



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

NOTICE OF APPLICATION

NAME OF APPLICANTS: Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as the court-appointed monitor (and, in such capacity, the "**Monitor**") of Mountain Equipment Cooperative and 1314625 Ontario Limited (collectively, the "**Petitioners**").

TO: Service List, attached hereto as **Schedule "A"**

TAKE NOTICE that an application will be made by the Monitor to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, British Columbia, at **10:00 a.m. on September 28, 2020**, via Microsoft Teams videoconference, for the order set out in Part 1 below.

Part 1: ORDER SOUGHT

1. An order substantially in the form attached hereto as **Schedule "B"** sealing the First Report of the Monitor dated September 24, 2020 (the "**First Report**"), which contains Confidential Appendix C, Confidential Appendix D, and Confidential Appendix E (collectively, the "**Confidential Appendices**").

Part 2: FACTUAL BASIS

A. Background

1. On September 14, 2020, the Petitioners were granted an initial order (the "**Initial Order**") by the Supreme Court of British Columbia to commence proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.
2. Among other things, the Initial Order afforded MEC an initial stay of proceedings up to and including September 24, 2020 (the "**Stay Period**") and appointed A&M as the Monitor during the CCAA Proceedings.

3. On September 21, 2020, the Petitioners filed a notice of application to extend the Stay Period from September 24, 2020 up to and until September 28, 2020, which application is being heard on September 24, 2020.
4. On September 22, 2020, the Petitioners filed an application (the “**Comeback Application**”) to, among other things:
 - (a) seek approval of an amended and restated initial order, which amends and restates the Initial Order to, *inter alia*:
 - (i) seek extension of the Stay Period through to October 31, 2020;
 - (ii) authorize an increased maximum amount of borrowing under the Interim Financing Facility (as defined in the First Report) to \$100 million;
 - (iii) grant a key employee retention plan (the “**KERP**”) charge against the assets of the Petitioners in an amount not to exceed \$778,000; and
 - (iv) seek approval of the sale approval and vesting order to approve the sale transaction contemplated by the asset purchase and sale agreement between the Petitioners and 1264686 B.C. Ltd. dated September 11, 2020 (the “**APA**”) for the sale of the Purchased Assets and vest all of the Purchased Assets in the Purchaser free and clear of any Encumbrances other than Permitted Encumbrances (the “**Proposed Transaction**”), as such capitalized terms are defined in the APA.
5. The Monitor has, in connection with and in support of the relief sought by the Petitioners at the Comeback Application, prepared the First Report.
6. As detailed further below, the Confidential Appendices contain confidential and commercially sensitive information pertaining to the KERP, the pre-filing sales and investment solicitation process (the “**SISP**”), and the liquidation value of the Petitioners’ real estate and inventories (the “**Liquidation Value**”). Accordingly, and in order to protect this commercially sensitive and confidential information, the Monitor seeks to file the First Report with the Confidential Appendices under seal. A copy of the First Report without the Confidential Appendices has been served on the Service List.

B. Confidential Appendix C

7. As detailed further in the First Report, Confidential Appendix C contains the following four exhibits (collectively the “**Confidential Exhibits**”):
 - (a) a summary of the parties contacted as part of the pre-filing sales and investment solicitation process (the “**SISP**”) is attached as Exhibit 1;
 - (b) a copy of the Phase 1 process letter, which was provided to interested parties in participating in the SISP, and which contains instructions for submitting a letter of intent (“**LOI**”), is attached as Exhibit 2;
 - (c) a copy of the Phase 2 process letter (the “**Phase 2 Letter**”), which was provided to qualified parties selected by the Special Committee (as defined in the First Report) to participate in Phase 2 of the SISP, is attached as Exhibit 3; and

- (d) a table comparing each of the four Final Bids (as defined in the Phase 2 Letter) received during Phase 2 is attached as Exhibit 4.
8. As set out further in the First Report, the Confidential Exhibits include competitively sensitive financial details about the LOIs and the Final Bids, and the sealing order is therefore necessary to, among other things:
- (a) protect commercially sensitive information regarding the Petitioners and the SISF; and
 - (b) preserve the confidentiality of the terms of the Final Bids to maintain the competitive nature of the SISF.

C. Confidential Appendix D

9. As detailed further in the First Report, the Monitor is of the view that the Proposed Transaction contemplated in the APA is more beneficial to the creditors of MEC than a liquidation.
10. In making this determination, the Monitor has prepared an estimate of the liquidation value (the “**Liquidation Value**”) of the Petitioners’ real estate and inventories as at the date of the Initial Order.
11. The Liquidation Value contains commercial sensitivity estimates surrounding the Liquidation Value of the Petitioners’ owned real estate holdings and its inventories, and the detailed calculations thereof have been redacted from the First Report but are contained in Confidential Appendix D.
12. Accordingly, and in addition to the foregoing, the sealing order is necessary in order to protect the commercially sensitive estimates and calculations regarding the Petitioners’ Liquidation Value.

D. Confidential Appendix E

13. As detailed further in the First Report, the Petitioners’ board of directors (the “**MEC Board**”) has identified a group of senior Management personnel (the “**Key Employees**”) who are critical to the Petitioners’ restructuring efforts, maintaining going concern value in support of the Proposed Transaction, and managing the day-to-day operations.
14. In order to retain and incentivize the Key Employees as full-time employees, the MEC Board has developed KERP.
15. Under the provisions of the KERP, each of the Key Employees will receive a set amount, payable on the earlier of:
- (a) the successful completion of a sale transaction or 30 days following the successful completion of a sale transaction, depending on the Key Employee;
 - (b) December 10 or 31, 2020, depending on the Key Employee;
 - (c) the last date of employment in the event MEC terminates the Key Employee’s employment without cause; or

- (d) on a pro-rated basis at the time of death in such situation if death occurs.
- 16. The maximum aggregate amount of payments under the KERP is \$778,000 for 8 Key Employees.
- 17. A comprehensive summary of the KERP and details of the Key Employees are contained in Confidential Appendix E, which includes, among other things:
 - (a) personal information and details regarding the Key Employees participating in the KERP; and
 - (b) commercially-sensitive information, including commentary regarding the KERP and the proposed remuneration of each of the Key Employees thereunder.
- 18. Accordingly, and in addition to all of the foregoing, a sealing order is necessary in respect of Confidential Appendix E to protect the commercially sensitive and confidential personal information of the KERP and the Key Employees.

SEALING ORDER

- 19. As detailed above, the Confidential Appendices contain sensitive commercial information, including details on the SISP, the Final Bids, the calculation of the Petitioners' Liquidation Value, personal information related to the Key Employees (including the amounts payable to the Key Employees pursuant to the KERP), and details of the KERP (collectively, the "**Confidential Information**"). If the Confidential Information was made publicly available, such disclosure could materially harm Petitioners' commercial interests and restructuring efforts.
- 20. Accordingly, the Monitor seeks to file the First Report with the Confidential Appendices under seal. However, and in order to ensure that all parties in these proceedings have access to the relevant information, the Monitor:
 - (a) has served a copy of the First Report (without the Confidential Appendices) on the Service List; and
 - (b) will make the First Report (without the Confidential Appendices) publicly available on the website that it maintains for these CCAA Proceedings.

Part 3: LEGAL BASIS

Sealing Documents

- 1. The Monitor requires a sealing order in order to authorize it to file the First Report (including the Confidential Appendices) under seal for the purposes of, among other things:
 - (a) protecting the commercially-sensitive Confidential Information; and
 - (b) preserving the overall efficacy of these CCAA Proceedings.
- 2. The following two-part test applies when determining whether public access to a court document may be restricted:

- (a) is the order necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
- (b) do the salutary effects of the sealing order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings?

Sierra Club of Canada v Canada (Minister of Finance), 2002 SCC 41, at para 53
Sahlin v Nature Trust of British Columbia, Inc., 2010 BCCA 516, at para 6

3. The First Report meet this two-part test because:

- (a) the Confidential Appendices appended to the First Report contain sensitive information that, if released publicly at this time, could materially harm Petitioners' commercial interests and restructuring efforts; and
- (b) the salutary effects of the requested sealing order outweigh any potential deleterious effects, as none of the parties with a commercial interest in these proceedings would be prejudiced by the granting of the order sought because a copy of the First Report (excluding the Confidential Appendices):
 - (i) has been provided to the Service List; and
 - (ii) will be made publicly available by the Monitor through the website that it maintains for these CCAA Proceedings.

Re Essar Steel Algoma Inc, 2015 ONSC 7656, at para 22
Walter Energy Canada Holdings, Inc (Re), 2016 BCSC 107, at paras 50-51
Walter Energy Canada Holdings, Inc (Re), 2016 BCSC 1746, at para 9
Target Canada Co (Re), 2015 ONSC 1487, at para 28

4. In further support of the relief sought in this application, the Monitor relies on the following:

- (a) *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;
- (b) the inherent and equitable jurisdiction of this Honourable Court; and
- (c) such further and other grounds as counsel may advise and this Honourable Court may deem just.

Part 4: MATERIAL TO BE RELIED ON

- 1. The First Report of the Monitor, dated September 24, 2020; and
- 2. such further and other materials as counsel may advise and this Honourable Court may permit.

The applicant estimates that the Application will take 10 minutes.

☐ This matter is within the jurisdiction of a Master.

- ☒ This matter is not within the jurisdiction of a Master. This matter is scheduled to be heard by the Honourable Madam Justice Fitzpatrick, who is seized of these proceedings.

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).

Date: September 24, 2020



Signature of Lawyer for the Applicant
Cassels Brock & Blackwell LLP
(H. Lance Williams and Mary I.A. Buttery, 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
- ☒ other

SCHEDULE "A"

NO. S-209201
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AND

IN THE MATTER OF MOUNTAIN EQUIPMENT CO-OPERATIVE
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PETITIONERS

SERVICE LIST

[Current to: September 24, 2020]

<p>Norton Rose Fulbright Canada LLP 1800 – 510 West Georgia Street Vancouver, BC V6B 0M3</p> <p>Attention: Howard A. Gorman, Q.C. Scott M. Boucher</p> <p>Email: howard.gorman@nortonrosefulbright.com scott.boucher@nortonrosefulbright.com krystal.shayler@nortonrosefulbright.com</p> <p>Tel: 604-687-6575</p> <p><i>Counsel for the Petitioners, Mountain Equipment Co-operative and 1314625 Ontario Limited</i></p>	<p>Alvarez & Marsal Canada Inc. 1680 – 400 Burrard Street Vancouver, BC V6C 3A6</p> <p>Attention: Todd Martin Vicki Chan Marianna Lee</p> <p>Email: tmartin@alvarezandmarsal.com vchan@alvarezandmarsal.com marianna.lee@alvarezandmarsal.com</p> <p>Tel: 1-844-768-8244</p> <p><i>Monitor</i></p>
<p>Cassels Brock & Blackwell LLP 2200 - 885 West Georgia Street Vancouver, BC V6C 3E8</p> <p>Attention: Mary I.A. Buttery, Q.C. H. Lance Williams</p> <p>Email: mbuttery@cassels.com lwilliams@cassels.com sdanielisz@cassels.com</p> <p>Tel: 604-691-6100</p> <p><i>Counsel for the Monitor, Alvarez & Marsal Canada Inc.</i></p>	<p>Dentons Canada LLP 2000 – 250 Howe Street Vancouver, BC V6C 3R8</p> <p>Attention: John R. Sandrelli Valerie Cross</p> <p>Email: john.sandrelli@dentons.com valerie.cross@dentons.com emma.newbery@dentons.com miriam.dominguez@dentons.com</p> <p>Tel: 604-687-4460</p> <p><i>Counsel for Royal Bank of Canada as administrative agent and collateral agent under the Updated Credit Agreement</i></p>

<p>FTI Consulting 1450 – 701 West Georgia Street Vancouver, BC V7Y 1B6</p> <p>Attention: Tom Powell Mike Clark</p> <p>Email: Tom.Powell@fticonsulting.com Mike.Clark@fticonsulting.com</p> <p>Tel: 604-484-9525</p> <p><i>Financial Advisor to the Royal Bank of Canada as administrative agent and collateral agent under the Updated Credit Agreement</i></p>	<p>Fasken Martineau DuMoulin LLP 2900 – 550 Burrard Street Vancouver, BC V6C 0A3</p> <p>Attention: Kibben Jackson Dylan Chochla</p> <p>Email: kjackson@fasken.com dchochla@fasken.com</p> <p>Tel: 604-631-3131</p> <p><i>Counsel for Kingswood Capital Management LP and 1264686 B.C. Ltd</i></p>
<p>Camelino Galessiere LLP 6 Adelaide Street East, Suite 220 Toronto, ON M5C 1H6</p> <p>Attention: Linda Galessiere Jessica Wuthmann</p> <p>Email: lgalessiere@cglegal.ca jwuthmann@cglegal.ca</p> <p>Tel: 416-306-3827</p> <p><i>Counsel for RioCan Reit and Cushman Wakefield</i></p>	<p>Kirryn Hashmi Legal Counsel First Capital Realty Inc. 85 Hanna Avenue, Suite 400 Toronto, ON M6K 3S3</p> <p>Email: kirryn.hashmi@fcr.ca</p> <p>Tel: 416.216.2083</p> <p><i>Counsel for First Capital Realty Inc.</i></p>
<p>David Fenrich Legal Counsel The Cadillac Fairview Corporation Limited 410 – 609 Granville Street P.O. Box 10317 Vancouver, BC V7Y 1E8</p> <p>Email: david.fenrich@cadillacfairview.com</p> <p>Tel: 604-638-3366</p> <p><i>Counsel for The Cadillac Fairview Corporation Limited</i></p>	<p>Gowling WLG (Canada) S.E.N.C.R.L., s.r.l. 1, Place Ville Marie, bureau 3700 Montréal QC H3B 3P4</p> <p>Attention: François Viau</p> <p>Email: francois.viau@gowlingwlg.com</p> <p>Tel: 514-392-9530</p> <p><i>Counsel for Les Galeries de la Capitale Holdings Inc., managed by Oxford Properties Group</i></p>
<p>Jean Cloutier Lanctôt Ltée 5290 Boul. Thimens Montréal, QC H4R 2B2</p> <p>Email: jcloutier@rlanctot.com</p> <p>Tel: 514-815-7729</p>	<p>Jay Ferm 2402 Vondron Road Madison, WI 53718</p> <p>Email: bills@planetbike.com</p>

<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 Suite 5300 TD Bank Tower Box 48, 66 Wellington Street West Toronto, ON M5K 1E6</p> <p>Attention: Heather Meredith James Klein</p> <p>Email: hmeredith@mccarthy.ca jklein@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: Jay Caragnini Bradley Wiffen</p> <p>Email: jcarfagnini@goodmans.ca 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</p> <p>Tel: 902-424-7244</p> <p><i>Counsel for Department of Justice (Nova Scotia)</i></p>	<p>Lax O’Sullivan Lisus Gottlieb LLP Suite 2750, 145 King Street West Toronto, ON M5H 1J8</p> <p>Attention: Matthew P. Gottlieb Andrew Winton Ryann Atkins</p> <p>Email: mgottlieb@lolg.ca awinton@lolg.ca ratkins@lolg.ca</p> <p>Tel: 416-598-1744</p> <p><i>Counsel for Midtown Plaza Inc.</i></p>
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SCHEDULE "B"

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)	MONDAY, THE 28 TH DAY
)	
MADAM JUSTICE FITZPATRICK)	OF SEPTEMBER, 2020

ON THE APPLICATION of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor (and, in such capacity, the "**Monitor**") of Mountain Equipment Cooperative and 1314625 Ontario Limited, coming on for hearing at Vancouver, British Columbia, on the 28th day of September, 2020; AND ON HEARING H. Lance Williams, counsel for the Monitor, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed herein, including the First Report of the Monitor, dated September 24, 2020;

THIS COURT ORDERS AND DECLARES THAT

1. Access to sealed items permitted by:
- ☐ Counsel of Record
 - ☐ Parties on Record
 - ☒ Further Court Order
 - ☐ Others

Items to be Sealed

Document Name	Date Filed (<i>Date on Court Stamp</i>)	Number of copies filed, including any extra copies for the judge	Duration of sealing order	Sought	Granted	
					Yes	No
Entire File				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Specific Documents First Report of the Monitor, dated September 24, 2020 with Confidential Appendices C, D and E.	To be filed	1	Until further order	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Clerk's Notes				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Order				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. Endorsement of this Order by counsel appearing, other than counsel for the Monitor 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 Lawyer for the Applicant
Cassels Brock & Blackwell LLP
(Mary I.A. Buttery, Q.C. and H. Lance Williams)

BY THE COURT

REGISTRAR

SCHEDULE “B”

Schedule “A”

List of Counsel

Name of Counsel	Party Represented

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SEALING ORDER

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LW/sd