



COURT FILE NUMBER BK01 095189  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

MATTER IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, OF TRADESMEN ENTERPRISES LIMITED PARTNERSHIP

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, OF TRADESMEN ENTERPRISES INC.

APPLICANTS TRADESMEN ENTERPRISES LIMITED PARTNERSHIP AND TRADESMEN ENTERPRISES INC.

DOCUMENT **AMENDED AND RESTATED ORDER (Procedural Consolidation, Approval of Interim Financing, Interim Financing Charge, Administration Charge, and KERP Charge)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
LAWSON LUNDELL LLP  
Barristers and Solicitors  
1100, 225 – 6 Avenue S.W.  
Calgary, Alberta  
T2P 1N2

**Attention: Alexis Teasdale**  
Telephone No.: 403-218-7564  
Fax No.: 403-269-9494  
Email: [ateasdale@lawsonlundell.com](mailto:ateasdale@lawsonlundell.com)

**DATE ON WHICH ORDER WAS PRONOUNCED:** March 2, 2021  
**NAME OF JUDGE WHO MADE THIS ORDER:** The Honourable Mr. Justice G.S. Dunlop  
**LOCATION OF HEARING:** Calgary, Alberta

UPON THE APPLICATION of Tradesmen Enterprises Inc. (“TEI”) and Tradesmen Enterprises Limited Partnership (“TELP”, and together with TEI, “Tradesmen” or the

“**Applicants**”); AND UPON reading the Notice of Application of Tradesmen, the Affidavit No. 2 of Dean Kato sworn on February 24, 2021, the Bench Brief of the Applicants, ^ the Second Report of KSV Restructuring Inc. in its capacity as Proposal Trustee of Tradesmen (the “**Proposal Trustee**”) dated February 24, 2021 (the “**Second Report**”), all filed; AND UPON noting the Affidavit of Service of Rachel Dingman, affirmed on February 24, 2021, filed; AND UPON hearing the submissions of counsel for the Applicants, counsel for Bank of Montreal, counsel for the Proposal Trustee, and any other counsel or interested parties present;

**IT IS HEREBY ORDERED THAT:**

**Service**

1. The time for service of the notice of application for this Order is hereby abridged and deemed good and sufficient, and no person, other than those served, is entitled to service of the notice of application.

**Procedural Consolidation**

2. The bankruptcy estates of TEI and TELP (collectively, the “**Estates**”) shall, subject to further order of the Court, be procedurally consolidated and shall continue under the estate number assigned to TELP (as consolidated, the “**Consolidated Proposal Proceeding**”).
3. Without limiting the generality of the foregoing, the Proposal Trustee is hereby authorized and directed to administer the Estates on a consolidated basis for all purposes in carrying out its administrative duties and other responsibilities as proposal trustee under the BIA as if the Consolidated Proposal Proceeding were a single proceeding under the BIA, including without limitation:
  - (a) the meetings of creditors of each Applicant be convened and conducted jointly;
  - (b) the Proposal Trustee is authorized to issue consolidated reports in respect of the Applicants; and
  - (c) the Proposal Trustee is authorized to deal with all filings and notices relating to the proposal proceedings of each of the Applicants, each as required under the BIA, on a consolidated basis.

4. Any pleadings or other documents served or filed in the Consolidated Proposal Proceeding by any party shall be deemed to have been served or filed in each of the proceedings comprising the Consolidated Proposal Proceeding.
5. A copy of this Order shall be filed by the Applicants in the court file for each of the Estates but any subsequent document required to be filed will hereafter only be required to be filed in the Consolidated Proposal Proceeding.
6. The procedural consolidation of the Estates pursuant to this Order shall not:
  - (a) affect the legal status or corporate structure of the Applicants; or
  - (b) cause either Applicant or any limited partner of TELP to be liable for any claim for which it is otherwise not liable, or cause either Applicant to have any interest in an asset to which it otherwise would not have.
7. The Estates are not substantively consolidated, and nothing in this Order shall be construed to that effect.
8. The Proposal Trustee may apply to this Court for advice and directions with respect to the implementation of this Order or with respect to any other matter relating to the procedural and/or substantive consolidation of the Estates.

#### **Interim Financing Agreement and Interim Lender Charge**

9. TELP is hereby authorized and empowered to borrow under an interim financing credit facility from Bank of Montreal (in such capacity, the “**Interim Lender**”), in order to finance its short-term liquidity needs during the pendency of these proceedings, substantially on the terms and in the form set out in the amended and restated interim financing agreement attached hereto as Schedule “A” (the “**Interim Financing Agreement**”), and such Interim Financing Agreement is hereby approved.
10. TELP is hereby authorized and empowered to borrow up to a maximum principal amount of \$2.8 million (the “**Maximum Amount**”), pursuant to the Interim Financing Agreement, unless or until such Maximum Amount is amended in accordance with the terms and conditions of the Interim Financing Agreement.

11. TEI is hereby authorized and empowered to enter into the Interim Financing Agreement in the capacity as a credit party thereunder and in accordance with the terms and conditions of the Interim Financing Agreement.
12. The Interim Lender is hereby granted, and is entitled to the benefit of, a priority charge on all of Tradesmen's present and after-acquired assets, property and undertakings (the "**Property**"), subject only to the Administration Charge, in order to secure the performance and payment of all obligations of Tradesmen to the Interim Lender set forth in the Interim Financing Agreement, including, without limitation, all principal, interest, and the closing fee and all other interim financing fees and expenses contemplated by the Interim Financing Agreement (the "**Interim Financing Charge**"). The Interim Financing Charge shall have the priority set out in paragraphs 17 to 20 of this Order.
13. Tradesmen is hereby authorized and empowered to execute, deliver and perform such further acts and agreements, as may be necessary or expedient from time to time, in order to give effect to the terms and conditions of Interim Financing Agreement and this Order.

#### **Administration Charge**

14. Legal counsel to Tradesmen (Lawson Lundell LLP) and the Proposal Trustee, as security for their respective professional fees and disbursements (including the professional fees and disbursements of the Proposal Trustee's counsel, Bennett Jones LLP) incurred both before and after the granting of this Order, are hereby granted, and are entitled to the benefit of, a priority charge not to exceed \$300,000 (the "**Administration Charge**") on all of the Property. The Administration Charge shall have the priority set out in paragraphs 17 to 20 of this Order.

#### **KERP and KERP Charge**

15. The Key Employee Retention Plan set out in Confidential Exhibit "1" to the Second Report (the "**KERP**") is hereby approved and Tradesmen is hereby authorized and empowered to perform its obligations thereunder and to make payments in accordance with the terms set out therein.

16. The employees designated in the KERP shall be entitled to the benefit of and are hereby granted a charge on the Property, which charge shall not exceed \$202,500, as security for payment of the obligations set out in the KERP. The KERP Charge shall have the priority set out in paragraphs 17 to 20 of this Order.

### **Ranking and Priority of Charges**

17. The respective ranking of the Administration Charge, the Interim Financing Charge, and the KERP Charge against the Property shall be as follows:
- (a) First, the Administration Charge; <sup>^</sup>
  - (b) Second, the Interim Financing Charge; and
  - (c) Third, the KERP Charge.
18. The filing, registration or perfection of the Administration Charge, <sup>^</sup> the Interim Financing Charge, and the KERP Charge (together, the “**Charges**”) shall not be required, and the Charges shall be enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
19. The Charges shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, deemed trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise in favour of any person, including but not limited to any liens or trusts arising under the British Columbia *Builders Lien Act*, S.B.C. 1997, c. 45 or any other provincial builders’ lien legislation (collectively, the “**Encumbrances**”).
20. The Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Interim Lender and the beneficiaries of the Charges (collectively, the “**Chargees**”) thereunder shall not otherwise be limited or impaired in any way by:
- (a) the pendency of, and any declarations of insolvency made in, these proceedings;

- (b) any application for a bankruptcy order issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended (the “**BIA**”), or any bankruptcy order made pursuant to such applications;
- (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
- (d) the appointment of any interim receiver, receiver, or receiver and manager of Tradesmen or the Property;
- (e) the provisions of any federal or provincial statutes; or
- (f) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, or any lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) that binds Tradesmen, and notwithstanding any provision to the contrary in any Agreement:
  - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, shall create or be deemed to constitute a new breach by Tradesmen of any Agreement to which it is a party;
  - (ii) none of the Chargees shall have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, or the execution, delivery or performance of the Interim Financing Agreement; and
  - (iii) the payments made by TELP pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

**Sealing**

21. Notwithstanding the procedural requirements of Rule 6.28 and Division 4 of the Alberta Rules of Court, Confidential Exhibit "1" to the Second Report shall be sealed on the Court file and shall not form part of the Public Record.
22. The Clerk of this Honourable Court shall file the Confidential Supplement in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS  
SEALED PURSUANT TO THE SEALING ORDER ISSUED BY  
THE HONOURABLE JUSTICE G.S. DUNLOP ON MARCH 2, 2021

**General**

23. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.



---

Justice of the Court of Queen's Bench of Alberta

**SCHEDULE "A"**  
**(Interim Financing Agreement)**



## AMENDED AND RESTATED INTERIM FINANCING AGREEMENT

Dated as of March 2, 2021

**WHEREAS** the Credit Parties (as defined below) have filed Notices of Intention to Make a Proposal (the “**Initial NOI Proceedings**”) with the Office of the Superintendent of Bankruptcy Canada on February 1, 2021 seeking creditor protection for the purposes of making a proposal to their creditors (the “**Proposal**”) pursuant to Part III Division I of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), and intend on making an application (the “**Application**”) to the Alberta Court of Queen's Bench (the “**Court**”) for the Interim Lender Order (as defined below);

**AND WHEREAS** pursuant to subsection 69(1) of the BIA, all proceedings against the Credit Parties are stayed for a period of thirty (30) days as a result of the Initial NOI Proceedings;

**AND WHEREAS**, in connection with the Initial NOI Proceedings the Borrower requested that Bank of Montreal (the “**Interim Lender**”) provide it with loans in order to, among other things, fund certain of the Borrower's obligations during the pendency of the Initial NOI Proceedings and the Interim Lender agreed to do so pursuant to an interim financing term sheet dated February 1, 2021 among the Interim Lender and the Credit Parties (the “**Previous Interim Financing Agreement**”);

**AND WHEREAS**, in connection with the Initial NOI Proceedings, on February 3, 2021, the Borrower applied to the Court and was granted an Order, which, among other things, authorized and empowered the Borrower to make borrowings under the Previous Interim Financing Agreement;

**AND WHEREAS**, the Borrower will apply to the Court on March 2, 2021 for an Order (the “**Interim Lender Order**”) to, among other things, extend the Initial NOI Proceedings by forty-five (45) days and approve this Agreement (the “**Extended NOI Proceedings**”);

**AND WHEREAS**, in connection with the Extended NOI Proceedings, the Borrower has requested that the Interim Lender continue to provide it with certain increased loans in order to continue to fund certain of the Borrower's obligations during the pendency of the Extended NOI Proceedings;

**AND WHEREAS** the Interim Lender has agreed to provide the requested loans pursuant to the Extended NOI Proceedings and the Interim Lender Order in accordance with the terms set out herein.

**NOW THEREFORE**, the parties, in consideration of the foregoing and the mutual agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

- 1. Borrower:** Tradesmen Enterprises Limited Partnership, by its general partner, Tradesmen Enterprises Inc. (the “**Borrower**”).
- 2. Guarantor:** Tradesmen Enterprises Inc. (in its own capacity, the “**Guarantor**”).
- 3. Credit Parties:** The Borrower and the Guarantor are collectively referred to as the “**Credit Parties**” and individually, a “**Credit Party**”.
- 4. Interim Lender:** Bank of Montreal
- 5. Defined Terms:** Capitalized terms used in this Agreement and not defined herein have the meanings set forth in Schedule “A” attached hereto or otherwise defined herein. Unless otherwise noted herein, all references herein

to “dollars” or to “\$” means Canadian dollars.

**6. Amendment and Restatement:**

Subject to the satisfaction of the conditions precedent set forth in Section 13 below, effective as of the date hereof:

- (a) the Previous Interim Financing Agreement, is hereby amended and restated as set forth herein without in any way affecting the rights or obligations of any party which may have accrued as of the date hereof pursuant to the provisions of such agreement prior to its amendment hereby;
- (b) all information, documentation and deliveries given or made under the Previous Interim Financing Agreement shall be deemed to have been given or made under this Agreement;
- (c) each of the parties hereto acknowledge and agree that this Agreement does not constitute a novation of the Previous Interim Financing Agreement and that all debts, liabilities, obligations and other requirements of the Credit Parties to the Interim Lender under the Previous Interim Financing Agreement shall (i) be debts, liabilities, obligations and requirements of the Credit Parties to the Interim Lender under this Agreement, and (ii) remain unaffected, except as amended hereby; and
- (d) the Previous Interim Financing Agreement, as so amended and restated, is hereby ratified and confirmed in all respects by each of the parties hereto.

**7. Purpose:**

To provide for the short-term liquidity needs of the Borrower pursuant to the Cash Flow Forecast while the Borrower is under BIA protection pursuant to the NOI Proceedings.

**8. Interim Facility and Maximum Amount:**

A senior secured super priority, interim, revolving credit facility (the “**Interim Facility**”) up to a maximum principal amount of \$2,800,000 as such amount may be amended from time to time pursuant to Section 17 below (the “**Maximum Amount**”).

**9. Availability and Advances under Interim Facility:**

Subject to the terms and conditions contained herein including, without limitation the satisfaction of the Conditions Precedent set out below, the Interim Facility shall be made available to the Borrower by way of multiple advances in Canadian dollars (each being an “**Advance**”). Any principal amount that is repaid may be re-borrowed.

For each Advance, the Interim Lender shall have received from the Borrower a completed advance request, substantially in the form attached hereto as Schedule “C” (each an “**Advance Request**”), which shall be executed by an officer of the Borrower and be in form and substance acceptable to the Interim Lender. The Interim Lender shall, within two (2) Business Days’ of receipt thereof advise the

Borrower of its satisfaction or non-satisfaction of the Funding Conditions, as determined by the Interim Lender in its sole discretion. Each Advance shall be made by the Interim Lender within one (1) Business Day of notifying the Borrower of the satisfaction of the Funding Conditions or waiver thereof. All Advances shall be funded to the Borrower's main deposit account held with the Interim Lender, or to such other account as the Borrower and the Interim Lender may agree to in writing from time to time.

**10. Interest Rate and Default Interest:**

Advances under the Interim Facility shall bear interest at a rate equal to 12% per annum. Interest shall accrue daily on the aggregate outstanding principal advanced under the Interim Facility and shall be calculated and payable in cash in arrears on the first Business Day of each month.

All interest and fees will be calculated on the basis of a 365 day year and actual days lapsed, up to and including the date of actual payment from the funding date or the due date, as applicable; provided that whenever a rate of interest or fee hereunder is calculated on the basis of a year (the "**deemed year**") that contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest or fee shall be expressed as a yearly rate by multiplying such rate of interest or fee by the actual number of days in the calendar year of calculation and dividing it by the number of days in the deemed year. The principle of deemed reinvestment of interest does not apply to any interest calculation in any Interim Financing Credit Documentation, and the rates of interest stipulated in any Interim Financing Credit Documentation are intended to be nominal rates and not effective rates or yields.

Any amounts which are not paid when due and payable by the Borrower hereunder, or in respect of any Interim Financing Credit Documentation, shall accrue interest (after as well as before maturity, default and judgment) on a daily basis up to and including the date of actual payment from (but excluding) the due date, at a rate equal to 16% per annum, payable on demand by the Interim Lender.

**11. Closing Fee:**

A closing fee in the amount of \$29,250 (the "**Closing Fee**") is to be paid by the Borrower to the Interim Lender from the proceeds of the first Advance under this Agreement on the date of the first Advance of the Interim Facility on or after the date hereof.

**12. Use of Proceeds:**

The Borrower is authorized to use Advances (i) for working capital, and other general corporate purposes of the Borrower including payroll and other priority payables approved by the Interim Lender in its sole discretion; (ii) to pay fees and expenses associated with the Interim Facility (including, without limitation, the fees of the Proposal Trustee, and legal fees of the counsel to the Borrower and the Proposal Trustee); (iii) to fund the payment of the Interim Financing Fees and Expenses; and (iv) to make payments necessary

to comply with or as contemplated under the Interim Lender Order, in each case of the foregoing paragraphs (i) to (iv), consistent with (and as provided for) in the Cash Flow Forecast in all material respects; provided that no proceeds from the Interim Facility or the Collateral shall be used other than in accordance with this Agreement unless otherwise agreed to in writing by the Interim Lender.

**13. Conditions Precedent To Effectiveness:**

The effectiveness of this Agreement is subject to the satisfaction of the following conditions precedent unless waived in writing by the Interim Lender in its sole discretion (collectively, the “**Conditions Precedent**”):

- (a) The Court shall have issued the Interim Lender Order satisfactory to the Interim Lender in its sole discretion, approving this Agreement and the Interim Facility and granting the Interim Lender a continuing charge (the “**Interim Lender Charge**”) on the Collateral of the Credit Parties, securing all obligations owing by the Credit Parties to the Interim Lender hereunder or under any other related agreement, including, without limitation, all principal, interest and the Closing Fee associated with the Interim Facility along with all other Interim Financing Fees and Expenses (collectively, the “**Interim Financing Obligations**”); the Interim Lender Order shall provide that the Interim Lender Charge shall have priority over all Liens, except for the Administration Charge; and the Interim Lender Order shall not have been stayed, vacated or otherwise caused to be ineffective or amended, restated or modified in a way that adversely impacts the rights and interests of the Interim Lender in a material manner, without the consent of the Interim Lender;
- (b) The Interim Lender shall be satisfied that (i) the entering into of this Agreement and the other Interim Financing Credit Documentation, the granting of the Interim Lender Charge and the consummation of the transactions contemplated hereby have been approved by the Borrower, the Guarantor and any other interested party relevant to the Interim Lender, and (ii) service of the Application has been effected on all required parties acceptable to the Interim Lender;
- (c) The Interim Financing Credit Documentation shall be satisfactory to the Interim Lender, acting reasonably, and shall have been executed by the Credit Parties;
- (d) The Interim Lender shall have received and been satisfied with the most recent Cash Flow Forecast delivered to it in accordance with the terms of this Agreement;
- (e) The Interim Lender shall have received and been satisfied with the most recent Business Update delivered to it in

accordance with the terms of this Agreement;

- (f) The Interim Lender shall have received an executed copy of a consent receivership order from the Credit Parties (the “**Consent Receivership Order**”), in form and substance satisfactory to the Interim Lender;
- (g) Since the date of the Previous Interim Financing Agreement, there shall not have been any material damage, destruction or Material Adverse Change to any of the Collateral, nor any material depreciation in the value thereof, and the Credit Parties’ operations shall be in material compliance with all applicable environmental, labor, health and safety and other applicable laws and regulations governing the Credit Parties and their business operations;
- (h) All of the representations and warranties of the Credit Parties as set forth herein and in any other Interim Financing Credit Documentation are true and accurate in all material respects; and
- (i) There are no Liens ranking in priority to the Interim Lender Charge, except the Administration Charge.

**14. Conditions Precedent To Advances:**

The Interim Lender's obligation to make Advances to the Borrower under this Agreement is subject to the satisfaction of the following conditions precedent unless waived in writing by the Interim Lender in its sole discretion (collectively, the “**Funding Conditions**”):

- (a) This Agreement shall have become effective and all conditions precedent set out in Section 13 above shall have been fulfilled;
- (b) The Interim Lender shall have received full cash payment of the Closing Fee;
- (c) The Interim Lender shall have received from the Borrower a completed Advance Request and advised the Borrower of its satisfaction of the Funding Conditions;
- (d) The Interim Lender shall, acting reasonably, be satisfied that the Credit Parties have complied with and are continuing to comply in all material respects with all applicable laws, regulations and policies in relation to their business other than (i) as may be permitted under the orders of the Court made in the NOI Proceedings applicable to the Credit Parties (collectively, the “**Restructuring Court Orders**” and each a “**Restructuring Court Order**”) or (ii) if any enforcement in respect of non-compliance is stayed by a Restructuring Court Order, provided the issuance of such Restructuring Court Order (in each case) does not result in the occurrence of an

## Event of Default;

- (e) The requested Advance shall not, if advanced to the Borrower, cause the aggregate amount of all outstanding Advances to exceed the Maximum Amount or be greater than the total Advances projected to be required in the Cash Flow Forecast, unless otherwise specifically approved by the Interim Lender;
- (f) All Interim Financing Fees and Expenses for which invoices have been provided to the Borrower shall have been paid, or will be paid from the proceeds of the requested Advance within such period of time set forth in the Cash Flow Forecast or as is otherwise acceptable to the Interim Lender in its sole discretion;
- (g) All of the representations and warranties of the Credit Parties as set forth herein and in any other Interim Financing Credit Documentation are true and accurate in all material respects;
- (h) No Default or Event of Default has occurred or will occur as a result of the requested Advance;
- (i) The Interim Lender is satisfied that no Material Adverse Change shall have occurred after the date of the issuance of the Interim Lender Order;
- (j) Since the date of the Interim Lender Order, there shall not have occurred any payment, prepayment, redemption, purchase or exchange of any pre-filing indebtedness or equity, or amendment or modification of any of the terms thereof, except as otherwise permitted by the terms of the Interim Lender Order or provided for hereunder and the aggregate amount of all such pre-filing amounts does not exceed the amounts set out therefor in the in the Cash Flow Forecast;
- (k) The Interim Lender is satisfied, in its sole discretion, with the process and conduct of any applicable Sale Process;
- (l) The Interim Lender shall have a valid and perfected super priority Lien on the Collateral pursuant to the Interim Lender Order and, there are no Liens ranking in priority to the Interim Lender Charge, except the Administration Charge; and
- (m) The Interim Lender Order shall be in full force and effect and shall not have been reversed, modified, amended or stayed in a manner adverse to the interests of the Interim Lender.

Notwithstanding any other provision herein (including within this Section) or in any other Interim Financing Credit Documentation, the Interim Lender is under no obligation to make Advances to the

Borrower in an aggregate amount exceeding the Maximum Amount.

**15. Repayment:**

The Interim Facility shall be cancelled and immediately repayable in full (including all accrued and unpaid interest thereon and all fees, costs and other amounts due and payable in connection therewith) on the earlier of: (i) the occurrence of any Event of Default hereunder which is continuing and has not been cured to the satisfaction of the Interim Lender; (ii) the implementation of the Proposal, which has been approved by the requisite majorities of the Borrower's creditors, including by the Interim Lender, and the Court; (iii) the conversion of the NOI Proceedings into a proceeding under the *Companies' Creditors Arrangement Act* (Canada) ("CCAA"), unless agreed to by the Interim Lender; (iv) the conversion of the NOI Proceedings into a receivership under the BIA; (v) the sale of all or substantially all of the Collateral; and (vi) forty-five (45) days from the commencement of the Extended NOI Proceedings (the earliest of such dates being the "**Maturity Date**"), unless such date is extended by the Interim Lender.

The commitment in respect of the Interim Facility shall expire on the Maturity Date and all amounts outstanding under the Interim Facility shall be repaid in full no later than the Maturity Date, without the Interim Lender being required to make demand upon the Credit Parties or to give notice that the Interim Facility has expired and the obligations are due and payable. The order of the Court sanctioning any Proposal shall not discharge or otherwise affect in any way any of the obligations of the Credit Parties to the Interim Lender under the Interim Facility, other than after the permanent and indefeasible payment in cash to the Interim Lender of all obligations under the Interim Facility on or before the date the Proposal is implemented.

**16. Prepayment:**

Upon five (5) days prior written notice to the Interim Lender, the Borrower may prepay any amounts outstanding under the Interim Facility at any time prior to the Maturity Date, without any prepayment fee or penalty. In no event shall the Interim Lender be obligated to accept any amount that would be contrary to any applicable law respecting interest to be charged. If the minimum interest is determined to be in excess of the maximum amount permitted by applicable law, then the minimum interest shall be reduced to the maximum amount that would be permitted by applicable law.

The Borrower may borrow, repay and re-borrow Advances, subject to the terms and conditions herein. Any amount repaid or prepaid under the Interim Facility (including pursuant to Section 17 below) shall be applied against amounts outstanding hereunder and in connection herewith by the Interim Lender in its sole and absolute discretion.

**17. Mandatory Repayments:**

Unless otherwise consented to in writing by the Interim Lender, Advances to the Borrower shall be forthwith repaid and the

Maximum Amount shall be permanently reduced: (i) upon receipt by a Credit Party (or any of its advisors or agents on its behalf) of surplus cash not required to fund disbursements and expenditures set forth in the Cash Flow Forecast; (ii) upon a sale of any of the Collateral out of the ordinary course of business, in an amount equal to the net cash proceeds of such sale (for greater certainty, net of reasonable costs and closing adjustments acceptable to the Interim Lender in its sole discretion); (iii) upon receipt by a Credit Party (or any of its advisors or agents on its behalf) of insurance proceeds with respect to the Collateral owned by it; (iv) upon receipt by a Credit Party (or any of its advisors or agents on its behalf) of a refund or payment on account of Taxes from any Governmental Entity, excluding refunds or payments on account of sales taxes; and (v) upon receipt by a Credit Party (or any of its advisors or agents on its behalf) of any amounts payable by Teck Coal Limited., Fluor Canada Ltd. or any of their respective affiliates.

**18. Evidence of Indebtedness:** The Interim Lender's accounts and records constitute, in the absence of manifest error, *prima facie* evidence of the indebtedness of the Borrower to the Interim Lender pursuant to the Interim Facility.

**19. Costs and Expenses:** The Credit Parties shall pay on demand all of the Interim Lender's legal fees on a full indemnity basis, out-of-pocket disbursements and any costs of realization or enforcement, in each case in connection with or otherwise related to the Interim Facility, the Interim Lender Charge, the other Interim Financing Credit Documentation and the NOI Proceedings (collectively, the "**Interim Financing Fees and Expenses**").

**20. Documentation and Interim Facility Security:** The Interim Financing Obligations shall be secured by

- (a) the Interim Lender Charge; and
- (b) such other documents and agreements as the Interim Lender may reasonably request, including those documents required in order to register or otherwise perfect the security interests comprising the Interim Lender Charge;

((a) and (b) collectively, the "**Interim Financing Security**").

The Interim Financing Security shall be in priority to all Liens, except the Administration Charge, pursuant to the terms of the Interim Lender Order. Notwithstanding the foregoing and subject to the concluding sentence of this paragraph, no proceeds of any Advance may be used to (a) investigate, object to or challenge in any way any claims of the Interim Lender against any Credit Party in respect of the Interim Facility, or (b) investigate, object to or challenge in any way the validity or enforceability of the Liens created under the Interim Financing Security.



The Interim Financing Security and charges created hereby and in the Interim Lender Order shall be deemed to be valid and perfected by the granting of the Interim Lender Order. The Interim Lender shall not be required to file any financing statement, mortgage or similar instrument or take any other action to validate or perfect the security interests and charges granted hereunder and in the Interim Lender Order, however the Interim Lender may register the Interim Financing Security (and/or any notice, certificate, instrument or other agreement associated therewith) in jurisdictions and at registries or public offices as the Interim Lender may determine necessary or beneficial to protect its interests under the Interim Financing Security.

**21. Permitted Liens and Priority:**

All Collateral will be free and clear of all other Liens, except for Permitted Liens.

**22. Cash Flow Forecast:**

Attached hereto as Schedule "B" is the most recent Cash Flow Forecast provided to the Interim Lender on or prior to the date of this Agreement, which is in form and substance satisfactory to the Interim Lender.

Following the granting of the Interim Lender Order, the Borrower shall, once every seven (7) days and not later than 12:00 noon Mountain Standard Time on each Wednesday of each week following the granting of the Initial Lender Order, provide the Interim Lender with an updated Cash Flow Forecast and such other related information as may be requested by the Interim Lender from time to time, in form and substance satisfactory to and approved by the Interim Lender, together with (i) a comparison of the previous week's forecast to actual cash receipts and expenditures for each line item in the Cash Flow Forecast (i.e. a week in arrears), and (ii) an explanation of the differences.

The Borrower shall use commercially reasonable efforts, if requested by the Interim Lender, to cause its non-legal advisors to participate in weekly conference calls with the Interim Lender and its advisors, agents and employees to discuss any Cash Flow Forecast along with the Borrower's current and projected operational performance and related financial matters.

**23. Proposal Trustee:**

The proposal trustee in the NOI Proceedings is KSV Restructuring Inc. (in such capacity, the "**Proposal Trustee**"). The Proposal Trustee shall be authorized to have direct discussions with the Interim Lender and its professional advisors, and the Interim Lender and its professional advisors shall be entitled to receive information from the Proposal Trustee as may be requested by the Interim Lender from time to time.

**24. Representations and Warranties:**

The Borrower represents and warrants to the Interim Lender, upon which the Interim Lender relies in entering into this Agreement and

the other Interim Financing Credit Documentation, as follows:

- (a) This Agreement and the other Interim Financing Credit Documentation and the transactions contemplated hereby and thereby:
  - (i) are within the powers of the Credit Parties;
  - (ii) subject to the granting of the Interim Lender Order, have been duly executed and delivered by or on behalf of the Credit Parties, as applicable;
  - (iii) do not conflict with or result in a breach of any of the terms or conditions of the constating documents of the Credit Parties, any applicable law, any contractual restrictions binding on or affecting the Credit Parties or any Credit Party's' material properties or any judgement, injunction, determination or award which is binding on any Credit Party;
  - (iv) upon the granting of the Interim Lender Order, constitute legal, valid and binding obligations of the Credit Parties; and
  - (v) other than those already obtained, do not require the consent or approval of, registration or filing with, or any other action by, any Governmental Entity or any third party, other than filings which may be made, but are not required, to register or otherwise record the Interim Lender Charge or the Interim Financing Security.
- (b) The activities of the Credit Parties will be conducted in material compliance with all applicable provincial and federal laws, subject to the provisions of the BIA and any Restructuring Court Order, unless (i) otherwise ordered by the Court, or (ii) the sanctions for non-compliance are stayed by a Restructuring Court Order.
- (c) The Credit Parties, since the commencement of the Initial NOI Proceedings, have maintained their respective obligations for payroll, source deductions, current normal cost pension liabilities, retail sales tax, goods and services tax and harmonized sales tax, as applicable, and are not in arrears in respect of payment of any of these obligations, except for source deductions in the amount of \$505,561 (the "**Existing Source Deduction**"), which will be paid on or before March 5, 2021 in accordance with the Cash Flow Forecast.
- (d) All representations and warranties made by the Credit Parties in all other Interim Financing Credit Documentation are true

and accurate in all material respects.

- (e) No Default or Event of Default has occurred and is continuing.
- (f) Each Credit Party is duly formed and validly existing under the laws of its jurisdiction of formation and is qualified to carry on business in each jurisdiction in which it owns property or assets or carries on business.
- (g) The Guarantor is the sole general partner of the Borrower and no amendments have been made to the partnership agreement governing the Borrower without the Interim Lender's knowledge and prior written consent.

**25. Affirmative Covenants:**

In addition to all of the other covenants and obligations contained herein, the Borrower covenants and agrees to perform, or cause to be performed, and do, or cause to be done, each of the following until the Interim Facility is permanently and indefeasibly repaid in full and terminated:

- (a) allow the Interim Lender or its agents and advisors, on reasonable notice during regular business hours, to enter on and inspect each Credit Party's assets and properties, and provide the Interim Lender and its agents or advisors, on reasonable notice and during normal business hours, full access to each Credit Party's books and records and cause management and employees thereof to fully co-operate with the Interim Lender, its agents and advisors;
- (b) provide to the Interim Lender regular updates regarding the status of the NOI Proceedings including, without limitation, reports on the progress of any Proposal, Restructuring Option, any Sale Process and any information, which may otherwise be confidential, subject to same being maintained as confidential by the Interim Lender, provided, however, that the Interim Lender shall not be entitled to receive any information in respect of bids or offers received in the Sale Process that encompass property over which the Interim Lender, or any of its affiliates or related parties, or another party in which the Interim Lender holds an interest, has also submitted a bid;
- (c) provide the Interim Lender with draft copies of all motions, applications, proposed orders or other material or documents that any of them intend to file within the NOI Proceedings as soon as practically possible prior to any such filing;
- (d) use commercially reasonable efforts to keep the Interim Lender apprised on a timely basis of all material developments with respect to the business and affairs of the Credit Parties including, without limitation, any changes to its Business

Update;

- (e) deliver to the Interim Lender the updated Cash Flow Forecast as and when set out herein, and such other reporting and other information from time to time reasonably requested by the Interim Lender. Without limiting the foregoing, the Borrower shall use commercially reasonable efforts to deliver to the Interim Lender copies of any financial reporting provided to the Proposal Trustee in a timely manner and forthwith provide to the Interim Lender any reports or commentary received from the Proposal Trustee regarding the financial position of the Credit Parties;
- (f) conduct all activities in a manner consistent with the Cash Flow Forecast;
- (g) use the proceeds of the Interim Facility only for the purposes described in Sections 7 and 12 above, and in a manner consistent and in strict compliance with the restrictions set out herein;
- (h) comply with the provisions of the Restructuring Court Orders; provided that if any Restructuring Court Order contravenes this Agreement or any of the Interim Financing Credit Documentation so as to adversely impact the rights or interests of the Interim Lender in a material manner, such contravention shall constitute, and shall be deemed to be, an Event of Default hereunder;
- (i) preserve, renew and keep in full force and effect each Credit Party's respective corporate existence and its respective material licenses, permits and approvals required in respect of its business, properties, assets or any activities or operations carried out therein, unless otherwise agreed to in writing by the Interim Lender;
- (j) use commercially reasonable efforts consistent with the Cash Flow Forecast to (i) maintain the insurance, in existence as at the date hereof with respect to the Collateral owned by the Credit Parties, or (ii) obtain insurance over such Collateral where none exists or has expired, on terms acceptable to the Interim Lender, acting reasonably; and
- (k) forthwith notify the Interim Lender of the occurrence of any Default or Event of Default, or any event that could reasonably be expected to cause a Material Adverse Change.

**26. Negative Covenants:**

The Borrower covenants and agrees not to do the following, other than with the prior written consent of the Interim Lender:

- (a) transfer, lease or otherwise dispose of all or any part of any Credit Party's property, assets or undertaking after the date hereof (excluding dispositions of obsolete assets or dispositions in the ordinary course of business). For greater certainty, in the case of any transfer, lease, sale or other disposition of any Collateral, all proceeds of such transfer, lease, sale or other disposition shall be subject to Section 17;
- (b) make any payment of principal or interest in respect of existing (pre-filing) debt or obligation other than as may be permitted by a Restructuring Court Order that does not result in an Event of Default, and is provided for in the Cash Flow Forecast;
- (c) make any payments not consistent with the Cash Flow Forecast;
- (d) settle any claims involving any Credit Party with a third party, or permit any assignments or transfers of any contracts with third parties;
- (e) make or give any additional financial assurances, in the form of bonds, letters of credit, financial guarantees or otherwise, to any person or Governmental Entity;
- (f) create, permit to exist or seek or support a motion by another party to provide to any third party a Lien on the Collateral which is senior to or *pari passu* with the Interim Lender Charge, except for the Administration Charge;
- (g) change a Credit Party's name, amalgamate, consolidate with or merge into, or enter into any similar transaction with any other entity except as part of a transaction under a Sale Process approved by a Restructuring Court Order, and on terms and conditions satisfactory to the Interim Lender, acting reasonably;
- (h) make any payment in respect of post-employment benefit payments; or
- (i) seek to convert, or permit to convert, the NOI Proceedings to a proceeding under the CCAA or to otherwise at any time seek Court protection for any Credit Party under the CCAA except with the consent of the Interim Lender.

**27. Reporting Covenants:**

The Borrower covenants and agrees to perform, or cause to be performed, and do, or cause to be done, each of the following when required:

- (a) provide the Interim Lender on or before March 16, 2021 with a current update to its most recent Business Update provided

to the Interim Lender, satisfactory to the Interim Lender in form and substance, as determined by the Interim Lender in its sole discretion;

- (b) provide the Interim Lender by no later than March 17, 2021 with evidence of all updated search results associated with any Liens, or potential claims, of any Governmental Entity against any Credit Party that could result in such Liens or claims having priority over the Interim Lender Charge (each being a “**Priority Governmental Claim**”), in each case satisfactory to the Interim Lender in form, substance and amount, as determined by the Interim Lender in its sole discretion; and
- (c) provide the Interim Lender with an updated Cash Flow Forecast hereunder when required by Section 22, in each case satisfactory to the Interim Lender in form and substance, as determined by the Interim Lender in its sole discretion.

**28. Indemnity and Release:**

The Borrower agrees to indemnify and hold harmless the Interim Lender and its directors, officers, employees, agents, attorneys, advisors and affiliates (all such persons and entities being referred to hereafter as “**Indemnified Persons**”) from and against any and all actions, suits, proceedings (including any investigations or inquiries), claims, losses, damages, liabilities or expenses of any kind or nature whatsoever (excluding indirect or consequential damages and claims for lost profits) which may be incurred by or asserted against or involve any Indemnified Person (collectively, “**Claims**”) as a result of or arising out of or in any way related to or resulting from the Interim Facility, this Agreement or any other Interim Financing Credit Documentation (regardless of whether such Claim is made in the NOI Proceedings or any other proceeding, including a bankruptcy or insolvency proceeding) and, upon demand, to pay and reimburse any Indemnified Person for any legal or other out-of-pocket expenses incurred in connection with investigating, defending or preparing to defend any such action, suit, proceeding (including, without limitation any inquiry or investigation) or claim (whether or not any Indemnified Person is a party to any action or proceeding out of which any such expenses arise); provided, however, the Borrower shall not be obligated to indemnify pursuant to this Section any Indemnified Person against any loss, claim, damage, expense or liability (x) to the extent it resulted from the gross negligence or willful misconduct of such Indemnified Person as finally determined by a court of competent jurisdiction, or (y) to the extent arising from any dispute solely among Indemnified Persons other than any claims arising out of any act or omission on the part of a Credit Party. The Borrower shall not be responsible or liable to any Indemnified Person or any other person for consequential or punitive damages.

The indemnities granted under this Agreement shall survive any

termination of the Interim Facility.

**29. Events of Default:**

The occurrence of any one or more of the following events shall constitute an event of default (“**Event of Default**”) under this Agreement:

- (a) the failure of the Borrower or any other person to pay any principal amount owing under this Agreement or any other Interim Financing Credit Documentation when due;
- (b) the failure of the Borrower or any other person to pay any interest or fees or any portion thereof owing under this Agreement or any other Interim Financing Credit Documentation when due and such default shall remain unremedied for a period of two (2) Business Days after written notice from the Interim Lender that such amount is overdue;
- (c) the issuance of an order of the Court (including any Restructuring Court Order) or any other court of competent jurisdiction without the prior written consent of the Interim Lender thereto:
  - (i) terminating the NOI Proceedings or lifting the stay in the NOI Proceedings to permit (A) the enforcement of any Lien against a Credit Party, or a material portion of its property, assets or undertaking, or (B) the appointment of a receiver and manager, receiver, or similar official or the making of a bankruptcy order against a Credit Party; or (C) converting the NOI Proceedings to proceedings under the CCAA;
  - (ii) granting any Lien which is senior to or *pari passu* with the Interim Lender Charge, except for the Administration Charge;
  - (iii) staying, reversing, vacating or otherwise modifying the Interim Lender Order or any Restructuring Court Order in a manner materially adverse to the interests of the Interim Lender; or
  - (iv) adversely impacting the rights and interests of the Interim Lender in a material manner;
- (d) the filing of any pleading by or on behalf of any Credit Party seeking any of the matters set forth in clause (c) above or failure of a Credit Party to diligently oppose any party that brings an application or motion for the relief set out in clause (c) above and/or fails to secure the dismissal of such motion or application within fifteen (15) days from the date such application or motion is brought;

- (e) failure of any Credit Party to comply with any positive or negative covenants in this Agreement not set forth in subsection (f) immediately below, which default has not been remedied or cured to the reasonable satisfaction of the Interim Lender, in its sole discretion, within five (5) Business Days of the breach first occurring, save and except for Section 26(i) which shall have no cure period;
- (f) failure of any Credit Party to comply with any reporting covenants when due;
- (g) should the aggregate amount of all Priority Governmental Claims outstanding, except for the Existing Source Deduction, at any time exceed \$100,000;
- (h) (i) a Restructuring Court Order is made, (ii) a liability arises or an event occurs, including any change in the Collateral, business, assets, or conditions (financial or otherwise), of a Credit Party, that will in the Interim Lender's judgment, acting reasonably, materially impair (A) the Interim Lender's ability to recover the amounts owed to it by the Credit Parties, or (B) a Credit Party's financial condition or ability to comply with its obligations under this Agreement, any other Interim Financing Credit Documentation, the Interim Lender Order, or any Restructuring Court Order, or carry out a Proposal or Restructuring Option reasonably acceptable to the Interim Lender (in each case, a "**Material Adverse Change**");
- (i) the Cash Flow Forecast or any update thereof contemplates or forecasts an adverse change or changes from the then existing Cash Flow Forecast and such change(s) constitute a Material Adverse Change, or any updated Cash Flow Forecast forecasts that borrowings under the Interim Facility will exceed the Maximum Amount at any time (unless and until the Interim Lender consents to increase the Maximum Amount, which shall be in the Interim Lender's sole and absolute discretion);
- (j) the Business Update or any update thereof contemplates or forecasts an adverse change or changes from the most recent Business Update provided to the Interim Lender hereunder and such change(s) constitute a Material Adverse Change;
- (k) any representation or warranty by a Credit Party or other person herein or in any Interim Financing Credit Documentation shall be incorrect or misleading in any material respect when made;
- (l) Advances under the Interim Facility exceed the Maximum Amount at any time without the prior written consent of the Interim Lender;



- (m) any material violation or breach of any Restructuring Court Order upon receipt by the Borrower of notice from the Interim Lender of such violation or breach;
- (n) an event of default has occurred under any of the Interim Financing Credit Documentation, which default has not been remedied or cured in accordance with the terms thereof;
- (o) any proceeding, motion or application is commenced or filed by a Credit Party, or if commenced by another party, supported or otherwise consented to by a Credit Party, seeking the invalidation, subordination or otherwise challenging of the terms of the Interim Facility, the Interim Lender Charge, this Agreement, or any of the other Interim Financing Credit Documentation or, unless the Proposal or Restructuring Option provides for repayment in full of the Interim Facility, the approval of any Proposal or Restructuring Option which does not have the prior written consent of the Interim Lender;
- (p) any Proposal is proposed or any Restructuring Option is consummated by a Credit Party that contravenes any provision of this Agreement or other Interim Financing Credit Documentation, unless the Interim Lender has consented thereto;
- (q) if any Credit Party pays or agrees to pay any of the legal, consulting or other professional fees and/or disbursements incurred by the Credit Parties, the Proposal Trustee or any other party in the NOI Proceedings (other than the Interim Lender and its agents and advisors), in excess of the amount set out in the cash flow, without the prior written consent of the Interim Lender;
- (r) failure of the Borrower to perform or comply with any other term or covenant under this Agreement or any other Interim Financing Credit Documentation, and such default shall continue unremedied for a period of five (5) Business Days from the breach first occurring;
- (s) if the priority of the Interim Lender Charge set out in the Interim Lender Order is varied without the consent of the Interim Lender; or
- (t) if the Borrower commences an action or takes any other proceeding to obtain any form of relief against the Interim Lender.

**30. Remedies:**

Upon the occurrence of an Event of Default that is continuing, and subject to the Restructuring Court Orders, the Interim Lender may, in its sole discretion, elect to terminate the Interim Lender's commitments to make Advances to the Borrower hereunder and

declare the obligations in respect of the Interim Financing Credit Documentation to be immediately due and payable and cease making any further Advances. Without limiting the foregoing remedies, upon the occurrence of an Event of Default that is continuing, the Interim Lender may, in its sole discretion, elect to permanently reduce the Maximum Amount. In addition, upon the occurrence of an Event of Default that is continuing, the Interim Lender may, in its sole discretion, subject to any Restructuring Court Order:

- (a) apply to a court for the appointment of a receiver or a receiver and manager over any of the Collateral;
- (b) set-off or combine any amounts then owing by the Interim Lender to the Credit Parties against the obligations of the Credit Parties to the Interim Lender hereunder;
- (c) subject to obtaining prior approval from the Court, exercise the powers and rights of a secured party under the *Personal Property Security Act* (Alberta) or any legislation of similar effect; and
- (d) subject to obtaining prior approval from the Court, exercise all such other rights and remedies under the Interim Financing Credit Documentation, the Restructuring Court Orders and applicable law.

**31. Taxes:**

All payments by the Borrower or any other person under this Agreement and the other Interim Financing Credit Documentation to the Interim Lender, including any payments required to be made from and after the exercise of any remedies available to the Interim Lender upon an Event of Default that is continuing, shall be made free and clear of and without reduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any country or any political subdivision or any country (collectively “**Taxes**”); provided, however, that if any Taxes are required by applicable law to be withheld (“**Withholding Taxes**”) from any amount payable to the Interim Lender under any Interim Financing Credit Documentation, the amount so payable to the Interim Lender shall be increased to the extent necessary to yield to the Interim Lender on a net basis after payment of all Withholding Taxes the amount payable under such Interim Financing Credit Documentation at the rate or in the amount specified in such Interim Financing Credit Documentation, and the Borrower shall provide evidence satisfactory to the Interim Lender that the Taxes have been so withheld and remedied.

**32. Further Assurances:**

The Borrower shall, at its expense, from time to time do, execute and deliver, or will cause to be done, executed and delivered, all such

further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) and things as the Interim Lender may reasonably request for the purpose of giving effect to this Agreement.

**33. Amendments, Waivers, Etc.:**

No amendment of any provision of this Agreement shall be effective unless agreed to by the Credit Parties and the Interim Lender, and, in the case of any material amendment, the Proposal Trustee.

No waiver or delay on the part of the Interim Lender in exercising any right or privilege hereunder or under any other Interim Financing Credit Documentation will operate as a waiver hereof or thereof unless made in writing by the Interim Lender and delivered in accordance with the terms of this Agreement or the other applicable Interim Financing Credit Documentation and then such waiver shall be effective only in the specific instance and for the specific purpose given.

**34. Entire Agreement/ Conflict:**

This Agreement, including the schedules hereto and the Interim Financing Credit Documentation, constitutes the entire agreement between the parties relating to the subject matter hereof. To the extent that there is any inconsistency between this Agreement and any of the other Interim Financing Credit Documentation, this Agreement shall govern.

**35. Assignment:**

The Interim Lender may assign this Agreement and any other Interim Financing Credit Documentation, or its interest in this Agreement or any other Interim Financing Credit Documentation, as the case may be, and its rights and obligations hereunder, in whole or in part, or grant a participation in its rights hereunder, at any time to any person without the consent of the Borrower or the Proposal Trustee. Neither this Agreement, another Interim Financing Credit Documentation, nor any rights thereunder may be assigned by any Credit Party.

**36. Severability:**

Any provision in this Agreement or any other Interim Financing Credit Documentation which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

**37. No Third Party Beneficiary:**

No person, other than the Credit Parties and the Interim Lender, is entitled to rely upon this Agreement and the parties expressly agree that this Agreement does not confer rights upon any party not a signatory hereto.

**38. Counterpart and Facsimile Signatures:**

This Agreement may be executed in any number of counterparts and by facsimile or other electronic transmission, including via electronic mail in portable document format, each of which when executed and delivered shall be deemed to be an original, and all of which when

taken together shall constitute one and the same instrument.

**39. Notices:**

Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or sent by electronic mail to the attention of the person as set forth below:

In the case of the Interim Lender, to:

**Bank of Montreal**

6<sup>th</sup> Floor, 350 - 7<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 3N9

Attention: Director, Special Accounts Management Unit  
Email: zachary.newman@bmo.com

With a copy to:

**Borden Ladner Gervais LLP**

Centennial Place, East Tower  
1900, 520 – 3<sup>rd</sup> Avenue SW  
Calgary, Alberta T2P 0R3

Attention: Josef G.A. Kruger Q.C.  
Email : jkruger@blg.com

In the case of the Borrower to:

**Tradesmen Enterprises Limited Partnership**

#730, 440 – 2nd Avenue S.W.  
Calgary, AB T2P 5E9

Attention: Ken Krawiec and Dean Kato  
Email: ken.krawiec@teigp.com  
Dean.Kato@teigp.com

With a copy to:

**Lawson Lundell LLP**

Brookfield Place  
225 6 Ave SW #1100  
Calgary, AB T2P 1N2

Attention: Alexis Teasdale  
Email: ateadale@lawsonlundell.com

In either case, with a copy to the Proposal Trustee:

**KSV Restructuring Inc.**  
150 King Street West, Suite 2308  
Toronto, Ontario, M5H 1J9

Attention: Bobby Kofman and David Sieradzki  
Email: bkofman@ksvadvisory.com  
dsieradzki@ksvadvisory.com

Any such notice shall be deemed to be given and received when received, unless received after 5:00 pm Mountain Time or on a day other than a Business Day, in which case the notice shall be deemed to be received the next Business Day.

**40. Security Valid  
Irrespective of Time of  
Advance:**

All rights, agreements, and obligations of the Credit Parties and the Interim Lender and the granting of, and the priorities of, the Interim Lender Charge and the obligations owing under the Interim Facility, will remain in full force and effect irrespective of the time of any loan or advance made to the Borrower by the Interim Lender, including whether advanced before or after or at the same time as the creation of the security interests granted hereunder or before or after or at the same time as the date of execution of this Agreement.

**41. Governing Law and  
Jurisdiction:**

This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the federal laws of Canada applicable therein. Without prejudice to the ability of the Interim Lender to enforce this Agreement in any other proper jurisdiction, the Borrower irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of Alberta, and further acknowledges and agrees that any disputes arising in respect of the Interim Financing Credit Documentation shall be heard by the Court.

(signature page follows)

IN WITNESS HEREOF, the parties hereto have executed this Agreement as at the date first referenced above.

**Interim Lender:**

**BANK OF MONTREAL**

Per: Zachary Newman  
Name: Zachary Newman  
Title: Director  
Shane Klein  
Shane Klein  
Managing Director

**Guarantor:**

**TRADESMEN ENTERPRISES INC.**

Per: Ken  
Name: **Krawiec**  
Title: Digitally signed by Ken Krawiec  
DN: cn=Ken Krawiec, c=CA,  
o=Tradesmen Enterprises LP,  
email=ken.krawiec@teigo.com  
Reason: I am approving this document  
Location: Calgary, AB  
Date: 2021.02.24 10:29:19 -07'00'

I have authority to bind the corporation

**Borrower:**

**TRADESMEN ENTERPRISES LIMITED PARTNERSHIP, by its General Partner, Tradesmen Enterprises Inc.**

Per: Ken  
Name: **Krawiec**  
Title: Digitally signed by Ken Krawiec  
DN: cn=Ken Krawiec, c=CA,  
o=Tradesmen Enterprises LP,  
email=ken.krawiec@teigo.com  
Reason: I am approving this document  
Location: Calgary, AB  
Date: 2021.02.24 10:28:12 -07'00'

I have authority to bind the partnership

## **SCHEDULE "A"**

### **DEFINED TERMS**

In this Agreement:

“**Advance**” and “**Advances**” has the meanings given thereto in Section 9.

“**Administration Charge**” means a charge on the Collateral of the Credit Parties, granted by the Court pursuant to the Interim Lender Order, up to an aggregate amount of \$300,000, securing the payment of the reasonable fees and disbursements incurred by the Credit Parties’ counsel, the Proposal Trustee and the Proposal Trustee’s counsel in connection with the NOI Proceedings, as set forth in the Cash Flow Forecast.

“**Advance Request**” has the meaning given thereto in Section 9.

“**Agreement**” means the amended and restated interim financing agreement to which this schedule is attached, together with all schedules attached hereto, as the same may be amended, amended and restated or otherwise replaced from time to time.

“**Application**” has the meaning given thereto in the recitals on the first page of this Agreement.

“**BIA**” has the meaning given thereto in the recitals on the first page of this Agreement.

“**Borrower**” has the meaning given thereto in Section 1.

“**Business Day**” means any day other than a Saturday, Sunday or any other day in which banks in Calgary, Alberta are not open for business.

“**Business Update**” means an executive summary prepared by senior management of the Borrower which outlines in sufficient detail, reasonably acceptable to the Interim Lender, the latest business information, claims, prospects, strategy and implementation of business matters associated with the Credit Parties and their operations for the next six (6) months from the date of issue.

“**Cash Flow Forecast**” means a minimum rolling eight (8) week cash flow forecast of expected weekly receipts and all of the operating and capital expenditures to be made during each calendar week and in the aggregate for the period of time covered by the Cash Flow Forecast, prepared by the Borrower with the assistance of the Proposal Trustee, the current form of which is attached as Schedule “B” to this Agreement, together with any subsequent detailed cash flow forecast prepared by the Borrower, with the assistance of the Proposal Trustee, and submitted by the Borrower to the Interim Lender and approved by the Interim Lender in accordance with the terms and conditions of this Agreement from time to time.

“**CAA**” has the meaning given thereto in Section 15.

“**Claims**” has the meaning given thereto in Section 28.

“**Closing Fee**” has the meaning given thereto in Section 11.

“**Collateral**” means all present and after-acquired real and personal property of the Credit Parties.

“**Court**” has the meaning given thereto in the recitals on the first page of this Agreement.

“**Credit Parties**” and “**Credit Party**” has the meaning given thereto in Section 3.

“**Default**” means an event or circumstance which, after the giving of notice or the passage of time, or both, will result in an Event of Default.

“**Event of Default**” has the meaning given thereto in Section 29.

“**Existing Source Deduction**” has the meaning given thereto in Section 24.

“**Extended NOI Proceedings**” has the meaning given thereto in the recitals on the first page of this Agreement.

“**Funding Conditions**” has the meaning given thereto in Section 14.

“**Governmental Entity**” means any federal, provincial, state, municipal, local or other government, governmental or public department, commission, board, bureau, agency or instrumentality, domestic or foreign and any subdivision, agent, commission, board or authority of any of the foregoing.

“**Guarantor**” has the meaning given thereto in Section 2.

“**Indemnified Persons**” has the meaning given thereto in Section 28.

“**Interim Facility**” has the meaning given thereto in Section 8.

“**Interim Financing Credit Documentation**” means this Agreement and any other documentation in respect of the Interim Facility that is requested by the Interim Lender (which shall be in form and substance satisfactory to the Interim Lender), including the Interim Financing Security.

“**Interim Financing Fees and Expenses**” has the meaning given thereto in Section 19.

“**Interim Financing Obligations**” has the meaning given thereto in Section 13.

“**Interim Financing Security**” has the meaning given thereto in Section 20.

“**Interim Lender**” has the meaning given thereto in Section 4.

“**Interim Lender Charge**” has the meaning given thereto in Section 13.

“**Interim Lender Order**” has the meaning given thereto in the recitals on the first page of this Agreement.

“**Initial NOI Proceedings**” has the meaning given thereto in the recitals on the first page of this Agreement.

“**Liens**” means all liens, hypothecs, charges, mortgages, trusts, deemed trusts (statutory or otherwise), encumbrances and security interests of every kind and nature whatsoever granted by Credit Parties, or otherwise charged, against the Collateral.

“**Material Adverse Change**” has the meaning given thereto in Section 29.



“**Maturity Date**” has the meaning given thereto in Section 15.

“**Maximum Amount**” has the meaning given thereto in Section 8.

“**NOI Proceedings**” means, collectively, the Initial NOI Proceedings and the Extended NOI Proceedings.

“**Permitted Liens**” means (i) the Interim Lender Charge and the Interim Financing Security; (ii) the Administration Charge; and (iii) any charges created under the Interim Lender Order or other order of the Court in the NOI Proceedings subsequent in priority to the Interim Lender Charge, the limit and priority of each of which shall be acceptable to the Interim Lender in its sole discretion.

“**Previous Interim Financing Agreement**” has the meaning given thereto in the recitals on the first page of this Agreement.

“**Priority Governmental Claim**” has the meaning given thereto in Section 27.

“**Proposal**” has the meaning given thereto in the recitals on the first page of this Agreement.

“**Proposal Trustee**” has the meaning given thereto in Section 23.

“**Restructuring Court Order**” and “**Restructuring Court Order**” have the meanings given thereto in Section 14.

“**Restructuring Option**” means any transaction involving the refinancing of the Borrower, the sale of all or substantially all of the assets of the Borrower (or the equity interests of the Borrower) or any other restructuring of the Borrower’s business and operations, including any liquidation, bankruptcy or other insolvency proceeding in respect of the Borrower.

“**Sale Process**” means a Court-approved sale process in respect of substantially all of the Credit Parties’ assets.

“**Taxes**” has the meaning given thereto in Section 31.

“**Withholding Taxes**” has the meaning given thereto in Section 31.

[END OF SCHEDULE]

**SCHEDULE "B"**  
**CASH FLOW FORECAST**

*See attached.*

**SCHEDULE "C"**

**FORM OF ADVANCE REQUEST**

Date: \_\_\_\_\_, 2021

**Bank of Montreal**

6<sup>th</sup> Floor, 350 – 7<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 3N9

Attention: Director, SAMU  
Email: zachary.newman@bmo.com

Dear Sirs:

We refer to the Amended and Restated Interim Financing Agreement dated \_\_\_\_\_, 2021 between Tradesmen Enterprises Limited Partnership, as borrower, Tradesmen Enterprises Inc., as guarantor, and Bank of Montreal, as interim lender (as the same may be amended, renewed, extended, modified and/or restated from time to time, the "**Loan Agreement**"). Capitalized terms used herein have the same meaning as in the Loan Agreement. The undersigned is an officer of the general partner of the Borrower and is authorized to make and deliver this notice for and on behalf of the Borrower and its general partner pursuant to the Loan Agreement.

1. We hereby give notice of our request for an Advance pursuant to the Loan Agreement, the particulars of which are as follows:
  - (a) Drawdown Date: \_\_\_\_\_
  - (b) Amount: \_\_\_\_\_
  - (c) Payment Instructions (if any): \_\_\_\_\_
  
2. The undersigned hereby certifies that:
  - (a) the Advance requested by this Advance Request is consistent with the Cash Flow Forecast and is within the Maximum Amount;
  - (b) the Credit Parties are in compliance with the Interim Financing Credit Documentation and all Restructuring Court Orders; and
  - (c) each term of the Interim Lender Order are in full force and effect and have not been reversed, modified, stayed or amended.
  
3. All of the representations and warranties of the Credit Parties pursuant to the Interim Financing Credit Documentation are true and accurate in all material respects on the date hereof.

4. There exists no Default or Event of Default on the date hereof and no Default or Event of Default will occur as a result of the Advance requested by this Advance Request.
5. No Material Adverse Change has occurred since the date of the issuance of the Interim Lender Order.
6. No Liens rank in priority to the Interim Lender Charge.

Yours very truly,

**TRADESMEN ENTERPRISES LIMITED  
PARTNERSHIP, by its general partner,  
Tradesmen Enterprises Inc., as Borrower**

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