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J. Jeffrey



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 **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
LAWSON LUNDELL LLP
Barristers and Solicitors
Suite 1100, 225 – 6 Avenue SW
Calgary, AB T2P 1N2
Attention: Alexis Teasdale
Telephone: (403) 218-7564
Fax: (403) 269-9494
Email: ateasdale@lawsonlundell.com
File: 29768-155647

AFFIDAVIT NO. 3 OF DEAN KATO
Sworn on March 8, 2021

I, **Dean Kato**, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am the President and CEO of Tradesmen Enterprises Inc. (“**TEI**”), the General Partner of Tradesmen Enterprises Limited Partnership (“**TELP**”, and together with TEI, “**Tradesmen**” or the “**Applicants**”). I have personal knowledge of the matters sworn to in this affidavit unless I indicate that my evidence is based on some other source, in which case I believe that evidence to be true.
2. This is my third affidavit sworn in these proceedings. Capitalized terms not otherwise defined herein have the meaning set forth in the Affidavit No. 1 of Dean Kato, sworn on

February 1, 2021 (the “**Kato Affidavit No. 1**”) and the Affidavit No. 2 of Dean Kato, sworn on February 24, 2021 (the “**Kato Affidavit No. 2**”).

3. I make this affidavit in support of the Application by Tradesmen returnable March 16, 2021 (the “**Application**”) under s. 65.13 the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”), for the following relief:

(a) an Order:

- (i) abridging the time for service of the Application and the supporting materials and deeming service thereof to be good and sufficient;
- (ii) approving, authorizing and ratifying the Liquidation Services Agreement dated March 3, 2021, between Tradesmen and Ritchie Bros. Auctioneers (Canada) Ltd. (the “**Liquidator**” and the “**Liquidation Services Agreement**”, respectively), the NMG Sale and the Commission Sale (each as defined herein and together, the “**Sales**”), and all transactions contemplated thereunder (collectively, the “**Transactions**”);
- (iii) vesting all of the Applicants’ right, title and interest in and to the Auction Assets and the Additional Equipment (each as defined in the Liquidation Services Agreement), as applicable, free and clear of any and all encumbrances, in and to the applicable buyer;
- (iv) sealing the summary of Offers received pursuant to the Proposal Solicitation Letter (each as defined herein);
- (v) approving Tradesmen’s redaction of the sensitive commercial information contained in the Liquidation Services Agreement, together with an Order sealing the unredacted Liquidation Services Agreement and schedules, subject to further order of the Court; and

(b) such further and other relief as to this Honourable Court may seem just and appropriate.

4. In swearing this Affidavit, I do not intend to waive litigation, common interest, or solicitor client privilege and I expressly maintain and preserve any and all such privilege that exists.

I. BACKGROUND

Brief History of the Project and the Teck Contract

5. Until January 11, 2021, Tradesmen’s principal contract (the “**Teck Contract**”) was with Teck Coal Limited (“**Teck**”) for the construction of a water management project located near Elkford, British Columbia (the “**Project**”).
6. As described in detail in the Kato Affidavit No. 1, the Teck Contract was terminated by Teck on January 11, 2021, after Tradesmen issued a notice of default to Teck for delays in approval of, and payment for, Tradesmen’s work on the Project. Due to Teck’s termination of the Teck Contract, Tradesmen filed and registered builders’ liens and commenced a civil action against Teck and others, seeking judgment in excess of \$52 million. The litigation comprised of the builders’ liens and the civil action (the “**Litigation**”) is Tradesmen’s most significant and valuable asset.
7. As a result of the events described in the Kato Affidavit No. 1, Tradesmen faced a severe liquidity crisis, and on February 1, 2021, each of TEI and TELP filed a Notice of Intention to Make a Proposal (each, an “**NOI**”) pursuant to subsection 50.4(1) of the BIA with the Office of the Superintendent of Bankruptcy. KSV Restructuring Inc. was appointed as Proposal Trustee under the NOIs (in such capacity, the “**Proposal Trustee**”).

Procedural History

8. On February 3, 2021, Tradesmen sought and obtained an Order (the “**Interim Financing Order**”) which, among other things:¹
- (a) procedurally consolidated the NOI Proceedings of TEI and TELP;

¹ Capitalized terms in sub-paragraphs 6(a)-(e) have the meaning given to them in the Interim Financing Order, unless otherwise defined.

- (b) authorized and empowered TELP to borrow under an interim financing credit facility from Bank of Montreal (“**BMO**”) and approved the Interim Financing Agreement;
 - (c) granted BMO the Interim Financing Charge over all of Tradesmen’s Property, subject only to the Administration Charge, to secure Tradesmen’s obligations to BMO under the Interim Financing Agreement;
 - (d) granted the Administration Charge as security for payment of the professional fees and disbursements of the Proposal Trustee, and of legal counsel for Tradesmen and for the Proposal Trustee; and
 - (e) declared that the Charges constitute a charge on the Property and rank in priority to all other Encumbrances on the Property.
9. On March 2, 2021, Tradesmen sought and obtained an Order (the “**Amended and Restated Interim Financing Order**”) which, among other things:²
- (a) granted an extension of the period of time within which Tradesmen must file a proposal to its creditors, up to and including Friday, April 16, 2021;
 - (b) approved the Amended and Restated Interim Financing Agreement (the “**IF Amendment**”), by which, among other things: (i) the Previous Interim Financing Agreement was amended and restated; (ii) the Maximum Amount Tradesmen may borrow thereunder was increased; and (iii) the maturity date was amended to the earlier of (A) various events specified in the IF Amendment and (B) April 16, 2021;
 - (c) authorized Tradesmen to obtain and borrow under and pursuant to the IF Amendment, and restated the Interim Financing Charge as security for repayment of the interim financing facility to be provided pursuant to the IF Amendment;

² Capitalized terms in sub-paragraphs 7 (a)-(e) have the meaning given to them in the Amended and Restated Interim Financing Order, unless otherwise defined.

- (d) approved the Key Employee Retention Plan (the “**KERP**”) and declared that all of Tradesmen’s Property is subject to a priority charge in favour of the employees identified under the KERP (the “**KERP Charge**”); and
- (e) approved the ranking of the priorities as between the Interim Financing Charge, the Administration Charge, and the KERP Charge and provided that the Court-ordered charges will rank ahead of any and all charges, security interests and encumbrances against Tradesmen’s Property.

II. LIQUIDATION OF TRADESMEN’S FIXED ASSETS

The Proposal Solicitation Process

- 10. Given the Termination of the Teck Contract and Tradesmen’s resulting liquidity crisis, its operations as a general contractor also ceased. Apart from taking the steps described in the Kato Affidavit No. 2 to wind-down its involvement in the Project and obtain payment of outstanding invoices and holdback amounts from Teck, Tradesmen’s principal focus became the Litigation.
- 11. As a result of these circumstances, Tradesmen no longer requires its fixed assets to carry on business while these proceedings, and the Litigation, are ongoing. Tradesmen has, in consultation with the Proposal Trustee, undertaken a process to liquidate its assets, as follows.
- 12. The Proposal Trustee, in consultation with Tradesmen, assembled a list of potential interested parties, which are regularly engaged in the liquidation of assets in insolvency proceedings (collectively, the “**Prospective Liquidators**”), and on February 2, 2021, the Proposal Trustee distributed an offer solicitation letter to these Prospective Liquidators (the “**Proposal Solicitation Letter**”). A true copy of the Proposal Solicitation Letter is attached to this Affidavit and marked as **Exhibit “A”**.
- 13. The Proposal Solicitation Letter requested proposals for liquidating Tradesmen’s fixed assets, including machinery, equipment, tools, and rolling stock. The Proposal Solicitation Letter provides, among other things:

- (a) a deadline for offers of February 18, 2021 at 2:00 p.m. MST (the “**Offer Deadline**”);
 - (b) a description of what is to be included in offers made pursuant to the Proposal Solicitation Letter, including the terms on which an offeror is prepared to conduct an auction, such as compensation to the offeror, whether the offeror is prepared to pay a net minimum guarantee, and what assets are to be included;
 - (c) that any liquidation services agreement entered into between Tradesmen and an offeror under the Proposal Solicitation Letter is subject to court approval; and
 - (d) asking offerors to advise of the terms of occupancy for Tradesmen’s facility in Grande Prairie (the “**Facility**”).
14. In total, the Proposal Trustee contacted six Prospective Liquidators to advise of the opportunity to submit liquidation proposals for the Applicants’ fixed assets.
15. Between February 2, 2021 and the Offer Deadline, the Proposal Trustee worked with Tradesmen to facilitate the attendance of interested parties at the Facility and Tradesmen was available to answer any questions regarding its fixed assets.
16. Four offers to conduct the liquidation of the Applicants’ fixed assets were received by the Offer Deadline (the “**Offers**”). Now shown to me and marked as **Confidential Exhibit “1”**, but not attached hereto, is a summary of the Offers.
17. The Offer from the Liquidator was selected because it provided the greatest amount of consideration, by way of a net minimum guarantee sale, and acknowledged that it could meet a deadline of April 30, 2021 for completing the Transaction.
18. Following the selection of the Liquidator’s Offer, the Liquidator, the Proposal Trustee, and the Applicants discussed the liquidation of the Additional Equipment that was left at the Teck project site in Elkford, British Columbia. The Liquidator agreed to retrieve from the Teck project site and sell on a commission basis the Additional Equipment at an auction to be run by the Liquidator on or around March 25, 2021 in Lethbridge, Alberta.

19. Tradesmen also owns certain computer equipment, which is presently in multiple locations. This equipment is not included in the Liquidation Services Agreement, as Tradesmen is still in the process of data retrieval from, and consolidation of, the computer equipment. Once that process is complete, Tradesmen intends to liquidate these assets, together with the contents of its Calgary office premises.

The Liquidation Services Agreement

20. On March 3, 2021, the Applicants and the Liquidator entered into a Liquidation Services Agreement. A copy of the Liquidation Services Agreement, which is redacted to remove commercially sensitive information, including the Guaranteed Amount (as defined in the Liquidation Services Agreement) to be paid in relation to the NMG Sale, is attached hereto and marked as **Exhibit “B”**. An unredacted copy of the Liquidation Services Agreement is now shown to me and marked as **Confidential Exhibit “2”** to this Affidavit, but is not attached hereto.
21. The Liquidation Services Agreement contemplates that the Liquidator will sell the fixed assets of the Applicants by way of two separate auction sales, as follows:
- (a) the Auction Assets, comprising construction machinery, equipment, tools and rolling stock located at the Applicants’ Facility, will be sold by way of an auction to be conducted on or around April 12, 2021 (the “**NMG Sale**”); and
 - (b) the Additional Equipment will be sold by way of a liquidation sale to be conducted by the Liquidator on behalf of the Applicants at the Liquidator’s facility in Lethbridge, by way of any combination of a liquidation or auction sale, and/or an online auction that is anticipated to be conducted on or around March 25, 2021 (the “**Commission Sale**”).
22. It is a condition precedent to the Transactions contemplated under the Liquidation Services Agreement that the Applicants have obtained one or more approval and vesting orders from the Court which will vest the assets identified in the Liquidation Services Agreement in each purchaser of such assets free and clear of any claims or encumbrances on or before March 19, 2021.

23. I believe the terms of the Liquidation Services Agreement and the consideration set out in the Liquidation Services Agreement are fair and commercially reasonable and were arrived at in a commercially reasonable manner.
24. The Liquidation Services Agreement provides for the sale of all of the Auction Assets and the Additional Equipment (collectively, the “Assets”) on the open market in a fair and efficient manner. I believe that the auction processes contemplated by the Liquidation Services Agreement provides Tradesmen with the best opportunity to attain the highest value for the Assets.
25. I also believe that the Liquidation Services Agreement presents minimal risk to Tradesmen, as far as the liquidation of its fixed assets is concerned, as it includes the Guaranteed Amount to be paid by the Liquidator. Tradesmen has already received a substantial deposit, equivalent to one-half of the Guaranteed Amount, and will receive the balance of the Guaranteed Amount no later than twenty one (21) calendar days following the NMG Sale, which is scheduled to be conducted on or around April 12, 2021.
26. The Sales and Transactions contemplated by the Liquidation Services Agreement will be beneficial to Tradesmen’s creditors because they will generate sale proceeds for Tradesmen and reduce the costs associated with storing, maintaining, and transporting the Assets, which are not necessary to Tradesmen’s business during these proceedings and its pursuit of the Litigation. The Liquidation Services Agreement will also enable Tradesmen to vacate its leased premises in Grande Prairie by April 30, 2021, resulting in a significant reduction in monthly occupancy costs.
27. I am informed by Alexis Teasdale, legal counsel to Tradesmen in these proceedings, and the Proposal Trustee, that the terms of the Liquidation Services Agreement are similar to the terms and conditions of liquidation services agreements that have been approved by Canadian courts in other insolvency proceedings.
28. The Proposal Trustee supports the relief sought by Tradesmen, and Tradesmen’s first priority secured lender, BMO, and its second priority secured lenders, PEF 2010 (A)

Limited Partnership, PEF 2010(B) Limited Partnership, and PEF 2010(C) Limited Partnership, consent to the relief sought.


Sealing Order

- 29. The Liquidation Services Agreement and the schedules thereto contain commercially sensitive information which may negatively impact the value attained on the realization of the Assets if the transaction contemplated by the Liquidation Services Agreement does not close, which would necessitate a further tender process. Accordingly, Tradesmen’s view is that any effort to remarket the Assets may be impaired if either of the Confidential Exhibits are made public.
- 30. Tradesmen is therefore requesting that the Offer summary and the unredacted copy of the Liquidation Services Agreement and its schedules be subject to a sealing Order of the Court pending further Order of the Court.
- 31. I believe that the Liquidation Services Agreement establishes a fair, reasonable and open process for all parties that have an interest in Tradesmen and that may ultimately become involved, and is a critical component in the advancement of these proceedings.

III. CONCLUSION

- 32. The process undertaken to solicit liquidation proposals was reasonable in the circumstances, and the consideration to be received for the Assets is reasonable and fair. On this basis, Tradesmen respectfully requests that the relief sought be granted.
- 33. I make this Affidavit in support of the Order sought by Tradesmen at the Application and for no improper purpose.

SWORN BEFORE ME this 8th day of March,)
2021 at Calgary, Alberta.)



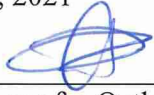
_____)
A Commissioner for Oaths in and for the)
Province of Alberta)

Alexis Teasdale
Barrister & Solicitor



_____)
DEAN KATO

THIS IS **EXHIBIT "A"** REFERRED TO IN
THE AFFIDAVIT OF DEAN KATO
SWORN BEFORE ME THIS 8th DAY
OF MARCH, 2021



A Commissioner for Oaths
In and for the Province of Alberta

Alexis Teasdale
Barrister & Solicitor



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February 2, 2021

DELIVERED BY EMAIL

Ritchie Bros. Auctioneers
721076 Range Road 51
County of Grande Prairie No. 1, AB
T0H 0G0

Attention: Gordon Aebly

Dear Sirs:

Re: Tradesmen Enterprises Limited Partnership (the "Company")

On February 1, 2021, the Company commenced restructuring proceedings by filing a Notice of Intention to Make a Proposal ("NOI") pursuant to the *Bankruptcy and Insolvency Act*. KSV Restructuring Inc. has been appointed as the proposal trustee under the NOI (the "Proposal Trustee").

As part of the Company's NOI proceedings, the Proposal Trustee is assisting the Company to solicit liquidation proposals for its fixed assets, which principally comprise construction machinery, equipment, tooling and rolling stock located at its facility in Grande Prairie, Alberta.

This letter is an invitation to participate in the process. The submission procedures are provided below:

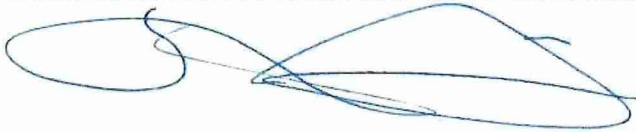
- The deadline for offers: **February 18, 2021 at 2:00 p.m. (MST)**;
- Offers are to indicate:
 - a) the terms on which you would be prepared to conduct an auction pursuant to a Liquidation Services Agreement, including commission percentage, buyer's premium and any expenses to be deducted from the gross sale proceeds; and/or
 - b) whether you are prepared to offer a net minimum guarantee ("NMG") for the assets and, if so, the profit participation split between the Company and your firm;
- Offers submitted on an NMG basis must allocate a purchase price for each piece of equipment indicating the specific deductions to the NMG resulting from the removal of such asset from the sale. Please note any pieces of equipment which are integral to the sale which, if removed, would make the sale uneconomic for you;
- The Liquidation Services Agreement is subject to Court approval. It will contemplate that assets would be sold to the successful bidder on an "as is, where is" basis, without representations and warranties, including as to the salability, merchantability, etc. of any of the Company's assets; and
- Please advise of the terms of occupancy of the Company's premises that you require, including the amount of time that you needed to conduct a sale from the Grande Prairie premises.

Please contact the undersigned should you have any questions or should you wish to arrange a viewing of the assets. An asset listing will be provided to you upon execution of the attached confidentiality agreement. Please note that the Company's asset list may be supplemented in the next few weeks. We will advise of any changes to the asset list in due course.

The Proposal Trustee notes that the process detailed in this letter may be amended, supplemented or terminated at any time, in the Proposal Trustee's sole and absolute discretion.

Yours very truly,

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS TRUSTEE UNDER
THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TRADESMEN ENTERPRISES LIMITED PARTNERSHIP**

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke, positioned below the typed name.

Per: David Sieradzki

DS:rk

CONFIDENTIALITY AGREEMENT

In connection with your possible interest in exploring a transaction (a "Transaction") involving the fixed assets of Tradesmen Enterprises Limited Partnership (the "Company"), you have requested certain oral and written information from the officers, directors, employees, representatives, solicitors, advisors and/or agents of the Company (collectively, the "Company Representatives") and/or KSV Restructuring Inc., in its capacity as proposal trustee (the "Proposal Trustee") in the Company's restructuring proceedings under the *Bankruptcy and Insolvency Act*. References to the "Information Parties" herein shall mean the Company, the Company Representatives and the Proposal Trustee. All such information furnished to you or your Representatives (as defined below) by or on behalf of the Information Parties (irrespective of the form of communication and whether such information is so furnished before, on or after the date hereof), and all analyses, compilations, data, studies, notes, interpretations, memoranda or other documents prepared by you or your Representatives containing or based in whole or in part on any such furnished information are collectively referred to herein as the "Information." In consideration of furnishing you with the Information, the Information Parties request your agreement to, and you agree to and will cause your Representatives to comply with, the following:

1. The Information will be used solely for the purpose of evaluating a Transaction, and the Information will be kept strictly confidential and will not be disclosed by you or your Representatives, except that you may disclose the Information or portions thereof to those of your directors, officers and employees and representatives of your legal, accounting and financial advisors (the persons to whom such disclosure is permissible being collectively referred to herein as the "Representatives") who need to know such information for the purpose of evaluating such Transaction; provided that such Representatives are informed of the confidential and proprietary nature of the Information and agree to comply with the terms of this Agreement. You agree to be responsible for any breach of this Agreement by your Representatives (it being understood that such responsibility shall be in addition to and not by way of limitation of any right or remedy the Company may have against such Representatives with respect to any such breach).
2. Except with the prior written consent of the Company, neither you nor your Representatives will disclose to any person either the fact that any investigations, discussions or negotiations are taking place concerning a Transaction, or that you have received Information from any of the Information Parties, or any of the terms, conditions or other facts with respect to any such possible Transaction or involvement, including the status thereof. The term "person" as used in this Agreement will be interpreted broadly to include the media and any corporation, company, group, partnership, limited liability company, trust or other entity or individual.
3. If you or any of your Representatives become legally compelled (including by deposition, discovery, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Information, you shall provide the Company with prompt prior written notice of such requirement so that the Company may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. If such protective order or other remedy is not obtained, or if the Company waives compliance with the provisions hereof, both you and your Representatives shall disclose only that portion of the Information which is legally required to be disclosed and to take all reasonable steps to attempt to preserve the confidentiality of the Information.
4. The term "Information" does not include any information which (i) at the time of disclosure is generally available to the public (other than as a result of a disclosure directly or indirectly by you or your Representatives) or (ii) was available to you on a non-confidential basis from a source other than any of the Information Parties or their respective advisors, provided that such source is not and was not known by you after due inquiry to be bound by a confidentiality obligation owed to the Company.

5. If you determine not to pursue a Transaction, you will promptly notify the Company or the Proposal Trustee of your determination. At the time of such notice, or if, at any earlier time, the Company or the Proposal Trustee so directs (whether or not you determine to pursue a Transaction), you and your Representatives will, at your option, promptly return to the Company, or destroy, all Information and all copies, extracts or other reproductions in whole or in part thereof. Notwithstanding the return of the Information, you and your Representatives will continue to be bound by this Agreement. Notwithstanding the foregoing, (a) you may retain a copy of the Information to the extent that such retention is required to demonstrate compliance with applicable law, regulation or professional standards, provided that it is kept strictly confidential; and (b) Information that is electronically stored may be retained in back-up servers if it is not intentionally made available to any person, and is deleted in accordance with your normal policies with respect to the retention of electronic records. Notwithstanding the return or destruction of the Information, you and your Representatives shall continue to be bound by the confidentiality and other obligations hereunder.
6. None of the Information Parties, or any of their officers, directors, employees, representatives or agents is making any representation or warranty, express or implied, as to the accuracy or completeness of the Information, and none of the Information Parties, or any of their officers, directors, employees, representatives or agents, will have any liability to you or any other person resulting from your use of the Information. Only those representations or warranties that are made to you in a definitive written agreement regarding a Transaction (a "Definitive Agreement") when, as, and if it is executed, and subject to such limitations and restrictions as may be specified in such Definitive Agreement, will have any legal effect.
7. Unless and until a Definitive Agreement with respect to a Transaction has been executed and delivered, the Company has no legal obligation of any kind whatsoever with respect to a Transaction by virtue of this Agreement or any other written or oral expression with respect to a Transaction except, in the case of this Agreement, for the matters specifically agreed to herein.
8. This Agreement will be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein without regard to the conflicts of law principles thereof.
9. If you agree with the foregoing, please sign and return a copy of this letter, which will constitute our agreement with respect to the subject matter hereof.

Confirmed and Acknowledged

Corporation:
Authorized Signing Officer:
Date:

THIS IS **EXHIBIT "B"** REFERRED TO IN
THE AFFIDAVIT OF DEAN KATO
SWORN BEFORE ME THIS 8th DAY
OF MARCH, 2021



A Commissioner for Oaths
In and for the Province of Alberta

Alexis Teasdale
Barrister & Solicitor

LIQUIDATION SERVICES AGREEMENT

This Liquidation Services Agreement, dated as of March 3, 2021 is made by and between Ritchie Bros. Auctioneers (Canada) Ltd., a corporation incorporated under the laws of British Columbia (the "**Liquidator**") and Tradesmen Enterprises Limited Partnership, a partnership formed under the laws of the Province of Alberta (the "**Company**") herein acting through and represented by its general partner, Tradesmen Enterprises Inc., a corporation incorporated under the laws of the Province of Alberta.

WITNESSETH:

WHEREAS, as part of its business, the Company operates as a mechanical contractor specializing in facility and pipeline construction, piping and structure fabrication, module assembly and maintenance projects, and owns construction machinery, equipment, tooling and rolling stock located at 72101 RR52, County of GP No. 1, Grande Prairie, Alberta, T8X 4G3, Canada (the "**Facility**"), being its facility in Grande Prairie, Alberta, and at the project site for the Fording River Operations Active Water Treatment Facility South (the "**Project Site**") of Teck Coal Limited, located approximately 29 kilometres northeast of Elkford, British Columbia.

WHEREAS, on February 1, 2021 the Company commenced restructuring proceedings by filing a Notice of Intention to Make a Proposal pursuant to subsection 50.4(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "**BIA**").

WHEREAS, the Company desires to retain the Liquidator to liquidate certain equipment at the Facility by conducting an auction for the Company's right, title, benefit and interest in the equipment described in the asset listing attached as Schedule "A" to this Agreement (collectively, the "**Auction Assets**").

WHEREAS, the Company also desires to retain the Liquidator to collect and transport certain equipment from the Project Site described in the asset listing attached as Schedule "B" to this Agreement (collectively the, "**Additional Equipment**") and liquidate the Company's right, title and interest in the Additional Equipment by conducting an auction for the same.

WHEREAS, the Liquidator is willing to serve as the Company's agent, for the purpose of providing such auction and liquidation services, upon the terms and conditions and in the manner set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

1.1 For the purposes of this Agreement, unless something in the subject matter or context is inconsistent therewith, the terms listed below shall have the respective meanings indicated:

"**Additional Equipment**" shall have the meaning set out in the Recitals of this Agreement.

"**Additional Sale Proceeds**" means the gross proceeds from the Commission Sale of the Additional Equipment net of Transfer Taxes and any buyer's premium.

"**Agreement**" means this agreement, including its recitals and schedules.

"Applicable Law" means, in respect of any Person, property, transaction or event, any domestic or foreign statute, law (including the common law), ordinance, rule, regulation, treaty, restriction, regulatory policy, standard, code or guideline, by-law or order, in each case, having the force of law that applies in whole or in part to such Person, property, transaction or event.

"Approval and Vesting Order" has the meaning set out in section 5.1(c) of this Agreement.

"Auction Assets" shall have the meaning set out in the Recitals of this Agreement, except as set forth below.

"BIA" shall have the meaning set out in the Recitals of this Agreement.

"Business Day" means any day excluding a Saturday, Sunday or statutory holiday in the Province of Alberta.

"Claims" means any claim of any nature or kind (including any cross-claim or counterclaim), demand, investigation, chose in or cause of action, suit, default, assessment, litigation, third party action, arbitral proceeding or proceeding by or before any Person.

"Commission Sale" means a liquidation sale of all of the Additional Equipment to be conducted by the Liquidator on behalf of the Company at the Liquidator's Facility, which may include any combination of a liquidation or auction sale of all or substantially all of the Additional Equipment, and/or an online auction of the Additional Equipment that is anticipated to be conducted on or around March 25, 2021.

"Court" means the Alberta Court of Queen's Bench.

"Deposit" shall have the meaning set out in Section 3.1 of this Agreement.

"Events of Default" shall have the meaning set out in Section 10.1 of this Agreement.

"Facility" shall have the meaning set out in the Recitals of this Agreement.

"Governmental Authority" means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, court (including the Court), tribunal, commission, stock exchange, bureau, board or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government or securities market regulation.

"Guaranteed Amount" has the meaning set out in Section 3.1 of this Agreement.

"KSV" means KSV Restructuring Inc., solely in its capacity as Proposal Trustee of the Company under the BIA.

"Liquidator's Commission" means a commission equal to [REDACTED] of the Additional Sale Proceeds.

"Liquidator's Facility" means the Liquidator's auction site at 245 Taylor Park Drive, Lethbridge, AB T1K 8G8.

"Liquidator's Incentive Fee" shall have the meaning set out in Section 3.2 of this Agreement.

"NMG Sale" means a liquidation sale of all of the Auction Assets to be conducted by the Liquidator on behalf of the Company, which may include any combination of a liquidation or auction sale of the Auction Assets located at the Facility, sales of substantially all of the Auction Assets, and/or an online auction of the Auction Assets that is anticipated to be conducted on or around April 12, 2021.

"Overage" has the meaning set out in Section 3.2 of this Agreement.

"Person" means an individual, body corporate, sole proprietorship, partnership or trust or unincorporated association, unincorporated syndicate, unincorporated organization, or another entity, and a natural person, acting in his or her individual capacity or in his or her capacity as executor, trustee, administrator or legal representative, and any Governmental Authority.

"Project Site" shall have the meaning set out in the Recitals of this Agreement.

"Removal Date" means a date no later than April 30, 2021, unless extended pursuant to mutual agreement between the Liquidator and the Company.

"Retained Assets" shall have the meaning set out in Section 3.6 of this Agreement.

"Sale Expenses" shall mean, with respect to the NMG Sale, direct operating expenses incurred in connection with the NMG Sale of [REDACTED] (as outlined in Article 3 hereof), but does not include any occupancy expenses with regard to the Facility.

"Sale Proceeds" means the gross proceeds from the NMG Sale of the Auction Assets net of Transfer Taxes and any buyer's premium.

"Sale Proceeds Account" shall have the meaning set out in Section Error! Reference source not found. of this Agreement.

"Sale Term" means the period of time beginning with the approval of this Agreement by the Court and ending on the Removal Date.

"Services" means the services to be performed by the Liquidator pursuant to Section 2.2 of this Agreement.

"Supervisors" means the individual(s) that will provide Services at the Facility as set forth in Sections 2.2 and 2.3 of this Agreement.

"Transfer Costs" means the actual out of pocket costs reasonably incurred by the Liquidator in connection with transporting the Additional Equipment from the Project Site directly to the Liquidator's Facility.

"Transfer Taxes" means all present and future transfer taxes, sales taxes, excise taxes, use taxes, production taxes, value-added taxes, goods and services taxes, land transfer taxes, registration and recording fees, and any other similar or like taxes and charges imposed by a Governmental Authority in connection with the sale, transfer or registration of the transfer of the Purchased Assets, including harmonized sales tax but excluding any taxes imposed or payable under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp) and any other applicable income tax legislation.

- 1.2 The division of this Agreement into Sections and Articles and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Sections, Articles and Schedules are to Sections and Articles of and Schedules to this Agreement.
- 1.3 In this Agreement words importing the singular number only include the plural and vice versa, words importing any gender include all genders and the term "including" means "including without limiting the generality of the foregoing".
- 1.4 In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.
- 1.5 Currency. All references to currency herein are to lawful money of Canada.

ARTICLE 2 RETENTION

- 2.1 The Company hereby retains the Liquidator to conduct the Commission Sale and the NMG Sale, and the Liquidator hereby agrees to serve, as agent for and on behalf of the Company in connection with the conduct of the Commission Sale and the NMG Sale as set forth herein. With respect to the Commission Sale and the NMG Sale, the Liquidator shall serve as the Company's sole and exclusive agent relative thereto throughout the Sale Term.
- 2.2 On the terms and conditions set forth herein, commencing after Court approval of this Agreement and satisfaction of the conditions precedent hereunder, the Liquidator shall provide the Company with the following Services with respect to the Commission Sale and the NMG Sale:
 - (a) oversee the Commission Sale and the NMG Sale, the removal of the Auction Assets from the Facility, as further described below, the removal of the Additional Equipment from the Project Site, and the transport of the Additional Equipment from the Project Site to the Liquidator's Facility;
 - (b) determine and implement commercially reasonable advertising (including brochures, web site listings and email notices) to sell the Auction Assets and the Additional Equipment during the Sale Term;
 - (c) prepare for the sale of the Auction Assets and the Additional Equipment, including arranging with KSV for a representative of the Company to perform a confirmatory review of the Auction Assets and the Additional Equipment prior to each of the Commission Sale and the NMG Sale, gathering specifications and photographs for brochures and arranging the Auction Assets and the Additional Equipment in a manner that in the Liquidator's judgment is designed to enhance the net recovery on the Auction Assets and the Additional Equipment, respectively;
 - (d) provide and supervise fully qualified and experienced personnel who will prepare for and sell the Auction Assets and the Additional Equipment in accordance with the terms of this Agreement;

- (e) sell the Auction Assets and the Additional Equipment for cash or other immediately available funds to the highest bidder(s) on an "as is where is" and "all sales are final" basis and in accordance with the terms of this Agreement and ensure that all advertising signs and promotional materials in connection with the Auction Assets and the Additional Equipment advise prospective purchasers that all sales are made on an "as is, where is" and "all sales are final" basis, and the Liquidator agrees that all receipts or bills of sale will contain similar "as is, where is" language;
 - (f) charge and collect on behalf of the Company from all purchasers any purchase price together with all applicable taxes in connection therewith, including Transfer Taxes;
 - (g) provide such other related service deemed necessary or prudent by the Company and the Liquidator, with the consent of KSV, under the circumstances presented; and
 - (h) provide the Company and KSV with reporting and reconciliation of accounting information in form reasonably acceptable to the Company and KSV as set forth herein.
- 2.3 In connection with the Commission Sale and the NMG Sale, the Liquidator shall directly retain and engage one or more Supervisors. Any such Supervisor may be an employee of the Liquidator or an independent contractor engaged as an agent of the Liquidator, and will not and shall not be deemed to be an employee of the Company in any manner whatsoever. In consideration of the Liquidator's engagement of the Supervisors in connection with the NMG Sale, Sale Expenses shall include the Supervisors' compensation and expenses.
- 2.4 All sales of the Auction Assets and the Additional Equipment shall be made by the Liquidator as agent in fact for the Company. Title to the Auction Assets and the Additional Equipment shall remain with the Company throughout the Sale Term until sold to a purchaser(s).
- 2.5 Subject to this Agreement, the Liquidator shall be the sole party authorized to sell the Auction Assets and the Additional Equipment. The Auction Assets and the Additional Equipment will be sold in such lots as the Liquidator may determine. The Liquidator will deal with the Auction Assets and the Additional Equipment in accordance with proper liquidation industry practices using qualified personnel to maximize realization.
- 2.6 The Liquidator is authorized to accept any reasonable means as payment for the Auction Assets or the Additional Equipment sold provided it is in immediately available funds.
- 2.7 The Liquidator shall sell the Auction Assets and the Additional Equipment on an "as is, where is" and "all sales are final" basis, without any representations of any kind or nature whatsoever, including as to merchantability or fitness, and without warranty or agreement as to the condition of such Auction Assets or Additional Equipment. The Company acknowledges that the Liquidator is acting solely in the capacity of agent for the Company and has no knowledge with respect to the fitness or usability of any of the Auction Assets or the Additional Equipment. The Liquidator will not use, alter or repair any of the Auction Assets or the Additional Equipment for any particular purpose or otherwise.
- 2.8 The Liquidator will not, and will have no authority to, incur any liability or obligation on behalf of the Company. The sole authority of the Liquidator, as agent of the Company, is to conduct the Commission Sale and the NMG Sale and thereby convey to purchasers, as agent for the Company, the right, title, interest and benefit of the Company in and to the Additional Equipment and the Auction Assets.

**ARTICLE 3
LIQUIDATOR'S FEES AND COMMISSIONS**

- 3.1 The Liquidator hereby guarantees to the Company that the proceeds of the Auction Assets generated from the NMG Sale, net of all Sale Expenses and Transfer Taxes, shall be no less than [REDACTED] (the "Guaranteed Amount"). The Liquidator shall advance half of the Guaranteed Amount to the Company within one (1) Business Day of executing this Agreement (the "Deposit") and shall advance the balance of the Guaranteed Amount no later than twenty-one (21) calendar days following the NMG Sale regardless of the results of the NMG Sale. If the NMG Sale does not take place, the Deposit shall be forthwith returned by the Company to the Liquidator. Notwithstanding the foregoing, if the NMG Sale does not take place as a result of an Event of Default caused by the Liquidator, the Company shall be entitled to retain [REDACTED] of the Deposit as liquidated damages and shall return the remainder of the Deposit to the Liquidator, provided that such forfeiture will not be deemed to constitute the full extent of damages including, without limitation, liquidated damages payable by the Liquidator.
- 3.2 After sufficient proceeds have been collected from the sale of the Auction Assets to first reimburse the Liquidator for the Guaranteed Amount advanced, the Liquidator shall be entitled to be paid the next available proceeds in the amount of [REDACTED] to reimburse the Liquidator for the payment of the Sale Expenses. Any additional proceeds above [REDACTED] (the "Overage") shall be divided [REDACTED] to the Company and [REDACTED] to the Liquidator. The Liquidator's share of the Overage shall be referred to herein as the "Liquidator's Incentive Fee". The percentage of the Overage payable to the Company shall be paid within ninety (90) calendar days of the NMG Sale.
- 3.3 The Liquidator shall be entitled to be paid the Liquidator's Commission, the Transfer Costs, and the Liquidator's out-of-pocket expenses, provided that such out-of-pocket expenses are first agreed to in writing by both KSV and the Company, from the Additional Sale Proceeds. The remainder of the Additional Sale Proceeds net of all Transfer Taxes thereafter shall be paid to the Company. If the Commission Sale does not take place for any reason other than the breach by the Liquidator of a material condition or covenant contained in this Agreement, an Event of Default caused by the Liquidator or the termination of this Agreement in accordance with Article 11 hereof, the Liquidator shall be authorized to retain, for future sale, the Additional Equipment. If the Commission Sale does not take place as a result of a breach by the Liquidator of a material condition or covenant contained in this Agreement, an Event of Default caused by the Liquidator, or the termination of this Agreement in accordance with Article 11 hereof, the Additional Equipment shall be returned by the Liquidator to the Company at the Liquidator's expense.
- 3.4 The Liquidator shall be entitled to charge and retain for its own account a reasonable and customary buyer's premium to all purchasers of: (a) [REDACTED] on all lots selling for [REDACTED] or less, (b) [REDACTED] on all lots selling for over [REDACTED] up to CAD [REDACTED] with a minimum fee of [REDACTED] per lot or, (c) [REDACTED] on all lots selling for over [REDACTED]. Any such buyer's premium collected shall not be considered proceeds of the Commission Sale or the NMG Sale made hereunder.
- 3.5 In the event that any Auction Asset is excluded, omitted or missing at the time of the commencement of the NMG Sale for any reason, the Guaranteed Amount shall be reduced by the unit price corresponding to such Auction Asset on Schedule "A" hereto, provided (i) there shall be no reduction to the Guaranteed Amount unless the aggregate unit price for all such Auction Assets exceeds [REDACTED]. Upon exceeding [REDACTED] the reduction to the Guaranteed Amount shall be on a dollar by dollar basis, exclusive of the [REDACTED] and (ii) in the event of any loss (i.e. fire, theft, vandalism), the Company shall submit an insurance claim and treat the funds received on account of such claim as Sale Proceeds to satisfy the Liquidator's obligations to the Guaranteed Amount, or

lower the Guaranteed Amount in the Liquidator's sole discretion. Nothing in this provision is intended to authorize the Company's removal of Auction Assets from the NMG Sale, but rather to provide a remedy in the event of an occurrence outside of the Company's control, and a method of updating and reconciling Schedule "A" to actual Auction Assets on hand at the Facility at the time of the commencement of the NMG Sale.

- 3.6 Provided that there has been no breach by the Liquidator of a material condition or covenant contained in this Agreement, no Event of Default has been caused by the Liquidator, and this Agreement has not been terminated in accordance with Article 11 hereof, the Liquidator shall be authorized to retain, for future sale, any Auction Assets not paid for by their respective purchasers following the NMG Sale (collectively, the "Retained Assets"). The Liquidator will be entitled to re-sell the Retained Assets by whichever means it deems appropriate. Such sale of any of the Retained Assets shall be calculated into the Sale Proceeds for the purposes of calculating the Overage.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF LIQUIDATOR

- 4.1 The Liquidator hereby represents, warrants and covenants in favor of the Company as follows:
- (a) the Liquidator is a corporation duly incorporated, organized and subsisting under the laws of British Columbia and has all of the necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder;
 - (b) the Liquidator has taken all necessary action required to authorize the execution, performance and delivery of this Agreement, and to consummate the transactions contemplated hereby;
 - (c) this Agreement is a valid binding obligation of the Liquidator enforceable in accordance with its terms;
 - (d) except as contemplated by this Agreement, no authorizations, consents or approvals of, or filing with or notice to, any Governmental Authority is required in connection with the execution, delivery or performance of this Agreement;
 - (e) neither the entering into nor the delivery of this Agreement nor the completion of the transactions contemplated hereby by the Liquidator will result in a violation of: (i) any of the provisions of the constating documents or by-laws of the Liquidator; (ii) any agreement or other instrument to which the Liquidator is a party or by which the Liquidator is bound; or (iii) any Applicable Law;
 - (f) the Liquidator acknowledges that it or its representatives have been furnished with all information regarding the Auction Assets and the Additional Equipment that the Liquidator requires to enable it to enter into this Agreement; and
 - (g) to the best of the Liquidator's knowledge, no action or proceeding has been instituted or threatened affecting the consummation of this Agreement or the transactions contemplated herein.

**ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF COMPANY**

- 5.1 The Company hereby represents, warrants and covenants in favour of the Liquidator as follows:
- (a) the Company is a partnership duly incorporated, organized and subsisting under the laws of the Province of Alberta and, acting through its general partner, Tradesmen Enterprises Inc., has all of the necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder;
 - (b) the Company has taken all necessary action required to authorize the execution, performance and delivery of this Agreement, and has taken all steps necessary and has good and valid authority to consummate the transactions contemplated hereby, including the conduct of the Commission Sale and the NMG Sale;
 - (c) the Company will forthwith after execution of this Agreement seek to obtain one or more approval and vesting orders from the Court which will vest the Auction Assets and the Additional Equipment in each respective purchaser free and clear of any Claims or encumbrances (each, an "Approval and Vesting Order");
 - (d) except as contemplated by this Agreement, no authorizations, consents or approvals of, or filing with or notice to, any Governmental Authority is required in connection with the execution, delivery or performance of this Agreement;
 - (e) neither the entering into nor the delivery of this Agreement nor the completion of the transactions contemplated hereby by the Company will result in a violation of: (i) any of the provisions of the constating documents or by-laws of the Company; (ii) any agreement or other instrument to which the Company is a party or by which the Company is bound; or (iii) any Applicable Law; and
 - (f) this Agreement is a valid and binding obligation of the Company enforceable in accordance with its terms.

**ARTICLE 6
AFFIRMATIVE DUTIES OF LIQUIDATOR**

- 6.1 The Liquidator shall reimburse, indemnify, defend and hold the Company and KSV and their respective officers, directors, agents, and employees, harmless from and against any Claims (including reasonable attorneys' fees), by or on behalf of any person, arising out of the Liquidator's breach of this Agreement, as well as any Claims asserted by the Liquidator's employees or agents, including the Liquidator's employees' or agents' payroll claims (wage claims, claims for taxes required to be withheld from wages, social security, etc.), or unemployment compensation claims.
- 6.2 The Liquidator shall be responsible for obtaining, in the name of and with the assistance of the Company, any permits or licenses necessary to conduct the Commission Sale and the NMG Sale.
- 6.3 The Liquidator shall provide sufficient labor and Supervisors for the set up and conduct of the Commission Sale and the NMG Sale, including auctioneers, accounting support, and personnel to register bidders.

- 6.4 The Liquidator shall not sell any assets located at the Facility other than the Auction Assets. The Company acknowledges that assets belonging to other owners may be sold at the Liquidator's Grande Prairie auction site during the NMG Sale.
- 6.5 The Liquidator shall be responsible for any costs associated with returning any assets inadvertently taken from the Project Site other than the Additional Equipment. Notwithstanding the foregoing, the Liquidator shall not be responsible for any costs associated with returning any assets listed as part of the Additional Equipment as a result of the Company's inadvertence. The Company acknowledges that assets belonging to other owners may be sold at the Liquidator's Facility during the Commission Sale.
- 6.6 The Liquidator shall repair all damage to the Facility caused by the Liquidator or any Person acting on the Liquidator's behalf in connection with the NMG Sale or the removal of Auction Assets from the Facility including, without limitation, by purchasers of Auction Assets; provided the Liquidator shall not be required to restore any part of the Facility or to repair or be liable for any damage resulting from any cause that is unrelated to the NMG Sale or that arose before the commencement of the NMG Sale. Following the Liquidator's completion of the NMG Sale, it shall leave the Facility in a clean and orderly condition, subject to the availability of sufficient trash containers provided by the Company. However, under no circumstances shall the Liquidator be responsible for i) removal of unsold items, ii) removal of items abandoned by buyers, iii) trash and debris of the Company or resulting from the removal process, iv) the Company's paperwork, or v) hazardous materials. As a term of sale between the Liquidator and its purchasers, the Liquidator obligates its purchasers to remove all of their purchased items by no later than April 30, 2021 and leave the Facility clean of all trash and debris resulting from their efforts.
- 6.7 The Liquidator shall charge and collect from buyers all applicable Transfer Taxes in addition to the purchase price and buyer's premium on all sales of the Auction Assets and the Additional Equipment as agent of the Company, and all such Transfer Taxes shall not form part of the proceeds of the Commission Sale or the NMG Sale. The Liquidator shall report and remit all collectible Transfer Taxes from the Commission Sale and the NMG Sale to Canada Revenue Agency. The Liquidator shall and hereby agrees to defend, indemnify, and hold harmless the Company and KSV and their respective directors, officers, agents, employees, principals of and from any and all Claims which the Company or KSV incur as a direct or indirect consequence in whole or in part of the failure of the Liquidator to report and remit the Transfer Taxes collectible by the Liquidator in respect of the Commission Sale and/or the NMG Sale to the Canada Revenue Agency.
- 6.8 The Liquidator shall provide the Company and KSV with an accounting of the Commission Sale and the NMG Sale within twenty-one (21) calendar days after their respective completion. With such accounting, and subject to Sections 3.2 and 3.3 hereof, the Liquidator shall also deliver any and all funds due and payable to the Company by wire transfer in immediately available funds within twenty-one (21) calendar days of each respective sale.
- 6.9 The Liquidator shall provide the Company and KSV with documentation to support all Transfer Costs within twenty-one (21) calendar days after completing the NMG Sale.

ARTICLE 7
AFFIRMATIVE DUTIES OF COMPANY

- 7.1 The Company shall be solely liable for any expenses incurred in connection with the maintenance or operation of the Facility, including but not limited to occupancy costs to April 30, 2021, utilities, security, local telephone, trash services, property taxes and any other related costs.

- 7.2 The Company shall and hereby agrees to defend, indemnify, and hold harmless the Liquidator and its agents, employees, principals and Supervisors from any and all known or unknown Claims which the Liquidator may incur as a direct or indirect consequence in whole or in part of: (i) the environmental condition of the real property on which the Facility is located, and/or any asserted damage, if any, to adjacent land owners, all as now or may at any time hereafter be in effect; (ii) any defect or failure not caused by the negligence and/or intentional misconduct of the Liquidator in product design or materials or storage, manufacture, distribution, sale or use by any person or entity of any product or goods; (iii) the Company's failure to pay over to the appropriate taxing authority any taxes required to be paid by the Company during and in respect of the Sale Term in accordance with applicable law; (iv) negligent or intentional acts or omissions of the Company or its agents, employees, representatives and principals in connection with the Commission Sale or NMG Sale; (v) liens, Claims, interests and encumbrances asserted against the Auction Assets; and/or (vi) the breach by the Company of any of its representations, warranties or other obligations under this Agreement.
- 7.3 The Liquidator shall be authorized to use the names "Tradesmen Enterprises Limited Partnership", "Tradesmen" and "Tradesmen Enterprises" in its advertising of the sale of the Auction Assets and the Additional Equipment and in its promotional materials.

ARTICLE 8 CONDITIONS PRECEDENT

- 8.1 The willingness of the Liquidator and the Company to enter into the transactions contemplated under this Agreement, and specifically any obligation of the Liquidator to fund the Guaranteed Amount pursuant to Section 3.1 hereof, are directly conditioned upon the satisfaction of the following conditions at the time or during the time periods indicated, unless specifically waived in writing by the applicable party:
- (a) all representations and warranties of the Liquidator and the Company hereunder shall be true and correct in all material respects, and no Event of Default shall have occurred;
 - (b) subject to Section 3.5 hereof, the Auction Assets set forth on Schedule "A" shall be available for sale by the Liquidator;
 - (c) the Additional Equipment set forth on Schedule "B" shall be available for sale by the Liquidator;
 - (d) no order shall have been made to restrain, enjoin or prohibit the purchase and sale of all or substantially all of the Auction Assets and/or the Additional Equipment;
 - (e) no material damage by fire or other hazard to all or substantially all of the Auction Assets or the Additional Equipment will have occurred from the date hereof; and
 - (f) the Company shall have obtained the Approval and Vesting Order or Approval and Vesting Orders, as applicable, on or before March 19, 2021.

ARTICLE 9 INSURANCE

- 9.1 The Company warrants that it will maintain throughout the Sale Term liability insurance policies (including, but not limited to, product liability, comprehensive public liability insurance and auto

liability insurance) covering injuries to persons and property in or in connection with the operation of the Facility, as well as casualty insurance, and shall cause the Liquidator to be an additional insured with respect to all such policies. The Company shall be responsible for the payment of all deductibles, self-insurance and other amounts payable in connection with any claim asserted under such policies, except for any claims arising directly from the gross negligence or willful misconduct of the Liquidator, or its employees, representatives, agents or Supervisors. The proceeds of any insurance resulting from a casualty or loss to the Auction Assets shall constitute proceeds hereunder.

ARTICLE 10 DEFAULTS

- 10.1 The following shall constitute "**Events of Default**" hereunder:
- (a) the failure by the Liquidator or the Company to perform any of their respective material obligations hereunder, which failure shall continue uncured five (5) calendar days after receipt of written notice thereof to the defaulting party;
 - (b) any representation or warranty made by the Company or the Liquidator proves untrue in any material respect as of the date made and throughout the Sale Term; or
 - (c) the NMG Sale is terminated, materially interrupted or impaired at the Facility for any reason other than (i) an Event of Default by the Liquidator or (ii) any other material breach or action by the Liquidator not authorized hereunder.

ARTICLE 11 TERMINATION

- 11.1 In the event any material term or covenant of the Liquidator or material condition to be performed or complied with for the benefit of the Company, including without limitation the conditions set out in Section 8.1 hereof, has not been performed or complied with or an Event of Default has been caused by the Liquidator, the Company, without limiting any other right that the Company may have, may either:
- (a) terminate this Agreement upon written notice to the Liquidator; or
 - (b) waive compliance with any such term, covenant or condition in whole or in part with respect to any such non-compliance on such terms as may be agreed upon without prejudice to any of its rights of termination in the event of non-performance of a term, covenant or condition in whole or in part.
- 11.2 In the event any material term or covenant of the Company or material condition to be performed or complied with for the benefit of the Liquidator, including without limitation the conditions set out in Section 8.1 hereof, has not been performed or complied with or an Event of Default has been caused by the Company, the Liquidator, without limiting any other right that the Liquidator may have, may either:
- (a) terminate this Agreement upon written notice to the Company; or
 - (b) waive compliance with any such term, covenant or condition in whole or in part with respect to any such non-compliance on such terms as may be agreed upon without prejudice

to any of its rights of termination in the event of non-performance of a term, covenant or condition in whole or in part.

**ARTICLE 12
MISCELLANEOUS**

12.1 Any notice or other communication under this Agreement shall be in writing and shall be delivered by electronic mail, addressed as follows:

(a) in the case of the Liquidator:

Ritchie Bros. Auctioneers (Canada) Ltd.

Attn: Eva Smoluch
Email: esmoluch@ritchiebros.com

(b) in the case of the Company:

Tradesmen Enterprises Limited Partnership

Attn: Dean Kato, CEO and President
Email: dean.kato@teigp.com

With a Copy to:

KSV Restructuring Inc.

Attn: Bobby Kofman/David Sieradzki
Email: bkofman@ksvadvisory.com / dsieradzki@ksvadvisory.com

12.2 This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein, without reference to any conflict of laws provisions.

12.3 The Liquidator's services involve the orchestration of a sales and marketing effort of the Auction Assets and the Additional Equipment on behalf of the Company. The Liquidator is not guaranteeing any result from the Commission Sale and the NMG Sale (other than payment of the Guaranteed Amount in respect of the NMG Sale) and nothing contained in this Agreement shall be construed as a warranty on the part of the Liquidator that any result will be achieved as part of the Commission Sale or the NMG Sale, unless explicitly stated otherwise, herein. The Guaranteed Amount shall be payable to the Company regardless of the proceeds of realization from the Auction Assets.

12.4 Throughout the Sale Term, the Liquidator shall have the right to the use and occupancy of, and peaceful and quiet possession of, the Facility to conduct the NMG Sale and to allow the removal of the Auction Assets from the Facility, without interruption. The Company shall throughout the Sale Term maintain in good working order, condition and repair, at its sole expense, all heating systems, air conditioning systems, and all other mechanical devices reasonably necessary to allow for the conduct of the NMG Sale and the removal of the Auction Assets from the Facility.

12.5 While the Liquidator takes steps to obtain each buyer's acknowledgment of the Company's rights to pursue buyers for their failure to fulfill purchase obligations as part of the terms of sale, the

Liquidator does not guarantee any buyer's performance of its obligations or payment of its purchase price.

- 12.6 The Liquidator does not warrant that the functions, features or content contained in the Liquidator's website (including any third party software, products or other materials used in connection with such website) or any third party website used by the Liquidator, will be timely, secure, uninterrupted or error-free, or that defects will be corrected.
- 12.7 Notwithstanding any of the terms of this Agreement to the contrary, the Liquidator's maximum liability for (i) any breach of covenants, agreements and/or indemnifications set forth herein, and (ii) any and all damages of any type or nature whatsoever, whether in contract, tort or otherwise, that may be sustained by the Company or any other person or entity that arises from or is otherwise related to this Agreement or the Commission Sale or the NMG Sale shall be limited to the aggregate amounts actually received by the Liquidator as compensation under this Agreement; provided, however, that nothing in this Section 12.7 limits the Liquidator's liability for the Guaranteed Amount.
- 12.8 The Liquidator has no obligation whatsoever to store, handle, treat, dispose, transport or remove any hazardous substance that may be located at the Facility or otherwise associated with the Auction Assets and shall have no liability to any party with regard to the removal or remediation of any such hazardous substances.
- 12.9 Except as expressly provided herein, each of the Company and the Liquidator will pay its respective legal and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement and any other costs and expenses whatsoever and howsoever incurred and will indemnify and save harmless the other from and against any Claim for any broker's, finder's or placement fee or commission alleged to have been incurred as a result of any action by it in connection with the transactions under this Agreement.
- 12.10 In the event any term or provision contained within this Agreement shall be deemed illegal or unenforceable, then such offending term or provision shall be considered deleted from this Agreement and the remaining terms shall continue to be in full force and effect.
- 12.11 This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations and understandings, and can only be modified by written agreement duly executed by the Company and the Liquidator. No waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, shall be limited to the specific breach waived.
- 12.12 Neither the Company nor the Liquidator shall assign this Agreement without the express written consent of the other. This Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and permitted assigns.
- 12.13 This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts, together, shall constitute one and the same instrument. Delivery by facsimile of this Agreement or an executed counterpart hereof shall be deemed a good and valid execution and delivery hereof or thereof.


- 12.14 Nothing contained hereof shall be deemed to create any relationship between the Liquidator and the Company other than an agency relationship. It is stipulated that the parties are not partners or joint venturers.

[Signature page follows]

IN WITNESS WHEREOF the parties have properly executed this Agreement on the date first written above.

**RITCHIE BROS. AUCTIONEERS
(CANADA) LTD.**

By:


Name: EVA SMOLUCH
Title: STRATEGIC ACCOUNTS MGR.

**TRADESMEN ENTERPRISES LIMITED
PARTNERSHIP BY ITS GENERAL
PARTNER, TRADESMEN ENTERPRISES
INC.**

By:


Name: Dean Kato
Title: CEO and President

SCHEDULES REDACTED DUE TO CONFIDENTIALITY