL-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [**daily**][**monthly not in advance on the _____ day of each month**] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

ALVAREZ & MARSAL CANADA INC., solely in
its capacity as Receiver of the Property, and not
in its personal or corporate capacity

Per: _____

Name:

Title:

Schedule “B”

Lenders’ Consultant’s Certificate

TO: Bank of Montreal, as administrative agent for and on behalf of the Lenders (the “Administrative Agent”)

AND TO: 2423402 ONTARIO INC. (the “Borrower”)

AND TO: ALVAREZ & MARSAL CANADA INC., in its capacity as court appointed receiver of the Borrower (in such capacity and not in its personal or corporate capacity, the “Receiver”)

RE: Requested Funding in the amount of \$*[Insert Amount]*

Reference is made to the Credit Agreement made as of August 28, 2014 as amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), between the Borrower, each of the financial institutions and other entities from time to time parties hereto (the “**Lenders**”) and the Administrative Agent.

Reference is made to the guaranteed price contract made as of August 28, 2014 (the “**Construction Contract**”), between the Borrower and Bondfield Construction Company Limited (the “**Contractor**”) for the carrying out of the Work. All terms used with initial capital letters but not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement.

Reference is made to the amending and restating receivership order of the Honourable Justice Hainey made July [●], 2019 (the “**Receivership Order**”).

1. We are the Lenders’ Consultant and in such capacity have reviewed the following, each as constituted as of the date hereof:

- (a) an application for payment in respect of a Base Progress Payment from the Contractor dated *[Insert Date]* in the amount of the Requested Funding delivered pursuant to Section 4.4(c) of the Construction Contract, a copy of which is attached hereto;
- (b) the certificate of the Consultant delivered pursuant to Section 4.5(a) of the Construction Contract in connection with the Requested Funding, a copy of which is attached hereto;
- (c) a Workplace Safety & Insurance Board Certificate of Clearance delivered pursuant to Section 4.4(f) of the Construction Contract, a copy of which is attached hereto; and
- (d) a statutory declaration of the Contractor on CCDC Form 9A delivered pursuant to Section 4.4(g) of the Construction Contract, a copy of which is attached hereto.

2. We have made, or caused to be made, such examinations or investigations as are, in our belief, necessary to enable us to make the statements or give the opinions contained or expressed in this Lenders' Consultant's Certificate, in accordance with our responsibilities in such regard pursuant to the provisions of the Construction Contract. We have periodically visited the Project Lands and last visited the Work on *[Insert Date]*.

3. Based upon the foregoing, we certify and confirm that:

- (a) the incurred Construction Costs to date are *[\$Insert Amount]*;
- (b) as of the date hereof, all Consents required in connection with the performance of the Work done to date, have been obtained;
- (c) the Requested Funding in the amount of *[\$Insert Amount]* is equal to ●% of the certified Construction Costs in respect of the Work for this Funding Period and is a "Certified Amount" for the purposes of the Receivership Order;
- (d) the construction Work is not abandoned;
- (e) all Loans made to the Borrower to date have been spent on incurred Construction Costs (less the Legislative Holdback), Borrowing Costs and Transaction Expenses;
- (f) true and complete copies of such bills, receipts and invoices necessary to substantiate the incurrence and payment of the incurred Construction Costs for which the Requested Funding is requested have been reviewed by us and we are satisfied with the same;
- (g) the sum of Fundings made on account of Construction Costs in respect of prior Funding Periods plus the Requested Funding on account of Construction Costs for this Funding Period does not exceed 90% of the total Construction Costs incurred and certified to date; and
- (h) we have received a title search of the Project Lands and confirmation from the Administrative Agent that there exists upon the Project Lands no Liens other than Permitted Liens.

This Lenders' Consultant's Certificate is being delivered to the Administrative Agent pursuant to Section 8.2(7)(c) of the Credit Agreement, and to the Receiver pursuant to the Receivership Order, and may be relied upon by the addressees hereof and their respective successors and assigns.

DATED this • day of • 20•.

PELICAN WOODCLIFF INC.

By:

Name:

Title:

IN THE MATTER OF THE RECEIVERSHIP OF 2423402 ONTARIO INC.

Court File No. CV-18-610236-00CL

BANK OF MONTREAL and 2423402 ONTARIO INC.
Applicant Respondent

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced in Toronto

**ORDER
(Appointing Receiver)**

McCarthy Tétrault LLP

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Toronto Dominion Centre
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Toronto, ON M5K 1E6

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Lawyers for the applicant, Bank of Montreal

TAB 4

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	THURSDAY <u>WEDNESDAY</u> , THE 6 <u>17</u> th
)	
JUSTICE HAINEY)	DAY OF DECEMBER <u>JULY</u> , 2018 <u>2019</u>

IN THE MATTER OF THE RECEIVERSHIP OF
2423402 ONTARIO INC.
BANK OF MONTREAL

Applicant

- and -

2423402 ONTARIO INC.

Respondent

ORDER
(Amending and Restating Receivership Order)

THIS MOTION made by Bank of Montreal, in its capacity as administrative agent (the “Administrative Agent”), for an order amending and restating the December 6, 2018 order (the “Appointment Order”) in which Alvarez & Marsal Canada Inc. was appointed receiver (in such capacity, the “Receiver”) of all of the assets, undertakings and properties of 2423402 Ontario Inc., to, among other things, increase the Receiver’s borrowing charge and authorize and direct the Receiver to make payments as set out therein, was heard this day at 330 University Avenue, Toronto, Ontario.

ON HEARING the submissions of counsel for the Administrative Agent, the Receiver, Zurich Insurance Company Ltd., and such other parties as were present,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

AMENDED & RESTATED ORDER

2. THIS COURT ORDERS AND DECLARES that the Appointment Order is hereby amended and restated in the form attached hereto as Schedule "AA".

Schedule “AA”

Court File No. CV-18-610236-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

<u>THE HONOURABLE MR.</u>)	<u>THURSDAY, THE 6th</u>
)	
<u>JUSTICE HAINEY</u>)	<u>DAY OF DECEMBER, 2018</u>

IN THE MATTER OF THE RECEIVERSHIP OF
2423402 ONTARIO INC.

BANK OF MONTREAL

Applicant

- and -

2423402 ONTARIO INC.

Respondent

AMENDED & RESTATED ORDER
(Appointing Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as receiver (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of 2423402 Ontario Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Eden Orbach sworn December 5, 2018 and the Exhibits thereto (collectively, the “**Affidavit**”) and on hearing the submissions of counsel for each of the Applicant, A&M, Cambridge Memorial Hospital (“**CMH**”), Infrastructure Ontario (“**IO**”), Zurich

Insurance Company Ltd. (the “**Surety**”), and the Debtor, and on reading the consent of A&M to act as the Receiver,

SERVICE

3. ~~1.~~ THIS COURT ORDERS that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

4. ~~2.~~ THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, A&M is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the “**Property**”) for the sole purpose of carrying out the terms of this Order and without taking possession or control of such Property.

RECEIVER’S POWERS

5. ~~3.~~ THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property without taking possession or control of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized, but not obligated, to do any of the following where the Receiver considers it necessary or desirable:

- (a) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (b) with the consent of the Applicant in consultation with CMH and IO, to enter into any agreements for and on behalf of the Debtor or cease to perform, repudiate or disclaim any contracts of the Debtor; and
- (c) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

6. ~~4.~~ THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, (iii) Bondfield Construction Company Limited ("**Bondfield**"), and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, and shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

7. ~~5.~~ THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure. The Receiver is authorized and empowered to access and make, retain and take away copies of the Records of the Debtor located at the offices of Bondfield and Bondfield shall cooperate and shall provide reasonable assistance to the Receiver with respect to such Records and information contained in such Records with respect to the Property, including the Project (as defined in the Affidavit).

8. ~~6.~~ THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service

provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

INTERIM FUNDING PAYMENTS

9. THIS COURT ORDERS that, notwithstanding anything else contained herein, the Receiver is authorized and directed to borrow from the Lenders pursuant to paragraph 24 hereof, hold and pay to the Surety the following amounts (collectively the “Interim Funding Payments”):

- (a) \$651,761, which the Receiver is authorized and directed to: (i) borrow from the Lenders pursuant to paragraph 24 hereof following this Order being issued and entered; and (ii) pay to the Surety within 5 business days of receipt of such funds by the Receiver. Such amount shall be deemed to be comprised of i) \$340,301 in respect of Base Progress Payments (as defined in the Construction Contract dated August 28, 2014 between Bondfield and the Debtor (the “Construction Contract”)) pursuant to Bondfield billing applications #44 to 55; and ii) \$311,460 in respect of Bondfield billing applications #1 to 43; and
- (b) Each Certified Amount (defined below) up to an aggregate total additional amount of \$1,725,315.24, which the Receiver is authorized and directed to (i) borrow from the Lenders pursuant to paragraph 24 hereof upon receipt of a Consultant Certificate (defined below) setting out the Certified Amount; and (ii) pay to the Surety within 5 business days of receipt of such Certified Amount by the Receiver.

10. THIS COURT ORDERS that each Consultant Certificate:

- (a) Must arise from an application for payment made by Bondfield (or the Surety acting on Bondfield's behalf to the extent it has been so authorized) pursuant to sections 4.4 and 4.5 of the Construction Contract that is delivered to the Lender's Consultant (as defined in the Construction Contract);
- (b) Must be signed by the Lender's Consultant and contain the certifications set out in the form attached hereto as **Schedule "B"** (the "**Consultant Certificate**"); and
- (c) Shall set out the amount certified by the Lender's Consultant (the "**Certified Amount**").

11. THIS COURT ORDERS that the Receiver shall be authorized and entitled to rely on each Consultant Certificate received by it from the Lender's Consultant in borrowing and making payments of any Certified Amount up to an aggregate total amount of \$1,725,315.24 pursuant to paragraph 9(b) hereof without further enquiry (including, without limitation, inquiring as to whether such Consultant Certificate has arisen from an application made by Bondfield or the Surety acting on behalf of Bondfield) and without any liability or responsibility whatsoever for any errors or omissions contained therein.

12. THIS COURT ORDERS that all Interim Funding Payments made by the Receiver to the Surety pursuant to this Order:

- (a) are deemed to be received by the Surety on behalf of Bondfield without any further step or action by the Receiver;
- (b) automatically reduce, by a corresponding amount, (I) the Available Commitment as defined in the Credit Agreement made as of August 28, 2014 as amended, restated, supplemented or otherwise modified from time to time, between the Debtor, each of the financial institutions and other entities from time to time parties thereto and the Administrative Agent; and (II) the amounts payable by the Debtor (i) to Bondfield pursuant to the Construction Contract; and (ii) to the Surety on account of

the Balance of the Construction Contract Price under the Contractor Bonds (defined below); and

(c) are without prejudice to the rights of the Debtor, the Administrative Agent, the Lenders and the Surety with respect to the issues in dispute among them, including the Lenders' position that the Debtor is entitled to set-off pursuant to the Construction Contract.

NO PROCEEDINGS AGAINST THE RECEIVER

13. ~~7.~~ THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

14. ~~8.~~ THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court. Nothing in this Order shall limit or restrict the rights of the Applicant to take action against Bondfield or to enforce any security granted by Bondfield in favour of the Applicant.

NO EXERCISE OF RIGHTS OR REMEDIES

15. ~~9.~~ THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, (iv) prevent the registration of a claim for lien; or (v) prevent Cambridge Memorial Hospital from asserting set-off rights against the Debtor arising under the Project Agreement, if any.

NO INTERFERENCE WITH THE RECEIVER

16. ~~10.~~ THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

17. ~~11.~~ THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtor.

EMPLOYEES

18. ~~12.~~ THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor and not of the Receiver. The Receiver shall not be liable for any employee-related responsibilities or liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA.

LIMITATION ON ENVIRONMENTAL LIABILITIES

19. ~~13.~~ THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall

exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

20. ~~14.~~ THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, and it shall have no obligations or liability (i) under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, the *Construction Act* (Ontario) or any other applicable legislation, or (ii) in respect of any of the Debtor's obligations or Property, including, without limitation, the Construction Agreement attached as Exhibit "F" to the Affidavit or the Project Agreement attached as Exhibit "G" to the Affidavit. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation. Unless further ordered by the Court, the Receiver will not be and shall not be deemed to be, in possession and control of any Property, including, without limitation, for the purposes of the BIA, the *Wage Earner Protection Program Act*, the *Construction Act* (Ontario) or any other applicable legislation.

RECEIVER'S ACCOUNTS

21. ~~15.~~ THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to the benefit of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. ~~16.~~ THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal

counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

23. ~~17.~~ THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

24. ~~18.~~ THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to: (a) with the consent of the Applicant to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$~~200,000~~2,577,076.24 consisting of \$200,000 plus \$2,377,076.24 in respect of the Interim Funding Payments (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order; and (b) open one or more new accounts to hold any amounts borrowed pursuant to foregoing paragraph (a). The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the **“Receiver’s Borrowings Charge”**) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, construction liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

25. ~~19.~~ THIS COURT ORDERS that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

26. ~~20.~~ THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule **“A”** hereto (the **“Receiver’s Certificates”**) for any amount borrowed by it pursuant to this Order.

27. ~~21.~~ THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

28. ~~22.~~ THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL 'https://www.alvarezandmarsal.com/CMH'.

29. ~~23.~~ THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, electronic or facsimile transmission to the Debtor's creditors or other interested parties and their advisors at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

30. ~~24.~~ THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. ~~25.~~ THIS COURT ORDERS that nothing in this Order shall:

- (a) prevent the Receiver from acting as a trustee in bankruptcy of the Debtor;
- (b) constitute or be deemed to constitute an exercise of “step-in rights” by the Applicant under Section 7 of the Lender’s Direct Agreement (as such term is defined in the Affidavit); or
- (c) prevent the Applicant from appointing the Receiver as its Appointed Representative (as such term is defined in the Lender’s Direct Agreement) or taking steps pursuant to the Lender’s Direct Agreement.

32. ~~26.~~ THIS COURT ORDERS that nothing in this Order, including the Interim Funding Payments and related borrowings, shall affect the Debtor’s ability to perform its obligations under the Construction Contract or alter, amend or otherwise affect the liability of the Surety to any Person pursuant to Performance Bond No. 6342957 (the “**Performance Bond**”), Labour and Materials Payment Bond No. 6342957 or Demand Bond No. 6342958 (collectively, the “**Contractor Bonds**”) issued by the Surety.

33. ~~27.~~ THIS COURT ORDERS that the Receiver shall make a demand under the Performance Bond for and on behalf of the Debtor as soon as reasonably practical and shall be empowered and authorized to execute, issue and endorse any agreements or documentation for and on behalf of the Debtor as the Receiver considers necessary or advisable to facilitate making such demand. The Receiver shall not take or consent to any actions that would compromise recovery under the Contractor Bonds without written consent of the Applicant.

34. ~~28.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

35. ~~29.~~ THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located,

for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

36. ~~30.~~ THIS COURT ORDERS that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid from the Debtor's estate with such priority and at such time as this Court may determine.

37. ~~31.~~ THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$_____

1. THIS IS TO CERTIFY that ALVAREZ & MARSAL CANADA INC., the receiver (in such capacity and not in its personal or corporate capacity, the "**Receiver**") of the assets, undertakings and properties 2423402 ONTARIO INC. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 6th day of December, 2018 (the "**Order**") made in an action having Court file number ____-CL-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [**daily**][**monthly not in advance on the _____ day of each month**] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

ALVAREZ & MARSAL CANADA INC., solely in
its capacity as Receiver of the Property, and not
in its personal or corporate capacity

Per: _____

Name:

Title:

Schedule "B"

Lenders' Consultant's Certificate

TO: Bank of Montreal, as administrative agent for and on behalf of the Lenders (the "Administrative Agent")

AND TO: 2423402 ONTARIO INC. (the "Borrower")

AND TO: ALVAREZ & MARSAL CANADA INC., in its capacity as court appointed receiver of the Borrower (in such capacity and not in its personal or corporate capacity, the "Receiver")

RE: Requested Funding in the amount of \$/Insert Amount/

Reference is made to the Credit Agreement made as of August 28, 2014 as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement", between the Borrower, each of the financial institutions and other entities from time to time parties hereto (the "Lenders") and the Administrative Agent.

Reference is made to the guaranteed price contract made as of August 28, 2014 (the "Construction Contract"), between the Borrower and Bondfield Construction Company Limited (the "Contractor") for the carrying out of the Work. All terms used with initial capital letters but not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement.

Reference is made to the amending and restating receivership order of the Honourable Justice Hainey made July [●], 2019 (the "Receivership Order").

1. We are the Lenders' Consultant and in such capacity have reviewed the following, each as constituted as of the date hereof:

- (a) an application for payment in respect of a Base Progress Payment from the Contractor dated /Insert Date/ in the amount of the Requested Funding delivered pursuant to Section 4.4(c) of the Construction Contract, a copy of which is attached hereto;
- (b) the certificate of the Consultant delivered pursuant to Section 4.5(a) of the Construction Contract in connection with the Requested Funding, a copy of which is attached hereto;
- (c) a Workplace Safety & Insurance Board Certificate of Clearance delivered pursuant to Section 4.4(f) of the Construction Contract, a copy of which is attached hereto; and
- (d) a statutory declaration of the Contractor on CCDC Form 9A delivered pursuant to Section 4.4(g) of the Construction Contract, a copy of which is attached hereto.

2. We have made, or caused to be made, such examinations or investigations as are, in our belief, necessary to enable us to make the statements or give the opinions contained or expressed in this Lenders' Consultant's Certificate, in accordance with our responsibilities in such regard pursuant to the provisions of the Construction Contract. We have periodically visited the Project Lands and last visited the Work on *[Insert Date]*.

3. Based upon the foregoing, we certify and confirm that:

- (a) the incurred Construction Costs to date are *\$/[Insert Amount]*;
- (b) as of the date hereof, all Consents required in connection with the performance of the Work done to date, have been obtained;
- (c) the Requested Funding in the amount of *\$/[Insert Amount]* is equal to •% of the certified Construction Costs in respect of the Work for this Funding Period and is a "Certified Amount" for the purposes of the Receivership Order;
- (d) the construction Work is not abandoned;
- (e) all Loans made to the Borrower to date have been spent on incurred Construction Costs (less the Legislative Holdback), Borrowing Costs and Transaction Expenses;
- (f) true and complete copies of such bills, receipts and invoices necessary to substantiate the incurrence and payment of the incurred Construction Costs for which the Requested Funding is requested have been reviewed by us and we are satisfied with the same;
- (g) the sum of Fundings made on account of Construction Costs in respect of prior Funding Periods plus the Requested Funding on account of Construction Costs for this Funding Period does not exceed 90% of the total Construction Costs incurred and certified to date; and
- (h) we have received a title search of the Project Lands and confirmation from the Administrative Agent that there exists upon the Project Lands no Liens other than Permitted Liens.

This Lenders' Consultant's Certificate is being delivered to the Administrative Agent pursuant to Section 8.2(7)(c) of the Credit Agreement, and to the Receiver pursuant to the Receivership Order, and may be relied upon by the addressees hereof and their respective successors and assigns.

DATED this • day of • 20•.

PELICAN WOODCLIFF INC.

By:

Name:

Title:

IN THE MATTER OF THE RECEIVERSHIP OF 2423402 ONTARIO INC.

Court File No. CV-18-610236-00CL

BANK OF MONTREAL and 2423402 ONTARIO INC.
Applicant Respondent

	<div>Ontario SUPERIOR COURT OF JUSTICE COMMERCIAL LIST Proceedings commenced in Toronto</div>
	<div>ORDER (Appointing Receiver)</div>
	<div>McCarthy Tétrault LLP Suite 5300, TD Bank Tower Toronto Dominion Centre 66 Wellington Street West Toronto, ON M5K 1E6</div>
	<div>Heather L. Meredith LSUC#48354R Tel: 416-601-8342 Fax: 416- 868-0673 Email: hmeredith@mccarthy.ca</div> <div>Geoff R. Hall LSUC#347010 Tel: 416-601-7856 Fax: 416-868-0673 Email: ghall@mccarthy.ca</div> <div>Trevor Courtis LSUC#67715A Tel: 416-601-7643 Fax: 416-868-0673 Email: tcourtis@mccarthy.ca Lawyers for the applicant, Bank of Montreal</div>

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Description	DOCS-#19390624-v3-Amended_Receivership_Order
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<u>Insertion</u>	
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count

Insertions	146
Deletions	42
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	188

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD
(Amended and Restated
Receivership Order)
(Returnable July 17, 2019)**

McCarthy Tétrault LLP

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Lawyers for Bank of Montreal

DOCS 19394789