

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE**

CIV-2022-404-1993

UNDER Part 7 of the High Court Rules 2016 and Part 15A of
the Companies Act 1993

IN THE MATTER OF **RUAPEHU ALPINE LIFTS LIMITED
(ADMINISTRATORS APPOINTED)**

AND of an application by **JOHN HOWARD ROSS FISK**
and **RICHARD JOHN NACEY**, as Administrators of
**RUAPEHU ALPINE LIFTS LIMITED
(ADMINISTRATORS APPOINTED)**

Applicants

**SECOND AFFIDAVIT OF JOHN HOWARD ROSS FISK IN SUPPORT OF
INTERLOCUTORY APPLICATION WITHOUT NOTICE FOR ORDERS
RELATING TO VOLUNTARY ADMINISTRATION**

Affirmed: 23rd November 2022

BUDDLE FINDLAY

Barristers and Solicitors
Auckland

Solicitor Acting: **D T Broadmore / L C Sizer**

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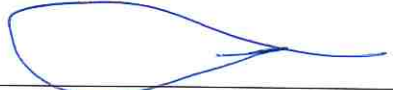
I, **JOHN HOWARD ROSS FISK**, of Auckland, Chartered Accountant and a New Zealand Licensed Insolvency Practitioner, solemnly and sincerely affirm:

1. On 18 November 2022 I affirmed an affidavit in this proceeding. The affidavit was filed in support of a without notice interlocutory application dated 21 November 2022 for orders under s 239ADO of the Companies Act 1993. The orders are sought to limit the liability of Mr Nacey and I as administrators of Ruapehu Alpine Lifts Ltd (in administration) (**Company**) under the Term Loan Facility Deed dated 17 November 2022 (**Facility**) given by ANZ Bank New Zealand Limited and Crown Regional Holdings Limited (together **Lenders**).
2. I am making this affidavit to update the Court on events since I affirmed my affidavit on 18 November 2022 in support of the application.
3. At the time I affirmed my affidavit, Mr Nacey and I were unwilling and unable to drawdown under the Facility without an order from the Court limiting our personal liability to the amount of the Company's available assets. However, to avoid the Company being placed into liquidation, Mr Nacey and I have decided to make a drawdown under the Facility to meet urgent liabilities of the Company, including staff wages that are due this week. On 22 November 2022 we submitted a drawdown request under the Facility for a total of \$549,225.16 under Tranche B and Tranche C.
4. I remain of the view that, without the orders sought in the application, the Company could not continue trading and would have to be placed into liquidation. That is because to preserve the possibility of selling the Company as a going-concern the Company would need to continue trading until the anticipated watershed meeting date of around 16 December 2022. To continue trading for that period, the Company would likely require further borrowing equivalent to the balance of the funding available under the Facility. Mr Nacey and I are not prepared to assume a risk of personal liability at that level.
5. However, Mr Nacey and I are prepared to make this drawdown under the Facility while a decision on the interlocutory application is pending, to preserve the possibility of selling the Company as a going-concern. I believe that a sale of the Company as a going-concern would result in the best return for the Company's creditors.



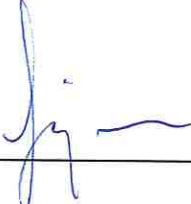
6. One of the conditions precedent to drawdown under the Facility is the obtaining of the court orders sought in the interlocutory application. Mr Nacey and I have requested that the Lenders waive that condition to allow this drawdown. I anticipate that the Lenders will agree to waive that condition for this drawdown, which will enable Mr Nacey and I to make this drawdown under the Facility.
7. I confirm the balance of my affidavit dated 18 November 2022 but am affirming this affidavit to update the Court on the Administrator's position now on borrowing under the Facility.

Affirmed at)
this 23rd day of November 2022)
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John Howard Ross Fisk

Before me:



A Solicitor of the High Court of New Zealand

Jia Yun (Betty) Zhang
Barrister & Solicitor
High Court of New Zealand
Auckland