

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE CHIEF) TUESDAY, THE 21ST
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)
JUSTICE MORAWETZ) DAY OF DECEMBER, 2021



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

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

Applicant

CCAA TERMINATION ORDER

THIS MOTION, made by McEwan Enterprises Inc. (the "**Applicant**") pursuant to the *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36*, as amended (the "**CCAA**") for an order (this "**Order**"), among other things, (i) extending the Stay Period (as defined below), (ii) increasing the approved amount of the Interim Transaction Funding (as defined below), (iii) approving the reports of Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as the Court-appointed monitor of the Applicant (the "**Monitor**") filed in these CCAA proceedings, and the activities and conduct of the Monitor described therein, (iv) approving the fees and disbursements of the Monitor and the Monitor's legal counsel, as described in the Fourth Report of the Monitor dated December 17, 2021 (the "**Fourth Report**"), including the affidavits attached thereto and sworn in support thereof, (v) terminating these CCAA proceedings effective as at the CCAA Termination Time (as defined below), and (vi) terminating the Court-ordered charges approved in these CCAA proceedings effective as at the CCAA Termination Time, was heard this day via videoconference.

ON READING the Applicant's Notice of Motion dated December 16, 2021, the affidavit of Dennis Mark McEwan sworn December 16, 2021 and the exhibits thereto (the "**McEwan Affidavit**") and the Fourth Report and the appendices thereto, and on hearing the submissions of

counsel for the Applicant, counsel for the Monitor and such other counsel as were present, and on reading the affidavit of service, filed:

SERVICE

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

CAPITALIZED TERMS

2. THIS COURT ORDERS that, unless otherwise indicated or defined herein, capitalized terms used in this Order have the meaning given to them in the McEwan Affidavit.

EXTENSION OF THE STAY PERIOD

3. THIS COURT ORDERS that the Stay Period (as defined in the Amended and Restated Initial Order granted by this Court in these CCAA proceedings on October 7, 2021 (as amended from time to time, the "**Amended and Restated Initial Order**")) be and is hereby extended to the earlier of (i) the CCAA Termination Time, or (ii) 11:59 p.m. on January 14, 2022.

INTERIM TRANSACTION FUNDING

4. THIS COURT ORDERS that the Stay Extension and Interim Transaction Funding Approval Order granted by this Court in these CCAA proceedings on November 1, 2021, as amended by the Stay Extension and Interim Transaction Funding Approval Order granted by this Court in these CCAA proceedings on November 26, 2021 (collectively, the "**November 1 Order**"), is hereby further amended to provide that the Interim Transaction Funding (as defined in the November 1 Order) shall not exceed \$2.0 million unless permitted by further Order of this Court. For certainty, the Interim Transaction Funding Lender's Charge (as defined in the November 1 Order) granted pursuant to the November 1 Order shall secure the full amount of the Interim Transaction Funding, as further amended by this Order.

APPROVAL OF MONITOR'S REPORTS, ACTIVITIES AND FEES

5. THIS COURT ORDERS that the First Report of the Monitor dated October 5, 2021, the Second Report of the Monitor dated October 14, 2021 (the "**Second Report**"), the Supplement to the Second Report dated November 1, 2021, the Second Supplement to the Second Report dated November 10, 2021, the Third Report of the Monitor dated November 24, 2021 (the "**Third Report**"), the Supplement to the Third Report dated December 2, 2021 and the Fourth Report, and the activities and conduct of the Monitor described therein, are hereby approved.

6. THIS COURT ORDERS that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approvals set forth in paragraph 5 of this Order.

7. THIS COURT ORDERS that the fees and disbursements of the Monitor for the period from September 28, 2021 to December 11, 2021, inclusive, as set out in the affidavit of Greg Karpel sworn December 17, 2021, be and are hereby approved.

8. THIS COURT ORDERS that the fees and disbursements of the Monitor's counsel, Bennett Jones LLP ("**Bennett Jones**"), for the period from September 28, 2021 to December 11, 2021, inclusive, as set out in the affidavit of Sean Zweig sworn December 16, 2021, be and are hereby approved.

9. THIS COURT ORDERS that the Monitor's fees and disbursements to complete its remaining duties in these CCAA proceedings and Bennett Jones' fees and disbursements in connection with the Monitor's completion of its remaining duties in these CCAA proceedings, as set out in the Fourth Report, be and are hereby approved.

TERMINATION OF CCAA PROCEEDINGS

10. THIS COURT ORDERS that upon service by the Monitor of an executed certificate in substantially the form attached as Schedule "A" hereto (the "**Monitor's Certificate**") on the service list in these CCAA proceedings (the "**Service List**") certifying that it has received the written consent of each of the Applicant, Royal Bank of Canada, Cadillac Fairview, First Capital, the Purchaser, Dennis Mark McEwan and the Monitor to the termination of these CCAA proceedings, these CCAA proceedings shall be terminated without any further act or formality

(the “**CCAA Termination Time**”), provided that nothing herein impacts the validity of any Orders made in these CCAA proceedings or any action or steps taken by any Person (as defined in the Amended and Restated Initial Order) pursuant thereto.

11. THIS COURT ORDERS that the Monitor is hereby directed to file a copy of the Monitor’s Certificate with the Court as soon as practicable following service thereof on the Service List.

12. THIS COURT ORDERS that the Charges (as defined in the Amended and Restated Initial Order) and the Interim Transaction Funding Lender’s Charge shall be and are hereby terminated, released and discharged effective as of the CCAA Termination Time without any further act or formality.

13. THIS COURT ORDERS that from and after the CCAA Termination Time, all Persons shall be deemed to have waived any and all defaults and events of default of the Applicant under any contracts, leases, licenses or other agreements to which the Applicant is a party, then existing or previously committed by the Applicant, or caused by the Applicant, as a result of the insolvency of the Applicant, the commencement or continuation of these CCAA proceedings by the Applicant and/or this Order or any other Orders of this Court in these CCAA proceedings, and any and all notices of default or any step or proceeding taken or commenced in connection therewith shall be deemed to have been rescinded and of no further force or effect.

DISCHARGE OF THE MONITOR

14. THIS COURT ORDERS that effective as at the CCAA Termination Time, A&M shall be discharged as the Monitor and shall have no further duties, obligations or responsibilities as Monitor from and after the CCAA Termination Time; provided that, notwithstanding its discharge as Monitor, A&M shall have the authority from and after the CCAA Termination Time to complete or address any matters in its role as Monitor that are ancillary or incidental to these CCAA proceedings, as may be required or appropriate.

15. THIS COURT ORDERS that, notwithstanding the Monitor’s discharge, the termination of these CCAA proceedings or any other provision of this Order, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor shall continue to have the benefit of, any

and all rights, approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Amended and Restated Initial Order, any other Order of this Court granted in these CCAA proceedings or otherwise, all of which are expressly continued and confirmed from and after the CCAA Termination Time, including in connection with any actions that may be taken by the Monitor following the CCAA Termination Time with respect to the Applicant or these CCAA proceedings pursuant to paragraph 14 of this Order.

16. THIS COURT ORDERS that upon the CCAA Termination Time, the Monitor, its counsel, and each of their respective affiliates and officers, directors, partners, employees and agents (collectively, the “**Released Parties**” and each a “**Released Party**”) shall be and are hereby released and discharged from any and all claims that any Person may have or be entitled to assert against the Released Parties, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the CCAA Termination Time in any way relating to, arising out of, or in respect of, these CCAA proceedings or with respect to their respective conduct in these CCAA proceedings (collectively, the “**Released Claims**”), and any such Released Claims are hereby released, stayed, extinguished and forever barred, and the Released Parties shall have no liability in respect thereof, provided that the Released Claims shall not include any claim or liability arising out of any gross negligence or wilful misconduct on the part of the applicable Released Party.

17. THIS COURT ORDERS that no action or other proceeding shall be commenced against any of the Released Parties in any way arising from or related to these CCAA proceedings, except with prior leave of this Court on not less than fifteen (15) days’ prior written notice to the applicable Released Party and upon further order securing, as security for costs, the full indemnity costs of the applicable Released Party in connection with any proposed action or proceeding as the Court hearing the motion for leave to proceed may deem just and appropriate.

GENERAL

18. THIS COURT ORDERS that the Applicant or the Monitor may apply to the Court as necessary to seek further orders and directions to give effect to this Order.

19. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicant and the Monitor and their 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 Applicant and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.



Chief Justice G.B. Morawetz

**SCHEDULE “A”
FORM OF MONITOR’S CERTIFICATE**

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

Applicant

MONITOR’S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated September 28, 2021 (as amended and restated by a further Order of the Court on October 7, 2021), Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed as the Monitor of McEwan Enterprises Inc. (the “**Applicant**”) in the within proceedings commenced under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).
- B. Pursuant to an Order of this Court dated December 21, 2021 (the “**CCAA Termination Order**”), among other things, A&M shall be discharged as the Monitor and the Applicant’s CCAA proceedings shall be terminated upon the service of this Monitor’s Certificate on the Service List, all in accordance with the terms of the CCAA Termination Order.
- C. Unless otherwise indicated or defined herein, capitalized terms used in this Monitor’s Certificate shall have the meaning given to them in the CCAA Termination Order.

THE MONITOR CERTIFIES that it has received the written consent of each of the Applicant, Royal Bank of Canada, Cadillac Fairview, First Capital, the Purchaser, Dennis Mark McEwan and the Monitor to the termination of these CCAA proceedings.

DATED at Toronto, Ontario this _____ day of _____, 2021.

ALVAREZ & MARSAL CANADA INC., solely in its capacity as Court-appointed Monitor of McEwan Enterprises Inc. and not in its personal or corporate capacity

Per: _____
Name:
Title:

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

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MCEWAN ENTERPRISES INC.**

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

CCAA TERMINATION ORDER

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