

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.

**THIRD REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.**

NOVEMBER 24, 2021

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1.0 INTRODUCTION

- 1.1 On September 28, 2021 (the “**Filing Date**”), McEwan Enterprises Inc. (“**MEI**” or the “**Applicant**”) obtained an initial order (the “**Initial Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The proceedings commenced by the Applicant under the CCAA are referred to herein as the “**CCAA Proceedings**”. Among other things, the Initial Order appointed Alvarez & Marsal Canada Inc. (“**A&M**”) as monitor in the CCAA Proceedings (in such capacity, the “**Monitor**”).
- 1.2 On October 7, 2021, the Applicant obtained an amended and restated Initial Order (the “**Amended and Restated Initial Order**”) that, among other things: (i) extended the Stay Period (as defined in the Initial Order) until and including November 1, 2021; and (ii) increased the Administration Charge and the Directors’ Charge (each as defined in the Initial Order) up to a maximum of \$350,000 and \$1.45 million, respectively.
- 1.3 On October 15, 2021, the Court heard the Applicant’s motion for an Order (the “**Approval and Vesting Order**”), among other things, approving the Proposed Transaction (as defined below) and the purchase agreement (the “**Purchase Agreement**”) dated September 27, 2021 between the Applicant and 2864785 Ontario Corp. (the “**Purchaser**”), being a new entity formed by MEI’s current shareholders.
- 1.4 On November 1, 2021, the Court issued written reasons dismissing the relief requested by the Applicant in the proposed Approval and Vesting Order (the “**November 1 Endorsement**”). Additionally, the Court issued an Order (the “**Stay Extension and Interim Transaction Funding Approval Order**”) that, among other things: (i) extended

the Stay Period until and including November 12, 2021; and (ii) granted the Interim Transaction Funding and corresponding Interim Transaction Funding Lender's Charge (each as defined in the Stay Extension and Interim Transaction Funding Approval Order) up to a maximum amount of \$600,000.

- 1.5 On November 12, 2021, the Applicant obtained an Order further extending the Stay Period to and including November 26, 2021.
- 1.6 In connection with the CCAA Proceedings, A&M filed the Pre-Filing Report of the Proposed Monitor dated September 27, 2021 (the "**Pre-Filing Report**"). The Monitor has also filed the First Report of the Monitor dated October 5, 2021 (the "**First Report**") and the Second Report of the Monitor dated October 14, 2021 (the "**Second Report**", and together with the Pre-Filing Report and the First Report, the "**Monitor's Reports**").¹ The Monitor's Reports and other Court-filed documents in the CCAA Proceedings are available on the Monitor's case website at www.alvarezmarsal.com/McEwanEnterprises (the "**Case Website**"). A copy of the Second Report is attached hereto as **Appendix "A"**.
- 1.7 As described in the Second Report, a key aspect of the Applicant's restructuring plan is to effectuate the sale and transfer of substantially all of its assets and liabilities to the Purchaser (the "**Proposed Transaction**"). The Proposed Transaction would allow the Purchaser to continue to operate the restructured business of MEI as a going concern, including maintaining each of MEI's current locations, with the exception of Fabbrica Don Mills and the Yonge & Bloor Location (together, the "**Excluded Locations**"). The

¹ The Monitor also filed two supplements to the Second Report, dated November 1, 2021 (the "**Supplement**") and November 10, 2021 (the "**Second Supplement**").

Proposed Transaction includes a cash deposit of up to \$2.25 million to be funded by the Purchaser, which, if approved by the Court, is intended to be utilized by the Applicant to finance its near term liquidity requirements (the “**Transaction Deposit**”).

1.8 Following the November 1 Endorsement, the Applicant and the Purchaser amended the Purchase Agreement pursuant to an amending agreement dated November 12, 2021 (the “**Amending Agreement**”). The Amending Agreement enhances the Proposed Transaction (as amended, the “**Amended Transaction**”) principally by: (i) increasing the Base Purchase Price to \$2.2 million (from \$520,000); and (ii) providing for the assignment of the equipment located at the Yonge & Bloor Location (the “**Yonge & Bloor Equipment**”) to the Yonge & Bloor Landlord. The Applicant and the Purchaser also prepared a revised form of the Purchase Agreement (the “**Receivership Purchase Agreement**”) that, in addition to encapsulating the revisions proposed under the Amending Agreement, contemplates the sale and transfer of substantially all of the assets and liabilities of MEI, with the exception of the Excluded Locations, to the Purchaser by a receiver (the “**Receiver**”) to be appointed pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the “**CJA**”).

1.9 The purpose of this report (the “**Third Report**”) is to provide the Court with information, and where applicable, the Monitor’s views on:

(i) the Applicant’s notice of motion dated November 12, 2021 (the “**Applicant’s Motion**”) for:

(a) an Order (the “**CCAA Amended Transaction Approval Order**”), among other things, (I) approving the Amended Transaction and related relief (as

described in further detail below) within the CCAA Proceedings, (II) extending the Stay Period to and including January 28, 2022, (III) approving the Transaction Deposit and granting the Transaction Charge (as defined below), and (IV) waiving any and all defaults and events of default under the assumed contracts identified in the Purchase Agreement arising as a result of, *inter alia*, the Applicant's insolvency, the CCAA Proceedings or the Purchase Agreement;

- (b) alternatively, if the CCAA Amended Transaction Approval Order is not approved, an Order (the “**Receivership Transaction Approval Order**”), among other things, (I) approving the Additional Interim Transaction Funding (as defined below) and granting the Transaction Charge, (II) approving the Receivership Purchase Agreement and the transaction contemplated thereby (the “**Receivership Transaction**”) pursuant to the CJA, conditional upon the future appointment of the Receiver over all of MEI's assets, properties and undertakings, MEI making an assignment in bankruptcy under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) and the termination of the CCAA Proceedings, (III) extending the Stay Period to and including January 28, 2022, and (IV) from and after the closing of the Receivership Transaction, waiving any and all defaults and events of default of MEI under the assumed contracts identified in the Receivership Purchase Agreement arising as a result of, *inter alia*, the Applicant's insolvency, the Applicant's proceedings or the Receivership Purchase Agreement; or

- (c) in the alternative, an Order (I) extending the Stay Period until and including December 8, 2021, and (II) increasing the Interim Transaction Funding to a maximum of \$1.4 million (from \$600,000);
- (ii) The Yonge & Bloor Landlord's amended notice of motion dated November 4, 2021 (the "**Y&B Landlord's Motion**") for an Order (the "**Receivership Order**"), among other things: (a) terminating the CCAA Proceedings (or in the alternative, lifting the stay of proceedings to permit the Y&B Landlord's Motion to proceed); and (b) appointing a receiver over all of MEI's assets, properties and undertakings pursuant to section 101 of the CJA for the purpose of implementing a Court-approved sale process for MEI's assets and/or business;
- (iii) the Applicant's cash flow results for the two-week period November 6 to November 19, 2021;
- (iv) the Applicant's updated cash flow forecast for the 10-week period November 20, 2021 to January 28, 2022;
- (v) the Monitor's activities since the date of the Second Report (October 14, 2021); and
- (vi) the Monitor's conclusions and recommendations in connection with the foregoing, as applicable.

2.0 TERMS OF REFERENCE AND DISCLAIMER

- 2.1 In preparing this Third Report, A&M, in its capacity as Monitor, has been provided with, and has relied upon unaudited financial information and the books and records prepared by

MEI, and has had discussions with management of MEI, its shareholders and its legal counsel (collectively, the “**Information**”). Except as otherwise described in this Third Report in respect of the Applicant’s cash flow forecast:

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

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

2.3 This Third Report should be read in conjunction with: (i) the Second Report; (ii) the Applicant’s Motion Record dated November 12, 2021, including the Affidavit of Dennis Mark McEwan, sworn on November 12, 2021 (the “**Third McEwan Affidavit**”); and (iii)

the Yonge & Bloor Landlord's Motion Record dated November 4, 2021, including the Affidavit of Jordan Robins, sworn on November 4, 2021 (the "**Robins Affidavit**"). Capitalized terms used and not defined in this Third Report have the meanings given to them in the Third McEwan Affidavit or the Second Report, as applicable.

- 2.4 While this Third Report considers certain of the potential future impacts of the COVID-19 pandemic on MEI's business and operations, such impacts cannot be fully determined at this time.
- 2.5 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars ("**CAD**").

3.0 UPDATES SINCE THE NOVEMBER 1 ENDORSEMENT

- 3.1 As described in the Third McEwan Affidavit, following the issuance of the November 1 Endorsement, the Applicant considered its available options and further restructuring alternatives and worked to advance next steps in the CCAA Proceedings. The Applicant discussed the benefits and risks that these alternatives may have for MEI's business with the Monitor and has expressed its goals of protecting the business and its stakeholders.
- 3.2 Since the November 1 Endorsement, the Monitor has discussed with the Applicant, among other things: (i) continuing discussions with the Yonge & Bloor Landlord with the goal of reaching a consensual resolution; (ii) further considering a sale process; and (iii) the relief sought in the Applicant's Motion.
- 3.3 On November 3, 2021, the Monitor, together with its counsel, formally requested that the Applicant and the Yonge & Bloor Landlord each provide to the Monitor, on a confidential

and without prejudice basis, the terms of a settlement proposal that it would be willing to accept to mutually terminate the Yonge & Bloor Lease and settle the ongoing dispute between the parties. Each of the parties provided the Monitor with a form of settlement proposal, and on a confidential and without prejudice basis, the Monitor held independent discussions with each party in an effort to advance a potential settlement. Following this process, the Monitor understands that the parties re-engaged in direct discussions with respect to a potential settlement.

- 3.4 With the assistance of the Monitor, the parties also finalized and executed a non-disclosure agreement on November 11, 2021. On November 12, 2021 the Yonge & Bloor Landlord's financial advisor delivered a preliminary information request list to the Monitor, which the Monitor then provided to the Applicant. The Applicant worked to compile and prepare materials to address such information requests. During the week of November 15, 2021, the Applicant provided information to the Yonge & Bloor Landlord so that it could undertake certain financial and legal due diligence on the MEI business to advance the settlement discussions and/or facilitate satisfying the due diligence condition contemplated by the Yonge & Bloor Landlord's Purchase Agreement. The Monitor understands that these discussions, as well as the Yonge & Bloor Landlord's diligence process, are ongoing.
- 3.5 As described in the Third McEwan Affidavit, based on the Applicant's review of its alternatives, and its discussions with certain of its key stakeholders, the Applicant decided to formulate the Amending Agreement and the Receivership Transaction Agreement and pursue the Amended Transaction, or in the alternative, the Receivership Transaction.

3.6 As stated in the Third McEwan Affidavit, the Applicant believes that the Amended Transaction is the best alternative that will protect the business and its stakeholders, and continues to believe that a sale process would be detrimental to its business. As such, the Applicant has not engaged in discussions with the Yonge & Bloor Landlord with respect to a consensual sale process. The Applicant has expressed to the Monitor its significant concerns regarding the harm and risks a sale process could cause to MEI's business, and without additional funding, the Applicant's limited liquidity position would not allow for an extended sale process.

4.0 THE APPLICANT'S MOTION

Alternative 1: CCAA Amended Transaction Approval Order

4.1 The Amended Transaction and the relief sought in the CCAA Amended Transaction Approval Order is substantially the same as the original Proposed Transaction and the relief sought on October 15, 2021 under the Approval and Vesting Order, save and except for the: (i) increased Base Purchase Price of \$2.2 million; (ii) assignment of the Yonge & Bloor Equipment; and (iii) removal of the "Buyer Designee" concept such that the acquired assets would remain in a single legal entity.

4.2 Like the Proposed Transaction, the Amended Transaction provides that all secured and unsecured liabilities are either paid in full or assumed by the Purchaser, with the exception of the Affected Landlord Claim.²

² As described in the Second Report, the Monitor understands that the agreements being advanced between MEI and the Cadillac Fairview Entities include a consensual termination of the Fabbria Don Mills lease (an Excluded Location). Accordingly, the only outstanding obligations known to the Monitor to be excluded from the Amended Transaction are the obligations owing and potential claims in respect of the Yonge & Bloor Location.

4.3 By increasing the Base Purchase Price and providing for the assignment of the Yonge & Bloor Equipment, the Applicant has materially increased the value that would be received by the Yonge & Bloor Landlord under the Amended Transaction.

4.4 Although there is no prescribed formula for determining a landlord claim in the CCAA, the following table sets out certain illustrative potential claim amounts that could be used to estimate the amount of the Affected Landlord Claim in comparison to the \$2.2 million Base Purchase Price. These potential claim amounts are not intended to be comprehensive.

Proxy for calculating the Affected Landlord Claim ³	Illustrative claim amount
Claim pursuant to subsection 136(1)(f) of the BIA	\$520,000 ⁴
12 months' rent	\$2.2 million
Claim pursuant to subsection 65.2(4)(b) of the BIA	\$6.3 million

4.5 The Amended Transaction also provides the Yonge & Bloor Landlord with the value that may be associated with the assignment of the Yonge & Bloor Equipment.

Monitor's Review and Assessment of the CCAA Amended Transaction Alternative

4.6 The Monitor's review and assessment of the original Proposed Transaction is described in detail in the Second Report at paragraphs 3.30 through 3.32, where the Monitor considered each of the factors set out in subsections 36(3) and 36(4) of the CCAA. As described in the Second Report, underlying the Proposed Transaction (and now the Amended Transaction) are certain financial, economic and market circumstances surrounding MEI,

³ Rent at the Yonge & Bloor Location is approximately \$183,000 per month, including HST (subject to certain annual increases), comprised of base rent and a provision for common area maintenance and taxes. The term of the lease extends to January 31, 2034. The amount of outstanding rent to the end of the term is approximately \$26.5 million, including HST.

⁴ The Monitor notes that pursuant to subsection 136(1)(f) of the BIA, the Yonge & Bloor Landlord's preferred claim in bankruptcy is also limited by the amount that can be realized from the property at the Yonge & Bloor Location, certain of which is subject to a secured equipment lease between MEI and RBC.

including certain unsustainable locations and the ongoing impacts and future uncertainty of the COVID-19 pandemic.

- 4.7 With the benefit of the November 1 Endorsement, the Amending Agreement and further discussion with certain key stakeholders, the Monitor makes the following additional comments (with reference to the relevant provisions of the CCAA) regarding the Amended Transaction.

36(4)(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition

- 4.8 In the absence of an appropriate sale process, alternative transactions and resulting proceeds and consideration are difficult to predict. Nonetheless, based on the information available and the analyses performed by the Monitor as outlined in the Second Report, as well as above, the Monitor is of the view that in the circumstances and under the process conducted by the Applicant, the consideration to be received under the Amended Transaction is fair and reasonable and offers a significant recovery to all creditors.

- 4.9 The increased Base Purchase Price of \$2.2 million and the assignment of the Yonge & Bloor Equipment materially increases the consideration to be received and enhances the compelling aspects of the Amended Transaction. In the Monitor's view, the compelling aspects of the Amended Transaction include, among other things, the following:

- (i) the Base Purchase Price of \$2.2 million provides a meaningful recovery to the Yonge & Bloor Landlord, estimated to be approximately equivalent to 12 months' rent. Further, the assignment of the Yonge & Bloor Equipment may provide

additional value to the Yonge & Bloor Landlord and assist in re-leasing the location;

- (ii) the Amended Transaction avoids potential employee severance and termination claims – which could be material – arising as a result of Mr. McEwan and potentially other employees not accepting new employment offers from the Yonge & Bloor Landlord or any other third-party purchaser (although the Yonge & Bloor Landlord proposes to assume any such severance and termination claims in the Yonge & Bloor Landlord's Purchase Agreement);⁵
- (iii) the Amended Transaction can be closed expeditiously with limited to no transaction risk (subject to litigation/appeal risk), in comparison to the higher transaction risk, time and cost that would be introduced by pursuing any other transaction, including the Yonge & Bloor Landlord's Purchase Agreement, which is subject to a 14-day due diligence period. The Monitor notes that any purchaser would require counterparty consent to assume outstanding obligations and ongoing leases, absent which, such amounts would need to be assigned pursuant to Court order or settled in cash on closing. In particular, certain material amounts currently outstanding include (all amounts approximate): (a) \$3.3 million owing to RBC, \$2.3 million of which is secured; (b) \$1.0 million owing to the Cadillac Fairview Entities (secured); (c) \$2.3 million owing to Fairfax in connection with unsecured shareholder loans; and (d) \$600,000 owing to the Interim Transaction Funding Lender (as defined in

⁵ As described in the Affidavit of Dennis Mark McEwan sworn on October 1, 2021, the Monitor understands that Mr. McEwan's continued involvement as chef and operator of MEI's business is premised on a continuation of his ownership interests and ongoing partnership with Fairfax.

the Stay Extension and Interim Transaction Funding Approval Order), which is secured by the Interim Transaction Funding Lender's Charge;

- (iv) as noted in the Second Report, it would appear to be uneconomical for an independent third-party purchaser (potentially save and except for the Yonge & Bloor Landlord) to assume the significant lease obligations in respect of the Yonge & Bloor Location, absent material amendments to the Yonge & Bloor Lease. Based on the Monitor's review of the financial results at the Yonge & Bloor Location, the Monitor notes that: (a) since opening in January 2019, with the exception of two months, the location has generated negative EBITDA and cash flow in every month of operation (and such losses would have been higher without the benefits of the government and landlord support programs the Applicant received during the COVID-19 period); (b) in comparison to the Applicant's comparable grocery location, the Yonge & Bloor Location generates significantly lower sales per square foot and its rent as a percentage of total sales is significantly higher; and (c) even with free rent, the Yonge & Bloor Location would continue to experience negative EBITDA and cash flow, until and unless sales at the location substantially increase; and
- (v) in the circumstances, it appears unlikely that a third-party (perhaps save and except for the Yonge & Bloor Landlord) would offer consideration superior to that of the Amended Transaction or the Yonge & Bloor Landlord's Purchase Agreement absent, among other things, material amendments to the Yonge & Bloor Lease.

- 4.10 On November 18, 2021, the Monitor received a letter from counsel to the Yonge & Bloor Landlord, subsequently amended on November 21 (the “**November 21 Letter**”), advising of certain amendments to the Yonge & Bloor Landlord’s Purchase Agreement. A copy of the November 21 Letter is attached hereto as **Appendix “B”**.
- 4.11 Following receipt of the November 21 Letter, the Monitor sought clarification on the proposed amendments to the Base Purchase Price under the Yonge & Bloor Landlord’s Purchase Agreement. Based on discussions with the Yonge & Bloor Landlord’s legal and financial advisors, the Monitor understands that the Base Purchase Price under the Yonge & Bloor Landlord’s Purchase Agreement would not result in any payment to equity. The Monitor notes, understandably and without criticism, that the Yonge & Bloor Landlord’s Purchase Agreement continues to remain conditional upon the completion of its ongoing due diligence process.
- 4.12 The Amended Transaction provides for materially superior recovery to the Yonge & Bloor Landlord than what would be received in a liquidating bankruptcy.

36(3)(d) the extent to which the creditors were consulted

- 4.13 As described in the Second Report, the Monitor understands that “*the Applicant’s secured creditors – RBC and the Cadillac Fairview Entities – support the transaction and each believe that Mr. McEwan is well positioned to lead MEI’s business going forward for the benefit of all stakeholders*”.
- 4.14 Following the November 1 Endorsement, the Monitor continued to consult with the Applicant’s key stakeholders, including RBC and the Cadillac Fairview Entities. RBC is MEI’s operating lender with amounts owing of approximately \$3.3 million (\$2.3 million

of which is secured), and the Cadillac Fairview Entities are the landlords to five of MEI's seven leases with secured amounts owing of approximately \$1.0 million in connection with deferred rents and a fixtures loan.

- 4.15 Based on discussions with the Cadillac Fairview Entities, the Monitor understands that the Cadillac Fairview Entities are supportive of the Amended Transaction, value Mr. McEwan's experience and expertise in the hospitality sector, and are of the view that maintaining a consolidated operation, and not dividing individual locations/operating units, is critical to the success of MEI's restructured business. The Cadillac Fairview Entities have raised a number of questions and concerns with respect to the possibility of a sale process that could result in a new third-party (or multiple third-parties) taking over MEI's business and assuming its leases (either as a whole or in part) in the context of an alternative transaction for MEI's business, including a new third-party having the requisite expertise to operate MEI's businesses, which is a unique combination of high-end restaurants and grocery operations.

36(4)(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company

- 4.16 As described in the Third McEwan Affidavit, the Applicant believes it has satisfied subsection 36(4), however there continues to be a dispute between the Applicant and the Yonge & Bloor Landlord in this regard. The Monitor notes that paragraphs 52 and 66 of the November 1 Endorsement provide that:

“Although MEI may have valid reasons to support its decision [not to embark on a sale process], that is not the requirement set out in s. 36(4)(a). The statute

references efforts being made to sell or otherwise dispose of the assets to persons who are not related the Company. In this case, no efforts were made. [...]

The facts of this case are such that the mandatory requirements of s. 36(4) have not been established and the proposed Transaction cannot be approved”.

- 4.17 The Monitor’s observations in relation to subsection 36(4)(b) of the CCAA, in light of the increased Base Purchase Price and the assignment of the Yonge & Bloor Equipment contemplated by the Amending Agreement, are set out above. As it relates to subsection 36(4)(a) of the CCAA, the Applicant has not attempted to sell its assets to an unrelated party since the November 1 Endorsement. However, the Applicant has articulated the factual basis upon which it believes it now satisfies subsection 36(4)(a) of the CCAA at paragraphs 10-25 of the Third McEwan Affidavit. The Monitor is cognizant of the November 1 Endorsement and is of the view that the Court should determine whether the circumstances of this case and the Applicant’s efforts described within the Third McEwan Affidavit now satisfy subsection 36(4)(a) of the CCAA.

Alternative 2: Receivership Transaction Approval Order

- 4.18 If the CCAA Amended Transaction Approval Order is not granted by the Court, the Applicant alternatively seeks to complete the Receivership Transaction pursuant to the Receivership Transaction Approval Order.
- 4.19 As set out above, the Receivership Transaction Approval Order, among other things:
- (i) approves the Receivership Transaction and the Receivership Purchase Agreement, pursuant to which the Receiver would be authorized to sell and transfer

substantially all of the assets and liabilities of MEI, with the exception of the Excluded Locations, to the Purchaser, conditional upon: (a) the appointment of the Receiver pursuant to the CJA; (b) MEI making an assignment in bankruptcy under the BIA; and (c) the termination of the CCAA Proceedings;

- (ii) authorizes the Receiver to complete the Receivership Transaction and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Receivership Transaction;
- (iii) authorizes the Receiver to hold and apply the Cash Reserve, to pay certain amounts from the Cash Reserve following the completion of the Receivership Transaction, and to deliver to the Purchaser any remaining funds in the Cash Reserve on the terms set out in the Receivership Purchase Agreement;
- (iv) from and after the closing of the Receivership Transaction, waives any and all defaults and events of default of MEI under the assumed contracts identified in the Receivership Purchase Agreement arising as a result of, *inter alia*, the Applicant's insolvency, the Applicant's proceedings or the Receivership Purchase Agreement;
- (v) approves additional interim funding in the form of the \$2.25 million Transaction Deposit (the "**Additional Interim Transaction Funding**") and grants a corresponding charge to secure same; and
- (vi) extends the Stay Period until and including January 28, 2022.

Monitor's Review and Assessment of the Receivership Transaction Alternative

4.20 Approval of a sale of a debtor company's assets or business outside of the ordinary course in a receivership proceeding is generally determined with regard to the factors enumerated in *Royal Bank v Soundair Corp.* ("**Soundair**").⁶ The *Soundair* factors include:

- (i) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (ii) the interests of the parties;
- (iii) the efficacy and integrity of the process by which offers are obtained; and
- (iv) whether there has been unfairness in the working out of the process.

4.21 The Monitor notes that this Court has previously found that the *Soundair* factors may, in appropriate circumstances, be satisfied where the proposed transaction was not the product of a sale process.⁷

4.22 However, where a sale of a debtor company's assets or business outside of the ordinary course is proposed shortly or immediately subsequent to the appointment of a receiver over the assets, property and undertakings of a debtor company, the Monitor notes that this Court has examined the proposed transaction with greater scrutiny and considered, among other things, whether a better result could realistically be achieved with the benefit of an extended sale process.⁸

⁶ The Monitor notes that the Applicant is currently still subject to the CCAA, and is not yet in receivership. The Monitor is not taking a position as to the appropriate legal test to be considered in connection with the relief sought by the Applicant with respect to the Receivership Alternative Transaction.

⁷ See for instance *Tool-Plas Systems Inc., Re* (2008) OJ No. 4218.

⁸ See for instance *ibid*; *Montrose Mortgage Corp. v Kingsway Arms Ottawa Inc.*, 2013 ONSC 6905; *Elleway Acquisitions Ltd. v 4358376 Ontario Inc.*, 2013 ONSC 7009 [Elleway].

4.23 Although there is no statutory analog to subsections 36(3)-(4) of the CCAA in the context of a receivership proceeding, the Monitor also notes that this Court has previously indicated that the inclusion of subsections 36(3)-(4) in the CCAA and 65.13(5) in the BIA demonstrate that greater scrutiny may be brought to bear upon related party sales in receivership proceedings.⁹ However, given the lack of express statutory direction, it would appear that Courts may have greater discretion in approving sale transactions within receivership proceedings.

4.24 While no receivership proceeding has been commenced and no receiver appointed, the Monitor has assessed the proposed Receivership Transaction having regard to the foregoing considerations. The Monitor's assessment in this regard and the Monitor's views on the compelling financial and commercial aspects of the Receivership Transaction are summarized here:

- (i) with the exception of the Affected Landlord Claim, the Receivership Transaction provides that all secured and unsecured claims remain unaffected;
- (ii) the Receivership Transaction provides for a better recovery to all creditors, including the Yonge & Bloor Landlord, than is estimated to be realized in a liquidating bankruptcy;
- (iii) the Receivership Transaction can be closed expeditiously with limited to no transaction risk, subject to litigation/appeal risk;

⁹ See for instance [Elleway](#), *ibid.*

- (iv) the Receivership Transaction is supported by MEI's secured creditors, RBC and the Cadillac Fairview Entities;
- (v) the Receivership Transaction allows MEI's business to continue to operate as a going concern, preserving the employment of approximately 268 employees, continuing the leases for each of the continuing locations and maintaining customer and trade relationships, which is expected to provide greater economic benefit to the majority of the Applicant's stakeholders than in a liquidating bankruptcy;
- (vi) the Base Purchase Price of \$2.2 million would provide a meaningful recovery to the Yonge & Bloor Landlord, equal to approximately 12 months' rent. Further, the assignment of the Yonge & Bloor Equipment may provide additional value to the Yonge & Bloor Landlord and assist in re-leasing the location; and
- (vii) the Additional Interim Transaction Funding, which is not attended by fees or interest, will provide the financing required to complete the CCAA Proceedings and the receivership and concurrent bankruptcy proceedings.

4.25 Notwithstanding the compelling commercial aspects noted above, in the Monitor's view, the legal dispute between the parties as to whether the Receivership Transaction satisfies the applicable legal test for approval is a threshold legal question. Given the particular circumstances of this case (including that there has been no sale process), the Monitor is not in a position to comment on the *Soundair* factors.

- 4.26 With the possible exception of the Yonge & Bloor Landlord, the Monitor is of the view that a better result could not realistically be achieved with the benefit of an extended sale process.

5.0 THE Y&B LANDLORD'S MOTION

- 5.1 On November 4, 2021 the Yonge & Bloor Landlord filed an amended notice of motion¹⁰ for the Receivership Order, among other things:

- (i) terminating the CCAA Proceedings, including the stay of proceedings, or in the alternative, lifting the stay of proceedings for the purposes of allowing the Y&B Landlord's Motion to proceed;
- (ii) requiring that any attempt to disclaim the Yonge & Bloor Lease be made on full and proper notice to First Capital Holdings (Ontario) Corporation;
- (iii) appointing a receiver, pursuant to section 101 of the CJA, for the purpose of designing and implementing a Court-approved sale process for MEI's assets and/or business and authorizing such receiver to bring a motion to this Court to approve the transaction contemplated by the best bid received thereunder; and
- (iv) authorizing the receiver to borrow by way of revolving credit or otherwise such monies as it considers necessary or desirable up to the principal amount of \$2.25 million and granting a corresponding charge (the "**Receiver's Borrowings Charge**") to secure the repayment of such borrowings.

¹⁰ The Yonge & Bloor Landlord's November 4 Notice of Motion amended and superseded a previous Notice of Motion filed on November 2 by the Yonge & Bloor Landlord.

- 5.2 The Yonge & Bloor Landlord has previously indicated that it is willing to provide the interim funding that would be required by a Court-appointed receiver up to \$2.25 million, provided that the Receiver's Borrowings Charge is approved.
- 5.3 The proposed Receiver's Borrowing Charge, if approved, will rank in priority to all other secured creditors and the Directors' Charge and the Interim Transaction Funding Lender's Charge, but subordinate to the RBC Security, the Administration Charge and the Receiver's Charge (as defined in the Receivership Order).
- 5.4 Subject to the foregoing, the contemplated priorities of the charges are as follows:
- (i) First – Administration Charge (to the maximum amount of \$350,000) and the Receiver's Charge, *pari passu* with one another;
 - (ii) Second – Receiver's Borrowings Charge (to the maximum amount of \$2.25 million);
 - (iii) Third – Directors' Charge (to the maximum amount of \$1.45 million); and
 - (iv) Fourth – Interim Transaction Funding Lender's Charge (to the maximum amount of \$600,000).
- 5.5 The Monitor has been advised that the Interim Transaction Funding Lender would object to the proposed ranking of the Receiver's Borrowings Charge.
- 5.6 As described in the Robins Affidavit, the Yonge & Bloor Landlord is of the view that the appointment of the Receiver represents the reasonable and prudent path forward and that any sale of the Applicant's assets/business and associated process be conducted under the

Court's jurisdiction and supervision. Moreover, the Yonge & Bloor Landlord has indicated that it is flexible as to how it participates in such a process, including that it is prepared to: (i) submit an offer in a traditional sale process; (ii) act as a stalking horse bidder; and (iii) acquire the business without a sale process on the terms presented in the Yonge & Bloor Landlord's Purchase Agreement.

Monitor's Review and Assessment of the Y&B Landlord's Motion

5.7 The Monitor is of the view that the Y&B Landlord's Motion is only relevant if the CCAA Amended Transaction Approval Order and the Receivership Transaction Approval Order are dismissed. In such circumstances, the Monitor is of the view that the December 8th Stay Extension (as defined below) is preferable to the commencement of the receivership proceedings proposed in the Y&B Landlord's Motion.

5.8 In assessing the Y&B Landlord's Motion, the Monitor considered, among other things, the following:

- (i) in the Monitor's view, the debtor-in-possession nature of the CCAA Proceedings better preserves MEI's business as a going concern, including maintaining normal course operations with customers, employees, vendors, landlords and other stakeholders;
- (ii) in the absence of a definitive, unconditional sale agreement for the business, the Receivership Order sought by the Yonge & Bloor Landlord would likely introduce increased risk and operational challenges to MEI's business, including among other things, the potential loss of employees and disruption to supplier relationships and the supply chain;

- (iii) in the Monitor's view, the CCAA Proceedings provide a more flexible, less costly and stable forum to complete the Applicant's restructuring;
- (iv) the continuation of the CCAA Proceedings would allow the Yonge & Bloor Landlord to continue its due diligence. The parties could then determinate whether a consensual settlement is possible or alternatively an appropriate sale process could be pursued;
- (v) the Yonge & Bloor Landlord has suggested that a receivership may not be just and convenient if MEI is willing to implement a CCAA sale process under the supervision of the Monitor; and
- (vi) the Monitor is of the view that if neither the Amended Transaction or the Receivership Transaction is approved, the CCAA Proceedings provide the most flexible and cost efficient forum to pursue an appropriate sale process without exposing MEI's business and stakeholders to greater risk. However, if MEI is not prepared to run a sale process, the Monitor believes it would be appropriate for the Y&B Landlord's Motion to be considered on or before December 8, 2021 (the proposed stay expiry, as discussed below).

6.0 CASH FLOW RESULTS RELATIVE TO FORECAST

- 6.1 Actual receipts and disbursements for the two-week period November 6 to November 19, 2021 (the "**Reporting Period**"), as compared to the cash flow forecast attached as Appendix "B" to the Second Supplement, are summarized in the following table:

Cash Flow Results		CAD\$000's	
	Budget	Actual	Variance
Receipts	1,503	1,580	77
Disbursements			
Vendors	(1,007)	(995)	12
Employee wages	(455)	(387)	68
Rent	-	-	-
Other SG&A	(160)	(57)	103
RBC principal, lease payments & interest	-	-	-
Restructuring professional Fees	(146)	(112)	34
Net Cash Flow	(265)	29	294
Cash balance, opening	43	43	-
Net Cash Flow	(265)	29	294
Revolving Facility draws	610	(90)	(700)
Interim Transaction Funding	-	-	-
Ending Cash Balance	388	(18)	(406)

6.2 During the Reporting Period:

- (i) total receipts of \$1.6 million actualized slightly above forecast, which variance is attributed to timing;
- (ii) total disbursements were approximately \$217,000 less than forecast. These variances are considered timing variances and are expected to reverse in future weeks; and
- (iii) overall, MEI experienced a positive net cash flow variance of approximately \$294,000.

6.3 As at November 19, 2021, MEI's available liquidity was approximately \$682,000, comprised of: (i) \$700,000 available under the Revolving Facility, which amount is

partially offset by (ii) an ending cash position of negative \$18,000 (cash balance net of outstanding cheques).

Yonge & Bloor Rent Reserve

- 6.4 The Monitor continues to hold the amounts funded into the Yonge & Bloor Rent Reserve in respect of disputed October and November rents.

Pre-Filing Payments

- 6.5 In accordance with paragraph 7(e) of the Initial Order, the Applicant is entitled to pay, with the consent of the Monitor, amounts owing for goods and services supplied prior to the Filing Date, if in the opinion of the Applicant, such payment is necessary or desirable to avoid disruption to the operations of the business. The Applicant set out in its materials filed in support of the Initial Order that it intends to provide payment to all trade suppliers in the normal course, subject to the terms of the Initial Order, in order to protect its ongoing business.
- 6.6 As of the date of this Third Report, the Applicant has issued, with the consent of the Monitor, pre-filing payments totaling approximately \$1.53 million to third-party suppliers in respect of goods and services provided prior to the Filing Date. Each such payment was made with the consent of the Monitor in accordance with the Initial Order.

7.0 UPDATED CASH FLOW FORECAST

- 7.1 The Applicant, with the assistance of the Monitor, has prepared an updated cash flow forecast (the “**Updated Cash Flow Forecast**”) for the ten-week period from November 20, 2021 to January 28, 2022 (the “**Cash Flow Period**”). A copy of the Updated Cash Flow

Forecast, together with the Notes and Summary of Assumptions, is attached hereto as **Appendix “C”**.

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

Updated Cash Flow Forecast	CAD\$000's
	10-Week Period
	<i>Jan-28</i>
Receipts	7,624
Disbursements	
Vendors	(4,827)
Employee wages	(2,167)
Rent	(1,339)
Other SG&A	(836)
RBC principal, lease payments & interest	(246)
Restructuring professional Fees	(900)
Net Cash Flow	(2,691)
Cash balance, opening	(18)
Net Cash Flow	(2,691)
Revolving Facility draws	600
Additional Interim Transaction Funding / Transaction Deposit	2,250
Ending Cash Balance	141

7.3 The Monitor notes the following with respect to the Updated Cash Flow Forecast:

- (i) during the Cash Flow Period, net cash flows are projected to be negative \$2.7 million. These negative cash flows are projected to be funded by a combination of draws on the Revolving Facility of \$600,000 and funding from the Transaction Deposit or Additional Interim Transaction Funding, as applicable, of \$2.25 million;

- (ii) the funding of the Transaction Deposit or Additional Interim Transaction Funding is subject to obtaining Court approval of the Amended Transaction or Receivership Transaction, respectively and a Court-ordered charge (the “**Transaction Charge**”) to secure the Transaction Deposit or the Additional Interim Transaction Funding, as applicable, for the benefit of the Purchaser in the event that the transaction is not completed;
- (iii) forecast rent includes catch-up payments to the Cadillac Fairview Entities of approximately \$185,000 relating to October and November rents at certain locations, as well as increased rents for December and January, based on recent discussions and agreement among the Applicant and the Cadillac Fairview Entities regarding the payment by the Applicant of full contractual rent from October 1, 2021 at all locations until a transaction is completed with the Purchaser; and
- (iv) forecast professional fees reflect projected payments to the Monitor and the Monitor’s legal counsel. Amounts owing and future amounts that will become owing to the Applicant’s legal counsel have not been included herein. The Monitor understands that the Applicant will work with the Applicant’s legal counsel in connection with the payment of its legal fees in due course when funding is available and such fees would be paid in advance of or as part of the Amended Transaction, or in the alternative, the Receivership Transaction.

8.0 THE TRANSACTION DEPOSIT, ADDITIONAL INTERIM TRANSACTION FUNDING & TRANSACTION CHARGE

- 8.1 As set out in the Updated Cash Flow Forecast, the Applicant projects that it will require additional funding of up to approximately \$2.25 million to continue the CCAA Proceedings

and to complete the Amended Transaction or the Receivership Transaction, if approved by the Court.

- 8.2 Pursuant to the CCAA Amended Transaction Approval Order, or in the alternative, the Receivership Transaction Approval Order, the Purchaser has agreed to provide the Transaction Deposit or Additional Interim Transaction Funding of up to \$2.25 million for use by MEI to fund its near term liquidity requirements and the completion of its insolvency proceedings.
- 8.3 Provision of the Transaction Deposit or Additional Interim Transaction Funding is subject to Court approval and, as noted above, the granting of the Transaction Charge to secure the repayment of the Transaction Deposit or the Additional Interim Transaction Funding, as applicable, to the Purchaser should the Amended Transaction or the Receivership Transaction, respectively, not be completed.
- 8.4 The proposed Transaction Charge, if approved, will rank in priority to all other secured creditors, other than statutory-priority deemed trust and liens for unpaid employee source deductions or taxes, but subordinate to the RBC Security and the other Court-ordered charges.
- 8.5 Subject to the foregoing, the contemplated priorities of the charges are as follows:
- (i) First – Administration Charge (to the maximum amount of \$350,000);
 - (ii) Second – Directors’ Charge (to the maximum amount of \$1.45 million); and

- (iii) Third – Interim Transaction Funding Lender’s Charge (to the maximum amount of \$600,000) and the Transaction Charge (to the maximum amount of \$2.25 million), *pari pasu* with one another.

8.6 If the Amended Transaction or the Receivership Transaction is approved by the Court, the Monitor supports providing the Purchaser with the benefits of the proposed Transaction Charge in the manner described given that: (i) it will provide the Applicant with the necessary liquidity to advance the CCAA Proceedings and complete the Amended Transaction or effect the Receivership Transaction in concurrent receivership and bankruptcy proceedings; and (ii) it does not increase the cost of the Applicant’s insolvency proceedings as there are no fees or interest contemplated to be paid in connection with the Transaction Deposit or Additional Interim Transaction Funding.

9.0 EXTENSION OF THE STAY PERIOD

9.1 The current Stay Period expires on November 26, 2021.

9.2 If the Court grants the CCAA Amended Transaction Approval Order, or in the alternative, the Receivership Transaction Approval Order, the Monitor supports the Applicant’s request to extend the Stay Period until and including January 28, 2022 for the following reasons:

- (i) the extension is necessary to enable MEI to: (a) implement the Amended Transaction or the Receivership Transaction and transition MEI’s business to the Purchaser; and (b) complete the CCAA Proceedings or commence the concurrent receivership and bankruptcy proceedings contemplated by the Receivership Transaction;

- (ii) the additional funding of \$2.25 million (under either the Amended Transaction or the Receivership Transaction) is projected to provide MEI with sufficient liquidity through the extended Stay Period; and
- (iii) the Applicant has acted, and continues to act, in good faith and with due diligence to advance the CCAA Proceedings and its restructuring efforts.

The December 8th Stay Extension

- 9.3 If the Court does not grant either of the Applicant's proposed alternatives or time is required by the Court to render a decision, the Applicant has also proposed seeking an Order to: (i) extend the Stay Period until and including December 8, 2021 (the "**December 8th Stay Extension**"); and (ii) increase the Interim Transaction Funding Lender's Charge to \$1.4 million (from \$600,000).
- 9.4 The Monitor supports the Applicant's request under this alternative for the following reasons:
- (i) as set out in the Updated Cash Flow Forecast, the \$800,000 increase to the Interim Transaction Funding is projected to provide the Applicant with sufficient liquidity through the period ending December 8, 2021;
 - (ii) as no fees or interest are payable in connection with the Interim Transaction Funding it will not increase the cost of the CCAA Proceedings;
 - (iii) the December 8th Stay Extension would provide the Applicant with the stability required to continue its ordinary course business operations, which is in the best interest of MEI's stakeholders;

- (iv) the December 8th Stay Extension would provide additional time for the Applicant to review and determine next appropriate steps in the CCAA Proceedings and for the parties to potentially reach a consensual resolution; and
- (v) the Applicant has acted, and continues to act, in good faith and with due diligence to advance the CCAA Proceedings and its restructuring efforts.

10.0 ACTIVITIES OF THE MONITOR SINCE THE SECOND REPORT

10.1 In addition to those activities described above, the activities of the Monitor from the date of the Second Report have also included the following:

- (i) considering various consensual paths forward, and attempting to facilitate same;
- (ii) engaging in discussions with MEI and its legal counsel regarding the CCAA Proceedings and the Applicant's available options and alternatives, which included the Monitor's review of the various transaction alternatives and associated purchase agreements put forward by MEI;
- (iii) engaging in discussions with the legal and financial advisors to the Yonge & Bloor Landlord, including in connection with the Y&B Landlord's Motion, its concerns with the Amended Transaction and Receivership Transaction, the Yonge & Bloor Landlord's Purchase Agreement, a potential settlement and other matters;
- (iv) participating in discussions with the Applicant and the Yonge & Bloor Landlord with respect to the execution of a mutually acceptable non-disclosure agreement to allow for certain financial, legal and other diligence information to be shared between the parties;

- (v) engaging in discussions with the Cadillac Fairview Entities and their legal counsel;
- (vi) engaging in discussions with RBC's legal counsel;
- (vii) responding to inquiries from creditors and other stakeholders;
- (viii) monitoring the Applicant's cash receipts and disbursements, and assisting in preparing weekly cash flow variance reporting;
- (ix) corresponding with the Applicant's finance team and considering requests for disbursements for goods or services supplied to the Applicant prior to the Filing Date in accordance with the Initial Order;
- (x) posting non-confidential materials filed with the Court to the Case Website;
- (xi) with its counsel, attending at the Yonge & Bloor Landlord's cross-examination of Mr. McEwan on November 19, 2021; and
- (xii) with the assistance of its legal counsel, preparing the Supplement, the Second Supplement and this Third Report.

11.0 CONCLUSIONS

- 11.1 The Applicant's Motion proposes three alternatives: (i) approving the Amended Transaction pursuant to the CCAA Amended Transaction Approval Order; (ii) approving the Receivership Transaction pursuant to the Receivership Transaction Approval Order; or (iii) granting the December 8th Stay Extension.

- 11.2 As discussed in this Third Report, the Amended Transaction, or in the alternative, the Receivership Transaction, are each commercially and financially compelling for the reasons articulated in this Third Report.
- 11.3 However, whether the Amended Transaction ought to be approved in light of the *Soundair* test and/or subsection 36(4)(a) of the CCAA (or a similar common law requirement/consideration in the context of the proposed receivership) continues to be a threshold legal question.
- 11.4 If this Court is of the view that the Applicant has now satisfied subsection 36(4) of the CCAA, or in the alternative, the common law requirements/considerations bearing on the proposed Receivership Transaction Approval Order, the Monitor is of the view that the Amended Transaction, or in the alternative, the Receivership Transaction, is fair and reasonable in the circumstances, and provides a meaningful recovery to all creditors.
- 11.5 If neither the CCAA Amended Transaction Approval Order or the Receivership Transaction Approval Order is approved, the Monitor is of the view that the December 8th Stay Extension is reasonable in the circumstances given that:
- (i) the December 8th Stay Extension will provide additional time for the Applicant to review and determine next appropriate steps in the CCAA Proceedings;
 - (ii) as described above, the Interim Transaction Funding will provide the Applicant with sufficient liquidity through the period ending December 8, 2021, and no additional fees or interest will be incurred by the Applicant thereunder; and

- (iii) in the Monitor's view, the continuation of the CCAA Proceeding is preferable as compared to converting to a receivership.

All of which is respectfully submitted to the Court this 24th day of November, 2021.

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

Per:



Greg Karpel
Senior Vice-President

APPENDIX A
SECOND REPORT OF THE MONITOR

See attached.

**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.

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

OCTOBER 14, 2021

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APPENDICES

Appendix A – Pre-Filing Report of the Proposed Monitor dated September 27, 2021

Appendix B – First Report of the Monitor dated October 5, 2021

1.0 INTRODUCTION

- 1.1 On September 28, 2021 (the “**Filing Date**”), McEwan Enterprises Inc. (“**MEI**” or the “**Applicant**”) obtained an initial order (the “**Initial Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The proceedings commenced by the Applicant under the CCAA are referred to herein as the “**CCAA Proceedings**”. Among other things, the Initial Order appointed Alvarez & Marsal Canada Inc. (“**A&M**”) as monitor in the CCAA Proceedings (in such capacity, the “**Monitor**”).
- 1.2 On October 7, 2021, the Applicant obtained an amended and restated Initial Order (the “**Amended and Restated Initial Order**”) that, among other things: (i) extended the Stay Period (as defined in the Initial Order) until and including November 1, 2021; and (ii) increased the Administration Charge and the Directors’ Charge (each as defined in the Initial Order) up to a maximum of \$350,000 and \$1.45 million, respectively.
- 1.3 In connection with the CCAA Proceedings, A&M filed the Pre-Filing Report of the Proposed Monitor dated September 27, 2021 (the “**Pre-Filing Report**”). The Monitor has also filed the First Report of the Monitor dated October 5, 2021 (the “**First Report**”, and together with the Pre-Filing Report, the “**Monitor’s Reports**”). The Monitor’s Reports and other Court-filed documents in the CCAA Proceedings are available on the Monitor’s case website at www.alvarezandmarsal.com/McEwanEnterprises (the “**Case Website**”). The Pre-Filing Report and the First Report are also attached hereto as **Appendix “A”** and **Appendix “B”**, respectively.

- 1.4 MEI's business is comprised of six high-end restaurant locations, three gourmet grocery locations, a catering business and an events business, each operating in the Greater Toronto Area, with the exception of one of the restaurants located in Thornbury, Ontario. MEI's brands include *Bymark*, *Fabbrica*, *Diwan*, *McEwan Fine Foods*, *McEwan Catering* and *ONE Restaurant*.¹ MEI also generates revenue from various television and media interests, as well as a partnership with Goodfood Market Corp., a subscription based food-delivery service.
- 1.5 MEI's equity is owned 55% by a subsidiary of Fairfax Financial Holdings Limited ("**Fairfax**") and 45% by McEwan Holdco Inc. ("**McEwan Holdco**"). Dennis Mark McEwan is the sole shareholder of McEwan Holdco. MEI is incorporated under the laws of Ontario and its registered head office is located in Toronto.
- 1.6 As described in the Pre-Filing Report and further herein, a key aspect of the Applicant's restructuring plan is to effectuate the going concern sale and transfer of substantially all of its assets and liabilities, with the exception of certain excluded lease agreements and related

¹ MEI's interest in ONE Restaurant consists of a 50% partnership interest established pursuant to a partnership agreement dated June 1, 2005 (the "**Partnership Agreement**"), which is currently held in a wholly owned subsidiary, 2860117 Ontario Limited (the "**McEwan Subsidiary**"). The McEwan Subsidiary is not an applicant in these CCAA Proceedings, however, pursuant to the Initial Order, the stay of proceedings has been extended to the benefit of the McEwan Subsidiary. The McEwan Subsidiary assumed its partnership interest in ONE Restaurant pursuant to an Assignment Agreement dated August 24, 2021 (the "**Assignment Agreement**"), between MEI, the McEwan Subsidiary and Dawsco (Food Services) Limited, Starwood (Food Services) Limited and Yorkset (Food Services) Limited carrying on business under the firm name of DSY Food Services Partnership (the "**ONE Restaurant Partner**"). The ONE Restaurant Partner holds the remaining 50% partnership interest in ONE Restaurant pursuant to the Partnership Agreement. The Monitor notes that an overview of the foregoing is set out in the McEwan Affidavit. In light of the proximity between the Assignment Agreement and the Filing Date, A&M, in its capacity as Proposed Monitor, requested and was provided with a copy of the Partnership Agreement and the Assignment Agreement and engaged in discussions with MEI's counsel regarding each agreement. Based on its review of the Partnership Agreement and the Assignment Agreement and its discussions with MEI's counsel, the Monitor is of the view that the incorporation of the McEwan Subsidiary and the assignment of MEI's interest in ONE Restaurant to the McEwan Subsidiary were undertaken for legitimate business and corporate purposes and do not otherwise impact MEI's creditors.

excluded liabilities, to a new entity (the “**Purchaser**”) formed by the Applicant’s current shareholders, being Fairfax and McEwan Holdco (the “**Proposed Transaction**”). The Proposed Transaction includes a cash deposit of up to \$2.25 million to be funded by the Purchaser, which, if approved by the Court, is intended to be utilized by the Applicant to finance its short term liquidity requirements (the “**Transaction Deposit**”).

1.7 The purpose of this report (the “**Second Report**”) is to provide the Court with information, and where applicable, the Monitor’s views on:

- (i) the Applicant’s motion for an Order (the “**Approval and Vesting Order**”), among other things:
 - (a) approving the Proposed Transaction and the purchase agreement dated September 27, 2021 (the “**Purchase Agreement**”) between the Applicant and the Purchaser, and vesting in the Purchaser or one or more of its designees (each a “**Buyer Designee**”), all of the Applicant’s right, title and interest in and to the Purchased Assets (as discussed below) free and clear from any Claims and Encumbrances (each as defined in the Approval and Vesting Order);
 - (b) approving the Transaction Deposit and granting the Transaction Deposit Charge (as defined and described below) on the Applicant’s Property (as defined in the Initial Order);
 - (c) authorizing the Monitor to: (i) hold a cash reserve on behalf of the Applicant for the wind-down of the CCAA Proceedings (the “**Cash Reserve**”); (ii)

pay certain amounts from the Cash Reserve on behalf of the Applicant following the completion of the Proposed Transaction with the consent of the Applicant; and (iii) deliver to the Purchaser any remaining funds in the Cash Reserve on the terms set out in the Purchase Agreement;

(d) from and after the closing of the Proposed Transaction, waiving any and all defaults and events of default of MEI under the Assumed Contracts (as defined and described below) committed by MEI, or caused by MEI, as a result of the insolvency of the Applicant, the commencement or continuation of the CCAA Proceedings by the Applicant, by any of the provisions in the Purchase Agreement or steps or transactions contemplated in the Purchase Agreement and/or any other Orders of this Court; and

(e) extending the Stay Period until and including December 17, 2021;

(ii) cash flow results for the two-week period ended October 8, 2021;

(iii) the Monitor's activities since the date of the First Report (October 5, 2021); and

(iv) the Monitor's conclusions and recommendations in connection with the foregoing, as applicable.

1.8 Given certain very recent developments discussed below, the Monitor needed to discuss, consider, and assess various new facts and circumstances in the days leading up to the motion for the Approval and Vesting Order. Accordingly, the Monitor was only able to finalize, serve and file the Second Report on the date hereof.

2.0 TERMS OF REFERENCE AND DISCLAIMER

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

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

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

- 2.3 This Second Report should be read in conjunction with: (i) the Affidavit of Dennis Mark McEwan, sworn on September 27, 2021, and filed in support of the Applicant's application for relief under the CCAA (the "**McEwan Affidavit**"); and (ii) the Affidavit of Dennis Mark McEwan, sworn on October 1, 2021, and filed in support of the Approval and Vesting Order (the "**Second McEwan Affidavit**", and together with the McEwan Affidavit, the "**McEwan Affidavits**"). Capitalized terms used and not defined in this Second Report have the meanings given to them in the Monitor's Reports, the McEwan Affidavits or the Purchase Agreement, as applicable.
- 2.4 While this Second Report considers certain of the potential future impacts of the COVID-19 pandemic on MEI's business and operations, such impacts cannot be fully determined at this time.
- 2.5 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars ("**CAD**").

3.0 APPROVAL AND VESTING ORDER

Events Leading to the Proposed Transaction

- 3.1 The events leading to and culminating in the Proposed Transaction are set out in further detail in the Pre-Filing Report and the McEwan Affidavits. Certain of the key events are summarized below:
- (i) although many of MEI's locations have historically been profitable, certain of its locations have been underperforming for a number of years, causing a significant strain on the business as a whole and resulting in declining financial results;

- (ii) the negative impacts of the COVID-19 pandemic over the past approximately 20 months, including restaurant closures, capacity constraints and other restrictions have exacerbated MEI's operating challenges and have resulted in significant cash losses, tightening liquidity and breaches under its Secured Credit Facilities held with RBC;
- (iii) to address these headwinds, MEI implemented extensive cost-saving and cash conservation measures, negotiated landlord concessions at certain of its locations, utilized a number of government subsidies made available during the COVID-19 pandemic and received additional debt and equity financing from its shareholders;
- (iv) in June, 2021, MEI engaged legal counsel to assist it in reviewing and assessing its various strategic alternatives, including obtaining additional financing, reducing the size of the business, considering a potential sale of the business and exploring whether consensual arrangements with its landlords could be reached to improve lease terms, reduce lease obligations and/or exit certain unprofitable locations. As it relates to discussions and negotiations with landlords, the Monitor understands that:
 - (a) positive discussions were held, and are ongoing, with the Cadillac Fairview Entities in respect of the leases for Bymark, Fabbrica TD, McEwan TD, Fabbrica Don Mills and McEwan Don Mills (collectively, the "**Cadillac Fairview Leases**") and the parties are working to finalize satisfactory arrangements on a consensual basis in respect of the Cadillac Fairview

Leases. The Monitor understands that the business terms are substantially finalized after many months of discussions; and

- (b) MEI had ongoing discussions over many months with its landlord (the “**Yonge & Bloor Landlord**”) in respect of the McEwan Yonge & Bloor grocery location (the “**Yonge & Bloor Location**”), however the parties were not able to reach a mutually satisfactory resolution to modify the lease terms or consensually terminate the lease.

3.2 After extensive review and consideration of its circumstances and available alternatives, MEI ultimately determined to pursue the Proposed Transaction. In that regard, MEI and the Purchaser entered into the Purchase Agreement on September 27, 2021 and MEI commenced the CCAA Proceedings on September 28, 2021 to implement its restructuring and effectuate the Proposed Transaction, subject to its approval by this Court.

Proposed Transaction

3.3 As described above, the Proposed Transaction involves the sale and transfer of substantially all of MEI’s assets and liabilities to the Purchaser, a newly incorporated company formed by the Applicant’s current shareholders. The Proposed Transaction will allow the Purchaser to continue to operate the restructured business of MEI as a going concern, including maintaining each of MEI’s current locations, with the exception of Fabricca Don Mills and the Yonge & Bloor Location (together, the “**Excluded Locations**”), subject to finalizing its agreement with the Cadillac Fairview Entities.²

² To the extent additional leases are designated to be terminated or disclaimed in the CCAA Proceedings, such terminated or disclaimed locations could also become Excluded Locations. The Purchase Agreement requires that the

- 3.4 The Monitor understands that pursuant to the Purchase Agreement, the Purchaser will offer employment to all of MEI's 268 full-time and part-time employees and assume all related employee obligations. Notably, this includes all of the employees currently working at the Excluded Locations.

Purchase Agreement

- 3.5 The Approval and Vesting Order provides for the vesting of all of the Applicant's right, title and interest in and to the Purchased Assets in the Purchaser and/or one or more Buyer Designees, free and clear from any Claims and Encumbrances.
- 3.6 The Purchase Agreement is described in detail in the Second McEwan Affidavit and attached thereto as Exhibit "C". The following table summarizes certain key terms of the Purchase Agreement:

Purchase Agreement – Summary of Key Terms	
Purchase Price	<ul style="list-style-type: none">• The aggregate consideration for the Purchased Assets under the Purchase Agreement is the sum of:<ul style="list-style-type: none">i. the assumption of the Assumed Obligations (described below), which are estimated by the Applicant to be approximately \$11 million; andii. cash payments of: (a) \$520,000 (the "Base Purchase Price"); and (b) an amount equal to the Cure Costs• The \$520,000 Base Purchase Price was calculated by the Applicant to be approximately the amount equal to the Yonge & Bloor Landlord's entitlement upon the disclaimer of the lease relating to the Yonge & Bloor Location (the "Yonge & Bloor Lease") as determined with reference to subsection 136(1)(f)

Monitor be consulted prior to any further leases becoming Excluded Locations. Furthermore, the proposed Approval and Vesting Order provides that the Applicant is not entitled to remove any of the Assumed Real Property Leases, which are Cadillac Fairview Leases, from the list of Material Contracts, Assumed Real Property Leases or Assumed Contracts or otherwise designate any such lease as an Excluded Asset, Excluded Contract or Excluded Obligation, without the prior written consent of the Cadillac Fairview Entities or further Order of the Court on notice to the Cadillac Fairview Entities.

Purchase Agreement – Summary of Key Terms	
	of the <i>Bankruptcy and Insolvency Act</i> , R.S.C. 1985, c. B-3, as amended (the “ BIA ”) (equivalent to three months’ accelerated rent ³)
Purchased Assets	<ul style="list-style-type: none"> • The Purchased Assets comprise of all of MEI’s right, title and interest in and to the assets and properties of MEI used, maintained, owned or operated for, in respect of or in connection with MEI’s business, in each case free and clear of all Encumbrances other than the Permitted Encumbrances, excluding the Excluded Assets (including, for greater certainty, the Excluded Contracts), including the following, among other things: cash and cash equivalents, accounts receivable, prepaid assets, inventory, supplies, motor vehicles owned or leased by MEI, property and equipment, intellectual property, insurance proceeds, and MEI’s partnership interest in ONE Restaurant • The Purchased Assets also include certain Real Property Leases, capital leases and other contracts to be assumed by the Purchaser (the “Assumed Contracts”) • Pursuant to the Purchase Agreement, the Purchaser may, at any time up to the day prior to the closing of the Transaction, elect to not acquire any assets, properties, and rights of MEI (and any such assets, properties, and rights shall be Purchased Assets shall be Excluded Assets); provided that, with respect to Contracts, such designation must be made in accordance with Section 2.4 of the Purchase Agreement
Assumed Obligations	<ul style="list-style-type: none"> • Pursuant to the Purchase Agreement, the Purchaser agrees to or to cause one or more Buyer Designees to assume, pay, discharge, perform and fulfill, among others, the following debts, commitments, claims, obligations and liabilities of MEI with respect to MEI’s business and the Purchased Assets, in each case whether direct or indirect, present or future, absolute, accrued or contingent: all pre-filing and post-filing trade obligations and accrued operating expenses; all employee liabilities and obligations, including accrued payroll and accrued vacation liabilities; all obligations in respect of MEI’s gift cards and other customer loyalty programs; all obligations under the Assumed Contracts; all Cure Costs; all obligations in respect of the Transaction Deposit; and other obligations expressly assumed under the Purchase Agreement
Employees	<ul style="list-style-type: none"> • The Purchaser will make an offer of employment to each of MEI’s current employees (approximately 268 individuals) on the same terms and conditions as their current employment terms
Excluded Assets	<ul style="list-style-type: none"> • Pursuant to the Purchase Agreement, the Purchased Assets do not, and will not be deemed to, include any of the following assets, property, rights, benefits or undertakings of MEI: all rights and interests in and to the Excluded Contracts; all of MEI’s rights and benefits under the Purchase Agreement and the Transaction; any asset or property otherwise forming part of the Purchased Assets that is sold, conveyed, leased or otherwise consumed, utilized, transferred or disposed of in the Ordinary Course during the Interim Period, or otherwise in compliance with the terms of the Purchase Agreement; and all director and officer insurance policies and any entitlements and any proceeds paid or payable thereunder to or on behalf of the directors and officers of the Purchaser

³ Based on the Monitor’s review of the Applicant’s books and records, no rent arrears are currently owing in connection with the Yonge & Bloor Lease.

Purchase Agreement – Summary of Key Terms	
	<ul style="list-style-type: none"> Pursuant to the Purchase Agreement, the Purchaser may, at any time up to the day prior to the closing of the Transaction, elect to not acquire any assets, properties, and rights of MEI (and any such assets, properties, and rights shall be Purchased Assets shall be Excluded Assets); provided that, with respect to Contracts, such designation must be made in accordance with Section 2.4 of the Purchase Agreement
Excluded Obligations	<ul style="list-style-type: none"> Pursuant to the Purchase Agreement, the Purchaser and/or, as applicable, one or more Buyer Designees, will not assume and will have no obligation to discharge, perform or fulfill any of the following liabilities, debts, obligations, commitments or claims, direct or indirect, whether present or future, absolute, accrued or contingent, of MEI: all liabilities and obligations of any kind relating to the Excluded Assets; all obligations and liabilities of MEI that are secured by court-ordered charges in the CCAA Proceedings and that are subject to the Cash Reserve; any liability with respect to any legal, accounting audit, financial advisory, and investment banking fees and any other expenses incurred by MEI, including with respect to the transactions contemplated by the Purchase Agreement or the CCAA Proceedings; and any other obligations or liabilities expressly excluded from the Assumed Obligations under the Purchase Agreement
Transaction Deposit	<ul style="list-style-type: none"> \$2.25 million, payable in one or more installments, to be repaid or assumed, as the case may be, in accordance with the terms of the Purchase Agreement and/or such additional terms as may be entered into between MEI and the Purchaser Proceeds to be used by MEI to fund its working capital requirements, other general corporate expenditures, and the costs of the CCAA Proceedings No fees or interest will be payable in connection with the Transaction Deposit If the Purchase Agreement is terminated for any reason, then the Transaction Deposit shall be immediately due and payable in full by MEI to the Purchaser without any additional notice, demand or other action or otherwise to MEI or from the Purchaser Subject to the Approval and Vesting Order and the Transaction Deposit Charge each having been granted by the Court
Cash Reserve	<ul style="list-style-type: none"> On the closing of the Proposed Transaction, MEI shall retain the Cash Reserve in an amount agreed to by MEI and the Purchaser, with the consent of the Monitor to fund the costs of completing the CCAA Proceedings Within three business days of the earlier of: (i) six months after the closing date of the Proposed Transaction; and (ii) the date the administration of MEI's wind-down is completed, MEI shall deliver to the Purchaser any funds remaining in the Cash Reserve Pursuant to the proposed Approval and Vesting Order, the Monitor will be authorized to: (i) hold the Cash Reserve on behalf of MEI; (ii) pay certain amounts from the Cash Reserve on behalf of MEI following the completion of the Proposed Transaction; and (iii) deliver to the Purchaser any remaining funds in the Cash Reserve on the terms set out in the Purchaser Agreement
Conditions	<ul style="list-style-type: none"> No due diligence or financing condition

Purchase Agreement – Summary of Key Terms	
	<ul style="list-style-type: none"> • Satisfactory arrangements entered into with the Cadillac Fairview Entities or a CCAA Assignment Order with respect to the assignment of certain of the Cadillac Fairview Leases • The granting by the Court of the Approval and Vesting Order • The receipt by the Purchaser of a Third Party Consent or the CCAA Assignment Order with respect to each Material Contract which cannot be assigned to the Purchaser without such a Third Party Consent or CCAA Assignment Order • Other customary conditions for a transaction of this nature

3.7 Based on MEI's balance sheet as at August 31, 2021:

(i) the Purchased Assets are comprised primarily of:

- cash of approximately \$1.0 million, although the Monitor understands that since August 31, 2021, this balance has been substantially utilized to fund normal course expenditures in connection with MEI's business and the CCAA Proceedings;
- accounts receivable of approximately \$343,000;
- inventory and prepaids of approximately \$1.4 million;
- MEI's partnership interest in ONE Restaurant of approximately \$1.0 million; and
- property, plant and equipment of approximately \$5.9 million; and

(ii) the Assumed Obligations are comprised primarily of:

- trade payables and accrued liabilities owing to third-party vendors of approximately \$2.7 million;
- amounts owing to employees for accrued wages and vacation payable of approximately \$687,000;
- gift card and similar customer loyalty obligations of approximately \$488,000;

- amounts currently secured owing to the Cadillac Fairview Entities in connection with a fixtures loan of approximately \$198,000 and deferred rent amounts of approximately \$539,000;
- amounts owing to RBC of approximately \$3.2 million, comprised of: (a) secured obligations of approximately \$2.2 million; and (b) unsecured obligations of approximately \$964,000; and
- unsecured shareholder loans owing to Fairfax of approximately \$2.3 million.

The Yonge & Bloor Landlord

- 3.8 Subsequent to the comeback hearing held on October 7, 2021, the Monitor had separate discussions with counsel to the Applicant, and with the financial advisor and counsel to the Yonge & Bloor Landlord. These meetings were intended to, among other things: (i) assist the Monitor in understanding the Yonge & Bloor Landlord's concerns regarding the Proposed Transaction; and (ii) explore whether the Monitor could facilitate further conversations between the parties to advance a mutually satisfactory resolution to the parties' business dispute. To date, these conversations have not resulted in a resolution between the parties. The Monitor understands that the Yonge & Bloor Landlord intends to oppose the approval of the Proposed Transaction and the granting of the Approval and Vesting Order given, among other things, the lack of a third-party sale process having been undertaken to canvass the market for MEI's business and/or assets.
- 3.9 In connection with its opposition to the approval of the Proposed Transaction and the granting of the Approval and Vesting Order, the Yonge & Bloor Landlord, through its counsel, provided the Monitor with an email on the evening of October 11, 2021 with the following:

- (i) a purchase agreement executed by the Yonge & Bloor Landlord (the “**Yonge & Bloor Landlord’s Purchase Agreement**”) in substantially the same form as the proposed Purchase Agreement, subject to certain revisions described below; and
- (ii) an unsigned debtor-in-possession term sheet (the “**DIP Term Sheet**”) pursuant to which the Yonge & Bloor Landlord would provide interim financing to MEI during a 14-day due diligence period (the “**Due Diligence Period**”), which commences the date next following the full execution of the Yonge & Bloor Landlord’s Purchase Agreement, as well as further financing consistent with the Transaction Deposit if the Yonge & Bloor Landlord waives its diligence condition and the Yonge & Bloor Landlord’s Purchase Agreement is approved.

3.10 The Yonge & Bloor Landlord’s Purchase Agreement differs from the Purchase Agreement in the following ways:

- (i) it includes the Due Diligence Period;
- (ii) it includes, as a condition precedent to the completion of the transaction, the Yonge & Bloor Landlord being satisfied, in its sole and absolute discretion, with the results of its due diligence of the Purchased Assets during the Due Diligence Period;
- (iii) it modifies the closing deliverables of MEI to include the execution and delivery of a consulting agreement, termination or other agreement between the Yonge & Bloor Landlord and Mr. McEwan or an order of this Court addressing same; and
- (iv) adds the Yonge & Bloor Lease (as defined below) to the Assumed Real Property Leases.

3.11 Key substantive differences between the Purchase Agreement and the Yonge & Bloor Landlord's Purchase Agreement are as follows:

- (i) the addition of the Yonge & Bloor Lease as a go forward operating location would appear to make the Yonge & Bloor Landlord's Purchase Agreement, on its face, financially superior;
- (ii) the potential for employee severance and termination claims to arise as a result of Mr. McEwan and potentially other employees not accepting new employment offers from the Yonge & Bloor Landlord, which may be material;⁴ and
- (iii) the inclusion of the Due Diligence Period.

3.12 It is the Monitor's view that the Due Diligence Period introduces a higher level of execution risk and, given the complexities of MEI's business, could very well require more than 14-days to complete. In addition to the customary diligence risks for a transaction of this nature (financial, operational, legal), certain additional factors impacting the consummation of the transaction contemplated by the Yonge & Bloor Landlord's Purchase Agreement include:

- (i) the prospect that the Yonge & Bloor Landlord would not be able to reach satisfactory arrangements in respect of the Cadillac Fairview Leases, or that such arrangements could require significant time to settle. The Monitor understands that many months and significant resources were required for MEI to reach its

⁴ As described in the Second McEwan Affidavit, the Monitor understands that Mr. McEwan's continued involvement as chef and operator of MEI's business is premised on a continuation of his ownership interests and ongoing partnership with Fairfax.

substantially finalized consensual arrangements with the Cadillac Fairview Entities; and

- (ii) that Mr. McEwan and possibly other key personnel are not prepared to accept new employment offers from the Yonge & Bloor Landlord, and that the resulting disruption to the business either prevents the Yonge & Bloor Landlord from waiving the due diligence condition precedent, or requires extended time to allow the Yonge & Bloor Landlord to identify and hire replacement personnel. If Mr. McEwan and/or other key personnel choose not to accept new employment offers from the Yonge & Bloor Landlord, that could also create material employment related unsecured claims against MEI.

3.13 The Monitor understands that the Cadillac Fairview Entities have been made aware of the Yonge & Bloor Landlord's interest in acquiring MEI's business, and that the Cadillac Fairview Entities and/or its counsel have had discussions with each of MEI and the Yonge & Bloor Landlord (or their respective counsel). Counsel to the Cadillac Fairview Entities has advised the Monitor that the Cadillac Fairview Entities (i) remain supportive of the Proposed Transaction, taking a significant degree of comfort having "Mr. McEwan at the helm"; and (ii) if the Proposed Transaction is not approved, third parties considering this opportunity should not expect to receive the same terms that have been agreed to with MEI.

3.14 The Cadillac Fairview Entities are secured creditors of MEI. In addition, unless a purchaser is prepared to take an assignment of the Cadillac Fairview Leases without amendment, the consent of the Cadillac Fairview Entities will be essential to MEI's ongoing business and the consummation of any sale transaction. The Cadillac Fairview Leases are currently

subject to a number of near-final negotiated and consensually agreed to concessions, which may not be afforded to a third party acquirer of the Cadillac Fairview Leases.

Affected Landlord Claim

- 3.15 The Monitor understands that the Applicant is close to finalizing its arrangements with the Cadillac Fairview Entities, including a settlement and termination payment in connection with Fabricca Don Mills (an Excluded Location). Accordingly, the only outstanding obligations known to the Monitor to be excluded from the Proposed Transaction are the obligations owing and potential claims in respect of the Yonge & Bloor Location (the “**Affected Landlord Claim**”).
- 3.16 As set out in the Second McEwan Affidavit, the Applicant intends for the Base Purchase Price to satisfy the Affected Landlord Claim. The Base Purchase Price was determined based on the Yonge & Bloor Landlord’s estimated maximum entitlement upon the disclaimer of the Yonge & Bloor Lease in a bankruptcy, as determined pursuant to subsection 136(1)(f) of the BIA.
- 3.17 To consider the potential impact of the Affected Landlord Claim – being the only affected claim, the Monitor prepared an illustrative analysis (the “**Illustrative Liquidation and Valuation Range Analysis**”) from available information provided by MEI, that compares the Proposed Transaction to estimated realizations that may be available to MEI’s creditors under:

- (i) a liquidation scenario involving a bankruptcy of MEI;⁵ and
- (ii) various going concern sale transaction scenarios assumed to be completed with independent third-party purchasers and implemented through the CCAA Proceedings.

3.18 The Monitor's Illustrative Liquidation and Valuation Range Analysis includes a variety of wind-down and going concern transaction scenarios, each considering a range of low and high liquidation and/or enterprise values for each of MEI's restaurant and grocery locations on a stand-alone basis. Among other things, this analysis examines each of MEI's restaurant and grocery locations' operations, cash flows and EBITDA (both prior to and during the COVID-19 pandemic) as well as comparable trading multiples and recent transactions as a valuation proxy. Estimated creditor claims were based on the Applicant's books and records, as at August 31, 2021, and other estimates made by the Monitor. Certain creditor claims, particularly as it relates to the potential damage claims of landlords, are inherently subjective, and may differ from how they are determined under various claim scenarios.

Illustrative Bankruptcy Liquidation Analysis

3.19 Having regard to claims that could arise in a bankruptcy liquidation, such as secured and unsecured creditor claims, employee termination and severance claims, lease termination/disclaimer claims and other damages claims for non-performance, the Monitor's Illustrative Liquidation and Valuation Range Analysis projects that in a

⁵ An illustrative liquidation through a receivership proceeding combined with a bankruptcy would result in the same or similar outcome as the illustrative liquidation scenario involving just a bankruptcy.

bankruptcy liquidation scenario, creditor recoveries are estimated to be (all figures approximate):

- (i) full payment (100% recovery) in respect of RBC's secured claim of \$2.2 million;
- (ii) full payment (100% recovery) in respect of the Cadillac Fairview Entities' secured claim, including: (a) a fixtures loan of \$198,000; and (b) amounts totalling \$1.1 million in respect of the Cadillac Fairview Leases (calculated pursuant to subsection 136(1)(f) of the BIA);
- (iii) full payment (100% recovery) in respect of the remaining two lease claims totalling \$540,000 (calculated pursuant to subsection 136(1)(f) of the BIA); and
- (iv) a recovery to remaining creditors in the range of approximately 1.8% to 26% in respect of unsecured claims estimated to be \$11 million in aggregate.

3.20 In comparison to the above bankruptcy liquidation analysis, the Monitor is of the view that the Proposed Transaction would provide a favourable outcome, for the following reasons:

- (i) it is beneficial to MEI's secured and unsecured creditors as it provides for either a full settlement or the full assumption of the obligations owing, with the exception of the Affected Landlord Claim, and avoids the unfortunate termination and dislocation of MEI's 268 employees, which may result in unpaid wages and vacation pay as well as severance and termination claims estimated to be in excess of \$4 million, termination of the Assumed Contracts, and termination of MEI's existing customer and trade relationships;

- (ii) it is beneficial to the landlord group as a whole as it: (a) provides for the continued operation of six of MEI's eight locations;⁶ and (b) provides for a cash payment of approximately \$520,000 to the Yonge & Bloor Landlord in respect of the Affected Landlord Claim, which is estimated to be the maximum amount that it would otherwise receive in a bankruptcy; and
- (iii) the Proposed Transaction is consistent with the rehabilitative intent of the CCAA by preserving the majority of the business to avoid liquidation.

Illustrative Sale Transaction Scenarios

3.21 Neither the Applicant nor the Monitor has completed any formal or informal third-party sale process. As described in the Second McEwan Affidavit:

- (i) the Applicant and its shareholders do not believe that a third-party purchaser would be in a position to acquire MEI's business absent Mr. McEwan's continued involvement (which is contingent upon the continuation of his partnership with Fairfax as co-owners of the business) for a purchase price that is equal or superior to that provided under the Proposed Transaction. Although the Monitor notes that the Yonge & Bloor Landlord's Purchase Agreement, on its face, would appear to be financially superior to the Proposed Transaction given that it includes the assumption of an additional location resulting in less claims and accordingly higher available recoveries. These potential benefits are tempered by the additional risk factors set out in paragraph 3.12 of this Second Report;

⁶ There is no lease arrangement or rent charged at the Diwan location, which is a restaurant located within the Aga Khan Museum in Toronto.

- (ii) based on the terms of the leases in respect of the Excluded Locations, including the Yonge & Bloor Lease, and the financial performance of such locations, it is not apparent that an independent economic third-party purchaser would likely acquire the Excluded Locations pursuant to their existing leases;
- (iii) the Proposed Transaction contemplates the acquisition and assumption of substantially all of MEI's assets and liabilities, with the exception of the Excluded Locations and certain limited excluded obligations, and provides consideration for the Affected Landlord Claim in the maximum amount to be recovered by the Yonge & Bloor Landlord in a bankruptcy;
- (iv) the Applicant believes that there is a significant risk that stakeholders, including the Yonge & Bloor Landlord, would receive materially less in a third-party sale transaction if the Proposed Transaction is not approved pursuant to the Approval and Vesting Order;
- (v) the Applicant is in need of additional financing to fund its ordinary course operations, which would be provided under the Purchase Agreement in the form of the Transaction Deposit if approved by the Court. However, the Monitor notes that interim financing may be obtained from other sources, including pursuant to the DIP Term Sheet; and
- (vi) without the support of Mr. McEwan, MEI's management team and Fairfax, the Applicant believes that there is a significant risk that MEI's stakeholders could be negatively impacted.

- 3.22 The Monitor is of the view that when valuing a going concern business or otherwise comparing one or more potential transactions to another, a full canvassing of the market through a third-party sale process should generally be encouraged. Without such a sale process, any discussion of potential enterprise values, transaction proceeds and ultimate creditor recoveries are necessarily theoretical, uncertain and difficult to predict.
- 3.23 However, in an effort to consider the proposed treatment of the Affected Landlord Claim under various illustrative sale transaction scenarios, the Monitor included within its Illustrative Liquidation and Valuation Range Analysis an analysis to consider illustrative enterprise values of each of MEI's restaurant and grocery locations on a stand-alone basis.
- 3.24 Based on this component of the Monitor's Illustrative Liquidation and Valuation Range Analysis:
- (i) the potential range of enterprise values could be material, resulting in a wide range of potential recoveries to creditors. In certain scenarios, proceeds would not be sufficient to fully repay secured creditors (resulting in no recovery on the Affected Landlord Claim and all other unsecured claims). However, when considering the higher range of potential enterprise values, recoveries to unsecured creditors were estimated to be greater than those in a bankruptcy, including with respect to the distribution on the Affected Landlord Claim in comparison to the claim prescribed by subsection 136(1)(f) of the BIA (assuming that the Yonge & Bloor Lease were to be disclaimed prior to a bankruptcy);
 - (ii) as there is no prescribed formula for determining a landlord claim in the CCAA, the claims that could be submitted by landlords within CCAA proceedings in

respect of one or more disclaimed lease may also range, but in most circumstances, it is expected that the submitted claim would be significantly larger than those in a bankruptcy. By applying such a higher claim amount (as compared to a bankruptcy claim) to the higher range of potential recoveries, there could be certain illustrative sale transaction scenarios where the recovery on the Affected Landlord Claim is greater than \$520,000. Conversely in the lower range of potential recoveries, even with a higher claim amount, the recovery on the Affected Landlord Claim is less than \$520,000. However, as described in the Second McEwan Affidavit, the Monitor understands that the Applicant has considered and is prepared to advance the Proposed Transaction through a concurrent receivership and bankruptcy process, which in the Applicant's view, effectively limits the Yonge & Bloor Landlord's recovery in any scenario to \$520,000;

- (iii) in comparison to the range of outcomes under various illustrative transaction scenarios, the Monitor would expect the Proposed Transaction to provide for the greatest number of locations and employees to be maintained, the greatest mitigation and reduction of claims to unsecured creditors and the least amount of disruption to the other creditors, landlords and stakeholders of MEI's business. The Monitor notes that the Yonge & Bloor Landlord's Purchase Agreement may result in a greater number of locations (i.e. because of the inclusion of the Yonge & Bloor Location) and therefore a greater mitigation and reduction of claims to unsecured creditors, however, as discussed herein, it is subject to certain additional risk factors; and

- (iv) the Proposed Transaction would appear to provide a low level of execution risk, while in comparison, the range of outcomes under various illustrative transaction scenarios and the transaction contemplated under the Yonge & Bloor Landlord's Purchase Agreement, include a higher level of risk and more uncertainty as to their outcome, particularly as they may require the consent of the Cadillac Fairview Entities.

Transaction Deposit & Transaction Deposit Charge

- 3.25 The Applicant projects that it will require additional funding to continue the CCAA Proceedings and to complete the Proposed Transaction, if approved by the Court. For further information regarding the Applicant's cash flow forecast, the Monitor directs readers to Section 5.0 of the Pre-Filing Report, attached hereto as Appendix "A".
- 3.26 Pursuant to the Purchase Agreement, the Purchaser has agreed to provide the Transaction Deposit of up to \$2.25 million for use by MEI to fund working capital requirements, general corporate expenditures and the costs of the CCAA Proceedings. Provision of the Transaction Deposit under the Purchase Agreement is subject to Court approval and the granting of a charge (the "**Transaction Deposit Charge**") to secure the repayment of the Transaction Deposit to the Purchaser should the Proposed Transaction not be completed. As noted above, if the Purchase Agreement is terminated for any reason, any amounts outstanding under the Transaction Deposit would be immediately due and payable in full by MEI to the Purchaser.
- 3.27 The proposed Transaction Deposit Charge, if approved, will rank in priority to all other secured creditors, other than statutory-priority deemed trust and liens for unpaid employee

source deductions or taxes, but subordinate to the RBC Security and the other Charges, pursuant to the Amended and Rested Initial Order.

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

- (i) First – Administration Charge (to the maximum amount of \$350,000);
- (ii) Second – Directors’ Charge (to the maximum amount of \$1.45 million); and
- (iii) Third – Transaction Deposit Charge (to the maximum amount of \$2.25 million).

3.29 If the Proposed Transaction is approved by the Court, the Monitor supports providing the Purchaser with the benefits of the proposed Transaction Deposit Charge in the manner described given that: (i) it will provide the Applicant with the necessary liquidity to advance the CCAA Proceedings and complete the Proposed Transaction; and (ii) it does not increase the cost of the CCAA Proceedings as there are no fees or interest contemplated to be paid in connection with the Transaction Deposit.

Monitor’s Review and Assessment of the Proposed Transaction

3.30 Underlying the Proposed Transaction are the unique financial circumstances surrounding MEI and certain economic and market conditions, including certain unsustainable locations and the ongoing impacts and future uncertainty of the COVID-19 pandemic. In assessing the reasonableness of the Proposed Transaction and the Approval and Vesting Order, the Monitor considered each of the factors set out in subsections 36(3) and 36(4) of the CCAA. In doing so, the Monitor was cognizant that: (i) the factors enumerated under subsection 36(3) of the CCAA are not exhaustive and need not be applied as a formulaic check list; (ii) the Proposed Transaction should be considered as a whole; and (iii) Canadian Courts

have previously indicated that subsection 36(4)(a) of the CCAA may be satisfied, in appropriate circumstances, without a formal sale process having been conducted. The Monitor's assessment in this regard is summarized immediately below:

36(3)(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances

- (i) as discussed in this Second Report, the Monitor understands that the Proposed Transaction resulted from an extensive review by the Applicant and its legal counsel of certain available restructuring alternatives, including obtaining additional financing, downsizing MEI's business, restructuring and/or exiting certain leases, and exploring a sale of MEI's business. Additionally, the Monitor understands that the Proposed Transaction was pursued by the Applicant only after it determined that it would not be able to reach a mutually satisfactory resolution with the Yonge & Bloor Landlord following extensive discussions and negotiations;
- (ii) although no third-party sale process was conducted, it would appear to be uneconomic for an independent third-party purchaser (potentially save and except for the Yonge & Bloor Landlord) to assume the material lease obligations in respect of the Yonge & Bloor Location, absent amendments to the Yonge & Bloor Lease. Accordingly, the Proposed Transaction would appear to be the most effective way to preserve the going concern value of the business and the greatest number of locations and employees without introducing additional transaction risk, time and cost;

36(3)(b) whether the monitor approved the process leading to the proposed sale or disposition

- (iii) the Monitor was not involved in the development of the Applicant's strategic process leading to the Proposed Transaction. However, since being retained as of September 10, 2021 and beginning its mandate on September 14, 2021, A&M, and then subsequently as the Monitor, has been apprised of the Applicant's strategic process leading to the Proposed Transaction and has engaged with MEI and its legal counsel regarding same;
- (iv) following the commencement of its engagement, the Monitor did suggest to the Applicant the option of commencing a formal or informal third-party sale process, however was advised by the Applicant that it was not prepared to do so;
- (v) given the economic benefit to MEI's creditors and other key stakeholders who support the Proposed Transaction, and that the Applicant undertook significant steps to reach consensual resolution with its landlords, the Monitor is of the view the Applicant's process leading to the consummation of the Proposed Transaction was not unreasonable in the circumstances;

36(3)(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy

- (vi) as discussed in this Second Report, the Monitor is of the view that the Proposed Transaction provides more commercial benefit to the creditors and stakeholders of MEI than would otherwise be available to creditors in a bankruptcy liquidation scenario;

36(3)(d) the extent to which the creditors were consulted

- (vii) the Monitor understands that prior to commencing the CCAA Proceedings, the Applicant engaged in discussions with RBC, and that RBC is supportive of MEI's restructuring efforts. In light of its support, notwithstanding that MEI is in breach of the Secured Credit Facilities, RBC has continued to provide MEI with access to the Secured Credit Facilities, on the condition that it would be an unaffected creditor in the CCAA Proceedings;
- (viii) the Monitor also understands that during the months leading to the commencement of the CCAA Proceedings, the Applicant engaged in extensive discussions and negotiations with the Cadillac Fairview Entities;
- (ix) outside of RBC and MEI's landlords, the Monitor is not aware of further consultation with creditors regarding the Proposed Transaction. As all of MEI's other creditors are unaffected under the Proposed Transaction no consultation with such parties was considered necessary by the Applicant;

36(3)(e) the effects of the proposed sale or disposition on the creditors and other interested parties

- (x) as discussed in this Second Report, with the exception of the Affected Landlord Claim, all obligations owing to MEI's creditors will be assumed by the Purchaser. As a result, nearly all of MEI's creditors (including all of its employees) will be unaffected by the Proposed Transaction and are expected to benefit from the continued operations of MEI's restructured business;

- (xi) as set out in the Applicant's Factum dated October 13, 2021 in support of the Approval and Vesting Order, the Applicant believes that the Base Purchase Price provided pursuant to the Proposed Transaction in consideration for the Affected Landlord Claim is equal to the maximum amount the Yonge & Bloor Landlord could receive in any transaction executed in an insolvency proceeding in the circumstances;

36(3)(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value

- (xii) as discussed in this Second Report, without the benefit of a third-party sale process having been conducted, any discussion of potential enterprise values, transaction proceeds and ultimate creditor recoveries are necessarily theoretical, uncertain and difficult to predict. In the present circumstances where no such sale process has been conducted but, substantially all of MEI's creditors are anticipated to be unaffected by the Proposed Transaction, the Monitor has analysed the consideration to be received by the Yonge & Bloor Landlord in respect of its Affected Landlord Claim. In this regard, the Monitor's Illustrative Liquidation and Valuation Range Analysis suggests that the treatment of the Affected Landlord Claim is fair and reasonable in the context of a bankruptcy liquidation scenario and in the projected outcomes under a hypothetical CCAA sale process, other than at the higher range of enterprise values (without any bankruptcy proceedings, which as described above, could be commenced by the Applicant following a sale, ultimately limiting the Affected Landlord Claim to \$520,000);

(xiii) although the Yonge & Bloor Landlord's Purchase Agreement could potentially result in fewer Excluded Locations, the Due Diligence Period would invariably be attended by increased risk, time and costs, which could ultimately reduce the market value of the business and creditor recoveries. As described above, the Yonge & Bloor Landlord's Purchase Agreement could very well create additional claims from MEI's employees; and

(xiv) further to the above, the Monitor notes that it has received correspondence from Miller Thomson LLP, counsel to an independent third-party purchaser, who has expressed an interest in conducting due diligence and submitting a bid for some or all of MEI's assets.

3.31 As described in subsection 36(4) of the CCAA, if a proposed sale or disposition is to a related party, the court may, after considering the factors referred to in subsection 36(3) of the CCAA grant the authorization only if it is satisfied that subsections 36(4)(a) and 36(4)(b) of the CCAA have been satisfied.

3.32 The Monitor regards the provisions within subsection 36(4) of the CCAA, in light of the dispute before the Court between the parties, as a significant threshold issue to the Proposed Transaction's approval. Further, the Monitor views the determination as to whether the circumstances of this case and the Applicant's efforts to ensure that the proposed related party transaction is in the best interests of MEI's stakeholders satisfy the requirement of subsection 36(4) of the CCAA as a question to be determined by the Court. To assist the Court in its determination the Monitor has outlined certain relevant considerations in respect of subsections 36(4)(a) and 36(4)(b) of the CCAA below:

36(4)(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company

- (i) no third-party sales process or other market test was conducted in or before these CCAA Proceedings;
- (ii) the Monitor understands the Yonge & Bloor Landlord's position to be that the Proposed Transaction cannot be approved absent a third-party sale process;
- (iii) the Monitor is aware that Canadian Courts have previously held that subsection 36(4)(a) of the CCAA may be satisfied, in appropriate circumstances, without a formal sale process having been conducted;
- (iv) as described in the Second McEwan Affidavit:
 - (a) prior to entering into the Purchase Agreement the Applicant, in consultation with its legal advisors, considered, among other things, the alternatives available to MEI, the viability and value of MEI's business absent the involvement of Mr. McEwan, Fairfax and MEI's management and the likelihood that an independent third-party purchaser would propose a superior transaction; and
 - (b) the Applicant has concluded that the Proposed Transaction is in the best interests of MEI and its stakeholders. More to the point, the Applicant has also concluded that the Purchaser is the only party likely to complete a going-concern transaction that would see substantially all of MEI's assets and liabilities acquired and assumed;

- (v) the Applicant's secured creditors – RBC and the Cadillac Fairview Entities – support the transaction and each believe that Mr. McEwan is well positioned to lead MEI's business going forward for the benefit of all stakeholders;

36(4)(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition

- (vi) in the absence of a third-party sale process being conducted, potential enterprise values, transaction proceeds and ultimate creditor recoveries are necessarily theoretical, uncertain and difficult to predict;
- (vii) in the circumstances and under the process conducted by the Applicant, the Monitor regards the consideration to be received under the Proposed Transaction as fair and reasonable and offers a significant recovery to nearly all creditors. Moreover, it would appear to be the highest consideration that could be obtained without exposing MEI's business to greater transaction risk, including the potential risks posed by diligence periods to conduct a sale process, and additional costs in the CCAA Proceedings. As discussed previously, the Proposed Transaction currently results in substantially all of MEI's creditors being unaffected and the Affected Landlord Claim receiving the amount it would be entitled to if the Yonge & Bloor Lease were to be disclaimed in a bankruptcy; and
- (viii) on its face (and if executable) the Yonge & Bloor Landlord's Purchase Agreement is financially superior to the Proposed Transaction. However, the Monitor notes that the Applicant's secured creditors view the Proposed Transaction as providing more certainty and less risk for the go forward business.

4.0 CASH FLOW RESULTS RELATIVE TO FORECAST

4.1 Actual receipts and disbursements for the two-week period September 25 to October 8, 2021 (the “**Reporting Period**”), as compared to the cash flow forecast attached as Appendix “A” to the Pre-Filing Report, are summarized in the following table:

Cash Flow Results		CAD\$000's	
	Budget	Actual	Variance
Receipts	1,320	1,758	438
Disbursements			
Vendors	(955)	(1,145)	(190)
Employee wages	(416)	(463)	(47)
Rent	(486)	(404)	82
Other SG&A	(78)	(295)	(217)
RBC principal, lease payments & interest	(30)	(18)	12
Restructuring professional Fees	(226)	(202)	24
Net Cash Flow	(871)	(769)	102
Cash balance, opening	930	1,138	208
Net Cash Flow	(871)	(769)	102
Revolving Facility draws	225	20	(205)
Transaction Deposit	-	-	-
Ending Cash Balance	284	389	105

4.2 During the Reporting Period:

- (i) total receipts were approximately \$438,000 greater than forecast, attributed primarily to higher than projected sales at MEI’s restaurant locations;
- (ii) total disbursements were approximately \$336,000 greater than forecast, attributed to: (a) increased vendor purchases to restock inventory associated with higher sales; and (b) certain timing variances that are expected to reverse in future weeks; and

(iii) overall, MEI experienced a positive net cash flow variance of approximately \$105,000.

4.3 As at October 8, 2021, MEI's available liquidity was \$1.1 million, comprised of: (i) \$389,000 cash on hand; and (ii) \$735,000 available under the Revolving Facility.

4.4 As described further above, the Applicant proposes to use the Transaction Deposit of up to \$2.25 million to provide the Applicant with sufficient liquidity through the 13-week period ending December 24, 2021. The funding of the multiple draw Transaction Deposit is subject to obtaining Court approval of the Proposed Transaction and the Transaction Deposit Charge. Following Court approval, if the Purchase Agreement is terminated for any reason, any amounts drawn under the Transaction Deposit would be immediately due and payable in full by the Applicant to the Purchaser. Without access to the Transaction Deposit or alternative financing, the Applicant will not have sufficient liquidity through the requested Stay Period extension of December 17, 2021.

Yonge & Bloor Rent Reserve

4.5 As described in the First Report, a dispute has arisen between the Applicant and the Yonge & Bloor Landlord (as defined below) in respect of the Applicant's payment of October rent. Until this dispute is resolved, the Applicant agreed to fund the disputed amount to the Monitor in trust (the "**Yonge & Bloor Rent Reserve**"). The Yonge & Bloor Rent Reserve was funded and received by the Monitor on October 7, 2021, and such payment is reflected in the cash flow results for the Reporting Period above.

Pre-Filing Payments

- 4.6 In accordance with paragraph 7(e) of the Initial Order, the Applicant is entitled to pay, with the consent of the Monitor, amounts owing for goods and services supplied prior to the Filing Date, if in the opinion of the Applicant, such payment is necessary or desirable to avoid disruption to the operations of the business or the Applicant during the CCAA Proceedings. The Applicant set out in its materials filed in support of the Initial Order that it intends to provide payment to all trade suppliers in the normal course, subject to the terms of the Initial Order, in order to protect its ongoing business.
- 4.7 As of the date of this Second Report, the Applicant has issued, with the consent of the Monitor, pre-filing payments totaling approximately \$800,000 to third-party suppliers in respect of goods and services provided prior to the Filing Date. Each such payment was made with the consent of the Monitor in accordance with the Initial Order.

5.0 EXTENSION OF THE STAY PERIOD

- 5.1 Pursuant to the Amended and Restated Initial Order, the current Stay Period expires on November 1, 2021. The Applicant is seeking an extension of the Stay Period to and including December 17, 2021.
- 5.2 If the Approval and Vesting Order is granted by the Court such that the Applicant obtains the proposed Transaction Deposit, the Monitor supports the Applicant's request to extend the Stay Period for the following reasons:

- (i) the extension is necessary to enable the Applicant to: (a) implement the Proposed Transaction and transition MEI's business to the Purchaser; and (b) complete the CCAA Proceedings;
- (ii) the Transaction Deposit to be approved pursuant to the Approval and Vesting Order is projected to provide the Applicant with sufficient liquidity through the extended Stay Period; and
- (iii) the Applicant has acted, and continues to act, in good faith and with due diligence to advance the CCAA Proceedings and its restructuring efforts.

5.3 If the proposed Approval and Vesting Order is not granted, the Monitor anticipates that the Applicant will return to Court prior to the expiry of the current Stay Period to seek further relief.

6.0 ACTIVITIES OF THE MONITOR SINCE THE FIRST REPORT

6.1 In addition to those activities described above, the activities of the Monitor from the date of the First Report have also included the following:

- (i) engaging in discussions with MEI and its legal counsel regarding the CCAA Proceedings, including in connection with the Monitor's review of the Proposed Transaction and associated purchase agreement, as well as MEI's ongoing discussions with its landlords;
- (ii) engaging in discussions with the legal and financial advisors to the Yonge & Bloor Landlord with respect to its concerns with the Proposed Transaction, as well as with respect to the Yonge & Bloor Landlord's Purchase Agreement;

- (iii) engaging in discussions with counsel for the Cadillac Fairview Entities;
- (iv) responding to inquiries from creditors and other stakeholders, including with respect to certain parties who contacted the Monitor to express interest in potentially submitting a bid for some or all of MEI's assets;
- (v) monitoring the Applicant's cash receipts and disbursements, and assisting in preparing weekly cash flow variance reporting;
- (vi) corresponding with the Applicant's finance team and considering requests for disbursements for goods or services supplied to the Applicant prior to the Filing Date in accordance with the Initial Order;
- (vii) posting non-confidential materials filed with the Court to the Case Website;
- (viii) with its counsel, attending at the Yonge & Bloor Landlord's cross-examination of Mr. McEwan on October 12, 2021;
- (ix) responding to inquiries from creditors, stakeholders and other interested parties, including addressing questions or inquiries of parties potentially interested in acquiring certain of MEI's assets; and
- (x) with the assistance of its legal counsel, preparing this Second Report.

7.0 ACTIVITIES TO COMPLETE IF THE APPROVAL AND VESTING ORDER IS GRANTED

7.1 If the proposed Approval and Vesting Order is granted, the Monitor anticipates engaging in the following activities prior to the termination of the CCAA Proceedings and the Monitor's discharge:

- (i) assisting the Applicant with the implementation of the Proposed Transaction, as required;
- (ii) on completion of the Proposed Transaction, delivering the Monitor's Certificate (as defined in the Approval and Vesting Order) to the Purchaser and filing the Monitor's Certificate with this Court;
- (iii) administering the Cash Reserve, on behalf of the Applicant, to pay certain amounts following the completion of the Proposed Transaction, and to deliver to the Purchaser any remaining funds in the Cash Reserve in accordance with the terms of the Purchase Agreement;
- (iv) pursuant to paragraph 33 of the Amended and Restated Initial Order, returning to Court to pass the fees and disbursements of the Monitor and its counsel since the Filing Date;
- (v) completing statutory and administrative duties and filings;
- (vi) attending to other administrative and wind-down matters; and

- (vii) pending resolution of the October rent dispute between the Applicant and the Yonge & Bloor Landlord, distributing the funds held in the Yonge & Bloor Rent Reserve accordingly.

8.0 CONCLUSIONS

8.1 There is a legal dispute between the parties as to whether the Applicant has satisfied subsections 36(4)(a) and 36(4)(b) of the CCAA, and if so, whether the Applicant should still be required to pursue one or more other transactions before the Proposed Transaction can be approved. On the one hand, the Applicant takes the position that it has satisfied the statutory requirements and that no sale process of any kind is required, and on the other hand, the Yonge & Bloor Landlord takes the opposite position.

8.2 If this Court agrees with the Applicant's positions on those threshold questions, the Monitor is of the view that the Proposed Transaction and Approval and Vesting Order are fair and reasonable in the circumstances and supports the Proposed Transaction. In assessing the reasonableness of the Proposed Transaction to be approved pursuant to the Approval and Vesting Order, the Monitor considered, among other things, the following factors:

- (i) with the exception of the Affected Landlord Claim, the Proposed Transaction provides that all secured and unsecured claims are paid in full or assumed;
- (ii) the Proposed Transaction provides for a better recovery than is estimated to be realized in a bankruptcy;
- (iii) the Proposed Transaction would appear to have a low level of transaction risk and can be closed expeditiously;

- (iv) the Proposed Transaction is supported by MEI's secured creditors, RBC and the Cadillac Fairview Entities;
- (v) the Proposed Transaction allows MEI's business to continue to operate as a going concern, preserving the employment of approximately 268 employees, continuing the leases for each of the continuing locations and maintaining customer and trade relationships, which is expected to provide greater economic benefit to the majority of the Applicant's stakeholders than in a liquidation or bankruptcy;
- (vi) the Proposed Transaction is consistent with the rehabilitative intent of the CCAA insofar as it will preserve the majority of MEI's business, avoid a bankruptcy or liquidation, and benefit substantially all of MEI's creditors and other stakeholders;
- (vii) unless the Yonge & Bloor Lease is assumed by a purchaser (which would appear to be uneconomic such that no party would do so on its existing terms other than possibly the Yonge & Bloor Landlord), the Affected Landlord Claim will receive the same or better treatment under the Proposed Transaction than it would receive in any other scenario, in the event that the Applicant disclaims the lease in a bankruptcy prior to making distributions; and
- (viii) the Transaction Deposit will provide the projected required financing to the Applicant with no fees or interest charged.

8.3 If the Approval and Vesting Order is granted, the Monitor is supportive of extending the Stay Period to December 17, 2021. However, if the Approval and Vesting Order is not

granted, the Applicant is not projected to have sufficient cash to support such an extension of the Stay Period.

All of which is respectfully submitted to the Court this 14th day of October, 2021.

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

Per: _____



Greg Karpel
Senior Vice-President

APPENDIX A
PRE-FILING REPORT OF THE PROPOSED MONITOR

See attached.

**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.

**PRE-FILING REPORT OF THE PROPOSED MONITOR
ALVAREZ & MARSAL CANADA INC.**

SEPTEMBER 27, 2021

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APPENDICES

Appendix A – 13-Week Cash Flow Forecast

Appendix B – Management’s Representation Letter Regarding the Cash Flow Forecast

1.0 INTRODUCTION

- 1.1 Alvarez & Marsal Canada Inc. (“**A&M**” or the “**Proposed Monitor**”) understands that McEwan Enterprises Inc. (“**MEI**” or the “**Applicant**”) intends to make an application to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for an order (the “**Initial Order**”) granting, among other things, a stay of proceedings pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and appointing A&M as Monitor of the Applicant (the “**Monitor**”). The proceedings to be commenced by the Applicant under the CCAA are referred to herein as the “**CCAA Proceedings**”.
- 1.2 MEI’s business is comprised of six high-end restaurant locations, three gourmet grocery locations, a catering business and an events business, each operating in Toronto, with the exception of one of the restaurants located in Thornbury, Ontario. MEI’s brands include *Bymark, Fabbrica, Diwan, McEwan Fine Foods, McEwan Catering* and *ONE Restaurant*.¹ MEI also generates revenue from various television and media interests, as well as a partnership with Goodfood Market Corp., a subscription based food-delivery service.
- 1.3 MEI’s equity is owned 55% by a subsidiary of Fairfax Financial Holdings Limited (“**Fairfax**”) and 45% by McEwan Holdco Inc. (“**McEwan Holdco**”). Dennis Mark McEwan is the sole shareholder of McEwan Holdco. MEI is incorporated under the laws of Ontario and its registered head office is located in Toronto.

¹ MEI’s interest in ONE Restaurant consists of a 50% partnership interest which is currently held in a wholly owned subsidiary, 2860117 Ontario Limited (the “**McEwan Subsidiary**”). The McEwan Subsidiary is not an applicant in these CCAA Proceedings, however, as discussed further below, the Applicant is requesting the stay of proceedings be extended to the McEwan Subsidiary.

- 1.4 A key part of the Applicant's restructuring plan and these CCAA Proceedings is to effectuate a going concern transaction of MEI's business, including the sale and transfer of substantially all of its assets and liabilities. To that end, the Applicant intends to seek to complete the sale and transfer of its business, with the exception of certain excluded lease agreements and related excluded liabilities, to a new entity (the "**Purchaser**") formed by the Applicant's current shareholders, being Fairfax and McEwan Holdco (the "**Proposed Transaction**").
- 1.5 The Proposed Transaction includes a cash deposit to be funded by the Purchaser, which, if approved by the Court, is intended to be utilized by the Applicant to finance its short term liquidity requirements (the "**Transaction Deposit**"). Without the Transaction Deposit (or alternative financing), the Applicant projects that it will exhaust its liquidity prior to the last week of October 2021. In light of these liquidity challenges, among other things, the Applicant intends to pursue its restructuring expeditiously.
- 1.6 The Proposed Monitor understands that the Applicant intends to bring a motion at a future date to seek approval of the Proposed Transaction. If appointed, the Monitor will file a report with the Court in connection with such motion, which will articulate the Monitor's views on the Proposed Transaction having regard to, among other things, the considerations set out in subsections 36(3)-(4) of the CCAA.
- 1.7 The purpose of this pre-filing report (the "**Report**") is to provide the Court with information, and where applicable, the Proposed Monitor's views on:
- (i) A&M's qualifications to act as Monitor;

- (ii) background information with respect to MEI;
- (iii) MEI's 13-week cash flow forecast;
- (iv) MEI's cash management system;
- (v) the relief sought by the Applicant as part of the proposed Initial Order, including:
 - (a) the Applicant's intention to continue making ordinary course payments to employees and vendors, including the payment of certain pre-filing obligations with the consent of the Monitor;
 - (b) extending the stay of proceedings for the benefit of the McEwan Subsidiary and Mr. McEwan;
 - (c) the priority Court-ordered charges over the property and assets of the Applicant (collectively, the "**Property**"); and
 - (d) the proposed notice to be provided in respect of the CCAA Proceedings; and
- (vi) the Proposed Monitor's conclusions and recommendations in connection with the foregoing.

2.0 TERMS OF REFERENCE AND DISCLAIMER

- 2.1 In preparing this Report, A&M, in its capacity as the Proposed Monitor, has been provided with, and has relied upon unaudited financial information and the books and records prepared by MEI, and has had discussions with management of MEI and its legal counsel

(collectively, the “**Information**”). Except as otherwise described in this Report in respect of the Applicant’s cash flow forecast:

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

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

2.3 This Report should be read in conjunction with the Affidavit of Dennis Mark McEwan, President and Secretary of MEI, sworn on September 27, 2021 (the “**McEwan Affidavit**”), and filed in support of the Applicant’s application for relief under the CCAA. Capitalized

terms used and not defined in this Report have the meanings given to them in the McEwan Affidavit.

- 2.4 This Report does not consider the potential future impact of the COVID-19 pandemic on MEI's business and operations. Such impact cannot be determined at this time.
- 2.5 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars ("CAD").

3.0 A&M'S QUALIFICATIONS TO ACT AS MONITOR

- 3.1 Alvarez & Marsal Canada ULC, an affiliate of A&M, was engaged to act as a consultant to MEI on September 10, 2021, and as such, the Proposed Monitor is familiar with the business and operations of the Applicant, its personnel and the key issues and stakeholders in the proposed CCAA Proceedings. A&M is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") and is not subject to any of the restrictions on who may be appointed as monitor set out in subsection 11.7(2) of the CCAA.
- 3.2 A&M is related to Alvarez & Marsal Holdings, LLC which is an independent international professional services firm, providing, among other things, bankruptcy, insolvency and restructuring services. The senior A&M personnel with carriage of this matter include experienced insolvency and restructuring practitioners who are Chartered Professional Accountants, Chartered Insolvency and Restructuring Professionals, and Licensed Insolvency Trustees, and whom have previously acted in CCAA matters of a similar nature.

3.3 The Proposed Monitor has retained Bennett Jones LLP to act as its independent legal counsel.

3.4 A&M has consented to act as Monitor of the Applicant should the Court grant the Applicant's request to commence the CCAA Proceedings pursuant to the Initial Order.

4.0 BACKGROUND INFORMATION

4.1 The information in this Report provides a summary of certain of the background to the CCAA Proceedings. The Proposed Monitor recommends that readers review the materials filed by the Applicant in respect of these CCAA Proceedings, including, but not limited to the McEwan Affidavit.

Financial Results

4.2 Although many of MEI's locations have historically been profitable, certain of its locations have been underperforming for a number of years, causing a significant strain on the business as a whole. Further, the negative impacts of the COVID-19 pandemic, including extensive restaurant closures, capacity constraints and other COVID-19 related measures over the past 18 months, have been significant and have resulted in material EBITDA losses and liquidity challenges for the consolidated MEI business.

4.3 For the year ended December 31, 2020 ("FY2020"), MEI reported revenue of approximately \$30.1 million, a reduction of 34% compared to the prior year. In FY2020, MEI experienced a net loss of approximately \$2.8 million, compared to the prior year's net loss of \$1.3 million. The negative impacts of the COVID-19 pandemic have continued this

year, with MEI reporting revenues of \$13.1 million and a net loss of \$2.2 million for the six months ended June 2021.

- 4.4 To address its underperforming locations and the operating headwinds caused by the COVID-19 pandemic, MEI implemented extensive cost-saving and cash conservation measures, negotiated landlord concessions at certain of its locations and utilized a number of government subsidies made available to companies during the COVID-19 pandemic.
- 4.5 Although these initiatives did provide some liquidity runway, MEI continued to experience significant operating and cash losses. In order to continue operating during the COVID-19 pandemic, Fairfax provided MEI unsecured debt financing of approximately \$1.72 million.

Employees

- 4.6 MEI currently employs approximately 268 staff, comprised of 213 full-time and 55 part-time employees.
- 4.7 The Applicant's payroll is processed by a third-party payroll processor, Desjardins Employer Solutions, and paid through MEI's Cash Management System (defined below).
- 4.8 MEI sponsors an employee benefits plan (including medical, dental, vision and other benefits) for eligible employees, administered by Manulife Financial. MEI does not maintain any pension plans for its employees.
- 4.9 During the CCAA Proceedings, MEI intends to continue funding the benefits plan and all other employee related costs and benefits in the normal course. The Proposed Monitor

understands that MEI is current in all of its funding obligations in respect of this plan and related costs.

- 4.10 The Proposed Monitor understands the Proposed Transaction will include an offer of employment to all of MEI's employees on the same terms to their existing employment (with those employees currently at excluded locations to be offered employment at an assumed location).

Trade Creditors

- 4.11 Based on MEI's books and records, as at August 31, 2021, approximately \$2.3 million is owing to trade creditors, consisting primarily of suppliers of food products, packaging and other general goods and services.
- 4.12 In addition to these amounts, MEI's books and records include an accrual of approximately \$500,000 in connection with obligations for customer gift cards and customer loyalty programs.
- 4.13 As described in this Report and included in the Cash Flow Forecast (defined below), MEI intends to continue to: (i) pay its third-party suppliers in the ordinary course and on usual trade terms, including pre-filing amounts owing as at the commencement of the CCAA Proceedings with the Monitor's consent and where the Applicant determines that such payment is necessary or desirable to avoid disruption to MEI's business; and (ii) honour all customer gift cards and loyalty programs in the ordinary course.

Landlords

- 4.14 MEI does not own any real property and all of its locations are leased. In total, MEI is party to seven leases, comprised of: (i) five leases managed by one third-party landlord; (ii) one lease managed by a third-party landlord in respect of the Thornbury restaurant location; and (iii) one lease managed by a third-party landlord in respect of its grocery store located in the Yonge and Bloor neighborhood of Toronto.
- 4.15 The lease agreement in respect of the ONE Restaurant is entered into directly by the ONE Restaurant partnership, as tenant, and there is no lease arrangement or rent charged at the Diwan location, which is a restaurant located within the Aga Khan Museum in Toronto.
- 4.16 Due to the impacts of the COVID-19 pandemic, MEI executed various rent concessions and deferrals with certain of its landlords (the “**Landlord Concessions**”). As at August 31, 2021, approximately \$500,000 is owing to landlords, based on MEI’s financial statements and taking into account certain amended lease terms.
- 4.17 In preparing the Cash Flow Forecast, MEI has projected the payment in full of its ongoing monthly rent obligations, but has not projected any repayments in respect of the Landlord Concessions.

RBC Secured Credit Facilities

- 4.18 As of the date of this Report, approximately \$2.2 million of secured debt was outstanding to Royal Bank of Canada (“**RBC**”), MEI’s operating lender. This secured debt balance is comprised of: (i) approximately \$239,000 owing under various revolving credit facilities (the “**Secured Credit Facilities**”); (ii) approximately \$1.7 million owing under various

equipment leases (the “**RBC Equipment Leases**”); and (iii) approximately \$250,000 owing under a term loan (the “**HASCAP Loan**”).

- 4.19 The Secured Credit Facilities consist of: (i) eight revolving demand facilities with cumulative maximum availability of \$850,000, of which approximately \$95,000 is currently drawn (the “**Revolving Facility**”); (ii) credit cards with a cumulative maximum availability of \$360,000; and (iii) a \$90,000 letter of credit.
- 4.20 The Proposed Monitor understands that MEI is currently not in compliance with certain of the covenants under the Secured Credit Facilities. However, as described in the McEwan Affidavit, RBC has confirmed to the Applicant that it is prepared to continue to provide access to the Secured Credit Facilities, including the Revolving Facility, on terms and conditions satisfactory to RBC during the CCAA Proceedings.
- 4.21 RBC will be an unaffected creditor in these CCAA Proceedings. As described further below, during the initial 10-day stay period the court ordered charges are proposed to rank behind the Secured Credit Facilities, the HASCAP Loan and the RBC Equipment Leases.

Other Credit Facilities

- 4.22 In addition to each of the above credit facilities, the Applicant is also party to:
- (i) a \$198,000 fixtures loan with one of its landlords, secured by MEI’s assets as well as certain of Mr. McEwan’s personal assets;
 - (ii) unsecured loans with RBC, under which approximately \$899,000 is owing, secured over certain of Mr. McEwan’s personal assets;

- (iii) certain leases with respect to photocopies and motor vehicles used in connection with MEI's business; and
- (iv) unsecured shareholder loans with Fairfax, under which approximately \$2.3 million is owing.

5.0 CASH FLOW FORECAST

- 5.1 The Applicant has prepared a weekly cash flow forecast (the “**Cash Flow Forecast**”) for the 13-week period from September 25 to December 24, 2021 (the “**Cash Flow Period**”). A copy of the Cash Flow Forecast, together with a summary of assumptions (the “**Cash Flow Assumptions**”) and management's report on the cash-flow statement required by subsection 10(2)(b) of the CCAA are attached hereto as **Appendices “A” and “B”**, respectively.
- 5.2 The following table provides a summary of the Cash Flow Forecast, including the period prior to the comeback hearing, being the two-week period ending October 8, 2021 (the “**Initial 2-Week Period**”):²

² The comeback hearing is currently scheduled to be heard on October 7, 2021.

Cash Flow Forecast		\$000's	
	2-Week Period	11-Week Period	13-Week Total
	<i>Oct-8</i>	<i>Dec-24</i>	<i>Dec-24</i>
Receipts	1,320	7,335	8,655
Disbursements			
Vendors	(955)	(5,290)	(6,245)
Employee wages	(416)	(2,327)	(2,743)
Rent	(486)	(1,222)	(1,708)
Other SG&A	(78)	(408)	(486)
RBC principal, lease payments & interest	(30)	(234)	(264)
Restructuring professional Fees	(226)	(684)	(910)
Net Cash Flow	(871)	(2,830)	(3,701)
Cash balance, opening	930	284	930
Net Cash Flow	(871)	(2,830)	(3,701)
Revolving Facility draws	225	530	755
Transaction Deposit	-	2,250	2,250
Ending Cash Balance	284	234	234

5.3 The Proposed Monitor notes the following with respect to the Cash Flow Forecast:

- (i) during the Initial 2-Week Period, net cash flows are projected to be negative \$871,000, which is projected to be sufficiently funded by the Applicant's current cash on hand of approximately \$930,000 and draws on the Revolving Facility of approximately \$225,000;
- (ii) during the entire Cash Flow Period, net cash flows are projected to be negative \$3.7 million. These negative cash flows are projected to be financed by a combination of: (a) cash on hand of approximately \$930,000; (b) the Transaction Deposit of \$2.25 million; and (c) draws on the Revolving Facility of approximately \$755,000;
- (iii) as described in the McEwan Affidavit, the funding of the Transaction Deposit is subject to obtaining Court approval of the Proposed Transaction and a Court-

ordered charge to secure the Transaction Deposit for the benefit of the Purchaser in the event that the Proposed Transaction is not completed. The Proposed Monitor notes that, without the Transaction Deposit, the Applicant is projected to exhaust its liquidity prior to the last week of October 2021 and without additional financing would not have sufficient liquidity to continue to fund the CCAA Proceedings or continue to operate in the ordinary course; and

- (iv) forecast disbursements include: (a) payments in the ordinary course and on normal trade terms, including the payment of all pre-filing vendor and employee amounts; and (b) the continued payment of principal, lease payments and interest owing to RBC.

5.4 Based on the Proposed Monitor's review,³ nothing has come to its attention that causes it to believe, in all material respects that:

- (i) the Cash Flow Assumptions are not consistent with the purpose of the Cash Flow Forecast;
- (ii) as at the date of this Report, the Cash Flow Assumptions are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Cash Flow Forecast, given the Cash Flow Assumptions; or

³ The Proposed Monitor has reviewed the Cash Flow Forecast to the standard required of a Court-appointed Monitor by subsection 23(1)(b) of the CCAA. Subsection 23(1)(b) requires a Monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the Court on the Monitor's findings. Pursuant to this standard, the Proposed Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to information supplied to it by certain key members of management. The Proposed Monitor reviewed information provided by management for the Cash Flow Assumptions. Since the Cash Flow Assumptions need not be supported, the Proposed Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast.

(iii) the Cash Flow Forecast does not reflect the Cash Flow Assumptions.

5.5 The Cash Flow Forecast has been prepared solely for the purpose and subject to the assumptions described above, and readers are cautioned that it may not be appropriate for other purposes.

6.0 PAYMENTS DURING THE CCAA PROCEEDINGS

6.1 MEI intends to pay for goods and services supplied as contemplated in the Cash Flow Forecast. As part of the Initial Order, the Applicant is requesting the Court's authorization to, with the consent of the Monitor, pay pre-filing amounts for goods or services supplied to MEI in the ordinary course subject to the restrictions set forth therein.

6.2 The Proposed Monitor considered the following to assess the reasonableness of the above requested relief:

- (i) as discussed in this Report, the Applicant's intended outcome of these CCAA Proceedings is to complete the Proposed Transaction, which contemplates the continuation of the business as a going concern and the assumption of all trade and related obligations (other than certain lease obligations) in the ordinary course. As such, to minimize disruption to MEI's business, which could potentially impact a going concern outcome, the Proposed Monitor is of the view that the payment of these pre-filing amounts is reasonable in the circumstances;
- (ii) the Proposed Monitor understands that the Transaction Deposit to be funded by the Purchaser of up to \$2.25 million (pending the Court's approval of the Proposed

Transaction), was purposely sized to provide for the normal course payment to third-party vendors, including pre-filing trade creditor obligations; and

- (iii) the Monitor's consent will be required before any such proposed payment may be made.

7.0 CASH MANAGEMENT SYSTEM

7.1 As described in the McEwan Affidavit, the Applicant's cash management system is operated through various accounts held by MEI with RBC (the "**Cash Management System**"). The Cash Management System is administered by MEI's finance department at its head office in Toronto.

7.2 The Applicant has a total of 10 bank accounts with RBC, each of which are Canadian dollar accounts. An overview of the accounts is as follows:

- (i) each of MEI's eight locations (excluding ONE Restaurant) has an account used for receipts and disbursements in respect of the location;
- (ii) an account for receipts in connection with its interest in the ONE Restaurant; and
- (iii) an account for receipts and disbursements in connection with its non-restaurant and grocery operations.

7.3 The Applicant intends to continue using its existing Cash Management System in substantially the same manner as before the commencement of the CCAA Proceedings and is seeking the approval of the Court to do so. The Proposed Monitor supports this request.

8.0 COURT-ORDERED CHARGES SOUGHT IN THE INITIAL ORDER

- 8.1 The Proposed Initial Order seeks the granting of the Administration Charge and the Directors' Charge (collectively, the "**Charges**") over the Property.
- 8.2 During the initial 10-day stay period the Charges are proposed to rank behind all of the Applicant's secured creditors, including the security granted in favour of RBC with respect to the Secured Credit Facilities, the HASCAP Loan and the RBC Equipment Leases (the "**RBC Security**").
- 8.3 At the comeback hearing, the Applicant intends to modify the priority of the Charges such that the Administration Charge and Directors' Charge would continue to rank behind the RBC Security, but in priority to all other secured creditors of the Applicant.

Administration Charge

- 8.4 The Initial Order provides for a charge over the Applicant's Property in an amount not to exceed \$225,000 in favour of the Monitor, counsel to the Monitor and counsel to the Applicant (the "**Administration Charge**"), as security for their respective professional fees and disbursements incurred prior to and after the commencement of the CCAA Proceedings. The Proposed Monitor understands that the Applicant intends to seek an increase in the amount of the Administration Charge to \$350,000 at the comeback hearing.
- 8.5 The Proposed Monitor assisted the Applicant in the calculation of the Administration Charge and is of the view that the amount of the charge for the initial 10-day stay period is reasonable and appropriate in the circumstances, having regard to the nature of the

proceedings, the anticipated professional costs incurred during the initial 10-day stay period, and the size of charges approved in similar CCAA proceedings.

Directors' Charge

- 8.6 The Initial Order provides that MEI will indemnify its director and officers against obligations and liabilities that they may incur in their capacity as director and officers of the Applicant from the commencement of the CCAA Proceedings, except to the extent that any obligation or liability was incurred as a result of gross negligence or wilful misconduct, and provides for a charge on the Property in the amount of \$600,000 in favour of MEI's director and officers as security for any such obligations or liabilities arising after the commencement of these CCAA Proceedings (the "**Directors' Charge**"). The Proposed Monitor understands that the Applicant intends to seek an increase in the amount of the Directors' Charge to \$1.45 million at the comeback hearing.
- 8.7 The Proposed Monitor understands that MEI holds a directors' and officers' insurance policy that provides coverage for certain obligations. However, this policy contains certain exceptions, exclusions and carve-outs, and as a result, the policy may not provide adequate coverage to MEI's director and officers during the CCAA Proceedings.
- 8.8 MEI's director and officers will only be entitled to the benefit of the Directors' Charge to the extent they do not have coverage under MEI's directors' and officers' insurance policy or to the extent such coverage is insufficient to pay an indemnified amount.
- 8.9 The Proposed Monitor assisted the Applicant in the calculation of the Directors' Charge, taking into consideration the amount of the Applicant's payroll, vacation pay and sales tax

liabilities. The Proposed Monitor is of the view that the amount of the Directors' Charge for the initial 10-day stay period is appropriate and reasonable in the circumstances.

Priority of Charges Created by the Proposed Initial Order

8.10 The priorities of the Charges are proposed to be as follows:

- (i) First – Administration Charge (to the maximum amount of \$225,000); and
- (ii) Second – Directors' Charge (to the maximum amount of \$600,000).

8.11 As set out above, the Proposed Monitor believes that the Charges are reasonable in the circumstances.

9.0 STAY OF PROCEEDINGS

9.1 The proposed Initial Order contemplates the granting of an initial 10-day stay of proceedings in respect of the Applicant, its business and the Property. Further, pursuant to the proposed Initial Order, the Applicant is seeking an extension of the stay of proceedings to: (i) the McEwan Subsidiary; and (ii) Mr. McEwan or his assets and property solely in respect of personal guarantees, indemnities, liabilities or claims that relate to or involve the Applicant or the obligations, liabilities and claims of and against the Applicant.

9.2 The proposed stay of proceedings will provide the breathing space required for the Applicant to stabilize its business and preserve value for its stakeholders. Moreover, it will prevent the termination of key contracts and the commencement of enforcement steps, which would be detrimental to the Applicant's restructuring efforts.

- 9.3 As described in the McEwan Affidavit, Mr. McEwan is an integral component of MEI's day-to-day business operations. The proposed extension of the limited stay of proceedings to Mr. McEwan and his assets and property will assist in ensuring Mr. McEwan's continued and uninterrupted participation in MEI's operations and these CCAA Proceedings. Accordingly, the Proposed Monitor supports the Applicant's request for the proposed extension of the stay of proceedings in respect of Mr. McEwan.
- 9.4 As described in the McEwan Affidavit, the only obligations of the McEwan subsidiary are those relating to the ONE Restaurant Partnership and its only asset is its partnership interest in The Hazleton Food Services Partnership. MEI's interest in the ONE Restaurant Partnership is a meaningful part of the business of the Company, and any steps that may be taken in respect of the McEwan Subsidiary could have a significant detrimental impact on the Applicant's restructuring efforts.
- 9.5 In light of the McEwan Subsidiary's limited liabilities, the Proposed Monitor believes that the proposed extension of the stay of proceedings to the McEwan Subsidiary will not prejudice stakeholders during the initial 10-day stay period.

10.0 NOTICE OF THE CCAA PROCEEDINGS

- 10.1 The proposed Initial Order contemplates that, without further Order of the Court, the standard noticing procedures within CCAA proceedings be modified, such that: (i) notice of the CCAA Proceedings will not be published in any newspaper; (ii) the Monitor will not send notice to creditors with claims against MEI in excess of \$1,000 in the prescribed manner; and (iii) no list of creditors and estimated amounts owing to them will be made publicly available on the Monitor's case website. Rather, the proposed Initial Order

contemplates that MEI, in consultation with the Monitor, shall send a notice to every known creditor who has a claim against the Applicant of more than \$5,000 advising of the CCAA Proceedings.

10.2 The Proposed Monitor recognizes the concerns of MEI with respect to the potential negative impacts that noticing may have on its vendor relationships, and is of the view that, in the specific circumstances of this case, the modified noticing procedures sought by MEI are reasonable. The Proposed Monitor considered the following to assess the reasonableness of the requested relief:

- (i) the Applicant intends to use the CCAA Proceedings to effectuate the Proposed Transaction, which is a going concern transaction;
- (ii) the Applicant intends to continue to pay all of its trade and employee obligations in the ordinary course, including pre-filing obligations, and any amounts not paid in the ordinary course (both pre- and post-filing amounts) are intended to be assumed by the Purchaser as part of the Proposed Transaction;
- (iii) each of the landlords in respect of the lease agreements that are to be excluded from the Proposed Transaction will be provided with notice of the CCAA Proceedings;
and
- (iv) the form of notice that MEI intends to send to its creditors includes information to notify them of the CCAA Proceedings and provides a link to access the Proposed


Monitor's case website should they wish to obtain additional information regarding the CCAA Proceedings.

11.0 CONCLUSIONS AND RECOMMENDATIONS

- 11.1 For the reasons set out in this Report, the Proposed Monitor is of the view that the relief requested by the Applicant in the proposed Initial Order is reasonable, appropriate and necessary having regard to the current circumstances of the Applicant. As such, the Proposed Monitor supports the Applicant's application for CCAA protection and respectfully recommends that the Court grant the Initial Order containing the relief requested by the Applicant.

All of which is respectfully submitted to the Court this 27th day of September, 2021.

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

Per: 

Greg Karpel
Senior Vice-President

APPENDIX A
CASH FLOW FORECAST

See attached.

McEwan Enterprises Inc.
Cash Flow Forecast
For the thirteen-week period ending December 24, 2021
(Unaudited, in 000s CAD)

Week ending	Notes	Week 1 Oct 01	Week 2 Oct 08	Week 3 Oct 15	Week 4 Oct 22	Week 5 Oct 29	Week 6 Nov 05	Week 7 Nov 12	Week 8 Nov 19	Week 9 Nov 26	Week 10 Dec 03	Week 11 Dec 10	Week 12 Dec 17	Week 13 Dec 24	13 Week Total
Receipts	(1)	653	667	667	667	667	667	667	667	667	667	667	667	667	8,655
Disbursements															
Vendors	(2)	(474)	(481)	(481)	(481)	(481)	(481)	(481)	(481)	(481)	(481)	(481)	(481)	(481)	(6,245)
Employee wages	(3)	(416)	-	(388)	-	(388)	-	(388)	-	(388)	-	(388)	-	(388)	(2,743)
Rent	(4)	-	(486)	-	-	-	(736)	-	-	-	(486)	-	-	-	(1,708)
Other SG&A (incl. HST remittances)	(5)	(42)	(36)	(36)	(37)	(39)	(37)	(37)	(37)	(39)	(37)	(37)	(37)	(37)	(486)
Total Disbursements		(932)	(1,003)	(905)	(518)	(908)	(1,254)	(905)	(518)	(908)	(1,004)	(905)	(518)	(905)	(11,182)
Operating Net Cash Flow		(279)	(336)	(238)	149	(241)	(587)	(239)	149	(241)	(337)	(239)	149	(239)	(2,527)
RBC principal, lease payments & interest	(6)	(26)	(4)	-	-	(71)	(10)	-	-	(71)	(10)	-	-	(71)	(264)
Restructuring professional fees	(7)	(170)	(57)	(170)	(57)	(102)	(28)	(28)	(73)	(62)	(28)	(28)	(57)	(51)	(910)
Net Cash Flow		(474)	(397)	(408)	93	(414)	(625)	(267)	76	(374)	(375)	(267)	93	(361)	(3,701)
Beginning Cash		930	481	284	126	219	305	430	163	239	364	239	197	443	930
Net Cash Flow		(474)	(397)	(408)	93	(414)	(625)	(267)	76	(374)	(375)	(267)	93	(361)	(3,701)
Transaction Deposit	(8)	-	-	250	-	500	750	-	-	500	250	-	-	-	2,250
Change in Revolving credit line		25	200	-	-	-	-	-	-	-	-	225	153	153	755
Ending Cash		481	284	126	219	305	430	163	239	364	239	197	443	234	234
<u>RBC Credit Line</u>															
Revolving credit line limit		850	850	850	850	850	850	850	850	850	850	850	850	850	
Revolving credit line drawn		(120)	(320)	(320)	(320)	(320)	(320)	(320)	(320)	(320)	(320)	(545)	(698)	(850)	
Revolving credit line available		730	530	530	530	530	530	530	530	530	530	305	153	-	

Prepared by Management. To be read in conjunction with the attached Notes.

McEwan Enterprises Inc. ("MEI")

Cash Flow Forecast

Notes

Disclaimer

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

Note 1 Receipts

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

Note 2 Vendors

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

Note 3 Employee wages

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

Note 4 Rent

Disbursements include: (i) the payment in full for ongoing post-filing monthly rent obligations; and (ii) an estimated payment during the week ending November 5 in respect of certain rent arrears.

Note 5 Other SG&A

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

Note 6 RBC principal, lease payments & interest

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

Note 7 Restructuring professional fees

Disbursements include forecast payments to MEI's legal counsel, the Monitor and the Monitor's legal counsel.

Note 8 Transaction Deposit

As described in the McEwan Affidavit, pursuant to the Purchase Agreement, the Purchaser has agreed to fund a deposit of up to \$2.25 million to MEI for use by MEI to fund its operations until the closing of the Proposed Transaction. The funding of the Transaction Deposit by the Purchaser is subject to obtaining Court approval of the Proposed Transaction and a Court-ordered charge to secure the repayment of the Transaction Deposit to the Purchaser in the event the Proposed Transaction is not completed. If the Proposed Transaction is completed, the obligation to repay the Transaction Deposit would be assumed by the Purchaser pursuant to the Proposed Transaction, and there is no adjustment to the cash purchase price as a result thereof. If the Purchase Agreement is terminated, the Company will be required to repay the Transaction Deposit to the Purchaser.

APPENDIX B
MANAGEMENT'S REPRESENTATION LETTER
REGARDING CASH FLOW FORECAST

See attached.



McEwan Enterprises Inc.
38 Karl Fraser Road, Toronto, On M3C 0H7
Telephone: 416-444-6262 Facsimile: 416-444-6212
www.mcewanfoods.com

Alvarez & Marsal Canada Inc.
200 Bay Street, Suite 2900
Toronto ON M5J 2J1

Attention: Mr. Greg Karpel

September 27, 2021

Dear Sirs:

Re: McEwan Enterprises Inc. ("MEI") – CCAA section 10(2) Prescribed Representations with Respect to Cash Flow Forecast


In connection with the application by MEI for the commencement of proceedings under the *Companies' Creditors Arrangement Act*, the management of MEI have prepared the attached 13-week projected cash flow statement for the period October, 2021 to December, 2021 (the "**Cash Flow Forecast**") and the list of assumptions on which the Cash Flow Forecast is based. The purpose of the Cash Flow Forecast is to determine the liquidity requirements of MEI during the CCAA proceedings.

MEI confirms that the hypothetical assumptions on which the Cash Flow Forecast is based are reasonable and consistent with the purpose described herein, and the probable assumptions are suitably supported and consistent with the plans of MEI and provide a reasonable basis for the projections. All such assumptions are disclosed in notes to the Cash Flow Forecast (the "**Notes**").

Since the projections are based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projections have been prepared solely for the purpose described herein, using the probable and hypothetical assumptions set out in the Notes. Consequently, readers are cautioned that the Cash Flow Forecast may not be appropriate for other purposes.

Yours truly,


Per: Name: Kuldip Anuja
Title: CFO

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

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

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

**PRE-FILING REPORT OF THE
PROPOSED MONITOR**

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

APPENDIX B
FIRST REPORT OF THE MONITOR

See attached.

**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.

**FIRST REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.**

OCTOBER 5, 2021

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APPENDICES

Appendix A – Pre-Filing Report of the Proposed Monitor

Appendix B – Form of Monitor’s Notice to Creditors

1.0 INTRODUCTION

- 1.1 On September 28, 2021 (the “**Filing Date**”), McEwan Enterprises Inc. (“**MEI**” or the “**Applicant**”) obtained an initial order (the “**Initial Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The proceedings commenced by the Applicant under the CCAA are referred to herein as the “**CCAA Proceedings**”.
- 1.2 Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as proposed monitor, filed the Pre-Filing Report of the Proposed Monitor dated September 27, 2021 (the “**Pre-Filing Report**”). The Pre-Filing Report and other Court-filed documents in the CCAA Proceedings are available on the Monitor’s case website at www.alvarezandmarsal.com/McEwanEnterprises (the “**Case Website**”). A copy of the Pre-Filing Report is also attached hereto as **Appendix “A”**.
- 1.3 The Initial Order, among other things:
- (i) appointed A&M as monitor of the Applicant (in such capacity, the “**Monitor**”);
 - (ii) granted a stay of proceedings against the Applicant up to and including October 7, 2021 (the “**Stay Period**”);
 - (iii) granted the Administration Charge and the Directors’ Charge (each as defined in the Initial Order) up to maximum amounts of \$225,000 and \$600,000, respectively;
- and

(iv) authorized the Applicant to continue making ordinary course payments to employees and vendors, including, with the consent of the Monitor, amounts owing for goods or services supplied to the Applicant prior to the Initial Order if, in the opinion of the Applicant, such payment is necessary or desirable to avoid disruption to the operations of the business or the Applicant during the CCAA Proceedings.

1.4 MEI's business is comprised of six high-end restaurant locations, three gourmet grocery locations, a catering business and an events business, each operating in the Greater Toronto Area, with the exception of one of the restaurants located in Thornbury, Ontario. MEI's brands include *Bymark*, *Fabbrica*, *Diwan*, *McEwan Fine Foods*, *McEwan Catering* and *ONE Restaurant*.¹ MEI also generates revenue from various television and media interests, as well as a partnership with Goodfood Market Corp., a subscription based food-delivery service.

1.5 MEI's equity is owned 55% by a subsidiary of Fairfax Financial Holdings Limited ("**Fairfax**") and 45% by McEwan Holdco Inc. ("**McEwan Holdco**"). Dennis Mark McEwan is the sole shareholder of McEwan Holdco. MEI is incorporated under the laws of Ontario and its registered head office is located in Toronto.

1.6 As described in the Pre-Filing Report, a key aspect of the Applicant's restructuring plan is to effectuate the going concern sale and transfer of substantially all of its assets and liabilities, with the exception of certain excluded lease agreements and related excluded

¹ MEI's interest in ONE Restaurant consists of a 50% partnership interest which is currently held in a wholly owned subsidiary, 2860117 Ontario Limited (the "**McEwan Subsidiary**"). The McEwan Subsidiary is not an applicant in these CCAA Proceedings, however, pursuant to the Initial Order, the stay of proceedings has been extended to the benefit of the McEwan Subsidiary.

liabilities, to a new entity (the “**Purchaser**”) formed by the Applicant’s current shareholders, being Fairfax and McEwan Holdco (the “**Proposed Transaction**”). The Proposed Transaction includes a cash deposit of up to \$2.25 million to be funded in multiple tranches by the Purchaser, which, if approved by the Court, is intended to be utilized by the Applicant to finance its short term liquidity requirements (the “**Transaction Deposit**”).

- 1.7 The Applicant has scheduled a hearing for October 15, 2021 for a motion to seek approval of the Proposed Transaction (the “**Sale Approval Motion**”). In connection with the Sale Approval Motion, the Monitor will file a report with the Court, which will articulate the Monitor’s views on the Proposed Transaction having regard to, among other things, the considerations set out in subsections 36(3)-(4) of the CCAA.
- 1.8 The purpose of this report (the “**First Report**”) is to provide the Court with information, and where applicable, the Monitor’s views on:
 - (i) updates regarding the CCAA Proceedings since the granting of the Initial Order;
 - (ii) the Applicant’s motion (the “**Comeback Motion**”) for an amended and restated initial order (the “**Amended and Restated Initial Order**”) which modifies the Initial Order to, among other things:
 - (a) increase the Administration Charge and the Directors’ Charge up to a maximum of \$350,000 and \$1.45 million, respectively; and
 - (b) extend the Stay Period to November 1, 2021;

- (iii) the activities of the Monitor since the Filing Date; and
- (iv) the Monitor's conclusions and recommendations in connection with the foregoing.

2.0 TERMS OF REFERENCE AND DISCLAIMER

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

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

2.2 Future oriented financial information referred to in this First Report was prepared based on MEI management's estimates and assumptions. Readers are cautioned that since

projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

- 2.3 This First Report should be read in conjunction with the Affidavit of Dennis Mark McEwan, President and Secretary of MEI, sworn on September 27, 2021 (the “**McEwan Affidavit**”), and filed in support of the Applicant’s application for relief under the CCAA. Capitalized terms used and not defined in this First Report have the meanings given to them in the Initial Order or the McEwan Affidavit.
- 2.4 This First Report does not consider the potential future impact of the COVID-19 pandemic on MEI’s business and operations. Such impact cannot be determined at this time.
- 2.5 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars (“**CAD**”).

3.0 UPDATES SINCE THE INITIAL ORDER

Notice to Creditors of the CCAA Proceedings

- 3.1 Pursuant to paragraph 41 of the Initial Order, on September 29 and 30, 2021, in consultation with the Monitor, the Applicant emailed or mailed a notice (together with an accompanying notice from the Monitor) advising all known creditors having a claim against the Applicant of more than \$5,000 of the CCAA Proceedings. The Monitor’s form of notice is attached hereto as **Appendix “B”**.

Rent Payments

- 3.2 The Monitor is working with the Applicant to address any matters related to monthly rent payable from and after the Filing Date. On October 1, 2021, the Applicant issued payment of what it believes is its monthly rent obligation for the month of October based on existing agreements or arrangements in place with its landlords for such monthly rent. The Monitor is working with the Applicant to address any landlord concerns on monthly rent payable and to understand the payment arrangements the Applicant has made with its landlords.
- 3.3 The Applicant has agreed that if there is a dispute regarding monthly rent payable, which is not resolved between any landlord, it will provide that disputed amount to the Monitor in trust pending resolution of the dispute. One such dispute has arisen between the Applicant and the Yonge & Bloor Landlord (as defined below) in respect of the Applicant's October rent. Accordingly, the Applicant has agreed to, and has advised the Yonge & Bloor Landlord that it will, fund the disputed amount into a trust account to be held by the Monitor (the "**Yonge & Bloor Rent Reserve**").
- 3.4 The Monitor understands that the Applicant is in the process of arranging for the Yonge & Bloor Rent Reserve to be funded into the Monitor's trust account.

The Yonge & Bloor Landlord

- 3.5 As described in the McEwan Affidavit, the Applicant has a single lease location with a landlord (the "**Yonge & Bloor Landlord**") in connection with the McEwan Yonge & Bloor grocery location.

- 3.6 The Yonge & Bloor Landlord, whose lease is in respect of an Excluded Location under the Proposed Transaction, conducted a cross-examination of Mr. McEwan on October 4, 2021 on the McEwan Affidavit.
- 3.7 To the extent that the Yonge & Bloor Landlord files any materials for the Comeback Motion, the Monitor may file a supplemental report to provide its views thereon.

Pre-filing Payments

- 3.8 In accordance with paragraph 7(e) of the Initial Order, the Applicant is entitled to pay, with the consent of the Monitor, amounts owing for goods and services supplied prior to the Initial Order, if in the opinion of the Applicant, such payment is necessary or desirable to avoid disruption to the operations of the business or the Applicant during the CCAA Proceedings. The Applicant set out in its materials filed in support of the Initial Order that it intends to provide payment to all trade suppliers in the normal course, subject to the terms of the Initial Order, in order to protect the ongoing Business.
- 3.9 As of the date of this First Report, the Applicant has issued, with the consent of the Monitor, pre-filing payments totaling approximately \$500,000 to third-party suppliers in respect of goods and services provided prior to the Filing Date.

4.0 INCREASES TO THE COURT-ORDERED CHARGES

- 4.1 The Initial Order provides for the Administration Charge and the Directors' Charge over the Applicant's Property. As described in the Pre-Filing Report, MEI advised at the time of the CCAA application that it intended to seek increases to the Administration Charge and the Directors' Charge at the Comeback Motion as each such charge under the Initial

Order was limited to the extent reasonably necessary for the initial 10-day Stay Period. MEI's intention in this regard was set out in the McEwan Affidavit.

Administration Charge

- 4.2 The Initial Order provides for the Administration Charge over the Applicant's Property in an amount not to exceed \$225,000 in favour of the Monitor, counsel to the Monitor and counsel to the Applicant. The Applicant is seeking to increase the Administration Charge in the Amended and Restarted Initial Order to \$350,000.
- 4.3 The Monitor assisted the Applicant in the calculation of the Administration Charge and is of the view that the increased amount of the charge is reasonable and appropriate in the circumstances, having regard to the nature of the proceedings, potential work involved at peak times, and the size of charges approved in similar CCAA proceedings.

Directors' Charge

- 4.4 The Initial Order provides that MEI will indemnify its director and officers against obligations and liabilities that they may incur in their capacity as director and officers of the Applicant from the commencement of the CCAA Proceedings, except to the extent that any obligation or liability was incurred as a result of gross negligence or wilful misconduct. The Initial Order provides for the Directors' Charge over the Applicant's Property in the amount of \$600,000 in favour of MEI's director and officers for that indemnity. The Applicant is seeking to increase the Directors' Charge to \$1.45 million in the Amended and Restated Initial Order.
- 4.5 The Monitor understands that MEI holds a directors' and officers' insurance policy that provides coverage for certain obligations. However, this policy contains certain exceptions,

exclusions and carve-outs, and as a result, the policy may not provide adequate coverage to MEI's director and officers during the CCAA Proceedings. MEI's director and officers will only be entitled to the benefit of the Directors' Charge to the extent they do not have coverage under MEI's directors' and officers' insurance policy or to the extent such coverage is insufficient to pay an indemnified amount.

- 4.6 The Monitor assisted the Applicant in the calculation of the proposed increase in the Directors' Charge, taking into consideration the amount of the Applicant's payroll, vacation pay, statutory employee obligations and sales tax liabilities. The primary components of the proposed \$1.45 million charge are approximately: (i) \$600,000 for employee salary and wages, taking into consideration the bi-weekly payroll cycles of the Applicant; (ii) \$500,000 for accrued vacation pay; (iii) \$300,000 for ongoing sales tax remittance obligations; and (iv) \$50,000 for other statutory employee obligations. The Monitor is of the view that the increased amount of the Directors' Charge is appropriate and reasonable in the circumstances.

Priority of Charges Created by the Amended and Restated Initial Order

- 4.7 As described in the Pre-Filing Report, as of the Filing Date, approximately \$2.2 million of secured debt was outstanding to RBC pursuant to certain secured credit facilities (the "**RBC Security**"). Pursuant to the Initial Order, RBC will be an unaffected creditor in the CCAA Proceedings and the RBC Security is accordingly proposed to rank in priority to the Charges in the Amended and Restated Initial Order.
- 4.8 Subject to the priority ranking of the RBC Security, the Charges in the Amended and Restated Initial Order are proposed to rank in priority to all other secured creditors, other

than statutory super-priority deemed trust and liens for unpaid employee source deductions or taxes. Additionally, the Charges in the Amended and Restated Initial Order do not purport to rank in priority to any secured creditor of the Applicant who did not receive notice of the Comeback Motion. MEI has advised the Monitor that it has provided notice of the Comeback Motion to all secured creditors with security registrations against the Applicant.

4.9 Subject to the foregoing, the contemplated priorities of the Charges in the Amended and Restated Initial Order are as follows:

- (i) First – Administration Charge (to the maximum amount of \$350,000); and
- (ii) Second – Directors’ Charge (to the maximum amount of \$1.45 million).

4.10 The Monitor believes that the Charges and their quantum are reasonable in the circumstances.

5.0 EXTENSION OF THE STAY PERIOD

5.1 Pursuant to the Initial Order, the current Stay Period expires on October 7, 2021. The Applicant is seeking an extension of the Stay Period to and including November 1, 2021.

5.2 The Monitor supports the Applicant’s request to extend the Stay Period for the following reasons:

- (i) the extension is necessary to enable MEI to: (a) continue ongoing discussions and negotiations with its landlords to attempt to achieve consensual lease amendments, and in certain circumstances lease terminations, in order to make the Applicant’s

business viable; (b) seek approval of the Proposed Transaction at the Sale Approval Motion; and (c) generally advance the CCAA Proceedings with a view to achieving a going concern solution for MEI on an expedited basis;

- (ii) by utilizing its cash on hand and availability under the Revolving Facility (as defined and described in the Pre-Filing Report), the Applicant is projected to have sufficient liquidity through the requested Stay Period. Further, as set out in the Pre-Filing Report (Section 5.0 Cash Flow Forecast), the Transaction Deposit of up to \$2.25 million is projected to provide the Applicant with sufficient liquidity through the 13-week period ending December 24, 2021. The funding of the Transaction Deposit is subject to obtaining Court approval at the Sale Approval Motion of the Proposed Transaction and a Court-ordered charge to secure the Transaction Deposit for the benefit of the Purchaser in the event that the Proposed Transaction is not completed. As no relief is sought with respect to the Transaction Deposit at this time, the proposed extension to the Stay Period is limited to the duration of time the Applicant is projected to have sufficient liquidity using its cash on hand and availability under the Revolving Facility; and
- (iii) the Applicant has acted, and continues to act, in good faith and with due diligence to advance the CCAA Proceedings and its restructuring efforts.

6.0 ACTIVITIES OF THE MONITOR SINCE THE FILING DATE

- 6.1 Since the Filing Date, the primary activities of the Monitor have included the following:

- (i) engaging in discussions with MEI and its legal counsel regarding the CCAA Proceedings, including in connection with the Monitor's review of the Proposed Transaction and associated purchase agreement, as well as MEI's ongoing discussions with its landlords;
- (ii) monitoring the Applicant's cash receipts and disbursements, and assisting in preparing weekly cash flow variance reporting;
- (iii) corresponding with the Applicant's finance team and considering requests for disbursements for goods or services supplied to the Applicant prior to the Filing Date in accordance with the Initial Order;
- (iv) activating the Case Website and coordinating the uploading of Court-filed documents to the Case Website;
- (v) completing and coordinating the noticing requirements pursuant to paragraph 41 of the Initial Order, including:
 - (a) arranging for publication of notice of the CCAA Proceedings, in the prescribed form, in *The Globe and Mail (National Edition)* on October 4, 2021 and October 8, 2021;
 - (b) posting the Initial Order to the Case Website on September 29, 2021; and
 - (c) as described above, arranging for the Applicant to send notice of the CCAA Proceedings to all known creditors having a claim against the Applicant of more than \$5,000;


- (vi) activating the Monitor's toll-free number and email account for the CCAA Proceedings, and responding to creditor and other inquiries received through those contact points;
- (vii) with its counsel, attending at the Yonge & Bloor Landlord's cross-examination of Mr. McEwan as described above;
- (viii) submitting Forms 1 (Information Pertaining to the Initial Order) and 2 (Debtor Company Information Summary) and related documents to the Office of the Superintendent of Bankruptcy's CCAA Online Filing System; and
- (ix) with the assistance of its legal counsel, preparing this First Report.

7.0 CONCLUSIONS AND RECOMMENDATIONS

- 7.1 For the reasons set out in this First Report, the Monitor respectfully recommends that the Court grant the Amended and Restated Initial Order containing the relief requested by the Applicant.

All of which is respectfully submitted to the Court this 5th day of October, 2021.

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

Per:  _____
Greg Karpel
Senior Vice-President

APPENDIX A
PRE-FILING REPORT OF THE PROPOSED MONITOR

See attached.

**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.

**PRE-FILING REPORT OF THE PROPOSED MONITOR
ALVAREZ & MARSAL CANADA INC.**

SEPTEMBER 27, 2021

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APPENDICES

Appendix A – 13-Week Cash Flow Forecast

Appendix B – Management’s Representation Letter Regarding the Cash Flow Forecast

1.0 INTRODUCTION

- 1.1 Alvarez & Marsal Canada Inc. (“**A&M**” or the “**Proposed Monitor**”) understands that McEwan Enterprises Inc. (“**MEI**” or the “**Applicant**”) intends to make an application to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for an order (the “**Initial Order**”) granting, among other things, a stay of proceedings pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and appointing A&M as Monitor of the Applicant (the “**Monitor**”). The proceedings to be commenced by the Applicant under the CCAA are referred to herein as the “**CCAA Proceedings**”.
- 1.2 MEI’s business is comprised of six high-end restaurant locations, three gourmet grocery locations, a catering business and an events business, each operating in Toronto, with the exception of one of the restaurants located in Thornbury, Ontario. MEI’s brands include *Bymark, Fabbrica, Diwan, McEwan Fine Foods, McEwan Catering* and *ONE Restaurant*.¹ MEI also generates revenue from various television and media interests, as well as a partnership with Goodfood Market Corp., a subscription based food-delivery service.
- 1.3 MEI’s equity is owned 55% by a subsidiary of Fairfax Financial Holdings Limited (“**Fairfax**”) and 45% by McEwan Holdco Inc. (“**McEwan Holdco**”). Dennis Mark McEwan is the sole shareholder of McEwan Holdco. MEI is incorporated under the laws of Ontario and its registered head office is located in Toronto.

¹ MEI’s interest in ONE Restaurant consists of a 50% partnership interest which is currently held in a wholly owned subsidiary, 2860117 Ontario Limited (the “**McEwan Subsidiary**”). The McEwan Subsidiary is not an applicant in these CCAA Proceedings, however, as discussed further below, the Applicant is requesting the stay of proceedings be extended to the McEwan Subsidiary.

- 1.4 A key part of the Applicant's restructuring plan and these CCAA Proceedings is to effectuate a going concern transaction of MEI's business, including the sale and transfer of substantially all of its assets and liabilities. To that end, the Applicant intends to seek to complete the sale and transfer of its business, with the exception of certain excluded lease agreements and related excluded liabilities, to a new entity (the "**Purchaser**") formed by the Applicant's current shareholders, being Fairfax and McEwan Holdco (the "**Proposed Transaction**").
- 1.5 The Proposed Transaction includes a cash deposit to be funded by the Purchaser, which, if approved by the Court, is intended to be utilized by the Applicant to finance its short term liquidity requirements (the "**Transaction Deposit**"). Without the Transaction Deposit (or alternative financing), the Applicant projects that it will exhaust its liquidity prior to the last week of October 2021. In light of these liquidity challenges, among other things, the Applicant intends to pursue its restructuring expeditiously.
- 1.6 The Proposed Monitor understands that the Applicant intends to bring a motion at a future date to seek approval of the Proposed Transaction. If appointed, the Monitor will file a report with the Court in connection with such motion, which will articulate the Monitor's views on the Proposed Transaction having regard to, among other things, the considerations set out in subsections 36(3)-(4) of the CCAA.
- 1.7 The purpose of this pre-filing report (the "**Report**") is to provide the Court with information, and where applicable, the Proposed Monitor's views on:
- (i) A&M's qualifications to act as Monitor;

- (ii) background information with respect to MEI;
- (iii) MEI's 13-week cash flow forecast;
- (iv) MEI's cash management system;
- (v) the relief sought by the Applicant as part of the proposed Initial Order, including:
 - (a) the Applicant's intention to continue making ordinary course payments to employees and vendors, including the payment of certain pre-filing obligations with the consent of the Monitor;
 - (b) extending the stay of proceedings for the benefit of the McEwan Subsidiary and Mr. McEwan;
 - (c) the priority Court-ordered charges over the property and assets of the Applicant (collectively, the "**Property**"); and
 - (d) the proposed notice to be provided in respect of the CCAA Proceedings; and
- (vi) the Proposed Monitor's conclusions and recommendations in connection with the foregoing.

2.0 TERMS OF REFERENCE AND DISCLAIMER

- 2.1 In preparing this Report, A&M, in its capacity as the Proposed Monitor, has been provided with, and has relied upon unaudited financial information and the books and records prepared by MEI, and has had discussions with management of MEI and its legal counsel

(collectively, the “**Information**”). Except as otherwise described in this Report in respect of the Applicant’s cash flow forecast:

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

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

2.3 This Report should be read in conjunction with the Affidavit of Dennis Mark McEwan, President and Secretary of MEI, sworn on September 27, 2021 (the “**McEwan Affidavit**”), and filed in support of the Applicant’s application for relief under the CCAA. Capitalized

terms used and not defined in this Report have the meanings given to them in the McEwan Affidavit.

2.4 This Report does not consider the potential future impact of the COVID-19 pandemic on MEI's business and operations. Such impact cannot be determined at this time.

2.5 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars ("CAD").

3.0 A&M'S QUALIFICATIONS TO ACT AS MONITOR

3.1 Alvarez & Marsal Canada ULC, an affiliate of A&M, was engaged to act as a consultant to MEI on September 10, 2021, and as such, the Proposed Monitor is familiar with the business and operations of the Applicant, its personnel and the key issues and stakeholders in the proposed CCAA Proceedings. A&M is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") and is not subject to any of the restrictions on who may be appointed as monitor set out in subsection 11.7(2) of the CCAA.

3.2 A&M is related to Alvarez & Marsal Holdings, LLC which is an independent international professional services firm, providing, among other things, bankruptcy, insolvency and restructuring services. The senior A&M personnel with carriage of this matter include experienced insolvency and restructuring practitioners who are Chartered Professional Accountants, Chartered Insolvency and Restructuring Professionals, and Licensed Insolvency Trustees, and whom have previously acted in CCAA matters of a similar nature.

3.3 The Proposed Monitor has retained Bennett Jones LLP to act as its independent legal counsel.

3.4 A&M has consented to act as Monitor of the Applicant should the Court grant the Applicant's request to commence the CCAA Proceedings pursuant to the Initial Order.

4.0 BACKGROUND INFORMATION

4.1 The information in this Report provides a summary of certain of the background to the CCAA Proceedings. The Proposed Monitor recommends that readers review the materials filed by the Applicant in respect of these CCAA Proceedings, including, but not limited to the McEwan Affidavit.

Financial Results

4.2 Although many of MEI's locations have historically been profitable, certain of its locations have been underperforming for a number of years, causing a significant strain on the business as a whole. Further, the negative impacts of the COVID-19 pandemic, including extensive restaurant closures, capacity constraints and other COVID-19 related measures over the past 18 months, have been significant and have resulted in material EBITDA losses and liquidity challenges for the consolidated MEI business.

4.3 For the year ended December 31, 2020 ("FY2020"), MEI reported revenue of approximately \$30.1 million, a reduction of 34% compared to the prior year. In FY2020, MEI experienced a net loss of approximately \$2.8 million, compared to the prior year's net loss of \$1.3 million. The negative impacts of the COVID-19 pandemic have continued this

year, with MEI reporting revenues of \$13.1 million and a net loss of \$2.2 million for the six months ended June 2021.

- 4.4 To address its underperforming locations and the operating headwinds caused by the COVID-19 pandemic, MEI implemented extensive cost-saving and cash conservation measures, negotiated landlord concessions at certain of its locations and utilized a number of government subsidies made available to companies during the COVID-19 pandemic.
- 4.5 Although these initiatives did provide some liquidity runway, MEI continued to experience significant operating and cash losses. In order to continue operating during the COVID-19 pandemic, Fairfax provided MEI unsecured debt financing of approximately \$1.72 million.

Employees

- 4.6 MEI currently employs approximately 268 staff, comprised of 213 full-time and 55 part-time employees.
- 4.7 The Applicant's payroll is processed by a third-party payroll processor, Desjardins Employer Solutions, and paid through MEI's Cash Management System (defined below).
- 4.8 MEI sponsors an employee benefits plan (including medical, dental, vision and other benefits) for eligible employees, administered by Manulife Financial. MEI does not maintain any pension plans for its employees.
- 4.9 During the CCAA Proceedings, MEI intends to continue funding the benefits plan and all other employee related costs and benefits in the normal course. The Proposed Monitor

understands that MEI is current in all of its funding obligations in respect of this plan and related costs.

- 4.10 The Proposed Monitor understands the Proposed Transaction will include an offer of employment to all of MEI's employees on the same terms to their existing employment (with those employees currently at excluded locations to be offered employment at an assumed location).

Trade Creditors

- 4.11 Based on MEI's books and records, as at August 31, 2021, approximately \$2.3 million is owing to trade creditors, consisting primarily of suppliers of food products, packaging and other general goods and services.
- 4.12 In addition to these amounts, MEI's books and records include an accrual of approximately \$500,000 in connection with obligations for customer gift cards and customer loyalty programs.
- 4.13 As described in this Report and included in the Cash Flow Forecast (defined below), MEI intends to continue to: (i) pay its third-party suppliers in the ordinary course and on usual trade terms, including pre-filing amounts owing as at the commencement of the CCAA Proceedings with the Monitor's consent and where the Applicant determines that such payment is necessary or desirable to avoid disruption to MEI's business; and (ii) honour all customer gift cards and loyalty programs in the ordinary course.

Landlords

- 4.14 MEI does not own any real property and all of its locations are leased. In total, MEI is party to seven leases, comprised of: (i) five leases managed by one third-party landlord; (ii) one lease managed by a third-party landlord in respect of the Thornbury restaurant location; and (iii) one lease managed by a third-party landlord in respect of its grocery store located in the Yonge and Bloor neighborhood of Toronto.
- 4.15 The lease agreement in respect of the ONE Restaurant is entered into directly by the ONE Restaurant partnership, as tenant, and there is no lease arrangement or rent charged at the Diwan location, which is a restaurant located within the Aga Khan Museum in Toronto.
- 4.16 Due to the impacts of the COVID-19 pandemic, MEI executed various rent concessions and deferrals with certain of its landlords (the “**Landlord Concessions**”). As at August 31, 2021, approximately \$500,000 is owing to landlords, based on MEI’s financial statements and taking into account certain amended lease terms.
- 4.17 In preparing the Cash Flow Forecast, MEI has projected the payment in full of its ongoing monthly rent obligations, but has not projected any repayments in respect of the Landlord Concessions.

RBC Secured Credit Facilities

- 4.18 As of the date of this Report, approximately \$2.2 million of secured debt was outstanding to Royal Bank of Canada (“**RBC**”), MEI’s operating lender. This secured debt balance is comprised of: (i) approximately \$239,000 owing under various revolving credit facilities (the “**Secured Credit Facilities**”); (ii) approximately \$1.7 million owing under various

equipment leases (the “**RBC Equipment Leases**”); and (iii) approximately \$250,000 owing under a term loan (the “**HASCAP Loan**”).

4.19 The Secured Credit Facilities consist of: (i) eight revolving demand facilities with cumulative maximum availability of \$850,000, of which approximately \$95,000 is currently drawn (the “**Revolving Facility**”); (ii) credit cards with a cumulative maximum availability of \$360,000; and (iii) a \$90,000 letter of credit.

4.20 The Proposed Monitor understands that MEI is currently not in compliance with certain of the covenants under the Secured Credit Facilities. However, as described in the McEwan Affidavit, RBC has confirmed to the Applicant that it is prepared to continue to provide access to the Secured Credit Facilities, including the Revolving Facility, on terms and conditions satisfactory to RBC during the CCAA Proceedings.

4.21 RBC will be an unaffected creditor in these CCAA Proceedings. As described further below, during the initial 10-day stay period the court ordered charges are proposed to rank behind the Secured Credit Facilities, the HASCAP Loan and the RBC Equipment Leases.

Other Credit Facilities

4.22 In addition to each of the above credit facilities, the Applicant is also party to:

- (i) a \$198,000 fixtures loan with one of its landlords, secured by MEI’s assets as well as certain of Mr. McEwan’s personal assets;
- (ii) unsecured loans with RBC, under which approximately \$899,000 is owing, secured over certain of Mr. McEwan’s personal assets;

- (iii) certain leases with respect to photocopies and motor vehicles used in connection with MEI's business; and
- (iv) unsecured shareholder loans with Fairfax, under which approximately \$2.3 million is owing.

5.0 CASH FLOW FORECAST

- 5.1 The Applicant has prepared a weekly cash flow forecast (the “**Cash Flow Forecast**”) for the 13-week period from September 25 to December 24, 2021 (the “**Cash Flow Period**”). A copy of the Cash Flow Forecast, together with a summary of assumptions (the “**Cash Flow Assumptions**”) and management's report on the cash-flow statement required by subsection 10(2)(b) of the CCAA are attached hereto as **Appendices “A” and “B”**, respectively.
- 5.2 The following table provides a summary of the Cash Flow Forecast, including the period prior to the comeback hearing, being the two-week period ending October 8, 2021 (the “**Initial 2-Week Period**”):²

² The comeback hearing is currently scheduled to be heard on October 7, 2021.

Cash Flow Forecast		\$000's	
	2-Week Period	11-Week Period	13-Week Total
	<i>Oct-8</i>	<i>Dec-24</i>	<i>Dec-24</i>
Receipts	1,320	7,335	8,655
Disbursements			
Vendors	(955)	(5,290)	(6,245)
Employee wages	(416)	(2,327)	(2,743)
Rent	(486)	(1,222)	(1,708)
Other SG&A	(78)	(408)	(486)
RBC principal, lease payments & interest	(30)	(234)	(264)
Restructuring professional Fees	(226)	(684)	(910)
Net Cash Flow	(871)	(2,830)	(3,701)
Cash balance, opening	930	284	930
Net Cash Flow	(871)	(2,830)	(3,701)
Revolving Facility draws	225	530	755
Transaction Deposit	-	2,250	2,250
Ending Cash Balance	284	234	234

5.3 The Proposed Monitor notes the following with respect to the Cash Flow Forecast:

- (i) during the Initial 2-Week Period, net cash flows are projected to be negative \$871,000, which is projected to be sufficiently funded by the Applicant's current cash on hand of approximately \$930,000 and draws on the Revolving Facility of approximately \$225,000;
- (ii) during the entire Cash Flow Period, net cash flows are projected to be negative \$3.7 million. These negative cash flows are projected to be financed by a combination of: (a) cash on hand of approximately \$930,000; (b) the Transaction Deposit of \$2.25 million; and (c) draws on the Revolving Facility of approximately \$755,000;
- (iii) as described in the McEwan Affidavit, the funding of the Transaction Deposit is subject to obtaining Court approval of the Proposed Transaction and a Court-

ordered charge to secure the Transaction Deposit for the benefit of the Purchaser in the event that the Proposed Transaction is not completed. The Proposed Monitor notes that, without the Transaction Deposit, the Applicant is projected to exhaust its liquidity prior to the last week of October 2021 and without additional financing would not have sufficient liquidity to continue to fund the CCAA Proceedings or continue to operate in the ordinary course; and

- (iv) forecast disbursements include: (a) payments in the ordinary course and on normal trade terms, including the payment of all pre-filing vendor and employee amounts; and (b) the continued payment of principal, lease payments and interest owing to RBC.

5.4 Based on the Proposed Monitor's review,³ nothing has come to its attention that causes it to believe, in all material respects that:

- (i) the Cash Flow Assumptions are not consistent with the purpose of the Cash Flow Forecast;
- (ii) as at the date of this Report, the Cash Flow Assumptions are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Cash Flow Forecast, given the Cash Flow Assumptions; or

³ The Proposed Monitor has reviewed the Cash Flow Forecast to the standard required of a Court-appointed Monitor by subsection 23(1)(b) of the CCAA. Subsection 23(1)(b) requires a Monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the Court on the Monitor's findings. Pursuant to this standard, the Proposed Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to information supplied to it by certain key members of management. The Proposed Monitor reviewed information provided by management for the Cash Flow Assumptions. Since the Cash Flow Assumptions need not be supported, the Proposed Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast.

(iii) the Cash Flow Forecast does not reflect the Cash Flow Assumptions.

5.5 The Cash Flow Forecast has been prepared solely for the purpose and subject to the assumptions described above, and readers are cautioned that it may not be appropriate for other purposes.

6.0 PAYMENTS DURING THE CCAA PROCEEDINGS

6.1 MEI intends to pay for goods and services supplied as contemplated in the Cash Flow Forecast. As part of the Initial Order, the Applicant is requesting the Court's authorization to, with the consent of the Monitor, pay pre-filing amounts for goods or services supplied to MEI in the ordinary course subject to the restrictions set forth therein.

6.2 The Proposed Monitor considered the following to assess the reasonableness of the above requested relief:

- (i) as discussed in this Report, the Applicant's intended outcome of these CCAA Proceedings is to complete the Proposed Transaction, which contemplates the continuation of the business as a going concern and the assumption of all trade and related obligations (other than certain lease obligations) in the ordinary course. As such, to minimize disruption to MEI's business, which could potentially impact a going concern outcome, the Proposed Monitor is of the view that the payment of these pre-filing amounts is reasonable in the circumstances;
- (ii) the Proposed Monitor understands that the Transaction Deposit to be funded by the Purchaser of up to \$2.25 million (pending the Court's approval of the Proposed

Transaction), was purposely sized to provide for the normal course payment to third-party vendors, including pre-filing trade creditor obligations; and

- (iii) the Monitor's consent will be required before any such proposed payment may be made.

7.0 CASH MANAGEMENT SYSTEM

7.1 As described in the McEwan Affidavit, the Applicant's cash management system is operated through various accounts held by MEI with RBC (the "**Cash Management System**"). The Cash Management System is administered by MEI's finance department at its head office in Toronto.

7.2 The Applicant has a total of 10 bank accounts with RBC, each of which are Canadian dollar accounts. An overview of the accounts is as follows:

- (i) each of MEI's eight locations (excluding ONE Restaurant) has an account used for receipts and disbursements in respect of the location;
- (ii) an account for receipts in connection with its interest in the ONE Restaurant; and
- (iii) an account for receipts and disbursements in connection with its non-restaurant and grocery operations.

7.3 The Applicant intends to continue using its existing Cash Management System in substantially the same manner as before the commencement of the CCAA Proceedings and is seeking the approval of the Court to do so. The Proposed Monitor supports this request.

8.0 COURT-ORDERED CHARGES SOUGHT IN THE INITIAL ORDER

- 8.1 The Proposed Initial Order seeks the granting of the Administration Charge and the Directors' Charge (collectively, the "**Charges**") over the Property.
- 8.2 During the initial 10-day stay period the Charges are proposed to rank behind all of the Applicant's secured creditors, including the security granted in favour of RBC with respect to the Secured Credit Facilities, the HASCAP Loan and the RBC Equipment Leases (the "**RBC Security**").
- 8.3 At the comeback hearing, the Applicant intends to modify the priority of the Charges such that the Administration Charge and Directors' Charge would continue to rank behind the RBC Security, but in priority to all other secured creditors of the Applicant.

Administration Charge

- 8.4 The Initial Order provides for a charge over the Applicant's Property in an amount not to exceed \$225,000 in favour of the Monitor, counsel to the Monitor and counsel to the Applicant (the "**Administration Charge**"), as security for their respective professional fees and disbursements incurred prior to and after the commencement of the CCAA Proceedings. The Proposed Monitor understands that the Applicant intends to seek an increase in the amount of the Administration Charge to \$350,000 at the comeback hearing.
- 8.5 The Proposed Monitor assisted the Applicant in the calculation of the Administration Charge and is of the view that the amount of the charge for the initial 10-day stay period is reasonable and appropriate in the circumstances, having regard to the nature of the

proceedings, the anticipated professional costs incurred during the initial 10-day stay period, and the size of charges approved in similar CCAA proceedings.

Directors' Charge

- 8.6 The Initial Order provides that MEI will indemnify its director and officers against obligations and liabilities that they may incur in their capacity as director and officers of the Applicant from the commencement of the CCAA Proceedings, except to the extent that any obligation or liability was incurred as a result of gross negligence or wilful misconduct, and provides for a charge on the Property in the amount of \$600,000 in favour of MEI's director and officers as security for any such obligations or liabilities arising after the commencement of these CCAA Proceedings (the "**Directors' Charge**"). The Proposed Monitor understands that the Applicant intends to seek an increase in the amount of the Directors' Charge to \$1.45 million at the comeback hearing.
- 8.7 The Proposed Monitor understands that MEI holds a directors' and officers' insurance policy that provides coverage for certain obligations. However, this policy contains certain exceptions, exclusions and carve-outs, and as a result, the policy may not provide adequate coverage to MEI's director and officers during the CCAA Proceedings.
- 8.8 MEI's director and officers will only be entitled to the benefit of the Directors' Charge to the extent they do not have coverage under MEI's directors' and officers' insurance policy or to the extent such coverage is insufficient to pay an indemnified amount.
- 8.9 The Proposed Monitor assisted the Applicant in the calculation of the Directors' Charge, taking into consideration the amount of the Applicant's payroll, vacation pay and sales tax

liabilities. The Proposed Monitor is of the view that the amount of the Directors' Charge for the initial 10-day stay period is appropriate and reasonable in the circumstances.

Priority of Charges Created by the Proposed Initial Order

8.10 The priorities of the Charges are proposed to be as follows:

- (i) First – Administration Charge (to the maximum amount of \$225,000); and
- (ii) Second – Directors' Charge (to the maximum amount of \$600,000).

8.11 As set out above, the Proposed Monitor believes that the Charges are reasonable in the circumstances.

9.0 STAY OF PROCEEDINGS

9.1 The proposed Initial Order contemplates the granting of an initial 10-day stay of proceedings in respect of the Applicant, its business and the Property. Further, pursuant to the proposed Initial Order, the Applicant is seeking an extension of the stay of proceedings to: (i) the McEwan Subsidiary; and (ii) Mr. McEwan or his assets and property solely in respect of personal guarantees, indemnities, liabilities or claims that relate to or involve the Applicant or the obligations, liabilities and claims of and against the Applicant.

9.2 The proposed stay of proceedings will provide the breathing space required for the Applicant to stabilize its business and preserve value for its stakeholders. Moreover, it will prevent the termination of key contracts and the commencement of enforcement steps, which would be detrimental to the Applicant's restructuring efforts.

- 9.3 As described in the McEwan Affidavit, Mr. McEwan is an integral component of MEI's day-to-day business operations. The proposed extension of the limited stay of proceedings to Mr. McEwan and his assets and property will assist in ensuring Mr. McEwan's continued and uninterrupted participation in MEI's operations and these CCAA Proceedings. Accordingly, the Proposed Monitor supports the Applicant's request for the proposed extension of the stay of proceedings in respect of Mr. McEwan.
- 9.4 As described in the McEwan Affidavit, the only obligations of the McEwan subsidiary are those relating to the ONE Restaurant Partnership and its only asset is its partnership interest in The Hazleton Food Services Partnership. MEI's interest in the ONE Restaurant Partnership is a meaningful part of the business of the Company, and any steps that may be taken in respect of the McEwan Subsidiary could have a significant detrimental impact on the Applicant's restructuring efforts.
- 9.5 In light of the McEwan Subsidiary's limited liabilities, the Proposed Monitor believes that the proposed extension of the stay of proceedings to the McEwan Subsidiary will not prejudice stakeholders during the initial 10-day stay period.

10.0 NOTICE OF THE CCAA PROCEEDINGS

- 10.1 The proposed Initial Order contemplates that, without further Order of the Court, the standard noticing procedures within CCAA proceedings be modified, such that: (i) notice of the CCAA Proceedings will not be published in any newspaper; (ii) the Monitor will not send notice to creditors with claims against MEI in excess of \$1,000 in the prescribed manner; and (iii) no list of creditors and estimated amounts owing to them will be made publicly available on the Monitor's case website. Rather, the proposed Initial Order

contemplates that MEI, in consultation with the Monitor, shall send a notice to every known creditor who has a claim against the Applicant of more than \$5,000 advising of the CCAA Proceedings.

10.2 The Proposed Monitor recognizes the concerns of MEI with respect to the potential negative impacts that noticing may have on its vendor relationships, and is of the view that, in the specific circumstances of this case, the modified noticing procedures sought by MEI are reasonable. The Proposed Monitor considered the following to assess the reasonableness of the requested relief:

- (i) the Applicant intends to use the CCAA Proceedings to effectuate the Proposed Transaction, which is a going concern transaction;
- (ii) the Applicant intends to continue to pay all of its trade and employee obligations in the ordinary course, including pre-filing obligations, and any amounts not paid in the ordinary course (both pre- and post-filing amounts) are intended to be assumed by the Purchaser as part of the Proposed Transaction;
- (iii) each of the landlords in respect of the lease agreements that are to be excluded from the Proposed Transaction will be provided with notice of the CCAA Proceedings;
and
- (iv) the form of notice that MEI intends to send to its creditors includes information to notify them of the CCAA Proceedings and provides a link to access the Proposed

Monitor's case website should they wish to obtain additional information regarding the CCAA Proceedings.

11.0 CONCLUSIONS AND RECOMMENDATIONS

- 11.1 For the reasons set out in this Report, the Proposed Monitor is of the view that the relief requested by the Applicant in the proposed Initial Order is reasonable, appropriate and necessary having regard to the current circumstances of the Applicant. As such, the Proposed Monitor supports the Applicant's application for CCAA protection and respectfully recommends that the Court grant the Initial Order containing the relief requested by the Applicant.

All of which is respectfully submitted to the Court this 27th day of September, 2021.

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

Per:



Greg Karpel
Senior Vice-President

APPENDIX A
CASH FLOW FORECAST

See attached.

McEwan Enterprises Inc.
Cash Flow Forecast
For the thirteen-week period ending December 24, 2021
(Unaudited, in 000s CAD)

Week ending	Notes	Week 1 Oct 01	Week 2 Oct 08	Week 3 Oct 15	Week 4 Oct 22	Week 5 Oct 29	Week 6 Nov 05	Week 7 Nov 12	Week 8 Nov 19	Week 9 Nov 26	Week 10 Dec 03	Week 11 Dec 10	Week 12 Dec 17	Week 13 Dec 24	13 Week Total
Receipts	(1)	653	667	667	667	667	667	667	667	667	667	667	667	667	8,655
Disbursements															
Vendors	(2)	(474)	(481)	(481)	(481)	(481)	(481)	(481)	(481)	(481)	(481)	(481)	(481)	(481)	(6,245)
Employee wages	(3)	(416)	-	(388)	-	(388)	-	(388)	-	(388)	-	(388)	-	(388)	(2,743)
Rent	(4)	-	(486)	-	-	-	(736)	-	-	-	(486)	-	-	-	(1,708)
Other SG&A (incl. HST remittances)	(5)	(42)	(36)	(36)	(37)	(39)	(37)	(37)	(37)	(39)	(37)	(37)	(37)	(37)	(486)
Total Disbursements		(932)	(1,003)	(905)	(518)	(908)	(1,254)	(905)	(518)	(908)	(1,004)	(905)	(518)	(905)	(11,182)
Operating Net Cash Flow		(279)	(336)	(238)	149	(241)	(587)	(239)	149	(241)	(337)	(239)	149	(239)	(2,527)
RBC principal, lease payments & interest	(6)	(26)	(4)	-	-	(71)	(10)	-	-	(71)	(10)	-	-	(71)	(264)
Restructuring professional fees	(7)	(170)	(57)	(170)	(57)	(102)	(28)	(28)	(73)	(62)	(28)	(28)	(57)	(51)	(910)
Net Cash Flow		(474)	(397)	(408)	93	(414)	(625)	(267)	76	(374)	(375)	(267)	93	(361)	(3,701)
Beginning Cash		930	481	284	126	219	305	430	163	239	364	239	197	443	930
Net Cash Flow		(474)	(397)	(408)	93	(414)	(625)	(267)	76	(374)	(375)	(267)	93	(361)	(3,701)
Transaction Deposit	(8)	-	-	250	-	500	750	-	-	500	250	-	-	-	2,250
Change in Revolving credit line		25	200	-	-	-	-	-	-	-	-	225	153	153	755
Ending Cash		481	284	126	219	305	430	163	239	364	239	197	443	234	234
<u>RBC Credit Line</u>															
Revolving credit line limit		850	850	850	850	850	850	850	850	850	850	850	850	850	
Revolving credit line drawn		(120)	(320)	(320)	(320)	(320)	(320)	(320)	(320)	(320)	(320)	(545)	(698)	(850)	
Revolving credit line available		730	530	530	530	530	530	530	530	530	530	305	153	-	

Prepared by Management. To be read in conjunction with the attached Notes.

McEwan Enterprises Inc. ("MEI")

Cash Flow Forecast

Notes

Disclaimer

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

Note 1 Receipts

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

Note 2 Vendors

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

Note 3 Employee wages

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

Note 4 Rent

Disbursements include: (i) the payment in full for ongoing post-filing monthly rent obligations; and (ii) an estimated payment during the week ending November 5 in respect of certain rent arrears.

Note 5 Other SG&A

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

Note 6 RBC principal, lease payments & interest

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

Note 7 Restructuring professional fees

Disbursements include forecast payments to MEI's legal counsel, the Monitor and the Monitor's legal counsel.

Note 8 Transaction Deposit

As described in the McEwan Affidavit, pursuant to the Purchase Agreement, the Purchaser has agreed to fund a deposit of up to \$2.25 million to MEI for use by MEI to fund its operations until the closing of the Proposed Transaction. The funding of the Transaction Deposit by the Purchaser is subject to obtaining Court approval of the Proposed Transaction and a Court-ordered charge to secure the repayment of the Transaction Deposit to the Purchaser in the event the Proposed Transaction is not completed. If the Proposed Transaction is completed, the obligation to repay the Transaction Deposit would be assumed by the Purchaser pursuant to the Proposed Transaction, and there is no adjustment to the cash purchase price as a result thereof. If the Purchase Agreement is terminated, the Company will be required to repay the Transaction Deposit to the Purchaser.

APPENDIX B
MANAGEMENT'S REPRESENTATION LETTER
REGARDING CASH FLOW FORECAST

See attached.



McEwan Enterprises Inc.
38 Karl Fraser Road, Toronto, On M3C 0H7
Telephone: 416-444-6262 Facsimile: 416-444-6212
www.mcewanfoods.com

Alvarez & Marsal Canada Inc.
200 Bay Street, Suite 2900
Toronto ON M5J 2J1

Attention: Mr. Greg Karpel

September 27, 2021

Dear Sirs:

Re: McEwan Enterprises Inc. ("MEI") – CCAA section 10(2) Prescribed Representations with Respect to Cash Flow Forecast


In connection with the application by MEI for the commencement of proceedings under the *Companies' Creditors Arrangement Act*, the management of MEI have prepared the attached 13-week projected cash flow statement for the period October, 2021 to December, 2021 (the "**Cash Flow Forecast**") and the list of assumptions on which the Cash Flow Forecast is based. The purpose of the Cash Flow Forecast is to determine the liquidity requirements of MEI during the CCAA proceedings.

MEI confirms that the hypothetical assumptions on which the Cash Flow Forecast is based are reasonable and consistent with the purpose described herein, and the probable assumptions are suitably supported and consistent with the plans of MEI and provide a reasonable basis for the projections. All such assumptions are disclosed in notes to the Cash Flow Forecast (the "**Notes**").

Since the projections are based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projections have been prepared solely for the purpose described herein, using the probable and hypothetical assumptions set out in the Notes. Consequently, readers are cautioned that the Cash Flow Forecast may not be appropriate for other purposes.

Yours truly,


Per: Name: Kuldip Anuja
Title: CFO

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

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

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

**PRE-FILING REPORT OF THE
PROPOSED MONITOR**

BENNETT JONES LLP

One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Sean Zweig (LSO# 57307I)

Tel: (416) 777-6254

Email: zweigs@bennettjones.com

Joshua Foster (LSO# 79447K)

Tel: (416) 777-7906

Email: fosterj@bennettjones.com

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

APPENDIX B
FORM OF MONITOR'S NOTICE TO CREDITORS

See attached.



September 29, 2021

To: Whom it may concern

Re: McEwan Enterprises Inc. (the “Applicant”)

On September 28, 2021, the Applicant commenced court-supervised restructuring proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) pursuant to an order (the “**Initial Order**”) granted by the Ontario Superior Court of Justice (the “**Court**”). Among other things, the Initial Order grants a stay of proceedings until October 7, 2021 in respect of the Applicant and its business and property (which may be extended by the Court from time to time) and appoints Alvarez & Marsal Canada Inc. as monitor (the “**Monitor**”) of the business and financial affairs of the Applicant.

A copy of the Initial Order and all materials filed in these proceedings may be obtained at the Monitor’s website at <http://www.alvarezandmarsal.com/McEwanEnterprises> or on request from the Monitor by calling 1-416-847-5187 or by emailing McEwanEnterprises@alvarezandmarsal.com.

Under the Initial Order, the Applicant, with the oversight of the Monitor, is entitled to pay expenses whether incurred prior to or after the Initial Order. It is the Monitor’s understanding that the Applicant intends to pay its suppliers and employees in the ordinary course on a continuing basis, subject to the terms of the Initial Order.

If you have any questions regarding the foregoing or require further information, please consult the Monitor’s website at <http://www.alvarezandmarsal.com/McEwanEnterprises> or should you wish to speak to a representative of the Monitor, please contact the Monitor at 1-416-847-5187 or by emailing McEwanEnterprises@alvarezandmarsal.com.

Yours very truly,

Alvarez & Marsal Canada Inc.,
Solely in its capacity as Court-appointed Monitor of
the Applicant and not in its personal or corporate capacity

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

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

FIRST REPORT OF THE MONITOR

BENNETT JONES LLP

One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Sean Zweig (LSO# 57307I)

Tel: (416) 777-6254

Email: zweigs@bennettjones.com

Joshua Foster (LSO# 79447K)

Tel: (416) 777-7906

Email: fosterj@bennettjones.com

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

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

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

SECOND REPORT OF THE MONITOR

BENNETT JONES LLP

One First Canadian Place
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M5X 1A4

Sean Zweig (LSO# 57307I)

Tel: (416) 777-6254

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Email: fosterj@bennettjones.com

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

APPENDIX B
NOVEMBER 21 LETTER

See attached.

November 21, 2021

BY EMAIL

Alvarez & Marsal Canada Inc.

200 Bay Street, Suite 2900

P.O. Box 22

Toronto, ON M5J 2J1

Attention: Greg Karpel, Joshua Nevsky and Justin Karayannopoulos

Bennett Jones LLP

3400 One First Canadian Place

Toronto, ON M5X 1A4

Attention: Sean Zweig and Joshua Foster

Dear Sirs:

RE: 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. (the "Applicant") – Court File No.: CV-21-00669445-00CL (the "CCAA Proceedings")

As you know, we are counsel to First Capital Holdings (Ontario) Corporation in the abovementioned proceedings.

Reference is made to the purchase agreement executed by our client that was delivered on October 11, 2021 to Alvarez & Marsal Canada Inc., in its capacity as the Monitor in the CCAA Proceedings (in such capacity, the "**Monitor**") (collectively, the "**First Capital Purchase Agreement**"), which the Monitor described as being "*in substantially in the same form [as]*" and "*on its face, financially superior [to]*" the purchase agreement dated September 27, 2021 between McEwan Enterprises Inc. and 2864785 Ontario Corp. (the "**Related-Party Purchaser**") (collectively, the "**Original Related-Party Purchase Agreement**").

Reference is also made to: (a) the amending agreement dated November 12, 2021 in respect of the Original Related-Party Purchase Agreement (the "**Related-Party Amending Agreement**"); and (b) the undated purchase agreement served on November 12, 2021 between an unappointed receiver and the Related-Party Purchaser (together with the Related-Party Amending Agreement, the "**Amended Related-Party Purchase Agreements**").

This letter serves as written confirmation for the Monitor that our client hereby amends the First Capital Purchase Agreement to reflect the substantive changes in the Amended Related-Party Purchase Agreements identified at paragraph 12 of Mark McEwan's affidavit sworn on November 12, 2021, such that, for greater certainty:

- i. like the Amended Related-Party Purchase Agreements, the Base Purchase Price under the First Capital Purchase Agreement be and is hereby increased from \$520,000 to \$2,200,000 (which amount is inclusive of all applicable HST), all of which is also payable

for delivery to our client on closing or as soon as practicable thereafter, as is the case under the Amended Related-Party Purchase Agreements (which, for greater certainty, is to be applied against the lease obligations owed to our client under its lease with the Applicant) ;

- ii. like the Amended Related-Party Purchase Agreements, the Y&B Equipment (as defined therein) be and is hereby assigned to our client on closing; and
- iii. like the Amended Related-Party Purchase Agreements, the First Capital Purchase Agreement may be closed in either the CCAA Proceedings or resulting receivership proceedings, as applicable.

For greater certainty, the First Capital Purchase Agreement is otherwise unamended from the prior version delivered. We also confirm that our client has provided us with the authority to bind our client to the foregoing amendments.

For further greater certainty, and until such time as this matter is resolved (either consensually or by way of Court adjudication), our client's offer is superior to any purchase price increase(s) that the Related-Party Purchaser may propose to make to our client in the future, up to the amount of damages that would be suffered by our client in the event its lease with the Applicant is disclaimed or otherwise terminated, which may amount to as much as \$15MM (the "**Damages**"). We advise you of the foregoing in the hope that it will avoid any unnecessary go-forward amendments to the various purchase agreements, given that:

- a. while increasing the quantum of consideration payable to our client is certainly a worthwhile and encouraged exercise from a settlement negotiation perspective, no such increase to our client can, in isolation, dislodge our client's offer from being "*on its face, financially superior,*" unless the Related-Party Purchaser proposes to pay our client more than the Damages (or to assume our client's lease, as our client's offer contemplates); and
- b. the real substantive dispute for the Court is not the arbitrary adequacy or inadequacy of a particular quantum being offered to our client, but, rather, the importance of good faith marketing efforts to prospective purchasers who are unrelated to the Applicant to demonstrate what ultimate transaction really is fair and reasonable.

We trust that the Monitor will advise the Applicant and the Court of the foregoing.

Yours truly,

AIRD & BERLIS LLP



Steven L. Graff

AIRD BERLIS

APPENDIX C
UPDATED CASH FLOW FORECAST

See attached.

(Unaudited, in 000s CAD)

[illegible]

McEwan Enterprises Inc. ("MEI")

Updated Cash Flow Forecast
Notes

Disclaimer

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

Assumptions

1) **Receipts**

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

2) **Vendors**

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

3) **Employee wages**

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

4) **Rent**

Disbursements include the payment for post-filing monthly rent obligations at each of MEI's locations. Forecast rent includes catch-up payments to the Cadillac Fairview Entities of approximately \$185,000 relating to October and November rents at certain locations, as well as increased rents for December and January, based on recent discussions and agreement among the Applicant and the Cadillac Fairview Entities.

5) **Other SG&A**

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

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

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

7) **Restructuring professional fees**

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

8) **Transaction Deposit / Interim Funding**

The Purchaser has agreed to provide the Transaction Deposit or Additional Interim Transaction Funding of up to \$2.25 million for use by MEI to fund its near-term liquidity requirements and the completion of its insolvency proceedings, subject to the CCAA Amended Transaction Approval Order, or in the alternative, the Receivership Transaction Approval Order being granted, each of which contains a Court ordered Transaction Charge to secure the repayment of the Transaction Deposit or the Additional Interim Transaction Funding, as applicable, to the Purchaser should the Amended Transaction or the Receivership Transaction, respectively, not be completed. The proposed Transaction Charge, if approved, will rank in priority to all other secured creditors, other than statutory-priority deemed trust and liens for unpaid employee source deductions or taxes, but subordinate to the RBC Security and the other Court-ordered charges.

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

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

THIRD REPORT OF THE MONITOR

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