



NO. S-209201
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

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

PETITIONERS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)
MADAM JUSTICE FITZPATRICK) FRIDAY, THE 27TH DAY OF
NOVEMBER, 2020

ON THE APPLICATION OF the petitioners, Mountain Equipment Co-operative and 1314625 Ontario Limited (together, the "**Petitioners**") coming on for hearing by MS Teams videoconference at Vancouver, British Columbia on 27/Nov/2020 AND ON HEARING Howard A. Gorman, Q.C. and Scott M. Boucher, counsel for the Petitioners, and those other counsel listed in **Schedule "A"** attached hereto; AND UPON READING the material filed, including the Second Affidavit of Robert Wallis made 23/Nov/2020 (the "**Second Wallis Affidavit**"), the Third Report of the Monitor dated 27/Oct/2020 and the Fourth Report of the Monitor dated 23/Nov/2020; AND PURSUANT TO the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the *British Columbia Supreme Court Civil Rules* and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

Terms of Reference

1. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Initial Order pronounced by this Court on September 14, 2020 (as the same has been amended and restated by the Amended and Restated Initial Order pronounced on October 2, 2020, as the same may be amended or amended and restated further from time to time, the "**ARIO**").

Monitor's Increased Powers

2. The powers and duties of Alvarez & Marsal Canada Inc., in its capacity as the court-Monitor and not in its personal capacity (and, in such capacity, the "**Monitor**") are hereby modified and expanded such that the Monitor, in addition to its powers set forth in the ARIO, is hereby empowered and authorized, but not obligated, to act at once in respect

of the Property and Business and, without in any way limiting the generality of the foregoing, is hereby expressly empowered and authorized to do any of the following where the Monitor considers it necessary or desirable to:

- (a) take any, and all steps in order to direct or cause the Petitioner to exercise rights under paragraph 13 of the ARIO;
- (b) to take possession of and exercise control over the Property and the Business and any and all proceeds, receipts and disbursements arising out of or from the Property and the Business;
- (c) to receive, preserve and protect the Property, or any part or parts thereof;
- (d) manage, operate and carry on the Business of the Petitioners, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the other business, cease to perform any contracts of the Petitioners, and/or disclaim any leases;
- (e) take any and all steps in order to direct or cause the Petitioners to administer the Property and operations of the Petitioners or to perform such other functions or duties as the Monitor considers necessary or desirable to deal with the Property or Business, including restructuring, wind-down, liquidation, disposal of assets, or other activities;
- (f) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property and/or the Business, whether in the Monitor's name or in the name and on behalf of the Petitioners, for any purpose pursuant to this Order;
- (g) monitor, review, and direct the Petitioners' receipts and disbursements and implement such measures of control as the Monitor deems reasonably necessary to ensure the appropriate monitoring of the Petitioners' expenses and disbursements, including:
 - (i) taking control of the Petitioners' existing bank accounts and, notwithstanding paragraph 12, establishing new bank accounts in the name of, and for, the Petitioners; and
 - (ii) adding or removing signing authorities to or from the Petitioners' bank account such that the Monitor will have sole and exclusive signing authority over the Petitioners' bank accounts,
- (h) initiate and administer any claims bar and/or claims resolution process, or protocol as may be approved by Order of this Court within these proceedings;
- (i) subject to the requirement for Court approval set forth in section 36 of the CCAA, direct or cause the Petitioners to complete one or more transactions for the sale of all or any part of the Business, Property or any part thereof, and conduct, supervise and recommend to the Court any procedure regarding the allocation and/or distribution of proceeds of any sales;
- (j) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:

- (i) without the approval of this Court in respect of any transaction, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359, or similar requirements under any other personal property security legislation to the extent the same may be waived by the court, shall not be required;

- (k) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (l) receive and collect all monies and accounts now owed or hereafter owing to the Petitioners and to exercise all remedies of the Petitioners in collecting such monies, including, without limitation, to enforce any security held by the Petitioners;
- (m) settle, extend or compromise any indebtedness owing to or by the Petitioners;
- (n) engage or cause the Petitioners to engage consultants, assistants, advisors, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, as the Monitor deems necessary or desirable to carry out the Monitor's powers and duties, including, without limitation, those conferred by the ARIO and this Order and all such persons shall be deemed to be "Assistants" under the ARIO;
- (o) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Petitioners, the Property or the Monitor, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Monitor deems appropriate on all matters relating to the Property and these proceedings, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable;
- (q) to exercise any rights or obligations of the co-operative Petitioner, or seek advice and directions, with respect to the *Cooperative Association Act*, SBC 1999, c 28;
- (r) prepare, negotiate and file with this Court a plan of compromise or arrangement in respect of the Petitioners, provided that the Petitioners' shall be deemed to have formulated such a plan, and any distributions made thereunder shall be deemed to have been made by the Petitioners and not the Monitor;

- (s) apply to this Court for any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order granted by this Court including, without limitation, for advice and directions with respect to any matter and financing and a corresponding charge to secure such borrowings of the Monitor as ordered by this Court;
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined in the ARIO), including the Petitioners and their past or present directors and officers, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR

3. Each of (i) the Petitioners, (ii) all of the Petitioners' current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, (iii) 1264686 B.C. Ltd. and its permitted assignees (collectively, the "**Purchaser**"), (iv) all of the Purchaser's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (v) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Monitor of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Monitor, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Monitor upon the Monitor's request, provided that the Monitor shall reimburse such Persons for their reasonable costs incurred in connection therewith.
4. All Persons shall forthwith advise the Monitor of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Petitioners, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Monitor or permit the Monitor to make, retain and take away copies thereof and grant to the Monitor unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 4 or in paragraph 5 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Monitor due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure, and provided that the Monitor shall reimburse such Persons for their reasonable costs incurred in connection therewith.
5. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Monitor for the purpose of allowing the Monitor to recover and fully copy all of the information contained therein whether by way of printing the information onto

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

NO PROCEEDINGS AGAINST THE MONITOR

6. No proceeding or enforcement process in any court or tribunal (each, a **"Proceeding"**), shall be commenced or continued against the Monitor except with the written consent of the Monitor or with leave of this Court. For certainty, the Monitor shall not be deemed to be a director or officer of the Petitioners.

CONTINUATION OF SERVICES

7. During the Stay Period, all Persons having oral or written agreements with the Petitioners or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services of any kind to the Petitioners are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Monitor, and that the Monitor shall be entitled to the continued use of the Petitioners' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Monitor in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Monitor, or as may be ordered by this Court.

MONITOR TO HOLD FUNDS

8. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Monitor from and after the making of this Order from any source whatsoever including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Monitor (the **"Post-Order Accounts"**) and the monies standing to the credit of such Post-Order Accounts from time to time, net of any disbursements provided for herein, shall be held by the Monitor to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

9. Subject to the right of employees to terminate their employment notwithstanding paragraph 10, all employees of the Petitioners shall remain the employees of the Petitioners until such time as the Monitor, on the Petitioners' behalf, may terminate the employment of such employees. The Monitor shall not be liable for any employee-

related liabilities of the Petitioners, nor shall it be deemed to be a successor employer or be liable for any successor employer liabilities as provided for in Section 14.06(1.2) of the BIA, other than amounts the Monitor may specifically agree in writing to pay and amounts in respect of obligations imposed specifically on receivers by applicable legislation. The Monitor shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Monitor may hire in accordance with the terms and conditions of such employment by the Monitor.

10. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Monitor may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “Sale”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Monitor, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Petitioners, and shall return all other personal information to the Monitor, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

11. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “Possession”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial or other law relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33, the *Fisheries Act*, R.S.C. 1985, c. F-14, the *Environmental Management Act*, R.S.B.C. 1996, c. 118 and the *Fish Protection Act*, S.B.C. 1997, c. 21 and regulations thereunder (collectively “Environmental Legislation”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless the Monitor is actually in possession.

LIMITATION ON THE MONITOR’S LIABILITY

15. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate

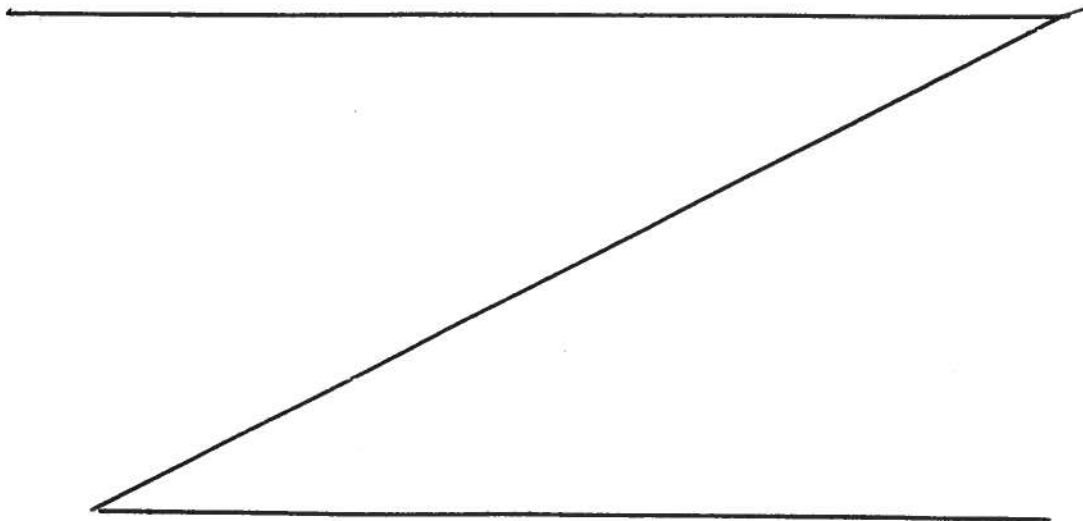
from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.

NON-DEROGATION OF RIGHTS

16. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after September 14, 2020 (the "**Filing Date**"), nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioners on or after the Filing Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

GENERAL

17. The Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
18. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioners, the Business or the Property.
19. The Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
20. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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

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



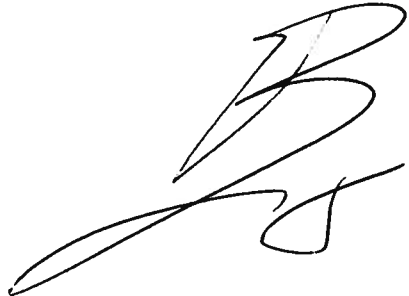
Counsel for the ~~Petitioners~~

Scott M. Boucher

BY THE COURT



REGISTRAR



SCHEDULE "A"
LIST OF COUNSEL

COUNSEL	NAME OF PARTY(IES) REPRESENTED
Mary I.A. Buttery, Q.C. H. Lance Williams	The Monitor, Alvarez & Marsal Canada Inc.
Philip Cho	Plateau Village Properties Inc.
Colin Gusikoski	Kevin Harding and certain other co-operative members and Lorne Hoover on his own behalf and on behalf of former MEC employees that have a claim against MEC
Ryann Atkins	Midtown Plaza Inc.
Elliot H. Bridgewater	BC Coop Association and Cooperatives and Mutuals Canada
Trevor Batty	Brookfield Residential (Alberta) LP

No. S209201
Vancouver Registry

In the Supreme Court of British Columbia

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

AND

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

Petitioners

ORDER MADE AFTER APPLICATION

NORTON ROSE FULBRIGHT CANADA LLP

Barristers & Solicitors
1800 – 510 West Georgia Street
Vancouver, BC V6B 0M3
Attention: Howard A. Gorman, Q.C.

Agent: West Coast Title Search

SCB/ker

File# 1001118436