

# COURT OF APPEAL OF ALBERTA

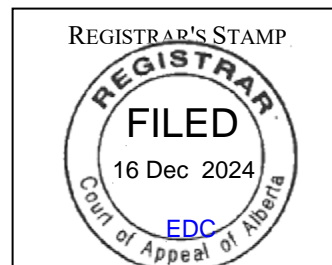
FORM AP-3  
[RULE 14.53]

COURT OF APPEAL FILE NUMBER: ~~2401-~~ 2401-0352AC AC

TRIAL COURT FILE NUMBER: 2401-15969

REGISTRY OFFICE: CALGARY

APPLICANTS: FOSSIL CREEK A2A DEVELOPMENTS, LLC  
AND WINDRIDGE A2A DEVELOPMENTS,  
LLC.



STATUS ON APPEAL: APPELLANTS  
STATUS ON APPLICATION: RESPONDENTS

RESPONDENTS: ALVAREZ & MARSAL CANADA INC.

STATUS ON APPEAL: RESPONDENT  
STATUS ON APPLICATION: APPLICANT

DOCUMENT: **APPLICATION FOR PERMISSION TO  
APPEAL**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT: **BENNETT JONES LLP**  
Barristers and Solicitors  
4500, 855 – 2nd Street SW  
Calgary, Alberta, T2P 4K7  
Attention: Kelsey Meyer / Luc Rollingson  
Telephone No.: (403) 298- 3324/ 298-3177  
Fax No.: (403) 265-7219

and

CONTACT INFORMATION OF ALL  
OTHER PARTIES: **CASSELS BROCK & BLACKWELL LLP**  
Counsel for Alvarez & Marsal Canada Inc. (the  
Monitor)  
3810, 888 – 3<sup>rd</sup> Street SW  
Calgary, AB T2P 5C5  
Attn: Jeff Oliver / Danielle Marechal  
Phone: (403) 351-2921 / 2922  
Email: [joliver@cassels.com](mailto:joliver@cassels.com) /  
[dmarechal@cassels.com](mailto:dmarechal@cassels.com)

File: 57100-4

**NOTICE TO RESPONDENT:**

Alvarez & Marsal Canada Inc.

**WARNING**

If you do not come to Court on the date and time shown below either in person or by your lawyer, the Court may give the applicant what it wants in your absence. You will be bound by any order that the Court makes. If you intend to rely on other evidence or a memorandum in support of your position when the application is heard or considered, you must file and serve those documents in compliance with the Rules. (Rule 14.41 and 14.43)

**NOTICE TO RESPONDENTS:**

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: February 13, 2025  
Time: 9:30 a.m.  
Where: Suites 2600, 450 – 1 Street SW  
Calgary AB T2P 5H1  
Before: A single Justice of the Court (Rule 14.37)

**Nature of Application and Relief Sought:**

1. This is a case where the Justice erred in law by granting an Amended and Restated Initial Order (“**ARIO**”) in proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”) against Fossil Creek A2A Developments, LLC and Windridge A2A Developments, LLC (the “**Applicants**”).
2. The Applicants are bodies corporate in the State of Texas, USA. No Order for Service *Ex Juris* upon the Applicants had been sought or granted in advance of the Court granting an Initial Order under the CCAA against the Applicants on November 14, 2024. The Applicants responded to the Initial Order which the Respondent, the court-appointed Monitor in the CCAA proceedings, was enforcing against the Applicants, and in doing so, expressly stated that they did not attorn to the jurisdiction of the Court of King’s Bench of Alberta and challenged the jurisdiction of the Court. All steps taken by the Applicants in

the CCAA proceedings were and remain without prejudice to their challenge to the Court's assertion of jurisdiction over them.

3. The Court erred in law in granting the ARIO against the Applicants notwithstanding that the applicants for the Initial Order in the CCAA proceedings did not apply for nor were they granted an Order for Service ex juris in relation to the Applicants, each of which are limited liability companies incorporated pursuant to the laws of Texas. The Court erred in asserting jurisdiction over the Applicants.
4. The Court erred in law in granting the ARIO against Fossil Creek A2A Developments, LLC, notwithstanding that it is not clear that there was any evidence before the Court that Fossil Creek A2A Developments, LLC has any liabilities, is insolvent, or has committed an act of bankruptcy, and thus is not a "debtor company" as that term is defined in the CCAA.
5. The Court erred in law in granting the ARIO, notwithstanding that there was no evidence that Fossil Creek A2A Developments, LLC or Windridge A2A Developments, LLC owed any liabilities to the investors who applied for the Initial Order against them.
6. The Court erred in law in granting the ARIO against the Applicants, in the circumstances where the investors (the applicants for the Initial Order) are not creditors of the Applicants, and it is not possible for the CCAA proceedings to further the purposes and objectives of the CCAA to effect a compromise or arrangement or to otherwise restructure or monitor the real estate development projects that the investors invested in, due to the fact that the lands that are the subject of those projects are located in Texas, and the entities that control the lands are trusts subject to the laws of Texas, the trustee of each of which is an individual and not a "debtor company" pursuant to the CCAA.
7. The Court erred in law in extending the CCAA proceedings over the Applicants and in directing the Applicants to respond to information requests to the Respondent, notwithstanding that there is no basis for the Court to assert jurisdiction over the Applicants.
8. Such further and other relief as counsel may request and this Honourable Court may grant.

**Grounds for making this application:**

9. The points of appeal are of significance to the insolvency bar generally, as the proposed appeal raises issues regarding jurisdiction;
10. The points of appeal are of significance to the action itself and to other parties within the action;
11. The appeal is *prima facie* meritorious and is not frivolous;
12. The appeal will not unduly hinder the progress of the action;
13. The ARIO appears to be contrary to law and/or involves an obvious error causing prejudice for which there is no other remedy; and
14. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**Material or evidence to be relied on:**

15. The Applicants intend to rely upon the following:
  - (a) The record or portions of the record that was before the Honourable Justice Simard at the hearings for the ARIO on November 21, 2024 and November 25, 2024.
  - (b) Such further and other material as counsel may advise and this Honourable Court may permit.

**Applicable Acts, Regulations and Rules:**

16. Part 14, Division 4 of the *Alberta Rules of Court*;
17. The *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended, and in particular, sections 11.02, 13 and 14;
18. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended;
19. The *Judicature Act*, RSA 2000, c J-2; and

20. Such further and other Acts, Regulations and Rules as counsel may advise and this Honourable Court may permit.

**COURT OF APPEAL OF ALBERTA****Form AP-1**

[Rules 14.8 and 14.12]

COURT OF APPEAL FILE NUMBER:

TRIAL COURT FILE NUMBER: 2401-15969

REGISTRY OFFICE: Calgary

PLAINTIFFS/APPLICANTS: FOSSIL CREEK A2A  
DEVELOPMENTS, LLC AND  
WINDRIDGE A2A  
DEVELOPMENTS, LLC.

Registrar's Stamp

STATUS ON APPEAL: Appellants

DEFENDANT/RESPONDENT: ALVAREZ & MARSAL CANADA  
INC, in its capacity as Court-  
appointed Monitor of  
WINDRIDGE A2A  
DEVELOPMENTS, LLC and  
FOSSIL CREEK A2A  
DEVELOPMENTS, LLC

STATUS ON APPEAL: Respondent

DOCUMENT: **CIVIL NOTICE OF APPEAL**APPELLANT'S ADDRESS FOR  
SERVICE AND CONTACT  
INFORMATION:Bennett Jones LLP  
Barristers and Solicitors  
4500 Bankers Hall East, 855 - 2nd Street SW  
Calgary, AB T2P 4K7  
Attn: Kelsey Meyer & Luc Rollingson  
Phone: (403) 298- 3323  
Fax: (403) 265-7219  
Email: meyerk@bennettjones.com /  
rollingsonl@bennettjones.com**WARNING**

To the Respondent: If you do not respond to this appeal as provided for in the Alberta Rules of Court, the appeal will be decided in your absence and without your input.

**1. Particulars of Judgment, Order or Decision Appealed From:**

Date pronounced: November 25, 2024

Date entered: December 3, 2024

Date served: December 3, 2024

Official neutral citation of reasons for decision, if any: **N/A**

(Attach a copy of order or judgment: Rule 14.12(3). If a copy is not attached, indicate under item 14 and file a copy as soon as possible: Rule 14.18(2).)

**2. Indicate where the matter originated:**

**X Court of King's Bench**

Judicial Centre: Calgary

Justice: Honourable Justice C. Simard

On appeal from a King's Bench Applications Judge or a Justice of the Court of Justice?:

Yes      X No

Official neutral citation of reasons for decision, if any, of the Applications Judge or Justice of the Court of Justice: (do not attach copy)

(If originating from an order of a King's Bench Applications Judge or a Justice of the Court of Justice, a copy of that order is also required: Rule 14.18(1)(c).)

**Board, Tribunal or Professional Discipline Body**

Specify Body:

**3. Details of Permission to Appeal, if required (Rules 14.5 and 14.12(3)(a)).**

Permission not required, or      Granted:

Date:

Justice:

(Attach a copy of order, but not reasons for decision.)

**4. Portion being appealed (Rule 14.12(2)(c)):**

Whole, or

X Only specific parts (if specific part, indicate which part): those parts relating to the Appellants.

(Where parts only of a family law order are appealed, describe the issues being appealed, e.g. property, child support, parenting, etc.)

## 5. Provide a brief description of the issues:

This Civil Notice of Appeal relates to the appeal by Fossil Creek A2A Developments, LLC and Windridge A2A Developments, LLC (the “**Appellants**”) of the Amended and Restated Initial Order granted on November 25, 2024 (“**ARIO**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”). A brief description of the issues is set out below.

1. The Applicants are bodies corporate in the State of Texas, USA. No Order for Service *Ex Juris* upon the Applicants had been sought or granted in advance of the Court granting an Initial Order under the CCAA against the Applicants on November 14, 2024. The Applicants responded to the Initial Order which the Respondent, the court-appointed Monitor in the CCAA proceedings, was enforcing against the Applicants, and in doing so, expressly stated that they did not attorn to the jurisdiction of the Court of King’s Bench of Alberta and challenged the jurisdiction of the Court. All steps taken by the Applicants in the CCAA proceedings were and remain without prejudice to their challenge to the Court’s assertion of jurisdiction over them.
2. The Court erred in law in granting the ARIO against the Applicants notwithstanding that the applicants for the Initial Order in the CCAA proceedings did not apply for nor were they granted an Order for Service ex juris in relation to the Applicants, each of which are limited liability companies incorporated pursuant to the laws of Texas. The Court erred in asserting jurisdiction over the Applicants.
3. The Court erred in law in granting the ARIO against Fossil Creek A2A Developments, LLC, notwithstanding that it is not clear that there was any evidence before the Court that Fossil Creek A2A Developments, LLC has any liabilities, is insolvent, or has committed an act of bankruptcy, and thus is not a “debtor company” as that term is defined in the CCAA.
4. The Court erred in law in granting the ARIO, notwithstanding that there was no evidence that Fossil Creek A2A Developments, LLC or Windridge A2A



Developments, LLC owed any liabilities to the investors who applied for the Initial Order against them.

5. The Court erred in law in granting the ARIO against the Applicants, in the circumstances where the investors (the applicants for the Initial Order) are not creditors of the Applicants, and it is not possible for the CCAA proceedings to further the purposes and objectives of the CCAA to effect a compromise or arrangement or to otherwise restructure or monitor the real estate development projects that the investors invested in, due to the fact that the lands that are the subject of those projects are located in Texas, and the entities that control the lands are trusts subject to the laws of Texas, the trustee of each of which is an individual and not a "debtor company" pursuant to the CCAA.
6. The Court erred in law in extending the CCAA proceedings over the Applicants and in directing the Applicants to respond to information requests to the Respondent, notwithstanding that there is no basis for the Court to assert jurisdiction over the Applicants.

**6. Provide a brief description of the relief claimed:**

The Appellants respectfully request the following relief:

1. That this appeal be granted;
2. That this Honourable Court overturn or vacate the ARIO as it relates to the Appellants;
3. That this Honourable Court declare that the Appellants are not parties to the CCAA proceedings;
4. Costs of this appeal; and
5. Such further and other relief as this Honourable Court may deem just.

**7. Is this appeal required to be dealt with as a fast track appeal? (Rule 14.14)**

Yes X No

**8. Does this appeal involve the custody, access, guardianship, parenting time, decision-making responsibility, contact or support of a child? (Rule 14.14(2)(b))**

Yes X No

**9. Will an application be made to expedite this appeal?**Yes ☐ No ☒**10. Is Judicial Dispute Resolution with a view to settlement or crystallization of issues appropriate? (Rule 14.60)**Yes ☐ No ☒**11. Could this matter be decided without oral argument? (Rule 14.32(2))**Yes ☐ No ☒**12. Are there any restricted access orders or statutory provisions that affect the privacy of this file? (Rules 6.29, 14.12(2)(e), 14.83)**Yes ☐ No ☒

If yes, provide details:  
(Attach a copy of any order.)

**13. List respondent(s) or counsel for the respondent(s), with contact information:**

CASSELS BROCK & BLACKWELL LLP  
Counsel for Alvarez & Marsal Canada Inc. (the Monitor)  
3810, 888 – 3rd Street SW  
Calgary, AB T2P 5C5  
Attn: Jeff Oliver / Danielle Marechal  
Phone: (403) 351-2921 / 2922  
Email: joliver@cassels.com / dmarechal@cassels.com  
File: 57100-4

*If specified constitutional issues are raised, service on the Attorney General is required under s. 24 of the Judicature Act: Rule 14.18(1)(c)(viii).*

**14. Attachments (check as applicable)**

  X   Order or judgment under appeal if available (not reasons for decision) (Rule 14.12(3))

Earlier order of Applications Judge, etc. (Rule 14.18(1)(c))

Order granting permission to appeal (Rule 14.12(3)(a))

Copy of any restricted access order (Rule 14.12(2)(e))

*If any document is not available, it should be appended to the factum, or included elsewhere in the appeal record.*

CERTIFIED *E. Wheaton*  
by the Court Clerk as a true copy of  
the document digitally filed on Dec  
3, 2024

COURT FILE NUMBER

2401-15969

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

Clerk's Stamp



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

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF  
ANGUS A2A GP INC., ANGUS MANOR PARK A2A GP INC., ANGUS  
MANOR PARK A2A CAPITAL CORP., ANGUS MANOR PARK A2A  
DEVELOPMENTS INC., HILLS OF WINDRIDGE A2A GP INC.,  
WINDRIDGE A2A DEVELOPMENTS, LLC, FOSSIL CREEK A2A GP  
INC., FOSSIL CREEK A2A DEVELOPMENTS, LCC, A2A  
DEVELOPMENTS INC., SERENE COUNTRY HOMES (CANADA) INC.  
and A2A CAPITAL SERVICES CANADA INC.

APPLICANT

**ALVAREZ & MARSAL CANADA INC.**, in its capacity as Court-appointed  
Monitor of ANGUS A2A GP INC., ANGUS MANOR PARK A2A GP INC.,  
ANGUS MANOR PARK A2A CAPITAL CORP., ANGUS MANOR PARK  
A2A DEVELOPMENTS INC., HILLS OF WINDRIDGE A2A GP INC.,  
WINDRIDGE A2A DEVELOPMENTS, LLC, FOSSIL CREEK A2A GP  
INC., FOSSIL CREEK A2A DEVELOPMENTS, LCC, A2A  
DEVELOPMENTS INC., SERENE COUNTRY HOMES (CANADA) INC.  
and A2A CAPITAL SERVICES CANADA INC.

DOCUMENT

**AMENDED AND RESTATED INITIAL ORDER**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION  
OF PARTY  
FILING THIS  
DOCUMENT

Cassels Brock & Blackwell LLP  
Bankers Hall West  
3810, 888 3rd St SW  
Calgary, AB T2P 5C5

E: [joliver@cassels.com](mailto:joliver@cassels.com) / [dmarechal@cassels.com](mailto:dmarechal@cassels.com)  
P: 403 351 2920 / 403 351 2922

**Attention: Jeffrey Oliver / Danielle Marechal**

File no. 57100-4

**DATE ON WHICH ORDER WAS PRONOUNCED:**

November 25, 2024

**LOCATION WHERE ORDER WAS PRONOUNCED:**

Calgary, Alberta

**JUSTICE WHO MADE THIS ORDER:**

The Honourable Justice Simard

**UPON** the application of Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as the court-appointed  
monitor (in such capacity, the "**Monitor**") with enhanced powers of Angus A2A GP Inc., Angus Manor Park  
A2A GP Inc., Angus Manor Park A2A Capital Corp., Angus Manor Park A2A Developments Inc., Hills of

Windridge A2A GP Inc., Windridge A2A Developments, LLC, Fossil Creek A2A GP Inc., Fossil Creek A2A Developments, LLC, A2A Developments Inc., Serene Country Homes (Canada) Inc., and A2A Capital Services Canada Inc. (together, the **"Debtor Companies"**) (the **"Monitor's Application"**); **AND UPON** the application of the Debtor Companies (the **"Debtor Companies' Application"**, and together with the Monitor's Application, the **"Applications"**); **AND UPON** having read the Applications, the Affidavit of Michael Edwards sworn on November 12, 2024, the Affidavit of Paul Lauzon sworn on November 12, 2024, the Affidavit of Isabelle Brousseau, sworn November 8, 2024, the Affidavit of Pat Wedlund, sworn November 12, 2024, the Affidavit of Brian Richards, sworn November 12, 2024, the Affidavit of Kim Picard sworn November 12, 2024, the Affidavit of Allan Whiteford Lind sworn November 21, 2024, the Affidavit of George Woodland Chambers sworn November 20, 2024, the Affidavit of Grayson James Ambrose sworn November 21, 2024 and the Second Affidavit of Grayson James Ambrose sworn November 21, 2024; **AND UPON** having read the Pre-filing Report of the Monitor dated November 13, 2024, the First Report of the Monitor dated November 20, 2024 (the **"First Report"**) , the First Supplement to the First Report of the Monitor dated November 21, 2024 and the Second Supplement to the First Report of the Monitor dated November 25, 2024; **AND UPON** reviewing the CCAA Initial Order granted by the Honourable Justice C. Feasby in these proceedings on November 14, 2024 (the **"Initial Order"**) ; **AND UPON** hearing counsel for the Monitor, Representative Counsel (as defined herein), counsel for the Debtor Companies and any other party in attendance; **IT IS HEREBY ORDERED AND DECLARED THAT:**

## **SERVICE**

1. The time for service of the notice of application for this order (the **"Order"**) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

## **APPLICATION**

2. The Debtor Companies are companies to which the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the **"CCAA"**) applies.

## **AFFILIATE ENTITIES**

3. Angus A2A Limited Partnership, Angus Manor A2A Limited Partnership, Hills of Windridge A2A LP, Hills of Windridge A2A Trust, Fossil Creek A2A Limited Partnership and Fossil Creek A2A Trust (together the **"Affiliate Entities"**) are integrally related to the Debtor Companies' business and the Applicant Investors' interests, and are hereby granted and shall have the same benefit, protections and authorizations provided to the Debtor Companies in this Order, and all the property and business of the Affiliate Entities shall henceforth be deemed to be the Property and Business

(each as defined in paragraph 11 hereof) of the Debtor Companies, notwithstanding that none of these entities are a “company” pursuant to the CCAA.

#### **NO SALE OF PROPERTY**

4. Subject to further order of this Court, all Persons shall be and are hereby enjoined from taking any action to consummate any agreement for the purchase and sale of all or any portion of the Property.

#### **CORPORATE REVIVAL**

5. The Alberta Corporate Registrar is hereby directed to temporarily revive the corporate bodies of Angus A2A GP Inc., Angus Manor Park A2A GP Inc. and Fossil Creek A2A GP Inc. (together the “**Alberta Struck Corporations**”) for the limited purpose of facilitating these CCAA proceedings.
6. The Director of the federal Corporate Registrar is hereby directed to temporarily revive the corporate body of A2A Capital Services Canada Inc. (together with the Alberta Struck Corporations, the “**Struck Corporations**”) for the limited purpose of facilitating these CCAA proceedings.
7. The temporary revival of the Struck Corporations shall expire upon the termination of the within CCAA proceedings, unless otherwise ordered by this Honourable Court.
8. For the duration of the temporary revival of the Alberta Struck Corporations, the Monitor is authorized and directed to send the Alberta Corporate Registrar a yearly report regarding the status of the within CCAA proceedings.
9. The Monitor, in addition to its prescribed rights and obligations under the CCAA and this Order, is authorized and directed to execute all documents necessary for the purpose of temporarily reviving the Struck Corporations, and the Struck Corporations are hereby relieved of any obligation to file delinquent and future annual returns.

#### **PLAN OF ARRANGEMENT**

10. The Debtor Companies, under the direction of the Monitor, 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 (a “**Plan**”).

## POSSESSION OF PROPERTY AND OPERATIONS

11. The Monitor shall exercise the management and control of the Debtor Companies and Affiliate Entities, and on behalf of the Debtor Companies and Affiliate Entities, shall:
- (a) permit the Debtor Companies and Affiliate Entities to 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**");
  - (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property; and
  - (c) 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 it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.
  - (d) be entitled to continue to utilize the central cash management system currently in place or, with the consent of the Monitor, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System (i) shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Debtor Companies, through the Monitor, of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, (ii) shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Debtor Companies, pursuant to the terms of the documentation applicable to the Cash Management System, and (iii) shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.
12. To the extent permitted by law, the Monitor on behalf of the Debtor Companies and the Affiliate Entities shall, be entitled but not required to make the following advances or payments of the following expenses, incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
  - (b) the reasonable fees and disbursements of any Assistants retained or employed by the Debtor Companies, Affiliate Entities or the Monitor on behalf of the Debtor Companies or Affiliate Entities, in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order.
- 13. Except as otherwise provided to the contrary herein, the Monitor on behalf of the Debtor Companies and Affiliate Entities shall be entitled but not required to pay all reasonable expenses incurred by the Debtor Companies and Affiliate Entities in carrying out the provisions of this Order, which shall include, without limitation:
  - (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance, maintenance and security services; and
  - (b) payment for goods or services actually supplied to the Debtor Companies or the Affiliate Entities following the date of this Order.
- 14. The Monitor, on behalf of the Debtor Companies and, where applicable, the Affiliate Entities shall 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 that are required to be deducted from employees' wages, including, without limitation, amounts in respect of:
    - (i) employment insurance,
    - (ii) Canada Pension Plan, and
    - (iv) income taxes,

but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after this Order, unless otherwise ordered by the Court;

- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Debtor Companies or Affiliate Entities in connection with the sale of goods and services by the Debtor Companies and Affiliate Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; 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 realty, municipal business 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 and that are attributable to or in respect of the carrying on of the Business by the Debtor Companies or Affiliated Entities.
- 15. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Monitor, on behalf of the Debtor Companies and the Affiliate Entities may 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 by the Monitor, on behalf of the Debtor Companies or the Affiliate Entities, from time to time for the period commencing from and including the date of this Order ("**Rent**"), but shall not pay rent in arrears.
- 16. Except as specifically permitted in this Order, the Monitor on behalf of the Debtor Companies or Affiliate Entities is 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 Debtor Companies or the Affiliate Entities to any of its creditors as of the date of this Order;
  - (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and
  - (c) not to grant credit or incur liabilities except in the ordinary course of the Business.



**RESTRUCTURING**

17. The Monitor, on behalf of the Debtor Companies and, where applicable, the Affiliate Entities shall, subject to such requirements as are imposed by the CCAA have the right to:

- (a) permanently or temporarily cease, downsize or shut down any portion of its business or operations and to dispose of redundant or non-material assets not exceeding \$500,000 in any one transaction or \$1,000,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to any of the Debtor Companies or Affiliate Entities (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the Monitor, on behalf of any of the Debtor Companies or the Affiliate Entities and such employee, or failing such agreement, to deal with the consequences thereof in the Plan
- (c) disclaim or resiliate, in whole or in part, their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Monitor on behalf of the Debtor Companies and Affiliate Entities deems appropriate, in accordance with section 32 of the CCAA; and
- (d) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Monitor, on behalf of the Debtor Companies and Affiliate Entities, to proceed with an orderly restructuring of the Business (the "**Restructuring**").

18. The Monitor, on behalf of the Debtor Companies and Affiliate Entities, shall provide each of the relevant landlords with notice of the Debtor Companies' or Affiliate Entities' 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. If the landlord disputes the Debtor Companies' or Affiliate Entities'

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, such landlord and the Monitor on behalf of the Debtor Companies or Affiliate Entities, or by further order of this Court upon application by the Monitor on behalf of the Debtor Companies or Affiliate Entities on at least two (2) days' notice to such landlord and any such secured creditors. If the Monitor, on behalf of the Debtor Companies or Affiliate Entities 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 such dispute 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 Debtor Companies' and the Affiliate Entities' claim to the fixtures in dispute.

19. If a notice of disclaimer or resiliation is delivered by the Monitor on behalf of the Debtor Companies or Affiliate Entities pursuant to section 32 of the CCAA, then:
- (a) during the notice 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 Monitor, on behalf of the Debtor Companies or Affiliate Entities, 24 hours' prior written notice; and
  - (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Debtor Companies or Affiliate Entities in respect of such lease or leased premises and such landlord shall be entitled to notify the Monitor, on behalf of the Debtor Companies or Affiliate Entities, of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE DEBTOR COMPANIES, AFFILIATE ENTITIES OR THE PROPERTY**

20. Until and including December 18, 2024, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Debtor Companies, the Affiliate Entities or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Debtor Companies or the Affiliate

Entities, or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

21. 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**"), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Debtor Companies, the Affiliate Entities or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:
- (a) empower the Debtor Companies or Affiliate Entities to carry on any business that the Debtor Companies or Affiliate Entities are not lawfully entitled to carry on;
  - (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;
  - (c) prevent the filing of any registration to preserve or perfect a security interest;
  - (d) prevent the registration of a claim for lien; or
  - (e) exempt the Debtor Companies or the Affiliate Entities from compliance with statutory or regulatory provisions relating to health, safety or the environment.
22. Nothing in this Order shall prevent any party from taking an action against the Debtor Companies or the Affiliate Entities where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

### **NO INTERFERENCE WITH RIGHTS**

23. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor Companies or the Affiliate Entities except with

the written consent of the Monitor on behalf of the Debtor Companies or the Affiliate Entities, or leave of this Court.

### **CONTINUATION OF SERVICES**

24. During the Stay Period, all persons having:

- (a) statutory or regulatory mandates for the supply of goods and/or services; or
- (b) oral or written agreements or arrangements with the Debtor Companies or the Affiliate Entities, 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, the Debtor Companies or the Affiliate Entities;

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Debtor Companies or Affiliate Entities or exercising any other remedy provided under such agreements or arrangements. The Debtor Companies and Affiliate Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by each Debtor Companies or Affiliate Entities in accordance with the payment practices of such Debtor Company or Affiliate Entity, or such other practices as may be agreed upon by the supplier or service provider and the Monitor on behalf of each of the Debtor Companies and the Affiliate Entities, or as may be ordered by this Court.

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

25. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any person, other than the Interim Lender where applicable, be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Debtor Companies or Affiliate Entities.

### **REPRESENTATIVE COUNSEL**

26. Fasken Martineau DuMoulin LLP ("**Canadian Rep Counsel**") is hereby appointed as counsel for

all Canadian investors in the Business and Property of the Debtor Companies and the Affiliate Entities, including without limitation, the Applicant Investors (the “**Canadian Investors**”) in these proceedings, any proceedings under the CCAA or the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the “BIA”) or in any other proceeding respecting the insolvency of the Debtor Companies or Affiliate Entities that may be brought before this Court (collectively, the “**Insolvency Proceedings**”), for any issue affecting the Canadian Investors. Nothing in this Order shall prohibit a Canadian Investor from retaining their own counsel in the within proceeding.

27. Canadian Rep Counsel shall represent the interests of the Canadian Investors, and is entitled (but not required) to consult with or seek instructions from individual Canadian Investors. Canadian Rep Counsel shall further be entitled but not required to commence the process of identifying no more than five (5) Canadian Investors to be nominated as Court-appointed representatives (the “**Canadian Representatives**”) pursuant to a further Order of this Honourable Court, as soon as practicable. The Canadian Representatives, once appointed, shall represent the Canadian Investors in the Insolvency Proceedings, including without limitation, for the purpose of settling or compromising claims by the Canadian Investors in the within CCAA proceedings.
28. Norton Rose Fulbright Canada LLP (“**Offshore Rep Counsel**” and together with Canadian Rep Counsel, “**Representative Counsel**”) is hereby appointed as counsel for all non-Canadian investors in in the Business and Property of the Debtor Companies and Affiliate Entities (the “**Offshore Investors**” and together with the Canadian Investors, the “**A2A Investors**”) in the Insolvency Proceedings, for any issue affecting the Offshore Investors. Notwithstanding the foregoing, nothing in this Order shall prohibit an Offshore Investor from retaining their own counsel in the within proceeding.
29. Offshore Rep Counsel shall represent the interests of the Offshore Investors, and is entitled (but not required) to consult with or seek instructions from individual Offshore Investors. Offshore Rep Counsel shall further be entitled but not required to commence the process of identifying no more than five (5) Offshore Investors to be nominated as Court-appointed representatives (the “**Offshore Representatives**” and together with the Canadian representatives, the “**Investor Representatives**”) pursuant to a further Order of this Honourable Court, as soon as practicable. The Offshore Representatives, once appointed, shall represent the Offshore Investors in the Insolvency Proceedings, including without limitation, for the purpose of settling or compromising claims by the Offshore Investors in the within CCAA proceedings.
30. Subject to further Order of the Court, Representative Counsel have standing make any application in these CCAA proceedings on behalf of the A2A Investors or other investors that they deem fit,

including but not limited to applications to add further respondents to these CCAA Proceedings.

31. Representative Counsel is authorized to take all steps necessary or desirable to carry out the terms of this Order including dealing with any Court, regulatory body or other government ministry, department or agency to take all such steps as are necessary or incidental thereto, provided however, that until and including the Continuation Date (as defined herein) Representative Counsel is directed to take only those actions absolutely necessary to carry out the terms of this Order.
32. Representative Counsel shall be entitled to the protection of the Administration Charge in relation to their fees and disbursements as further particularized in paragraphs 47 to 49 hereof.
33. Representative Counsel shall have no liability as a result of their appointment nor the fulfillment of their duties in carrying out this Order or any further Order of the Court in these CCAA proceedings, save and except for any gross negligence or willful misconduct on their part.
34. Notice of the appointment of Representative Counsel shall be provided by the completion of the Notice Protocol defined and outlined in paragraphs 63 to 66 hereof.

#### **DIRECTORS AND OFFICERS**

35. All current and former directors and officers of the Debtor Companies shall have no further power or authority to manage or direct the Debtor Companies including, but not limited to, the power to direct the sale, transfer or other disposition of the Property or Business on behalf of the Debtor Companies or incur any obligations on behalf of the Debtor Companies.
36. All of the current and former directors, officers, shareholders and Assistants of the Debtor Companies and all other persons acting on the instruction or behalf of any of the foregoing having notice of this Order shall and are hereby directed to co-operate with and provide the Monitor with reasonable access to the books and records of the Debtor Companies and Affiliate Entities.

#### **APPOINTMENT OF MONITOR**

37. A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs of the Debtor Companies and Affiliate Entities with the powers and obligations set out in the CCAA or set forth herein and that the Debtor Companies and Affiliate Entities and, where applicable, their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Debtor Companies and Affiliate Entities

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.

38. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Debtor Companies' and the Affiliate Entities' receipts and disbursements, Business and dealings with the Property;
- (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 and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the any Debtor Company or Affiliate Entity;
- (c) 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 Debtor Companies and Affiliate Entities to the extent that is necessary to adequately assess the Property, Business, and financial affairs of the Debtor Companies and Affiliate Entities, or to perform its duties arising under this Order;
- (d) be at liberty to engage independent legal counsel (in both Canada and the United States) 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;
- (e) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Debtor Companies, Affiliate Entities and any other Person; and
- (f) perform such other duties as are required by this Order or by this Court from time to time.

39. Without in any way limiting the powers and duties of the Monitor otherwise set out herein or in the CCAA, the Monitor is hereby empowered and authorized, but not obligated, to do any of the following in the name of and on behalf of the Debtor Companies and the Affiliate Entities, where the Monitor considers it necessary or desirable:

- (a) take any and all actions and steps to manage, operate and carry on the Business, including, without in any way limiting the generality of the foregoing:
  - (i) any actions or steps the Monitor considers necessary or desirable to proceed with an orderly restructuring or liquidation of the Business;
  - (ii) any and all steps of the Debtor Companies or Affiliate Entities authorized by this Order and any other Order made in these proceedings, including making distributions or payments;
  - (iii) permanently or temporarily ceasing, downsizing or shutting down any of the Debtor Companies or Affiliate Entities operations;
  - (iv) terminating the employment of or temporarily laying off employees of the Debtor Companies or the Affiliate Entities;
  - (v) preparing a Plan on behalf of the Debtor Companies and Affiliate Entities;
  - (vi) entering into any agreements;
  - (vii) settling, extending or compromising any indebtedness owing to or by the Debtor Companies and Affiliate Entities;
  - (viii) engaging and instructing Assistants from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Monitor's powers and duties, including those conferred by this Order;
  - (ix) purchasing or leasing machinery, equipment, inventories, supplies, premises or other assets to continue the Business, or any part or parts thereof;
  - (x) initiating, prosecuting and continuing the prosecution of any and all proceedings and defending all proceedings now pending or hereafter instituted with respect to the Debtor Companies, the Affiliate Entities, the Business, the Property or the Monitor and to settle or compromise any such proceeding;
  - (xi) exercising any rights of the Debtor Companies or the Affiliate Entities;



- (xii) applying for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and in the name of the Debtor Companies and Affiliate Entities;
  - (xiii) taking any and all corporate governance actions for any Debtor Company or Affiliate Entity; and
  - (xiv) providing instruction and direction to the Assistants of the Debtor Companies and Affiliate Entities;
- (b) preserve, protect and exercise control over the Property, or any parts thereof, including, without in any way limiting the generality of the foregoing to:
- (i) receive, collect and exercise control over all monies and accounts held by or owing to the Debtor Companies and Affiliate Entities, including any proceeds of the sale of any of the Property;
  - (ii) exercise all remedies of the Debtor Companies and Affiliate Entities in collecting monies owed or hereafter owing to the Debtor Companies or the Affiliate Entities and to enforce any security held by the Debtor Companies or the Affiliate Entities;
  - (iii) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property for any purpose pursuant to this Order;
  - (iv) market, sell, convey, transfer, lease or assign the Property or any part of parts of the Property out of the ordinary course of business, including running a sales solicitation process without the approval of this Court, in respect of any one transaction not exceeding \$500,000 or \$1,000,000 in the aggregate and with the approval of this Court in respect of any other transaction; and
  - (v) to register a copy of this Order and any other Order granted in the within CCAA proceedings in respect of the Property against title to any of the Property;
- (c) to report to, meet with and discuss with such affected persons as the Monitor deems appropriate on all matters relating to the Business and the Property, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable;

- (d) oversee and direct the preparation and dissemination of financial and other information of the Debtor Companies and Affiliate Entities in these proceedings, including cash flow statements;
  - (e) conduct investigations from time to time, including, without limitation, to determine whether any additional entities should be added to the within proceedings, and to make any application to add a respondent to these CCAA proceeding and amend the style of cause accordingly; and
  - (f) perform such other duties or take any steps reasonably incidental to the exercise of these powers and in each case where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other persons, including the Debtor Companies and the Affiliate Entities, and without interference from any other person.
40. The Monitor is not and shall not, for any purposes, be deemed to be a principal, director, officer, or employee of the Debtor Companies.
41. Nothing in this Order shall constitute or be deemed to constitute the Monitor as receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of any of the Debtor Companies or Affiliate Entities within the meaning of any relevant legislation, regulation, common law, or rule of law or equity. For greater clarity, any distribution to creditors of any of the Debtor Companies or Affiliate Entities administered by the Monitor on behalf of any of the Debtor Companies or Affiliate Entities will be deemed to have been made by Debtor Companies or Affiliate Entities, themselves.
42. The Monitor is not and shall not for the purposes of the *Income Tax Act* (Canada) (“ITA”) be deemed to be a legal representative or person to whom s. 150(3) of that Act applies.
43. The Monitor is not, and shall not be deemed, to be the owner of the Property for any purpose and nothing in this Order shall require 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 be 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 or any other provincial or federal regulations

in Canada or internationally ("**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. 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.

44. The Monitor shall provide any creditor of the Debtor Companies or Affiliate Entities, including the Interim Lender, with information provided by the Debtor Companies or Affiliate Entities 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 Debtor Companies or Affiliate Entities 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 Debtor Companies or Affiliate Entities may agree.
45. 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, in its personal or corporate capacity, 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 protections afforded the Monitor by the CCAA or any applicable legislation. For greater certainty, the Monitor is not and shall not be deemed to incur liability for any act or omission of the Debtor Companies or Affiliate Entities, including, without limitation, in relation to the payment of and/or accounting for any taxes (including, without limitation, any taxes, duties, fees, premiums, assessment, imposts, levies and other similar charges taxes imposed under the ITA, the *Excise Tax Act*, RSC 1985. C E-15, or any similar legislation and owing to the Receiver General, the Canada Revenue Agency or any governmental authority in a jurisdiction outside of Canada) on revenues earned or any indebtedness or obligations whatsoever or howsoever incurred by the Debtor Companies or Affiliate Entities.
46. The enhancement of the Monitor's powers as set forth in this Order, the exercise by the Monitor of any of its powers, the performance by the Monitor of any of its duties, or the employment by the Monitor of any person in connection with its appointment and the performance of its powers and duties shall not constitute the Monitor as an employer, successor employer, or related employer of the employees of the Debtor Companies of Affiliate Entities or any employee caused to be hired by the Debtor Companies or Affiliate Entities by the Monitor within the meaning of any provincial, federal or municipal legislation, other relevant legislation, regulation, common law, or rule of law or equity governing employment, pensions, or labour standards for any purpose whatsoever or

expose the Monitor to any liability to any individual arising from or relating to their employment or previous employment. Nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee-related liabilities or duties, including, without limitations, wages, severance pay, termination pay, vacation pay and pension or benefit amounts.

47. The Monitor, counsel to the Monitor in Canada and the United States (collectively, "**Monitor's Counsel**"), the Monitor's Assistants and Representative Counsel shall each be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Debtor Companies and Affiliate Entities as part of the costs of these proceedings. The Debtor Companies and Affiliate Entities are hereby authorized and directed to pay the accounts of the Monitor, Monitor's Counsel, and Representative Counsel on a bi-weekly basis unless otherwise agreed by the parties and the Monitor, on behalf of the Debtor Companies and Affiliate Entities, are hereby authorized to pay the Monitor, Monitor's Counsel and Representative Counsel's retainers, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.
48. The Monitor, Monitor's Counsel, and Representative Counsel shall pass their accounts from time to time.
49. The Monitor, Monitor's Counsel and Assistants, and Representative Counsel, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$250,000 as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 57 and 59 hereof.
50. Section 10(2)(b) of the CCAA is hereby waived and the report containing the prescribed representations of the Debtor Companies and Affiliate Entities regarding the preparation of the cash flow statement is hereby dispensed with.

## INTERIM FINANCING

51. The Monitor, on behalf of the Debtor Companies and the Affiliate Entities is hereby authorized and empowered to obtain and borrow under a credit facility from Pillar Capital Corp. (the "**Interim Lender**") in order to finance the Debtor Companies' and Affiliate Entities' working capital

requirement and other general corporate purposes and capital expenditures, provided that the initial principal amount of the credit facility not exceed \$500,000 unless permitted by further order of this Court.

52. Such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Monitor (in accordance with its court-ordered enhanced powers) on behalf of the Debtor Companies and the Affiliate Entities and the Interim Lender dated as of November 13, 2024 (the “**Term Sheet**”).
53. The Monitor, on behalf of the Debtor Companies and Affiliate Entities is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs, and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the Term Sheet or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Monitor on behalf of the Debtor Companies and Affiliate Entities is hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the Interim Lender under and pursuant to the Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.
54. The Interim Lender shall be entitled to the benefits of and is hereby granted a charge (the “**Interim Lender’s Charge**”) on the Property to secure all obligations under the Term Sheet and/or Definitive Documents incurred on or after the date of this Order which charges shall not exceed the aggregate amount advanced on or after the date of this Order under the Term Sheet and/or Definitive Documents. The DIP Lender’s Charge shall not secure any obligation existing before the date this Order is made. The Interim Lender’s Charge shall have the priority set out in paragraphs 57 and 59 hereof.
55. Notwithstanding any other provision of this Order:
  - (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender’s Charge or any of the Definitive Documents;
  - (b) upon the occurrence of an event of default under the Definitive Documents or the Interim Lender’s Charge, the Interim Lender, upon **ten** days notice to the Monitor on behalf of the Debtor Companies and Affiliate Entities, may exercise any and all of its rights and remedies against the Debtor Companies, the Affiliate Entities or the Property under or

pursuant to the Term Sheet, Definitive Documents, and the Interim Lender's Charge, including without limitation, to cease making advances to the Monitor on behalf of the Debtor Companies and the Affiliate Entities, and set off and/or consolidate any amounts owing by the Interim Lender to the Debtor Companies and Affiliate Entities against the obligations of the Debtor Companies and Affiliate Entities to the Interim Lender under the Term Sheet, the Definitive Documents or the Interim Lender's 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 any Debtor Company or Affiliate Entity and for the appointment of a trustee in bankruptcy of any Debtor Company or Affiliate Entity; and

- (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Debtor Companies, Affiliate Entity or the Property.

- 56. The Interim Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Debtor Companies under the CCAA, or any proposal filed by the Debtor Companies of the Affiliate Entities under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Definitive Documents

## VALIDITY AND PRIORITY OF CHARGES

- 57. The priorities of the Administration Charge, and the Interim Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$250,000); and

Second – Interim Lender's Charge (to the maximum amount of \$500,000, plus the amount of all interest, fees and expenses in respect of the principal amount advanced under the Term Sheet and/or Definitive Documents).

- 58. The filing, registration or perfection of the Administration Charge and the Interim Lender's Charge (collectively, the "**Charges**") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

59. Each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and subject always to section 34(11) of the CCAA such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.
60. Except as otherwise expressly provided for herein, or as may be approved by this Court, neither the Debtor Companies nor the Affiliate Entities shall grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Debtor Companies or Affiliate Entities also obtain the prior written consent of the Monitor and the beneficiaries of Charges, or further order of this Court.
61. The Charges 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 Interim Lender thereunder shall not otherwise be limited or impaired in any way by:
- (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
  - (b) any application(s) for bankruptcy order(s) issued pursuant to 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, sublease, offer to lease or other agreement (collectively, an "**Agreement**") that binds the Debtor Companies or Affiliate Entities, and notwithstanding any provision to the contrary in any Agreement:
    - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, including the Term Sheet or the Definitive Documents, shall create or be deemed to constitute a new breach by the Debtor Companies of any Agreement to which it is a party;
    - (ii) 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 creation of the

Charges, the Debtor Companies execution, delivery or performance of the Term Sheet or the Definitive Documents; and

- (iii) the payments made by the Debtor Companies or Affiliate Entities pursuant to this Order, including pursuant to the Term Sheet 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.

## ALLOCATION

- 62. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Charges amongst the various assets comprising the Property, or the costs of these proceedings among any parties who have benefitted from these CCAA proceedings.

## SERVICE AND NOTICE PROTOCOL

- 63. The Monitor shall (i) without delay, publish in the *National Post*, the *Globe and Mail* (National Edition), the *Dallas Morning News*, and subject to the Monitor's discretion, *The Straits Times*, *Philippine Daily Inquirer*, *Star Media Group Berhad* and the *South China Morning Post* a notice containing the information prescribed under the CCAA as well as particulars of the Comeback Hearing and the potential expansion of the Interim Lender's Charge to attach to the interest of the Offshore Investors; (ii) within five (5) days after the date of this Order (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 Debtor Companies or Affiliate Entities of more than \$1,000 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.
- 64. The Monitor shall establish a case website in respect of the within proceedings at [www.alvarezandmarsal.com/a2a](http://www.alvarezandmarsal.com/a2a) (the "**Monitor's Website**").
- 65. The Monitor, on its own behalf and on behalf of the Debtor Companies and Affiliate Entities, is at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence to all investors, by posting notice of these proceedings, the Monitor's Website and contact information for Representative Counsel on the "Concerned A2A Investors"



Facebook page at <https://www.facebook.com/groups/265791773886300/>, and where the Monitor deems appropriate, on LinkedIn and Reddit.

66. Any person that wishes to be served with any application and other materials in these proceedings by ordinary mail, courier, or electronic transmission must deliver to the Monitor by way of ordinary mail, courier, or electronic transmission, a request to be added to the service list (the "**Service List**") to be maintained by the Monitor.
67. Where the Monitor takes the steps referenced in paragraphs 63 to 66 hereof in addition to effecting service on the Service List (together, the "**Notice Protocol**"), such notice shall be deemed good and sufficient service thereof for the purposes of any subsequent hearings scheduled in these proceedings.

## REGISTRATION ON TITLE

68. The Monitor is hereby expressly empowered and authorized to register a copy of this Order and any other Orders in respect of the lands legally described as:
  - (a) PT LT 28 CON 5 ESSA TWP AS IN RO346115 SECONDLY; TOWNSHIP OF ESSA, bearing parcel identification number ("PIN") 58103-0065 (LT); and
  - (b) PT LT 28 CON 5 ESSA TWP; PT LT 29 CON 5 ESSA BEING PT 2 51R16117; TOWNSHIP OF ESSA, bearing PIN 58103-0059 (LT),

(collectively, the "**Angus Manor Lands**")

each in the registry office for the Land Titles Division of Simcoe (No. 51), against title to any of the Angus Manor Lands, where the Monitor considers it necessary or desirable.

69. The Land Registry Office for the Land Titles Division of Simcoe (No. 51) is hereby directed to accept this Order for registration on title to the Angus Manor Lands.

## ADJOURNMENTS AND DISMISSALS

70. The portions of the Monitor's Application seeking an extension of the Charges to apply and attach to the undivided fractional interests of any individual investor in any real property which is the subject of these CCAA proceedings, seeking to add Hills of Windridge Trust and Fossil Creek Trust as

Affiliate Entities, and seeking to enjoin the sale of the Texas Lands (as defined in the Monitor's Application) are hereby dismissed.

71. Notwithstanding any provision of this Order, the portion of the Monitor's Application seeking an increase to the Administration Charge and the Interim Lender's Charge is adjourned to Friday, November 29, 2024 at 9:00 am, for one hour before the Honourable Justice Simard.
72. Notwithstanding any other provision of this Order, the portion of the Monitor's Application seeking the removal of trustees and the entirety of the Debtor Companies' Application, are each adjourned to Wednesday, December 18, 2024, at 10:00 am (the "**Continuation Date**"), for one half day before the Honourable Justice Simard.

#### INFORMATION TO BE PROVIDED

73. By no later than 4:00 pm on Thursday, November 28, 2024, the Monitor will provide a second report of the Monitor (the "**Second Report**") to this Court and the Service List.
74. The Second Report shall report on:
  - (a) the expenditures and accruals to date of the Monitor, Monitor's Counsel, and Representative Counsel; and
  - (b) a revised cash flow statement listing all proposed expenditures of the Monitor, Monitor's Counsel, and Representative Counsel until and including the Continuation Date.
75. The Debtor Companies shall provide to the Monitor, as soon as it becomes available, the Requested Information (as defined herein), but in any event, by no later than 4:00 pm on Friday, December 6, 2024, the Debtor Companies will provide to the Monitor, for all entities listed in Schedule "A" hereto:
  - (a) all the requested information listed in the first section of Schedule "B" to Appendix "C" of the First Report listed as "Corporate Records";
  - (b) all requested information listed in the second section of Schedule "B" to Appendix "C" of the First Report listed as "Accounting Records", banking records to subsequently be updated daily until and including the Continuation Date;

- (c) all requested information listed in the third section of Schedule “B” to Appendix “C” of the First Report listed as “Investor Records”;
- (d) all requested information listed in the fourth section of Schedule “B” to Appendix “C” of the First Report listed as “Contracts”,
- (e) all requested information listed in the fifth section of Schedule “B” to Appendix “C” of the First Report listed as “Contacts”, and
- (f) all requested information listed in the final section of Schedule “B” to Appendix “C” of the First Report listed as “Other”, which shall for greater certainty henceforth include;
  - (i) all title documents for the Property;
  - (ii) all documents related to the marketing of the Property, including for greater certainty, access to any virtual data rooms and/or other due diligence materials created for the purpose of marketing the Property;
  - (iii) all valuation and appraisal information, in any form whatsoever, for the Property; and
  - (iv) all information with respect to the investor approval process conducted in connection with any sale of any Property including, without limitation, all information regarding the process for notifying investors of potential sales, the contents of any communication with investors and information regarding the process for obtaining investor approval of any sale of any Property.

(collectively, the “**Requested Information**”)

76. By no later than 4:00 pm on Friday, December 13, 2024, the Monitor will provide a third report of the Monitor, and any confidential supplements thereto (collectively the “**Third Report**”) to this Court and the Service List. The purpose of the Third Report shall be to provide the Court with a proper record to determine whether a continuation of these CCAA proceedings are appropriate after the Continuation Date.
77. The Monitor shall have leave to apply for any further relief under the CCAA or amend the existing Monitor’s Application by providing such application or amendment to this Court and the Service List

by no later than 4:00 pm on Friday, December 13, 2024. The Debtor Companies shall be entitled to provide additional affidavit evidence with respect to the Debtor Companies' Application by providing such affidavits to this Court and the Service List by no later than 4:00 pm on Friday, December 13, 2024.

78. Any interested party (including the Debtor Companies and the Monitor) may provide to this Court and Service List a brief of law with respect to any Application returnable on the Continuation Date by no later than 4:00 pm Monday, December 16, 2024.

## **GENERAL**

79. The Monitor and Representative Counsel may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.
80. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
81. 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 Debtor Companies, the Affiliate Entities, the Business or the Property.
82. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Monitor on behalf of the Debtor Companies and Affiliate Entities and on its own behalf, and the Monitor's respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor on behalf of the Debtor Companies and the Affiliate Entities 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 Monitor on behalf of the Debtor Companies and the Affiliate Entities and on its own behalf, and its respective agents in carrying out the terms of this Order.
83. The Monitor is at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered

to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

84. Subject to local law, rules and regulations:

- (a) The Monitor is hereby authorized and empowered to act as the foreign representative (in such capacity, the **"Foreign Representative"**) in respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada.
- (b) The Foreign Representative is hereby authorized to apply for recognition of these proceedings, as necessary, in any jurisdiction outside of Canada, including in the United States Bankruptcy Court for the Northern District of Texas pursuant to Chapter 15 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

85. Any interested party (including the Debtor Companies and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice 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.

86. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order

  
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Justice of the Court of King's Bench of Alberta

**Schedule "A"**  
**A2A Group**

1. Angus A2A GP Inc.;
2. Angus A2A Limited Partnership;
3. Angus Manor Park A2A GP Inc.,
4. Angus Manor A2A Limited Partnership;
5. Angus Manor Park A2A Capital Corp.;
6. Angus Manor Park A2A Developments Inc.;
7. Windridge A2A GP Inc.;
8. Windridge A2A LP;
9. Hills of Windridge A2A Trust;
10. Windridge A2A Developments, LLC;
11. Fossil Creek A2A GP Inc.,
12. Fossil Creek A2A Limited Partnership;
13. Fossil Creek A2A Developments, LLC;
14. Fossil Creek A2A Trust;
15. A2A Developments Inc.;
16. Serene Country Homes (Canada) Inc.;
17. A2A Capital Services Canada Inc.;
18. Hills of Windridge Trust; and
19. Fossil Creek Trust.