

**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 MOTION RECORD**  
(Motion Returnable September 28, 2020)

September 24, 2020

**TORKIN MANES LLP**  
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Lawyers for the Receiver,  
MNP Ltd.

TO: **THE SERVICE LIST**

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# TAB 1

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

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**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 24<sup>th</sup> 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 Henechowitz CPA, CA, CIRP, LIT

Senior Vice President

30790.0004/17514880\_1

**WAIVER AND AMENDING AGREEMENT**

**THIS AGREEMENT** made as of the 5th day of September, 2020.

**BETWEEN:**

**2771470 ONTARIO INC.**

(the “**Purchaser**”)

– and –

**PINE ROCK HOLDINGS LIMITED**

(the “**Original Purchaser**”)

– and –

**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**”)

**WHEREAS:**

- Pursuant to an asset purchase agreement, dated as of July 27, 2020 (the “**Purchase Agreement**”), between the Original Purchaser, as purchaser, and the Vendor, as vendor, the Original Purchaser agreed to purchase from the Vendor the Purchased Assets, on the terms and conditions set forth in the Purchase Agreement;
- B. Pursuant to an assignment and assumption agreement, dated August 28, 2020, and in accordance with the terms of Section 8.03 of the Purchase Agreement, the Original Purchaser assigned, and the Purchaser assumed, all right, title, estate and interest of the Assignor in the Purchase Agreement and the benefit of the covenants and the advantages to be derived from the Purchase Agreement;
- C. The parties have entered, or intend to enter into, an interim operation and occupation agreement (the “**Operation Agreement**”) to permit the Purchaser to take possession of the Property and to operate the related business until the Closing Date, in connection with which the Purchaser has agreed to provide an additional deposit of \$50,000.00;
- D. The Purchaser desires to waive the Due Diligence Conditions set out in Section 4.01 of the Purchase Agreement; and
- E. The parties wish to amend the Purchase Agreement on the terms and conditions set forth herein.



**NOW THEREFORE** in consideration of the sum of TWO DOLLARS (\$2.00) paid by each of the parties to one another and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. Waiver**

The Purchaser hereby waives the Due Diligence Conditions set out in Section 4.01 (a) to (d), inclusive, of the Purchase Agreement in their entirety.

**2. Amendment**

The parties agree that the Purchase Agreement is hereby amended by adding the following as Section 2.05(a)(i):

“by payment to the Vendor on or before 5:00 PM EST on September 2, 2020, the sum of Fifty Thousand Dollars (\$50,000), with the definition of “**Deposit**” in subsection (a) above being deemed to include such sum once paid to the Vendor for all purposes of this Agreement;”.

**3. General**

- (a) **Defined Terms.** Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement.
- (b) **Time of Essence.** Time shall be of the essence of this Agreement and of each of its provisions.
- (c) **Terms to Remain the Same.** The parties hereby confirm except as amended herein, all other terms of the Purchase Agreement remain in full force and effect.
- (d) **Further Assurances.** Each of the undersigned agrees to promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the any other party to this Agreement may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use its reasonable commercial efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement.
- (e) **Successors and Assigns.** This Agreement shall enure to the benefit of and shall be binding upon the undersigned and their respective successors and assigns.
- (f) **Governing Law.** This Agreement shall be construed and enforced 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.
- (g) **Counterparts.** This Agreement may be executed in several counterparts and delivered by fax, e-mail or other electronic means, each of which shall be

deemed to be an original, and all such counterparts shall constitute one and the same instrument.

**IN WITNESS WHEREOF** the parties have duly executed this Agreement as of the date first above written.

**2771470 ONTARIO INC.**

Per: \_\_\_\_\_  
 Name: Michael Laidlaw  
 Title: Authorized Signing Officer

*I have the authority to bind the corporation.*

**PINE ROCK HOLDINGS LIMITED**

Per: \_\_\_\_\_  
 Name:  
 Title:

*I have the authority to bind the corporation.*

**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: Jerry Henechowicz  
 Title: Senior Vice-President

*I have the authority to bind the corporation.*

AMONG



IN WITNESS WHEREOF the parties have duly executed this Agreement as of the date first above written.

**PINE ROCK HOLDINGS LIMITED**

Per:   
Name: Ralph Laidlaw  
Title: Secretary Treasurer

*I have the authority to bind the corporation.*

**2771470 ONTARIO INC.**

Per:   
Name: Michael Laidlaw  
Title: Authorized Signing Officer

*I have the authority to bind the corporation.*

**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: Jerry Henechowicz  
Title: Senior Vice-President

*I have the authority to bind the corporation.*

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Winkler

**IN WITNESS WHEREOF** the parties have duly executed this Agreement as of the date first above written.

**PINE ROCK HOLDINGS LIMITED**

Per: \_\_\_\_\_

Name: Ralph Laidlaw  
Title: Secretary Treasurer

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**2771470 ONTARIO INC.**

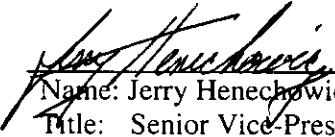
Per: \_\_\_\_\_

Name: Michael Laidlaw  
Title: Authorized Signing Officer

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**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: Jerry Henechawicz  
Title: Senior Vice-President

*I have the authority to bind the corporation.*

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**SECOND WAIVER AND AMENDING AGREEMENT**

**THIS AGREEMENT** made as of the 22<sup>nd</sup> day of September, 2020.

**BETWEEN:**

**2771470 ONTARIO INC.**

(the "**Purchaser**")

- and -

**PINE ROCK HOLDINGS LIMITED**

(the "**Original Purchaser**")

- and -

**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**")

**WHEREAS:**

- A. Pursuant to an asset purchase agreement, dated as of July 27, 2020, as amended from time to time (the "**Purchase Agreement**"), between the Original Purchaser, as purchaser, and the Vendor, as vendor, the Original Purchaser agreed to purchase from the Vendor the Purchased Assets, on the terms and conditions set forth in the Purchase Agreement;
- B. Pursuant to an assignment and assumption agreement, dated as of August 28, 2020, and in accordance with the terms of Section 8.03 of the Purchase Agreement, the Original Purchaser assigned, and the Purchaser assumed, all right, title, estate and interest of the Original Purchaser in the Purchase Agreement and the benefit of the covenants and the advantages to be derived from the Purchase Agreement;
- C. Pursuant to an interim operation and occupation agreement dated as of September \_\_\_, 2020 (the "**Operation Agreement**") the Purchaser has been granted possession of the Property to operate the related business thereon until the Closing Date in accordance with and subject to the terms and provisions thereof;
- D. Pursuant to a waiver and amending agreement dated as of September \_\_\_, 2020 (the "**Waiver and Amending Agreement**"), the Purchaser waived the Due Diligence Conditions set out in Section 4.01 of the Purchase Agreement, save and except the Outstanding Financial Condition (as such term is defined in the Waiver and Amending Agreement); and

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- E. The parties hereto wish to amend the Purchase Agreement on the terms and conditions set forth herein.

**NOW THEREFORE** in consideration of the sum of TWO DOLLARS (\$2.00) paid by each of the parties to one another and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Waiver**

The Purchaser hereby waives the Outstanding Financial Condition.

2. **Amendment**

The parties hereto agree that the Purchase Agreement is hereby amended as follows:

- (a) by deleting the last sentence of Section 2.09.
- (b) by adding the following as Section 2.10:

“From the Purchase Price, the sum of Fifty Thousand (\$50,000) Dollars (the “**Holdback**”) shall be held back in the Vendor’s Solicitors’ trust account from and after Closing, subject to an agreement governing the payment, retention and eventual disbursement of the Holdback (the “**Holdback Agreement**”) to be entered into by the parties and the Vendor’s Solicitors prior to Closing.

The Holdback Agreement shall be in such form as agreed upon by all parties prior to Closing, each acting reasonably, provided that the Holdback Agreement shall incorporate the following terms, as well as such reasonable escrow, indemnity and release terms as may be required by the Vendor’s Solicitors:

- (a) Subject to the terms of (c) below, the Holdback shall be held by the Vendor’s Solicitors in trust until the earlier of the: (i) date upon which the Certified Replacement Gas Tanks (as such term is defined in the Waiver and Amending Agreement) have been installed on the Property and certified by the Technical Standards and Safety Authority (the “**Gas Tank Certification**”), or (ii) ninetieth (90<sup>th</sup>) day immediately following Closing (the “**Holdback Term**”).
- (b) Both the Vendor and the Purchaser hereby covenant and agree to work together in good faith to achieve Gas Tank Certification as expeditiously as possible and shall keep each other regularly informed with each such party’s efforts in furtherance thereof.
- (c) In the event that Gas Tank Certification has not been achieved prior to the ninetieth (90<sup>th</sup>) day immediately following Closing (the “**Holdback Term Outside Date**”), each of the Vendor and the Purchaser shall have the right, as it may determine, to extend the Holdback Term Outside Date by a further period of up to thirty (30) days, by written notice to the other party and the

Vendor's Solicitors prior to the expiration of the initial Holdback Term Outside Date (such extended date being hereinafter referred to as the "**Extended Holdback Term Outside Date**").

- (d) Any and all costs associated with Gas Tank Replacement Costs (as that term is defined in the Operation Agreement) shall be shared equally by the Vendor and the Purchaser (each a "**Certification Costs Share**"), provided that the Vendor shall be initially responsible to bear all of the Gas Tank Replacement Costs and shall seek reimbursement from the Purchaser of its Certification Costs Share as a post-closing adjustment. For greater certainty, the Purchaser's Certification Costs Share shall not be limited to fifty percent (50%) of the Holdback.
- (e) To the extent that that Gas Tank Certification has not been achieved prior to the expiry of the Holdback Term Outside Date or the Extended Holdback Term Outside Date, as applicable, subject to mutual written agreement by the Vendor and the Purchaser to the contrary, the Holdback shall be automatically released by the Vendor's Solicitors to the Purchaser forthwith upon written authorization and direction to the Vendor's Solicitors. The Purchaser shall thereafter be solely responsible to oversee the achievement of Gas Tank Certification and shall utilize such portions of the Holdback as may be required to reimburse itself for one-half (1/2) the Gas Tank Replacement Costs (as such term is defined in the Operation Agreement) based on paid invoices reflecting the Purchaser's incurring of such Gas Tank Replacement Costs, representing the Vendor's Certification Costs Share. Once Gas Tank Certification has ultimately been achieved, the Purchaser shall forthwith remit any remaining funds of the Holdback to the Vendor (or as it may otherwise direct in writing). Provided that notwithstanding the foregoing and/or anything contained herein to the contrary, to the extent that the Holdback is insufficient to reimburse the Purchaser for the Vendor's Certification Costs Share, the Vendor shall nonetheless remain responsible and liable to the Purchaser to reimburse it for all such deficient amounts.
- (f) To the extent that Gas Tank Certification has been achieved prior to the expiry of the Holdback Term Outside Date or the Extended Holdback Term Outside Date, as applicable, the Holdback shall be automatically released by the Vendor's Solicitors to the Vendor (or as it may otherwise direct), without the necessity of any further authorizations and/or action by any of the parties, though both the Vendor and the Purchaser covenant and agree to deliver to the Vendor's Solicitors such authorization, direction and/or release as the Vendor's Solicitors may reasonably require in accordance with the terms of the Holdback Agreement.
- (g) Subject to the provisions hereinafter set out, in the event that there is any balance remaining on account of the Holdback in the Vendor's Solicitors' trust account by the date that is six (6) months following the Closing Date,

(the “**Outside Liability Date**”) notwithstanding any other terms of this Section 2.10, the Vendor’s Solicitors shall be entitled to release such remaining balance of the Holdback to the Vendor and neither the Vendor nor the Vendor’s Solicitors shall thereafter have any further liability in connection with the Holdback. Provided that the foregoing shall not apply in the event that the Holdback Term has been extended in accordance with any of the foregoing provisions to a date later than the Outside Liability Date. The Vendor’s Solicitors shall further be prohibited from releasing the Holdback to the Vendor in the event that the Purchaser has previously authorized and directed the Holdback to be released to the Purchaser pursuant to subsection (e) above.

This Section shall not merge and shall survive Closing.”

### 3. **General**

- (a) **Defined Terms.** Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement.
- (b) **Time of Essence.** Time shall be of the essence of this Agreement and of each of its provisions.
- (c) **Terms to Remain the Same.** The parties hereby confirm except as amended herein, all other terms of the Purchase Agreement remain in full force and effect.
- (d) **Further Assurances.** Each of the undersigned agrees to promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the any other party to this Agreement may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use its reasonable commercial efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement.
- (e) **Successors and Assigns.** This Agreement shall enure to the benefit of and shall be binding upon the undersigned and their respective successors and assigns.
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[Signature page follows.]



**IN WITNESS WHEREOF** the parties have duly executed this Agreement as of the date first above written.

**PINE ROCK HOLDINGS LIMITED**

Per: \_\_\_\_\_

Name: Ralph Laidlaw

Title: Secretary Treasurer

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**2771470 ONTARIO INC.**

Per: \_\_\_\_\_

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Per: \_\_\_\_\_

Name: Jerry Henechowicz

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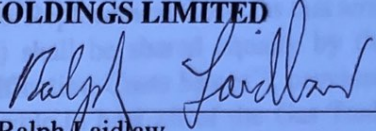
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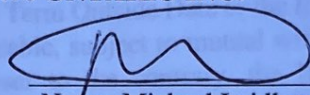


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