

COURT/ESTATE NUMBER 24-2746532
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE EDMONTON

IN THE MATTER OF THE NOTICE OF INTENTION TO
 MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND
 INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED,
 OF ALASKA-ALBERTA RAILWAY DEVELOPMENT
 CORPORATION

APPLICANT MNP LTD., in its capacity as Court-appointed Interim
 Receiver of Alaska-Alberta Railway Development
 Corporation

DOCUMENT **APPLICATION (Approval of Interim Receiver's Fees
 and Activities and Discharge of Interim Receiver)**

ADDRESS FOR SERVICE AND CONTACT
 INFORMATION OF PARTIES FILING THIS
 DOCUMENT LAWSON LUNDELL LLP
 Barristers and Solicitors
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 File No.: 26420-158262

NOTICE TO RESPONDENT(S)

This application is made against you. You are Respondents.

You have the right to state your side of this matter before the Judge.

To do so, you must be in Court when the application is heard as shown below:

Date:	December 16, 2021
Time:	10:00 a.m.
Where:	Virtual WebEx Hearing on the Edmonton Commercial List https://albertacourts.webex.com/meet/virtual.courtroom86
Before Whom:	The Honourable Justice M.J. Lema

Go to the end of this document to see what else you can do and when you must do it.

Remedy Claimed or Sought:

1. MNP Ltd. (“MNP”), in its capacity as the Court-appointed Interim Receiver (in such capacity, the “**Interim Receiver**”) of all of the property, assets and undertakings (collectively, the “**Property**”) of Alaska-Alberta Railway Development Corporation (“A2A” or the “**Company**”), and in its capacity as trustee under the proposal of A2A (in such capacity, the “**Trustee**”), seeks an Order substantially in the forms attached hereto as **Schedule “A”**, for the following relief:

- (a) abridging the time for service of this Application and any supporting materials, waiving service on any other party, and deeming service thereof to be good and sufficient;
- (b) ratifying and approving the Third Report to the Court of the Interim Receiver dated December 7, 2021, and the activities of the Interim Receiver as set out therein, provided that only the Interim Receiver, in its personal capacity and with respect to its own personal liability, shall be entitled to rely on or utilize in any way such approval;
- (c) approving:
 - (i) the fees and disbursements of the Interim Receiver for the period from October 1, 2021 to November 15, 2021;
 - (ii) the fees and disbursements of legal counsel to the Interim Receiver and Trustee for the period from October 1, 2021 to November 15, 2021; and
 - (iii) the estimated fees and disbursements of the Interim Receiver and legal counsel for the Interim Receiver and the Trustee to complete the administration of A2A’s interim receivership estate; and

directing that the same be paid without the necessity of a formal passing of accounts, and waiving the requirements of rules 79-82 of the *Bankruptcy and Insolvency General Rules*, CRC 1978, c 368, as amended;

- (d) declaring that the Interim Receiver has satisfied its obligations under and pursuant to the Interim Receivership Orders granted in these proceedings, that the Interim Receiver is not liable for any act or omission on its part, including without limitation, any acts or omissions pertaining to the discharge of its duties in the within proceedings, save and except for the usual exclusions, and that any claims against the Interim Receiver in connection with the performance of its duties are stayed, extinguished and forever barred, subject to leave of this Honourable Court, on notice to the Interim Receiver;
 - (e) discharging the Interim Receiver as the Court-appointed interim receiver of all of the Property upon the Interim Receiver filing a certificate confirming the completion of the Interim Receiver's remaining obligations, and confirming that, upon its discharge, the Interim Receiver shall not be, or be deemed to be, in possession and control of any of the Property; and
 - (f) declaring that, notwithstanding the Interim Receiver's discharge, it shall remain Interim Receiver for the performance of duties incidental to the completion of the administration of the interim receivership in these proceedings and shall continue to have the benefit of the provisions of all Orders made in this proceeding.
2. Such further and other relief as counsel may request and this Honourable Court may deem just and reasonable in all of the circumstances.

Grounds for Making this Application:

Background

- 3. On June 18, 2021, A2A filed a Notice of Intention to Make a Proposal (the "**NOI**") under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the **BIA**). MNP consented to act as trustee under the NOI (in such capacity, the "**Trustee**"), which resulted in the automatic stay of all proceedings against A2A and its assets for an initial period of thirty (30) days (the "**Initial Stay Period**"), to July 18, 2021.
- 4. A2A's operations were undertaken to build and operate a railway from Northern Alberta to Alaska and allow for the transport of resource commodities to global markets via the ports of Southcentral Alaska (the "**Railway Project**"). A2A's assets principally consist of

intangible and intellectual property and confidential, technical, and proprietary information related to the development of the Railway Project.

5. A2A's primary secured creditor is Bridging Finance Inc., as agent for Bridging Income Fund LP and other related funds (the "**Bridging Lender**"). A2A is indebted to the Bridging Lender in the amount of approximately \$212.9 million pursuant to a non-revolving credit facility (the "**Bridging Loan**"). As security for the Bridging Loan, Bridging holds a security interest over all of A2A's present and after-acquired property.
6. On April 30, 2021 and May 3, 2021, the Ontario Superior Court of Justice granted Orders appointing PricewaterhouseCoopers Inc., LIT ("**PwC**"), as receiver and manager (in such capacity, the "**Bridging Receiver**") of, *inter alia*, the Bridging Lender.
7. After A2A filed the NOI, the Trustee and the Bridging Receiver engaged in discussions regarding the best path forward in respect of A2A, which resulted in the Bridging Receiver applying on July 12, 2021 to appoint MNP as interim receiver of the Property, under section 47.1 of the *BIA*. MNP consented to act in that capacity. The Bridging Receiver's application was successful and this Honourable Court granted an interim receivership order on July 12, 2021 (the "**Interim Receivership Order**").
8. On each of July 12, 2021, August 26, 2021, and October 13, 2021, the Interim Receiver, successfully applied to this Honourable Court under section 50.4(9) of the *BIA* for extensions of the Initial Stay Period up to and including November 29, 2021.
9. On October 13, 2021, the Interim Receiver obtained an Amended and Restated Receivership Order, which expanded the Interim Receiver's powers to include the power to negotiate and file a proposal on behalf of A2A (the "**Amended and Restated Interim Receivership Order**" and together with the Interim Receivership Order, the "**Interim Receivership Orders**"). On October 27, 2021, the Trustee filed a proposal in respect of A2A (the "**Proposal**") with the Office of the Superintendent of Bankruptcy Canada.
10. At a meeting of creditors to consider the Proposal held on November 9, 2021, the Proposal was accepted by the required majority of A2A's creditors entitled to vote on the Proposal, and the Trustee has applied to this Honourable Court for approval of the Proposal on December 16, 2021.

Approval of Interim Receiver's Activities

11. Since the date of the Interim Receiver's Second Report to this Honourable Court, the Interim Receiver has:
 - (a) consulted with the Bridging Receiver on the terms of the Proposal and various matters related to the interim receivership proceedings;
 - (b) prepared and lodged the Proposal and all related documents with the Official Receiver;
 - (c) met with the contractors of the Company regarding various matters relating to A2A's operations and intellectual property; and
 - (d) responded to creditor and stakeholder inquiries.
12. The Interim Receiver has acted diligently since its appointment and has undertaken the activities described in its Third Report to this Honourable Court, which actions are lawful, proper and consistent with the *BIA* and the Interim Receiver's powers and duties under the Interim Receivership Orders.
13. As reflected in the Interim Statement of Receipts and Disbursements scheduled to the Interim Receiver's Third Report, the Interim Receiver is holding approximately \$140,900 in its trust account, of which approximately \$113,000 consists of a retainer previously paid to A2A's former legal counsel (the "**Retainer**") by Sean McCoshen (the former director of A2A) personally. Mr. McCoshen is currently bankrupt and Farber Group ("**Farber**") acts as Trustee of his bankrupt estate; as such, the Interim Receiver anticipates that it will remit the Retainer to Farber.

Approval of Interim Receiver's Fees and Disbursements

14. The accounts of the Interim Receiver for the period of October 1, 2021 to November 15, 2021, total approximately \$44,118.
15. The accounts of the Interim Receiver's legal counsel, Lawson Lundell LLP, for the period of October 1, 2021 to November 15, 2021, total approximately \$23,480.

16. Various administrative matters remain outstanding to complete the administration of the Interim Receivership, including, *inter alia*, preparing final GST returns, paying the Retainer to Farber, paying any residual operating expenses of A2A, paying any remaining funds held by the Interim Receiver to the Trustee to be distributed under the terms of the Proposal, and preparing the final Statement of Receipts and Disbursements.
17. The estimated fees and disbursements of the Interim Receiver and Lawson Lundell LLP necessary to complete the administration of the interim receivership (and for Lawson Lundell LLP, approval of the Proposal), over and above the amounts referenced in paragraphs 14 and 15 are \$15,750 and \$10,500, respectively.
18. The Interim Receiver's fees are for time and services provided at market rates for firms providing similar services on matters of similar complexity in Alberta and the work was properly delegated to the appropriate seniority level.
19. The Interim Receiver believes that, based on its review, the fees and disbursements billed by its legal counsel were properly incurred, fair and reasonable, consistent with market rates for firms providing similar services on matters of similar complexity in Alberta.
20. Under section 47.2 of the *BIA*, this Honourable Court has jurisdiction to make any order respecting the payment of the fees and disbursements of an interim receiver appointed pursuant to section 47.1 of the *BIA* that it considers proper. The Order sought is proper. The Interim Receiver and its counsel are entitled to fair compensation for the services rendered, which services were undertaken efficiently and conscientiously, and reflect the value in issue, the importance of the Interim Receiver's work in relation to A2A, and the results achieved.

Material or Evidence to be Relied On:

21. The Third Report of the Interim Receiver, dated December 7, 2021;
22. All pleadings, affidavits and other materials filed in this Action; and
23. Such further and other material or evidence as counsel may advise and this Honourable Court may permit.

Applicable Rules:

24. *Alberta Rules of Court*, Alta Reg 124/2010, as amended.

Applicable Acts and Regulations:

25. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and in particular, subsections 47.1(1.1), 47.2(1), and 47.2(3) thereof;
26. The *Bankruptcy and Insolvency General Rules*, Can Reg 368, CRC 1978, c 368, and in particular, rules 79-82; and
27. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

28. None.

How the Application is proposed to be heard or considered:

29. In person, via WebEx videoconference, before the Honourable Justice M.J. Lema, sitting in Edmonton Commercial List chambers, with some or all of the parties present.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE "A"

COURT/ESTATE NUMBER 24-2746532
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, OF ALBERTA RAILWAY DEVELOPMENT CORPORATION

APPLICANT MNP LTD., in its capacity as Court-appointed Interim Receiver of Alaska-Alberta Railway Development Corporation

DOCUMENT **ORDER (Approval of Interim Receiver's Fees and Activities and Discharge of Interim Receiver)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTIES FILING THIS DOCUMENT
LAWSON LUNDELL LLP
Barristers and Solicitors
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Attention: Alexis Teasdale
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Fax: (403) 269-9494
Email: ateasdale@lawsonlundell.com
File No.: 26420-158262

DATE ON WHICH ORDER WAS PRONOUNCED: December 16, 2021

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice M.J. Lema

LOCATION OF HEARING: Edmonton, Alberta

UPON THE APPLICATION of MNP Ltd. in its capacity as interim receiver (in such capacity, the “**Interim Receiver**”) of the current and future assets, undertakings and property (the “**Property**”) of Alaska-Alberta Railway Development Corporation (“**A2A**”); **AND UPON HAVING READ:** (i) the Interim Receivership Order granted by the Honourable Justice D.L. Shelley on July 12, 2021 (the “**Interim Receivership Order**”); (ii) the Amended and Restated Interim Receivership Order granted by the Honourable Justice N. Whitling on October 13, 2021 (the “**Amended and Restated Interim Receivership Order**” and together with the Interim Receivership Order, the “**Interim Receivership Orders**”); and (iii) the Third Report of the

Interim Receiver, dated December 7, 2021 (the “**Third IR Report**”); **AND UPON** noting the Affidavit of Service of Vanessa Gacusana, affirmed on December [●], 2021, to be filed; **AND UPON** it appearing that all interested and affected parties have been served with notice of the Application; **AND UPON** hearing the submissions of counsel for the Interim Receiver, and any other counsel or interested parties present;

IT IS HEREBY ORDERED THAT:

Service

1. The time for service of the notice of application for this order (“**this Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today, and no other than those persons served is entitled to service of the notice of application.

Approval of Activities

2. The Third IR Report is hereby ratified and approved, and the activities of the Interim Receiver set out therein are hereby ratified and approved, provided that only the Interim Receiver in its personal capacity and with respect to its own personal liability shall be entitled to rely on or utilize in any way the approval set out in this Order.

Approval of Fees and Disbursements

3. The fees and disbursements of the Interim Receiver for the period from October 1, 2021 to November 15, 2021 are hereby approved without the necessity of a formal passing of accounts.
4. The fees and disbursements of legal counsel to the Interim Receiver and Trustee for the period from October 1, 2021 to November 15, 2021 are hereby approved without the necessity of a formal passing of accounts.
5. The estimated fees and disbursements of the Interim Receiver and legal counsel for the Interim Receiver and the Trustee to complete the administration of A2A’s estate are hereby approved without the necessity of a formal passing of accounts.

6. The requirement to apply for taxation of the Interim Receiver's accounts and discharge within two months of completion of the Interim Receiver's duties, and the notice requirements and procedures for objection set out in rules 79, 80, 81 and 82, are hereby waived.

Discharge of the Interim Receiver

7. On the evidence before this Court, the Interim Receiver has satisfied its obligations under and pursuant to the Interim Receivership Orders and shall not be liable for any act or omission on its part, including without limitation, any acts or omissions pertaining to the discharge of its duties in the within proceedings, save and except for save and except for any liability arising out of any fraud, gross negligence or willful misconduct. Subject to the foregoing, any claims against the Interim Receiver in connection with the performance of its duties are stayed, extinguished and forever barred.
8. No action or other proceedings shall be commenced against the Interim Receiver in any way arising from or related to its capacity or conduct as Interim Receiver, except with prior leave of this Court on notice to the Interim Receiver, and upon such terms as this Court may direct.
9. Upon the Interim Receiver filing a certificate in the form attached hereto as Schedule "A", confirming the completion of the Interim Receiver's remaining obligations, the Interim Receiver shall be discharged as Interim Receiver of the Property, provided however, that notwithstanding the Interim Receiver's discharge:
 - (a) the Interim Receiver shall remain Interim Receiver for the performance of such incidental duties as may be required to complete the administration of the interim receivership in these proceedings; and
 - (b) the Interim Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Interim Receiver in its capacity as Interim Receiver.

10. Upon the Interim Receiver being discharged in accordance with paragraph 9 of this Order, the Interim Receiver shall no longer be, and shall not be deemed to be, in possession and control of any of the Property, or any proceeds, receipts or disbursements arising out of or from the Property.

General

11. This Order must only be served upon those parties attending or represented at the application therefor, and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.
12. Service of this Order on any party not attending the application therefor is hereby dispensed with.

Justice of the Court of Queen's Bench of Alberta

COURT/ESTATE NUMBER 24-2746532
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE EDMONTON

IN THE MATTER OF THE NOTICE OF INTENTION TO
 MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND
 INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED,
 OF ALASKA-ALBERTA RAILWAY DEVELOPMENT
 CORPORATION

APPLICANT MNP LTD., in its capacity as Court-appointed Interim
 Receiver of Alaska-Alberta Railway Development
 Corporation

DOCUMENT **INTERIM RECEIVER'S DISCHARGE CERTIFICATE**

ADDRESS FOR SERVICE AND CONTACT
 INFORMATION OF PARTIES FILING THIS
 DOCUMENT
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 File No.: 26420-158262

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Jerry.Henechowicz@mnp.ca

Pursuant to the Interim Receivership Order of the Honourable Madam Justice D.L. Shelley of the Court of Queen's Bench of Alberta (the "**Court**") made on July 12, 2021, which was amended and restated by an order of the Honourable Mr. Justice N. Whitting made on October 13, 2021 (collectively, the "**Interim Receivership Orders**"), MNP Ltd. was appointed as interim receiver (in such capacity, the "**Interim Receiver**"), without security, of all of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**") of Alaska-Alberta Railway Development Corporation ("**A2A**" or the "**Company**").

Pursuant to the Order (Approval of Interim Receiver’s Fees and Activities and Discharge of Interim Receiver) of the Honourable Mr. Justice M.J. Lema granted December 16, 2021 (the “**Discharge Order**”), the Interim Receiver was discharged as Interim Receiver of the Property, such discharge to be effective upon the filing by the Interim Receiver with the Court a certificate confirming the completion of the Interim Receiver’s remaining obligations, provided however, that the Interim Receiver: (a) shall remain Interim Receiver for the performance of such incidental duties as may be required to complete the administration of the interim receivership in these proceedings; and (b) shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Interim Receiver in its capacity as Interim Receiver.

Capitalized terms not otherwise defined in this Certificate shall have the meaning given to them in the Discharge Order.

MNP Ltd., solely in its capacity as Court-appointed Interim Receiver of the Property (as that term is defined in the Interim Receivership Orders and not in its personal or corporate capacity, hereby CERTIFIES THAT:

1. The Interim Receiver has completed the remaining administrative matters necessary to complete the administration of the interim receivership herein, as described in the Third IR Report.
2. This Certificate was filed by the Interim Receiver with the Court on the ____ day of _____, _____.

MNP LTD., solely in its capacity as the Court-appointed interim receiver of Alaska-Alberta Railway Development Corp., and not in its personal capacity or any other capacity

Per: _____

Name:
Title