



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

**NOTICE OF APPLICATION
(Assignment Order)**

Name of applicant: The Petitioners, Mountain Equipment Co-operative ("**MEC**") and 1314625 Ontario Limited ("**131 Limited**", together with MEC, the "**Petitioners**")

To: The Service List attached hereto as **Schedule "A"**

TAKE NOTICE that an application will be made by the Petitioners to the Honourable Madam Justice Fitzpatrick by MS Teams videoconference on 21/Oct/2020 at 10:00 am for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An assignment order (the "**Assignment Order**") substantially in the form attached hereto as **Schedule "B"**, which among other things assigns all of the rights and obligations of the Petitioners under the Remaining Contracts (defined below) to 1266524 B.C. Ltd. (the "**Purchaser**"), as assignee of 1264686 B.C. Ltd. (the "**Original Purchaser**").
2. Such further and other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

Introduction

1. All capitalized terms not otherwise defined herein have the same meaning as given to them in the first affidavit of Philippe Arrata made on 13/Sep/2020 (the "**First Arrata Affidavit**").
2. On September 14, 2020, Madam Justice Fitzpatrick granted the Initial Order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the

“CCAA”), granting, among other things, a stay of proceedings in favour of the Petitioners (the **“Stay of Proceedings”**) until the return date of September 24, 2020.

3. On September 24, 2020, Madam Justice Fitzpatrick extended the Stay of Proceedings until September 28, 2020, which was subsequently extended to November 3, 2020.
4. On October 2, 2020, this Court made an order approving the Transaction pursuant to the Sale Agreement (the **“Sale Approval and Vesting Order”**) and an amended and restated initial order (the **“Amended and Restated Initial Order”**).
5. Since that time, and as discussed below, the Petitioners, in conjunction with the Purchaser, have been working diligently and in good faith to work with counterparties to the Consent Required Contracts (as defined below) to obtain consents to assign those contracts to the Purchaser.

Overview of the Sale Agreement

6. As discussed in the First Arrata Affidavit, the first affidavit of Robert Wallis made 22/Sep/2020 (the **“First Wallis Affidavit”**) and the First Report of the Monitor, after engaging in an extensive search for refinancing opportunities and then the SISF process, the Petitioners received a number of bids for substantially all of the assets for MEC’s business.
7. The bid from Kingswood Capital Management LP (**“Kingswood”**) was clearly the best offer for the Petitioners and their stakeholders, as it was not only the highest in terms of total consideration among the bids, it also would ensure the maximum levels of retention in terms of employees and stores, assumption of liability for warranties, gift cards, and payments to certain suppliers and service providers, as well as the lowest closing risk.
8. On September 11, 2020, the Petitioners entered into the Sale Agreement with the Purchaser, which is a Canadian subsidiary of Kingswood. Among other things, the Sale Agreement will result in the Business being continued as a going concern, with the Purchaser retaining at least 75% of active employees and at least 17 of MEC’s stores.
9. Since the date of the Sale Approval and Vesting Order, the Purchaser has confirmed that it will be retaining 21 of MEC’s stores, and a large majority of its active employees.
10. Some of the key aims and elements of the Sale Agreement include the following:
 - (a) the Purchaser will continue to operate the Business as a going concern under a similar name to MEC and will maintain the goodwill of the retail business;
 - (b) the Purchased Assets comprise almost all of the assets currently used by MEC for the Business;
 - (c) the Purchaser will assume liabilities including with respect to warranties, existing gift cards, and employees who accept offers of employment;

- (d) in order to protect goodwill with existing suppliers and contractors, the Purchaser will assume liability for payments to certain inventory and other key vendors and suppliers and will seek assignment of certain contracts; and
 - (e) the Sale Agreement is not conditional on any financing or third-party approvals.
- 11. The Sale Agreement is for a price that will repay the Lenders in full, will result in the assumption of certain significant liabilities of the Petitioners, will maximize the ongoing number of operating stores and retention of a majority number of employees, and is expected to leave the Petitioners with additional funds to support a CCAA plan and/or claims process for a distribution to unsecured creditors.

Assignment Order

The Sale Agreement

- 12. Under the Sale Agreement, the Petitioners must use commercially reasonable efforts, as directed by and in cooperation with the Purchaser, to obtain the written consent of the counterparties to the various contracts that are included in the Purchased Assets to the assignment of those contracts to the Purchaser, to the extent the same is required by the terms of those contracts.
- 13. Although required to maintain only 17 retail locations, the Purchaser has negotiated revised lease agreements with 15 lease retail locations and will maintain the six owned retail locations, for a total of 21 retail locations. Because of these amended lease agreements, it is not anticipated that any Real Property Leases will be subject to an assignment application.
- 14. In addition, the Petitioners must use commercially reasonable efforts to obtain written consent of:
 - (a) the counterparties or any other Persons to the assignment to the Purchaser of 27 Assumed Contracts that are defined as “Material Contracts”; and
 - (b) the counterparties or any other Persons to the assignment of 59 Personal Property Leases to the Purchaser,(collectively, the “**Consent Required Contracts**”).
- 15. The Purchaser is continuing to review the Consent Required Contracts, and the number of Consent Required Contracts may be updated by the time of the hearing of this application.
- 16. Pursuant to the Sale Agreement, the Purchaser is responsible for the payment of all cure costs in relation to the Remaining Contracts (the “**Cure Costs**”). Accordingly, the Assignment Order contemplates that, as a condition of the assignment of the Remaining Contracts to which they relate, Cure Costs shall be paid by the Purchaser to the

applicable counterparty within five business days of the Purchaser's receipt of wire or other payment instructions from such counterparty.

The Remaining Contracts

17. The Consent Required Contracts include substantially all material contracts in connection with the Petitioners business, including agreements with key apparel and equipment suppliers, and IT related contracts. The assignment of these agreements is important to the continuation of the Petitioners' business by the Purchaser as it currently operates.
18. In total, there are currently 101 Consent Required Contracts. To the extent that consent cannot be obtained, the Petitioners are required to make an application for the Assignment Order assigning all of the counterparties' respective rights and obligations under these agreements to the Purchaser and compelling or deeming the applicable consents to have been provided.
19. Of the Consent Required Contracts, the parties have agreed in the Sale Agreement to designate a subset of 12 information technology related contracts as "Material IT Contracts". The Material IT Contracts are crucial to the operation of the Petitioners' business (for example, marketing, online payment process and delivery). Under the Sale Agreement, it is a condition of the closing of the Transaction that the Petitioners obtain either consents to the assignment to the Purchaser of all Material IT Contracts, or an assignment order of the Court. The Material IT Contracts are those contracts specifically listed in Schedule 6.2(f) to the Sale Agreement.
20. The Petitioners are bringing this application for the Assignment Order authorizing the assignment of any remaining Consent Required Contracts for which consent has not been obtained (the "**Remaining Contracts**"). The Petitioners and the Purchaser are continuing to work diligently to obtain consents, and the number of Remaining Contracts will likely be reduced prior to the return date for this Application.
21. The Petitioners and the Purchaser have contacted each of the counterparties to the Consent Required Contracts to seek their consent to the assignment of their respective contracts.
22. On October 1, 2020, the Petitioners, in conjunction with the Purchaser and with the assistance of counsel, delivered letters to the counterparties of the Consent Required Contracts, in which the Petitioners advised the counterparties of the CCAA proceeding and the Transaction, and requested their consent to the assignment of their respective contract to the Purchaser.
23. The letter advised the counterparties that if they did not provide their consent, the Petitioners would be required to seek a court order assigning the applicable contract under the CCAA.

24. Given the Petitioners' cash flows, the need to repay the Lenders in full at closing, and the need to close the Transaction in sufficient time to take advantage of the holiday sales period generally, both the Petitioners and the Purchaser have been working expediently, in good faith, and with due diligence to effect the closing.
25. To that end, the Petitioners and their counsel have been in frequent and extensive discussions with the non-landlord counterparties in order to obtain their consent to the assignment or amendment of their respective contracts in the short period of time before closing.
26. The Purchaser, directly or through its agents, have been in discussions with the landlord counterparties, and that all of the landlords with respect to the Leases to be assumed have either consented to the assignment or amendment of their respective Leases, or have, or are expected to have by the hearing of this application, agreements in principle for the assignment or amendment of their Leases.
27. The assignment of the Remaining Contracts is important for a successful going concern solution for the Petitioners' business and therefore the preservation of employment for a majority of the Petitioners' active employees, and the continued and seamless operation of most of the Petitioners' stores. In particular, if the Petitioners are not able to obtain consents for the Material IT Contracts, the Purchaser will not have an obligation to close the Transaction.

Part 3: LEGAL BASIS

1. The Petitioners rely on:
 - (a) the CCAA;
 - (b) the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**");
 - (c) *Supreme Court Civil Rules* 8-1 and 13-1;
 - (d) the inherent jurisdiction of this Honourable Court; and
 - (e) such further and other legal bases and authorities as counsel may advise and this Honourable Court may permit.

Assignment Order

2. Section 11.3(1) of the CCAA authorizes the Court to make an order assigning the rights and obligations of a debtor company under an agreement to any person specified by the Court and agreeable to the assignment, provided that none of the exclusions in section 11.3(2) apply.
3. Under section 11.3(3), in deciding whether to make the assignment order, the Court is to consider, among other things, the following factors:
 - (a) whether the monitor approved the proposed assignment;
 - (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
 - (c) whether it would be appropriate to assign the rights and obligations to that person.

The Monitor supports the granting of the Assignment Order

4. The Monitor's opinion on the appropriateness of the Assignment Order under s. 11.3 of the CCAA is set out in its Second Report.

The Purchaser is willing and able to perform the Remaining Contracts

5. The Petitioners are of the view that the Purchaser is able to perform the obligations under the Remaining Contracts. The Purchaser has provided a letter with certain projected financial information for the Purchaser and other relevant information which will be attached as an Appendix to the Second Report of the Monitor.
6. Further, as noted above, a large number of counterparties have provided consents to assign or amend their respective contracts or leases.

It is appropriate to grant the Assignment Order in the circumstances

7. With respect to whether it is appropriate to make the Assignment Order, prior to the enactment of section 11.3, the Courts would rely on the general power under section 11 of the CCAA to assign agreements over the objections of counterparties, where such assignment was important to the reorganization process, with care being taken not to unnecessarily affect third party rights or inappropriately impose on counterparties.

Barafield Realty Ltd. v. Just Energy (B.C.) Limited Partnership, 2014 BCSC 945, para. 107
Nexient Learning Inc. (Re), [2009] O.J. No. 5507 (S.C.J.), paras. 56-58

8. This Court has held that the effect of the enactment of section 11.3 was to codify what had been the general approach to assignment issues. That general approach considered the twin goals of assisting the reorganization process, while also treating the counterparties fairly and equitably.

9. In *Re TBS Acquireco Inc.*, in considering whether to assign the subject contracts and leases under section 11.3, the Court noted that a large number of consents has been obtained, and the assignment of the remaining leases and contracts would result in the greatest number of stores and the continued employment of the greatest number of people.

10. In this case, it is appropriate to grant the Assignment Order because, among other things:

- (a) The Transaction will be completed. The assignment of the Material IT Contracts is a condition of closing and therefore is necessary to the successful restructuring of the Petitioners' business and the receipt of the Purchase Price. Without the assignment of the Material IT Contracts, MEC will not be able to continue as a going concern, resulting in the loss of employment for upwards of hundreds of employees, the loss of business to MEC's suppliers, the loss of a key tenant for numerous landlords in a difficult rental environment generally, and the failure to maximize value for the Petitioners' stakeholders;
- (b) The Petitioners' business will be carried on with minimal disruption and with optimal likelihood of success. Although the assignment of the Remaining Contracts that are not Material IT Contracts is not an actual condition for the closing of the Transaction, such contracts are nonetheless important for the continued operation and success of the business by the Purchaser;
- (c) Based on information received from the Purchaser, it is and will be able to comply with the covenants and obligations under the Remaining Contracts;
- (d) Absent the assignment of any given Remaining Contract, the obligations with respect to the same will be stranded with the Petitioners as unsecured liabilities, the net proceeds will be insufficient to satisfy such obligations in full, and the recovery of all other unsecured creditors will be diminished; and
- (e) The Purchaser has agreed to pay the Cure Costs in respect of the Consent Required Contracts, as set out at Schedule "B" to the draft Assignment Order.

11. In addition:

- (a) No amendments are being sought in respect of the Remaining Contracts pursuant to the proposed Assignment Order;
- (b) The Remaining Contracts do not include any eligible financial contracts, contracts entered into post-filing or collective agreements; and

- (c) the Petitioners intend to provide all landlords and other counterparties to the Remaining Contracts with notice of the application to assign the Remaining Contracts.
12. In the circumstances the Petitioners submit that the non-exhaustive considerations under section 11.3(3) have been met, and this Court should exercise its discretion to assign the Remaining Contracts to the Purchaser, as the Purchaser has demonstrated its ability to perform such contracts for the ultimate benefit of the Petitioners' stakeholders, including the counterparties.

Part 4: MATERIAL TO BE RELIED ON

- 1. Affidavit #1 of Philippe Arrata, made 13/Sep/2020;
- 2. Confidential Affidavit #2 of Philippe Arrata, made 13/Sep/2020;
- 3. The First Report of the Monitor, dated 24/Sep/2020;
- 4. Affidavit #1 of Robert Wallis, made 22/Sep/2020;
- 5. Affidavit #3 of Philippe Arrata, made 15/Oct/2020;
- 6. The Second Report of the Monitor, to be filed;
- 7. The pleadings and other materials filed herein; and
- 8. Such further and other material as this Honourable Court may accept.

The applicants estimate that the application will take two hours.

- ☐ This matter is within the jurisdiction of a master.
- ☒ This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that:
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

- (i) a copy of the filed application response;
- (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Norton Rose Fulbright Canada LLP

Date: 16/Oct/2020

per:

Signature of

☐ applicant ☒ lawyer for applicants

 Howard A. Gorman, Q.C.

To be completed by the court only:

Order made

- ☐ in the terms requested in paragraphs _____ of Part 1 of this notice of application
- ☐ with the following variations and additional terms:

Date: _____

Signature of ☐ Judge ☐ Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery

- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts

SCHEDULE "A"

No. S209201
Vancouver Registry

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R.S.C. 1985, c. C-36, AS AMENDED

AND

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

Petitioners

EMAIL SERVICE LIST

ASSIGNMENT ORDER EMAIL SERVICE LIST

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<p>Victory Square Law Office LLP #710 – 777 Hornby Street Vancouver, BC V6Z 1S4</p> <p>Attention: Colin Gusikoski</p> <p>Email: cgusikoski@vslo.ca</p> <p>Tel: 604-602-7984</p> <p>- and -</p> <p>Nathanson Schachter & Thompson LLP Suite 750 - 900 Howe Street Vancouver, BC V6Z 2M4</p> <p>Attention: Peter J. Reardon</p> <p>Email: preardon@nst.bc.ca</p> <p>Tel: 778.328.8940</p> <p><i>Counsel for Kevin Harding and certain other co-operative members</i></p>	<p>WeirFoulds LLP 66 Wellington Street West, Suite 4100 P.O. Box 35, TD Bank Tower Toronto, ON M5K 1B7</p> <p>Attention: Philip Cho</p> <p>Email: pcho@weirfoulds.com</p> <p>Tel: 416-619-6296</p> <p>- and -</p> <p>Clark Wilson LLP 900 – 885 West Georgia Street Vancouver, BC V6C 3H1</p> <p>Attention: Christopher Ramsay Katie Mak</p> <p>Email: cramsay@cwilson.com kmak@cwilson.com ncarlson@cwilson.com dhamann-trou@cwilson.com</p> <p>Tel: 604-687-5700</p> <p><i>Counsel for Plateau Village Properties Inc.</i></p>
<p>McCarthy Tétrault LLP 66 Wellington Street West Suite 5300, TD Bank Tower Box 48 Toronto, ON M5K 1E6</p> <p>Attention: Heather Meredith James Klein Alexander Steele</p> <p>Email: hmeredith@mccarthy.ca jklein@mccarthy.ca asteale@mccarthy.ca</p> <p>Tel: 416-362-1812</p> <p><i>Counsel for Concert Realty</i></p>	<p>Goodmans LLP Bay Adelaide Centre 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7</p> <p>Attention: Bradley Wiffen</p> <p>Email: bwiffen@goodmans.ca</p> <p>Tel: 416-979-2211</p> <p><i>Crestpoint Real Estate Investments Ltd., as authorized asset manager on behalf of 0965311 B.C. Ltd.</i></p>

<p>Department of Justice – Nova Scotia 6th floor, 1690 Hollis Street Halifax, NS B3J 3J9</p> <p>Attention: Pamela Branton Senior Solicitor Legal Services Division</p> <p>Email: pamela.branton@novascotia.ca catherine.lunn@novascotia.ca agnes.macneil@novascotia.ca</p> <p>Tel: 902-424-7244</p> <p><i>Counsel for Department of Justice (Nova Scotia)</i></p>	<p>Borden Ladner Gervais LLP 1200 - 200 Burrard Street Vancouver, BC V7X 1T2</p> <p>Attention: Ian Graf</p> <p>Email: igraf@blg.com</p> <p>Tel: 604-640-4121</p> <p><i>Counsel for Southern Railway of British Columbia Limited</i></p>
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LANDLORDS	
BRITISH COLUMBIA	
Beedie Development Limited Partnership (101 East 2 nd Avenue, Vancouver) c/o Beedie Development Group 3030 Gilmore Diversion Burnaby, BC V5G 3B4 Attention: VP, Asset Management Attention: Katie Maslechko Rob Fiorventio Taylor Archer Email: Katie.maslechko@beedie.ca rob.fiorvento@beedie.ca taylor.archer@beedie.ca	The Mac & Mac Developments Ltd. (1450 Government Street, Victoria) 402 - 612 View Street Victoria, BC V8W 1J5 Attention: Jesse Fitzpatrick Email: jesse_fitco@icloud.com c/o Pearlman Lindholm 201 - 19 Dallas Road Victoria, BC V8V 1B4 Attention: Tim Schober Fax: 250-388-5856
McIntosh Properties Ltd. (1867 Copper Road, Kelowna) 201 – 1980 Cooper Road Kelowna, BC V1Y 8K5 Attention: Randy Lowe Email: randy@mcintoshproperties.ca	I.G. Investment Management, Ltd. as trustee for Investors Real Property Fund (1077 Great Northern Way, Vancouver) One Canada Centre 447 Portage Ave Winnipeg, MB R3C 3B6 Attention: Max Rosenfeld Email: mrosenfeld@cclgroup.com

Valley Properties Ltd. (1 - 6121 200 th Street, Langley) Attention: Mona Khandan Wayne Popowich Email: mona.khandan@bentallgreenoak.com wayne.popowich@bentallgreenoak.com	
ALBERTA	
Brookfield Residential (Alberta) LP by its GP Camra Ltd. (710 – 19587 Seaton Crescent, Calgary) 4906 Richard Road, SW Calgary, AB T3E 6L1 Attention: Vice President Commercial Attention: Elton Ma Stephanie Peters Andrew Borras elton.ma@brookfieldpropertiesdevelopment.com stephaniep@viewwest.net Andrew.borras@brookfieldpropertiesdevelopment.com	Cameron Corporation (1624 99 Street, NW, Edmonton) 10180 – 11 th Street Edmonton, AB T5K 1K6 Attention: Sarb Dhaliwal Tony Rota Email: sarb@cameroncorporation.com tony@cameron-corporation.com
MANITOBA	
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2206181 Ontario Inc. (300 Queen Street, West, Toronto) 205 - 26 Soho Street Toronto, ON M5T 1Z7 Attention: Dominique Michaud Stafford Lawson Sybille Welte Owen Lawson Email: dmichaud@robapp.com stafford@parallaxcorp.ca swelte@sitelinegroup.com olawson@rogers.com	9310924 Canada Inc. (1051 Wellington Road, London) 250 Bloor Street East, 15th Floor Toronto, ON M4W 1E5 Attention: Fund Manager Attention: Maggie Zhan Email: maggie_zhan@manulife.ca c/o Colliers International 2200 - One Queen Street, East Toronto, ON M5C 2Z2 Attention: Lease Services Attention: Alanna Cantkier Email: alanna.cantkier@colliers.com

QUEBEC	
169159 Canada Inc. (4394 St-Denis Street, Montreal) 312 - 4388 St-Denis Street Montreal, QC H2J 2L1 Attention: Mario Blanco Email: mdennys.blanco@gmail.com	ECL Developments Limited (4869 Boulevard Taschereau, Greenfield Park) 250 Bloor Street East, 15th Floor Toronto, ON M4W 1E5 Attention: Fund Manager c/o Colliers International 2200 - One Queen Street, East Toronto, ON M5C 2Z2 Attention: Alanna Cantkier Email: alanna.cantkier@colliers.com
Le Carrefour Laval (2013) Inc. (2615 Boulevard Daniel-Johnson, Laval) c/o The Cadillac Fairview Corporation Limited 5th Floor, 20 Queen Street, West Toronto, ON M5H 3R4 Attention: Marcia Grant Email: Marcia.grant@cadillacfairview.com	MCM Real Estate Trust (8989 Boulevard De L'Acadie, Montreal) c/o Bentall Kennedy (Canada) LP 320 – 615 du Marche Central Street Montreal, QC H4N 3J5 Attention: Dev Hubraj Email: dev.hubraj@quadreal.com
NOVA SCOTIA	
Racala Property Development Limited (1550 Granville Street, Halifax) 60 Highfield Park Drive Dartmouth, NS B3A 4R9 Attention: Gibran Ramia Joe Ramia Email: gramia@pagepm.ca jramia@rankinc.ca	

Supplier Agreements	
Shimano Canada Limited Attention: Joe Mignacca Email: jmignacca@shimano.com	Groupe Rossignol Canada Inc. Attention: Chris Horan Email: choran@rossignol.com
Parks Canada Agency Attention: Alain Nantel Email: alain.nantel@pc.gc.ca	

Material IT Contracts	
Microsoft Corporation Attention: John Kelly Email: jkell@microsoft.com Attention: Tracey Meunier Email: tracey.meunier@microsoft.com	TELUS Communications Inc. Attention: Denise Mann Email: Denise.Mann@telus.com Attention: Lisa Polonio Email: Lisa.Polonio@telus.com
IBM Canada Ltd., by IBM Global Financing Canada Corporation. Attention: Scott Ellis Email: ellis@ca.ibm.com Attention: Michelle Doak Email: doakm@ca.ibm.com Attention: Liane Whittman Email: lwittman@ca.ibm.com	Blue Yonder, Inc. (fka JDA Software Inc.) Attention: Nicholas Barton Email: Nicholas.Barton@blueyonder.com Attention: Arleen Ottensman Email: Arleen.Ottensman@blueyonder.com
Reliant Web Hosting Inc. DBA Pivotree (formerly DBA Tenzing Managed IT Services) Attention: Elizabeth Scott Email: elizabeth.scott@pivotree.com Attention: Jess Lee Email: jess.lee@pivotree.com Attention: Gustavo Chavez Email: gustavo.chavez@pivotree.com Attention: Ted Eastwick Email: ted.eastwick@pivotree.com Attention: Mo Ashoor Email: mo.ashoor@pivotree.com	hybris Canada, Inc. Attention: Daniel H. Greenberg Email: daniel.greenberg@sap.com Attention: Arlette Noujaim Email: arlette.noujaim@sap.com Attention: Jenny Ni Email: jenny.ni02@sap.com
Other IT and Software Agreements	
Carbon Black, Inc. Attention: Russell Anderson Email: ruanderson@vmware.com	Computer Generated Solutions Quebec, Inc. Attention: Carl S. Heringer Email: cheringer@cgsinc.com Attention: Barbara Krzywoszanski Email: BKrzywoszanski@cgsinc.com
Sophos Limited Attention: The Legal Department Email: Legalnotices@sophos.com	Rapid7 LLC Attention: Ross Carman Email: ross_carman@rapid7.com

The Ultimate Software Group of Canada, Inc. Attention: Jennifer Smereka Email: jennifer_smereka@ultimatesoftware.com Attention: Arlene Rodriguez Email: arlene_rodriguez@ultimatesoftware.com	New Relic Inc. Attention: Lindsay Gordon Email: lindsaygordon@newrelic.com
ZOFTEC, LLC dba Veras Retail Attention: Florin V. Ivan Email: florin@ivanandassociates.com Attention: Justin M. Clark Email: justin@ivanandassociates.com	Adobe Inc. Attention: Chehade Semaan Email: chsemaan@adobe.com

Other Agreements	
Avanade Canada Inc. Attention: Adam Brovender Email: adam.brovender@avanade.com	Heatherbrae Builders Co. Ltd. Attention: Dave Knight Email: davek@heatherbrae.com
Personal Property Leases	
LBEL Inc. Attention: Derek Gamlem Email: EFAssignments@eservicecanada.ca	Wells Fargo Equipment Finance Company Attention: Bhavesh Mistry Email: Bhavesh.Mistry2@wellsfargo.com

SCHEDULE "B"

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

(Assignment Order)

ON THE BEFORE THE HONOURABLE MADAM 21/Oct/2020
JUSTICE FITZPATRICK

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 21/Oct/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 First Affidavit of Philippe Arrata made 13/Sep/2020 (the "**First Arrata Affidavit**"), the Third Affidavit of Philippe Arrata made 15/Oct/2020, the Second Report of the Monitor dated 15/Oct/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:

1. The time for service of the Notice of Application dated October 16, 2020 and supporting materials is hereby abridged such that the Notice of Application is properly returnable today and hereby dispenses with further service thereof.
2. Any capitalized term used and not defined herein shall have the meaning ascribed to it in the Asset Purchase Agreement dated September 11, 2020 (the "**Sale Agreement**") between the Petitioners, as vendor, and 1264686 B.C. Ltd. (the "**Original Purchaser**"), as purchaser (a copy of which is attached as Exhibit "P" to the First Arrata Affidavit), or the Approval and Vesting Order dated October 2, 2020 (the "**Approval and Vesting Order**"), as applicable.

3. Pursuant to section 11.3 of the CCAA, immediately upon the delivery of the Monitor's certificate as contemplated the Approval and Vesting Order, all of the rights and obligations of the Petitioners under the agreements listed in **Schedule "B"** hereto, including all associated or related agreements, schedules, appendices, addenda, amendments, supplements, restatements or other modifications (each an **"Assigned Contract"** and collectively, the **"Assigned Contracts"**) shall be assigned, conveyed and transferred to 1266524 B.C. Ltd. (the **"Purchaser"**).
4. The assignment of the Assigned Contracts to the Purchaser is valid and binding upon all of the counterparties to the Assigned Contracts (each a **"Counterparty"** and, collectively, the **"Counterparties"**), notwithstanding any restriction or prohibition contained in any such Assigned Contract relating to the assignment thereof, including, but not limited to, any provision requiring the consent of any party to the transfer, conveyance, or assignment of the Assigned Contracts.
5. The assignment and transfer of the Assigned Contracts shall further be subject to the provision of this Court's Approval and Vesting Order directing that the Petitioners' rights and obligations under the Assigned Contracts shall vest absolutely in the Purchaser free and clear of all Encumbrances other than the Permitted Encumbrances (as such terms are defined in the Approval and Vesting Order).
6. No Counterparty, nor any other person, upon the assignment and transfer to, and assumption by, the Purchaser of the Assigned Contracts hereunder shall make or pursue any demand, Claim, action or suit or exercise any right or remedy (including any termination rights) under any Assigned Contract against the Purchaser relating to:
 - (a) any defaults thereunder relating to the assignment of the Assigned Contracts;
 - (b) the Petitioners having sought or obtained relief under the CCAA;
 - (c) the insolvency of the Petitioners; or
 - (d) any failure by the Petitioners to perform a non-monetary obligation under any Assigned Contract;and all such Counterparties and parties shall be forever barred and estopped from taking such action. For greater certainty, nothing herein shall limit or exempt the Purchaser in respect of obligations accruing, arising or continuing after the date hereof, under Assigned Contracts other than in respect of items (a) through (d) above.
7. The Cure Costs of the Assigned Contracts shall be in the amounts set out in **Schedule "B"** hereto and, upon Closing, the Purchaser shall pay the Cure Costs as set out therein with respect to each applicable Assigned Contract, in full and final satisfaction of any Cure Costs owing to the applicable Counterparty by no later than the day that is the later of: (i) five (5) business days following delivery of the Monitor's Certificate to the

Purchaser; and (ii) five (5) business days from the date that the Purchaser receives wire remittance instructions or other payment instructions from such Counterparty.

8. The Petitioners shall send a copy of this Order to all of the Counterparties listed in **Schedule "B"**. The Petitioners shall provide notice to any Counterparty that is listed in **Schedule "B"** as of the date of this Order in the event that, prior to closing of the Sale Transaction, the Assigned Contract to which it is a party is subsequently added as an Excluded Contract (as the term is defined in the Sale Agreement) and such Counterparty shall thereby be removed from **Schedule "B"** without the need for further court order.
9. The Monitor is hereby authorized and directed to take such actions as it deems necessary or appropriate in the circumstances to assist the Petitioners in the assignment and transfer of the Assigned Contracts.
10. Notwithstanding:
 - (a) the pendency of these proceedings;
 - (b) any petitions for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of either of the Petitioners and any bankruptcy order issued pursuant to any such petitions; or
 - (c) any assignment in bankruptcy made in respect of either of the Petitioners;

the assignment of the Assigned Contracts in and to the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Petitioners and shall not be void or voidable by creditors of any of the Petitioners, nor shall it constitute or be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *BIA* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

11. This Order shall have full force and effect in all provinces and territories in Canada.
12. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Petitioners, the Monitor, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners, or the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Petitioners, and the Monitor and their respective agents in carrying out the terms of this Order.
13. The Petitioners, the Purchaser, the Monitor, and any Counterparty may apply to this Court for advice and direction, or to seek relief in respect of any matters arising from or

under this Order, including without limitation, as necessary, to effect the transfer of the Assigned Contract (including any transfer of title registrations in respect of such Assigned Contracts), the interpretation of this Order or the implementation thereof, and for any further order that may be required, on notice to any party likely to be affected by the order sought or on such notice as this Court requires.

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

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

Signature of

☐ party ☒ lawyer for the Petitioners

Scott M. Boucher

By the Court.

Registrar

SCHEDULE "A" – List of Counsel

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

SCHEDULE "B" – List of Assigned Contracts and Cure Costs

<u>No.</u>	<u>Name of Agreement</u>	<u>Counterparty</u>	<u>Cure Costs (Cdn\$)</u>
Supplier Agreements			
1.	Retailer Agreement, dated January 23, 2019, between Mountain Equipment Co-operative and Shimano Canada Limited.	Shimano Canada Limited	\$266,230.56
2.	Authorized Retail Dealer Agreement, dated August 29, 2012, between Mountain Equipment Co-operative and Groupe Rossignol Canada Inc.	Groupe Rossignol Canada Inc.	\$0
3.	Agreement for the Sale of Parks Canada's Discovery Passes and Expiration Date Decals, dated December 8, 2017, between Mountain Equipment Co-operative and Parks Canada Agency.	Parks Canada Agency	\$0
Material IT Contracts			
4.	Volume Licensing Program (Agreement no. E0541091), dated June 29, 2019, between Mountain Equipment Co-operative and Microsoft Corporation, such Program including the following licensing and purchasing documents: (i) Microsoft Business and Services Agreement X20-10008; (ii) Enterprise Agreement X20-10136; (iii) Enterprise Enrollment No. 82652644; (iv) Enterprise Purchase Agreement X20-10134; (v) Enterprise Agreement Customer Price Sheet Quote No. 0857974.004; (vi) Pricing Amendment P-CTM-CPT-OPT,P-M239	Microsoft Corporation	\$0
5.	Telus Customer Agreement – Non-Regulated/ Forborne Services (Contract ID# ECB 282776), dated February 26, 2019, between Mountain Equipment Co-operative and TELUS Communications Inc.	TELUS Communications Inc.	\$24,799.26
6.	Statement of Work # 726432 for Professional Services Agreement between TELUS and Mountain Equipment Co-operative, dated February 20, 2019.	TELUS Communications Inc.	

<u>No.</u>	<u>Name of Agreement</u>	<u>Counterparty</u>	<u>Cure Costs (Cdn\$)</u>
7.	Telus Customer Agreement – Non-Regulated/ Forborne Services (Contract ID# ECB 282941), dated February 26, 2019, between Mountain Equipment Co-operative and TELUS Communications Inc.	TELUS Communications Inc.	
8.	Telus Customer Agreement – Non-Regulated/ Forborne Services (Contract ID# ECB 285127), dated August 29, 2019, between Mountain Equipment Co-operative and TELUS Communications Inc.	TELUS Communications Inc.	
9.	IBM Customer Agreement Number ICA-234238, dated September 7, 1994, between Mountain Equipment Co-operative and IBM Canada Ltd.	IBM Canada Ltd., by IBM Global Financing Canada Corporation.	\$7,202.24
10.	Software Support Agreement, dated April 7, 2000, between Mountain Equipment Co-operative and Blue Yonder, Inc. (fka JDA Software Inc.), as amended from time to time.	Blue Yonder, Inc. (fka JDA Software Inc.)	\$0
11.	Master Service Agreement, dated January 30, 2015, between Mountain Equipment Co-operative and Reliant Web Hosting Inc. DBA Pivotree (formerly DBA Tenzing Managed IT Services).	Reliant Web Hosting Inc. DBA Pivotree (formerly DBA Tenzing Managed IT Services).	\$14,871.40
12.	Master Services Agreement, dated June 9, 2014, between Mountain Equipment Co-operative and hybris Canada, Inc.	hybris Canada, Inc.	\$0
Other IT and Software Agreements			
13.	Cb Response Cloud Agreement, dated July 27, 2018, between Mountain Equipment Co-operative and Carbon Black, Inc.	Carbon Black, Inc.	\$0
14.	Software License Agreement, dated August 19, 2014, between Mountain Equipment Co-operative and Computer Generated Solutions Quebec, Inc. (as assigned by Visual 2000 International, Inc. effective May 29, 2019).	Computer Generated Solutions Quebec, Inc.	\$7,640.00

<u>No.</u>	<u>Name of Agreement</u>	<u>Counterparty</u>	<u>Cure Costs (Cdn\$)</u>
15.	Mutual Non-Disclosure Agreement, dated August 19, 2014, between Mountain Equipment Co-operative and Computer Generated Solutions Quebec, Inc. (as assigned by Visual 2000 International, Inc. effective May 29, 2019).	Computer Generated Solutions Quebec, Inc.	\$0
16.	Sophos End User License Agreement, dated September 28, 2016, between Mountain Equipment Co-operative and Sophos Limited.	Sophos Limited	\$0
17.	End User License and Services Terms and Conditions, dated December 29, 2016, between Mountain Equipment Co-operative and Rapid7 LLC.	Rapid7 LLC	\$0
18.	SaaS Model Agreement, dated September 4, 2015, between Mountain Equipment Co-operative and The Ultimate Software Group of Canada, Inc.	The Ultimate Software Group of Canada, Inc.	\$24,689.71
19.	Multi-Year Order Form dated July 29, 2016 between Mountain Equipment Co-operative and New Relic Inc.	New Relic Inc.	\$0
20.	Customer Agreement date January 1, 2017 between Mountain Equipment Co-operative and ZOFTEC, LLC dba Veras Retail.	ZOFTEC, LLC dba Veras Retail	\$0
21.	Value Incentive Plan Commercial Membership Agreement between Mountain Equipment Co-operative and Adobe Inc.	Adobe Inc.	\$0
Other Agreements			
22.	Customer Services Agreement, dated October 3, 2016, between Mountain Equipment Co-operative and Avanade Canada Inc.	Avanade Canada Inc.	\$0
23.	Construction Management Contract (CCDC Form 5B), dated August 9, 2016, between Mountain Equipment Co-operative and Heatherbrae Builders Co. Ltd.	Heatherbrae Builders Co. Ltd.	\$0
Personal Property Leases			
	The equipment lease agreements between Mountain Equipment Co-operative, as lessee, and LBEL Inc., as lessor, under the following lease numbers:		

<u>No.</u>	<u>Name of Agreement</u>	<u>Counterparty</u>	<u>Cure Costs (Cdn\$)</u>
24.	100411519-1	LBEL Inc.	\$4.47
25.	100411519-10	LBEL Inc.	\$0
26.	100411519-11	LBEL Inc.	\$0
27.	100411519-12	LBEL Inc.	\$0
28.	100411519-13	LBEL Inc.	\$698.93
29.	100411519-14	LBEL Inc.	\$0
30.	100411519-15	LBEL Inc.	\$0
31.	100411519-16	LBEL Inc.	\$0
32.	100411519-17	LBEL Inc.	\$1.95
33.	100411519-18	LBEL Inc.	\$0
34.	100411519-19	LBEL Inc.	\$0
35.	100411519-2	LBEL Inc.	\$2.03
36.	100411519-20	LBEL Inc.	\$0
37.	100411519-3	LBEL Inc.	\$0
38.	100411519-4	LBEL Inc.	\$2.65
39.	100411519-5	LBEL Inc.	\$46.39
40.	100411519-6	LBEL Inc.	\$1.20
41.	100411519-7	LBEL Inc.	\$0
42.	100411519-8	LBEL Inc.	\$0
43.	100411519-9	LBEL Inc.	\$12.12
44.	780-0490449-001	LBEL Inc.	\$0
45.	780-0494928-001	LBEL Inc.	\$0
46.	780-0498850-001	LBEL Inc.	\$4,055.45
47.	780-0500218-001	LBEL Inc.	\$0
48.	780-0503662-001	LBEL Inc.	\$0

<u>No.</u>	<u>Name of Agreement</u>	<u>Counterparty</u>	<u>Cure Costs (Cdn\$)</u>
49.	780-0504382-001	LBEL Inc.	\$0
50.	780-0505741-001	LBEL Inc.	\$0
51.	780-0506079-001	LBEL Inc.	\$0
52.	780-0506143-001	LBEL Inc.	\$0
53.	780-0506319-001	LBEL Inc.	\$0
54.	780-0506594-001	LBEL Inc.	\$0
55.	780-0506835-001	LBEL Inc.	\$0
56.	780-0506844-001	LBEL Inc.	\$0
57.	780-0506954-001	LBEL Inc.	\$0
58.	780-0507484-001	LBEL Inc.	\$0
59.	780-0508885-001	LBEL Inc.	\$0
60.	780-0508887-001	LBEL Inc.	\$143.10
61.	780-0509880-001	LBEL Inc.	\$0
62.	780-0509995-001	LBEL Inc.	\$0
63.	780-0510004-001	LBEL Inc.	\$0
64.	780-0511098-001	LBEL Inc.	\$0
65.	780-0514039-001	LBEL Inc.	\$16.36
	The equipment lease agreements between Mountain Equipment Co-operative, as lessee, and Wells Fargo Equipment Finance Company, as lessor, under the following lease numbers:		
66.	9796948-001	Wells Fargo Equipment Finance Company	\$32.17
67.	9796937-001	Wells Fargo Equipment Finance Company	\$62
68.	9769866-001	Wells Fargo Equipment Finance Company	\$881.68
69.	9796943-001	Wells Fargo Equipment Finance Company	\$0

<u>No.</u>	<u>Name of Agreement</u>	<u>Counterparty</u>	<u>Cure Costs (Cdn\$)</u>
70.	9796939-001	Wells Fargo Equipment Finance Company	\$1,253.70
71.	9816189-001	Wells Fargo Equipment Finance Company	\$0
72.	9882171-001	Wells Fargo Equipment Finance Company	\$65.49
73.	9944836-001	Wells Fargo Equipment Finance Company	\$0
74.	9796954-001	Wells Fargo Equipment Finance Company	\$0
75.	9796933-001	Wells Fargo Equipment Finance Company	\$0
76.	9769864-001	Wells Fargo Equipment Finance Company	\$504.56
77.	9796936-001	Wells Fargo Equipment Finance Company	\$0
78.	9944837-001	Wells Fargo Equipment Finance Company	\$0
79.	9796951-001	Wells Fargo Equipment Finance Company	\$0

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.
Filing Agent: West Coast Title Search

SCB/ker

Matter# 1001118436

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

NOTICE OF APPLICATION

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

SCB/ker

Matter# 1001118436