

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

1711423 ONTARIO LIMITED

Applicant

and

OLD MILL MARINA (KAWAGAMA) LIMITED

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

**SECOND REPORT TO THE COURT OF MNP LTD IN ITS CAPACITY AS RECEIVER
AND MANAGER OF THE ASSETS, UNDERTAKINGS, AND PROPERTIES OF
OLD MILL MARINA (KAWAGAMA) LIMITED**

February 9, 2021

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INTRODUCTION

1. On March 9, 2020, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made an order (the “**Appointment Order**”), *inter alia*, appointing MNP Ltd. (the “**Receiver**”) as receiver and manager of all the assets, undertakings and properties of Old Mill Marina (Kawagama) Limited (“**Old Mill**” or the “**Company**”) acquired for, or used in relation to the business carried on by the Company (collectively, the “**Property**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. Old Mill is a private Ontario corporation which maintained and operated a full-service marina facility from an owned waterfront property municipally known as 1652 Russell Landing Road, Dorset, Ontario located on Kawagama Lake, in the District of Haliburton (included with the Property and separately referred to as the “**Real Property**”).
3. The Property includes 97 boat slips on Kawagama Lake, storage and fueling facilities, boat launch facilities, a main building containing service bays, retail store and an office area, a residential waterfront home, currently unoccupied, and other smaller structures used for storage and maintenance. The Property also includes various chattels utilized in the operation of the marina, business records, goodwill and intangible property.
4. The Company had use of two (2) indoor watercraft storage buildings (the “**Storage Facilities**”) to store its customers’ watercraft during the winters. The Storage Facilities are owned by 1801552 Ontario Limited (“**180 Corp**”) that is an entity related by common control to the Applicant, who is a senior secured creditor in this matter. As such, 180 Corp has cooperated with the Receiver by allowing the Receiver full access and use of Storage Facilities throughout these proceedings in exchange for the Receiver paying the Storage Facilities operating costs.
5. The circumstances leading to the appointment of the Receiver, are set out in the Affidavit of John Carl Hubble, sworn March 6, 2020 (the “**Hubble Affidavit**”) in support of the initial Receivership Application, brought by the Applicant.
6. A copy of the Appointment Order, together with related Court documents and all reports with respect of this matter are available on the Receiver’s website, which can be found at <https://mnpdebt.ca/oldmillmarina>.
7. On September 22, 2020, the Receiver filed its first report to Court (the “**First Report**”) in support of its motion returnable September 28, 2020 seeking order(s) *inter alia*:
 - a. approving the Agreement of Purchase and Sale dated July 27, 2020 (the “**Sale Agreement**”) entered into between the Receiver, as vendor, and Pine Rock Holdings Limited (“**Pine Rock**”) as purchaser, later assigned by Pine Rock to

2771470 Ontario Inc., (the “**Purchaser**”) and the transaction contemplated therein (the “**Sale Transaction**”);

- b. authorizing the Receiver to take such steps as are necessary and appropriate to facilitate the closing of the Sale Transaction;
- c. vesting title in and to the Purchased Assets (as such term is later defined) in the Purchaser or as it may direct, free and clear of any encumbrances, save and except as otherwise contemplated by the Sale Agreement; and
- d. authorizing the Receiver to make interim distributions (the “**Distributions**”) as set out below.

A copy of the First Report (without appendices) is attached hereto as **Appendix “B”**.

8. On September 24, 2020, the Receiver filed a Supplementary First Report (the “**Supplementary Report**”) to advise the Court of a Second Waiver Agreement (the “**Waiver Agreements**”) between the Receiver and Purchaser. The Waiver Agreements, among other things, set out the mechanism by which the replacement of the fuel tanks located on the premises (the “**Fuel Tanks**”) is being funded equally by the Purchaser and Receiver, and the structure of a \$50,000 holdback (the “**Fuel Tank Holdback**”) fund to be established by the Receiver from the proceeds of sale to deal with the fuel tank replacements to be completed post closing. A copy of the Supplementary Report is attached as **Appendix “C”**.
9. On September 28, 2020, the Court issued orders providing the relief sought as set out above that *inter alia*:
 - a. approved the Sale Agreement and authorized the Receiver to take those steps necessary to complete the Sale Transaction; and
 - b. authorizing an interim distribution (the “**Interim Distribution**”) from the funds realized by the Receiver and after the closing of the Sale Transaction as follows;
 - i. the Receiver and its counsel’s fees as approved by the Court;
 - ii. \$80,702.50 plus any accrued interest to the date of payment to Kirkfield Holdings Limited (“**Kirkfield**”) to repay funds advanced to the Receiver by way of Receiver Certificates;
 - iii. the reserving of funds in the amount of \$269,017.15 (the “**CRA Holdback**”) in respect of a potential claim by the Canada Revenue Agency (“**CRA**”);

- iv. \$863,333.62 in favour of 1711423 Ontario Limited (“**1711423**”), plus per diem interest to the date of distribution; and
- v. \$82,576.70 to Haliburton County Development Corporation (“**HCDC**”), plus per diem interest to the date of distribution.

Copies of the Court’s September 28th, 2020 Sale Approval and Vesting Order and Ancillary Order are attached as **Appendices “D”** and **“E”**, respectively.

PURPOSE OF THIS REPORT

10. The purpose of this the Receiver’s second report (the “**Second Report**”) is to:
- a. update the Court with respect to:
 - i. the Receiver’s activities since the First Report including the completion of the Sale Transaction;
 - ii. the status of additional realizations;
 - iii. the Receiver’s investigation of the potential CRA claim as raised in the First Report;
 - b. provide support for the Receiver’s motion for an order, among other things:
 - i. approving this Second Report and the activities and actions of the Receiver described herein;
 - ii. approving the Receiver’s Interim Statement of Receipts and Disbursements for the period September 11, 2020 to February 5, 2021 (the “**Interim R&D**”);
 - iii. approving the fees and disbursements of the Receiver and its counsel Torkin Manes LLP (“**Torkin Manes**”), including approval of the estimate of additional fees and disbursements required in connection with the receivership proceeding (collectively, the “**Professional Fees**”);
 - iv. approving the release of the CRA Holdback for distribution as set out below in paragraph 9 (b)(iii);

- v. approving the discharge of MNP as Receiver and thereupon releasing MNP from any and all liability upon the filing of a certificate with the Court confirming that the administration by the Receiver of its duties pursuant to the Appointment Order have been completed; and
- vi. such other relief as the Court deems just.

DISCLAIMER AND TERMS OF REFERENCE

11. In preparing this Report, the Receiver has relied on information (the “**Information**”) regarding the Company and the Property:
- a. included in the Application/Motion Records and other materials filed with the Court in connection with these proceedings, including the Hubble Affidavit;
 - b. provided by the Company’s directors and management, the Applicant and its respective legal counsel;
 - c. located in Old Mill’s available books and records;
 - d. obtained during the Receiver’s operation of Old Mill; and
 - e. otherwise made available or provided to the Receiver and its counsel.
12. Except as described in this Report, the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada Handbook.
13. All currency references contained herein are in Canadian Dollars, unless otherwise specified. All capitalized terms not otherwise defined herein shall have the meanings as defined in the Appointment Order, unless otherwise specified.

RECEIVER’S ACTIVITIES

14. Since September 22, 2020, the date of First Report, the Receiver’s activities have concentrated on:
- a. completing the Sale Transaction and transitioning the operations of Old Mill to the Purchaser;
 - b. arranging for the installation and certification of the Fuel Tanks;

- c. pursuant to the Ancillary Order made a distribution of \$81,271.28 to Kirkfield to repay its advance to the Receiver plus accrued interest and \$575,825.00 to 1711423;
- d. continuing pre-appointment accounts receivable collections;
- e. preparing and filing Canada Employee Wage Subsidy (“CEWS”) claims;
- f. corresponding with CRA regarding its potential claims against the Company and facilitating a trust examine by CRA; and
- g. preparing this Report and reviewing all Court materials filed in connection with this motion.

COMPLETION OF THE SALE TRANSACTION

15. A copy of the unredacted Sale Agreement is attached hereto as **Appendix “F”**. The pertinent provisions of the Purchase Agreement are summarized as follows:

- a. **Purchased assets:** the assets to be purchased (the “**Purchased Assets**”) included:
 - i. Substantially all of the Property, other than accounts receivable and cash as identified in the Sale Agreement;
 - ii. Real Property - the Real Property and a residential property located adjacent to the Real Property municipally known as 1676 Russell Landing Road;
 - iii. Goodwill – including the business name and all other intangible property; and
 - iv. Client Lists and Intellectual Property – including contact information of past and current clients of Old Mill’s business and related information in the Receiver’s actual possession regarding past and current transactions with such clients.
- b. **Purchase price:** \$1,350,000.00 and subject to closing adjustments for:
 - i. specific inventory and equipment sales by the Receiver prior to closing;
 - ii. shared costs of for the removal of the underground fuel tanks, installation and certification of above ground fuel tanks; and
 - iii. other standard closing adjustments for a real property sale.

- c. **Representations and Warranties:** consistent with the standard terms of an insolvency transaction, i.e. on an “as is, where is” bases, with limited representations and warranties.
16. The Sale Transaction closed effective October 15, 2020. Following closing adjustments, payment of outstanding realty taxes and deducting for the Fuel Tank Holdback of \$50,000 to be held by Torkin Manes, the net sale proceeds totalling \$1,286,715.59 was remitted to the Receiver.

Fuel Tank Holdback

17. The Receiver has been advised by the Purchaser that as of the date of this Second Report, the installation of the Fuel Tanks is substantially complete. The installed tanks have not yet been certified by the appropriate authorities as a result of government COVID restrictions, which prevent those authorities from conducting the required inspections until COVID restrictions are lifted. The Receiver expects that the tanks will be certified in the near future and is aware of no reason why the tanks will not receive the appropriate certification.”
18. In light of the above, the Receiver and Purchaser have agreed to extend the timeline for certification of the Fuel Tanks and will authorize Torkin Manes to release the Fuel Tank Holdback to the Receiver being the escrow agent for the Receiver and Purchaser once the installation is paid for by the Receiver and the certification is received.

Other Potential Realizations

19. Pre-appointment accounts receivable - the Receiver has recovered a total of \$33,805.50 of pre-appointment accounts receivable. Approximately \$7,500 of potentially collectable receivables remain and the Receiver is continuing its collection efforts through a collection agency.
20. HST refunds – the Receiver anticipates receipt of additional HST refunds of between approximately \$10,000 to \$15,000 in addition to the HST refunds of \$13,437.57 already collected.
21. CEWS claims – the Receiver understands that CRA has accepted the CEWS claims filed totalling approximately \$63,000, with payment to be issued shortly.
22. The Receiver is not aware of any other potential recoveries.

PROFESSIONAL FEES AND DISBURSEMENTS

Receiver's Fees and Disbursements

23. The Court's Ancillary Order dated September 28, 2020 included the approval of the Receiver's fees, disbursements and applicable HST to September 17, 2020 totaling \$334,934.50 plus an accrual of additional fees and HST of \$22,600, representing an estimate of the Receiver's fees to complete the matter. To-date the Receiver has drawn \$294,285.24 in respect of its accounts.
24. Attached as **Appendix "G"** is the affidavit of Jerry Henechowicz sworn February 9, 2021 describing the Receiver's fees and disbursements from September 1, 2020 to the completion of the administration of the Receivership. This fee Affidavit includes the \$22,600 accrual previously approved by the Court and approximately, plus approximately \$30,000 in additional fees that had not been accrued for at September motion.
25. The Receiver respectfully requests that this Court approve the Receiver's fees and disbursements as described above.

Legal Fees and Disbursements of Torkin Manes

26. The Court's Ancillary Order dated September 28, 2020 included the approval of the Torkin Manes' fees, disbursements and applicable HST to September 22, 2020 totalling \$102,457.11. The Receiver has paid these accounts in full. The Fee Affidavit sworn in support of that motion included an estimate of \$10,000 in legal fees to complete this matter.
27. Torkin Manes has issued two invoices covering its fees and disbursements for the period since the September motion, and its actual fees totalled \$32,823.39 inclusive of HST for that time period, including an estimate of \$5,000 to complete this matter. Attached as **Appendix "H"** is the affidavit of S. Fay Sulley sworn February 9, 2021 describing the aforementioned fees and disbursements of Torkin Manes.
28. It is the Receiver's opinion that the fees and disbursements of Torkin Manes as described in the affidavit of S. Fay Sulley are fair and reasonable and justified in the circumstances, and accurately reflect the work done on behalf of the Receiver by Torkin Manes.
29. On the assumption that there are no delays, disputes or unforeseen developments in connection with the Receiver's discharge motion, Torkin Manes estimates that it will charge additional fees of up to \$5,000 plus disbursements and HST until the completion of the administration of these proceedings.

POTENTIAL PRIORITY CLAIMS

HST

30. As set out in the First Report, the Receiver was advised by the Company's principal, Robert Walliser ("**Walliser**") that CRA had allegedly assessed the Company for approximately \$300,000 (the "**Potential HST Assessment**") related to inventory transfers between the Company and a related entity Old Mill Marina (Lake of Bays) Limited.
31. On September 25, 2020, Walliser filed with the Court correspondence he received from CRA dated March 5, 2020 (the "**CRA Notice**") regarding the Potential HST Assessment, which led to the Receiver's establishment of the CRA Holdback of \$269,017.15. A copy of CRA's correspondence dated March 5, 2020 is attached as **Appendix "I"**.
32. The Receiver has reviewed the CRA Notice with CRA's insolvency collection officers, who have confirmed that:
 - a. the CRA Notice was addressed to Walliser personally care of the Company and not addressed to the Company;
 - b. to-date there has not been any HST assessment issued as set out in the CRA Notice; and
 - c. CRA's records do indicate a liability of any kind owing by the Company for unremitted HST.
33. Chaitons LLP as counsel to 1711423 has advised the Receiver that contemporaneously with this motion by the Receiver, it will be bring its own motion seeking an order adjudging Old Mill bankrupt.
34. MNP has also consented to act as Trustee should the Court issue an order adjudging the Company bankrupt. In the regard, since the Company's creditors have been already been advised of these Receivership proceedings, MNP in is capacity proposed Trustee recommends that to promote efficiency and costs, the required mailing of the Notice of the First Meeting of Creditors (the "**Notice**") that normally includes a copy of the Company's Statement of Affairs, Proof of Claim form and Form of Proxy (collectively the "**Forms**"), be limited to the Notice including directions to download the Forms.
35. Based on the above and the fact that CRA has not assessed the Company or filed a claim for any outstanding HST in the eleven months following the date of the Receiver's appointment, the Receiver therefore recommends that the CRA Holdback be released for distribution. Furthermore, CRA will be served with this motion by the Receiver and should

CRA have any objection to the release of the CRA Holdback, such objection can be heard by the Court at the return of the within Motion.

Unremitted Employee Source Deductions

36. CRA has recently completed a trust examine of the Company's payroll records and although a formal claim has not been issued, the CRA Trust Examiner has advised the Receiver that the claim for unremitted employee source deductions will be less than \$10,000.

Employee WEPP Claims

37. As set out in the First Report, when terminated by the Company, all employees were paid any outstanding wages and vacation pay. In its administration of the WEPP program, the only claims filed by employees were for unpaid termination pay. Accordingly, there has not been any priority claims in respect of WEPP.

SECURED CREDITOR CLAIMS

38. As reported in the First Report, the secured creditors were as follows:

- a. 1711423 was owed approximately \$863,000 and holds a first-ranking mortgage (the "**1st Mortgage**") and a third-ranking mortgage registered against title to the Real Property; and
 - b. HCDC was owed approximately \$83,000 and holding a second-ranking mortgage (the "**2nd Mortgage**") against the Real Property.
39. As authorized by the Ancillary Order, the Receiver has already made an interim distribution of \$ 575,825.00 to 1711423 as a partial repayment of its 1st Mortgage.
40. 1711423 has provided a payout statement for its 1st Mortgage dated February 4, 2021 that indicates a remaining balance of \$310,492.24 plus per diem interest of \$42.49 to the date of repayment. A copy of 1711423's payout statement is attached as **Appendix "J"**.

INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

41. The Receiver's Interim R&D as at February 5, 2021 is attached as **Appendix "K"** that indicates net cash receipts over disbursements of \$334,331.98.

PROPOSED DISTRIBUTIONS TO SECURED CREDITORS

42. Based on the foregoing, the Receiver recommends that subject to there being sufficient realizations and maintaining sufficient reserves for the potential CRA priority claim for unremitted source deductions and unpaid accounts of the Receiver and its counsel, the Receiver be authorized to distribute:
- a. \$310,492.24 to 1711423 on account of the balance of its 1st Mortgage plus any per diem interest to the date of payment; and
 - b. \$82,576.80 to HCDC on account of its 2nd Mortgage.

DISCHARGE OF THE RECEIVER

43. Other than the completion of accounts receivable collections and other potential realizations, receipt of the Fuel Tanks Holdback, making final distribution of funds to the Receiver, Torkin Manes, 1711423 and HCDC as well as other administrative matters, the administration of this proceeding is substantially complete.
44. In order to avoid the costs related with bringing another motion to discharge the Receiver, the Receiver recommends that it be discharged along with the standard release, upon the filing of a certificate with the Court confirming that the administration of this proceeding has been completed.

CONCLUSION AND RECOMMENDATION

45. Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief detailed in paragraph 10 (e) of this Second Report.

All of which is respectfully submitted, this 9th day of February 2021.

MNP LTD.,
Solely in Its Capacity as Court-Appointed
Receiver and Manager of Old Mill Marina (Kawagama) Limited
And Not in Its Personal or Corporate Capacity

Per: 

Jerry Henechowicz CPA, CA, CIRP, LIT
Senior Vice President

A

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.

)

MONDAY, THE 9TH

JUSTICE MCEWEN

)

DAY OF MARCH, 2020

)

1711423 ONTARIO LIMITED

Applicant

- and -



OLD MILL MARINA (KAWAGAMA) LIMITED

Respondent

ORDER
(Appointing the Receiver)

THIS APPLICATION made by 1711423 Ontario Limited (the "**Lender**") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing MNP Ltd. as receiver and manager (and in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of Old Mill Marina (Kawagama) Limited (the "**Debtor**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of John Carl Hubble sworn March 6, 2020 and the Exhibits thereto and on hearing the submissions of counsel for the Lender, no one appearing for the Debtor although duly served as appears from the affidavit of service of Lynda Christodoulou sworn March 6, 2020 and on reading the consent of MNP Ltd. to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the

Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, MNP Ltd. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to take possession of boats or any other tangible personal property belonging to a third party (the "**Third Party Property**") and located either on the Property or on the property municipally known as 1569 Russell Landing, Dorset Ontario;
- (c) to receive, preserve, and protect the Property and the Third Party Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property and the Third Party Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (d) to manage, operate, and carry on the business of the Debtor, 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 business, or cease to perform any contracts of the Debtor;

- (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) 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 Debtor, the Property or the Receiver, 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;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to market the Property for sale free and clear of any rights of occupation of the Property by Jennifer Walisser and Robert Walisser;

- (l) 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 not exceeding \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$100,000.00; 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 subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (m) if requested by the purchaser, to deliver vacant possession of the Property upon ninety (90) days notice in writing to Jennifer and Robert Walisser;
- (n) 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;
- (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (t) to conduct a process for identification and verification of the proprietary claims of parties to the Third Party Property and to require any party wishing to make a proprietary claim to any Third Party Property to file a proof of claim in the form acceptable to the Receiver;
- (u) to return the Third Party Property to persons holding proved proprietary claims to such Third Party Property upon payment by such persons of the Receiver's reasonable fees and disbursements associated with the return of the Third Party Property; and
- (v) 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 Receiver 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 below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; and (iii) 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 Receiver of the existence of any Property or information regarding the Property in such Person's possession or control, shall grant immediate and continued access to the Property or information

regarding the Property to the Receiver, and shall deliver all such Property or information to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver 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 Debtor 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 Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver 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 Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver 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 Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver 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 RECEIVER

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "**eligible financial contract**" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor 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 to

the Debtor 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 Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's 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 Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver 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 Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall 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 Receiver, 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 Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver 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 respecting 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*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver'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 it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may

consider necessary or desirable, provided that the outstanding principal amount does not exceed \$150,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

23. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

24. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further

orders that a Case Website shall be established in accordance with the Protocol with the following URL '[http://www.mnpdebt.ca/old mill marina](http://www.mnpdebt.ca/old_mill_marina)'.

25. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

26. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

29. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver 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.

30. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver 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.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 09 2020

PER / PAR: 

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number ___-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

[RECEIVER'S NAME], solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

1711423 ONTARIO LIMITED
Applicant

-and-

OLD MILL MARINA (KAWAGAMA) LIMITED
Respondent

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT
TORONTO

ORDER

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Lawyers for the Applicant

B

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

1711423 ONTARIO LIMITED

Applicant

and

OLD MILL MARINA (KAWAGAMA) LIMITED

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

**FIRST REPORT TO THE COURT OF MNP LTD IN ITS CAPACITY AS RECEIVER
AND MANAGER OF THE ASSETS, UNDERTAKINGS, AND PROPERTIES OF
OLD MILL MARINA (KAWAGAMA) LIMITED**

September 22, 2020

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INTRODUCTION

1. On March 9, 2020, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made an order (the “**Appointment Order**”), *inter alia*, appointing MNP Ltd. (the “**Receiver**”) as receiver and manager of all the assets, undertakings and properties of Old Mill Marina (Kawagama) Limited (“**Old Mill**” or the “**Company**”) acquired for, or used in relation to the business carried on by the Company (collectively, the “**Property**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. Old Mill is a private Ontario corporation which maintained and operated a full-service marina facility from an owned waterfront property municipally known as 1652 Russell Landing Road, Dorset, Ontario located on Kawagama Lake, in the District of Haliburton (included with the Property and separately referred to as the “**Real Property**”).
3. The Property includes 97 boat slips on Kawagama Lake, storage and fueling facilities, boat launch facilities, a main building containing service bays, retail store and an office area, a residential waterfront home, currently unoccupied, and other smaller structures used for storage and maintenance. The Property also includes various chattels utilized in the operation of the marina, business records, goodwill and intangible property.
4. The Company had use of two (2) indoor watercraft storage buildings (the “**Storage Facilities**”) to store its customers’ watercraft during the winters. The Storage Facilities are owned by 1801552 Ontario Limited (“**180 Corp**”), an entity related by common control to the Applicant, who is a senior secured creditor in this matter. As such, 180 Corp has cooperated with the Receiver by allowing the Receiver full access and use of Storage Facilities throughout these proceedings in exchange for the Receiver paying the Storage Facilities’ operating costs.
5. Since its appointment on March 9, 2020, the Receiver has taken control the Property of the Company and, with the access granted by 180 Corp, approximately four hundred (400) watercraft and related equipment (the “**Customers’ Boats**”) owned by customers and located at the Property and Storage Facilities. The Receiver re-started the marina operations, which had been dormant for the winter season at the time of the appointment of the Receiver, prepared for the spring launch of all Customers’ Boats and operated the marina over the summer months.
6. In addition, the Receiver has conducted a sales process in respect of the Property and business of Old Mill on a going concern basis, as authorized by the Appointment Order. The sales process has resulted in multiple offers to purchase the Property, one of which the Receiver has conditionally accepted, pending approval by this Honourable Court.

7. It should be noted by the Court that this entire receivership has occurred against the backdrop of the COVID-19 pandemic and resultant state of emergency as declared by the Province of Ontario, which has, at times, added to the complexity of this Receivership. The Receiver and its counsel have been required to ensure that the operation of the marina conformed to applicable COVID-19 safety guidelines.

CIRCUMSTANCES LEADING TO THE APPOINTMENT OF THE RECEIVER

8. The circumstances leading to the appointment of the Receiver, are set out in the Affidavit of John Carl Hubble, sworn March 6, 2020 (the “**Hubble Affidavit**”) in support of the initial Receivership Application, brought by the Applicant, including the following:
 - a. the Applicant advanced two separate loans to Old Mill in the total principal amount of \$1,250,000, secured by the first-ranking and a third-ranking mortgages registered against title to the Real Property, as well as a general security agreement and a PPSA registration against the personal property of Old Mill;
 - b. Old Mill has been in default of its payment obligations to the Applicant since January 2019;
 - c. on February 26, 2020, Mr. Robert Walliser (“**Walliser**”), a director and principal of the Company and notified the Applicant that all of the Company’s employees were terminated and that he had abandoned the Property (save and except for a residential home on the premises, which was occupied by his wife, also one of the directors and her children). At that time the Customers’ Boats were still in prepaid winter storage from the previous year/season;
 - d. on March 3, 2020, the Applicant issued written demand for repayment of all and amounts due and owing and issued to the Company a Notice of Intention to Enforce Security pursuant to Section 244(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”);
 - e. as stated earlier in this Report, the Company utilized the Storage Facilities from 180 Corp. The Storage Facilities comprise two (2) indoor structures (one of which was heated) that were designed built for the purpose of storing watercraft. The Storage Facilities. At the time of the Company’s abandonment, no arrangements had been made for the continued supply of propane to heat and protect certain of the Customers’ Boats in the heated storage and no arrangements for the orderly return/release of Customers’ Boats still in winter storage in the spring. Given these concerns an immediate application was made for the Court-appointment of a

receiver to take control of the Property and arrange for an orderly return of Customers' Boats.

9. A copy of the Appointment Order, together with related Court documents and all reports with respect of this matter are available on the Receiver's website, which can be found at <https://mnpdebt.ca/oldmillmarina>.

PURPOSE OF THIS REPORT

10. The purpose of this Receiver's first report (the "**First Report**") is to:

- a. update the Court with respect to:
 - i. the activities of the Receiver since the date of the Appointment Order including describing the Receiver's operation of the marina, completing the spring launch of all Customers' Boats and rental of boat slips to water access only customers; and
 - ii. the results of the Sale Process (as such term is later defined) conducted by the Receiver;
- b. provide information to the Court in support of the Receiver's request for orders, *inter alia*,
 - i. approving the First Report and the conduct and activities of the Receiver as set out therein;
 - ii. approving the Agreement of Purchase and Sale dated July 27, 2020 (the "**Sale Agreement**") entered into between the Receiver, as vendor, and Pine Rock Holdings Limited ("**Pine Rock**") as purchaser, later assigned by Pine Rock to 2771470 Ontario Inc., (the "**Purchaser**") and the transaction contemplated therein (the "**Sale Transaction**") ;
 - iii. authorizing the Receiver to take such steps as are necessary and appropriate to facilitate the closing of the Sale Transaction;
 - iv. vesting title in and to the Purchased Assets (as such term is later defined) in the Purchaser or as it may direct, free and clear of any encumbrances, save and except as otherwise contemplated by the Sale Agreement;
 - v. sealing the Confidential Appendices "1" and "2" noted in this Report until such time as the Sale Transaction is closed or by further order of the Court;

- vi. approving the fees and disbursements of the Receiver and its counsel Torkin Manes, LLP as set out in this Report and the Fee Affidavits of Jerry Henechowicz and S. Fay Sulley (collectively, the “**Fee Affidavits**”);
- vii. approving the Receiver’s Interim Statement of Receipts and Disbursements dated September 10, 2020; and
- viii. authorizing the Receiver to make a distribution from the funds realized by the Receiver and after the closing of the Sale Transaction, in favour of those creditors, and in the amounts, as set-out later in this Report.

DISCLAIMER AND TERMS OF REFERENCE

11. In preparing this Report, the Receiver has relied on information (the “**Information**”) regarding the Company and the Property:
- a. included in the Application/Motion Records and other materials filed with the Court in connection with these proceedings, including the Hubble Affidavit;
 - b. provided by the Company’s directors and management, the Applicant and its respective legal counsel;
 - c. located in Old Mill’s available books and records; and
 - d. otherwise made available or provided to the Receiver and its counsel.
12. Except as described in this Report, the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada Handbook.
13. All currency references contained herein are in Canadian Dollars, unless otherwise specified. All capitalized terms not otherwise defined herein shall have the meanings as defined in the Appointment Order, unless otherwise specified.

RECEIVER’S ACTIVITIES

14. Since its appointment, the Receiver has performed the following activities:
- a. taking possession and control of the Property including a review of the operations of Old Mill to assess the Receiver’s needs to restart and manage the business of the Company;

- b. arranging to borrow \$75,000 from Kirkfield Holdings Limited (“**Kirkfield**”), a party related to the Applicant, by the issuance of a Receiver Certificate in order to fund operations during the receivership period prior to the receipt of proceeds from operations;
- c. identifying and inventorying all third-party property located at the Property, specifically the Customers’ Boats;
- d. reactivating the Old Mill’s business to facilitate summer slip rentals, spring launch and release of the Customers’ Boats to their owners (the “**Operations**”);
- e. preparing statutory filings pursuant to Section 245 and 246(1) of the BIA;
- f. retaining certain employees of Old Mill to facilitate the Operations;
- g. arranging for insurance coverage for the Property;
- h. arranging for the registration of the Appointment Order against title to the Real Property;
- i. corresponding with secured creditors, unsecured creditors and other stakeholders including the Lake Kawagama Cottage Owners Association regarding the status and operations of Old Mill;
- j. communicating with customers of Old Mill, including by posting of notices on the Receiver’s website, Old Mill’s website, hosting of a virtual townhall meeting as well as by e-mail;
- k. reviewing, approving and paying various operating disbursements;
- l. preparing and filing applications for the Canada Emergency Wage Subsidy (“**CEWS**”);
- m. preparing and sending documentation concerning the filing of Wage Earner Protection Program claims to former employees of Old Mill who were terminated prior to the date of the Appointment Order;
- n. conducting the marketing and sale process for the Property and the Company’s going-concern business (the “**Sale Process**”), as described in greater detail below;
- o. negotiating of the Sale Agreement as described in greater detail below;
- p. negotiating and entering into the Interim Occupancy Agreement described below;
and

- q. preparing this First Report.
15. Throughout this time the marina operations were subject to the provincial government operating regulations and other restrictions to prevent the spread of Covid. These measures added significant difficulties and costs to ensure the safe operation of the Marina through the Receiver's mandate.

SALE PROCESS

16. The following steps were taken by the Receiver to conduct in the Sale Process:
- a. on March 23, 2020, the Receiver distributed a brief interest solicitation letter (the "**Teaser**") via e-mail to prospective purchasers. The distribution list included:
 - i. companies identified by management of Old Mill as potentially having an interest in the business;
 - ii. over 100 established Canadian marina operators with operations within southern Ontario;
 - iii. Canadian and US-based venture capital firms;
 - iv. Canadian real estate development firms; and
 - v. companies known by the Receiver and its affiliated MNP Corporate Finance practice to invest in marinas.

A copy of the Teaser is attached hereto as **Appendix "B"**

- b. the Receiver initially set the Offer Deadline at May 15, 2020. Due to the provincial government COVID-19 regulations (the "**COVID19 Regulations**") and inability to begin on-site property tours, the Offer Deadline was extended to June 12, 2020;
- c. on March 23, 2020, a notice was published on the Boating Ontario website advertising the acquisition opportunity of the Property and business of Old Mill. Included on the website posting was a copy of the Teaser;
- d. on May 12, 2020, the Receiver advertised the acquisition opportunity in the National Post newspaper. A copy of the advertisement is attached as **Appendix "C"**;

- e. Notice of the sale was published in the *Insolvency Insider* e-mail publication on April 20th and 27th, May 4th, 11th, 19th, and 25th and June 1st and 8th, 2020; and
 - f. a secure online data room was set up containing additional information and documents in respect of the Company and its business and assets, including a Confidential Information Memorandum that included the basic terms and conditions of sale and the standard form of offer to be used to submit the offer. Access to the online data room was provided to all interested parties that signed a confidentiality and non-disclosure agreement (“NDA”).
17. Prospective purchasers were provided with the opportunity to conduct site tours beginning on May 19th, 2020, which was the first date on which marinas were permitted to operate pursuant to COVID-19 Regulations.

The Storage Facilities

18. 180 Corp, the owner of the Storage Facilities advised the Receiver prior to the commencement of the Sale Process that it was open to selling the land and buildings that comprise the Storage Facilities to the successful party purchasing of the Property, given that the Storage Facilities were an integral part of business operations of the marina and its winter watercraft storage program. Any sale transaction for the Storage Facility would be completed separately but also concurrently between 180 Corp and the purchaser of the marina.
19. Accordingly, the Receiver facilitated communications between 180 Corp and potential purchasers with respect to the potential acquisition of the Storage Facilities.

Sale Process Results

20. Interested parties were requested to submit their offers using a standard form that was placed in the data room.
21. Following the sending of in excess of 200 Teasers to potential purchasers and advertisement of the Sale Process, a total of thirty-six (36) parties signed an NDA and were provided with access to the online data room.
22. Offers were due by 5:00 PM (Toronto Time) on June 12th, 2020 (the “**Bid Deadline**”). An offeror requested an additional seven (7) days to submit an offer as there were significant delays in obtaining financial commitments from certain lenders due to the impact of COVID-19. The Receiver agreed to allow for the one-week extension with a revised bid deadline of 5:00 PM (Toronto Time) on June 19th, 2020 (the “**Extended Bid Deadline**”).

23. Five (5) parties submitted offers prior to the Extended Bid Deadline. A summary of the five offers received is attached as **Confidential Appendix “1”**.
24. The Receiver identified an offer from Pine Rock as the best and highest offer for the Property with the highest likelihood of being completed. Between June 19, 2020 and July 27, 2020, the Receiver entered into negotiations with the Pine Rock, which culminated in the Sale Agreement with the Purchaser. During this period the Purchaser was entering into agreements with 180 Corp. for the purchase of the Storage Facilities, a condition precedent to the Sale Transaction.
25. The material terms of the Sale Agreement include:
- a. **Purchased assets:** the assets to be purchased (the “**Purchased Assets**”) included
 - i. Substantially all of the Property, other than accounts receivable and cash as identified in the Sale Agreement;
 - ii. Real Property - the Real Property and a residential property located adjacent to the Real Property municipally known as 1676 Russell Landing Road;
 - iii. Goodwill – including the business name and all other intangible property; and
 - iv. Client Lists and Intellectual Property – including contact information of past and current clients of Old Mill’s business and related information in the Receiver’s actual possession regarding past and current transactions with such clients.
 - b. **Purchase price:** the final purchase price in the Sale Agreement attached as **Confidential Appendix “2”** and subject to closing adjustments for:
 - i. specific inventory and equipment sales by the Receiver prior to closing;
 - ii. shared costs of for the removal of underground fuel tanks and installation of above ground fuel tanks; and
 - iii. other standard closing adjustments for a real property sale.
 - c. **Deposit:** a deposit of \$125,000 has been received by the Receiver’s counsel;
 - d. **Closing date:** pursuant to the terms of the Sale Agreement, the Sale Transaction is to close within thirty (30) days of the end of a due-diligence period. The conditions to closing were waived by the Purchaser on August 27, 2020, thereby

ending the due-diligence period. Closing is therefore to be on September 26, 2020 and may be earlier if such is agreed to by the parties.

- e. **Representations and Warranties:** consistent with the standard terms of an insolvency transaction, i.e. on an “as is, where is” bases, with limited representations and warranties.
- f. **Material Conditions:** the only remaining outstanding condition under the Sale Agreement are:
 - i. vacant possession of the Property including the residence; and
 - ii. the Court granting the Approval and Vesting Order.

Interim Occupancy Agreement

26. With the approaching end of the boating season, significant concerns have been expressed by customers of Old Mill as to whether winter storage will be available for the 2020/2021 winter months. As a result, in the Receiver’s view, it is important to ensure continuity of operations and a relatively seamless transition of possession and operation of the marina to the Purchaser. To this end, the Receiver and the Purchaser entered into the Interim Occupation and Operation Agreement dated September 5, 2020 (the “**Interim Occupancy Agreement**”). The Interim Occupancy Agreement allows for the Purchaser to pre-emptively contact customers to prepare for the winterization and storage of watercraft to ensure that customers do not feel the need to have their watercraft serviced and stored by a competing marina facility. **The Interim Occupancy Agreement is attached as Appendix “D”.**
27. The Interim Occupancy Agreement also permits the Purchaser to occupy the Real Property and operate the marina pending closing of the Sale Transaction for its own account. In the event the Sale Transaction does not close for any reason, the Purchaser will be required to account to the Receiver for all proceeds of operations during the period in which the Purchaser is in possession of the Property pending closing. In addition, any customer payments for winter storage are to be held in trust by the Purchaser and only released to the Purchaser following closing of the Sale Transaction.

The Residential Occupant

28. In the Appointment Order, the Receiver was provided with the authority to evict the occupant on 90 days’ notice. The required 90-day notice has been provided by the Receiver to the tenant, who has agreed to leave the premises prior to closing and has indicated that she has secured alternative housing for herself and her family in Huntsville, Ontario. By email dated September 17, 2020, the occupant confirmed that she had

vacated the house and removed her personal belongings. The Receiver is satisfied that the tenant has located suitable alternative housing and that it is now in a position to deliver vacant possession of the Real Property to the Purchaser upon the closing of the Sale Transaction.

Fuel Storage and Insurance Issue

29. The Receiver also dealt with the replacement of certain underground fuel storage tanks located on the Real Property. A recent Phase 2 environmental report in respect of the Property, obtained by the Receiver, indicates no environmental concerns with the Property. In order for the Purchaser to obtain suitable insurance for the Property post-closing, the Purchaser required the removal and replacement of the underground storage tanks with above-ground tanks as well as additional environment testing by Pinchin Environmental Services (“**Pinchin**”) of the soil in the area surrounding the underground tanks. The Receiver and Purchaser agreed to equally share the estimated costs of approximately \$70,000 as a closing adjustment.
30. The underground tanks removal and additional soils tests by Pinchin were completed on September 11, 2020. Preliminary reports from Pinchin indicate no evidence of environmental contamination caused by the underground tanks. Arrangements are in place for the installation of insurance-compliant, above-ground tanks, which work will be completed post closing, at the expense of the Receiver.

SALE AGREEMENT RECOMMENDATIONS

31. The Receiver recommends that the Court issue an order approving the Sale Agreement and authorizing the Receiver to complete the Sale Transaction and vesting title to the Property (including the Real Property) in the Purchaser for the following reasons:
 - a. the Sale Process was conducted in accordance with the Appointment Order;
 - b. the market was widely canvassed for approximately twelve (12) weeks using several marketing techniques, including direct solicitation to prospective purchasers, online advertisements and newspaper advertisement;
 - c. the Sale Transaction represents the highest and best offer received during the Sale Process with the highest likelihood of closing;
 - d. the end of the boating season is approaching and without incurring significant costs to continue operations, as well as requiring arrangements to be made for the use of the Storage Facilities, the Receiver is not able to offer continuing marina operations, which would result in large customer loss and greatly diminishing the value of Old Mill;

- e. in the event the Sale Transaction is not completed, the Applicant has advised the Receiver that it is not prepared to fund the significant costs and professional fees needed to continue the operations of the marina. Without such funding, the Receiver would have no alternative but to offer the Property for sale on an “as is where is” after liquidation of all inventory and marina equipment. It is unlikely, in such a circumstances, that the marina would be in a position to continue as a going concern. Since the Marina provides a critical service for water access only cottagers on Kawagama Lake, its shutdown would severely hamper these cottagers ability to access their cottages and likely have a significant negative impact on the access to and value of their properties.
 - f. completion of the Sale Transaction would provide ongoing permanent and seasonal employment;
 - g. absent the Sale Transaction, a protracted marketing period will continue to be necessary. The ongoing professional fees would likely further erode the proceeds available for distribution with no certainty that a superior transaction could be completed; and
 - h. the Applicant has advised that it supports the Sale Transaction notwithstanding that the proceeds of realization are significantly less than the amounts owing to it from the Company.
32. In the Receiver’s opinion, the Sale Transaction represents the best and highest offer for the Property and the Sale Process was fair and reasonable. The Receiver made sufficient effort to obtain the best price and has not acted improvidently. Accordingly, the Receiver respectfully requests that the Court approve the Sale Transaction, grant an order vesting the right, title and interest in the Property to the Purchaser and authorize the Receiver to take all steps necessary to complete the Sale Transaction.

CONFIDENTIAL APPENDICES

33. The Receiver is of the view that **Confidential Appendices “1” and “2”** should remain sealed until the earlier of 60 days following the closing of the Sale Transaction or further order of the Court, as the information contained therein is commercially sensitive and could prejudice the sale of the Property in the event the Sale Transaction does not close. The Receiver does not believe that any party will suffer prejudice if the Confidential Appendices are sealed in this manner.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

34. Attached as **Appendix “E”** is the Receiver’s Interim Statement of Receipts and Disbursements for the period of March 9, 2020 to September 10, 2020. During this period receipts were \$398,747.90 and disbursements were \$341,396.27 resulting in an excess of receipts over disbursements of \$57,351.63. The balance is exclusive of the \$125,000 deposit from the Purchaser which is currently being held in trust by Torkin Manes.

PROFESSIONAL FEES

35. The Receiver’s accounts total \$312,525.25 in fees and disbursements, plus HST of \$41,132.29, for a total amount of \$357,534.50 for the period of March 1, 2020 to August 31, 2020. The Receiver’s estimated fees to complete its administration will not exceed \$20,000, plus HST (the “**Receiver’s Accounts**”). Copies of the Receiver’s Accounts, together with a summary of the accounts, total billable hours charged and the average hourly rate, are set out in the Affidavit of Jerry Henechowicz sworn September 22, 2020, attached hereto as **Appendix “F”**.

36. The accounts of the Receiver’s Counsel, Torkin Manes, total \$90,694.56 in fees and disbursements and \$11,762.55 in HST for a total of \$102,457.11 for the period of March 2, 2020 to September 22, 2020. Torkin Manes’ estimated fees through to the completion of the Receivership administration will not exceed \$10,000, plus HST (the “**Torkin Manes’ Accounts**”). Attached hereto as **Appendix “G”** is a copy of the Fee Affidavit of S. Fay Sulley sworn September 22, 2020, attaching the Torkin Manes’ Accounts and a summary of the personnel, hours and hourly rates described in the Torkin Manes’ Accounts.

37. The average hourly rates for the Receiver and Torkin Manes for the referenced billing periods were \$350.82 and \$415.50, respectively.

38. The Receiver is of the view that the hourly rates charged by Torkin Manes are consistent with the rates charged by corporate law firms practicing in the area of insolvency in the Toronto market and that the fees charged are reasonable and appropriate in the circumstances.

STATUTORY PRIORITIES

Unremitted Employee Source Deductions and HST

39. Due to COVID-19 operating restrictions, Canada Revenue Agency (“**CRA**”) has not been able to complete a trust examine to confirm the amount, if any, of unremitted employee source deductions and HST.

40. Based on the Receiver's initial review of the Company's records, it does not appear that there are any liability for unremitted employee source deductions.
41. With respect to unremitted HST, the Receiver was advised that by Walliser that CRA had assessed the Company for approximately \$300,000 related to inventory transfers between the Company and a related entity Old Mill Marina (Lake of Bays) Limited. The Receiver understands, based on information provided by Walliser, that this assessment was not outstanding as of the date of the advance and registration of the Applicant's 1st mortgage, which, by implication means that it was not outstanding at the time of the registration of the second-ranking mortgage in favour of Haliburton County Development Corporation ("HCDC")¹ outstanding at the time the Company granted the 3rd Mortgage and GSA to the Applicant.
42. The Receiver has not received documentation from CRA on the basis and timing of this assessment and will reserve this amount, as applicable, from any expected distribution.

Employee WEPP Claims

43. When terminated by the Company, all employees were paid any outstanding wages and vacation pay. In its administration of the WEPP program, the only claims filed by employees were for unpaid termination pay. Accordingly, the Receiver does not anticipate any priority claims in respect of WEPP.

SECURED CREDITORS AND MORTGAGEES

44. Copies of the 1st Mortgage, 2nd and 3rd Mortgages are attached as **Appendix "H"**. A copy of the parcel register in respect of the property is attached as **Appendix "I"**. A copy of a summary of a PPSA search conducted against Old Mill is attached as Appendix **"J"**.

1711423 Security

45. As set out above, the Applicant, 1711423 Ontario Limited, holds a first-ranking mortgage (the "**1st Mortgage**") registered against title to the Real Property on September 2, 2016 as Instrument number HA44419. In addition, it holds a third-ranking mortgage (the "**3rd Mortgage**") registered against title to the Real Property on June 18, 2019 as Instrument number HA60340.

¹ The HCDC mortgage was registered in 2012. The HCDC subsequently, its interest in favour of the Applicant's first mortgage in the principal amount of \$750,000. By definition, if the CRA assessment was not outstanding as of the date of the advance and registration of the Applicant's first mortgage, it cannot have been outstanding as of the date of the advance and registration of the HCDC mortgage.

46. The Applicant also holds personal property security against the personal property of Old Mill in the form of a General Security Agreement (“GSA”). The Applicant has registered its security interest pursuant to the PPSA. Based on a statement of account provided by the Applicant’s counsel, the balance due to the Applicant in respect of the 1st Mortgage is \$828,978.08 plus an allocation of the Applicant’s total legal fees of \$50,174.27 (to be added to the mortgage balance pursuant to the standard charge terms associated with the mortgage) of \$34,355.54, for a total due and owing pursuant to the 1st mortgage of \$863,333.62 as of September 17, 2020. A copy of the Applicant’s Statement of Account as at September 17, 2020 is attached as **Appendix “K”**.

Haliburton County Development Corporation Security

47. As set out above, the Haliburton County Development Corporation (“HCDC”) holds as security a second ranking mortgage (the “2nd Mortgage”) against the Real Property . registered on June 5, 2012 as Instrument number HA21205. On September 2, 2016, a Postponement of Charge was registered against title to the Real property pursuant to which the HCDC mortgage was postponed in favour of the Applicant’s first mortgage. Based on a payout statement provided by HCDC, the Company will be indebted to HCDC in the amount of \$82,576.70 as at September 28, 2020. A copy of the HCDC payout statement is attached as **Appendix “L”**.

Security Opinions

48. The Receiver’s Counsel, Torkin Manes, has provided an opinion on the validity and enforceability of the Applicant’s security and the HCDC security. The opinion provides that, subject to the standard assumptions and qualifications contained therein:

- a. the Applicant holds a valid and perfected security interest in the Company’s personal assets as set out in the general security agreement, duly registered pursuant to the PPSA; and
- b. the Applicant mortgages and the HCDC mortgage constitute valid and enforceable charges against title to the Real Property.

PRIORITY

49. Neither the Receiver nor its counsel are aware of any reason why the priority of the Applicant mortgages and the HCDC mortgage would not be determined by date of registration, taking into account the postponement agreement registered against title to the Real Property.

50. With respect to any HST liability that may be asserted at a later date by CRA, the Receiver and its counsel are of the view that the available evidence demonstrates that the 1st mortgage in favour of the Applicant and the 2nd mortgage in favour of HCDC were fully-advanced prior to the date on which any HST liability could possibly have arisen in connection with the Old Mill related party transactions.

51. Accordingly, the Receiver is of the view that the 1st and 2nd mortgages registered against title to the Real Property constitute “prescribed security interests” pursuant to the Excise Tax Act and hold priority over any subsequent interest in that specific property that may be asserted at a later date by CRA.

ALLOCATION OF PURCHASE PRICE BETWEEN REAL PROPERTY AND PERSONAL PROPERTY

52. Pursuant to the terms of the Sale Agreement, the Purchaser is required to allocate the total overall purchase price between the Real Property and personal property. Although not finalized, the portion of the purchase price allocated to Real Property will not be less than is \$1,000,000. The Receiver is of the view that it is appropriate at this time to issue a distribution to the Applicant and to HCDC from the proceeds of the transaction specifically allocated to Real Property.

DISTRIBUTION

53. The Receiver recommends, in light of the above, that it be authorized to distribute:

- a. \$80,702.50 to Kirkfield to repay the funds advanced to the Receiver by way of Receiver’s Certificate;
- b. \$863,333.62 to 1711423 on account of its 1st Mortgage; and
- c. \$82,576.80 to HCDC on account of its 2nd Mortgage.

This distribution will leave in the estate more than sufficient funds to cover future professional fees, estimated CRA or employee liabilities or any other contingencies that may arise.

CONCLUSION AND RECOMMENDATION

54. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make order granting the relief detailed in paragraph 6(b) of this Report.

All of which is respectfully submitted, this 22nd day of September 2020.

MNP LTD.,

Solely In Its Capacity As Court-Appointed

Receiver And Manager Of Old Mill Marina (Kawagama) Limited

And Not In Its Personal Or Corporate Capacity



Per:

Jerry Henechowicz CPA, CA, CIRP, LIT

Senior Vice President

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

1711423 ONTARIO LIMITED

Applicant

and

OLD MILL MARINA (KAWAGAMA) LIMITED

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

**SUPPLEMENTARY FIRST REPORT TO THE COURT OF MNP LTD IN ITS
CAPACITY AS RECEIVER AND MANAGER OF THE ASSETS, UNDERTAKINGS,
AND PROPERTIES OF
OLD MILL MARINA (KAWAGAMA) LIMITED**

September 24, 2020

INTRODUCTION

1. The Receiver filed with the Court its First Report to Court dated September 22, 2020, outlining, among other things, its activities since its appointment and the sales process in respect of the Old Mill Marina. At the time that the First Report was being finalized, a Second Waiver Agreement was being negotiated and finalized between the parties. The Second Waiver Agreement was not executed by the parties until after the finalization of the First Report to Court, and thus, this Supplementary Report is required in order to provide the Court and the stakeholders with a complete set of the documents related to the sale of the marina.
2. As the Court can see, the two attached waiver agreements demonstrate:
 - a. that all conditions to the transaction have been waived;
 - b. certain additional deposits that have been agreed to between the parties;
 - c. the mechanism by which the replacement of the fuel tanks located on the premises is being funded between the Receiver and the Purchaser, and the nature and structure of a \$50,000 holdback fund to be established by the Receiver from the proceeds of sale to deal with the replacement of the tanks, which work will not be completed until after closing.
3. In addition, the Receiver wishes to correct two typographical errors that appear in the First Report, namely:
 - a. Paragraph 35 of the First Report should be amended to read The Receiver's accounts total \$292,525.25 for fees, \$3,876.96 for disbursements plus HST of \$38,532.29 for a total of \$335,934.50 for the period March 1, 2020 to August 31, 2020. The Receiver's estimated fees to complete the administration will not exceed \$20,000 plus HST (the "**Receiver's Accounts**"). Copies of the Receiver's Accounts, together with a summary of the accounts, total billable hours charged and the average hourly rate, are set out in the Affidavit of Jerry Henechowicz sworn September 22, 2020, attached hereto as **Appendix "F"**.; and
 - b. Paragraph 54 of the First Report should be amended to read – Based on the foregoing, the Receiver respectively recommends that this Honourable Court make an order(s) granting the relief details in paragraph 10(b) of this Report.

All of which is respectfully submitted, this 24th day of September 2020.

MNP LTD.,

Solely In Its Capacity As Court-Appointed

Receiver And Manager Of Old Mill Marina (Kawagama) Limited

And Not In Its Personal Or Corporate Capacity

A handwritten signature in blue ink, appearing to read "Jerry Henechowitz".

Per:

Jerry Henechowitz CPA, CA, CIRP, LIT

Senior Vice President

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described in the Sale Agreement (the "Purchased Assets"), was heard this day by videoconference in accordance with Commercial List COVID 19 procedures.

ON READING the Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Josset Johnson sworn September 23, 2020 filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, including, without limitation, the Interim Operation and Occupation Agreement attached as an Appendix to the Report by the Receiver.
2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement (and listed on Schedule B hereto) shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice McEwen dated March 9, 2020 (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in Land Registry Office No. 19, Land Titles Division of Haliburton, of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* 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.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 14 2020

PER / PAR: 

Schedule A - Form of Receiver's Certificate

Court File No. CV-20-00637615-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

1711423 ONTARIO LIMITED

Applicant

- and -

OLD MILL MARINA (KAWAGAMA) LIMITED

Respondent

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c-B-3, and Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable McEwen of the Ontario Superior Court of Justice (the "Court") dated March 9, 2020, MNP Ltd. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of Old Mill Marina (Kawagama) Limited (the "Debtor").

B. Pursuant to an Order of the Court dated September 28, 2020, the Court approved the agreement of purchase and sale made as of July 27, 2020 (the "Sale Agreement") between the Receiver and 2771470 Ontario Inc (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for

the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

MNP Ltd., in its capacity as Receiver of the undertaking, property and assets of Old Mill Marina (Kawagama) Limited, and not in its personal or corporate capacity

Per: _____

Name:

Title:

Schedule B – Purchased Assets

Real Property: The property municipally known as 1652 and 1676 Russell Landing Road, Township of Algonquin Highlands, and legally described as PT LT 16 CON 12 SHERBORNE AS IN H87622 EXCEPT PT 1, 2, 3 19R1733 AND EXCEPT PT 2 19R5130; S/T H87622; TOWNSHIP OF ALGONQUIN HIGHLANDS, being all of PIN 39115-0241 (LT), together with all buildings, structures, improvements, systems, chattels and fixtures situated or located thereon or therein.

Personal and Intellectual Property: All Property, other than Real Property of the Debtor to be conveyed to the Purchaser pursuant to the Sale Agreement including, without limitation, all of the Debtor's chattels, personal property, Goodwill, Assigned Contracts (if any), Warranties, Client Lists, Books and Records, Equipment, Trailers, intellectual property (including all Licenses and Permits), office furniture and equipment (all capitalized terms in this Schedule carry the same meaning ascribed to them by definition in the Sale Agreement)."

Schedule C – Claims to be deleted and expunged from title to Real Property

The following instruments are to be discharged upon registration of the Vesting Order:

1. Instrument No. HA21205 registered on June 5, 2012, being a Charge in favour of Haliburton County Development Corporation in the principal amount of \$125,000 (the "Haliburton Charge");
2. Instrument No. HA44419 registered on September 2, 2016, being a Charge in favour of 1711423 Ontario Limited ("1711423") in the principal amount of \$750,000 (the "1711423 Charge");
3. Instrument No. HA44420 registered on September 2, 2016, being a Notice of Assignment of Rents – General in favour of 1711423;
4. Instrument No. HA44421 registered on September 2, 2016, being a Postponement of Interest of the Haliburton Charge in favour of the 1711423 Charge;
5. Instrument No. HA53254 registered on March 1, 2018, being a Notice relating to the 1711423 Charge; and
6. Instrument No. HA60340 registered on June 18, 2019, being a Charge in favour of 1711423 in the principal amount of \$500,000.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

Permitted Encumbrances with respect to the Property means:

1. The exceptions and qualifications set out in the *Land Titles Act* (Ontario) and/or on the parcel register for the Real Property;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any registered or unregistered easements, servitudes, rights-of-way, licences, restrictions that run with the land and other encumbrances and/or agreements with respect thereto (including, without limiting the generality of the foregoing, easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables);
4. Indicate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due or liens for same which are due but the validity of which are being contested in good faith by the Vendor provided that the Vendor has provided security which in the opinion of the Vendor, acting reasonably, is necessary to avoid any lien, charge or encumbrance arising with respect thereto;
5. Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Real Property;
6. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance, provided that any such work orders, deficiency notices and any other noncompliance are discoverable by the Purchaser no less than three (3) Business Days before the Waiver Date by way of an updated search with the applicable Governmental Authority, regardless of whether or not such search was performed;
7. Any breaches of any applicable laws, including, without limitation, outstanding building permits, work orders and deficiency notices, provided that such breaches are discoverable by the Purchaser no less than three (3) Business Days before the Waiver Date by way of an updated search with the applicable Governmental Authority, regardless of whether or not such search was performed;
8. Any subdivision agreements, site plan agreements, development agreements and any other agreements with the municipality, region, publicly regulated utilities or other governmental authorities having jurisdiction;
9. Defects or irregularities in title to the Real Property; and

10. Without in any way limiting the generality of any of the foregoing, the following specific instruments registered on title against the Real Property:

- (a) Plan 19R203 deposited on April 23, 1971;
- (b) Plan 19R752 deposited on June 10, 1975;
- (c) Instrument No. H87622 registered on April 12, 1972, being a Transfer in favour of the Debtor and containing a subject to interest burdening the Real Property as noted in the legal description therefor; and
- (d) Instrument No. HA64443 registered on March 10, 2020, being an Application to Register Court Order.

1711423 ONTARIO LIMITED
Applicant

-and- OLD MILL MARINA (KAWAGAMA) LIMITED
Respondent

Court File No. CV-20-00637615-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT
TORONTO**

APPROVAL AND VESTING ORDER

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Jeffrey J. Simpson (39663M)
jsimpson@torkinmanes.com
Tel: 416-777-5413
Fax: 1-888-587-9143

Lawyers for the Receiver, MNP Ltd.

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE

MR. JUSTICE HAINEY

)
)
)

MONDAY, THE 28TH

DAY OF SEPTEMBER, 2020

BETWEEN:

1711423 ONTARIO LIMITED

Applicant

- and -

OLD MILL MARINA (KAWAGAMA) LIMITED

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

ORDER

(Re: Interim Distribution, Receiver's Conduct, Fees and Sealing)

THIS MOTION, made by MNP Ltd. in its capacity as the Court-appointed receiver and manager (and in such capacities, the "Receiver") without security, of all the assets, undertakings, and properties of Old Mill Marina (Kawagama) Limited (the "Debtor") for an order, among other things, approving the Report of the Receiver dated September 22, 2020 (the "Report") and the actions of the Receiver set out therein, sealing the Confidential Appendices to the Report, authorizing the Receiver to make an interim distribution, and approving the fees and disbursements of the Receiver and its counsel as shown in the Fee Affidavits (as hereinafter defined) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report, including the Fee affidavits of Jerry Henechowitz for the Receiver and S. Fay Sulley for Torkin Manes LLP (collectively, referred as the "Fee Affidavits") and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served pursuant to the applicable Commercial List service and filing protocols, as appears from the Proof of Service of Josset Johnson, filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the Report and the conduct and activities of the Receiver as described in the Report are hereby approved.

3. **THIS COURT ORDERS** that, following the completion of the sale transaction approved herein, the Receiver is hereby authorized and directed to make the following distributions from the proceeds of the realization of the real property of the Debtor, in the following order of priority:

- (a) The sum of \$80,702.50, plus any additional interest to the date of payment, to Kirkfield Holdings Limited to repay the funds advanced to the Receiver by way of Receiver's Certificate;
- (b) The amounts shown on the Fee Affidavits for the fees and disbursements of the Receiver and its counsel, as approved by this Honourable Court herein;
- (c) A holdback (the "Holdback") in the amount of \$269,017.15 representing the amount of the potential claim shown in the letter dated March 20, 2020 (the "March 5, 2020 Letter") addressed to the Debtor from Canada Revenue Agency ("CRA"), pending a determination by the Receiver as to any amounts that may be owing to CRA in connection with the March 5, 2020 Letter, such determination to be communicated to all affected parties and such determination to be subject to further order of the Court should any party dispute the receiver's determination;
- (d) The sum of \$863,333.62 in favour of 1711423 Ontario Limited, plus per diem interest at the applicable rate to the date of distribution, in full satisfaction of the indebtedness secured by the first mortgage registered as Instrument Number HA44419 against title to the Real Property described in Schedule "A";
- (e) The sum of \$82,576.70 in favour of Haliburton County Development Corporation, plus per diem interest at the applicable rate from the day

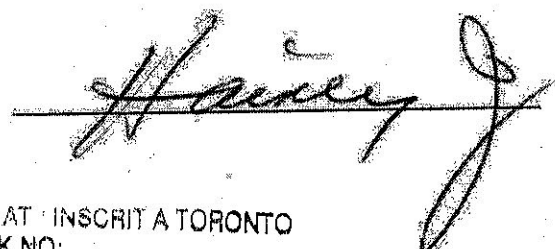
Immediately following this date of this Order to the date of distribution, in full satisfaction of the indebtedness secured by the first mortgage registered as Instrument Number HA21205 against title to the Real Property described in Schedule "A";

4. **THIS COURT ORDERS** that the payments indicated in items (d) and (e) above are subject to availability of funds, and in the event the proceeds of the liquidation of the property of the Debtor are insufficient to fund the above-noted distributions, the Receiver shall make the distributions in the order of priority above, to the extent possible, and shall be authorized to make such partial payments to the above-note creditors and stakeholders as may be necessary to give effect to this Order.

5. **THIS COURT ORDERS THAT** in the event any creditor holding a valid mortgage against title to the Property shown on Schedule "A" receives no payment or a partial payment pending finalization of the CRA potential liability, such mortgage creditor shall maintain its priority ranking as against the proceeds of sale, in such amounts as remain to be paid to that creditor in the event that the Holdback or any portion thereof is released for distribution to creditors.

6. **THIS COURT ORDERS** that Confidential Appendices to the Report shall be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all contents of the Court file, pending the earlier of (a) further Order of this Court; or (b) the expiry of 60 days following the date of the completion of the transaction(s) approved in this Order.

7. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, Torkin Manes LLP, as set out in the Report and the Fee Affidavits are hereby approved.



ENTERED AT INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 14 2020

PER / PAR: 

SCHEDULE A

Legal Description and Municipal Address of Real Property

PT LT 16 CON 12 SHERBORNE AS IN H87622 EXCEPT PT 1, 2, 3 19R1733 AND EXCEPT PT 2 19R5130; S/T H87622; TOWNSHIP OF ALGONQUIN HIGHLANDS, being all of PIN 39115-0241 (LT), municipally known as 1652 and 1676 Russell Landing Road, Township of Algonquin Highlands.

1711423 ONTARIO LIMITED
Applicant

-and- OLD MILL MARINA (KAWAGAMA) LIMITED
Respondent

Court File No. CV-20-00637615-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT
TORONTO**

**ORDER
(Re Interim Distribution, Receiver's Conduct, Fees
and Sealing)**

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto, ON M5C 2W7

Jeffrey J. Simpson (39663M)
jsimpson@torkinmanes.com
Tel: 416-777-5413
Fax: 1-888-587-9143

Lawyers for the Receiver, MNP Ltd.

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ASSET PURCHASE AGREEMENT

This Agreement made this 27th day of July, 2020.

AMONG:

MNP Ltd., solely in its capacity as the Receiver and Manager of the assets and undertaking of Old Mill Marina (Kawagama) Limited and not in its personal or corporate capacities

(the "Vendor")

- and -

PINE ROCK HOLDINGS LIMITED, a corporation governed by the laws of Ontario, in trust for a company to be incorporated

(the "Purchaser")

WHEREAS:

- A. Pursuant to the Order of the Honourable Mr. Justice McEwen of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 9, 2020 (the "**Receivership Order**"), MNP Ltd. was appointed as the Receiver and manager (the "**Receiver**") of the property, assets and undertakings (collectively, the "**Property**") of Old Mill Marina (Kawagama) Limited. (the "**Debtor**");
- B. Pursuant to the Receivership Order the Court authorized the Receiver to implement a sale process (the "**Sale Process**") in respect of the Property; and
- C. In accordance with the Sale Process, the Purchaser has agreed to purchase the Purchased Assets (as defined below) from the Vendor and the Vendor has agreed to sell the Purchased Assets to the Purchaser on the terms and conditions contained herein,

NOW THEREFORE, in consideration of the premises and mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the parties, the parties hereto agree as follows:

ARTICLE I INTERPRETATION

1.01 Definitions

In this Agreement, the following terms shall have the meanings set out below unless the context requires otherwise:

"**Acceptance Date**" means the date of acceptance of this Agreement by the Vendor;

"**Adjacent Boat Storage Lands**" has the meaning set out in section 6.05 hereof;

“**Adjacent Boat Storage Lands APS**” has the meaning set out in section 4.01(d) hereof;

“**Agreement**” means this asset purchase agreement, including all schedules and all amendments or restatements, as permitted and references to “**Article**” “**Section**” or “**Schedule**” mean the specified Article, Section of, or Schedule to this Agreement and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;

“**Applicable Law**” means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority, including, without limitation, Environmental Laws;

“**Approval and Vesting Order**” means the approval and vesting order issued by the Court approving this Agreement and the Transaction contemplated by this Agreement and conveying to the Purchaser all of each of the Receiver’s and the Debtor’s right, title and interest, if any, in and to the Purchased Assets free and clear of all Encumbrances, and which order shall be in a form substantively similar to the draft order attached as **Schedule “C”** hereto;

“**Assigned Contracts**” means those contracts listed at **Schedule “B”** hereto;

“**Books and Records**” means such books and records relating to the Purchased Assets as may be in the possession of the Receiver, but does not include any books or records that are in the possession of third parties;

“**Business Day**” means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;

“**Claims**” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including solicitor and client costs and disbursements, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing, related to the Debtor or the Property, and “**Claim**” means any one of them;

“**Closing**” means the completion of the purchase and sale of the Purchased Assets in accordance with the provisions of this Agreement;

“**Closing Date**” means, subject to the terms of Section 4.04, the fifteenth (15th) Business Day following the Waiver Date, or such earlier or later date as may be agreed to by the Parties;

“**Closing Time**” means the time of day on the closing date established by the parties to complete this Agreement;

“**Court**” has the meaning set out in the recitals hereof;

“**Debtor**” has the meaning set out in the recitals hereof;

“**Deposit**” has the meaning set out in section 2.05(a) hereof, in Canadian Dollars;

“**Due Diligence Conditions**” has the meaning set out in section 4.01 hereof;

“**Due Diligence Period**” means the period commencing on the Acceptance Date and ending at 5:00 PM EST on the date that is thirty (30) days following the Acceptance Date;

“**Encumbrances**” means liens, charges, security interests, pledges, leases, title retention agreements, mortgages, restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances of any kind or character whatsoever;

“**Environmental Laws**” means any and all applicable international, federal, provincial, municipal or local laws, by-laws, statutes, regulations, treaties, orders, judgments, decrees, ordinances, official directives and all authorizations relating to the environment, occupational health and safety, health protection or any Hazardous Materials;

“**ETA**” means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;

“**Excluded Liabilities**” has the meaning given in section 2.07 hereof;

“**Governmental Authorities**” means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power and “**Governmental Authority**” means any one of them;

“**Hazardous Materials**” means any contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Governmental Authority and any “contaminants”, “dangerous substances”, “hazardous materials”, “hazardous substances”, “hazardous wastes”, “industrial wastes”, “liquid wastes”, “pollutants” and “toxic substances”, all as defined in, referred to or contemplated in federal, provincial and/or municipal legislation, regulations, orders and/or ordinances relating to environmental, health and/or safety matters and, not to limit the generality of the foregoing, includes asbestos, urea formaldehyde foam insulation and mono or poly-chlorinated biphenyl wastes;

“**HST**” means all harmonized sales tax imposed under Part IX of the ETA;

“**Interim Period**” means the period from and including the date of this Agreement to and including the Closing Date;

“**ITA**” means the *Income Tax Act*, R.S.C. 1985, c.1, as amended;

“Licences and Permits” means all licences, permits, filings, certificates, authorizations, approvals or indicia of authority related to the Purchased Assets or necessary for the operation or use of the Purchased Assets;

“Notice” has the meaning set out in section 8.02 hereof

“Parties” means the Vendor and the Purchaser together, and **“Party”** means any one of them;

“Permitted Encumbrances” means those Permitted Encumbrances listed in Schedule “D” to the Approval and Vesting Order;

“Person” is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;

“Property” has the meaning set out in the recitals hereof;

“Purchase Price” has the meaning given in Section 2.02, in Canadian dollars;

“Purchased Assets” means the assets described at **Schedule “A”** hereto, including, without limitation, the Assigned Contracts, and excluding such assets that are disposed in accordance with Section 2.08 of this Agreement;

“Purchaser’s Solicitors” means Robins Appleby LLP;

“Real Property” has the meaning prescribed in **Schedule “A”** hereto;

“Receivership Order” has the meaning set out in the recitals hereof;

“Taxes” means all taxes, charges, fees, levies, imposts and other assessments, including all sales, use, goods and services, harmonized, value added, net worth, transfer, withholding, payroll, employer health, excise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments or similar charges in the nature of a tax including Canada Pension Plan and provincial pension plan contributions, employment insurance payments and workers compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

“Termination Notice” has the meaning set out in section 4.01 hereof;

“Transaction” means the transaction of purchase and sale contemplated by this Agreement;

“Vendor” means MNP Ltd., solely in its capacity as the Receiver and Manager of the assets and undertaking of Old Mill Marina (Kawagama) Limited and not in its personal or corporate capacities;

“Vendor’s Solicitors” means Torikin Manes LLP;

“Waiver Date” has the meaning set out in section 4.01 hereof; and



“Waiver Notice” has the meaning set out in section 4.01 hereof.

1.02 Headings and Sections

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.03 Number and Gender

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”.

1.04 Currency

Except as otherwise expressly provided in this Agreement, all dollar amounts referred to in this Agreement are stated in Canadian dollars.

1.05 Statute References

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

1.06 Time Periods

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

1.07 Consent

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

1.08 No Strict Construction

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

1.09 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties relating to the subject matter of this Agreement and supersede all prior agreements,



understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and the Purchaser shall acquire the Purchased Assets on an "as is, where is" basis subject only to the benefit of the representations and warranties in this Agreement. Any cost estimates, projections or other predictions contained or referred to in any other material that has been provided to the Purchaser or any of its affiliates, subsidiaries, agents or representatives are not and shall not be deemed to be representations or warranties of the Vendor or any of its affiliates, subsidiaries, agents, employees or representatives.

1.10 Section and Schedule References

Unless the context requires otherwise, references in this Agreement to Sections or Schedules are to Sections and Schedules, as applicable, of this Agreement. The Schedules to this Agreement, listed as follows, are an integral part of this Agreement:

Schedule	Description
Schedule "A"	Asset Listing
Schedule "B"	Assigned Contracts
Schedule "C"	Approval and Vesting Order
Schedule "D"	Permitted Encumbrances

ARTICLE II PURCHASE AND SALE

2.01 Purchase and Sale of Purchased Assets

On the Closing Date, subject to the terms and conditions of this Agreement:

- (a) the Vendor shall transfer, sell, convey, assign and deliver unto the Purchaser, and the Purchaser shall acquire and accept, all of the Vendor's right, title and interest in and to the Purchased Assets; and
- (b) the Purchaser shall pay the Purchase Price as provided in Section 2.02.

2.02 Purchase Price

The purchase price (the "**Purchase Price**") for the Purchased Assets including the Real Property shall be One Million, Three Hundred and Fifty Thousand (\$1,350,000) Dollars, subject to adjustments.

2.03 Adjustments

Except as otherwise set out herein, adjustments shall be made, as of 12:01 a.m. on the Closing Date, for realty taxes, local improvement rates, municipal/provincial levies and charges, water and assessment rates, utilities, amounts paid or payable pursuant to Assigned Contracts, and for all

other items that would normally be adjusted between a Vendor and a Purchaser in a transaction of the nature contemplated in this Agreement. The day of Closing shall be for the account of the Purchaser.

Notwithstanding the foregoing, the Purchaser acknowledges and agrees that any adjustment in favour of the Purchaser for boat slips and storage fees for the 2020 calendar year shall not exceed the aggregate sum of Fifteen Thousand (\$15,000) Dollars, and the Vendor shall be entitled to retain any amounts in excess of Fifteen Thousand (\$15,000) Dollars paid or received on account of any such boat slips or storage fees for the 2020 calendar year, all without any liability to the Purchaser therefor.

Any adjustments that cannot be determined on the Closing Date, including, without limitation, any ordinary course adjustments, including, but not limited to, adjustment for utilities and customer contracts that may be reasonably necessary, shall be determined by the parties as soon after the Closing Date as is reasonably possible. Any amounts payable by one party to the other, as determined by the parties, acting reasonably, shall be paid within ten (10) days of the request for such payment. Upon completion, the Vendor and the Purchaser shall exchange undertakings to re-adjust the foregoing items, if necessary, which undertakings to readjust shall be limited to any readjustments requested within one hundred eighty (180) days of the Closing Date or such longer period as the parties may agree.

The Purchaser acknowledges and agrees that the Vendor shall be solely entitled to all amounts owing by third parties and deemed to be accounts receivables on account of the Purchased Assets as of the Closing Date and the Vendor shall be entitled to take such action both before and after Closing as the Vendor deems advisable in order to collect such amounts from such third parties. In the event that the Purchaser receives any such amounts directly from the applicable third party, the Purchaser shall be deemed to be holding such amounts received in trust for the Vendor and shall immediately following the Purchaser's receipt of same pay the Vendor such amounts.

The Purchaser further acknowledges and agrees that there shall not be any adjustment in favour of the Purchaser on account of any item included on any inventory list provided by the Vendor that is not in the actual possession of the Vendor or is not situate on the Property at Closing nor shall the Vendor be required to perform any inventory count on Closing.

2.04 Allocation of Purchase Price

The Vendor and the Purchaser acknowledge and agree that they shall each make their own allocations of the Purchase Price as among the Purchased Assets for the purposes of the *Income Tax Act* (Canada) and any filings in accordance with the provisions thereof, save and except that the Vendor and the Purchaser shall, prior to Closing, agree on the allocation of the Purchase Price among the items comprising the Purchased Assets on which HST is exigible.

2.05 Satisfaction of Purchase Price

The Purchaser shall pay the amount of the Purchase Price on Closing together with all applicable sales and transfer taxes by wire transfer subject to the terms hereof. The Purchase Price shall otherwise be satisfied as follows:

- (a) by payment to the Vendor within ten (10) days following the Acceptance Date, the sum of Seventy-Five Thousand (\$75,000) Dollars (the "**Deposit**"), which Deposit shall be held by the Vendor in trust, pending the completion or earlier termination of the Transaction;
- (b) the balance of the Purchase Price, net of the Deposit and subject to the adjustments contemplated herein, shall be paid to the Vendor (or as it may otherwise direct) on Closing;
- (c) The Deposit is to be held in accordance with the terms of this Agreement. The Deposit will be held by the Vendor until completion or other termination of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Vendor shall place the Deposit in a non-interest bearing account and no interest shall be earned, received or paid on the Deposit;
- (d) The Deposit shall be held in trust by the Vendor and shall be:
 - (i) credited to the Purchaser as an adjustment against the Purchase Price on the Closing Date if the purchase and sale of the Purchased Assets is completed pursuant to this Agreement;
 - (ii) refunded to the Purchaser without interest or deduction if the purchase and sale of the Purchased Assets is not completed pursuant to this Agreement, provided that the Purchaser is not in default under this Agreement; or
 - (iii) retained by the Vendor as a genuine pre-estimate of liquidated damages and not as a penalty, in addition to any other rights and remedies that the Vendor may have under this Agreement and at law and/or equity, including offering the Purchased Assets or such portion thereof as the Vendor may deem advisable in its sole and absolute discretion for sale to another person, if the purchase and sale of the Purchased Assets is not completed pursuant to this Agreement as a result of the Purchaser's breach hereunder.

2.06 Sales and Transfer Taxes; HST Election

- (a) The Purchaser shall be responsible for the payment on Closing of any Taxes that are required to be paid or remitted in connection with the consummation of the transactions contemplated hereunder, including, without limitation, HST, and the Purchaser acknowledges and agrees that HST shall be in addition to and not included in the Purchase Price and shall be collected and remitted in accordance with the ETA. For greater certainty, the Purchaser agrees to indemnify and hold the Vendor harmless in respect of any Taxes which may be assessed against the Vendor in respect of the sale to the Purchaser of the Purchased Assets. In particular but without limiting the generality of the foregoing, the Purchaser shall indemnify and save harmless the Vendor, its directors, officers, employees, agents and representatives from all claims, liabilities, penalties, interest, costs and legal and other expenses incurred, directly or indirectly, in connection with the assessment of HST payable in respect of the transaction contemplated hereunder.

- (b) At the Closing, the Vendor and the Purchaser shall, if applicable, jointly execute elections under Section 167 of the ETA to have the sale of the Purchased Assets take place on a HST-free basis under Part IX of the ETA and the Purchaser shall file such election with its HST return for the reporting period in which the sale of the Purchased Assets takes place.
- (c) In the event that the joint elections described in (b) above are not applicable, then the Purchaser shall deliver, prior to Closing, its HST certificate and indemnity in form and content satisfactory to the Vendor and the Vendor's Solicitors, certifying that the Purchaser shall be liable for, shall self-assess and shall remit to the appropriate Governmental Authority all HST payable in respect of the transaction contemplated hereunder. The Purchaser's certificate shall also include certification of the Purchaser's prescription and/or registration, as the case may be, and the Purchaser's HST registration number. If the Purchaser shall fail to deliver its certificate, then the Purchaser shall tender to the Vendor, at Closing, in addition to the balance due at Closing described herein, an amount equal to the HST that the Vendor shall be obligated to collect and remit in connection with the said transaction.

2.07 Excluded Liabilities

Without in any way limiting or derogating from the terms of Section 5.04 or 5.05 below and except as otherwise set out herein, the Purchaser is not assuming, and shall not be deemed to have assumed any liabilities, obligations or commitments of the Debtor or the Receiver or of any other Person, whether known or unknown, fixed or contingent or otherwise, including any debts, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the conduct or operation of the Debtor's Business or the Debtor's ownership or interest therein, whether pursuant to this Agreement or as a result of the Transaction (collectively, the "Excluded Liabilities"). For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) except as otherwise agreed in this Agreement, all Taxes payable by the Debtor arising with respect to any period prior to the Closing Date;
- (b) any liability, obligation or commitment resulting from an Encumbrance, except for those resulting from a Permitted Encumbrance; and
- (c) any liability, obligation or commitment relating to any employee or terminated employee of the Debtor.

Notwithstanding anything to the contrary contained in this Section, the Purchaser shall assume any liabilities arising out of Section 9 of the *Employment Standards Act, 2000*, S.O. 2000, c. 41 or the common law relating to successor employer liability.

2.08 Vendor's Disposition of the Purchased Assets

The Vendor may dispose of boats, equipment and other inventory and/or assets prior to the Closing Date in the ordinary course of the receivership and/or the operations of the marina, provided that the Purchaser shall have a right of first offer to purchase any of such assets, as follows:

- (a) Prior to the Waiver Date, the Vendor shall deliver to the Purchaser a list of assets which it desires to dispose and which sets out the desired purchase price for such assets;
- (b) Within two (2) Business Days of receipt of such list, the Purchaser shall provide written notice of which assets it desires to purchase at such prices, and shall pay such amounts directly to the Vendor within two (2) Business Days of delivery of its notice, at which time the Vendor shall do all things to immediately transfer ownership of the assets to the Purchaser on an as is, where is basis with the terms of Section 5.04 applying *mutatis mutandis*;
- (c) The Vendor may attempt to sell any assets not purchased by the Purchaser in accordance with Subsection (b) to third-parties. However, if the Vendor is unable to sell such assets to a third-party at no less than the listed price or five (5%) less than the listed price, the Vendor may not offer such assets to a third-party at a reduced price without first offering them to the Purchaser at the reduced price; and
- (d) Where the Vendor offers any assets to the Purchaser at a reduced price, Subsection (b) and (c) and this Subsection (d) shall apply, as applicable, until such assets are sold or until the Vendor no longer desires to sell them.

The Purchaser and the Vendor agree that an adjustment to the Purchase Price will be made on Closing, by way of a credit to the Purchaser, for the value of the aggregate amount paid for any Purchased Assets disposed by the Vendor to a third-party in accordance with the provisions of this Section 2.08.

ARTICLE III CLOSING ARRANGEMENTS

3.01 Closing and COVID-19 Pandemic

Closing shall take place at 4:00 PM EST (the "Closing Time") on the Closing Date at the offices of the Vendor's Solicitors, or such other time and location as the Parties may agree upon in writing.

In the event it is necessary to do so as a result of the Covid-19 pandemic, the parties hereto agree to close the subject transaction in a manner that is consistent with then-in force social distancing and other governmental directives and guidelines, by way of email or other electronic exchange of documents, and in such event, electronic copies of signatures shall suffice for purposes of this Agreement.

3.02 Electronic Registration and Tender

- (a) In the event that the electronic registration system ("TERS") is operative in the relevant land registry office (the "Registry Office"), the following provisions shall apply:
 - (i) The Purchaser shall be obliged to retain a solicitor who is both an authorized TERS user and is in good standing with the Law Society of Ontario to represent the Purchaser in connection with the completion of the transaction

and shall authorize such solicitor to enter into a document registration agreement with the Vendor's Solicitors in the form as agreed by the parties (the "DRA"), establishing the procedures and timing for completing this transaction.

- (ii) The delivery and exchange of the closing documents:
 - (A) shall not occur contemporaneously with the registration of the Application for Vesting Order and other registerable documentation; and
 - (B) shall be governed by the DRA, pursuant to which the Vendor's Solicitors and Purchaser's Solicitors shall hold all closing documents in escrow, and will not be entitled to release them except in strict accordance with the provisions of the DRA.
- (b) The Purchaser expressly acknowledges and agrees that the Vendor will not release the Application for Vesting Order described in this Agreement for registration until the balance of funds due on Closing, in accordance with the statement of adjustments, are remitted by wire transfer to the Vendor's Solicitors (or in such other manner as the Vendor or Vendor's Solicitors may in writing direct) prior to the release of the Application for Vesting Order for registration, which the Vendor's Solicitors will hold in escrow.
- (c) Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been made by the Vendor upon the Purchaser when the Vendor's Solicitors have:
 - (i) delivered all closing documents required to be delivered by the Vendor to the Purchaser pursuant to this Section 3;
 - (ii) advised the Purchaser's Solicitors in writing that the Vendor is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
 - (iii) completed all steps required by TERS to complete this transaction that can be performed or undertaken by the Vendor's Solicitors without the cooperation or participation of the Purchaser's Solicitors, and specifically when the "completeness signatory" for the Application for Vesting Order has been electronically "signed" by the Vendor's Solicitors,without the necessity of personally attending upon the Purchaser or the Purchaser's Solicitors with the closing documents, and without any requirement to have an independent witness evidencing the foregoing.
- (d) Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall

be deemed to have been made by the Purchaser upon the Vendor when the Purchaser's Solicitors have:

- (i) delivered the balance due at Closing and all the closing documents required to be delivered by the Purchaser to the Vendor pursuant to this Section 3;
- (ii) advised the Vendor's Solicitors in writing that the Purchaser is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
- (iii) completed all steps required by TERS to complete this transaction that can be performed or undertaken by the Purchaser's Solicitors without the cooperation or participation of the Vendor's Solicitors, and specifically when the "**completeness signatory**" for the Application for Vesting Order has been electronically "**signed**" by the Purchaser's Solicitors,

without the necessity of personally attending upon the Vendor or the Vendor's Solicitors with the closing documents, and without any requirement to have an independent witness evidencing the foregoing.

- (e) If through no fault of the Purchaser's Solicitors or the Vendor's Solicitors TERS is unavailable on the Closing Date, such that the Purchaser's Solicitors are unable to register the Application for Vesting Order, then the transaction contemplated by this Agreement shall be completed in escrow in accordance with the terms of the DRA which shall apply until such time as TERS becomes available. Upon TERS becoming available, the Vendor's Solicitors shall advise the Purchaser's Solicitors forthwith and the parties shall arrange to complete the registration of the Application for Vesting Order as expeditiously as possible, whereupon the escrow shall be released.
- (f) Any tender of documents or money under this Agreement may be made upon the Parties or their respective counsel and money may be tendered by wire transfer of funds to the account of the Vendor's Solicitors.

In the event of any conflict or inconsistency between the terms of this Section 3.02 and the terms of the DRA, the terms of this Section 3.02 shall prevail.

3.03 Vendor's Closing Deliveries

At the Closing, the Vendor shall deliver or cause to be delivered to the Purchaser the following documents, all of which shall be in form and content satisfactory to the Purchaser, acting reasonably, however, no such documents shall impose upon the Vendor any greater obligation or liability than is set out by the terms of this Agreement:

- (a) a copy of the issued and entered Approval and Vesting Order and the executed Receiver's Certificate substantially in the forms attached hereto;

- (b) a bill of sale or general conveyance, executed by the Vendor, conveying to the Purchaser all of the right, title and interest of the Vendor in and to the Purchased Assets, pursuant to the Approval and Vesting Order;
- (c) any assignments with respect to the Assigned Contracts that are necessary to effect the assignment of the Assigned Contracts, it being understood and agreed that the Vendor shall not be responsible for obtaining the consent of any party to such Assigned Contracts should such consent be required and that the Purchaser shall be solely responsible for obtaining all such consents prior to Closing at the Purchaser's sole cost, though the Vendor agrees to use reasonable efforts (which for greater certainty shall not include the Vendor incurring any costs or expenses) to assist the Purchaser in obtaining such consents;
- (d) any Books and Records, plans, specifications and designs in respect of the Real Property in the actual possession of the Vendor. For greater certainty, nothing herein shall require the Vendor to make any efforts to obtain any Books and Records, plans, specifications and designs from third parties that are not in the possession of the Vendor;
- (e) a bring down certificate dated as of the Closing Date, confirming that all of the representations and warranties of the Vendor contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time;
- (f) if applicable, an executed election in the prescribed form and containing the prescribed information, to have section 167 of the ETA, and any similar provision of any applicable provincial legislation, apply in respect of the purchase and sale of the Purchased Assets hereunder so that no tax is payable in respect of such purchase and sale under Part IX of the ETA;
- (g) any reasonable documentation, acts or things required to be done and/or otherwise reasonably required in order to give effect to the conveyance of the Real Property, including, without limitation, an Application for Vesting Order in registerable form, a statement of adjustments and an undertaking to readjust;
- (h) all master and duplicate keys, access codes or computer passwords relating to the Purchased Assets in the Vendor's possession and all security cards and codes relating to the Property in the Vendor's possession. For greater certainty, nothing herein shall require the Vendor to make any efforts to obtain any master and duplicate keys, access codes or computer passwords relating to the Purchased Assets from third parties that are not in the possession of the Receiver, except as specifically required by this Agreement;
- (i) vacant possession of the Real Property free from occupancy of any third party, unless such occupancy is in accordance with rights granted under the Assigned Contracts or as otherwise set out herein, save and except that the Debtor's family shall be entitled to temporarily remain on the portion of the Real Property on which they currently reside provided that the Vendor delivers a notice to vacate to such

persons forthwith after the Waiver Date in accordance with the Receivership Order, and provides evidence of such notice to the Purchaser prior to the Closing Date;

- (j) a direction with respect to funds;
- (k) an acknowledgement dated as of the Closing Date, that each of the conditions precedent in Section 4.03 of this Agreement have been fulfilled, performed or waived as of the Closing Date; and
- (l) such other documents and assurances as are required by the Purchaser, acting reasonably, in order to give effect to the terms and intent of this Agreement and the Transaction.

3.04 Purchaser's Closing Deliveries

At the Closing, the Purchaser shall deliver or cause to be delivered to the Vendor (or as the Vendor may otherwise direct) the following documents and payments, all of which shall be in form and content satisfactory to the Vendor, acting reasonably, however, no such documents shall impose upon the Purchaser any greater obligation or liability than is set out by the terms of this Agreement:

- (a) the balance of the Purchase Price, subject to adjustments;
- (b) any assumption agreements or other documents with respect to the Assigned Contracts to evidence that the counterparties to such contracts have consented to the assignment of the Assigned Contracts;
- (c) a bring down certificate dated as of the Closing Date, confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time;
- (d) an acknowledgement dated as of the Closing Date, that each of the conditions precedent in Section 4.02 of this Agreement have been fulfilled, performed or waived as of the Closing Date;
- (e) if applicable, an executed election in the prescribed form and containing the prescribed information, to have section 167 of the ETA, and any similar provision of any applicable provincial legislation, apply in respect of the purchase and sale of the Purchased Assets hereunder so that no tax is payable in respect of such purchase and sale under Part IX of the ETA, and the Purchaser, shall file its and the Vendor's election within the time periods prescribed under such legislation;
- (f) the HST certificate and indemnity contemplated herein;
- (g) an undertaking to readjust the statement of adjustments;
- (h) a direction re title with respect to the Real Property;



- (i) an acknowledgement in form and content satisfactory to the Vendor and the Vendor's Solicitor's with respect to the "as is, where is" nature of the transaction contemplated herein;
- (j) the release with respect to environmental matters contemplated herein; and
- (k) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to complete or evidence the transactions contemplated in this Agreement.

3.05 Receiver's Certificate

Upon receipt of written confirmation from the Purchaser that all of the conditions contained in Section 4.01 have been satisfied or waived by the Purchaser, and upon satisfaction or waiver by the Vendor of all of the conditions contained in Section 4.03, the Vendor shall deliver forthwith to the Purchaser the Receiver's Certificate, substantially in the form attached as Schedule "A" to the Approval and Vesting Order, and shall file same with the Court.

ARTICLE IV CONDITIONS PRECEDENT/VENDOR'S RIGHT TO TERMINATE OR EXTEND

4.01 Due Diligence Conditions of the Purchaser

The Purchaser shall not be obligated to complete the purchase and sale of the Purchased Assets pursuant to this Agreement unless, on or before the expiration of the Due Diligence Period, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Purchaser and may be waived, in whole or in part, in writing by the Purchaser at any time (collectively, the "**Due Diligence Conditions**"):

- (a) *Due Diligence Condition.* The Purchaser shall be satisfied, in its sole, complete and unfettered discretion, with its inspection and examination of the Purchased Assets and its review of all documentation relating thereto, including, without limitation, any title documents pertaining to the Real Property and the terms and provisions of the Assigned Contracts;
- (b) *Financing Condition.* The Purchaser shall be satisfied, in its sole, complete and unfettered discretion:
 - (i) that it will be able to obtain sufficient financing for its acquisition of the Purchased Assets as contemplated herein; and
 - (ii) with the terms, conditions and requirements of such financing, including, without limitation, the requirement to provide guarantees from any parties related to the Purchaser;
- (c) *Environmental Condition.* The Purchaser shall be satisfied, in its sole, complete and unfettered discretion, with the environmental condition of the Real Property and



the results of any environmental reports received and/or commissioned by the Purchaser in connection herewith; and

- (d) *Condition re Adjacent Boat Storage Lands.* The Purchaser shall have entered into an agreement of purchase and sale to acquire the Adjacent Boat Storage Lands from the applicable owner(s) thereof (the "**Adjacent Boat Storage Lands APS**") on terms and conditions satisfactory to the Purchaser in its sole and unfettered discretion.

The Purchaser shall have until the expiration of the Due Diligence Period to notify the Vendor in writing that it elects to waive the Due Diligence Conditions and complete the Transaction in accordance with the terms and conditions hereof (the "**Waiver Notice**"). For purposes hereof, the date upon which the Purchaser delivers the Waiver Notice to the Vendor shall be referred to herein as the "**Waiver Date**". To the extent that the Purchaser notifies the Vendor that it does not elect to waive one (1) or more of the Due Diligence Conditions (the "**Termination Notice**") or in the event that Purchaser fails to deliver a Waiver Notice to the Vendor prior to the expiration of the Due Diligence Period, the Purchaser shall be deemed to have elected not to proceed with the Transaction and this Agreement shall be automatically terminated and of no further force and effect as of the date upon which the Purchaser has so delivered a Termination Notice to the Vendor or upon expiration of the Due Diligence Period, as applicable. In such event and subject to the terms hereof respecting the Deposit, the Deposit, together with accrued interest thereof, shall be returned to the Purchaser in full without deduction, within two (2) Business Days thereof.

4.02 Other Conditions Precedent of the Purchaser

The Purchaser shall not be obligated to complete the purchase and sale of the Purchased Assets pursuant to this Agreement unless, at or before the Closing Time (or such other date as may be indicated below), each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Purchaser and may be waived, in whole or in part, in writing by the Purchaser at any time; and the Vendor agrees with the Purchaser to take all such actions, steps and proceedings within its reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

- (a) *Representations and Warranties.* The representations and warranties of the Vendor in Section 5.01 shall be true and correct at the Closing Time;
- (b) *Vendor's Compliance.* The Vendor shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the deliveries contemplated in Section 3.03 or elsewhere in this Agreement;
- (c) *Approval and Vesting Order.* The Court shall have issued the Approval and Vesting Order and all statutory appeal periods relating to the Approval and Vesting Order shall have expired and all appeals and motions to set aside or vary the Approval and Vesting Order have been finally determined;
- (d) *No Litigation.* There shall be no Orders issued by any Court of competent jurisdiction against any of the Parties, or involving any of the Purchased Assets, for

the purpose of enjoining, preventing or restraining the completion of the transactions contemplated hereby or otherwise claiming that such completion is improper.

- (e) *Adjacent Boat Storage Lands APS.* The transaction contemplated by the Adjacent Boat Storage Lands APS shall be successfully completed by the applicable parties thereto concurrently on the Closing Date.

4.03 Conditions Precedent of the Vendor

The Vendor shall not be obliged to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Vendor, and may be waived, in whole or in part, in writing by the Vendor at any time; and the Purchaser agrees with the Vendor to take all such actions, steps and proceedings within the Purchaser's reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

- (a) *Representations and Warranties.* The representations and warranties of the Purchaser in Section 5.02 shall be true and correct at the Closing Time;
- (b) *Purchaser's Compliance.* The Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed by or complied with at or before the Closing Time and shall have executed and delivered or caused to have been executed and delivered to the Vendor at the Closing Time all the deliveries contemplated in Section 3.04 or elsewhere in this Agreement;
- (c) *Approval and Vesting Order.* The Court shall have issued the Approval and Vesting Order and all statutory appeal periods relating to the Approval and Vesting Order shall have expired and all appeals and motions to set aside or vary the Approval and Vesting Order shall have been finally determined; and
- (d) *No Litigation.* There shall be no Orders issued by any Court of competent jurisdiction against any of the Parties, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the transactions contemplated hereby or otherwise claiming that such completion is improper.

4.04 Non-Satisfaction of Conditions

If any condition precedent set out in this Agreement is not satisfied or performed prior to the time specified therefore, the Party for whose benefit the condition precedent is inserted may:

- (a) save and except for the conditions set out in Sections 4.02 (c), (d) and (e) and 4.03 (c) and (d), which shall be treated as true conditions precedent that cannot be waived by either Party, waive compliance with the condition, in whole or in part, in its sole discretion by written notice to the other Party and without prejudice to

any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part;

- (b) elect on written notice to the other Party to terminate this Agreement before Closing; or
- (c) if the Approval and Vesting Order has not been or the Vendor determines it will not be obtained by the Closing Date, the Vendor, in its sole and absolute unilateral discretion, may elect to extend the Closing Date for an additional period or additional periods not exceeding thirty (30) days in total, during which time the Vendor will continue to make best efforts to attempt to obtain the Approval and Vesting Order, by notice to the Purchaser, in writing, of the Vendor's election to extend prior to 5:00 p.m. on the date which is five (5) days prior to Closing.

4.05 Vendor's Right to Terminate

Notwithstanding anything to the contrary contained in this Agreement, if at any time or times prior to the Closing Date, the Vendor is unable to complete this Agreement as a result of any action taken by an encumbrancer, any action taken by the present registered owner, the refusal by the present registered owner to take any action, the exercise of any right by the present registered owner or other party which is not terminated upon acceptance of this Agreement, a certificate of pending litigation is registered against the Real Property, a court judgment or order is made, or if the sale of the Purchased Assets or any portion thereof is restrained at any time by a court of competent jurisdiction, the Vendor may, in its sole and unfettered discretion, elect by written notice to the Purchaser, to terminate this Agreement, whereupon the Deposit shall be returned to the Purchaser without deduction, and neither party shall have any further rights or liabilities hereunder.

ARTICLE V REPRESENTATIONS AND WARRANTIES/ PURCHASER'S ACKNOWLEDGEMENTS/PURCHASER'S INDEMNITY AND RELEASE

5.01 Representations and Warranties of the Vendor

As a material inducement to the Purchaser entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations and warranties of the Vendor set out in this Section 5.01, the Vendor hereby represents and warrants to the Purchaser as follows:

- (a) *Incorporation of the Vendor.* The Vendor has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary action on the part of the Vendor;
- (b) *Due Authorization.* The Vendor has been duly appointed as the Receiver of the Property, with the full right, power and authority to enter into this Agreement, perform its obligations hereunder and convey all right, title and interest of the



Vendor and the Debtor in and to the Purchased Assets, subject to the issuance by the Court of the Approval and Vesting Order;

- (c) *Residence.* The Vendor is not and at the Closing Time will not be a non-resident of Canada for the purposes of the ITA;
- (d) *HST.* The Vendor is a registrant under Part IX of the ETA and the Vendor will continue to be a registrant at the Closing Time;
- (e) *Employees.* All employees of the Debtor's business have been terminated;
- (f) *No Disposition.* The Vendor has done no act itself to encumber, sell or dispose of any of the Purchased Assets except as permitted by the Receivership Order, approved by the Court or permitted pursuant to the terms of this Agreement;
- (g) *No Litigation or Proceedings.* The Vendor is not aware of any action or proceeding pending or threatened against it which may affect its right to convey any of the Purchased Assets as contemplated herein; and
- (h) *Vendor's Course of Conduct.* From the Acceptance Date and until the Closing, the Vendor shall deal with the Purchased Assets and the assets and undertakings of the Debtor as would a prudent receiver of similar assets and undertakings, including, without limitation, in the ordinary course of the receivership and/or the operations of the marina selling or otherwise disposing of such assets that would otherwise be included in the Purchased Assets, provided that the Vendor complies with Section 2.08 of this Agreement.

5.02 Representations and Warranties of the Purchaser

As a material inducement to the Vendor entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Vendor is entering into this Agreement in reliance upon the representations and warranties of the Purchaser set out in this Section 5.02, the Purchaser hereby represents and warrants to the Vendor as follows:

- (a) *Incorporation of the Purchaser.* The Purchaser is a corporation duly incorporated under the laws of the jurisdiction of its incorporation and is duly organized and validly subsisting under such laws;
- (b) *Due Authorization.* The Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments. The execution and delivery of this Agreement and such other agreements and instruments and the completion of the transactions contemplated by this Agreement and such other agreements and instruments have been duly authorized by all necessary corporate action on the part of the Purchaser;
- (c) *Enforceability of Obligations.* This Agreement constitutes a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with

its terms subject, however, to limitations on enforcement imposed by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of the rights of creditors or others and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought;

- (d) *Approvals and Consents.* No authorization, consent or approval of, or filing with or notice to any governmental agency, regulatory body, court or other Person is required in connection with the execution, delivery or performance of this Agreement by the Purchaser or the purchase of any of the Purchased Assets hereunder;
- (e) *Due Diligence.* Except to the extent that the Purchaser has relied on the accuracy of any representation or warranty of the Vendor set out in this Agreement, the Purchaser has conducted and completed its own due diligence in respect of the Purchased Assets;
- (f) *HST.* The Purchaser is a registrant under Part IX of the ETA and the Purchaser will continue to be a registrant at the Closing Time; and
- (g) *Investment Canada Act (Canada).* Either (i) the Purchaser is not a “non-Canadian”, as defined in the *Investment Canada Act (Canada)* (“ICA”); or (ii) if the Purchaser is a “non-Canadian”, this transaction is not a reviewable transaction under the ICA, or, if applicable, the Purchaser is a non-Canadian for the purpose of the ICA and will within three (3) Business Days of the execution of this Agreement submit to Investment Canada a fully completed Application for Review with respect to the transaction contemplated in this Agreement and will use its best efforts to obtain approval from Investment Canada prior to Closing.

The Purchaser shall promptly deliver to the Vendor written notice specifying the occurrence or likely occurrence of any event which may result in any of the Purchaser’s representations and warranties contained in this Agreement not continuing to be true as at Closing.

5.03 Survival of Representations and Warranties

- (a) The representations and warranties of the Vendor contained in Section 5.01 or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive the Closing.
- (b) The representations and warranties of the Purchaser contained in Section 5.02 or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive the Closing.

5.04 Acquisition of Assets on “As Is, Where Is” Basis

Subject only to the express representations and warranties of the Vendor set out in this Agreement, the Purchaser acknowledges and agrees:

- (a) that the Vendor makes no representation and/or warranty as to the accuracy, correctness, fitness for purpose or comprehensiveness of any documentation or information relating to the Purchased Assets delivered by the Vendor or anyone acting on behalf of the Vendor to the Purchaser, including without limitation documentation and information provided in any data room or similar system to which the Vendor has granted the Purchaser access, the inventory lists provided or to be provided by the Vendor, and any documentation and information so provided and/or contained therein, or as to the Purchaser's entitlement to use or rely on same, and that the Purchaser shall be required to make its own investigations to satisfy itself in this regard. In the event that this transaction does not close for any reason whatsoever, including the default of the Vendor, the Purchaser agrees to return documentation and information provided or made available by the Vendor, and all copies thereof made by or on behalf of the Purchaser or its agents and representatives, forthwith to the Vendor
- (b) that the Vendor is selling and the Purchaser is purchasing the Purchased Assets on an "as is, where is" basis subject to whatever defects, conditions, impediments, Hazardous Materials or deficiencies which may exist on the Date of Closing, including, without limiting the generality of the foregoing, any latent or patent defects in the Purchased Assets, including without limitation the Real Property. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, location, merchantability, quantity, the existence or non-existence of Hazardous Materials, compliance with any or all Environmental Law, condition or quality, or in respect of any other matter or thing whatsoever concerning any one or more of the Purchased Assets, including any law, by-law, regulation, code, standard or agreement of, or administered by, any municipality, utility or other government or authority, fire insurance underwriters or any other party, or the right of the Vendor to sell same save and except as expressly provided for in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* of Ontario do not apply hereto and have been waived by the Purchaser. The descriptions of the Property contained in this Agreement are for the purposes of identification only and no representation, warranty or condition has or will be given by the Vendor concerning the accuracy of such descriptions. The Vendor will provide title to the Purchased Assets in accordance with the terms of the Approval and Vesting Order;
- (c) that, notwithstanding any statutory provisions to the contrary, the Purchaser has no right to submit requisitions of title related to the Permitted Encumbrances or in regard to any outstanding work orders, deficiency notices or orders to comply issued by any Governmental Authorities provided that such are Permitted Encumbrances, and the Purchaser shall accept the title to the Real Property subject to those Permitted Encumbrances listed in the Approval and Vesting Order.



- (d) that, without limiting the generality of the foregoing, the Purchaser has entered into this Agreement and has purchased the Purchased Assets from the Vendor on the basis that:
1. the Purchaser shall not require the deletion of nor compliance with any registered agreement with any municipality, Governmental Authority, public or private utility or conservation authority;
 2. the Purchaser is purchasing the Real Property forming part of the Purchased Assets on an "as is, where is" basis subject to any and all zoning and/or other by-laws and regulations and easements affecting the Real Property, restrictions and covenants which run with the Real Property, defects and deficiencies, encroachments, work orders, deficiency notices and compliance requests provided that same are Permitted Encumbrances, impost charges, lot levies, sewer charges, development charges and any requirements which may have been, now are or may in the future be imposed by any federal, provincial, municipal or other Governmental Authority having jurisdiction over the Real Property, including, but not limited to, the Permitted Encumbrances referenced in this Agreement;
 3. the Real Property shall be accepted together with all such boats, trailers, cars and other items belonging to customers and clients of the Debtor that are currently or may prior to the Closing Date be placed on any portion of the Real Property and that remain on the Real Property as of the Closing Date, without such items being included in the Purchased Assets and without the Vendor having any obligation to remove or relocate any such items nor any liability for such items nor their removal or relocation, such that the Purchaser shall be required to deal directly with the owners of such items following Closing in order to effect their removal or relocation;
 4. the Vendor shall not be required to provide any letters of compliance, releases or acknowledgements whatsoever including, without limitation, any confirmations in respect of any registered agreements, restrictions and/or easements. The Purchaser further acknowledges that the Purchaser will be deemed to have received notice of all provisions and obligations contained in any site plan, development or other registered agreement whether registered by any provincial, regional, municipal, public or private utility or governmental authority or any owner or occupant of adjoining lands;
 5. the Vendor is not providing and has made no representations, warranties, covenants, agreements, statements, acknowledgements, inducements or promises whatsoever, save and except as expressly contained in this Agreement, with respect to the Real Property, whether express or implied, by statute, at law or in equity, to or in favour of the Purchaser, oral or written, legal, equitable, collateral, or otherwise, including without limitation, with respect to:
 - (i) title, including, without limitation, the existence, validity, registration, enforceability or priority of any mortgages, charges, liens, encumbrances, security interests, claims or demands of whatsoever nature or kind affecting or in any way relating to the Real Property;

- (ii) the fitness for any particular purpose or use, zoning, suitability, description, marketability, access, condition, quality, extent of the Real Property, availability of services, permitted use or state of repair of the Real Property, compliance or accord of any improvements with municipal building by-laws and/or Ontario building code requirements and/or Ontario or municipal fire code requirements;
- (iii) the presence, absence, nature and/or extent of Hazardous Materials on, in, under, about or migrating from the Real Property; the discharge of such Hazardous Materials from, on, or in relation to the Real Property; the existence, state, nature, identity, extent or effect of any administrative orders, control orders, stop orders, compliance orders or any other orders, proceedings or actions under the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act* (Ontario) or any other applicable law in relation to the Real Property; nor, the existence, state, nature, kind, identity, extent or effect of any liability on the Purchaser to fulfil any obligations with respect to the environmental condition or quality of the Real Property. The Purchaser acknowledges that it accepts the Real Property subject to the environmental condition and any Hazardous Materials, whether or not such environmental condition and/or Hazardous Materials is or are known by the Vendor prior to the completion date, and acknowledges that the Purchaser will have no recourse against the Vendor for any such pre-existing environmental conditions or Hazardous Materials; and
- (iv) any defects in workmanship or any existing, executed or partially performed agreement for the supply of materials or services to the Real Property or any improvement constructed thereon or therein including any right, license or easement to the use of any portion of the Real Property or any fixtures or chattels located thereon; or any other matter or thing whatsoever in respect of all or any of the Real Property or otherwise affecting this Agreement or any right or entitlement by which agreement or operation of law may run with and bind the Real Property;
- (e) the Purchaser is responsible for conducting its own searches and investigations of the current and past uses of the Real Property and the other Purchased Assets;
- (f) the Vendor makes no representation or warranty of any kind that the present use or future intended use by the Purchaser of the Purchased Assets is or will be lawful or permitted;
- (g) it is satisfied with the Real Property and the rest of the Purchased Assets and all matters and things connected therewith or in any way related thereto;
- (h) the Vendor shall not be responsible for any matters relating to encroachments on or to the Real Property, or encroachments of the Real Property onto adjoining lands, or to remove same, or for any matters relating to any applicable zoning regulations or by-laws in existence now or in the future affecting the Real Property;



- (i) it is relying entirely upon its own investigations and inspections in entering into this Agreement;
- (j) the Vendor shall have no liability for, or obligation with respect to, the value, state or condition of the Purchased Assets;
- (k) the Vendor has made no representations or warranties with respect to or in any way related to the Purchased Assets, including without limitation, the following:
 - (i) the title, quality, quantity, marketability, zoning, fitness for any purpose, state, condition, encumbrances, description, present or future use, value, location or any other matter or thing whatsoever related to the Purchased Assets, either stated or implied; and
 - (ii) the environmental state of the Real Property, the existence, nature, kind, state or identity of any Hazardous Materials on, under, or about the Real Property, the existence, state, nature, kind, identity, extent and effect of any administrative order, control order, stop order, compliance order or any other orders, proceedings or actions under the *Environmental Protection Act* (Ontario), or any other statute, regulation, rule or provision of law and the existence, state, nature, kind, identity, extent and effect of any liability to fulfill any obligation to compensate any third party for any costs incurred in connection with or damages suffered as a result of any discharge of any Hazardous Materials whether on, under or about the Real Property or elsewhere; and
- (l) it will ensure that any environmental and/or structural reports prepared for or on behalf of the Purchaser shall also be addressed to the Vendor and a copy of each such report shall be delivered to the Vendor promptly after the completion thereof, regardless of whether the transaction contemplated by this Agreement closes. If for any reason such transaction is not consummated, the Purchaser agrees to deliver promptly to the Vendor any and all reports and other data pertaining to the Property and the Building and any inspections or examinations conducted hereunder.

The provisions in this Section 5.04 shall not merge and shall survive Closing and the Purchaser shall deliver on Closing an acknowledgement to the Vendor regarding the terms set out in this Section 5.04.

5.05 Release

The Purchaser agrees to release and discharge the Vendor and its directors, officers, employees, agents and representatives from every claim of any kind that the Purchaser may make, suffer, sustain or incur in regard to any Hazardous Materials relating to the Real Property. The Purchaser further agrees that the Purchaser will not, directly or indirectly, attempt to compel the Vendor to clean up or remove or pay for the cleanup or removal of any Hazardous Materials, remediate any condition or matter in, on, under or in the vicinity of the Real Property or seek an abatement in the Purchase Price or damages in connection with any Hazardous Materials. This provision shall not expire with, or be terminated or extinguished by or merged in the Closing of the transaction of purchase and sale, contemplated by this Agreement, and shall survive the



termination of this Agreement for any reason or cause whatsoever and the closing of this transaction.

ARTICLE VI INTERIM PERIOD

6.01 Access

Subject to any restrictions arising in connection with the Covid-19 pandemic, either according to governmental directives or as may be reasonably required by the Vendor, during the Interim Period, and without in any way limiting or derogating from the "as is, where is" and without recourse nature of this Agreement or the Transaction, the Purchaser shall have reasonable access to the Purchased Assets during normal business hours and at such other times as agreed to in writing by the Vendor to, among other things, conduct such inspections of the Purchased Assets as it deems appropriate, including, without limitation, invasive environmental and soils testing as the Purchaser may require, provided at least 48 hours' prior written notice is provided to the Vendor in each instance. Such inspection shall only be conducted in the presence of a representative of the Vendor. The Purchaser shall not be provided with access to any of the foregoing to the extent that such access would violate or conflict with (i) any Applicable Law to which the Vendor or any of the Purchased Assets is subject; or (ii) any agreement, instrument or understanding by which the Vendor is bound, including, without limitation, the Assigned Contracts. The Purchaser shall indemnify and hold harmless the Vendor from and against all Claims incurred or arising from or in any way related to the inspection of the Purchased Assets by the Purchaser or attendance by the Purchaser at the Premises.

The Purchaser acknowledges and agrees that in the event that the Transaction is not completed, the Purchaser shall, upon payment by the Vendor of the Purchaser's actual costs therefor as evidenced by invoices and proof of payment thereof satisfactory to the Vendor, deliver to the Vendor copies of any Phase I ESA, Phase II ESA and/or any other reports, studies or assessments required by the Vendor together with a reliance letter from the author of each such reports, study and/or assessment in favour of the Vendor, in each instance within five (5) Business Days of request by the Vendor. The Purchaser further acknowledges and agrees that the terms of this paragraph shall survive the termination of the Transaction, howsoever caused.

Notwithstanding anything contained herein to the contrary and without limiting the obligation of the Purchaser to provide reliance letters as set out above, the Purchaser and the Vendor agree that each party shall be responsible for payment of fifty percent (50%) of the actual cost of the Phase I ESA and Phase II ESA reports, as evidenced by invoices therefor. The Purchaser shall pay the full cost of the Phase I ESA and Phase II ESA reports directly to the third-party providing such reports, and the Vendor shall pay fifty (50%) of such cost to the Purchaser within two (2) Business Days of request by the Purchaser.

6.02 Title Diligence

The Purchaser shall examine title to the Purchased Assets at its own expense and shall not call for the production of any title, deed, abstract, survey or proof of or evidence of title to the Purchased Assets nor to have furnished to it copies of any such documents other than those in the possession or within the control of the Vendor. The Purchaser shall be allowed until the expiration of the Due Diligence Period to satisfy itself as to title to the Purchased Assets at its own expense. If, within

such time, the Purchaser furnishes the Vendor with any valid objection as to title which the Vendor is unable or unwilling to remove or correct on or before the Closing Date, and which the Purchaser will not waive, this Agreement shall be terminated in accordance with Article VII hereof. Notwithstanding the foregoing, the Purchaser shall accept the title to the Property subject to the Permitted Encumbrances and shall not be entitled to make and the Vendor shall not be obligated to respond to any requisitions in connection with any one or more of the Permitted Encumbrances, with any such requisition so made being deemed to not be a valid objection to title. Save as to any valid objections so made within such time or any objection going to the root of title, the Purchaser shall be conclusively deemed to have accepted the title of the Vendor to the Purchased Assets.

In the event that there are any outstanding work orders, deficiency notices or orders to comply issued by any Governmental Authorities that affect the Real Property which are not a Permitted Encumbrance of which the Purchaser notifies the Vendor in writing and which the Vendor is unable or unwilling to remove or correct on or before the Closing Date, and which the Purchaser will not waive, this Agreement shall be terminated in accordance with Article VII hereof.

The Purchaser agrees to accept title to the Purchased Assets pursuant to the Approval and Vesting Order and subject to the Purchased Assets being free from any lien, charge, security interest or other claim ranking in priority to the interest being conveyed to the Purchaser at the Closing Time and the implementation of the Approval and Vesting Order save and except for the Permitted Encumbrances, all in accordance with the terms of this Agreement.

6.03 Risk of Loss

The Purchased Assets shall remain at the risk of the Vendor, to the extent of its interest, until Closing. From and after such date and time, the Purchased Assets shall be at the risk of the Purchaser.

6.04 Purchaser's Right to Close or Terminate

If, prior to Closing, the Purchased Assets are substantially damaged or destroyed by fire or other casualty such that the value of such damage or destruction is equal to twenty percent (20%) or more of the Purchase Price, then, at its option, the Purchaser may decline to complete the transaction. Such option shall be exercised within seven (7) days after notification to the Purchaser by the Vendor of the occurrence of damage or destruction (or prior to the Closing Date if such occurrence takes place within seven (7) days of the Closing Date) in which event this Agreement shall be terminated automatically. If the Purchaser does not exercise such option, it shall complete the transaction and shall be entitled to an assignment of the proceeds of insurance referable to such damage or destruction without any abatement to the Purchase Price. Where any damage or destruction is not substantial, the Purchaser shall complete the transaction and shall be entitled to an assignment of the proceeds of insurance referable to such damage or destruction provided that such damage or destruction is insured or, otherwise, to an abatement agreed between the Vendor and the Purchaser, each acting reasonably.

6.05 Transfer and Delivery of Purchased Assets

The Purchaser acknowledges that it shall be the Purchaser's sole responsibility to obtain, at its own expense, any consents, approvals or any further documentation or assurances which may be required to carry out the terms of this Agreement, including in respect of any Purchased Assets



subject to lease or any Purchased Assets which are not assignable without the consent or other action of a third party or parties. Without limiting the generality of the foregoing, the Purchaser acknowledges that it has satisfied itself with respect to its ability to continue boat storage on certain adjoining premises to the Real Property (the "**Adjacent Boat Storage Lands**"), and acknowledges further that the right to utilize the Adjacent Boat Storage Lands for boat storage is not included in the Assigned Contracts or the Purchased Assets and is solely the Purchaser's responsibility. The Vendor shall execute and deliver such documents to effect registrations, recordings and filings with Governmental Authorities as may be reasonably required in connection with the transfer of ownership to the Purchaser of the Purchased Assets.

ARTICLE VII TERMINATION

7.01 Termination by the Parties

This Agreement may be validly terminated:

- (a) upon the mutual written agreement of the Vendor and the Purchaser;
- (b) pursuant to Section 4.04(b) by either Party;
- (c) by the Vendor pursuant to Section 4.05;
- (d) pursuant to Section 6.02; and
- (e) pursuant to Section 6.04 by the Purchaser.

7.02 Vendor's Right to Retain Payments Made By Purchaser

If the Purchaser fails to comply with any of the material terms of this Agreement, the Vendor may by notice to the Purchaser elect to treat this Agreement as having been repudiated by the Purchaser. In that event, any payments made by the Purchaser (including the Deposit) shall be forfeited to the Vendor on account of its liquidated damages (and not as a penalty), and the Purchased Assets may be resold and/or reassigned by the Vendor.

7.03 Termination If No Breach of Agreement

If this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of a Party, then:

- (a) all obligations of each of the Vendor and the Purchaser hereunder shall be at an end; and
- (b) neither party shall have any right to specific performance, to recover damages or expenses or to any other remedy or relief other than as provided herein.



**ARTICLE VIII
OTHER COVENANTS OF THE PARTIES; GENERAL**

8.01 Expenses

Each Party shall pay its own legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the transactions contemplated in this Agreement, and the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement.

8.02 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement ("**Notice**") shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile:

- (a) in the case of Notice to the Vendor at:

MNP Ltd.
300 -111 Richmond St W., Toronto ON M5H 2G4
Attn: Jerry Henechowicz, jerry.henechowicz@mnp.ca

with a copy to:
Torkin Manes LLP, counsel to the Vendor
1500-151 Yonge St., Toronto ON M5C 2W7
Attn: Jeffrey Simpson, jsimpson@torkinmanes.com

- (b) in the case of Notice to the Purchaser at:

128 Hillside Avenue East
Toronto, ON M4S 1T5
Attention: Ralph Laidlaw, mlaidlaw99@gmail.com

with a copy to:

Robins Appleby LLP, counsel to the Purchaser
2600 – 120 Adelaide Street West, Toronto ON M5H 1T1
Attn: Sherri Lavine, slavine@robapp.com

Any Notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving notice to the other Party in accordance with the provisions of this Section.



8.03 Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns. The Purchaser shall not assign or transfer, whether absolutely, by way of security or otherwise, this Agreement or all or any part of its respective rights or obligations under this Agreement without the prior written consent of the Vendor, which consent may be arbitrarily or unreasonably withheld or conditioned by the Vendor in the Vendor's sole and absolute subjective discretion. Notwithstanding the above, the Purchaser may at any time assign any of its rights or obligations arising under this Agreement to a related party of the Purchaser, as defined in the *Business Corporations Act* (Ontario) acceptable to the Vendor, acting reasonably, and with the Purchaser providing evidence satisfactory to the Vendor that such assignee is so related to the Purchaser but, upon such assignment and completion of the transactions contemplated by this Agreement, the Purchaser shall not be released and discharged from any obligations hereunder until after Closing. In such instance, upon the successful completion of the Transaction, the Purchaser shall be automatically released and discharged from all obligations hereunder without any necessity for the execution and delivery of any documentation evidencing such release and discharge.

8.04 No Third Party Beneficiaries

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns. Nothing in this Agreement shall be construed to create any rights or obligations except between the Parties, and no person or entity shall be regarded as a third party beneficiary of this Agreement.

8.05 Time of the Essence

Time shall be of the essence in respect of the obligations of the Parties arising prior to Closing under this Agreement.

8.06 Amendment

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party to be bound thereby.

8.07 Further Assurances

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing provided that the reasonable costs and expenses of any actions taken after Closing at the request of a Party shall be the responsibility of the requesting Party.

8.08 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

8.09 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

8.10 Planning Act

This Agreement shall be effective to create an interest in the Real Property only if the provisions of the *Planning Act*, R.S.O. 1990, c. P-13, as amended from time to time, are complied with, failing which this Agreement shall be terminated in accordance with Article VII.

8.11 No Registration

The Purchaser hereby covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, or any other document, instrument or Court order or judgement providing evidence of this Agreement against title to the Real Property. Should the Purchaser be in default of its obligations under this Section, the Vendor may (as agent and attorney of the Purchaser) cause the removal of such notice of this Agreement, caution, certificate of pending litigation or other document providing evidence of this Agreement or any assignment of this Agreement from the title to the Real Property. The Purchaser irrevocably nominates, constitutes and appoints the Vendor as its agent and attorney in fact and in law to cause the removal of such notice of this Agreement, any caution, certificate of pending litigation or any other document or instrument whatsoever from title to the Real Property. The Purchaser acknowledges and agrees that the Vendor may rely on the terms of this Section 8.11 as a full estoppel to any proceeding, suit, claim, motion or other action brought by the Purchaser in order to obtain and attempt to register against the title to the Real Property any of the items set out in this Section 8.11.

8.12 Confidentiality

The Purchaser agrees that all information and documents supplied by the Vendor or anyone on its behalf to the Purchaser or anyone on the Purchaser's behalf (including but not limited to information in the schedules hereto) shall, unless and until Closing occurs, be received and kept by the Purchaser and anyone acting on the Purchaser's behalf on a confidential basis and, without the Vendor's prior written consent shall not be disclosed to any third party. If for any reason Closing does not occur, all such documents shall forthwith be returned intact to the Vendor and no copies or details thereof shall be retained by the Purchaser or anyone acting on its behalf. The Purchaser and Vendor further agree that unless and until the terms of this Agreement become public knowledge in connection with an application to the Court, the Purchaser shall keep such terms confidential and shall not disclose them to anyone except the Purchaser's solicitors, agents or lenders acting in connection herewith and then only on the basis that such

persons also keep such terms confidential as aforesaid. Notwithstanding anything contained herein to the contrary, the Purchaser shall have the right to disclose any information and documents supplied by the Vendor hereunder to its solicitors, consultants, and/or lenders as may be required by the Purchaser in its efforts to complete the Transaction, provided that each such party shall maintain the confidentiality required hereunder. In addition to the foregoing, the Purchaser shall have the right to discuss the Transaction with former employees of the Debtor as part of its due diligence hereunder, provided that the Purchaser affords the Vendor an opportunity to be involved in such discussions.

Notwithstanding anything contained herein to the contrary, from and after the Waiver Date, the Purchaser shall have the right to promote and disclose the business to be operated on the Real Property (which shall include, without limitation, promotion on its website and social media sites, inclusion in press releases and any other corporate material it produces) and shall have the right to erect signs on the Real Property which disclose information about the intended operation of the business related to the Real Property, provided that in each instance the Purchaser has received the prior written approval of the Vendor to the details, form and content all such promotional material and signage, which approval shall not be unreasonably withheld.

8.13 Document Preparation

The Purchaser shall prepare or cause to be prepared the land transfer tax affidavit to be attached to the Application for Vesting Order described herein. The Vendor shall prepare or cause to be prepared all other documentation described herein. Each of the parties shall deliver draft documentation to the other not less than three (3) Business Days prior to Closing. The Purchaser shall be responsible for and pay all registration costs incurred in connection with the transaction contemplated in this Agreement. Except as otherwise expressly provided in this Agreement, each of the Vendor and the Purchaser shall be responsible for and pay all legal and other professional/consultant fees and disbursements incurred by it, directly or indirectly, in connection with this Agreement.

8.14 Vendor's Capacity

It is acknowledged by the Purchaser that the Vendor is entering into this Agreement solely in its capacity as Court-Appointed Receiver of the Purchased Assets and that the Vendor shall have no personal or corporate liability under or as a result of this Agreement. Any claim against the Vendor shall be limited to and only enforceable against the property and assets then held by or available to it in its capacity as Receiver of the Purchased Assets and shall not apply to its personal property and other assets held by it in any other capacity. The term "Vendor" as used in this Agreement shall have no inference or reference to the present registered owner of the Purchased Assets.



8.15 Execution and Delivery

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed and delivered either in original or faxed form or by electronic delivery in portable document format (PDF) and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other party an original of the signed copy of this Agreement which was so faxed or electronically delivered.



IN WITNESS OF WHICH the Parties have executed this Agreement.

MNP Ltd., solely in its capacity as the Receiver and Manager of the assets and undertaking of Old Mill Marina (Kawagama) Limited and not in its personal or corporate capacities

Per: _____

Name: *Terry Henechowicz*
Title: *Senior Vice-President*

I have authority to bind the corporation.

PINE ROCK HOLDINGS LIMITED, in trust for a company to be incorporated, as Purchaser

Per: _____

Name
Title

Per: _____

Name
Title

I/We have the authority to bind the corporation

IN WITNESS OF WHICH the Parties have executed this Agreement.

MNP Ltd., solely in its capacity as the Receiver and Manager of the assets and undertaking of Old Mill Marina (Kawagama) Limited and not in its personal or corporate capacities

Per: _____

Name:

Title:

I have authority to bind the corporation.

PINE ROCK HOLDINGS LIMITED, in trust for a company to be incorporated, as Purchaser

Per: 

Name RALPH LAIDLAW

Title SECRETARY TREASURER

Per: _____

Name

Title

I/We have the authority to bind the corporation

SCHEDULE "A"

ASSET LISTING

Real Property: The property municipally known as 1652 and 1676 Russell Landing Road, Township of Algonquin Highlands, and legally described as PT LT 16 CON 12 SHERBORNE AS IN H87622 EXCEPT PT 1, 2, 3 19R1733 AND EXCEPT PT 2 19R5130; S/T H87622; TOWNSHIP OF ALGONQUIN HIGHLANDS, being all of PIN 39115-0241 (LT), together with all buildings, structures, improvements, systems, chattels and fixtures situated or located thereon or therein.

Shop and yard equipment: See attached list.

The Purchaser acknowledges and agrees that the foregoing list is subject to the Vendor's right to sell or otherwise dispose of such equipment in accordance with the terms of this Agreement.

The Assigned Contracts.

Goodwill – Goodwill shall include, without limitation, the name "Old Mill Marina (Kawagama)", all intellectual property of any nature or kind (including, without limitation, all trademarks and trade names) and the right to create and operate a website in respect of the Debtor's business and using such names, trademarks and trade names.

Warranties – Includes all warranties of any nature or kind relating to the Debtor's business or to any of the other Purchased Assets, subject to nothing herein shall be interpreted as implying that the Receiver has provided any independent representations or warranties regarding the Purchased Assets.

Client Lists – Includes contact information of past and current clients of the Debtor's business and related information in Vendor's actual possession regarding past and current transactions with such clients.

Old Mill Marina (Kawagama) Limited
Marina Equipment List - July 22, 2020

Equipment

- 1982 Lion LiftAll forklift
- 1990 Load Lifter forklift
- 1990 Massey Ferguson 55HP tractor with 8; blower
- Shop tools consistent with marine repair facility, including jacks, hoists, diagnostic equipment, specialty tools, air compressors and shop manuals
- Office equipment (computers, furniture, printers, filing cabinets)
- 2006 Legend 19' aluminum work boat w/ 115HP Mercury engine
- 1990's 21' Jon Boat w/ 60HP Mercury engine
- 2011 Ford F250

Trailers

- 3x Heritage Boat Trailers
- 3x Venture Yard Trailers
- 2x Legend trailers
- 3x tandem PWC trailers
- Phoenix pontoon trailer
- Sea-ray tandem trailer
- Hoosier hydraulic pontoon trailer
- Princecraft scissor pontoon trailer
- pontoon trailer (manufacturer unknown)
- 4pc snowmobile trailer (not serviceable)
- tri-axle trailer (for Steel barge)

Miscellaneous

- 18 boats, for parts
- 4 skidoo snowmobiles (not running)
- children's playhouse assembly
- assorted structural steel stock
- various sections of floating docks

Other Equipment

- 2008 15 hp Mercury 4-stroke outboard longshaft
- 2011 20 hp mercury 4-stroke outboard longshaft
- 2013 15 hp mercury 4-stroke outboard shortshaft
- 2013 15 hp mercury 4-stroke outboard longshaft
- 2013 9.9hp mercury longshaft pro kicker
- 20x assorted old outboards in disrepair/not running 5 hp to 25 hp
- Parts and tools consistent with Ski-Doo dealership (all from pre-2012)

SCHEDULE "B"

ASSIGNED CONTRACTS

[Receiver and Purchaser to jointly determine what contracts are necessary for the business to be assumed.]

SCHEDULE "C"

APPROVAL AND VESTING ORDER

Court File No. CV-

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) ●DAY, THE ●
JUSTICE)
) DAY OF ●, 2020

1711423 ONTARIO LIMITED

Applicant

- and -

OLD MILL MARINA (KAWAGAMA) LIMITED

Respondent

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c-B-3, and Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

APPROVAL AND VESTING ORDER

THIS MOTION, made by MNP Ltd. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of Old Mill Marina (Kawagama) Limited (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and ● (the "Purchaser") dated ● and appended to the Report of the Receiver dated ● (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice McEwen dated March 9, 2020; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Haliburton (#19) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the

“Real Property”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

7. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or

voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) 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.

8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE
JUSTICE

)
)
)

•DAY, THE •
DAY OF •, 2020

1711423 ONTARIO LIMITED

Applicant

- and -

OLD MILL MARINA (KAWAGAMA) LIMITED

Respondent

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c-B-3, and Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice McEwen of the Ontario Superior Court of Justice (the "**Court**") dated March 9, 2020, MNP Ltd. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of Old Mill Marina (Kawagama) Limited. (the "**Debtor**").

B. Pursuant to an Order of the Court dated •, the Court approved the agreement of purchase and sale made as of •, (the "**Sale Agreement**") between the Receiver and • (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the

Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

MNP LTD., in its capacity as Receiver of the undertaking, property and assets of Old Mill Marina (Kawagama) and not in its personal capacity

Per: _____

Name:

Title:

Schedule B – Purchased Assets

Real Property: The property municipally known as 1652 and 1676 Russell Landing Road, Township of Algonquin Highlands, and legally described as PT LT 16 CON 12 SHERBORNE AS IN H87622 EXCEPT PT 1, 2, 3 19R1733 AND EXCEPT PT 2 19R5130; S/T H87622; TOWNSHIP OF ALGONQUIN HIGHLANDS, being all of PIN 39115-0241 (LT), together with all buildings, structures, improvements, systems, chattels and fixtures situated or located thereon or therein.

Shop and yard equipment: See attached list.

The Purchaser acknowledges and agrees that the foregoing list is subject to the Vendor's right to sell or otherwise dispose of such equipment in accordance with the terms of the Sales Agreement.

The Assigned Contracts.

Goodwill – Goodwill shall include, without limitation, the name “Old Mill (Kawagama) Limited”, all intellectual property of any nature or kind (including, without limitation, all trademarks and trade names) and the right to create and operate a website in respect of the Debtor's business and using such names, trademarks and trade names.

Warranties – Includes all warranties of any nature or kind relating to the Debtor's business or to any of the other Purchased Assets, subject to nothing herein shall be interpreted as implying that the Receiver has provided any independent representations or warranties regarding the Purchased Assets.

Client Lists – Includes contact information of past and current clients of the Debtor's business and related information in the Vendor's actual possession regarding past and current transactions with such client.

Schedule C – Claims to be deleted and expunged from title to Real Property

Legal Description:

The following instruments are to be discharged upon registration of the Vesting Order:

1. Instrument No. HA21205 registered on June 5, 2012, being a Charge in favour of Haliburton County Development Corporation in the principal amount of \$125,000 (the “**Haliburton Charge**”);
2. Instrument No. HA44419 registered on September 2, 2016, being a Charge in favour of 1711423 Ontario Limited (“**1711423**”) in the principal amount of \$750,000 (the “**1711423 Charge**”);
3. Instrument No. HA44420 registered on September 2, 2016, being a Notice of Assignment of Rents – General in favour of 1711423;
4. Instrument No. HA44421 registered on September 2, 2016, being a Postponement of Interest of the Haliburton Charge in favour of the 1711423 Charge;
5. Instrument No. HA53254 registered on March 1, 2018, being a Notice relating to the 1711423 Charge; and
6. Instrument No. HA60340 registered on June 18, 2019, being a Charge in favour of 1711423 in the principal amount of \$500,000.

SCHEDULE "D"

Permitted Encumbrances, Easements and Restrictive Covenants related to the Real Property

(unaffected by the Vesting Order)

Permitted Encumbrances with respect to the Property means:

1. The exceptions and qualifications set out in the *Land Titles Act* (Ontario) and/or on the parcel register for the Real Property;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any registered or unregistered easements, servitudes, rights-of-way, licences, restrictions that run with the land and other encumbrances and/or agreements with respect thereto (including, without limiting the generality of the foregoing, easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables);
4. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due or liens for same which are due but the validity of which are being contested in good faith by the Vendor provided that the Vendor has provided security which in the opinion of the Vendor, acting reasonably, is necessary to avoid any lien, charge or encumbrance arising with respect thereto;
5. Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Real Property;
6. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance, provided that any such work orders, deficiency notices and any other noncompliance are discoverable by the Purchaser no less than three (3) Business Days before the Waiver Date by way of an updated search with the applicable Governmental Authority, regardless of whether or not such search was performed;
7. Any breaches of any applicable laws, including, without limitation, outstanding building permits, work orders and deficiency notices, provided that such breaches are discoverable by the Purchaser no less than three (3) Business Days before the Waiver Date by way of an updated search with the applicable Governmental Authority, regardless of whether or not such search was performed;
8. Any subdivision agreements, site plan agreements, development agreements and any other agreements with the municipality, region, publicly regulated utilities or other governmental authorities having jurisdiction;

9. Defects or irregularities in title to the Real Property; and
10. Without in any way limiting the generality of any of the foregoing, the following specific instruments registered on title against the Real Property:
 - (a) Plan 19R203 deposited on April 23, 1971;
 - (b) Plan 19R752 deposited on June 10, 1975; and
 - (c) Instrument No. H87622 registered on April 12, 1972, being a Transfer in favour of the Debtor and containing a subject to interest burdening the Real Property as noted in the legal description therefor.

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ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
OLD MILL MARINA (KAWAGAMA) LIMITED
OF THE COUNTY OF HALIBURTON
IN THE PROVINCE OF ONTARIO

AFFIDAVIT OF JERRY HENECHOWICZ
(Sworn February 9, 2021)

I, Jerry Henechowicz, of the City of Markham, in the Province of Ontario,

MAKE OATH AND SAY AS FOLLOWS:

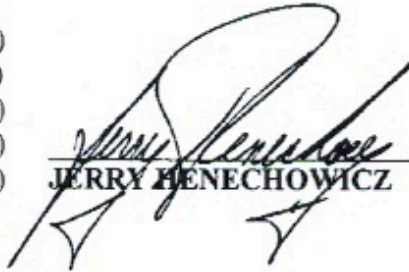
1. I am a Senior Vice President and a licensed Trustee with MNP Ltd. the Court-appointed Receiver and Manager (the “**Receiver**”) of Old Mill Marina (Kawagama) Limited (the “**Company**”) and as such have knowledge of the matters deposed to herein, except where such knowledge is stated to be based on information and belief, in which case I state the source of the information and verily believe such information to be true.
2. The Receiver was appointed, without security, of the assets, property and undertaking of the Company by Order of the Court dated March 9, 2020.
3. The Receiver has prepared one Statement of Account in connection with its appointment as Liquidator detailing its services rendered and disbursements incurred for the period September 1, 2020 to the completion of the administration of this proceeding. Attached hereto and marked as Exhibit “A” to this my Affidavit is a summary of the Statement of Account.
4. Attached hereto and marked as Exhibit “B” are copies of the Statements of Account. The average hourly rate in respect of the account is \$280.50.

5. This Affidavit is made in support of a motion to, *inter alia*, approve the receipts and disbursements of the Receiver and its accounts.

SWORN before me by video conference)
From Toronto, Ontario)
this 9th day of February, 2021)



A Commissioner, etc.



JERRY HENECHOWICZ

Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF JERRY HENECHOWICZ

Sworn before me

This 9th day of February, 2021

Commissioner for taking Affidavits, etc

**RECEIVERSHIP OF OLD MILL MARINA (KAWAGAMA) LIMITED
SUMMARY OF STATEMENTS OF ACCOUNT OF
MNP LTD IN ITS CAPACITY AS COURT APPOINTED RECEIVER AND MANAGER
FOR THE PERIOD SEPTEMBER 1, 2020 TO THE COMPLETION OF THE ADMINISTRATION OF
THE RECEIVERSHIP**

MNP INVOICE	DATE	HOURS	FEES	DISBURSEMENTS	HST	TOTAL
9622234	09-Feb-2021	178.25	\$ 50,000.00	\$ -	\$ 6,500.00	\$ 56,500.00
		178.25	\$ 50,000.00	\$ -	\$ 6,500.00	\$ 56,500.00

Average Hourly Rate **\$ 280.50**

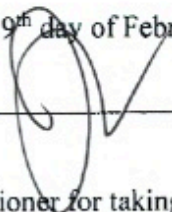
Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF JERRY HENECHOWICZ

Sworn before me

This 9th day of February, 2021



Commissioner for taking Affidavits, etc

Invoice



Invoice Number : 9622234

Client Number : 0721880

Invoice Date : Feb 9 2021

Invoice Terms : Due Upon Receipt

Old Mill Marina (Kawagama) Limited
c/o MNP Ltd.
111-300 Richmond Street West
Toronto, ON M5H 2G4

For Professional Services Rendered :

Professional services as Court Appointed Receiver and Manager of Old Mill Marina (Kawagama) Limited for the period September 1, 2020 to the completion of the administration of the receivership as set out on the attached time and billing summary capped at \$50,000. 50,000.00

Harmonized Sales Tax : 6,500.00

Total (CAD) : 56,500.00

HST Registration Number : 103697215 RT 0001

Invoices are due and payable upon receipt.

Thank you for your business. We sincerely appreciate your trust in us.

Licensed Insolvency Trustees
111 RICHMOND STREET WEST, SUITE 300;
TORONTO ON; M5H 2G4
P: (416) 596-1711 F: (416) 596-7894 www.MNPDebt.ca

MNP LTD

COURT APPOINTED RECEIVER AND MANAGER OF OLD MILL MARINA (KAWAGAMA) LIMITED

FOR THE PERIOD AUGUST 31, 2020 TO THE COMPLETION OF THE ADMINISTRATION OF THE RECEIVERSHIP PROCEEDING

DATE	PROFESSIONAL	HOURS	DESCRIPTION
01-Sep-2020	Jerry Henechowicz	1.00	Calls and emails related to closing of transaction
01-Sep-2020	Jessie Hue	.30	Prepare e-transfer payment and posting in Ascend, email confirmation to M. Litwack and J. Henechowicz. Posting AR for the final week of Aug.
01-Sep-2020	Michael Litwack	.20	Emails re draft first report
02-Sep-2020	Jerry Henechowicz	1.10	On-going issues related to closing and environmental issues, tank removal and new install
02-Sep-2020	Jessie Hue	.20	Follow up with B. Camduff on the status of the incoming e-transfers.
02-Sep-2020	Michael Litwack	.50	Call w/ B Camduff; Emails re credit card processing; Call w/ J Henechowicz.
03-Sep-2020	Jerry Henechowicz	1.50	Call with counsels and purchaser on revisions to agreements regarding removal of tanks
03-Sep-2020	Jessie Hue	.60	Banking, prepare cheque req, review of address and email for direction of the preference of courier to M. Litwack. Email J. Henechowicz Torkin Manes statement.
03-Sep-2020	Michael Litwack	1.50	Response to customer inquiry; Calls w/ J Henechowicz; Prepared customer list and e-mailed to purchaser; Conference call.
04-Sep-2020	Jerry Henechowicz	1.10	Responding to customer emails, preparation of notice to customers re sale, calls with counsel on terms of and status of amended agreements
04-Sep-2020	Jessie Hue	.80	Banking, prepare cheque req for Crates and arrange for courier. Prepare receipt voucher and posting the sale of trailer. Prepare cover letter for payment for Crates.
04-Sep-2020	Michael Litwack	1.30	Calls and e-mails w/ purchaser re transfer of social media accounts, email server access and phone system access.
07-Sep-2020	Jerry Henechowicz	1.00	Reviewing and responding to multiple emails from Purchaser regarding the operation of the Marina.
08-Sep-2020	Jerry Henechowicz	1.20	Calls with Laidlaw's and Pinchin to co-ordinate environmental review, review of amended agency and assignment agreement, review of update notice to customers
08-Sep-2020	Jessie Hue	.30	Prepare the e-transfer requisition and transfer. Posting in Ascend and email confirmation to M. Litwack and J. Henechowicz.
08-Sep-2020	Jessie Hue	.40	Banking, prepare cheque requisition and mailing of invoice payment.
08-Sep-2020	Michael Litwack	1.80	Conference call re removal of fuel tanks; Payroll for previous week; Call w/ J Henechowicz; Draft notice to customers re removal of fuel tanks; Emails re draft of notice to customers; Finalizing and sending notice to customers
09-Sep-2020	Jerry Henechowicz	.60	Responding to emails from J. Walliser, purchaser and co-ordination of tank removal, discussion of amendments to Occupation Agreement
09-Sep-2020	Jessie Hue	.50	Banking, prepare cheque requisition for Pinchin and make arrangement for courier.
09-Sep-2020	Jessie Hue	2.80	Prepare the invoice docket for August, prepare the affidavit of fees and the summary of accounts. Prepare cheque req for payment to Pinchin and arrange for courier for payment.
09-Sep-2020	Jessie Hue	.30	Dealing with redirection of mail, saving statement of account for RP2 account and bill invoices to J. Henechowicz. Dealing with outstanding invoice and confirm with Mike payment remitted.

MNP LTD

COURT APPOINTED RECEIVER AND MANAGER OF OLD MILL MARINA (KAWAGAMA) LIMITED

FOR THE PERIOD AUGUST 31, 2020 TO THE COMPLETION OF THE ADMINISTRATION OF THE RECEIVERSHIP PROCEEDING

DATE	PROFESSIONAL	HOURS	DESCRIPTION
09-Sep-2020	Michael Litwack	.20	Email response to customer; Direction re invoice for service provider
10-Sep-2020	Jerry Henechowicz	.40	Multiples calls and emails related to tank removal, soil tests and insurance naming of various parties
10-Sep-2020	Jessie Hue	.50	Prepare the revised WEPP claim and email M. Litwack same.
10-Sep-2020	Michael Litwack	.30	Call w/ S Leslie (Muskoka Petro Tech) re planning for removal of fuel tanks
11-Sep-2020	Jerry Henechowicz	.60	Follow up on tank removal and related processes
11-Sep-2020	Jessie Hue	.30	Save CRA letter and email A. Kapoor for response.
11-Sep-2020	Michael Litwack	5.00	Attended at premise to oversee removal of in-ground fuel tanks; Emails and calls w/ J Henechowicz; Met with employee of purchaser on site; Discussions w/ B Canduff.
11-Sep-2020	Michael Litwack	2.10	Travel to/from Old Mill
11-Sep-2020	Akhil Kapoor	.10	Reviewing an email from S. Canada re POC of an employee
12-Sep-2020	Michael Litwack	.60	Emails re WEPPA claim; Direction to J Hue re updating MNP website; Draft of notice to customers re successful removal of tanks
14-Sep-2020	Jerry Henechowicz	2.30	Call with Torkin Manes re issues related to closing, preparation of sale approval report, call with J Hubble on closing issues
14-Sep-2020	Jessie Hue	2.20	Bank rec for the month of August, posting credit amounts on the credit cards, bank rec as of Sept 11 and email M. Litwack for finalizing draft R&D.
14-Sep-2020	Jessie Hue	.60	Review of WEPP, t/c with Service Canada, filing claims with no proof of claims with the Service Canada, scan confirmed payment forms to the directory and update the WEPP schedule.
14-Sep-2020	Michael Litwack	3.30	Conference call w/ counsel; Email to customer re invoices; Review of Bell invoices and emails w/ J Hue re Bell; Emails re auto policy renewal; Call w/ G McBride re auto policy; Emails re RBC notice re vehicles; Call and e-mail to RBC re vehicle payments; Preparation of information needed for court report; Revision to R&D.
15-Sep-2020	Jerry Henechowicz	1.50	Update with Laidlaws on multiple issues related to closing, updates to draft report, review with Torkin Manes
15-Sep-2020	Jessie Hue	.50	Update website and email M. Litwack.
15-Sep-2020	Michael Litwack	1.40	Revised R&D with bank reconciliation; Prepared reconciliation for service fees and collected receivables; Emails w/ Laidlaw re phone system; Conference call re closing conditions
16-Sep-2020	Jerry Henechowicz	2.10	Update with Torkin Manes, review and updates to report, calls with insurers, review of distributions and available funds, emails to lenders for account statements
16-Sep-2020	Michael Litwack	.20	Emails re vehicle insurance; Direction re insurance payment

MNP LTD

COURT APPOINTED RECEIVER AND MANAGER OF OLD MILL MARINA (KAWAGAMA) LIMITED

FOR THE PERIOD AUGUST 31, 2020 TO THE COMPLETION OF THE ADMINISTRATION OF THE RECEIVERSHIP PROCEEDING

DATE	PROFESSIONAL	HOURS	DESCRIPTION
16-Sep-2020	Akhil Kapoor	.40	Review of information- CRA letter re wrong information provided by an employee to them, reviewing all ROEs issued by MNP and matching SIN no with the SIN no mentioned by CRA in their letter and preparing a note for the purpose of discussion with CRA and MNP team
17-Sep-2020	Jerry Henechowicz	1.10	Multiple updates to Court Reports
17-Sep-2020	Jessie Hue	.50	Banking, prepare cheque req for Insurance and preparation for courier.
17-Sep-2020	Jessie Hue	.70	Review Bell Canada invoices, posting in Ascend and prepare cheque requisition, email J. Henechowicz for Ascend cheque approval. Prepare mailing of payment.
17-Sep-2020	Michael Litwack	.20	Returning customer's call
18-Sep-2020	Jerry Henechowicz	2.10	Further updates and amendments to Court report, calls with purchaser on closing issues and timing
18-Sep-2020	Jessie Hue	.40	Review of redirection of mail, correspondence regarding cheque for insurance refund and email confirmation for deposit.
18-Sep-2020	Michael Litwack	.30	Updated affidavit and schedules
18-Sep-2020	Akhil Kapoor	1.30	1) Email communication with M. Litwack re CRA letter for pending information in a T4 filed by an employee, discussing how to gather the required information 2) Filling the reqd info in the form shared by CRA as discussed with M. Litwack 3) Sending the form through fax to Sudbury tax centre 4) Reviewing all the information relating to employees in WEPP and payroll worksheets
20-Sep-2020	Matthew Lcm	3.30	Review and adjust draft report to Court
21-Sep-2020	Michael Litwack	2.20	Conference call w/ counsel re closing terms; Emails re request by purchaser to e-mail customers; Meeting w/ J Henechowicz; Review and revised draft of Receiver's report
22-Sep-2020	Jerry Henechowicz	1.00	Finalization and service of report and related matters, multiple emails to complete all necessary APS doc's and waivers
22-Sep-2020	Sheldon Title	.40	call with Jerry on CRA claim for unpaid HST and priority vis-a-vis mortgage; review of prescribed security interest calculations and forward same to Jerry for him to consider; search for Diane Winter's paper on same
22-Sep-2020	Jessie Hue	.50	Banking, deposit money order rand insurance refund and email J. Henechowicz.
22-Sep-2020	Michael Litwack	.50	Conference w/ counsel and J Henechowicz re review of terms for report;
23-Sep-2020	Jerry Henechowicz	.50	Completion of TSSA applicaiton
23-Sep-2020	Jessie Hue	.40	Prepare e-transfer and posting in Ascend, prepare requisition.
23-Sep-2020	Jessie Hue	.50	Update website.
23-Sep-2020	Jessie Hue	.20	Receipt of cheque and email J. Henechowicz for direction.
23-Sep-2020	Jessie Hue	.30	Banking, prepare cheque req and email J. Henechowicz for Ascend approval.

MNP LTD

COURT APPOINTED RECEIVER AND MANAGER OF OLD MILL MARINA (KAWAGAMA) LIMITED

FOR THE PERIOD AUGUST 31, 2020 TO THE COMPLETION OF THE ADMINISTRATION OF THE RECEIVERSHIP PROCEEDING

DATE	PROFESSIONAL	HOURS	DESCRIPTION
23-Sep-2020	Michael Litwack	.30	Payroll processing and direction;
24-Sep-2020	Jerry Henechowicz	1.00	Completion and filing of supplementary report, review of revised orders
24-Sep-2020	Jessie Hue	.30	Banking, prepare receipt voucher and remote deposit and email J. Henechowicz confirmation.
24-Sep-2020	Jessie Hue	.30	Dealing with the redirection of mail, email M. Litwack confirmation of the opening of the RT2 account and saved to the directory.
25-Sep-2020	Jessie Hue	.50	Prepare cheque req for Hydro accounts and email J. Henechowicz for Ascend approval.
25-Sep-2020	Jessie Hue	.20	Dealing with mail and redirected mail and forward to M. Litwack.
28-Sep-2020	Jerry Henechowicz	.80	Review of emails related to Sale approval orders
28-Sep-2020	Jessie Hue	.40	Update the website with the supplementary motion record and motion record.
28-Sep-2020	Matthew Lem	1.30	Review of correspondence; discussion with J. Simpson re same; attend conference call with Chaitons and Torkin Manes; attend court virtually on sale approval and distribution motion; review of amended ancillary order; discussion with J. Simpson re same.
29-Sep-2020	Jerry Henechowicz	.20	Receipt and review of orders
29-Sep-2020	Jessie Hue	.30	Prepare the cheques and mailing payment to Hydro and Pinchin.
30-Sep-2020	Jessie Hue	.30	Dealing with mail and redirected mail, save to directory and email M. Litwack.
30-Sep-2020	Jessie Hue	.40	Update the website.
30-Sep-2020	Michael Litwack	.30	Emails re transfer of web domain and facebook account; Email re internet service provider
01-Oct-2020	Jerry Henechowicz	.30	Update emails with Mike Laidlaw on closing adjustments
01-Oct-2020	Jessie Hue	.40	Prepare the bank rec for the month of September and email J. Henechowicz.
01-Oct-2020	Michael Litwack	.40	Emails re transfer of web domain and facebook page; Update meeting w/ J. Henechowicz
02-Oct-2020	Jessie Hue	.80	Prepare the wire instructions for Petrotech, review banking for payments made to date and email J. Henechowicz Ascend payments to date.
02-Oct-2020	Jessie Hue	1.00	Meeting with J. Henechowicz and prepare the journal entries and email confirmation and trial balance for Jerry.
02-Oct-2020	Michael Litwack	.20	Emails re invoice from Tert & Ross; Email to customer re A/R balance.
05-Oct-2020	Michael Litwack	.20	Response to customer re acquisition; Emails re receivable account
05-Oct-2020	Sariyya Panahi	.50	call with CRA re: insolvency

MNP LTD

COURT APPOINTED RECEIVER AND MANAGER OF OLD MILL MARINA (KAWAGAMA) LIMITED

FOR THE PERIOD AUGUST 31, 2020 TO THE COMPLETION OF THE ADMINISTRATION OF THE RECEIVERSHIP PROCEEDING

DATE	PROFESSIONAL	HOURS	DESCRIPTION
06-Oct-2020	Jerry Henechowicz	.70	Update with John Hubble, preparation for meeting to review closing issues and needed adjustments
06-Oct-2020	Jessie Hue	.30	Provide M. Litwack as to the payments made to date for Tert and Ross,
06-Oct-2020	Jessie Hue	.20	Banking, review payment made to Pinchin, confirm mailing address and date of the payment to J. Henechowicz.
06-Oct-2020	Michael Litwack	1.50	Preparation of schedule for collection of remaining receivables; Review of credit card payments and e-transfers for any a/r payments made; Email to B Camduff re outstanding receivables.
07-Oct-2020	Jessie Hue	.50	Reconcile invoices and payment made to date for Bell, further inquiry with Bell to provide balance of invoices.
07-Oct-2020	Jessie Hue	.40	Dealing with the redirection of mail, save to the directory and email same to J. Henechowicz.
07-Oct-2020	Michael Litwack	2.80	Correspondence w/ R Walisser re website domain; Email to M. Laidlaw re website; Prepared schedule of all receivables (inclusive of pre-appointment amounts outstanding) and reconciled with payments made; Review of invoice and work order numbers for all outstanding receivables and preparing A/R schedule with offsets, invoice numbers and notes.
07-Oct-2020	Sariyya Panahi	.25	call with CRA
08-Oct-2020	Jerry Henechowicz	2.00	On site meeting to review closing items
08-Oct-2020	Jessie Hue	1.00	Follow up with Bell as to invoices outstanding and reconcile invoices.
08-Oct-2020	Michael Saxe	.20	follow up with sariyya re claim submission status
08-Oct-2020	Michael Litwack	1.20	Prepared letter for remittance of source deductions; Zoom meeting w/ purchasers; Accessing IDS system to retrieve invoices; Contacting IDS support re system changes for printing of invoices via PDF
09-Oct-2020	Jerry Henechowicz	1.30	Preparation and sending of closing items to Laidlaws, discussion of same with Torkin Manes, review of closing documents provided by Torkin Manes and other closing issues
09-Oct-2020	Jessie Hue	.50	Prepare cheque req for source deductions and email J. Henechowicz for Ascend approval.
09-Oct-2020	Michael Litwack	1.00	Conference call w/ A Collins re closing agenda; Call from IDS customer support; Emails re closing agenda; Research on transfer of vehicles and boats
11-Oct-2020	Jerry Henechowicz	1.00	Follow up on various closing items
13-Oct-2020	Jerry Henechowicz	2.80	Review and preparation of information for statement of adjustments, updates with Purchaser, calls with Torkin Manes, execution of closing documents and sending of same to Torkin Manes

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COURT APPOINTED RECEIVER AND MANAGER OF OLD MILL MARINA (KAWAGAMA) LIMITED

FOR THE PERIOD AUGUST 31, 2020 TO THE COMPLETION OF THE ADMINISTRATION OF THE RECEIVERSHIP PROCEEDING

DATE	PROFESSIONAL	HOURS	DESCRIPTION
13-Oct-2020	Michael Litwack	3.20	Tech support call w/ IDS re printing of PDFs for old invoices; Accessing IDS system and printing off all invoices and work orders for any customer accounts shown with a balance; Call to/from Algonquin Highlands re outstanding property taxes; Call w/ J Henechowicz; Emails re vehicles and boats; Research on requirements to obtain lost vehicle ownerships and transfer of vehicles and boats; Direction to J Hue re preparation of schedule of expenses for adjustments to closing;
14-Oct-2020	Jerry Henechowicz	1.50	Multiple calls and emails related to closing of sale transaction
14-Oct-2020	Jessie Hue	.20	Dealing with inquiry as to the status of the Scotia bank refund in relation to the e-transfer error. Emailed same with M. Litwack.
14-Oct-2020	Jessie Hue	.70	Prepare the cheque reqs and mailing of payment to TSSA and Highland.
14-Oct-2020	Jessie Hue	1.50	Prepare schedule and reconcile utilities paid to date and email M. Litwack.
14-Oct-2020	Michael Litwack	4.00	Meeting w/ J Henechowicz; Conference call w/ counsel; Attended at Service Ontario to obtain missing ownership documents; Emails re original court order needed by Service Ontario; Email to Highlands Internet; Emails re utilities; Emails re refund for customer; Further direction to J Hue re utilities and deposits; Accessing IDS to retrieve backup of accounting records for current and previous years.
15-Oct-2020	Jerry Henechowicz	1.10	Multiple calls and emails related to closing of sale transaction, arranging for filing of outstanding corporate tax returns
15-Oct-2020	Jessie Hue	.40	Banking, prepare cheque req and request email cheque approval for Integrated.
15-Oct-2020	Jessie Hue	.40	Banking, prepare cheque req.
15-Oct-2020	Parth Patel	2.20	Drafted 2019 T2
15-Oct-2020	Michael Litwack	1.00	Emails re Xerox; Call to RBC re vehicle; Call from and email to RBC re vehicles;
15-Oct-2020	Jessie Hue	1.60	T/c with utilities to confirm if there was a security deposit with Hydro and Bell.
16-Oct-2020	Jerry Henechowicz	1.00	Multiple calls and emails related to closing of sale transaction, preparation and execution of various closing documents, attending to receipt of funds
16-Oct-2020	Jessie Hue	.40	Prepare cheque req for RBC payment on vehicle.
16-Oct-2020	Michael Litwack	.70	Calls w/ J Henechowicz; Emails re insurance cancellations; Preparation of insurance cancellation forms.
19-Oct-2020	Jerry Henechowicz	1.30	Preparation of bill of sale re Dorset Docks, preparation of distribution and payment of counsel and MNP accounts, call with S Judelman re filing of outstanding returns to obtain HST refunds
19-Oct-2020	Jessie Hue	.80	T/c and cancelling utility services for Hydro and Bell.
19-Oct-2020	Jessie Hue	.30	Prepare receipt voucher and posting in retainer account the sale of the assets. Email Maddie at TD for incoming wire details, transfer the funds to the trust account, posting in Ascend and email J. Henechowicz confirmation.
19-Oct-2020	Saul Judelman	.50	T2 2019

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COURT APPOINTED RECEIVER AND MANAGER OF OLD MILL MARINA (KAWAGAMA) LIMITED

FOR THE PERIOD AUGUST 31, 2020 TO THE COMPLETION OF THE ADMINISTRATION OF THE RECEIVERSHIP PROCEEDING

DATE	PROFESSIONAL	HOURS	DESCRIPTION
19-Oct-2020	Michael Litwack	.20	Direction to J Hue re utilities
20-Oct-2020	Jerry Henechowicz	.80	Issues related to completing multiple interim distributions
20-Oct-2020	Sheldon Title	.10	approve disbursement
20-Oct-2020	Jessie Hue	3.00	Baning, preparation of various wires instructions postings and transfer of wire fees for distributions. Prepare cheque req for expenses for J. Henechowicz for vendor payment.
20-Oct-2020	Jessie Hue	.20	Printing approved cheques and mailing.
20-Oct-2020	Michael Litwack	2.40	Emails re original copy of appointment order; Accessing IDS to print additional invoices; Email to IDS support re issue with printing PDFs; Calls w/ RBC re 2014 F150; Call w/ Reliance Home Comfort; Emails re 2014 Ford F150; Emails re Reliance Home Comfort.
21-Oct-2020	Jerry Henechowicz	.90	Email to John Hubble re utilization of sale proceeds, call with Rob Walliser
21-Oct-2020	Jessie Hue	.50	Baning, provide the GL and trial balance. Etransfer for B. Carnduff. Prepare cheque re for utilities and mailing.
21-Oct-2020	Parth Patel	1.40	Drafted 2020 T2
21-Oct-2020	Michael Litwack	.60	Call to RBC re vehicle; Emails with M Laidlaw re vehicles
22-Oct-2020	Jerry Henechowicz	.20	Update on status with Mike Laidlaw
22-Oct-2020	Jessie Hue	1.60	Dealing with redirection of mail, prepare cheque reqs and mailing to vendors. Prepare journal entries and corrections to the AR entries and email updated GL to J. Henechowicz. Mailing of the RBC payment. F/u with M. Litwack on Xerox response letter. T/c with Jerry regarding inquiry with CRA, msg with Mark at CRA and email same with Jerry.
22-Oct-2020	Michael Litwack	.30	Email to IDS support; Call and left voicemail for Xerox; Emails re Xerox payment; Emails re RBC payment
23-Oct-2020	Jerry Henechowicz	.40	Preparation of completion activity listing, follow up on CEWS and tax return filings
23-Oct-2020	Jeanne Cheng	.30	Disc re T2 and signing
23-Oct-2020	Jessie Hue	1.00	Discussion with Hydro and arrange for having the final invoice. Inquiry to have the redirection of mail cancelled.
23-Oct-2020	Michael Litwack	3.40	Emails and call re Bowman Fuels invoice; Attending at Service Ontario to obtain replacement ownerships and UVIPs for vehicles;
26-Oct-2020	Jessie Hue	.40	Review of mail and forward to J. Henechowicz.
26-Oct-2020	Jessie Hue	.30	Prepare etransfer payment to B. Carnduff and posting in Ascend.
26-Oct-2020	Saul Judelman	.25	Review of FY 2020 Financials

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COURT APPOINTED RECEIVER AND MANAGER OF OLD MILL MARINA (KAWAGAMA) LIMITED

FOR THE PERIOD AUGUST 31, 2020 TO THE COMPLETION OF THE ADMINISTRATION OF THE RECEIVERSHIP PROCEEDING

DATE	PROFESSIONAL	HOURS	DESCRIPTION
26-Oct-2020	Parth Patel	.60	prepared package for production - updated signoffs in CW and prepared EL
26-Oct-2020	Michael Litwack	1.80	Support ticket sent to IDS re PDF printing; Email re web domain; Call to CRA re audit; Call w/ M. Laidlaw re vehicle transfers; Review of sale materials re RV; Call back to CRA re CEWS; emails re CRA; Emails re CEWS claim; Call w/ Sariyya re CEWS
26-Oct-2020	Sariyya Panahi	.50	call with Michael L. and CRA
27-Oct-2020	Jerry Henechowicz	.30	Filing of 2019 and 2020 Federal income tax returns
27-Oct-2020	Jessie Hue	.30	Purchase term deposit, posting in Ascend and email J. Henechowicz.
27-Oct-2020	Michael Litwack	2.70	IT support w/ IDS re printing PDF issue; Accessing system to print any remaining work orders and invoices for collection of receivables; Email to Xerox; Met w/ M Laidlaw re transfer of vehicles, boats and trailers
28-Oct-2020	Jerry Henechowicz	1.00	Preparation of HST claims, following up on status of CEWS claims
28-Oct-2020	Jessie Hue	.30	Provide the HSTT return forms.
28-Oct-2020	Jessie Hue	.20	Follow up with M. Litwack on the overpayment and refund.
28-Oct-2020	Sariyya Panahi	.20	call with CRA
29-Oct-2020	Jerry Henechowicz	.30	Emails with J Hubble and Chaitons on status of distributions
29-Oct-2020	Michael Litwack	.30	Call and email w/ Xerox; Email w/ M Laidlaw;
02-Nov-2020	Jessie Hue	.60	Filing post receivership quarterly returns.
02-Nov-2020	Jessie Hue	.30	Prepare cheque req for Integrated and email J. Henechowicz for approval. Banking reversal on payment.
02-Nov-2020	Michael Litwack	.70	Emails re and call to Bracebridge propane; Call to CRA; Email to J Henechowicz re HST returns; Prepared calculation for B Carduff ROE; Direction to A Kapoor re ROE;
03-Nov-2020	Jessie Hue	.20	Archive the Firmex dataroom and email J. Henechowicz confirmation.
03-Nov-2020	Michael Litwack	1.30	Call from Georgian Propane; Access to IDS system to pull reports for sales tax; Prepared information for sales tax filing for pre-appointment; Direction to J Hue re sales tax; Direction to A Kapoor re ROE for B Carduff
03-Nov-2020	Akhil Kapoor	.30	Discussion with M. Litwack re employee details, preparation of ROE for an employee of Old Mill and sending copies to the employee and S. Canada with a scanned copy to M. Litwack
04-Nov-2020	Jessie Hue	.20	Email J. Henechowicz insurance refund cheque received and arrange for c
06-Nov-2020	Jessie Hue	.20	Deposit of the insurance refund and email J. Henechowicz confirmation.

MNP LTD**COURT APPOINTED RECEIVER AND MANAGER OF OLD MILL MARINA (KAWAGAMA) LIMITED****FOR THE PERIOD AUGUST 31, 2020 TO THE COMPLETION OF THE ADMINISTRATION OF THE RECEIVERSHIP PROCEEDING**

DATE	PROFESSIONAL	HOURS	DESCRIPTION
11-Nov-2020	Michael Litwack	.40	Emails with M Laidlaw re document required for transfer of vehicle ownerships; Met with M Laidlaw to notarize document.
13-Nov-2020	Michael Litwack	.50	Meeting w/ S. Panahi re CRA communications; Call w/ K Harris (CRA); Email to J Henechowicz re CRA position
13-Nov-2020	Sariyya Panahi	.75	cews call with cra and Michael
16-Nov-2020	Jessie Hue	.10	Dealing with Creditor call.
17-Nov-2020	Jessie Hue	.30	Dealing with redirection of mail, remain cheque to the correct address.
18-Nov-2020	Jessie Hue	.60	T/c with Canada Post to cancel redirection of mail, email confirmation to J. Henechowicz and the directory.
18-Nov-2020	Jessie Hue	.10	Follow up on the payment made to date to Maslack.
18-Nov-2020	Michael Litwack	.20	Emails re payment to supplier
19-Nov-2020	Jessie Hue	.50	Dealing with redirection of mail, save to the directory CRA correspondence, invoice for Torkin Manes, NOA, invoices for confirmation if to remit payment.
19-Nov-2020	Michael Litwack	.20	Emails re CRA notice of HST account closure; Emails w/ M Laidlaw.
20-Nov-2020	Patricia Ball	.10	Oct Bank Rec
23-Nov-2020	Jessie Hue	.30	Dealing with redirection of mail, save to the directory, email the WEPP statement and utilities invoices for Hydro and Reliance to M. Litwack.
23-Nov-2020	Jessie Hue	.30	Banking, prepare receipt voucher, save the NOA to the directory and email J. Henechowicz remote deposit slip.
25-Nov-2020	Jessie Hue	.30	Attempt to file pre-receivership returns, emailed M. Litwack and J. Henechowicz findings, msg with Kamila to obtain access code for RT1 account.
25-Nov-2020	Michael Litwack	1.10	Emails re invoices; Call to Shred-it; Call to Bell; Emails re Bell invoices; Call to Hydro One; Email to Hydro One; Emails re CRA returns
26-Nov-2020	Michael Litwack	.30	Call w/ L Morrison re credit card terminals; Call to Scotiabank; Email re Bell
27-Nov-2020	Jessie Hue	.40	Prepare cheque req for the final Bell utilities, contact Bell for the HST breakdown for posting.
30-Nov-2020	Jessie Hue	.60	Bank rec.
01-Dec-2020	Michael Litwack	.20	Voicemail from and Call to Shred-it
02-Dec-2020	Jessie Hue	.30	Prepare cheque req for Maslack.
02-Dec-2020	Jessie Hue	.30	Arrange for the registered mail of the 2019 T4 to CRA.
02-Dec-2020	Michael Litwack	.30	Emails re T4 for 2019; Emails w/ M Laidlaw re vehicles and hydro
02-Dec-2020	Trina Bumingham	.50	Printed and mailed out T4s to CRA via registered mail.

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COURT APPOINTED RECEIVER AND MANAGER OF OLD MILL MARINA (KAWAGAMA) LIMITED

FOR THE PERIOD AUGUST 31, 2020 TO THE COMPLETION OF THE ADMINISTRATION OF THE RECEIVERSHIP PROCEEDING

DATE	PROFESSIONAL	HOURS	DESCRIPTION
03-Dec-2020	Jessie Hue	.50	Review of the NOA and filed return and email M. Litwack findings.
03-Dec-2020	Michael Litwack	.20	Email w/ purchaser re hydro accounts
04-Dec-2020	Sariyya Panahi	.50	call with the CRA and correspondence with M. Litwack re: payroll numbers and remittances
07-Dec-2020	Jerry Henechowicz	.40	Follow up on CEWS and potential statutory liabilities, review of notices of assessments, email to Torkin Manes on issues
07-Dec-2020	Jessie Hue	.20	Save the executed proof of claim to the directory and email M. Litwack same.
07-Dec-2020	Jessie Hue	.90	Banking, posting various EFT disbursements and prepare the bank rec for October. Email M. Litwack direction for integrated dealer invoice.
07-Dec-2020	Michael Litwack	1.00	Emails and messages re CRA account; Review of CRA notices and preparation of tracking table;
07-Dec-2020	Sariyya Panahi	.50	call with cra
07-Dec-2020	Bonnie Ren	.40	check CRA online for assessments related to the company (CEWS, T2, etc.) and update manager; download 2019 and 2020 notices for all accounts and sent to
08-Dec-2020	Jerry Henechowicz	.30	Follow up on CEWS and HST assessment
08-Dec-2020	Bonnie Ren	1.30	call CRA to transfer 2019 payroll payment to 2020 and allocate based on schedule received; look into HST transfers to RC0002 account
10-Dec-2020	Jerry Henechowicz	.40	Calls and emails with MNP HST advisor re follow up on HST Claims and timing of assessments
10-Dec-2020	Sariyya Panahi	.25	cews issue
10-Dec-2020	Kal Ruprai	.30	dw jerry h re letter from cra re g/hst
16-Dec-2020	Jerry Henechowicz	.30	Emails from A English re Ford Vehicle
17-Dec-2020	Jessie Hue	.20	Dealing with returned mail, t/c to confirm mailing address and re sent mail.
17-Dec-2020	Michael Litwack	.20	Emails re insurance premium refunds
22-Dec-2020	Jerry Henechowicz	.30	Review of HST preliminary findings
22-Dec-2020	Jessie Hue	.40	Banking, prepare receipt voucher and remote deposit.
22-Dec-2020	Kal Ruprai	.30	dw heenu to ask her to find info online, review info
23-Dec-2020	Jerry Henechowicz	.40	Review of HST liability with MNP tax group and ability to release reserve
23-Dec-2020	Kal Ruprai	.80	dw jerry, vims from and to dabinder sani of cra coll'ns, dw heenu; dw dabinder sani of cra
24-Dec-2020	Jerry Henechowicz	.20	Update from Kal Ruprai on HST liability

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COURT APPOINTED RECEIVER AND MANAGER OF OLD MILL MARINA (KAWAGAMA) LIMITED**

FOR THE PERIOD AUGUST 31, 2020 TO THE COMPLETION OF THE ADMINISTRATION OF THE RECEIVERSHIP PROCEEDING

DATE	PROFESSIONAL	HOURS	DESCRIPTION
24-Dec-2020	Kal Ruprai	.40	dws heenu, ems w jerry
06-Jan-2021	Jerry Henechowicz	.50	Planning of next steps and discharge motion with J Simpson Torkin Manes
08-Jan-2021	Jerry Henechowicz	.20	Update call with J Simpson
15-Jan-2021	Jerry Henechowicz	.40	Emails related to extension of holdback period
20-Jan-2021	Jerry Henechowicz	.60	preparation of trust examine information and making arrangements for upload to CRA
20-Jan-2021	Sariyya Panahi	.25	call with CRA re: cews
22-Jan-2021	Jerry Henechowicz	.10	Call with CRA re Trust Exam
25-Jan-2021	Jerry Henechowicz	.20	Arranging meeting re status of tank installations
28-Jan-2021	Jerry Henechowicz	.40	Follow up on status on pump installation, preparation of HST December 31, 2021
29-Jan-2021	Jerry Henechowicz	.20	Continued follow up on status of Trust Examine
29-Jan-2021	Jessie Hue	.30	Filing of the quarterly HST returns with CRA.
29-Jan-2021	Jessie Hue	.10	Save CRA correspondence to the directory.
01-Feb-2021	Jerry Henechowicz	.40	Email to Loopstra re payout statements, co-coordinating old mill Cews filing
01-Feb-2021	Sariyya Panahi	1.00	call with agent re: additional support for payroll accounts; updating period 5 claim and filing claims 1-5.
05-Feb-2021	Jessie Hue	1.50	Bank rec and investigate cleared cheques deposited in June and Dec 2020. Balancing items posted in reconciliation.
07-Feb-2021	Jerry Henechowicz	3.20	Drafting of second report
08-Feb-2021	Jerry Henechowicz	3.80	Drafting of second report
08-Feb-2021	Jessie Hue	.60	Print the cleared cheques that was deposited twice by mobile deposit, email TD to investigate and request reversal and emailed same with J. Henechowicz.
08-Feb-2021	Matthew Lem	1.80	Review and adjust draft report to Court.
09-Feb-2021	Jerry Henechowicz	2.00	Finalization and service of second report
		178.25	

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COURT APPOINTED RECEIVER AND MANAGER OF OLD MILL MARINA (KAWAGAMA) LIMITED

FOR THE PERIOD AUGUST 31, 2020 TO THE COMPLETION OF THE ADMINISTRATION OF THE RECEIVERSHIP PROCEEDING

DATE	PROFESSIONAL	HOURS	DESCRIPTION	
BILLING SUMMARY				
	PROFESSIONAL	HOURS	HOURLY RATE	AMOUNT
	Akhil Kapoor	2.10	375.00	787.50
	Bonnie Ren	1.70	375.00	637.50
	Jeanne Cheng	0.30	600.00	180.00
	Jerry Henechowicz	52.30	645.00	33,733.50
	Jessie Hue	46.00	220.00	10,120.00
	Kal Ruprai	1.80	600.00	1,080.00
	Matthew Lem	6.40	575.00	3,680.00
	Michael Litwack	56.70	375.00	21,262.50
	Michael Saxe	0.20	575.00	115.00
	Parth Patel	4.20	275.00	1,155.00
	Patricia Ball	0.10	175.00	17.50
	Sariyya Panahi	4.70	445.00	2,091.50
	Saul Judelman	0.75	575.00	431.25
	Sheldon Title	0.50	645.00	322.50
	Trina Burningham	0.50	215.00	107.50
	Total	178.25		75,721.25

H

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

1711423 ONTARIO LIMITED

Applicant

and

OLD MILL MARINA (KAWAGAMA) LIMITED

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

**AFFIDAVIT OF S. FAY SULLEY
Sworn February 9, 2021**

I, S. Fay Sulley, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

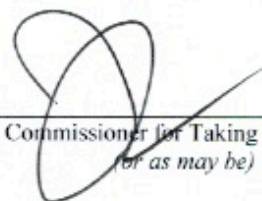
1. I am a Lawyer with the law firm of Torkin Manes LLP ("**Torkin Manes**"), which has been engaged as independent counsel, to MNP Ltd. in its capacity as the Court-appointed receiver and manager (and in such capacities, the "**Receiver**") without security, of all the assets, undertakings, and properties of Old Mill Marina (Kawagama) Limited (the "**Debtor**") and as such have knowledge of the matters to which I hereinafter depose either through my own knowledge or by informing myself with respect thereto in which case I have indicated the source of my information and belief.
2. Attached hereto as **Exhibit "A"** are true copies of the accounts issued by Torkin Manes to the Receiver of October 31, 2020 and January 31, 2021, which includes detailed descriptions of the work performed. The total fees charged by Torkin Manes to the Receiver were \$28,379.50, plus

HST of \$3,689.34, plus disbursements of \$711.63, plus HST on disbursements of \$42.92, for a total amount of \$32,823.39. We anticipate additional fees of \$5,000 in connection with preparation and attendance at the Motion.

3. I confirm that the attached accounts accurately reflect the services provided by Torkin Manes in this matter and the fees and disbursements claimed by it.

4. Additionally, attached hereto as **Exhibit "B"** is a summary of additional information with respect to the aforesaid accounts indicating all members of Torkin Manes who worked on this matter during the period described above, their year of call to the bar, total time charges and hourly rates, and I hereby confirm that this list represents an accurate account of such information.

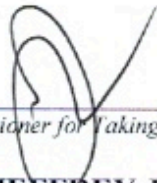
by video conference
SWORN by S. Fay Sulley of the City of Toronto, before me at the City of Toronto, in the Province of Ontario, on February 9, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.


Commissioner for Taking Affidavits
(or as may be)

JEFFREY J. SIMPSON


S. FAY SULLEY

This is Exhibit "A" referred to in the Affidavit of S. Fay Sulley
sworn February 9, 2021



Commissioner for Taking Affidavits (or as may be)

JEFEREY J. SIMPSON

Torkin Manes LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto, ON M5C 2W7

Tel: 416 863 1188
Fax: 416 863 0305
torkinmanes.com



October 31, 2020

Invoice No.: 339576

Attention: Jerry Henechowicz
MNP Ltd.
111 Richmond Street West, Suite 300
Toronto, ON M5H 2G4

ACCOUNT FOR PROFESSIONAL SERVICES RENDERED

RE: Old Mill Marina
File No.: 30790.0004

TO PROFESSIONAL SERVICES RENDERED HEREIN AS FOLLOWS:

Sep 16 20	SFS	Follow up phone call with client	0.50
Sep 22 20	AE	To review of and revising various versions of draft second waiver and amending agreement; extensive e-mail correspondence with Jerry Henechowicz, Rachel Puma and Sherri Lavine re same and re related matters	1.80
Sep 22 20	JJS	Finalization of report, Notice of Motion, Vesting Order and Ancillary Order and numerous telephone discussions and emails with counsel for other parties, receiver and Torkin Manes staff	3.00
Sep 22 20	AR	Obtained copies of instruments required for exhibits; e-mail correspondence re same; receipt of signed Agreements from Purchaser's solicitor; prepared compiled copies	1.30

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Our File No.: 30790.0004
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Sep 23 20	JJS	Exchange of e-mails with Mr. Quinlan, counsel for Walliser regarding approval and vesting motion	0.70
Sep 24 20	JJS	Drafting of supplementary report and arranging Zoom hearing	1.20
Sep 24 20	AE	To e-mail correspondence with Jerry Henechowicz and Rachel Puma re closing date	0.20
Sep 24 20	JJS	Telephone discussion with Mr. Quinlan, counsel for Walliser and review of priority of CRA HST assessment vs. secured creditors	1.20
Sep 25 20	AE	To conference with Jeffrey Simpson re approval and vesting order; e-mail correspondence with Rachel Puma and Jerry Henechowicz re residential tenant	0.20
Sep 25 20	SFS	Telephone discussion with Jerry Henechowicz	0.70
Sep 27 20	JJS	Exchange of e-mails with Mr. Henechowicz and revisions to draft Orders and circulating same to counsel and Court	1.30
Sep 28 20	JJS	Pre-motion revisions to Order and discussions between counsel	0.90
Sep 28 20	JJS	Attendance at Motion before Justice Hainey	0.60
Sep 28 20	JJS	Post-motion discussions between counsel regarding forms of order as directed by Justice Hainey and communications with the Court in respect thereof	1.10
Sep 28 20	AE	To e-mail correspondence with Rachel Puma re inventory; e-mail correspondence with Jerry Henechowicz re same	0.10

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Sep 28 20	SJ	Conducted updated Personal Property Security Act search against Old Mill Marina (Kawagama) Limited	0.20
Sep 28 20	SFS	Review of correspondence and respond to same	0.50
Sep 29 20	JJS	Finalizing forms of Order and communications with other counsel and Court office regarding same	1.50
Sep 29 20	SFS	Telephone discussion with Rachel Puma and client; review of correspondence	1.20
Sep 30 20	AR	Circulated requisition letter and reply to client; requested realty tax information	0.20
Oct 01 20	AE	To finalizing reply to requisitions; e-mail correspondence with Rachel Puma re inventory and contracts	0.20
Oct 01 20	AR	Revised reply to requisitions; e-mail correspondence with client	0.30
Oct 05 20	AE	To review of draft closing agenda; attending to preliminary closing matters	0.20
Oct 05 20	AR	Review of closing agenda and revisions to same; amended reply to requisitions; exchange of e-mail correspondence re closing matters and Receiver's Certificate	0.50
Oct 06 20	AR	Arranged for student to attend at Court on closing; exchange of e-mail correspondence re closing logistics; circulated reply to requisitions	0.60
Oct 08 20	AE	To telephone discussion with Jerry Henechowicz re adjustments and holdback for gas tanks; review of draft closing documents	1.00

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Oct 08 20	AR	Drafted closing documents, statement of adjustments and Application for Vesting Order; review of closing agenda	3.70
Oct 09 20	AE	To finalizing closing documents; e-mail correspondence with Rachel Puma re same; e-mail correspondence with Jerry Henechowicz re assets to be conveyed and related matters; conference with Jerry Henechowicz and Michael Litwack re same	1.60
Oct 09 20	JJS	Exchange of e-mails with Mr. English regarding closing of sale transaction	0.40
Oct 09 20	AR	Drafted additional documents; circulated to Purchaser's solicitor; revised statement of adjustments; email correspondence with client re outstanding matters and closing	3.10
Oct 10 20	AE	To review of draft closing documents received from Rachel Puma; e-mail correspondence with Rachel Puma re comments on same and responses to comments on additional draft closing documents	0.40
Oct 11 20	AE	To drafting and circulating holdback agreement	0.80
Oct 13 20	AE	To attending to closing matters and adjustments; conference call with Jerry Henechowicz and Angie Riches re same; revising holdback agreement	1.50
Oct 13 20	AR	Revised Statement of Adjustments; preparation for closing; review of outstanding matters	3.70
Oct 14 20	AE	To conference call and extensive e-mail correspondence with Jerry Henechowicz, Michael Litwack, Jeffrey Simpson and Angie Riches re outstanding closing matters; e-mail correspondence with Rachel Puma re same; attending to	2.40

		closing issues and extension of closing	
Oct 14 20	AR	Attended to all matters associated with closing of transaction	3.40
Oct 14 20	JJS	Pre-closing update conference call with client and Mr. English and Ms. Riches and Mr. Litwack	0.80
Oct 15 20	AE	To review of revised statement of adjustments; attending to closing	0.90
Oct 15 20	AR	Attended to all matters in connection with closing of transaction	3.00
Oct 16 20	AH	Attended the Superior Court of Justice Commercial List Counter at 330 University Avenue to file Receiver's Certificate; corresponded with Angie Riches, Aaron English, Jeffery Simpson, and Josset Johnson	3.50
Oct 16 20	AE	To attending to closing issues	0.90
Oct 16 20	JJS	Dealing with last minute closing issues such as difficulties in filing receiver's certificate and requirement from Service Ontario of original court order	1.20
Oct 16 20	AR	Attended to all matters associated with closing of transaction	2.60
Oct 19 20	AR	Attended to post-closing matters	0.40
Oct 20 20	AR	Correspondence re delivery of original Order	0.20
Oct 21 20	AE	To e-mail correspondence with Jerry Henechowicz re holdback	0.10
		Total Hours:	55.80

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October 31, 2020
Our File No.: 30790.0004
Invoice # 339576



OUR FEE:	\$24,120.50
HST:	\$3,135.67
SUB-TOTAL:	<hr/> \$27,256.17

LAWYERS' SUMMARY: FEES SUBJECT TO HST:

<u>LAWYERS AND LEGAL ASSISTANTS INVOLVED</u>	<u>HOURLY RATE</u>	<u>HOURS WORKED</u>
Abel Hazon	225.00	3.50
Angie Riches	270.00	23.00
Shalan Jankowski	300.00	.20
Aaron English	510.00	12.30
Jeffrey Simpson	625.00	13.90
Fay Sulley	725.00	2.90
TOTAL HOURS		55.80

DISBURSEMENTS

TAXABLE DISBURSEMENTS:

Deliveries	19.18
Agents fees	34.16
Title search disbursements	15.00
Laser copies	79.80
Process Server	80.00
File Order	75.00
	<hr/> 303.14

NON-TAXABLE DISBURSEMENTS:

Paid to obtain copies	24.00
Corporate search	8.00
Personal Prop Securities Act search	16.00
File Notice of Motion	320.00
Bank transfer and service charges	13.50
	<hr/> 381.50

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October 31, 2020
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Invoice # 339576

Torkin|Manes
Barristers & Solicitors

Total Disbursements	\$684.64	
HST on Disbursements	\$39.41	
TOTAL DISBURSEMENTS AND HST:		\$724.05
<hr/>		
TOTAL FEE, DISBURSEMENTS & HST		\$27,980.22
BALANCE DUE AND OWING BY YOU		\$27,980.22

TORKIN MANES LLP



Per: _____
Jeffrey Simpson

E. & O. E.

HST REGISTRATION NUMBER: R117245456

Payment is due upon receipt.
Interest will be charged pursuant to the Solicitors Act at the
rate of 1.0 percent per year.

Torkin Manes LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto, ON M5C 2W7

Tel: 416 863 1188
Fax: 416 863 0305
torkinmanes.com



January 31, 2021

Invoice No.: 344574

Attention: Jerry Henechowicz
MNP Ltd.
111 Richmond Street West, Suite 300
Toronto, ON M5H 2G4

ACCOUNT FOR PROFESSIONAL SERVICES RENDERED

RE: Old Mill Marina
File No.: 30790.0004

TO PROFESSIONAL SERVICES RENDERED HEREIN AS FOLLOWS:

Nov 13 20	AR	Correspondence re original Order appointing Receiver	0.10
Dec 16 20	AE	To e-mail correspondence from Rachel Puma re truck transfer; e-mail correspondence with receiver re same	0.20
Dec 17 20	AE	To telephone discussion with Jerry Henechowicz re Ford truck issues; e-mail correspondence with Rachel Puma re same	0.30
Jan 05 21	JJS	Exchange of e-mails with Mr. Henechowicz	0.40
Jan 07 21	JJS	Telephone discussion with Mr. Henechowicz regarding discharge motion	0.40
Jan 08 21	JJS	E-mail to Mr. English; e-mail to Mr. Henechowicz; e-mail to Ms. Poliak; e-mail to Court office all in respect of arranging for motion for discharge and potential bankruptcy of debtor company	0.70

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January 31, 2021
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Jan 08 21	AR	Review of holdback agreement and outstanding matters; correspondence re same	0.40
Jan 11 21	JJS	Communications with Ms. Poliak and other counsel and client reps to schedule motion and communications with court regarding same	1.80
Jan 12 21	JJS	Conference call with Ms. Poliak and Mr. Henechowicz	0.40
Jan 12 21	JJS	E-mail to counsel list regarding revision to motion date after advice from Commercial List Office that the February 12 date is no longer available	0.40
Jan 12 21	JJS	Review of escrow agreement and various e-mails with Mr. English regarding release of escrow funds	0.60
Jan 13 21	AE	To review of holdback agreement; e-mail correspondence with Jerry Henechowicz re extension of holdback period and release of holdback funds; e-mail correspondence with Rachel Puma re extension of holdback period	0.50
Jan 25 21	AE	To e-mail correspondence from Rachel Puma re status of gas tank certification; e-mail correspondence with Jerry Henechowicz re same	0.10
Jan 26 21	AE	To telephone discussion with Jerry Henechowicz re status of gas tank replacement work; e-mail correspondence with Rachel Puma re same	0.20
Jan 26 21	JJS	Follow up regarding completion of installation of tanks and certification as per escrow agreement	0.60
		Total Hours:	7.10

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January 31, 2021
Our File No.: 30790.0004
Invoice # 344574



OUR FEE: \$4,259.00
HST: \$553.67
SUB-TOTAL: \$4,812.67

LAWYERS' SUMMARY: FEES SUBJECT TO HST:

<u>LAWYERS AND LEGAL ASSISTANTS INVOLVED</u>	<u>HOURLY RATE</u>	<u>HOURS WORKED</u>
Angie Riches	270.00	.10
Angie Riches	280.00	.40
Aaron English	510.00	.50
Aaron English	525.00	.80
Jeffrey Simpson	650.00	5.30
TOTAL HOURS		7.10

DISBURSEMENTS

TAXABLE DISBURSEMENTS:

Deliveries 26.99
26.99

Total Disbursements \$26.99
HST on Disbursements \$3.51

TOTAL DISBURSEMENTS AND HST: \$30.50

TOTAL FEE, DISBURSEMENTS & HST \$4,843.17

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January 31, 2021
Our File No.: 30790.0004
Invoice # 344574


Torkin|Manes
Barristers & Solicitors

BALANCE DUE AND OWING BY YOU

\$4,843.17

TORKIN MANES LLP

Per:



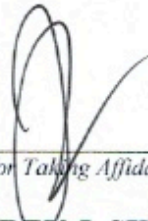
Jeffrey Simpson

E. & O. E.

HST REGISTRATION NUMBER: R117245456

Payment is due upon receipt.
Interest will be charged pursuant to the Solicitors Act at the
rate of 1.0 percent per year.

This is Exhibit "B" referred to in the Affidavit of S. Fay Sulley
sworn February 9, 2021



Commissioner for Taking Affidavits (or as may be)

JEFFREY J. SIMPSON

Summary of Additional Lawyer Information

<u>Lawyer</u>	<u>Year of Call</u>	<u>Hours Billed</u>	<u>Hourly Rate</u>	<u>Total Billed</u>
S. Fay Sulley	1984	2.90	\$725.00	\$2,102.50
Jeffrey J. Simpson	1997	13.90	\$625.00	\$8,687.50
		5.30	\$650.00	\$3,445.00
Aaron English	2004	12.80	\$510.00	\$6,528.00
		0.80	\$525.00	\$ 420.00
Shalan Jankowski	Clerk	0.20	\$300.00	\$ 60.00
Angie Riches	Clerk	23.10	\$270.00	\$6,237.00
		0.40	\$280.00	\$ 112.00
Abel Hazon	Student	3.50	\$225.00	\$ 787.50
Sub-Total				\$28,379.50
Anticipated additional fees re attendance				\$5,000.00
TOTAL				<u>\$33,379.50</u>

1711423 ONTARIO LIMITED
Applicant

-and-

OLD MILL MARINA (KAWAGAMA) LIMITED
Respondent

Court File No. CV-20-00637615-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT OF S. FAY SULLEY
SWORN FEBRUARY 9, 2021**

TORKIN MANES LLP

Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Jeffrey J. Simpson (39663M)
jsimpson@torkinmanes.com
Tel: 416-777-5413

Lawyers for the Receiver, MNP Ltd.

I



Canada Revenue Agency
Agence du revenu
du Canada

London-Windsor TSO (Windsor site)
Windsor ON N9A 5S8

March 05, 2020

OLD MILL MARINA (KAWAGAMA) LIMITED
C/O ROB WALISSER
PO BOX 160
DORSET ON POA 1E0

Dear Sir:

Re: OLD MILL MARINA (LAKE OF BAYS) LIMITED

It appears that the above-named to whom you seem to be related or with whom you seem not to be dealing at arm's length, transferred property to you. According to our investigation, this transfer resulted in your obtaining a benefit in the amount of \$1,346,464. The details of the transfer are as follows:

Property transferred: FUNDS VIA BANK TRANSFER

Property value: \$1,346,464

Percentage of ownership: 100%

Consideration given: \$0

Benefit received: \$1,346,464

Section 325 of the "Excise Tax Act" states that you may be liable with the transferor for the lesser of their tax debt and the benefit you received as a result of the transfer.

Under the circumstances, we are considering assessing you under subsection 325(2) of the "Excise Tax Act" for the sum of \$269,017.15 which represents the lesser of the benefit received, and the transferor's tax debt. If you believe, however, that the amount of the benefit you received is not as mentioned above, or if you believe that you should not be assessed, please provide, within 30 days of this letter, information and documentation to

.../2

Canada

Ontario Regional
Collections/Compliance Centre
101-441 University Ave. W.
Windsor ON N9A 5S8

Local : 519-944-4378
Toll Free : 1-833-973-0867
Fax : 519-252-1836
Web site : canada.ca/taxes

support your claim. If we do not receive this information, we could raise the proposed assessment without further notice.

Yours truly,

A handwritten signature in black ink, appearing to be 'B. Haugh', written in a cursive style.

B. Haugh (1218)
Collections Officer

J

1711423 ONTARIO LIMITED

INDEBTEDNESS OF OLD MILL MARINA (KAWAGAMA) LIMITED

Indebtedness pursuant to First Mortgage

Mortgage:	First
Promissory Note:	01-Sep-16
Interest rate:	6.00%
Principal:	\$750,000.00
Balance as at:	February 4, 2021
01-Jan-19 Balance:	\$750,000.00
2019 Interest:	\$45,000.00
Balance:	\$795,000.00
20-Oct-20 Interest:	\$38,290.68
Partial repayment:	-\$577,825.00
Balance:	\$255,465.68
31-Dec-20 Interest:	\$3,023.59
Balance:	\$258,489.28
04-Feb-21 Interest:	\$1,487.20
Balance:	\$259,976.48

Per diem:	\$42.49
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Enforcement legal fees:	Chaitons LLP	\$21,858.39
	Loopstra Nixon LLP	\$28,657.37
	Total:	\$50,515.76

Total outstanding as at February 4, 2021:	\$310,492.24
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RECEIVERSHIP OF OLD MILL MARINA (KAWAGAMA) LIMITED
INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS
AS AT FEBRUARY 5, 2021

Receipts

Sale Proceeds - 2771470 Ontario Inc.	\$ 1,286,715.59
Spring launch and service fees	116,458.50
Slip rentals	80,625.00
Advance from secured creditor	75,000.00
Sale of Inventory	62,892.48
HST collected	33,796.88
Pre- appointment accounts receivable	33,805.50
HST refund	13,437.57
	<u>1,702,731.52</u>

Disbursements

Distribution to Secured Creditor	577,825.00
Receiver's fees and disbursements	260,429.42
Payroll including employee benefits	146,597.71
Legal fees and disbursements	90,694.56
Repayment of secured creditor's advance	75,000.00
HST paid	60,625.65
Equipment repairs and maintenance	33,457.61
Payment to boat inventory floor financing lender	31,046.97
Supplies and fuel	18,250.81
Insurance net of refunds received	14,187.12
Security	9,167.50
Environmental assessment	6,500.00
Interest on secured creditor's advance	6,271.28
Utilities	6,153.43
Monthly truck financing payments	5,879.08
Outside consulting	6,369.81
Appraisal fees	4,675.00
Computer and software services	4,464.40
Travel	3,223.64
License fees and dues	2,779.00
Office and general	2,027.56
Bank charges	1,454.24
Sale process advertisements	990.00
Mail redirection	260.05
Filing fees	70.00
	<u>1,368,399.84</u>

EXCESS OF CASH RECEIPTS OVER DISBURSEMENTS

\$ 334,331.68

NOTES:

1. Excludes interest earned on Term Deposits and the \$50,000 holdback in the possession of the Receiver's counsel.