

SEP 14 2020



No. **S-209201**  
Vancouver Registry

In the Supreme Court of British Columbia

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

AND

IN THE MATTER OF MOUNTAIN EQUIPMENT CO-OPERATIVE AND 1314625 ONTARIO  
LIMITED

Petitioners

**PETITION TO THE COURT**

**ON NOTICE TO:**

Those parties set out in **Schedule "A"** attached hereto.

**This proceeding is brought for the relief set out in Part 1 below, by the Petitioners.**

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioners
  - (i) 2 copies of the filed response to petition, and
  - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

**Time for response to petition**

A response to petition must be filed and served on the petitioners,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

- (c) if you were served with the petition anywhere else, within 49 days after that service, or, and
- (d) if the time for response has been set by order of the court, within that time.

(1)	<p>The address of the registry is:  The Law Courts  800 Smithe Street  Vancouver, British Columbia  V6Z 2E1</p>
(2)	<p>The ADDRESS FOR SERVICE of the petitioners is:  Norton Rose Fulbright Canada LLP  1800 – 510 West Georgia Street  Vancouver, British Columbia  V6B 0M3</p> <p>Fax number address for service (if any) of the petitioners: N/A</p> <p>E-mail address for service (if any) of the petitioners:  <a href="mailto:howard.gorman@nortonrosefulbright.com">howard.gorman@nortonrosefulbright.com</a>  <a href="mailto:scott.boucher@nortonrosefulbright.com">scott.boucher@nortonrosefulbright.com</a></p>
(3)	<p>The name and office address of the petitioners' lawyer is:  Norton Rose Fulbright Canada LLP  1800 – 510 West Georgia Street  Vancouver, British Columbia  V6B 0M3  Attention: Howard A. Gorman, Q.C.</p>

#### Claim of the Petitioners

#### Part 1: ORDERS SOUGHT

1. The Petitioners, Mountain Equipment Co-operative ("**MEC**") and 1314625 Ontario Limited ("**131 Limited**", together with MEC, the "**Petitioners**") seek an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), on the terms substantially as set out in the draft Initial Order attached hereto as **Schedule "B"**, and which shall grant certain relief including, *inter alia*:
  - (a) abridging the time for service of this Petition and the Petition Record and dispensing with further service thereof other than in accordance with the Initial Order;
  - (b) declaring that the Petitioners are entities to which the CCAA applies;
  - (c) staying all proceedings and remedies taken or that might be taken in respect of the Petitioners or any of their property, except as set forth in the Initial Order or

as otherwise permitted by law, for 10 days (as may be extended by the Court thereafter);

- (d) authorizing the Petitioners to carry on business in a manner consistent with the preservation of its property and business;
  - (e) appointing Alvarez & Marsal Canada Inc. as the monitor of the Petitioners ("**A&M**" or the "**Proposed Monitor**") under section 11.7 of the CCAA;
  - (f) approving certain priority charges with respect to activities occurring in the first 10 days following pronouncement of the Initial Order, including the Administration Charge, Interim Financing Charge (subject to limited draws as necessary for the first 10 days following the Initial Order), and D&O Charge, as defined below;
  - (g) authorizing payment of the reasonable fees and disbursements of the Proposed Monitor, the Proposed Monitor's legal counsel, and the Petitioners' counsel;
  - (h) scheduling a comeback hearing (the "**Comeback Hearing**") for September 24, 2020, at a time to be set by this Honourable Court; and
  - (i) such further and other relief as the Petitioners may request and this Honourable Court may deem just.
2. The Petitioners also seek a sealing order, substantially in the form attached as **Schedule "C"**, sealing and maintaining the confidentiality of certain information.

## **Part 2: FACTUAL BASIS**

### **BACKGROUND AND OVERVIEW**

1. MEC is a cooperative association incorporated by or under an act of the legislature of British Columbia being the *Cooperative Association Act*, S.B.C. 1999, c 28 (the "**Cooperative Association Act**"), formed in 1971.
2. MEC is a member owned and directed retail consumer co-operative, specializing in outdoor activity equipment and clothing. Its head office is located at 1077 Great Northern Way, Vancouver, B.C. (the "**Head Office**"). It currently operates online and in 22 retail locations across Canada in B.C., Alberta, Manitoba, Ontario, Quebec, and Nova Scotia.
3. 131 Limited is a company incorporated pursuant to the laws of Ontario. MEC is the sole shareholder of 131 Limited, which operates as a holding company that owns the parcel of land that comprises the parking lot at the site of MEC Store 14002 located at 366 Richmond Road, Ottawa, ON (the "**Ottawa Store**"). MEC owns the other two parcels of land that comprise that property.

### **Corporate Organization**

4. In addition to 131 Limited, MEC owns shares or has an ownership interest in the following entities:

- (a) 50% of the shares of Park Towns Developments GP Inc.; and
  - (b) 49.5% interest in Park Towns Developments Limited Partnership.
5. Park Towns Developments Limited Partnership was formed to build a residential townhouse project behind the MEC store in North York, Ontario. At this time, what remains of that project is the sale of some final parking spots at the development and final close-out. MEC is expected to receive some *de minimis* funds through its interest in the Park Towns partnership when the townhouse development closes.

### **Cooperative Organization**

6. MEC currently has approximately 5,700,000 members each who have paid a \$5 membership fee for rights to shop at MEC and participate in governance as a cooperative member.
7. MEC is a member owned and directed retail consumer co-operative, specializing in outdoor activity equipment and clothing. MEC supports an active outdoor lifestyle with a broad product offering across a variety of sports and activities, including hiking, climbing, cycling, running, snow and watersports, camping and travel.
8. In 2019 and 2020, MEC was named one of Canada's most trusted brands by Gustavson Brand Trust Index. In 2018, 2019 and 2020, MEC was also named as one of B.C.'s top 100 employers by MediaCorp.
9. MEC has a history of community involvement, including its "MEC All Out" program focused on connecting people to their community, free or low-cost workshops at MEC locations, and MEC races, bike meet-ups, festivals, gear swaps and club nights. MEC has also contributed approximately \$44 million since 1987 to organizations focused on conservation and outdoor recreation.
10. MEC is a key Canadian retail partner with global outdoor brands including Patagonia, The North Face, Arc'teryx, Salomon, Cannondale, Birkenstock, Black Diamond, Garmin, Osprey, Shimano, Blundstone and many more.
11. Further, MEC's private label has a history of being trusted by members for its premium quality, competitive price point and sustainability. MEC's private label includes 80 Fair Trade Certified products, the most of any Canadian retailer.

### **Assets and Operations**

12. As noted above, MEC operates as an outdoor equipment and clothing retail co-operative that sells products exclusively to its members. A lifetime membership in MEC is available to anyone for the price of \$5.
13. It currently operates online and in 22 retail locations across Canada. In total it has five stores in B.C., four in Alberta, one in Manitoba, seven in Ontario, four in Quebec and one in Nova Scotia.

14. MEC has entered into lease agreements for most of its retail stores across Canada (the "**Leases**"). The Leases are for stores located at the following locations:
- (a) Store No. 10001 - 111 East 2nd Ave, Vancouver, B.C. (the "**East 2<sup>nd</sup> Ave Store**");
  - (b) Store No. 10003 - 1450 Government St, Victoria, B.C. (the "**Victoria Store**");
  - (c) Store No. 10004 - 6121 200 St #1, Langley City, B.C. the "**Langley Store**";
  - (d) Store No. 10006 - 1876 Cooper Rd #100, Kelowna, B.C. (the "**Kelowna Store**");
  - (e) Store 11002 - 11904 104th Ave NW, Edmonton, AB (the "**Edmonton Brewery Store**");
  - (f) Store 11003 - 1624 99 Street NW, Edmonton, AB (the "**South Edmonton Store**");
  - (g) Store 11004 - 710-19587 Seton Crescent SE, Calgary, AB (the "**Calgary South Store**");
  - (h) Store 11005 - 460 Na'a CM SW, Calgary, AB (the "**Calgary North West Store**");
  - (i) Store 12001 – 201 1 Avenue S, Saskatoon, SK (the "**Saskatoon Store**");
  - (j) Store 14001 - 300 Queen St West, Toronto, ON (the "**Toronto Store**");
  - (k) Store 14004 - 61 Bryne Drive, Barrie, ON (the "**Barrie Store**");
  - (l) Store 14005 - 1051 Wellington Road, London, ON (the "**London Store**");
  - (m) Store 14007 - 10 Manitou Drive, Kitchener, ON (the "**Kitchener Store**");
  - (n) Store 15001 - 8989 de l'Acadie Boulevard, Montréal, QC (the "**Montreal Store**");
  - (o) Store 15002 - 1475 Boulevard Lebourgneuf, Québec City, QC (the "**Quebec City Store**");
  - (p) Store 15003 - 4869 Taschereau Boulevard, Greenfield Park, QC (the "**Longueuil Store**");
  - (q) Store 15005 - 2615 Boulevard Daniel-Johnson, Laval, QC (the "**Laval Store**");  
and
  - (r) Store 16001 - 1550 Granville Street, Halifax, N.S. (the "**Halifax Store**").
15. MEC also has leases for the following properties:
- (a) its Eastern Distribution Centre located at 8875 Torbram Road, Brampton, ON (the "**Eastern Distribution Centre**");

- (b) the Head Office, in Vancouver, B.C.; and
  - (c) Store 15004 - Rue Saint-Denis, Montréal, QC (the "**Saint-Denis Store**"), which has permanently closed.
16. In addition to the permanently closed Saint-Denis Store, the Saskatoon Store and the Calgary North West Store have not yet opened.
  17. The profitability across the above listed stores varies considerably. In particular, the terms of the respective Leases for some of these locations have a significant impact on the profitability of these stores.
  18. As of September 4, 2020, and primarily due to the Covid-19 pandemic, there was approximately \$4.6 million in rent deferrals or arrears in respect of the Leases, and MEC has agreed to rent deferral plans with some of its various landlords to repay these arrears by late 2021. Further, MEC has significant past due amounts owed to merchandise suppliers and other vendors.
  19. MEC also owns the real property at some stores and other locations as follows:
    - (a) Store 10002 - 212 Brooksbank Avenue, North Vancouver, B.C. (the "**North Vancouver Store**");
    - (b) Western Distribution Centre located at 13340 76<sup>th</sup> Avenue, Surrey, B.C. (the "**Western Distribution Centre**");
    - (c) Store 11001 - 830 10<sup>th</sup> Avenue SW, Calgary, AB (the "**10<sup>th</sup> Avenue Store**");
    - (d) Store 13001 - 303 Portage Avenue, Winnipeg, MB (the "**Winnipeg Store**");
    - (e) Store 14003 - 1030 Brant Street, Burlington, ON (the "**Burlington Store**");
    - (f) Store 14006 - 784 Sheppard Avenue E, North York, ON (the "**North York Store**"); and
    - (g) the Ottawa Store.
  20. As noted above, 131 Limited owns the parcel of land on which the parking lot for the Ottawa Store is located and MEC owns the two parcels of land for the Ottawa Store itself.

### **Employees and Senior Management**

21. 131 Limited has no employees. The directors of 131 Limited are Philippe Arrata and Joanna Ban.
22. As of September 7, 2020, MEC has approximately 1516 employees, consisting of:
  - (a) 1143 active employees;

- (b) 176 employees who have been laid off;
  - (c) 118 employees on the Canada Emergency Wage Subsidy program; and
  - (d) 79 employees on unpaid "protected" leave.
23. As of September 10, 2020, MEC's senior management consists of:
- (a) Philippe Arrata, as Chief Executive Officer;
  - (b) Joanna Ban, as Chief Financial Officer;
  - (c) Nancy Blair, as Chief Transformation Officer;
  - (d) Catherine Lau, as General Counsel;
  - (e) Deb Paulsen, as Chief Human Resources Officer;
  - (f) Nicole Watt, as Chief Retail Operations Officer; and
  - (g) Charmaine Claasens, as Chief Marketing Officer,
- (collectively, the "**Management**").
24. MEC has eight directors on its Board, consisting of Judith Lynn Richardson (Chair), Matthew Robert Handford, Roderic Jardine Macdonald, Ellen Gail Pekeles, Alison Kay Simpson, Kathy Lynne Uher, Robert Brian Wallis, and Kathryn Lee Weston. Graham Allen and Judy Martin were also selected to participate in MEC's governance as members-at-large after an interview process conducted by the Board and MEC's governance office.
25. MEC has a number of committees comprised of members of its Board and the Management, consisting of the following:
- (a) the finance and audit committee, comprising Mr. Wallis, Mr. Handford, Ms. Simpson and Ms. Weston;
  - (b) the human resources and compensation committee, comprised of Ms. Weston, Mr. Handford, Ms. Pekeles and Ms. Uher;
  - (c) the governance committee, comprised of Mr. Macdonald, Ms. Pekeles, Mr. Wallis and Ms. Uher;
  - (d) the nomination committee, comprised of Mr. Handford, Ms. Pekeles, Ms. Simpson, Mr. Allen and Ms. Martin; and
  - (e) a special committee, comprised of Mr. Wallis, Ms. Richardson and Mr. Handford (the "**Special Committee**"), which was established to make recommendations to the MEC Board on strategic alternatives, including: transactions with a view to sell all or substantially all or any portion of MEC's assets (or a merger,

amalgamation or some other strategic alliance involving MEC); pursuit of organic growth; recapitalization, restructuring or reorganization; or any other strategic alternative in the best interests of MEC.

26. The Boards and the Management have been and remain engaged in the initiatives and actions set out herein. It is contemplated that many of the Petitioners' directors will continue in their roles during the CCAA proceeding, if the Petitioners' application is granted.
27. Directors to MEC's Board are elected by the members for three year terms and ordinarily MEC's Board is comprised of nine directors.
28. On June 1, 2020, as permitted by the Registrar in British Columbia for all cooperative associations, MEC announced that its AGM (originally scheduled for June 23, 2020) would be postponed by up to six months due to the impact of COVID-19 and to allow MEC to focus on acute, urgent and time sensitive challenges impacting MEC's business. The AGM is now currently scheduled to be held on December 10, 2020.
29. The Petitioners have arranged and funded standard director and officer liability insurance.

#### **Recent Market Circumstances**

30. Since 2015, MEC embarked on a significant growth plan, highlighted by six new stores (the Kelowna Store, the South Edmonton Store, the South Calgary Store, the North York Store, the Kitchener Store and the Laval Store) and two new relocated stores in Vancouver and Toronto, a new head office, new Eastern distribution centre as well as significant investments in online retail resources such as the back-end enterprise resource planning (ERP) system. There have also been two additional new store commitments (Calgary North West and Saskatoon) which have yet to be opened.
31. This growth plan was successful from a market expansion and sales perspective (top line growth of over \$98 million or 27%), but it also resulted in a higher fixed cost structure and increased debt levels.
32. These dynamics resulted in a challenging fiscal 2019 underscored by a reduction in year-over-year EBITDA from the inflated cost structure and certain under-performing stores and continued liquidity tightness due to capex investment and excess merchandise purchases.
33. As a result, the MEC Board brought in a new management team to spearhead a transformation and focus on cost reduction and a return to profitability. This pre-Covid-19 transformation plan included focusing on the member experience, improving merchandise assortment, reducing annual costs through efficiencies in technology spend, supply chain improvements and operations. In addition, efforts were initiated to find a subtenant for the Head Office with the goal of moving to a more appropriate space for MEC's needs.

34. During the Covid-19 period of March to September 2020, while there was a considerable increase in online sales in that period (increasing by 86% compared to last year), MEC experienced a reduction in sales of \$90 million compared to last year, and all MEC stores were closed as of March 18, 2020.
35. While MEC has re-opened many of its stores, five remain closed as a result of Covid-19. The stores that have re-opened are operating at a reduced sales volume.

## ASSETS AND LIABILITIES

### Recent Financial Statements

36. MEC's 2019 and 2020 Financial Statements are attached as **Exhibit "E"** to Affidavit #1 of Philippe Arrata, sworn 13/Sep/2020 (the "**First Arrata Affidavit**").

### Net Losses

37. MEC's total normalized losses since 2015 were approximately \$80 million. In 2017 and 2018, real estate sale transactions shored up MEC's finances and generated approximately \$49 million in capital gains. The net earnings and losses from 2017 to 2020 reflected capital gains from these transactions (\$4,413,000, \$26,696,000, \$15,546,000 and \$1,867,000 respectively) offsetting MEC's operating losses.
38. In the last five years, MEC's reported net earnings or losses can be summarized as follows:

Fiscal Year	Net Earnings or Operating Loss (in thousands)
December 2014 to December 2015	53
December 2015 to February 2017	(4,652) Normalized (9,065)
February 2017 to February 2018	11,745 Normalized (14,951)
February 2018 to February 2019	(15,893) Normalized (31,439)
February 2019 to February 2020	(22,668) Normalized (24,535)

### Assets

39. The Petitioners' assets consist primarily of owned and leased real property, equipment, inventory, accounts receivable, and intangible assets including certain trademarks on

trade names, membership lists and goodwill. As at February 23, 2020, the Petitioners recorded a book value of \$388,994,000 in current and long-term assets, which included:

- (a) \$114,124,000 in current assets, mainly comprised of inventory, accounts receivable, and prepaids and deposits;
- (b) \$262,306,000 in property and equipment; and
- (c) \$12,564,000 in intangible assets.

### **Liabilities**

- 40. The Petitioners' liabilities are comprised primarily of amounts owed to suppliers, governments and employees, the Credit Facility (defined below), capital lease obligations and deferred lease liabilities, and gift cards and provision for sales returns.
- 41. The Petitioners' current and long-term liabilities, as reported in its February 2020 Financial Statements, totalled \$229,568,000. This amount consists of:
  - (a) \$156,205,000 in current liabilities, including \$55,001,000 for amounts owing to suppliers, governments and employees, \$81,055,000 under the Credit Facility, and \$15,221,000 in relation to gift cards and sales returns; and
  - (b) \$73,363,000 in long-term liabilities, including \$35,556,000 in relation to capital lease obligations, and \$37,419,000 for deferred lease liabilities.
- 42. The Petitioners' financial obligations are discussed in further detail below. Capitalized terms not otherwise defined take their meaning from those financial agreements.

### The Credit Facility

- 43. On August 3, 2017, MEC, as borrower, and 131 Limited, as guarantor, entered into a credit agreement (the "**Credit Agreement**") with Royal Bank of Canada ("**RBC**"), as agent (RBC in such capacity, the "**Agent**"), lead arranger and sole bookrunner and RBC, Canadian Imperial Bank of Commerce ("**CIBC**") and the Toronto-Dominion Bank ("**TD**" with RBC and CIBC, the "**Lenders**") as Lenders for a senior secured asset-based revolving credit facility (the "**Credit Facility**").
- 44. The Credit Facility allowed MEC to borrow up to a maximum of \$130,000,000 with an additional \$20,000,000 accordion, and had a maturity date of August 3, 2020. The Credit Facility availability is determined by the borrowing base, being eligible inventory, credit card receivables, and a real estate component, less inventory reserves and relevant liabilities, and is reduced by committed loans drawn on the facility.
- 45. The Credit Agreement was amended by an amending agreement dated January 31, 2020 (the "**Amended Credit Agreement**"), which amended certain terms of the Credit Agreement.

46. The Amended Credit Agreement was further amended by an amending and waiver agreement dated June 18, 2020 (the “**Second Amended Credit Agreement**”), which amended certain terms of the Amended Credit Agreement and the Credit Agreement.
47. As noted above, the term of the Credit Agreement, as amended by the Amended Credit Agreement and the Second Amended Credit Agreement, was set to expire on August 3, 2020.
48. Accordingly, the Second Amended Credit Agreement was further amended by a third amending and waiver agreement on July 31, 2020 (the “**Third Amended Credit Agreement**”, which is collectively referred to herein with the Credit Agreement, the Amended Credit Agreement, and the Second Amended Credit Agreement, as the “**Updated Credit Agreement**”), which, among other things, extended the maturity date of the Credit Facility to September 30, 2020, reduced the borrowing limit under the facility from \$130 million to \$110 million, and removed the \$20 million accordion.
49. As of September 11, 2020, approximately \$74 million has been borrowed under the Credit Facility, leaving approximately \$19 million available under the borrowing base.
50. MEC is unable to repay the Credit Facility by the maturity date of September 30, 2020.
51. Security for MEC’s obligations under the Updated Credit Agreement include a first priority general security interest over all present and after-acquired personal property, and mortgages on eligible real property (the “**Lenders’ Security**”).
52. Pursuant to the terms of the Credit Agreement, as continued to the Updated Credit Agreement, 131 Limited provided a guarantee of MEC’s obligations in respect of the Credit Facility in favour of the Lenders (the “**Guarantee**”).
53. The Lenders have confirmed their support for the filing of this CCAA proceeding and the relief sought herein, and as discussed further below, have agreed to provide interim financing to the Petitioners to allow them to maintain operations and complete the restructuring. The Lenders’ support is premised on the Petitioners seeking approval of the restructuring transaction described herein, and that transaction being sufficient to see the Lenders paid in full.

#### Other Liabilities/Security

54. The Petitioners have other secured creditors with security registrations (mainly relating to equipment such as printers and computers, as well as several vehicles) in various personal property registries across the country.
55. Further, MEC owes amounts to trade creditors, suppliers, landlords and other creditors.

#### **Membership Holdings**

56. The authorized capital of MEC is an unlimited number of shares with a par value of \$5.00 per share. Each new member is required to purchase one share for cash. Each

year in which they make purchases at MEC, and in which MEC declares a patronage return, their portion of the return is applied to purchase patronage shares on their behalf in proportion to the amount spent by them in purchasing goods or services from MEC, so that their overall share balance will grow.

57. Patronage returns have historically been an element of MEC's business model. As permitted by the *Cooperative Association Act* and MEC's consolidated Memorandum & Rules (the "**Rules**"), the MEC Board may allocate some or all of MEC's annual surplus to its membership, in proportion to each member's purchases during the year. The Rules require that this return be converted into additional shares or patronage shares at MEC.
58. Since this portion has been credited to members, MEC is not subject to income taxes on the amount of the patronage return.
59. Members have also benefited from share redemptions. The Rules allow the MEC Board to decide to redeem all or part of any member's patronage share balance, and pay this amount in money or any other form. Members may also apply to have all of their shares but one bought back. Otherwise, the shares cannot be sold or traded.
60. As through 2017, MEC has issued 16 share redemptions and returned \$35 million to its members.
61. Since 2017, as MEC has not had surplus profits, MEC has not issued any share redemptions, aside from where a member has requested their shares be redeemed or when MEC was notified of a member's death. As noted above, although MEC reported a profit in 2018, that profit was the result of real estate sales, not from retail business performance.

## **CCAA RELIEF AND THE INSOLVENCY OF THE PETITIONERS**

### **Circumstances Preceding CCAA Filing**

62. The Petitioners are currently in the midst of a liquidity crisis, primarily due to difficult retail conditions, as exacerbated by the Covid-19 pandemic, all of which have made it necessary for the Petitioners to refinance, downsize operations, conduct a review of strategic alternatives including an assessment of refinancing and/or recapitalization options as well as a potential sale of the MEC business or a combination thereof. In addition, the term of the Credit Agreement, was set to expire on August 3, 2020 before being extended to September 30, 2020. These factors, together with MEC's ongoing lease, contractual and trade creditor obligations, have necessitated a restructuring of the Petitioners' affairs.

### **Statutory Requirements of the CCAA**

63. The Petitioners are entities to which the CCAA applies and have debts in excess of \$5,000,000.

64. As set out above, and as shown in the Petitioners' financial statements, on a consolidated basis, the Petitioners are in the midst of a liquidity crisis. They are (on a consolidated basis) insolvent on a cash flow basis and will shortly be unable to meet their obligations as they generally come due.
65. The Proposed Monitor is prepared to act as Court-appointed Monitor should an Initial Order be obtained. The Petitioners in conjunction with the Proposed Monitor have provided a 13-week cash flow statement (the "**Cash Flow Statement**"), which is attached as **Exhibit "L"** to the First Arrata Affidavit. Although the Cash Flow Statement is the best forecast currently available, there is an expectation that there will be some changes and/or adjustments as the path forward becomes clearer.
66. As set out in the Cash Flow Statement, the Petitioners require approximately \$89 million in order to meet their obligations through to the end of the Cash Flow Statement period.
67. The Petitioners have formulated the outline of a restructuring plan designed to allow them to continue their business. Specifically, during the course of these proceedings, the Petitioners intend to:
- (a) immediately stabilize their cash flows and operations;
  - (b) develop a strategy that will address the liquidity issues faced by the Petitioners that will generate sufficient revenue to sustain themselves through the CCAA process;
  - (c) continue the Petitioners' present efforts to restructure and streamline operations;
  - (d) obtain a Sale Approval and Vesting Order (the "**SAVO**") to approve a transaction with the successful bidder selected by the MEC Board in the sale and investment solicitation process ("**SISP**") the Petitioners concluded on August 28, 2020, which will provide for the repayment to the Lenders and to allow MEC to emerge as a better capitalized operation with as little disruption as practicable; and
  - (e) establish an efficient claims process, which the Petitioners intend to address at a future hearing, by which all claims against the Petitioners can be identified and resolved with a view to formulating a plan of compromise and arrangement for presentation to their creditors.

### **Stay of Proceedings**

68. A stay of proceedings is essential to maintaining the status quo in order to preserve the value of the Petitioners' business and to ensure that no creditor of the Petitioners receives preferential treatment relative to other creditors. Such a stay would provide the Petitioners with the opportunity to complete the transaction resulting from the SISP, obtain the SAVO and prepare a CCAA plan of arrangement.

## Interim Financing

69. As noted above, during these CCAA proceedings, it is anticipated that the Petitioners will require incremental financing that will see aggregate indebtedness approach \$89 million (before letters of credit exposure).
70. Without interim financing and the cooperation of the Lenders, the Petitioners will not have sufficient cash on hand or receipts generated to continue operating and complete the proposed transaction with the successful bidder. Without continued operations as a major retail operation, the value of the Petitioners' assets would significantly diminish and many stakeholders, including significant numbers of MEC's employees, suppliers, landlord and customers, would be adversely affected.
71. In order to support certain near-term liquidity requirements, and on the premise that the proposed transaction to sell MEC's business as a going concern will be completed, the Lenders have agreed to act as interim lenders (the "**Interim Lenders**") during these CCAA proceedings, and to provide an interim financing facility (the "**Interim Financing Facility**") under a restructuring support agreement between the Petitioners and the Lenders, among others, dated as of September 11, 2020 (the "**Restructuring Support Agreement**") and a fourth amending agreement to the Updated Credit Agreement (the "**Fourth Amending Agreement**", and together with the Restructuring Support Agreement, the "**Interim Financing Credit Agreement**").
72. It is a condition of the Interim Financing Credit Agreement that advances made to the Petitioners be secured by a court-ordered security interest, lien and charge over all of the assets and undertakings of the Petitioners (the "**Interim Financing Charge**"). The Interim Financing Credit Agreement is attached as **Exhibit "M"** to the First Arrata Affidavit.
73. The key financial terms of the Interim Financing Credit Agreement include:
- (a) subject to a calculation of borrowing availability, a maximum principal amount of \$100 million under the combined Updated Credit Agreement and the Interim Financing Facility, to be funded in progressive advances on an as-needed basis;
  - (b) an initial advance of \$15 million (the "**Initial Advance**") will be funded on the date that the conditions precedent to funding the Initial Advance, described below, are satisfied or waived, which is anticipated to occur prior to the Comeback Hearing, with subsequent advances provided following drawdown requests, subject to approval by the Monitor;
  - (c) interest is payable on the outstanding principal amount at the applicable rate per annum for the Prime Rate, BA Rate and LIBO Rate Loans, any unused line fee, and the Default Rate for past due payments (all as defined in the Updated Credit Agreement), plus a rate of 2% per annum, payable on the Maturity Date (defined below);

- (d) an amendment fee of \$250,000 shall be earned on the execution of the Interim Financing Credit Agreement and paid on the date of CCAA Court approval of the Interim Financing Credit Agreement;
  - (e) the Petitioners shall reimburse the Interim Lenders for all reasonable and documented expenses in connection with the Interim Financing Facility and Interim Financing Credit Agreement; and
  - (f) the Credit Facility will continue to operate in accordance with its terms, and post-filing receipts of the Petitioners will be applied to repay the existing indebtedness under the Updated Credit Agreement. The Interim Financing Facility will not be used to pay any pre-filing obligations of the Petitioners.
74. In addition to the above financial terms, the Interim Financing Credit Agreement provides for a maturity date that is the earlier of (i) November 30, 2020; (ii) the completion of a Transaction, which in aggregate is for all or substantially all of the Petitioners' assets, is sufficient to repay the Lenders in full, and is approved by the CCAA Court; and (iii) at the Agent and Lenders' option upon the occurrence of any Event of Default (other than the commencement of these CCAA proceedings) (the "**Maturity Date**").
75. Further, the Interim Financing Credit Agreement contains, among others, the following key provisions:
- (a) the Petitioners must meet certain conditions precedent to funding the Initial Advance, which include the Petitioners obtaining the Initial Order;
  - (b) the parties agree to a budget in accordance with the Cash Flow Statement under the Interim Financing Credit Agreement (the "**Interim Financing Budget**"), which the Petitioners are required to comply with, within the parameters of agreed variances;
  - (c) in addition to the agreed uses of the Interim Financing Facility for normal operating purposes and as set out in the Interim Financing Budget, the Petitioners shall use advances under the Interim Financing Facility to:
    - (i) pay (i) the reasonable and documented legal fees and expenses of the Interim Lenders and (ii) the reasonable and documented fees and expenses of the Monitor and its legal counsel; and
    - (ii) pay the fees and interest owing to the Interim Lenders under the Interim Financing Credit Agreement.
  - (d) it is an Event of Default under the Interim Financing Credit Agreement to, among other things, fail to obtain court approval of a Transaction that is satisfactory to the Interim Lenders, pay amounts when due under the Interim Financing Credit Agreement, and fail to comply with the Interim Financing Budget on the terms as set out in the Interim Financing Credit Agreement;

- (e) the Interim Financing Charge will not secure any obligations other than post-filing obligations; and
  - (f) as discussed in further detail below, the Petitioners must seek and obtain the Interim Financing Charge.
76. Further, the Lenders and the Petitioners do not intend to seek priority over certain purchase money security interests with the Interim Financing Charge, and will carve out the collateral that is subject to such encumbrances from that charge (the “**Carve Out**”). Generally, the Carve Out is with respect to specific equipment that does not form part of the Lenders’ Security under the Updated Credit Agreement.
77. The Petitioners and their financial and legal advisors have considered different financing options, and in consultation with the MEC Board, have determined it would be very difficult to obtain the requisite financing for these CCAA proceedings with another third-party lender, as opposed to the Lenders, as any such financing would likely have to involve a priming of the Lenders’ security position, security subordinate to the Lenders’ Security or on an unsecured basis, all of which would likely be problematic or not feasible. Further, the Petitioners have been working on a very tight time-frame, given the timeline to complete a transaction and restructure their business.
78. Accordingly, the Petitioners have focused efforts on negotiating interim financing with the Lenders, which has resulted in the Interim Financing Credit Agreement. As there are no other significant secured creditors, the Petitioners believe no stakeholder is prejudiced by the facility.
79. The Petitioners anticipate returning to Court for the Comeback Hearing on or about September 24, 2020, to seek approval to request subsequent advances under the Interim Financing Facility, to obtain the SAVO to approve the transaction with the successful bidder, and for such further and other relief as may be requested.

#### **Charges on Assets, Properties and Undertakings of the Petitioners**

80. It is contemplated that the Proposed Monitor, counsel to the Proposed Monitor, and counsel to the Petitioners will be granted a first-priority Court-ordered charge on the assets, property and undertakings of the Petitioners in priority to all other charges up to a maximum amount of \$1.0 million (the “**Administration Charge**”).
81. The Petitioners require the expertise, knowledge and continuing participation of the above professionals in order to complete a successful restructuring. The Petitioners believe that the Administration Charge is necessary to ensure their important continued participation in this process, and is fair and reasonable in the circumstances.
82. In addition, it is contemplated that the Interim Lenders be granted, in respect of the Interim Financing Credit Agreement and Interim Financing Facility provided for therein, the Interim Financing Charge, being a fourth-priority Court-ordered charge on the assets, property and undertakings of the Petitioners in priority to all other charges other than the

Administration Charge, the D&O Charge, the Key Employee Charge, and the Carve Out, up to a maximum amount of \$15 million for the initial ten day stay period.

83. Given the Petitioners' urgent need for funding during the initial period of CCAA proceedings, in large part to pay out the Petitioners' obligations to the Lenders and other essential creditors and contractors, the Petitioners believe that the Interim Financing Charge as requested is fair and reasonable in the circumstances.
84. It is also contemplated that the Petitioners' directors and officers will be granted a second-priority Court-ordered charge on the assets, property and undertakings of the Petitioners in priority to all other charges other than the Administration Charge, up to a maximum amount of \$4.5 million (the "**D&O Charge**").
85. A successful restructuring of the Petitioners' affairs requires the continued participation of the Petitioners' directors and officers. These individuals have specialized expertise, decades of combined experience with the Petitioners, and key relationships with the Petitioners' stakeholders. The directors and officers have knowledge that cannot be easily replaced or replicated. The Petitioners therefore believe the D&O Charge is fair and reasonable in the circumstances.
86. Further, several of the Petitioners' directors and officers have expressed the need for certainty with respect to potential personal liability if they continue in their current capacities for the benefit of the Petitioners' stakeholders during the CCAA proceedings.
87. The Petitioners maintain an insurance policy in respect of the potential liability of directors and officers, the limit of which is \$10,000,000 for all claims. The D&O Charge is not intended to duplicate insurance coverage, but only to apply in the event that coverage limitations or exclusions were to become an issue.
88. Finally, with respect to Court-ordered charges, it is contemplated that at the Comeback Hearing, the Petitioners will seek a proposed Key Employee Retention Plan ("**KERP**"), together with an order that the beneficiaries be granted a third-priority Court-ordered charge on the assets, property and undertakings of the Petitioners in priority to all other charges other than the Administration Charge and the D&O Charge (the "**Key Employee Charge**").

#### **Proposed KERP**

89. Without the retention of certain key employees, the Petitioners' ability to successfully maintain their business operations, complete restructuring and preserve asset value while it restructures would be seriously compromised.
90. In July and September 2020, the MEC Board approved retention agreements (the "**Retention Agreements**") for a limited number of key management employees (less than 14). The total payable under the Retention Agreements in aggregate, is \$778,000.

91. The Retention Agreements include provision for payment of retention compensation upon the earlier of certain dates, including a sale of all or substantially all of MEC's assets (or the merger, amalgamation or consolidation of MEC with another entity), the employee's termination without cause, or by certain dates in December 2020, depending on the employee.
92. The Retention Agreements also include confidentiality provisions with respect to the content of the same. Without the key employees subject to the proposed KERP and the Retention Agreements, the Petitioners would likely not be able to obtain the necessary management experience to maintain business operations at a satisfactory level and continue the restructuring.
93. It is not certain that all executives offered Retention Agreements will remain through to conclusion of the restructuring.
94. The Proposed Monitor has reviewed the terms of the Retention Agreements and has concluded that the terms and the proposed Key Employee Charge are reasonable in the circumstances and customary in similar CCAA proceedings. The Lenders have confirmed they are agreeable to the Retention Agreements and proposed Key Employee Charge as well.
95. The Petitioners are hopeful that a CCAA plan will be approved and implemented promptly, and that these proceedings can be successfully concluded as soon as possible. Accordingly, when the Petitioners seek Court-approval of the KERP at the Comeback Hearing, they will also seek approval of the Key Employee Charge to protect the beneficiaries of the Retention Agreements.

#### **Payment of Outstanding Accrued Vacation and Banked Overtime Pay**

96. MEC has calculated the amounts of accrued but unpaid vacation pay and required remittances for its employees up to August 29, 2020, as well as total banked overtime owing for its employees up to August 29, 2020. The total amounts for MEC's employees as of that date was \$1,701,608.43 for accrued but unpaid vacation pay and \$39,450.25 for banked overtime. On September 11, 2020, in preparation for the filing of this Petition, MEC initiated payment and distribution of outstanding accrued but unpaid vacation pay and banked overtime to all employees. MEC intends to continue to process such payments after the Initial Order is granted as necessary. The Proposed Monitor is aware of the payment. The Purchaser (defined below) has confirmed its support for this plan, and the Lenders are aware of this plan.
97. In some provinces where MEC operates, there may be deemed trusts or deemed priority for unpaid wages including vacation pay, and personal liability on directors and officers can be imposed for accrued but unpaid vacation pay, and since the Petitioners need to retain MEC's directors and senior management to complete their restructuring efforts, removing that potential personal liability is important.

**SISP**

98. By an engagement letter dated February 10, 2020, (the “**Engagement**”), the Petitioners engaged Alvarez and Marsal Canada Securities ULC (the “**Financial Advisor**”) initially to assist in a review of strategic alternatives, provide assistance to obtain and negotiate new financing and, once the impact of Covid-19 became apparent, to provide assistance with liquidity management to maintain operations during the Covid-19 period.
99. In accordance with the Engagement, the Financial Advisor initially attempted to identify a satisfactory refinancing alternative, by, among other things, contacting numerous financial institutions and government entities. That effort was occurring concurrent with the outbreak of COVID-19 and its significant negative impact on both MEC’s business and the retail sector in general. In this regard, the Financial Advisor:
- (a) established a data room;
  - (b) contacted 66 potential lenders, including traditional, non-bank and alternative lenders;
  - (c) entered into non-disclosure agreements with 46 of these lenders and provided access to the data room to those lenders; and
  - (d) received five term sheets for refinancing, none of which in isolation provided for a complete refinancing.
100. Despite the significant efforts to obtain a suitable refinancing source that would allow MEC to meet its financing needs, and as noted above, none of the term sheets received would have achieved that result.
101. Given the results of that refinancing process, by a further engagement letter signed on June 10, 2020, the Petitioners and the Financial Advisor then expanded the original Engagement to include, in addition to assistance with the Petitioners’ attempts to continue to identify potential viable refinancing options, the initiation of an investment or sale initiatives for some or all of their businesses and assets to assist in rectifying the Petitioners’ financial predicament as set out herein.
102. The Engagement does not include any success fee nor is the compensation based upon the pricing obtained in any transaction.
103. In this regard, the Financial Advisor:
- (a) established a data room;
  - (b) identified potential interested purchasers and distributed an initial “teaser” letter to 158 parties;
  - (c) entered into Confidentiality Agreements with 39 interested parties;
  - (d) distributed a process letter on June 30, 2020;

- (e) requested Non-Binding Indicative Letters of Intent (the “**LOIs**”) to be received by July 15, 2020;
  - (f) received nine LOIs and reviewed and conducted due diligence on each parties’ LOI; and
  - (g) met with the Special Committee to review and discuss the LOIs.
104. The Financial Advisor presented the LOIs to the Special Committee on July 16, 2020, and provided a fulsome review of the LOIs on July 21, 2020, as well as its recommendations of the bidders to move onto the second phase (“**Phase 2**”) of the SISP process.
  105. A meeting of the MEC Board was held on July 24, 2020 to consider the recommendation of the Special Committee with respect to the LOIs.
  106. On August 6, 2020, the Financial Advisor issued Phase 2 process letters to the five recommended bidders who had submitted LOIs, formally advancing these bidders into Phase 2. During Phase 2, these five bidders continued extensive diligence with the Financing Advisor and MEC, participated in management meetings and engaged legal, financing and other advisor to assist in their review of the opportunity. The Phase 2 process letter established a final bid deadline of August 28, 2020 (the “**Final Bid Deadline**”).
  107. The Petitioners received four bids by the Final Bid Deadline and the Special Committee and the Financial Advisor reviewed each of them. On September 4, 2020, the MEC Board, with the input of their advisors, identified Kingswood Capital Management LP (“**Kingswood**”) as the successful bidder and negotiations ensued to finalize a form of purchase and sale agreement.
  108. In the view of the Petitioners and the Financial Advisor, the SISP carried out by the Petitioners was extensive and properly canvassed the market to identify the best and highest value for the Business. The SISP was run prior to the filing of these proceedings, with the support of the Lenders, to maintain stability in the Business and to promote a going concern solution, but was structured and implemented in the same or similar manner as typically done in a SISP in the course of CCAA proceedings.
  109. In addition to representing the highest consideration and reflecting the lowest closing risks, Kingswood’s bid included the other advantages discussed below in paragraph 113.
  110. On September 11, 2020, the Petitioners entered into an asset purchase and sale agreement (the “**Sale Agreement**”) with Kingswood (the “**Purchaser**”), under which agreement the Purchaser (through a Canadian-based subsidiary) agreed to purchase and the Petitioners agreed to sell, the Petitioners’ right, title, benefit and interest in to and under, or relating to, the assets, property and undertaking owned or used or held for use by the Petitioners (the “**Purchased Assets**”) in connection with the business and operations of MEC (the “**Business**”), as applicable, but excluding certain assets,

liabilities, employees, contracts and real estate properties leased by MEC, as specified in or determined pursuant to the Sale Agreement (the “**Excluded Assets**”). The Sale Agreement is conditional on court approval through this proceeding.

111. As part of the Sale Agreement, the Petitioners and the Purchaser also entered into an escrow agreement dated September 11, 2020 (the “**Escrow Agreement**”) and a transition services agreement that will be executed on the closing of the Sale Agreement (the “**Transition Services Agreement**”).
112. Some of the key aims and elements of the Sale Agreement (along with the Escrow Agreement and the Transition Services Agreement), include the following:
  - (a) the Purchaser will continue to operate the Business as a going concern under a similar name to MEC and will maintain the goodwill of the retail business;
  - (b) the Purchased Assets comprise almost all of the assets currently used by MEC for the Business;
  - (c) the Purchaser will retain at least 75% of the active employees of MEC, and will acquire, or assume the leases for, at least 17 of MEC’s retail locations;
  - (d) the Purchaser will assume liabilities including with respect to warranties, existing gift cards, and employees who accept offers of employment;
  - (e) in order to protect goodwill with existing suppliers and contractors, the Purchaser will assume liability for payments to certain inventory and other key vendors and suppliers and will seek assignment of certain contracts. The liabilities and contracts that the Purchaser will assume will be confirmed by the Purchaser through a process set out in the Sale Agreement; and
  - (f) the Sale Agreement is not conditional on any financing or third-party approvals.
113. Significantly, the Sale Agreement is for a price that will repay the Lenders in full, will maximize the ongoing number of operating stores and retention of a majority number of employees, and is expected to leave the Petitioners with additional funds to support a CCAA plan and/or claims process for a distribution to unsecured creditors.
114. Under the Sale Agreement, the Petitioners and the Purchaser will not seek the assignment of three of the Leases, being the Calgary North West Store Lease, the Saskatoon Store Lease, and the Saint-Denis Store Lease. These Leases relate to future store sites not yet opened or, in the case of the Saint-Denis Store Lease, a store that was permanently closed by MEC, and are expected to be disclaimed by the Petitioners because they are not included in the Sale Agreement and such disclaimers are required to allow a successful CCAA plan.
115. If the Petitioners receive approval from the Proposed Monitor (once appointed as Monitor), the Petitioners intend to serve notices of disclaimer to the landlords for those Leases immediately after the hearing of the Initial Order.

116. The Purchaser supports the initiation of these CCAA proceedings to effect the Sale Agreement.
117. It is the Petitioners' view that the SISP was thorough and that it canvassed the market broadly. The transaction obtained through that process is acceptable to the MEC Board and the Lenders, and will result in the repayment in full of the Lenders, continued employment for a majority of MEC's employees, an ongoing tenant for most of MEC's landlords, and a continued customer for suppliers.
118. As noted above, at the Comeback Hearing, the Petitioners anticipate requesting that this Court confirm the Engagement and approve the transaction resulting from the SISP, while giving the Financial Advisor a fifth priority charge with respect to their fees.

#### **Payments during the CCAA Proceedings**

119. As noted above, the Sale Agreement includes the Purchaser assuming the obligation to pay certain pre-filing inventory suppliers and other key trade creditors.
120. In addition, an inability to keep trade accounts and contracts current would prejudice the Petitioners' operations, decrease or limit revenue, and may result in unwanted interruptions in sales. Therefore, the Petitioners seek authorization, subject to review by the Proposed Monitor (once appointed as Monitor), to pay certain third party creditors for having supplied pre-filing goods and services in the ordinary course of the Petitioners' business, as reviewed and approved by the Proposed Monitor. The Petitioners should also be authorized to pay essential post-filing trade accounts.
121. Any such anticipated payments would relate to merchandise suppliers, contract operators, and other essential parties necessary to maintain operations.

#### **Position of Secured Creditors**

122. These CCAA proceedings and the intended transaction will see the indebtedness to the Lenders under the Updated Credit Agreement, together with all amounts advanced under the Interim Financing Facility, paid out in full upon the closing of the Sale Agreement. The Lenders support the Petitioners' proposed CCAA filing and the Charges as proposed herein given this premise.

#### **Monitor**

123. The Proposed Monitor is qualified to act as Monitor in this proceeding if the Initial Order is granted, and has advised the Petitioners that it is willing to so act as Monitor, if appointed. A Consent to Act as Monitor signed by the Proposed Monitor is attached as **Exhibit "S"** to the First Arrata Affidavit.

#### **Part 3: LEGAL BASIS**

1. The Petitioners plead and rely on:

- (a) the CCAA;
- (b) the *Cooperative Association Act*;
- (c) the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”);
- (d) the *Supreme Court Civil Rules*;
- (e) the inherent jurisdiction of this Honourable Court; and
- (f) such other legal basis as counsel may advise and this Honourable Court may accept.

### **The CCAA applies to the Petitioners**

2. The Court has jurisdiction to grant protection under the CCAA to a “debtor company” where the total claims against such company exceed \$5 million. The CCAA defines “debtor company” as including “any company that is bankrupt or insolvent” – but it does not define “insolvent”.

CCAA, ss. 2 and 3

3. The CCAA defines “company” as including any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province.

CCAA, s. 1(1)

4. The conceptualization of insolvency under the CCAA is informed, but not dictated, by the definition of “insolvent person” under the BIA, which is as follows:

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

BIA, s. 2;

*Re Stelco Inc*, [2004] O.J. No 1257 (S.C.)

5. The conceptualization of insolvency under the CCAA is, indeed, broader than under the BIA in order to give effect to the CCAA’s rehabilitative objectives. As such, a financially troubled company is insolvent for the purposes of the CCAA if it is “reasonably expected

to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring.

*Stelco, supra*, para. 26;  
*Lemare Holdings Ltd. (Re)*, 2014 BCSC 893, para. 18

6. In this case, the Petitioners are insolvent on a cash flow basis. As is disclosed in the First Arrata Affidavit, the Petitioners have suffered sustained net operating losses over the past several years, caused predominantly by a higher cost structure and certain under-performing stores, made worse by the effects of the Covid-19 pandemic.
7. The Petitioners currently have significant obligations under the Updated Credit Agreement that are coming due imminently, and insufficient liquidity to meet those obligations in the near term. Accordingly, the Petitioners are insolvent for the purposes of the CCAA.
8. 131 Limited is a wholly owned and controlled subsidiary of MEC, and is therefore an affiliated company for the purposes of section 3(2) of the CCAA. Further, 131 Limited is insolvent in its own right for having granted a guarantee of MEC's obligations under the Updated Credit Agreement.
9. As set out in the First Arrata Affidavit, the total liabilities of the Petitioners are significantly in excess of \$5 million.
10. 131 Limited is a company incorporated pursuant to the *Business Corporations Act*, R.S.O. 1990, c. B.16. MEC is a cooperative association incorporated under the *Cooperative Association Act*. Accordingly, the Petitioners are both "companies" for the purposes of the CCAA as they are both companies, corporations or legal persons incorporated under an Act of a provincial legislature.

*Cooperative Association Act*, s. 1(1)

11. The Petitioners therefore satisfy the statutory requirements of section 3(1) of the CCAA as being companies to which the CCAA applies.
12. The Proposed Monitor is a licenced trustee within the meaning of section 2(1) of the *BIA*, and has consented to act as Court-appointed Monitor of the Petitioners. The Proposed Monitor is qualified to act in such capacity under section 11.7 of the CCAA.

### **Urgency**

13. The Petitioners provided short notice of this application to the Lenders.
14. Section 11 of the CCAA states that:

... if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

15. *Supreme Court Civil Rule 8-5(6)* provides that the Court may make an order without notice in the case of urgency.
16. In this case, the Petitioners require urgent relief due to its liquidity challenges and its current inability to pay creditors, including landlords, suppliers, employees and the Lenders. In the result, the Petitioners have sought to have this application heard on short notice to preserve and maintain the operations of MEC to prevent enforcement steps from being taken in respect of the Leases and various other liabilities, and to close the transaction with the successful bidder under the SISP and obtain the SAVO.

### **The discretion of the Court**

17. An Initial Order under the CCAA should be granted if it accords with the remedial purposes of the CCAA, which include rehabilitation, the avoidance of social and economic loss resulting from liquidation, and the building of consensus among interested stakeholders.

*Re Ted Leroy Trucking [Century Services] Ltd*, 2010 SCC 60 at paras 15, 59, 70

18. An Initial Order may include any relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course during the restructuring period. Such relief typically includes a stay of proceedings, which ensures that creditor enforcement does not interfere with the company's ability to maintain operations while restructuring its affairs. The stay of proceedings maintains the status quo while the company develops a plan for the benefit of its creditors.

CCAA, s. 11.01, 11.02;  
*Century Services, supra*, paras. 60-62  
*Re Lehndorff*, [1993] O.J. No 14 (S.C.) at paras 5-6

19. The threshold for a debtor company to obtain a stay of proceedings under the CCAA is low. The company only has to satisfy the Court that a stay of proceedings would "usefully further" its efforts to reorganize. The debtor company is not required to put forward anything more than a germ of a plan that requires protection.

*Century Services, supra* at para 70;  
*Industrial Properties Regina Limited v Copper Sands Land Corp*, 2018 SKCA 36 at para 21

20. Since November 1, 2019, when certain amendments to the CCAA became effective, any stay of proceedings in an Initial Order under the CCAA is restricted to ten days, albeit subject to extension at the first comeback application and subsequently thereafter. This newly shortened initial stay period is meant to minimize prejudice to creditors who may have received short or no notice of the Initial Application. Any creditor with concerns about the adequacy of service is only required to wait ten days to make its case in opposition to the debtor company's filing or the resulting stay of proceedings.

CCAA, s. 11.02(1)

21. A debtor company is expected to act in good faith and with due diligence both before and after the commencement of proceedings under the CCAA; however, any in-depth analysis of good faith and due diligence is ordinarily deferred to subsequent applications. In any event, the existence of financially challenging circumstances is not evidence of an absence of good faith or due diligence on the part of the debtor company.

*Industrial Properties, supra* at paras 22-23

22. Here, the Petitioners have acted with good faith and due diligence in addressing its cash flow and illiquidity, and by filing under the CCAA to facilitate a restructuring of its business and affairs.
23. The stay of proceedings sought by the Petitioners in its draft Initial Order conforms with the B.C. Model CCAA Initial Order and is sought to enable the Petitioners to continue and complete the process for the SAVO, thus providing sufficient capital to repay the Lenders and provide funding to distribute to other creditors.

#### **The Charges are necessary and appropriate**

24. As noted above, the Petitioners seek the majority of the Administration Charge, the Interim Financing Charge, and the D&O Charge at the Initial Order hearing, and intend on seeking the Key Employee Charge at the Comeback Hearing (collectively, the “**Charges**”). The Charges are necessary and appropriate in the circumstances to ensure the Petitioners have a reasonable opportunity to restructure its affairs with support from key stakeholders.
25. At the Initial Order hearing, the Petitioners will only seek approval of the portion of the Interim Financing Facility to operate ten days until the Comeback Hearing.
26. The Lenders are the Petitioners’ primary secured creditors and support the granting of the Charges.

#### The Administration Charge

27. The CCAA authorizes the Court to grant a priority charge in respect of professional fees and disbursements on notice to affected secured creditors. The factors to consider in determining whether to approve an administration charge include:
- (a) the size and complexity of the businesses being restructured;
  - (b) the proposed role of the beneficiaries of the charge;
  - (c) whether there is an unwarranted duplication of roles;
  - (d) whether the quantum of the proposed charge appears to be fair and reasonable;
  - (e) the position of the secured creditors likely to be affected by the charge; and
  - (f) the position of the Monitor.

CCAA, s. 11.52;  
*Re Canwest Publishing Inc. / Publications Canwest Inc.*, 2010 ONSC 222, para. 54

28. Courts have recognized that administration charges, as well as charges in favour of directors and officers, are often necessary to ensure a debtor company's successful restructuring. For example, in *Re Timminco*, Justice Morawetz (now Chief Justice) stated that failing to provide such charges would "result in the overwhelming likelihood that the CCAA proceedings would come to an abrupt halt, followed, in all likelihood, by bankruptcy proceedings".

*Re Timminco Ltd*, 2012 ONSC 506 at para 66

29. In the instant case, the Administration Charge is required to secure the collective fees and disbursements incurred before and after the commencement of these proceedings of legal counsel for the Petitioners, the Proposed Monitor and its counsel. The charge is necessary in light of the size and complexity of the restructuring and the necessary involvement of qualified professionals. The Petitioners require the knowledge, expertise and continuing participation of the beneficiaries of the proposed Administration Charge in order to successfully complete the SAVO process and restructure its significant debt.
30. The proposed quantum of the Administration Charge, in the amount of \$1,000,000, is reasonable in the circumstances, including the size and complexity of the Petitioners' operations and assets, as well as the complexity and short time-frame to obtain the SAVO approving the transaction with the successful bidder under the SISP. The Proposed Monitor has advised in its Pre-Filing Report that such quantum is appropriate in light of the nature of the Petitioners' operations, the scope of duties of the Monitor, and the scope of duties of counsel to the Petitioners and the Monitor.
31. The Lenders were given notice of and support the granting of the Administration, D&O and Key Employee Charges. It is anticipated that the Lenders will be paid in full, and otherwise unaffected by the proceedings.

#### The Interim Financing Charge

32. As discussed above, the Lenders have agreed to provide the Petitioners with the Interim Financing Facility to continue their operations during these CCAA proceedings and to finance the costs of the restructuring.
33. The CCAA authorizes the Court to grant interim financing and to also order a charge with respect to the same, over the assets of the debtor company in priority of any secured creditor of the debtor, on notice to the secured creditors who are likely to be affected by such security or charge and in an amount that the court considers appropriate having regard to the debtor company's cash flow statement. The security or charge may not secure an obligation that exists before the order granting the charge is made.

CCAA, s. 11.2(1)

34. As section 11.2 of the CCAA provides the statutory jurisdiction to grant an interim financing charge, the Court should first address whether the proposed charge complies with that section before moving on to address the enumerated factors under s. 11.2(4) of the CCAA, which are discussed below.

*Canwest, supra*, para. 42

*Section 11.2(1) of the CCAA*

35. The Petitioners submit the Interim Financing Charge complies with s. 11.2(1) of the CCAA and does not secure any of the Petitioners' pre-filing obligations to the Lenders.
36. As noted above, the Interim Financing Credit Agreement is an amendment to the existing Updated Credit Agreement, pursuant to which the Lenders are prepared to provide further liquidity to MEC despite any defaults under the Updated Credit Agreement.
37. It is an express term of the Interim Financing Credit Agreement that advances made under the Interim Financing Facility may not be used to satisfy pre-filing obligations under the Updated Credit Agreement or any other pre-filing debt.
38. Further, the Interim Financing Charge does not secure any of the Petitioners' pre-filing obligations, and includes the Carve Out, which will ensure that other secured creditors' purchase money security interests are not primed by the charge.
39. While the terms of the Interim Financing Credit Agreement provide that post-filing receipts collected by MEC shall be applied to pay down the Petitioners' pre-filing debt under the Updated Credit Agreement, mechanisms in interim financing agreements whereby pre-filing obligations are paid from proceeds derived by post-filing operations are not contrary to s. 11.2(1) of the CCAA.
40. In a 2016 decision in *Performance Sports Group Ltd., Re*, Justice Newbould of the Ontario Superior Court examined a similar interim financing facility and concluded as follows:

Section 11.2(1) of the CCAA provides that security for a DIP facility may not secure an obligation that existed before the order authorizing the security was made. The effect of this provision is that advances under a DIP facility may not be used to repay pre-filing obligations. In this case, the ABL DIP Facility is a revolving facility. Under its terms, receipts from operations of the PSG Entities post-filing may be used to pay down the existing ABL Facility. The applicants submit that in this case, the ABL DIP Facility preserves the pre-filing status quo by upholding the relative pre-stay priority position of each secured creditor. By requiring that the PSG Entities only use post-filing cash receipts to pay down the accrued balance under the revolving credit facility, the ABL DIP Lenders are in no better position with respect to the priority of their pre-filing debt relative to other creditors. I accept that no advances under the ABL DIP Facility will be used to pay pre-filing obligations and there has been inserted in the Initial Order a provision that

expressly prevents that. The provision that receipts from operations of the PSG Entities post-filing may be used to pay down the existing ABL Facility is approved.

*Re: Performance Sports Group Ltd.*, 2016 ONSC 6800, para. 22

41. In *Re: Comark Inc.*, Justice Morawetz reviewed a similar interim financing facility, whereby pre-filing obligations of the debt would be reduced by proceeds from post-filing operations, which would be deposited into a blocked account and swept by the lender in order to reduce the pre-filing debt.

*Re: Comark Inc.*, 2015 ONSC 2010, paras. 19 and 24

42. In considering whether that interim financing complied with s. 11.2(1) of the CCAA, Justice Morawetz noted that:
- (a) the proposed facility would not result in a greater level of secured debt than was contemplated under the pre-filing facilities;
  - (b) the proposed charge would not prime other secured creditors' purchase money security interests; and
  - (c) the proposed charge would increase while the pre-filing facility would be paid down.

*Comark, supra*, para. 26

43. Justice Morawetz then accepted the submissions from the debtor and the proposed monitor that since the pre-filing obligations were being reduced by the use of the debtor's cash generated from its business, the proposed charge only secured post-filing advances made under the interim facility, and confirmed that such a facility does not contravene s. 11.2(1) of the CCAA.

*Comark, supra*, para. 28

44. Lastly, a similar conclusion was reached by Madam Justice Romaine of the Alberta Court of Queen's Bench in the recent CCAA proceeding involving ENTREC Corporation and others under A.B. Q.B. 2001 06423 (the "**ENTREC Proceeding**").

45. In the Initial Order made in the ENTREC Proceeding on May 15, 2020, Romaine J. approved a \$6.3 million interim financing facility that was described by the Monitor in that proceeding as follows:

The Interim Facility requires that ENTREC pay down the pre-filing ABL Facility through a sweeping mechanism whereby ENTREC's post-filing collection of receivables will be swept through the blocked Deposit Accounts into the Collection Accounts and applied towards the pre-filing ABL Facility consistent with the pre-filing practices under the current Cash Management System. Funds advanced under the Interim Facility will be used to pay post-filing operating and other costs during the 13 weeks ending August 7, 2020...

Initial Order dated May 15, 2020, as amended and restated on May 25, 2020;  
First Report of the Monitor dated May 21, 2020 at para. 9.2.

46. The Initial Order in the ENTREC Proceeding also included a carve out provision for certain purchase money security interests, similar to that in the *Comark* matter, and as proposed by the Petitioners and the Interim Lenders on this application.
47. Without the Interim Financing Facility, the Petitioners would not be able to finance their operations during these CCAA proceedings and restructure their debt. Given that the Interim Financing Facility is being provided by the Petitioners' senior secured lenders, does not charge any pre-filing obligations, is subject to the Carve Out, and has the approval of the Proposed Monitor, the Petitioners submit the Interim Financing Charge will not materially prejudice the Petitioners' creditors, and complies with s. 11.2(1) of the CCAA.

*Section 11.2(4) of the CCAA*

48. In determining whether an interim financing charge is appropriate, the Court is also required to consider the following factors under s. 11.2(4) of the CCAA:
- (a) the period during which the company is expected to be subject to proceedings under this Act;
  - (b) how the company's business and financial affairs are to be managed during the proceedings;
  - (c) whether the company's management has the confidence of its major creditors;
  - (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
  - (e) the nature and value of the company's property;
  - (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
  - (g) the monitor's report referred to in paragraph 23(1)(b), if any.

*League Assets Corp. (Re)*, 2013 BCSC 2043, para. 24

49. The Petitioners submit the application of the above factors in this case support the approval of the Interim Financing Facility and the granting of the Interim Financing Charge, for reasons including the following:
- (a) the length of time that the Petitioners are expected to be subject to the CCAA proceedings is unforeseen. It is anticipated that the Petitioners will seek an extension of the stay of proceedings at the Comeback Hearing for a further amount of time that will allow the Petitioners to complete the SAVO process without having to seek a further extension;

- (b) the business and financial affairs of the Petitioners will be managed by the directors and key management employees of MEC in consultation with the Proposed Monitor;
- (c) the Petitioners have the confidence of the Lenders, which are the Petitioners' senior secured creditors and the proposed Interim Lenders. The Lenders support the approval of the Interim Financing Facility and the granting of the Interim Financing Charge;
- (d) without the Interim Financing Facility, the Petitioners will not be able to fund their operations and continue their restructuring efforts, and the value of the Petitioners' assets would be diminished as a result;
- (e) as discussed above, in the view of the Petitioners and the Proposed Monitor, no secured creditor will be materially prejudiced by the Interim Financing Charge, as the charge includes the Carve Out and will preserve the pre-filing status quo; and
- (f) the Proposed Monitor supports the approval of the Interim Financing Facility and granting of the Interim Financing Charge.

*Section 11.2(5) of the CCAA*

50. Pursuant to recently enacted section 11.2(5) of the CCAA, when an order is made for interim financing at the same time as the granting of the Initial Order, the Court shall not grant the interim financing order unless it is satisfied that the terms of the financing are limited to those terms that are reasonably necessary for continued operations of the debtor in the ordinary course of business during the time period of the initial stay.

CCAA, s. 11.2(5)

*Miniso International Hong Kong Limited v Migu Investments Inc.*, 2019 BCSC 1234, paras 79-90

51. While the draws on the Interim Financing Facility are subject to projections in the Cash Flow Statement, it is anticipated that approximately \$15 million will be required from the date of the Initial Order to the date of the Comeback Hearing. The Petitioners and the Proposed Monitor believe this amount is reasonable given what is required to operate MEC in the ordinary course, and to fund the various costs of the restructuring and SAVO process during that period.

The D&O Charge

52. The Court may grant a charge in favour of directors and officers in an amount the Court considers appropriate. The purpose of the D&O Charge is to indemnify directors and officers against any obligations or liabilities that may arise after the Initial Order is granted.

CCAA, s. 11.51

53. As with other Charges, the Petitioners must give notice to the secured creditors who are likely to be affected by the D&O Charge. The Lenders support the granting of the D&O Charge.
54. The D&O Charge is intended to protect as against post-filing liabilities, not protected by any existing D&O insurance policy.
55. The purpose of a D&O Charge is “to keep the directors and officers in place during the restructuring by providing them with protection against liabilities they could incur during the restructuring” in order to avoid destabilization and assist with the restructuring.

*Re Canwest Global Communications Corp*, [2009] OJ No 4286 (S.C.), para. 48

56. In this case, a successful completion of the SAVO process and restructuring of the Petitioners’ debt requires the continued participation of the directors and officers. These individuals have significant institutional knowledge and expertise that cannot be replicated, and they have a history of responsibility for key stakeholder relationships. This expertise and experience could not be replaced on the timelines contemplated by the SAVO process and this restructuring.
57. In addition, the Petitioners’ directors and officers have expressed the need for certainty with respect to potential personal liability if they continue in their current capacities during the CCAA proceedings.
58. The term of the Initial Order regarding the D&O Charge is consistent with the B.C. Model CCAA Initial Order. The Proposed Monitor is aware that the Petitioners are seeking the D&O Charge in the amount of \$4,500,000 and confirms such figure is reasonable in the circumstances.

### **Other Relief Sought**

#### Payment of vacation pay and other amounts to employees

59. As discussed above, MEC initiated payment and distribution of outstanding accrued but unpaid vacation pay and banked overtime to all employees. MEC intends to continue to process such payments after the Initial Order is granted as necessary. As noted above, MEC has made these payments to limit employee uncertainty surrounding payment of these amounts and to avoid potential personal liability to the directors and officers of MEC.

#### Sealing Order

60. The Petitioners also bring an application seeking a sealing order for confidential exhibits comprising unredacted versions of the Interim Financing Credit Agreement, the Sale Agreement and related agreements and documents, the Updated Credit Agreement, and the Retention Agreements for key employees under the proposed KERP, attached to the Confidential Affidavit #2 of Philippe Arrata (the “**Confidential Exhibits**”).

61. Since the Confidential Exhibits contain commercially sensitive information and personal information of the key employees, the Petitioners request that this document be sealed on the Court record. It is not uncommon for such materials to be sealed in CCAA proceedings, to prevent the disclosure of commercially sensitive information and the personal information of employees.

*Walter Energy Canada Holdings Inc. (Re)*, 2016 BCSC 107, paras. 50-51;  
*Walter Energy Canada Holdings, Inc. (Re)*, 2018 BCSC 529, para. 11  
*Canwest Publishing Inc. (Re)*, 2010 ONSC 222, para. 65

62. The leading authority for sealing orders is *Sierra Club of Canada v Canada (Minister of Finance)*. The two-fold test is as follows:
- (a) such an order is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
  - (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

*Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41, para. 53

63. With respect to the first branch of the test, the following elements are to be considered:
- (a) the risk must be real and substantial, well grounded in evidence, posing a serious threat to the commercial interest in question;
  - (b) the important commercial interest must be one which can be expressed in terms of a public interest in confidentiality, where there is a general principle at stake; and
  - (c) the judge is required to consider not only whether reasonable alternatives are available to such an order but also to restrict the order as much as is reasonably possible while preserving the commercial interest in question.
64. The sealing order as proposed is limited only to commercially sensitive information in the Interim Financing Credit Agreement, the Updated Credit Agreement, the Sale Agreement and related agreements and documents, and individual particulars in the retention agreements for the key employees under the proposed KERP.
65. The public disclosure of commercially sensitive information in the Interim Financing Credit Agreement, the Updated Credit Agreement, and the Sale Agreement would cause significant and undue adverse effects on the business of MEC, the Lenders and the Purchaser. Further, the confidentiality of the terms of the Retention Agreements is a required term of the agreements, without which the Petitioners would not have the necessary management experience to maintain business operations and continue the

restructuring. In these circumstances, the Petitioners submit that the sealing order as proposed is reasonable and appropriate.

- 66. There is no material prejudice to the Petitioners' stakeholders should the sealing order be granted as drafted, and there would only be a "minimal effect negative to the consent of an open court" should the order be granted.

*Stelco Inc. (Re)*, [2006] O.J. No. 275, para. 3

**Part 4: MATERIALS TO BE RELIED ON**

- 1. Affidavit #1 of Philippe Arrata, to be filed;
- 2. Confidential Affidavit #2 of Philippe Arrata, to be filed;
- 3. The pre-filing report of the Proposed Monitor, to be filed; and
- 4. Such further and other materials that counsel may advise and this Honourable Court may accept.

The petitioners estimate that the hearing of the petition will take 2 hours.

Norton Rose Fulbright Canada LLP

per:

Date: 13/Sep/2020

Signature of

petitioner  lawyer for petitioner

*fu*

Howard A. Gorman, Q.C.

**To be completed by the court only:**

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this petition

with the following variations and additional terms:

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

Date: \_\_\_\_\_

Signature of  Judge  Master

**SCHEDULE "A" – List of Parties and Counsel**

<b>COUNSEL</b>	<b>NAME OF PARTY(IES) REPRESENTED</b>
John Sandrelli Valerie Cross	Royal Bank of Canada as administrative agent and collateral agent under the Updated Credit Agreement
Mary I.A. Buttery, Q.C.	The Proposed Monitor, Alvarez & Marsal Canada Inc.
Dylan Chochla Kibben Jackson	Kingswood Capital Management LP and 1264686 B.C. Ltd.

**SCHEDULE "B"**

No. \_\_\_\_\_  
Vancouver Registry

In the Supreme Court of British Columbia

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

AND

IN THE MATTER OF MOUNTAIN EQUIPMENT CO-OPERATIVE AND 1314625 ONTARIO  
LIMITED

Petitioners

**ORDER MADE AFTER APPLICATION**

ON THE      BEFORE      THE HONOURABLE MADAM      14/Sep/2020  
JUSTICE FITZPATRICK

APPLICATION of the Petitioners, Mountain Equipment Co-operative and 1314625 Ontario Limited, coming on for hearing at Vancouver, British Columbia on 14/Sep/2020 and on hearing Howard A. Gorman, Q.C., counsel for the Petitioners and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the First Affidavit of Phil Arrata sworn 13/Sep/2020 (the "**First Arrata Affidavit**"), the consent of Alvarez & Marsal Canada Inc. to act as Monitor and the pre-filing report of Alvarez & Marsal Canada Inc. dated 13/Sep/2020; AND UPON BEING ADVISED that the secured creditors who are likely to be affected by the charges created herein were given notice; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the British Columbia *Supreme Court Civil Rules* and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES that:

1. The time for service of the petition for this Order is hereby abridged and deemed good and sufficient and this petition is properly returnable today.

**JURISDICTION**

2. The Petitioners are companies to which the CCAA applies.

**SUBSEQUENT HEARING DATE**

3. The hearing of the Petitioners' application for an extension of the Stay Period (as defined in paragraph 17 of this Order) and for any ancillary relief shall be held at the Courthouse

at 800 Smithe Street, Vancouver, British Columbia at 10:00 a.m. on Thursday, the 24<sup>th</sup> day of September, 2020 or such other date as this Court may order (the **"Return Date"**).

#### **PLAN OF ARRANGEMENT**

4. The Petitioners shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the **"Plan"**).

#### **POSSESSION OF PROPERTY AND OPERATIONS**

5. Subject to this Order and any further Order of this Court, the Petitioners shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the **"Property"**), and continue to carry on their business (the **"Business"**) in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Petitioners shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, **"Assistants"**) currently retained or employed by them, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.
6. The Petitioners shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:
  - (a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively **"Wages"**); and
  - (b) the fees and disbursements of any Assistants retained or employed by the Petitioners which are related to the Petitioners' restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioners, whenever and wherever incurred, in respect of:
    - (i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioners or any subsidiaries or affiliated companies of the Petitioners are domiciled;
    - (ii) any litigation in which the Petitioners are named as parties or is otherwise involved, whether commenced before or after the Order Date; and
    - (iii) any related corporate matters; and

- (c) all amounts owing for goods and services actually supplied, both prior to and subsequent to the Order Date, to the Petitioners by other parties providing goods or services with the prior consent of the Monitor, if, in the opinion of the Petitioners and the Monitor, the supplier or service provider is critical to the Business and ongoing operations of the Petitioners and the payment is required to ensure ongoing supply.
7. The Petitioners shall be subrogated to the rights of any creditor receiving payment pursuant to paragraph 6(c) of this Order in the amount of the payment(s) (the total amount paid to such party constituting a **"Critical Supplier Claim"**). Each such Critical Supplier Claim shall be deemed to be assigned to the Petitioners for all purposes and the Petitioners shall be entitled to vote the Critical Supplier Claims in any Plan.
8. Except as otherwise provided herein, the Petitioners shall be entitled to pay all expenses reasonably incurred by the Petitioners in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
- (a) all expenses and capital expenditures reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services, provided that any capital expenditure exceeding \$100,000 shall be approved by the Monitor;
  - (b) all obligations incurred by the Petitioners after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioners following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Petitioners' obligations incurred prior to the Order Date); and
  - (c) fees and disbursements of the kind referred to in paragraph 6(b) which may be incurred after the Order Date.
9. The Petitioners are authorized to remit, in accordance with legal requirements, or pay:
- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;
  - (b) all goods and services or other applicable sales taxes (collectively, **"Sales Taxes"**) required to be remitted by the Petitioners in connection with the sale of goods and services by the Petitioners, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or

were collected prior to the Order Date but not required to be remitted until on or after the Order Date; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.
10. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Petitioners shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Petitioners and the landlord from time to time ("**Rent**"), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including Order Date shall also be paid.
11. Except as specifically permitted herein, the Petitioners are hereby directed, until further Order of this Court:
- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioners to any of its creditors as of the Order Date except as authorized by this Order;
  - (b) to make no payments in respect of any financing leases which create security interests;
  - (c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of their Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
  - (d) to not grant credit except in the ordinary course of the Business only to their customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioners to such customers as of the Order Date; and
  - (e) to not incur liabilities except in the ordinary course of Business.

## **FINANCIAL ARRANGEMENTS**

12. Notwithstanding any other provision in this Order:

- (a) the Petitioners are hereby authorized and empowered to borrow, repay and reborrow from Royal Bank of Canada ("**RBC**"), as agent (RBC in such capacity, the "**Agent**"), lead arranger and sole bookrunner and RBC, Canadian Imperial Bank of Commerce ("**CIBC**") and the Toronto-Dominion Bank ("**TD**" with RBC and CIBC, the "**Lenders**") such amounts from time to time as the Petitioners consider necessary, and the operating asset-based revolving credit facility between the Petitioners and the Agent and Lenders, as amended (the "**Credit Facility**") shall continue to operate in accordance with its terms, and the Lenders shall be entitled to collect interest, fees and costs on the Credit Facility;
- (b) the Petitioners are hereby authorized and empowered to comply with and carry out the terms of the Restructuring Support Agreement (as hereinafter defined) including the repayment of outstanding amounts owing to the Lenders under the Credit Facility;
- (c) the Credit Facility shall be secured by the same charge (the "**Lenders' Charge**") as secured the Credit Facility as at the Order Date; and
- (d) the Petitioners are authorized to deal with the Lenders in respect of the Credit Facility on such terms as may be negotiated and agreed upon between the Agent, Petitioners and the Lenders.

## **RESTRUCTURING**

13. Subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), the Petitioners shall have the right to:
  - (a) permanently or temporarily cease, downsize or shut down all or any part of their Business or operations and commence marketing efforts in respect of any of their redundant or non-material assets and to dispose of redundant or non-material assets not exceeding \$500,000 in any one transaction or \$1,000,000 in the aggregate;
  - (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deems appropriate; and
  - (c) pursue all avenues of refinancing for their Business or Property, in whole or part;
 all of the foregoing to permit the Petitioners to proceed with an orderly restructuring of the Business (the "**Restructuring**").
14. The Petitioners shall provide each of the relevant landlords with notice of the Petitioners' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Petitioners' entitlement to remove any such fixture under the

provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors who claim a security interest in the fixtures, such landlord and the Petitioners, or by further Order of this Court upon application by the Petitioners, the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If the Petitioners disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Petitioners' claim to the fixtures in dispute.

15. If a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Petitioners and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer or the resiliation, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Petitioners, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to notify the Petitioners of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.
16. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable, or any other personal privacy legislation of another province (the "**Relevant Enactment**"), the Petitioners, in the course of these proceedings, is permitted to, and hereby shall, disclose personal information of identifiable individuals in their possession or control to stakeholders, their advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioners or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties

may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

### **STAY OF PROCEEDINGS, RIGHTS AND REMEDIES**

17. Until and including September 24, 2020, or such later date as this Court may order (the "**Stay Period**"), no action, suit or proceeding in any court or tribunal (each, a "**Proceeding**") against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioners and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.
18. Except as otherwise provided herein in respect of the Credit Facility with the Lenders and the terms of the Restructuring Support Agreement (as hereinafter defined), during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioners and the Monitor or leave of this Court.
19. Nothing in this Order, including paragraphs 17 and 18, shall: (i) empower the Petitioners to carry on any business which the Petitioners are not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioners.

### **NO INTERFERENCE WITH RIGHTS**

20. During the Stay Period, 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 Petitioners, except with the written consent of the Petitioners and the Monitor or leave of this Court.

### **CONTINUATION OF SERVICES**

21. During the Stay Period, all Persons having oral or written agreements with the Petitioners or mandates under an enactment 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 Business or the Petitioners, 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 Petitioners, and that the Petitioners shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Order Date are paid by the Petitioners in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

22. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioners on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

23. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioners with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioners whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioners, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioners or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Petitioners that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

#### **DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE**

24. The Petitioners shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Petitioners after the commencement of the within proceedings, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

25. The directors and officers of the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the "**D&O Charge**") on the Property, which charge shall not exceed an aggregate amount of \$4,500,000, as security for the indemnity provided in paragraph 24 of this Order. The D&O Charge shall have the priority set out in paragraphs 42 and 44 herein.
26. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the Petitioners' directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order.

#### **APPOINTMENT OF MONITOR**

27. Alvarez & Marsal Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioners with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioners and their members, shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioners pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
28. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
  - (a) monitor the Petitioners' receipts and disbursements;
  - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
  - (c) assist the Petitioners, to the extent required by the Petitioners, in their dissemination, to the Lenders and their counsel financial and other information as agreed to between the Petitioners and the Lenders which may be used in these proceedings including reporting on a basis to be agreed with the Lenders and, without limiting the foregoing, the information and reporting requirements as provided for in the Credit Agreement and the Interim Financing Credit Agreement (both as hereinafter defined);
  - (d) advise the Petitioners in their preparation of the Petitioners' cash flow statements and reporting required by the Lenders, which information shall be reviewed with the Monitor and delivered to the Lenders and their counsel on a periodic basis agreed to by the Lenders and as required by and in accordance with the Credit Agreement and the Interim Financing Credit Agreement (both as hereinafter defined);

- (e) advise the Petitioners in their development of the Plan and any amendments to the Plan;
  - (f) assist the Petitioners, to the extent required by the Petitioners, with the holding and administering of creditors', members' or shareholders' meetings for voting on the Plan;
  - (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Petitioners, to the extent that is necessary to adequately assess the Petitioners' business and financial affairs or to perform its duties arising under this Order;
  - (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
  - (i) perform such other duties as are required by this Order or by this Court from time to time.
29. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.
30. Nothing herein contained shall require or allow the Monitor 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 *Fisheries Act*, the *British Columbia Environmental Management Act*, the *British Columbia Fish Protection Act* and regulations thereunder, or any other environmental legislation of another province (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, the Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor'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.

31. The Monitor shall provide any creditor of the Petitioners and the Lenders with information provided by the Petitioners in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Petitioners is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Petitioners may agree.
32. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.

#### **ADMINISTRATION CHARGE**

33. The Monitor, counsel to the Monitor, and counsel to the Petitioners shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioners as part of the cost of these proceedings. The Petitioners are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioners on a periodic basis and, in addition, the Petitioners are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Petitioners, retainers in the amounts of \$50,000 respectively to be held by them as security for payment of their respective fees and disbursements outstanding from time to time, in addition to any existing retainers currently being held by the Monitor, counsel to the Monitor and counsel to the Petitioners.
34. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.
35. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1,000,000, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioners' restructuring. The Administration Charge shall have the priority set out in paragraphs 42 and 44 hereof.

**INTERIM FINANCING**

36. The Petitioners are hereby authorized and empowered to obtain and borrow under an interim financing facility from the Lenders (the "**Interim Lenders**") in order to finance the continuation of the Business and preservation of the Property, provided that borrowings under such credit facility shall not exceed \$15,000,000 from the date of this Order to the Return Date, and a total aggregate amount of \$100,000,000, unless permitted by further Order of this Court.
37. Such interim financing facility shall be on the terms and subject to the conditions set forth in the restructuring support agreement between the Petitioners and the Lenders, among others, dated as of September 11, 2020 (the "**Restructuring Support Agreement**") and the fourth amending agreement to the credit agreement contained therein (the "**Credit Agreement**") between the Petitioners and the Lenders, among others, dated as of September 11, 2020 (the "**Fourth Amending Agreement**", and together with the Restructuring Support Agreement, the "**Interim Financing Credit Agreement**", attached to the First Arrata Affidavit as **Exhibit "M"**.
38. The Petitioners are hereby authorized and empowered to execute and deliver the Restructuring Support Agreement, the Fourth Amending Agreement, and such credit agreements, mortgages, charges, hypothecs and security documents, guarantees, and other definitive agreements and documents (collectively, and including the Restructuring Support Agreement and the Fourth Amending Agreement, the "**Definitive Documents**"), as are contemplated by the Interim Financing Credit Agreement or as may be reasonably required by the Lenders pursuant to the terms thereof, and the Petitioners are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Interim Lenders under and pursuant to the Interim Financing Credit Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.
39. The Interim Lenders shall be entitled to the benefit of and are hereby granted a charge (the "**Interim Financing Charge**") on the Property. The Interim Financing Charge shall not secure an obligation that exists before this Order is made. The Interim Financing Charge shall have the priority set out in paragraphs 42 and 44 hereof, provided that the Interim Financing Charge shall not rank in priority to the encumbrances listed at **Schedule "B"** attached hereto and such other encumbrances in respect of which the Lenders have contractually agreed to subordinate the priority of their security relative to such encumbrances (the "**Carve Out**").
40. Notwithstanding any other provision of this Order:
- (a) the Interim Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the Interim Financing Charge or any of the Definitive Documents;

- (b) upon the occurrence of an event of default under any of the Definitive Documents or the Interim Financing Charge, the Interim Lenders, upon seven (7) days' notice to the Petitioners and the Monitor, may exercise any and all of its rights and remedies against the Petitioners or the Property under or pursuant to the Interim Financing Credit Agreement, the other Definitive Documents and the Interim Financing Charge, including without limitation, to cease making advances to the Petitioners and set off and/or consolidate any amounts owing by the Interim Lenders to the Petitioners against the obligations of the Petitioners to the Interim Lenders under the Interim Financing Credit Agreement, the other Definitive Documents or the Interim Financing Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioners and for the appointment of a trustee in bankruptcy of the Petitioners; and
- (c) the foregoing rights and remedies of the Interim Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioners or the Property.
41. The Interim Lenders, in such capacity, as well as the Lenders in the broader capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioners under the CCAA, or any proposal filed by the Petitioners under the *Bankruptcy and Insolvency Act of Canada* (the "**BIA**").

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

42. The priorities of the Administration Charge, the D&O Charge and the Interim Financing Charge, as among them, shall be as follows:
- First – the Administration Charge (to the maximum amount of \$1,000,000);
- Second – the D&O Charge (to the maximum amount of \$4,500,000); and
- Third – the Interim Financing Charge (to the maximum amount of \$102,000,000 to secure any and all advances and letters of credit issued plus interest, costs, fees and disbursements payable under the Definitive Documents).
43. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge, the Interim Financing Charge and the D&O Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be effective as against the Property and shall be valid, enforceable and opposable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.
44. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other

security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA.

45. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioners shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioners obtain the prior written consent of the Monitor, the Interim Lenders and the beneficiaries of the Administration Charge and the Director's Charge.
46. The Administration Charge, the D&O Charge, the Interim Financing Credit Agreement, the other Definitive Documents and the Interim Financing Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the Lenders shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Petitioners; and notwithstanding any provision to the contrary in any Agreement:
  - (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Interim Financing Credit Agreement or the other Definitive Documents shall create or be deemed to constitute a breach by the Petitioners of any Agreement to which they are a party;
  - (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Petitioners entering into the Interim Financing Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
  - (c) the payments made by the Petitioners pursuant to this Order, the Interim Financing Credit Agreement or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.
47. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Petitioners' interest in such real property leases.

## SERVICE AND NOTICE

48. The Monitor shall (i) without delay, publish in the Vancouver Sun and the Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioners of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.
49. The Petitioners and the Monitor are at liberty to serve 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 or electronic transmission to the Petitioners' creditors or other interested parties at their respective addresses as last shown on the records of the Petitioners and that any such service or notice by courier, personal delivery or electronic 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.
50. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: <http://www.alvarezandmarsal.com/MEC> (the "**Monitor's Website**").
51. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on the Monitor's Website.
52. Notwithstanding paragraphs 49 and 51 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

## GENERAL

53. The Petitioners or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.
54. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioners, the Business or the Property.

55. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.
56. Each of the Petitioners and the Monitor 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 the Monitor 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, including acting as a foreign representative of the Petitioners to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.
57. The Petitioners may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioners determine that such a filing is appropriate.
58. The Petitioners are hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.
59. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.
60. Any interested party (including the Petitioners and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
61. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioners is hereby dispensed with.
62. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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Signature of

party  lawyer for the Petitioners

Howard A. Gorman, Q.C.

By the Court.

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Registrar

**SCHEDULE "A" – List of Counsel**

<b>COUNSEL</b>	<b>NAME OF PARTY(IES) REPRESENTED</b>
John Sandrelli Valerie Cross	Royal Bank of Canada as administrative agent and collateral agent under the Updated Credit Agreement
Mary I.A. Buttery, Q.C.	The Proposed Monitor, Alvarez & Marsal Canada Inc.
Dylan Chochla Kibben Jackson	Kingswood Capital Management LP and 1264686 B.C. Ltd.

**SCHEDULE "B" – Carve Out Encumbrances**

<b>BRITISH COLUMBIA PPSA</b>	
<b>Secured Party:</b> CIT FINANCIAL LTD.	<b>Base Reg.:</b> 939821H
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE	<b>Expiry Date:</b> MAY 06, 2021
<b>Collateral:</b> PHOTOCOPIERS TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES. ACCESSIONS, REPLACEMENTS, SUBSTITUTIONS, ADDITIONS AND IMPROVEMENTS THERETO. ALL PROCEEDS FROM THE AFORESAID COLLATERAL THAT ARE GOODS, INTANGIBLES, CHATTEL PAPER, DOCUMENTS OF TITLE, INSTRUMENTS, MONEY OR INVESTMENT PROPERTY (ALL AS DEFINED IN THE PERSONAL PROPERTY SECURITY ACT) AND INCLUDING INSURANCE PROCEEDS.	
<b>Secured Party:</b> GE VFS CANADA LIMITED PARTNERSHIP	<b>Base Reg.:</b> 141283I
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE	<b>Expiry Date:</b> AUG22, 2020
<b>Collateral:</b> ALL GOODS WHICH ARE COPIERS TOGETHER WITH ALL REPLACEMENTS AND SUBSTITUTIONS THEREOF AND ALL PARTS, ACCESSORIES, ACCESSIONS AND ATTACHMENTS THERETO AND ALL PROCEEDS THEREOF, INCLUDING ALL PROCEEDS WHICH ARE ACCOUNTS, GOODS, CHATTEL PAPER, INVESTMENT PROPERTY, DOCUMENTS OF TITLE, INSTRUMENTS, MONEY, INTANGIBLES, CROPS OR INSURANCE PROCEEDS (REFERENCE NO. 9769864-001)	
<b>Secured Party:</b> GE VFS CANADA LIMITED PARTNERSHIP	<b>Base Reg.:</b> 141299I
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE	<b>Expiry Date:</b> AUG22, 2020
<b>Collateral:</b> ALL GOODS WHICH ARE COPIERS TOGETHER WITH ALL REPLACEMENTS AND SUBSTITUTIONS THEREOF AND ALL PARTS, ACCESSORIES, ACCESSIONS AND ATTACHMENTS THERETO AND ALL PROCEEDS THEREOF, INCLUDING ALL PROCEEDS WHICH ARE ACCOUNTS, GOODS, CHATTEL PAPER, INVESTMENT PROPERTY, DOCUMENTS OF TITLE, INSTRUMENTS, MONEY, INTANGIBLES, CROPS OR INSURANCE PROCEEDS (REFERENCE NO. 9769866-001)	
<b>Secured Party:</b> GE VFS CANADA LIMITED PARTNERSHIP	<b>Base Reg.:</b> 378352I
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE	<b>Expiry Date:</b> JAN07, 2021
<b>Collateral:</b> ALL GOODS WHICH ARE PRINTERS AND COPIERS TOGETHER WITH ALL REPLACEMENTS AND SUBSTITUTIONS THEREOF AND ALL PARTS, ACCESSORIES, ACCESSIONS AND ATTACHMENTS THERETO AND ALL PROCEEDS THEREOF, INCLUDING ALL PROCEEDS WHICH ARE ACCOUNTS, GOODS, CHATTEL PAPER, INVESTMENT PROPERTY, DOCUMENTS OF TITLE, INSTRUMENTS, MONEY, INTANGIBLES, CROPS OR INSURANCE PROCEEDS (REFERENCE NO. 9792123-001)	
<b>Secured Party:</b> GE VFS CANADA LIMITED PARTNERSHIP	<b>Base Reg.:</b> 431715I
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE	<b>Expiry Date:</b> FEB09, 2021
<b>Collateral:</b> ALL GOODS WHICH ARE COPIERS TOGETHER WITH ALL REPLACEMENTS AND SUBSTITUTIONS THEREOF AND ALL PARTS, ACCESSORIES, ACCESSIONS AND ATTACHMENTS THERETO AND ALL PROCEEDS THEREOF, INCLUDING ALL PROCEEDS WHICH ARE ACCOUNTS, GOODS, CHATTEL PAPER, INVESTMENT PROPERTY, DOCUMENTS OF TITLE, INSTRUMENTS, MONEY, INTANGIBLES, CROPS OR INSURANCE PROCEEDS (REFERENCE NO. 9796948-001)	

<b>Secured Party:</b> GE VFS CANADA LIMITED PARTNERSHIP	<b>Base Reg.:</b> 431716I			
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE	<b>Expiry Date:</b> FEB 09, 2021			
<b>Collateral:</b> ALL GOODS WHICH ARE COPIERS TOGETHER WITH ALL REPLACEMENTS AND SUBSTITUTIONS THEREOF AND ALL PARTS, ACCESSORIES, ACCESSIONS AND ATTACHMENTS THERETO AND ALL PROCEEDS THEREOF, INCLUDING ALL PROCEEDS WHICH ARE ACCOUNTS, GOODS, CHATTEL PAPER, INVESTMENT PROPERTY, DOCUMENTS OF TITLE, INSTRUMENTS, MONEY, INTANGIBLES, CROPS OR INSURANCE PROCEEDS (REFERENCE NO. 9796951-001)				
<b>Secured Party:</b> GE VFS CANADA LIMITED PARTNERSHIP	<b>Base Reg.:</b> 431718I			
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE	<b>Expiry Date:</b> FEB 09,2021			
<b>Collateral:</b> ALL GOODS WHICH ARE COPIERS TOGETHER WITH ALL REPLACEMENTS AND SUBSTITUTIONS THEREOF AND ALL PARTS, ACCESSORIES, ACCESSIONS AND ATTACHMENTS THERETO AND ALL PROCEEDS THEREOF, INCLUDING ALL PROCEEDS WHICH ARE ACCOUNTS, GOODS, CHATTEL PAPER, INVESTMENT PROPERTY, DOCUMENTS OF TITLE, INSTRUMENTS, MONEY, INTANGIBLES, CROPS OR INSURANCE PROCEEDS (REFERENCE NO. 9796954-001)				
<b>Secured Party:</b> C. KEAY INVESTMENTS LTD. DBA OCEAN C. KEAY INVESTMENTS LTD. C.KEAY INVESTMENTS LTD.	<b>Base Reg.:</b> 453961I			
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OP	<b>Expiry Date:</b> FEB 23,2021			
<b>Vehicle Collateral:</b>				
Type	Serial #	Year	Make/Model	MH Reg.#
TR	1JJV532T3SL275998	1995	WABASH 53'T/A DRY VAN SPR	
<b>General Collateral:</b> TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES, ACCESSIONS, REPLACEMENTS, SUBSTITUTIONS, ADDITIONS AND IMPROVEMENTS THERETO AND ALL PROCEEDS IN ANY FORM DERIVED DIRECTLY OR INDIRECTLY FROM ANY DEALING WITH THE COLLATERAL AND A RIGHT TO AN INSURANCE PAYMENT OR ANY PAYMENT THAT INDEMNIFIES OR COMPENSATES FOR LOSS OR DAMAGE TO THE COLLATERAL OR PROCEEDS OF THE COLLATERAL.				
<b>Secured Party:</b> WELLS FARGO EQUIPMENT FINANCE COMPANY	<b>Base Reg.:</b> 537484J			
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE	<b>Expiry Date:</b> SEP14, 2022			
<b>Collateral:</b> ALL GOODS WHICH ARE COPIERS TOGETHER WITH ALL REPLACEMENTS AND SUBSTITUTIONS THEREOF AND ALL PARTS, ACCESSORIES, ACCESSIONS AND ATTACHMENTS THERETO AND ALL PROCEEDS THEREOF, INCLUDING ALL PROCEEDS WHICH ARE ACCOUNTS, GOODS, CHATTEL PAPER, INVESTMENT PROPERTY, DOCUMENTS OF TITLE, INSTRUMENTS, MONEY, INTANGIBLES, CROPS OR INSURANCE PROCEEDS (REFERENCE NO. 9882171-001)				
<b>Secured Party:</b> CIT FINANCIAL LTD.	<b>Base Reg.:</b> 562051J			
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE	<b>Expiry Date:</b> SEP27, 2022			
<b>Collateral:</b> RICOH PRINTERS TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES, ACCESSIONS, REPLACEMENTS, SUBSTITUTIONS, ADDITIONS AND IMPROVEMENTS THERETO. ALL PROCEEDS FROM THE AFORESAID COLLATERAL THAT ARE GOODS, INTANGIBLES, CHATTEL PAPER, DOCUMENTS OF TITLE, INSTRUMENTS, MONEY OR				

INVESTMENT PROPERTY (ALL AS DEFINED IN THE PERSONAL PROPERTY SECURITY ACT) AND INCLUDING INSURANCE PROCEEDS.			
<b>Secured Party:</b> APPLE CANADA INC.	<b>Base Reg.:</b> 415013K		
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE	<b>Expiry Date:</b> NOV22, 2020		
<b>Collateral:</b> ALL GOODS WHICH ARE COMMUNICATION & ELECTRONIC DEVICES MANUFACTURED, DISTRIBUTED OR SOLD BY APPLE CANADA INC., THE GOODS DESCRIBED HEREIN TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES, ACCESSIONS, REPLACEMENTS, SUBSTITUTIONS, ADDITIONS AND IMPROVEMENTS THERETO, AND ALL PROCEEDS IN ANY FORM DERIVED DIRECTLY OR INDIRECTLY FROM ANY DEALING WITH THE COLLATERAL OR PROCEEDS THEREOF, AND WITHOUT LIMITATION, MONEY, CHEQUES, DEPOSITS IN DEPOSIT-TAKING INSTITUTIONS, GOODS, ACCOUNTS RECEIVABLE, RENTS OR OTHER PAYMENTS ARISING FROM THE LEASE OF THE COLLATERAL, CHATTEL PAPER, INSTRUMENTS, INTANGIBLES, DOCUMENTS OF TITLE, SECURITIES, AND RIGHTS OF INSURANCE PAYMENTS OR ANY OTHER PAYMENTS AS INDEMNITY OR COMPENSATION FOR LOSS OR DAMAGE TO THE COLLATERAL OR PROCEEDS OF THE COLLATERAL. (REFERENCE NO. 9946246-001) (FOR INTERNAL USE ONLY) (AS MAY BE AMENDED OR UPDATED FROM TIME TO TIME)			
<b>Secured Party:</b> LBEL INC.	<b>Base Reg.:</b> 884391K		
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE	<b>Expiry Date:</b> JUL 10, 2024		
<b>Collateral:</b> PHOTOCOPIERS TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES. ACCESSIONS, REPLACEMENTS, SUBSTITUTIONS, ADDITIONS AND IMPROVEMENTS THERETO. ALL PROCEEDS FROM THE AFORESAID COLLATERAL THAT ARE GOODS, INTANGIBLES, CHATTEL PAPER, DOCUMENTS OF TITLE, INSTRUMENTS, MONEY OR INVESTMENT PROPERTY (ALL AS DEFINED IN THE PERSONAL PROPERTY SECURITY ACT) AND INCLUDING INSURANCE PROCEEDS.			
<b>Secured Party:</b> G.N. JOHNSTON EQUIPMENT CO. LTD.	<b>Base Reg.:</b> 669057L		
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE	<b>Expiry Date:</b> JUL 30, 2023		
<b>Vehicle Collateral:</b>			
Type	Serial #	Year	Make/Model
MV	560-19-B46074	2019	RAYMOND 560-OPC30TT
MV	560-19-B46076	2019	RAYMOND 560-OPC30TT
MV	560-19-B46078	2019	RAYMOND 560-OPC30TT
<b>General Collateral:</b> (3) DEKA BATTERIES 18D125136C79 S/N 2005AI 2011AI 2012AI AND (3) DEKA CHARGERS Q4-24/36-150BB S/N 2-10-0119-00314 2-10-0519-20936 2-10-1218-20820 REF. 509297			
<b>Secured Party:</b> LBELINC.	<b>Base Reg.:</b> 906149L		
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE	<b>Expiry Date:</b> NOV21, 2025		
<b>Collateral:</b> PHOTOCOPIERS TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES. ACCESSIONS, REPLACEMENTS, SUBSTITUTIONS, ADDITIONS AND IMPROVEMENTS THERETO. ALL PROCEEDS FROM THE AFORESAID COLLATERAL THAT ARE GOODS, INTANGIBLES, CHATTEL PAPER, DOCUMENTS OF TITLE, INSTRUMENTS, MONEY OR INVESTMENT PROPERTY (ALL AS DEFINED IN THE PERSONAL PROPERTY SECURITY ACT) AND INCLUDING INSURANCE PROCEEDS			
<b>Secured Party:</b> WELLS FARGO EQUIPMENT FINANCE	<b>Base Reg.:</b> 108152M		

<b>COMPANY</b>	
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE	<b>Expiry Date:</b> MAR09, 2026
<b>Collateral:</b> ALL GOODS WHICH ARE PHOTOCOPIERS, MULTIFUNCTION DEVICES, PRINTERS, 3D PRINTERS, PRODUCTION PRINTERS, INDUSTRIAL INKJETS, DIGITAL PRESSES, DIGITAL SIGNAGE, FAX MACHINES, PROJECTORS, VIDEO CONFERENCING, INTERACTIVE WHITEBOARDS, SERVERS, AND SOFTWARE, OFFICE FURNITURE (CHAIRS, TABLES, ACCESSORIES), TELEPHONY, COMPUTERS, TELECONFERENCING EQUIPMENT, MAILING SYSTEMS, FOLDER INSERTERS. THE GOODS DESCRIBED HEREIN TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES, ACCESSIONS, REPLACEMENTS, SUBSTITUTIONS, ADDITIONS AND IMPROVEMENTS THERETO, AND ALL PROCEEDS IN ANY FORM DERIVED DIRECTLY OR INDIRECTLY FROM ANY DEALING WITH THE COLLATERAL OR PROCEEDS THEREOF, AND WITHOUT LIMITATION, MONEY, CHEQUES, DEPOSITS IN DEPOSIT-TAKING INSTITUTIONS, GOODS, ACCOUNTS RECEIVABLE, RENTS OR OTHER PAYMENTS ARISING FROM THE LEASE OF THE COLLATERAL, CHATTEL PAPER, INSTRUMENTS, INTANGIBLES, DOCUMENTS OF TITLE, SECURITIES, AND RIGHTS OF INSURANCE PAYMENTS OR ANY OTHER PAYMENTS AS INDEMNITY OR COMPENSATION FOR LOSS OR DAMAGE TO THE COLLATERAL OR PROCEEDS OF THE COLLATERAL. (REFERENCE NO. 8326544-001) (FOR INTERNAL USE ONLY) (AS MAY BE AMENDED OR UPDATED FROM TIME TO TIME)	

<b>ALBERTA PPSA</b>	
<b>Secured Party:</b> GE VFS CANADA LIMITED PARTNERSHIP	<b>Base Reg.:</b> 15010726580
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE	<b>Expiry Date:</b> 2021-Jan-07
<b>Collateral:</b> ALL GOODS WHICH ARE PRINTERS AND COPIERS TOGETHER WITH ALL REPLACEMENTS AND SUBSTITUTIONS THEREOF AND ALL PARTS, ACCESSORIES, ACCESSIONS AND ATTACHMENTS THERETO AND ALL PROCEEDS THEREOF, INCLUDING ALL PROCEEDS WHICH ARE ACCOUNTS, GOODS, CHATTEL PAPER, INVESTMENT PROPERTY, DOCUMENTS OF TITLE, INSTRUMENTS, MONEY, INTANGIBLES, CROPS OR INSURANCE PROCEEDS (REFERENCE NO. 9792123-001)	
<b>Secured Party:</b> GE VFS CANADA LIMITED PARTNERSHIP	<b>Base Reg.:</b> 15020934670
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE	<b>Expiry Date:</b> 2021-Feb-09
<b>Collateral:</b> ALL GOODS WHICH ARE COPIERS TOGETHER WITH ALL REPLACEMENTS AND SUBSTITUTIONS THEREOF AND ALL PARTS, ACCESSORIES, ACCESSIONS AND ATTACHMENTS THERETO AND ALL PROCEEDS THEREOF, INCLUDING ALL PROCEEDS WHICH ARE ACCOUNTS, GOODS, CHATTEL PAPER, INVESTMENT PROPERTY, DOCUMENTS OF TITLE, INSTRUMENTS, MONEY, INTANGIBLES, CROPS OR INSURANCE PROCEEDS (REFERENCE NO. 9796939-001)	
<b>Secured Party:</b> GE VFS CANADA LIMITED PARTNERSHIP	<b>Base Reg.:</b> 15020934682
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE	<b>Expiry Date:</b> 2021-Feb-09
<b>Collateral:</b> ALL GOODS WHICH ARE COPIERS TOGETHER WITH ALL REPLACEMENTS AND SUBSTITUTIONS THEREOF AND ALL PARTS, ACCESSORIES, ACCESSIONS AND ATTACHMENTS THERETO AND ALL PROCEEDS THEREOF, INCLUDING ALL PROCEEDS WHICH ARE ACCOUNTS, GOODS, CHATTEL PAPER, INVESTMENT PROPERTY, DOCUMENTS OF TITLE, INSTRUMENTS, MONEY, INTANGIBLES, CROPS OR INSURANCE PROCEEDS (REFERENCE NO. 9796937-001)	
<b>Secured Party:</b> LBEL INC.	<b>Base Reg.:</b> 19112122796
<b>Base Debtor:</b>	<b>Expiry Date:</b> 2025-Nov-21

<b>MOUNTAIN EQUIPMENT CO-OPERATIVE</b>
<b>Collateral:</b> PHOTOCOPIERS TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES. ACCESSIONS, REPLACEMENTS, SUBSTITUTIONS, ADDITIONS AND IMPROVEMENTS THERETO. ALL PROCEEDS FROM THE AFORESAID COLLATERAL THAT ARE GOODS, INTANGIBLES, CHATTEL PAPER, DOCUMENTS OF TITLE, INSTRUMENTS, MONEY OR INVESTMENT PROPERTY (ALL AS DEFINED IN THE PERSONAL PROPERTY SECURITY ACT) AND INCLUDING INSURANCE PROCEEDS

<b>MANITOBA PPSA</b>	
<b>Secured Party:</b> LBEL INC.	<b>Base Reg.:</b> 201920179806
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE	<b>Expiry Date:</b> 2025-11-21
<b>Collateral:</b> PHOTOCOPIERS TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES. ACCESSIONS, REPLACEMENTS, SUBSTITUTIONS, ADDITIONS AND IMPROVEMENTS THERETO. ALL PROCEEDS FROM THE AFORESAID COLLATERAL THAT ARE GOODS, INTANGIBLES, CHATTEL PAPER, DOCUMENTS OF TITLE, INSTRUMENTS, MONEY OR INVESTMENT PROPERTY (ALL AS DEFINED IN THE PERSONAL PROPERTY SECURITY ACT) AND INCLUDING INSURANCE PROCEEDS	

<b>QUEBEC</b>	
<b>Secured Party:</b> LBEL INC.	<b>Base Reg.:</b> 19-1327984-0001
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE	<b>Expiry Date:</b> 2025-10-10
<b>Collateral:</b> (1) IMPRIMANTE RICOH P C600, ns: 5329X601827; (3) IMPRIMANTE RICOH AFICIO SP 5300DN, ns: Y029X355575; Y029X355584; Y028X842771  Les biens meubles décrits ci-dessus, où qu'ils se trouvent, incluant toutes les pièces, accessoires, biens de remplacement, ajouts et dispositifs s'y rattachant, corporels et incorporels (incluant tout logiciel), présents et futurs, reliés à ces biens meubles ou fixés sur ceux-ci, ainsi que tous les produits et toute la documentation, les manuels ou les informations fournis relativement à ces biens meubles.	

<b>ONTARIO PPSA</b>						
<b>Secured Party:</b> GE VFS CANADA LIMITED PARTNERSHIP				<b>Reg. No.:</b> 20150107 1559 5064 8135		
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE				<b>Expiry Date:</b> 2021-Jan-07		
<b>Collateral:</b>						
<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	
		X				
<b>General Collateral Description:</b> EQUIPMENT - ACCOUNT SCHEDULE- 9792123001						
<b>Secured Party:</b> GE VFS CANADA LIMITED PARTNERSHIP				<b>Reg. No.:</b> 20150209 1851 5064 9241		
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE				<b>Expiry Date:</b> 2021-Feb-09		
<b>Collateral:</b>						
<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	

		X				
<b>General Collateral Description:</b> EQUIPMENT - ACCOUNT SCHEDULE- 9796936001						
<b>Secured Party:</b> GE VFS CANADA LIMITED PARTNERSHIP				<b>Reg. No.:</b> 20150209 1855 5064 9244		
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE				<b>Expiry Date:</b> 2021-Feb-09		
<b>Collateral:</b>						
<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	
		X				
<b>General Collateral Description:</b> ACCOUNT SCHEDULE- 9796933001						
<b>Secured Party:</b> GE VFS CANADA LIMITED PARTNERSHIP.				<b>Reg. No.:</b> 20150209 1856 5064 9245		
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE				<b>Expiry Date:</b> 2021-Feb-09		
<b>Collateral:</b>						
<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	
		X				
<b>General Collateral Description:</b> ACCOUNT SCHEDULE- 9796943001						
<b>Secured Party:</b> CIT FINANCIAL LTD.				<b>Reg. No.:</b> 20160927 1126 1616 0567		
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE				<b>Expiry Date:</b> 2022-Sept-27		
<b>Collateral:</b>						
<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	
		X		X		
<b>General Collateral Description:</b> RICOH PRINTERS AND ACCESSORIES						
<b>Secured Party:</b> LBEL INC.				<b>Reg. No.:</b> 20191121 1512 1901 4810		
<b>Base Debtor:</b> MOUNTAIN EQUIPMENT CO-OPERATIVE				<b>Expiry Date:</b> 2025-Nov-21		
<b>General Collateral Description:</b> PHOTOCOPIERS WITH ALL ACCESSORIES						

No. \_\_\_\_\_  
Vancouver Registry

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In the Supreme Court of British Columbia

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

AND

IN THE MATTER OF MOUNTAIN EQUIPMENT CO-OPERATIVE  
AND 1314625 ONTARIO LIMITED

Petitioners

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**ORDER MADE AFTER APPLICATION**

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**NORTON ROSE FULBRIGHT CANADA LLP**

Barristers & Solicitors

1800 – 510 West Georgia Street

Vancouver, BC V6B 0M3

Attention: Howard A. Gorman, Q.C.

Filing Agent: West Coast Title Search

SCB/ker

Matter# 1001118436



2. Items to be Sealed:

Document Name:	Date Filed: (date on Court Stamp)	Number of copies filed, including any extra copies for the judge.	Duration of sealing order: (to specific date or until further order)	Sought	Granted	
					Yes	No
1) <u>Entire File</u>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2) <u>Specific Documents:</u> (a) Exhibit A -I (pages 1-574) to the Confidential Affidavit	14/Sep/2020	One.	Until further order.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3) <u>Clerk's Notes</u>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4) <u>Order</u>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Endorsement of this Order by counsel appearing, other than counsel for the Petitioners, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

\_\_\_\_\_  
Signature of  
 party  lawyer for the Petitioners

Howard A. Gorman, Q.C.

By the Court.

\_\_\_\_\_  
Registrar

**SCHEDULE "A" – List of Counsel**

<b>COUNSEL</b>	<b>NAME OF PARTY(IES) REPRESENTED</b>
John Sandrelli Valerie Cross	Royal Bank of Canada as administrative agent and collateral agent under the Updated Credit Agreement
Mary I.A. Buttery, Q.C.	The Proposed Monitor, Alvarez & Marsal Canada Inc.
Dylan Chochla Kibben Jackson	Kingswood Capital Management LP and 1264686 B.C. Ltd.

No. \_\_\_\_\_  
Vancouver Registry

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In the Supreme Court of British Columbia

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

AND

IN THE MATTER OF MOUNTAIN EQUIPMENT CO-OPERATIVE  
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Petitioners

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**ORDER MADE AFTER APPLICATION**  
**(Sealing Order)**

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**NORTON ROSE FULBRIGHT CANADA LLP**  
Barristers & Solicitors  
1800 – 510 West Georgia Street  
Vancouver, BC V6B 0M3  
Attention: Howard A. Gorman, Q.C.

SCB/ker

File# 1001118436

No. \_\_\_\_\_  
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In the Supreme Court of British Columbia

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

AND

IN THE MATTER OF MOUNTAIN EQUIPMENT CO-OPERATIVE  
AND 1314625 ONTARIO LIMITED

Petitioners

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**PETITION**

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**NORTON ROSE FULBRIGHT CANADA LLP**  
Barristers & Solicitors  
1800 – 510 West Georgia Street  
Vancouver, BC V6B 0M3  
Attention: Howard A. Gorman, Q.C.

SCB/ker

Matter# 1001118436