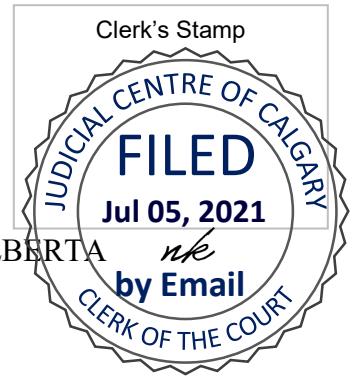


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Justice Horner  
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July 15, 2021



COURT FILE NUMBER 2101-04670

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF BANK OF MONTREAL

RESPONDENTS TRADESMEN ENTERPRISES LIMITED PARTNERSHIP and  
TRADESMEN ENTERPRISES INC.

MATTER IN THE MATTER OF THE RECEIVERSHIP OF  
TRADESMEN ENTERPRISES LIMITED PARTNERSHIP,  
and TRADESMEN ENTERPRISES INC.

DOCUMENT **FIRST REPORT OF KSV RESTRUCTURING INC.,  
in its capacity as receiver and manager of TRADESMEN  
ENTERPRISES LIMITED PARTNERSHIP AND  
TRADESMEN ENTERPRISES INC.**

**JULY 5, 2021**

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF PARTY  
FILING THIS DOCUMENT

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**First Report to Court of  
KSV Restructuring Inc. as  
Receiver and Manager of  
Tradesmen Enterprises Limited Partnership  
and Tradesmen Enterprises Inc.**

July 5, 2021

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## **Appendices**

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COURT FILE NUMBER: 2101-04670

## COURT OF QUEEN'S BENCH OF ALBERTA

IN THE MATTER OF THE RECEIVERSHIP OF  
TRADESMEN ENTERPRISES LIMITED PARTNERSHIP  
AND TRADESMEN ENTERPRISES INC.  
OF THE CITY OF CALGARY,  
IN THE PROVINCE OF ALBERTAFIRST REPORT OF KSV RESTRUCTURING INC.  
AS RECEIVER AND MANAGER OF  
TRADESMEN ENTERPRISES LIMITED PARTNERSHIP AND  
TRADESMEN ENTERPRISES INC.

JULY 5, 2021

## 1.0 Introduction

1. This report (the "Report") is filed by KSV Restructuring Inc. ("KSV") in its capacity as receiver and manager ("Receiver") of Tradesmen Enterprises Limited Partnership ("TELP") and Tradesmen Enterprises Inc. ("TEI", and together with TELP, the "Companies"). KSV was appointed Receiver pursuant to an order of the Court of Queen's Bench of Alberta (the "Court") issued on April 15, 2021 (the "Receivership Order"). A copy of the Receivership Order is attached as Appendix "A".
2. KSV was formerly the proposal trustee (the "Proposal Trustee") in connection with Notices of Intention to Make a Proposal filed by the Companies on February 1, 2021 pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") (the "NOI Proceedings").
3. The principal purposes of the NOI Proceedings were for the Companies to:
  - a) obtain a stay of proceedings to afford the Companies breathing space to advance litigation against Teck Coal Limited ("Teck"), Fluor Canada Ltd. ("Fluor"), Canadian Pacific Limited, the Province of British Columbia and FortisBC Energy (the "Litigation"); and
  - b) access funding under an interim financing credit facility dated February 1, 2021 (the "Interim Financing Agreement") between the Companies and Bank of Montreal ("BMO"), as interim lender (in such capacity, the "Interim Lender"), which was approved pursuant to a Court order dated February 3, 2021, as amended and restated pursuant to a Court order dated March 2, 2021.
4. As it became apparent that the Litigation would not be resolved prior to August 1, 2021, being the six-month anniversary of the commencement of the NOI Proceedings and the date by which the Companies were required to file a proposal pursuant to subsection 50.4(9) of the BIA, the Companies did not seek to extend the NOI Proceedings beyond April 17, 2021. As a result, the Companies were deemed to have made assignments in bankruptcy pursuant to subsection 50.4(8) of the BIA on April 17, 2021. KSV is the licensed insolvency trustee administering the Companies' bankruptcy proceedings.

## 1.1 Purposes of this Report

1. The purposes of this Report are to:
  - a) provide background information about the Companies and these proceedings, including the status of the Litigation;
  - b) summarize the outcome of the auctions of TELP's machinery and equipment conducted by Ritchie Bros. Auctioneers (Canada) Ltd. (the "Liquidator") pursuant to a Court-approved Liquidation Services Agreement dated March 3, 2021 between TELP and the Liquidator (the "LSA");
  - c) discuss the Receiver's recommended distribution to BMO (the "Distribution") of liquidation proceeds of approximately \$2.612 million (the "Net Proceeds");
  - d) discuss the need to increase the quantum of the Receiver's borrowings and the Receiver's Borrowings Charge (as defined in the Receivership Order) from \$2.5 million to \$3 million;
  - e) summarize the fees and disbursements of the Receiver, its insolvency counsel, Bennett Jones LLP ("Bennett Jones"), and its litigation counsel, Lawson Lundell LLP ("Lawson"), from April 1, 2021 to May 31, 2021, and seek approval of same; and
  - f) recommend that the Court issue an order (the "Interim Distribution Order"), *inter alia*:
    - i. authorizing the Receiver to make the Distribution to BMO;
    - ii. increasing the limit of the Receiver's borrowings from the maximum principal amount of \$2.5 million to \$3 million, and granting a corresponding increase in the Receiver's Borrowings Charge;
    - iii. approving the fees and disbursements of the Receiver, Bennett Jones and Lawson for the period April 1, 2021 to May 31, 2021; and
    - iv. approving this Report and the Receiver's activities described herein.

## 1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon unaudited financial information prepared by the Companies, the Companies' books and records and discussions with the Companies' management, legal counsel and majority owner, Fulcrum Capital Partners Inc. ("Fulcrum"). The Receiver has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*.
2. The Receiver expresses no opinion or other level of assurance with respect to the financial information presented in this Report or relied upon by the Receiver in preparing this Report. Any party wishing to place reliance on the Companies' financial information should perform its own due diligence and any reliance placed by any party on the information presented herein shall not be considered sufficient for any purpose whatsoever.

## 2.0 Background

1. Prior to the commencement of the NOI Proceedings, TELP carried on a mechanical contracting business specializing in facility and pipeline construction, piping and structure fabrication, module assembly and maintenance projects. TELP operated from two leased premises in Alberta, both of which were vacated on or around April 30, 2021. Its head office was located in Calgary and its fabrication facility in Grande Prairie. TELP's workforce was not unionized and it did not maintain any registered pension plans. TEI is an inactive holding company with no business activity or operations.
2. Pursuant to an agreement dated May 28, 2019 (the "Teck Contract"), Teck retained TELP to act as the general contractor to construct the Fording River Operations Active Water Treatment Facility (South Project) located near Elkford, British Columbia (the "Project").
3. The Project is substantially over budget – TELP takes the position that the Teck Contract originally had a budget of \$32 million. The Project is now projected to have a total cost of approximately \$140 million. The Receiver has been advised that due to the increased scope of the Project, TELP issued approximately 900 change order requests and 1,700 requests for information to Teck. By letter dated January 11, 2021, Teck terminated the Teck Contract. TELP's position is that the grounds relied upon by Teck to terminate the contract are improper. At the time Teck terminated the contract, the Project was the only material project being performed by TELP.
4. The termination of the Teck Contract caused the Companies to commence the NOI Proceedings. TELP reduced its employee headcount from approximately 614 in early January to seven as at the date of this Report. During the NOI Proceedings, TELP entered into contracts with its remaining employees concerning their future terms of employment with TELP (the "Employment Agreements").
5. TELP's remaining employees are critical to the Litigation given their familiarity with the Teck Contract and/or their involvement with the Project. Accordingly, the Receiver retained each of these employees on the terms of their Employment Agreements, subject to each employee confirming that the Receiver is not a successor-employer of TELP and that the Receiver shall have no personal liability for any of TELP's employment-related obligations.
6. Each of the Employment Agreements provides the respective employee with an entitlement to participate in a key employee retention plan (the "KERP"). Pursuant to a Court order dated March 2, 2021 obtained in the NOI Proceedings, a charge was granted over the Companies' property, assets and undertakings (collectively, the "Property") to secure the payments contemplated by the KERP (the "KERP Charge"). The Receivership Order recognizes the KERP Charge and preserves the priority thereof.

7. BMO is the Companies' principal secured creditor and the applicant in these proceedings. The details of BMO's debt are provided in Section 4 of this Report. The Companies' other significant creditors are:
  - a) sub-contractors who may be owed approximately \$18 million according to TELP's books and records. As at the date of this Report, 15 of these sub-contractors (collectively, the "Lien Claimants") have filed liens against Project lands totalling approximately \$18.9 million for their unpaid work performed on the Project. There may be additional lien claims filed in due course;
  - b) Fulcrum was owed approximately \$1.8 million at the commencement of the NOI Proceedings and since that time has funded its guarantee of the BMO debt; and
  - c) Teck also claims to be a creditor of TELP, which TELP disputes. As set out in Section 2.1 below, Teck has recently provided its counterclaim to TELP.
8. A summary of the Companies' financial position at the commencement of the NOI Proceedings was provided in the Proposal Trustee's First Report to Court dated February 2, 2021 (the "First Report") and, accordingly, is not repeated in this Report. A copy of the First Report is provided in Appendix "B", without appendices. All of the Court materials filed in these proceedings are available on the Receiver's website at <https://www.ksvadvisory.com/insolvency-cases/case/tradesmen-enterprises>.

## 2.1 The Litigation

1. Shortly following the termination of the Teck Contract, TELP registered builders' liens in the amount of approximately \$52.8 million against lands associated with the Project, including real property owned by Canadian Pacific Limited and the Province of British Columbia, and a statutory right of way registered in favour of FortisBC Energy Inc.
2. On February 24, 2021, TELP commenced the Litigation against Teck, Fluor, Canadian Pacific Limited, the Province of British Columbia and FortisBC Energy Inc. by filing a Notice of Civil Claim in the Supreme Court of British Columbia (the "B.C. Court").
3. Since that time, the parties have taken steps to advance the Litigation, including:
  - a) in April, 2021, TELP and Teck agreed to arbitrate the Litigation;
  - b) Stuart Hankinson was jointly engaged by Teck and TELP as arbitrator (the "Arbitrator");
  - c) TELP is seeking to have Fluor added as a party to the arbitration. Fluor is the design engineering firm retained by Teck for the Project. On April 21, 2021, the parties appeared before the B.C. Court in respect of an application by Fluor to stay the Litigation as against it. The B.C. Court granted a stay and directed that Fluor's participation in the arbitration is to be determined by the Arbitrator;
  - d) on May 26, 2021, representatives of TELP, Teck and the Receiver convened a "senior executive" meeting via videoconference. The senior executive meeting is required under the dispute resolution provisions of the Teck Contract to see if the dispute between TELP and Teck could be settled prior to the commencement of the arbitration. The dispute was not resolved at the May 26<sup>th</sup> meeting;

- e) on June 3, 2021, TELP's Notice to Arbitrate was served on Teck, Fluor and the Arbitrator; and
  - f) on June 23, 2021, Teck served its counterclaim on TELP, Fluor and the Arbitrator.
4. The first substantive step in the arbitration is Fluor's application to be removed as a party to the arbitration. Fluor's application is scheduled to be heard by the Arbitrator on August 6, 2021.

### **3.0 Net Proceeds**

1. The Receivership Order recognizes and gives full effect to an approval and vesting order approving the LSA issued by the Court on March 16, 2021 in the NOI Proceedings. Pursuant to the Receivership Order, the Net Proceeds were paid by the Liquidator to the Receiver.
2. The Liquidator sold TELP's fixed assets located at its leased facility in Grande Prairie, Alberta, as well as certain sundry equipment located on the Project site. The Receiver sold TELP's office furniture and computer equipment located at its leased head office in Calgary, Alberta. All of TELP's owned fixed assets have now been liquidated.
3. The Net Proceeds paid by the Liquidator to the Receiver from the sale of the fixed assets plus the nominal proceeds from the Receiver's sale of the office furniture and equipment totaled approximately \$2.612 million. The Net Proceeds are being held by the Receiver in its receivership account opened for these proceedings.

### **4.0 Distribution to BMO**

1. Subject to an order of the Court, the Receiver proposes to make the Distribution, which is in the amount of approximately \$2.612 million.
2. BMO intends to apply the Distribution as a permanent reduction against the Companies' pre-filing indebtedness.
3. BMO's pre-filing and post-filing indebtedness is summarized below:
  - a) BMO's pre-filing debt totals approximately \$25 million (the "BMO Pre-Filing Indebtedness"), plus interest and costs which continue to accrue. Fulcrum provided BMO with a partial guarantee of the Companies' indebtedness to BMO, and Fulcrum has funded that guarantee;
  - b) during the NOI Proceedings, the \$2.8 million Interim Financing Agreement was fully drawn. Pursuant to the Receivership Order, advances under the Interim Financing Agreement are secured by a charge on the Property (the "Interim Financing Charge"); and
  - c) as at the date of this Report, BMO has funded \$690,000 pursuant to receiver's certificates (the "Receiver's Certificates") in accordance with the Receivership Order. Pursuant to the Receivership Order, such advances are secured by the Receiver's Borrowings Charge.



- The Interim Financing Agreement sets out that the sale of BMO's collateral is to be distributed to BMO. Section 16 of the Interim Financing Agreement titled "Mandatory Repayments" provides as follows:

**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. **[emphasis added]**

- In addition, Sections 13 and 25 of the Interim Financing Agreement permit BMO, as Interim Lender, to waive certain conditions precedent to advances under the Interim Financing Agreement and negative covenants, including those related to the payment of the BMO Pre-Filing Indebtedness.
- In connection with the proposed treatment of the Distribution, BMO has provided the applicable waivers in accordance with the Interim Financing Agreement. Equally, BMO, in its capacity as the holder of the Receiver's Certificates and the beneficiary of the Receiver's Borrowings Charge, has indicated that it wishes to waive its entitlement to repayment with respect to the Net Proceeds for the purposes of the Interim Distribution Order.
- A copy of the Interim Financing Agreement is attached as Appendix "C".

#### 4.1 Court-Ordered Charges

- The known obligations ranking in priority to BMO's pre-filing security on TELP's fixed assets are the Companies' obligations secured by the Court-ordered charges created or continued under the Receivership Order. The status of each charge is provided in the table below.

Charge	Amount (\$000s)	Status
Receiver's Charge	1,000	All fees and disbursements of the Receiver and its counsel are current up to May 31, 2021. These fees are contemplated to be paid in the cash flow pursuant to which BMO is advancing funds under the Receiver's Certificates.
Administration Charge	300	The Administration Charge covers the professional fees incurred during the NOI Proceedings, all of which have been paid.
Receiver's Borrowings Charge	2,500	As noted above, the Receiver has borrowed \$690,000 as at the date of this Report.
Interim Financing Charge	2,800	The \$2.8 million Interim Financing Agreement was fully drawn upon during the NOI Proceedings.
KERP Charge	202.5	All amounts payable under the KERP have been funded to-date, including the first quarterly bonuses payable thereunder. Projected KERP payments are included in the Companies' cash flow, with funding made pursuant to the Receiver's Certificates.

## 4.2 Recommendation

1. The Distribution is to be applied by BMO against the BMO Pre-Filing Indebtedness. The Receiver believes that the proposed Distribution and its application to the BMO Pre-Filing Indebtedness is appropriate for the following reasons:
  - a) the Receiver's counsel, Bennett Jones, has provided the Receiver with an opinion<sup>1</sup> on BMO's security in respect of the BMO Pre-Filing Indebtedness. The opinion confirms the validity and enforceability of BMO's security, subject to standard qualifications and assumptions;
  - b) BMO's security includes TELP's fixed assets. The Receiver is not aware of any creditor whose security attaches to TELP's fixed assets other than BMO and Fulcrum, which have both consented to the Distribution;
  - c) although BMO's advances secured by the Interim Financing Charge and the Receiver's Borrowings Charge rank in priority to the Pre-Filing Indebtedness, BMO has provided the applicable waivers that the Distribution can be applied against the BMO Pre-Filing Indebtedness;
  - d) the claims of the sub-contractors (including the Lien Claimants) do not attach to the fixed assets or the Net Proceeds. The Receiver believes it is inequitable for BMO to use collateral which is solely subject to its security interests to finance these proceedings, including the Litigation, which, if successful, will likely result in proceeds being paid to the sub-contractors in respect of their trust claims; and
  - e) the Receiver is not aware of any other secured claims that rank or may rank in priority to BMO in respect of the fixed assets or the Net Proceeds.
2. Based on the foregoing, the Receiver recommends that this Honourable Court issue an order authorizing and directing the Receiver to make the Distribution to BMO.

## 5.0 Receiver's Borrowings Charge<sup>2</sup>

1. As a mechanism to fund these proceedings, the Receivership Order created the Receiver's Borrowings Charge in the amount of \$2.5 million, being a priority charge over the Property subordinate only to the Receiver's Charge and the Administration Charge.<sup>3</sup> As at the date of this Report, BMO has advanced \$690,000 under the Receiver's Certificates, which amount is secured by the Receiver's Borrowings Charge.
2. In order to minimize the number of Court attendances for the sole purpose of increasing the Receiver's borrowings and the amount of the Receiver's Borrowings Charge, paragraph 27 of the Receivership Order authorizes the Receiver to increase its borrowings in increments of \$500,000 by serving a report on the Service List, which describes the need for the increased borrowings, or by further order of the Court. Any such increases are to be secured by the Receiver's Borrowings Charge.

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<sup>1</sup> A copy of the security opinion will be made available to the Court should the Court wish to review it.

<sup>2</sup> Capitalized terms in this section of the Report have the meanings ascribed to them in the March 2<sup>nd</sup> Order, or in the proposed Receivership Order, as applicable.

<sup>3</sup> The Administration Charge secured the professional fees incurred in the NOI Proceedings, which were continued under the Receivership Order.

3. If the Receiver serves a report on the Service List and a party files a Notice of Objection, the increase would be subject to a further Court order. If no Notice of Objection is received within 10 days of serving such report, the Receiver's Borrowings Charge would be increased without the need for a further order of the Court.
4. The Receiver has worked with the Company's former management team to prepare a cash flow projection for the period ending September 30, 2021 (the "Projection"). The Projection reflects a cumulative funding requirement of approximately \$2.7 million (including advances to-date of \$690,000), principally to fund professional fees incurred in connection with the Litigation, employee costs secured by the KERP Charge and costs to store and maintain TELP's data, which is critical for the Litigation. Accordingly, the Receiver is proposing to increase its maximum borrowings and the Receiver's Borrowings Charge from \$2.5 million to \$3 million.

## 6.0 Professional Fees

1. The Receiver has two sets of counsel: Bennett Jones, which deals exclusively with receivership matters, and Lawson, which deals with the Litigation. Prior to the NOI Proceedings, TELP had retained Lawson as its litigation counsel. Given its deep knowledge of the Litigation, the Receiver was of the view that retaining Lawson as its litigation counsel would be more cost effective than retaining new counsel for this purpose. Its retention also allowed the Litigation to advance without the disruption that would have resulted from retaining new litigation counsel.
2. The fees (excluding disbursements and applicable sales tax) of the Receiver, Bennett Jones and Lawson from April 1, 2021 to May 31, 2021 total approximately \$90,300, \$54,700 and \$244,400. This includes fees incurred in the two weeks prior to the date of the Receivership Order, during which the Receiver and its counsel worked with the Companies, BMO and their respective legal counsel to prepare for the transition to the receivership from the NOI Proceedings, including in respect of the Court materials filed in support of BMO's receivership application.
3. Detailed invoices in respect of the fees and disbursements of the Receiver, Bennett Jones and Lawson can be made available to the Court upon request. A summary of the fees and disbursements included on each invoice of KSV, Bennett Jones and Lawson for the referenced billing periods is attached as Appendix "D".
4. As detailed in its accounts, the Receiver's principal activities have included, among other things, the following:
  - a) preparing for the transition to these receivership proceedings from the NOI Proceedings, including dealing with the Employment Agreements and working with BMO to approve a funding mechanism;
  - b) working with management to prepare a cash flow projection in order to quantify the Receiver's Borrowings Charge;
  - c) providing BMO with weekly cash flow reporting, including rolling cash flow projections and budget-to-actual variance analyses;
  - d) overseeing the liquidation of TELP's fixed assets and coordinating with the Liquidator in respect thereof;

- e) working with Lawson and Bennett Jones in connection with the Litigation, including reviewing and commenting on materials filed with the B.C. Court and/or the Arbitrator;
  - f) preparing for and attending the senior executive meeting on May 26, 2021 with representatives of TELP and Teck; and
  - g) drafting this Report and reviewing and commenting on Court materials filed in connection with the proposed Interim Distribution Order.
5. The Receiver is of the view that the hourly rates charged by Bennett Jones and Lawson are consistent with the rates charged by corporate law firms practicing in the areas of corporate insolvency, restructuring and litigation in the Alberta market, and that the overall fees charged by Bennett Jones, Lawson and the Receiver are reasonable and appropriate in the circumstances.

## 7.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court issue the proposed Interim Distribution Order granting the relief detailed in Section 1.1(1)(f) of this Report.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.  
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF  
TRADESMEN ENTERPRISES LIMITED PARTNERSHIP AND  
TRADESMEN ENTERPRISES INC.  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “A”**

COURT FILE NUMBER 2101-04670  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
APPLICANT **BANK OF MONTREAL**  
RESPONDENTS **TRADESMEN ENTERPRISES LIMITED  
PARTNERSHIP, and TRADESMEN ENTERPRISES  
INC.**  
DOCUMENT **CONSENT RECEIVERSHIP ORDER**

Clerk's Stamp

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File No. 407500.000127

**DATE ON WHICH ORDER WAS PRONOUNCED: APRIL 15, 2021**  
**NAME OF JUSTICE WHO MADE THIS ORDER: JUSTICE B.E.C. ROMAINE**  
**LOCATION OF HEARING: CALGARY, ALBERTA**

**UPON** the application (the "**Application**") of Bank of Montreal ("**BMO**") for the appointment of a receiver in respect of each of Tradesmen Enterprises Limited Partnership and Tradesmen Enterprises Inc. (collectively, the "**Debtor**"); **AND UPON** having read the Application, the Affidavit of Zachary Newman sworn on April 6, 2021 and filed, the Supplemental Affidavit of Zachary Newman sworn on April 13, 2021 and filed, the Affidavit of Service of Jennifer Gorrie sworn on April 13, 2021 and filed, the Fourth Report of KSV Restructuring Inc. ("**KSV**") in its capacity as proposal trustee dated and filed on April 6, 2021, the Supplement to the Fourth Report of KSV in its capacity as proposal trustee dated and filed on April 13, 2021, and such other pleadings filed in this action or in Alberta Court of Queen's Bench Action No. BK01-095189 (the "**NOI Proceedings**"); **AND UPON** noting the consent of the Debtor; **AND UPON** noting the consent of KSV to act as receiver and manager of the Debtor (in such capacity, the "**Receiver**"); **AND UPON** hearing from counsel for BMO, counsel for the Debtor, counsel for KSV, and any other counsel or interested parties present;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. The time for service of the Application is hereby abridged and deemed good and sufficient and this Application is properly returnable today.

**LIFTING OF NOI STAY**

2. The stay of proceedings provided for in the NOI Proceedings is hereby lifted *nunc pro tunc* to allow for the commencement of the within action and the Application.

**APPOINTMENT**

3. Pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”), and section 13(2) of the *Judicature Act*, R.S.A. 2000, c.J-2, KSV is hereby appointed Receiver, without security, of all of the Debtor’s current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the “**Property**”).

**RECEIVER'S POWERS**

4. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, which shall include the Receiver’s ability to abandon, dispose of or otherwise release any interest in any of the Debtor’s real property, or any right in any immovable assets;
  - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to or by the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;
- (k) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:



- (i) without the approval of this Court in respect of any transaction not exceeding \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$2,000,000; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, R.S.A. 2000, c. P-7 or any other similar legislation in any other province or territory shall not be required.

- (m) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding section 191 of the *Land Titles Act*, RSA 2000, c. L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtor, and without interference from any other Person (as defined below).

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

5. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver’s request.
6. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.
7. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in

possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph; and (ii) affect a Regulatory Body’s investigation in respect of the debtor or an action, suit or proceeding that is taken in respect of the debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. “**Regulatory Body**” means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

#### **NO EXERCISE OF RIGHTS OF REMEDIES**

10. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Debtor or the

Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:

- (a) empower the Debtor to carry on any business that the Debtor is not lawfully entitled to carry on;
  - (b) prevent the filing of any registration to preserve or perfect a security interest;
  - (c) prevent the registration of a claim for lien; or
  - (d) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment.
11. Nothing in this Order shall prevent any party from taking an action against the Applicant where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Receiver at the first available opportunity.

#### **NO INTERFERENCE WITH THE RECEIVER**

12. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, except with the written consent of the Debtor and the Receiver, or leave of this Court.

#### **CONTINUATION OF SERVICES**

13. All persons having:
- (a) statutory or regulatory mandates for the supply of goods and/or services; or
  - (b) oral or written agreements or arrangements with the Debtor, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtor
- are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the

Debtor or exercising any other remedy provided under such agreements or arrangements. The Debtor shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Debtor in accordance with the payment practices of the Debtor, or such other practices as may be agreed upon by the supplier or service provider and each of the Debtor and the Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

14. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

#### **EMPLOYEES**

15. Subject to employees’ rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor’s behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47 (“**WEPPA**”).
16. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such

information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

17. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
- (i) before the Receiver's appointment; or
  - (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
- (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
    - A. complies with the order, or
    - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;

- (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,
  - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
  - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
- (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

- 18. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, sections 14.06, 81.4(5) or 81.6(3) of the BIA.

#### **RECEIVER'S ACCOUNTS**

- 19. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1,000,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.
- 20. The Receiver and its legal counsel shall pass their accounts from time to time.
- 21. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its

counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

## **FUNDING OF THE RECEIVERSHIP**

22. The Receiver shall be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2,500,000 at any time except as otherwise provided for in paragraph 27 below or as this Court may by further order authorize, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.
23. Neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
24. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.
25. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.
26. The Receiver shall be allowed to repay any amounts borrowed by way of Receiver’s Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.
27. The Receiver shall be allowed to increase the borrowings limit under paragraph 22 hereof, in \$500,000 increments, without further order of this Court, provided that (i) the Receiver prepares and files a report to the Court describing the need for increased borrowings, and (ii) serves such



report on the service list maintained for these proceedings. Unless a Person files and serves on the Receiver a written Notice of Objection within 10 days of the service of the report, the Receiver shall be authorized and entitled to increase its borrowings by such a \$500,000 increment and the Receiver's Borrowings Charge shall be increased to the same extent. In the event that a Notice of Objection is filed and served on the Receiver, the Receiver's Borrowing Charge shall only be increased if so ordered by the Court upon application by the Receiver.

#### **CONTINUATION OF CHARGES AND PRIORITIES OF CHARGES**

28. Each of the Administration Charge, the Interim Financing Charge and the KERP Charge (each as defined in the orders granted in the NOI Proceedings) shall continue to constitute valid and enforceable charges on the Property.
29. The priority of the charges created in the NOI Proceedings (and continued by this Order) in relation to the Receiver's Charge and the Receiver's Borrowings Charge created hereunder, shall be as follows:
  - (a) First - the Receiver's Charge;
  - (b) Second - the Administration Charge;
  - (c) Third - the Receiver's Borrowings Charge;
  - (d) Fourth - the Interim Financing Charge; and
  - (e) Fifth - the KERP Charge.

#### **ALLOCATION**

30. Any interested party may apply to this Court on notice to any other party likely to be affected, for an Order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

#### **AUCTION**

31. Notwithstanding any other provision of this Order, Ritchie Bros Auctioneers (Canada) Ltd. (the "**Liquidator**") is hereby authorized and directed to continue to perform its services under the liquidation services agreement ("**Liquidation Services Agreement**") entered into between the Liquidator and the Debtor, as approved by this Honourable Court pursuant to the Order granted on March 16, 2021 in the NOI Proceedings (the "**Auction Order**").

32. The Auction Order is hereby ratified and recognized in these proceedings and remains enforceable in all respects, except that references to the “Applicants” therein shall be read to mean the Receiver where the context requires.
33. Any proceeds arising from the Liquidation Services Agreement, the Auction Order and the transactions contemplated thereunder, which, but for the commencement of this action, would be payable to the Debtor shall be paid to the Receiver in accordance with the terms of this Order.

#### **GENERAL**

34. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
35. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver’s reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
36. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor and the Receiver is hereby authorized to act as the trustee in bankruptcy of the Debtor.
37. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
38. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

39. The Plaintiff shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
40. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

## **FILING**

41. The Receiver shall continue to maintain its present website in respect of these proceedings at <https://www.ksvadvisory.com/insolvency-cases/case/tradesmen-enterprises> (the "**Receiver's Website**") and shall post there as soon as practicable:
- (a) all materials prescribed by statute or regulation to be made publically available; and
  - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
42. Service of this Order shall be deemed good and sufficient by:
- (a) serving the same on:
    - (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
    - (ii) any other person served with notice of the application for this Order;
    - (iii) any other parties attending or represented at the application for this Order; and
  - (b) posting a copy of this Order on the Receiver's Website
- and service on any other person is hereby dispensed with.

43. 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.

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

---

Justice of the Court of Queen's Bench of Alberta

**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of Tradesmen Enterprises Limited Partnership and Tradesmen Enterprises Inc. appointed by Order of the Court of Queen's Bench of Alberta and Court of Queen's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "**Court**") dated the 15<sup>th</sup> day of April, 2021 (the "**Order**") made in action numbers [●], has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of [\$], being part of the total principal sum of \$2,500,000 that the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [**daily**] [**monthly not in advance on the ● day of each month**] after the date hereof at a notional rate per annum equal to the rate of [●] per cent above the prime commercial lending rate of Bank of [●] from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at [●].
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

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

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

KSV Restructuring Inc., solely in its capacity as  
Receiver of the Property (as defined in the Order),  
and not in its personal capacity

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

## **Appendix “B”**

**ENTERED**



20923

COURT FILE NUMBER

B201 2708739

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

COM  
Feb 3 2021  
Justice Jones

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

**FIRST REPORT OF KSV RESTRUCTURING INC.  
IN ITS CAPACITY AS PROPOSAL TRUSTEE UNDER THE  
NOTICES OF INTENTION TO MAKE A PROPOSAL**

**FEBRUARY 2, 2021**

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF PARTY  
FILING THIS DOCUMENT

**PROPOSAL TRUSTEE**  
**KSV RESTRUCTURING INC.**  
150 King Street West  
Suite 2308  
Toronto, ON M5H 1J9

**Attention: Bobby Kofman/David Sieradzki**  
Telephone No.: 416-932-6228/647-282-6228  
Email:  
bkofman@ksvadvisory.com/dsieradzki@ksvadvisory.com

**COUNSEL TO PROPOSAL TRUSTEE**  
**BENNETT JONES LLP**  
3400 One First Canadian Place  
PO Box 130  
Toronto, ON M5X 1A4

**Attention: Sean Zweig/Joshua Foster**  
Telephone No.: 416-777-6254/416-777-7906  
Email: zweigs@bennettjones.com/fosterj@bennettjones.com





**First Report to Court of  
KSV Restructuring Inc. as  
Proposal Trustee of  
Tradesmen Enterprises Limited Partnership  
and Tradesmen Enterprises Inc.**

February 2, 2021

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## **Appendices**

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ESTATE FILE NOS.: 25-095189 AND 25-2708739

## COURT OF QUEEN'S BENCH OF ALBERTA

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
TRADESMEN ENTERPRISES LIMITED PARTNERSHIP,  
OF THE CITY OF CALGARY,  
IN THE PROVINCE OF ALBERTA

AND

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
TRADESMEN ENTERPRISES INC.,  
OF THE CITY OF CALGARY,  
IN THE PROVINCE OF ALBERTA

FIRST REPORT OF KSV RESTRUCTURING INC.  
AS PROPOSAL TRUSTEE OF  
TRADESMEN ENTERPRISES LIMITED PARTNERSHIP AND TRADESMEN ENTERPRISES  
INC.

FEBRUARY 2, 2021

## 1.0 Introduction

1. This report (the "Report") is filed by KSV Restructuring Inc. ("KSV") in its capacity as proposal trustee (the "Proposal Trustee") in connection with Notices of Intention to Make a Proposal ("NOI") filed by Tradesmen Enterprises Limited Partnership ("TELP") and Tradesmen Enterprises Inc. ("TEI") (together, the "Company") on February 1, 2021 pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"). Copies of the certificates of filing issued by the Office of the Superintendent of Bankruptcy are provided in Appendix "A".
2. The affidavit of Dean Kato, the President and CEO of the Company, sworn on February 1, 2021 (the "Affidavit") provides, *inter alia*, the Company's history and the background to these proceedings and, accordingly, that information is not repeated in this Report. The Affidavit is included with the Company's application materials.
3. The principal purposes of these proceedings are for the Company to:
  - a) obtain a stay of proceedings so that the Company is afforded the necessary breathing space to expediently advance its construction lien litigation against Teck Coal Limited ("Teck") and other parties, as detailed in the Affidavit;
  - b) seek approval of a senior ranking court-ordered charge to secure interim financing required for the Company to pursue its litigation and to fund its operations; and
  - c) have the opportunity to formulate and make a proposal to its creditors.

## 1.1 Purposes of this Report

1. The purposes of this Report are to:
  - a) provide background information about the Company;
  - b) discuss the purpose of these proceedings;
  - c) discuss the Company's need for interim financing, which is to be provided through a facility dated February 1, 2021 between the Company and Bank of Montreal ("BMO") (the "Interim Financing Facility") in the maximum principal amount of \$1.9 million, as well as a charge (the "Interim Financing Charge") over the Company's property, assets and undertakings (collectively, the "Property") in favour of BMO for its advances to the Company under the Interim Financing Facility;
  - d) discuss the rationale for a charge in the amount of \$300,000 on the Property (the "Administration Charge") as protection for the fees and disbursements of the Proposal Trustee, the Proposal Trustee's counsel, Bennett Jones LLP ("Bennett Jones"), and the Company's counsel, Lawson Lundell LLP ("Lawson");
  - e) provide the basis for the Proposal Trustee's support of the Company's application for the Interim Financing Charge and the Administration Charge, including the reasons the Proposal Trustee believes it is appropriate for the charges to have priority over all of the Company's existing creditors and other stakeholders;
  - f) discuss the rationale for the proposed administrative consolidation of the NOI proceedings of TELP and TEI; and
  - g) recommend that this Honourable Court make an order approving the Interim Financing Facility, the Interim Financing Charge, the Administration Charge (and their proposed priorities) and the administrative consolidation of TELP's and TEI's estates.

## 1.2 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Company, the Company's books and records and discussions with the Company's management, legal counsel and majority owner, Fulcrum Capital Partners Inc. ("Fulcrum"). The Proposal Trustee has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*.
2. The Proposal Trustee expresses no opinion or other level of assurance with respect to the financial information presented in this Report or relied upon by the Proposal Trustee in preparing this Report. Any party wishing to place reliance on the Company's financial information should perform its own diligence and any reliance placed by any party on the information presented herein shall not be considered sufficient for any purpose whatsoever.

### 1.3 KSV's Prior Mandate

1. On January 13, 2021, KSV<sup>1</sup> was engaged by TELP to assist it to, *inter alia*, consider its restructuring options. KSV's engagement letter contemplates that, in the event it is appointed as a court officer in any insolvency proceeding involving the Company, its engagement would terminate immediately prior to such appointment and thereafter KSV's duties and obligations would be governed by statute and by any court order appointing it.
2. In carrying out its advisory mandate, KSV obtained background information concerning the Company's business, financial position and liquidity challenges.

## 2.0 Background

1. All of the Company's operations are performed by TELP. TEI is the General Partner of TELP and does not conduct any active business operations.
2. The Company is a mechanical contractor specializing in facility and pipeline construction, piping and structure fabrication, module assembly and maintenance projects. The Company operates from two leased premises in Alberta: its head office is located in Calgary and its fabrication operations are performed from a facility in Grande Prairie. The Company's workforce is not unionized and the Company does not maintain any registered pension plans.
3. Pursuant to an agreement dated May 28, 2019 (the "Teck Contract"), Teck retained the Company to act as the general contractor to construct the Fording River Operations Active Water Treatment Facility (South Project) located near Elkford, British Columbia (the "Project").
4. Since being awarded the Teck Contract, the Project has become the Company's central focus and in recent months represented the only material contract being performed by the Company. The Project is substantially over-budget – the Teck Contract originally had a budget of \$32 million and is now projected to have a total cost of approximately \$140 million. The Proposal Trustee has been advised that Teck presently has an approved budget of approximately \$101 million for the Project. The Company has issued approximately 900 change order requests to Teck in respect of the Project, all resulting from changes to the Project that were requested by Teck.
5. By letter dated January 11, 2021, Teck terminated the Teck Contract. Since the contract termination, the Company has, *inter alia*:
  - a) sent a letter to Teck disputing its contract termination;
  - b) filed a claim of builders lien in the amount of approximately \$48.6 million (the "Lien");

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<sup>1</sup> KSV's affiliate, KSV Advisory Inc., was engaged for this advisory mandate. KSV is a wholly-owned subsidiary of KSV Advisory Inc.

- c) registered the Lien against lands associated with the Project including real property owned by each of Canadian Pacific Limited and the Province of British Columbia, and a statutory right of way registered in favour of FortisBC Energy Inc. (the “3<sup>rd</sup> Party Lands”). Each of these parties will be notified by the Company that they will be named in, and be parties to, the Company’s litigation with Teck in respect of the Liens; and
  - d) sent a letter to Fluor Canada Ltd. (“Fluor”), the engineering consultant on the Project, advising that the Company intends to commence an action against it.
6. The Proposal Trustee understands that the Company is presently processing invoices and updating its books and records in respect of its accounting for the Project. The Company expects that the amounts owing from Teck will increase materially and that it will lien the same 3<sup>rd</sup> Party Lands for such amounts.
7. The Company’s business and operations have been severely affected by the termination of the Teck Contract. The Company has reduced its number of employees from approximately 614 in early January to 32 as at the date of this Report. The Company expects to further reduce the number of its employees in the coming weeks. The Company’s principal focus is now pursuing its litigation.
8. BMO is the Company’s operating lender and largest creditor. BMO is presently owed approximately \$25 million, plus interest and costs, which continue to accrue. The Company is in default of its credit facility with BMO. TEI is the guarantor under BMO’s credit facility with TELP. On January 14, 2021, BMO issued a demand and notice of intention to enforce security under section 244 of the BIA. Since that time, the Company has been working with BMO to consider restructuring options and how to most effectively advance its litigation. In the context of those discussions, BMO has agreed to provide financing to the Company under the Interim Financing Facility, conditional upon, among other things, receipt of the Interim Financing Charge.
9. Additional information about the Company is included in the Affidavit. Court materials filed in these proceedings will be made available on the Proposal Trustee’s website at <https://www.ksvadvisory.com/insolvency-cases/case/tradesmen-enterprises>.

## **3.0 Financial Position**

### **3.1 Assets**

1. The Company’s principal asset is the amount owing from Teck in respect of work performed on the Project. The Proposal Trustee understands that the Company has not been paid by Teck since December 11, 2020.
2. In addition to the Company’s lien litigation, the Company’s next most significant assets are its capital assets, which are comprised of fabrication and other equipment, tooling and rolling stock. An appraisal of these assets is in process as at the date of this Report.

## 3.2 Liabilities

1. Based on the Company's books and records, creditor obligations totalled approximately \$45.7 million as at January 22, 2021. A summary of the Company's liabilities is provided in the table below.

<b>Liability</b>	<b>Note</b>	<b>(Unaudited) Amount (\$000's)</b>
Canada Revenue Agency ("CRA")	a	505
BMO debt	b	24,355
Shareholder loan	c	1,814
Sub-contractor obligations	d	16,886
Other	e	2,148
<b>Total</b>		<b>45,708</b>

### Notes:

- a) The Proposal Trustee understands that the Company withheld, but did not remit, source deductions on a payroll processed in December 2020. This obligation appears to be a deemed trust claim in favour of CRA and is to be paid in the near term. This amount is to be funded from the Interim Financing Facility.
- b) The BMO debt is a revolving loan facility secured against all of the Property. The Company's borrowings under this facility exceed the authorized limit of the facility, being \$23 million.
- c) The shareholder loan was advanced on a secured basis by Fulcrum and presently totals approximately \$1.8 million, including interest. Fulcrum has also provided a partial guarantee of the BMO debt.
- d) Sub-contractor obligations represent amounts owing to parties who provided work or materials to the Project and as such may have lien rights. Certain of the parties have placed liens on the Project and the 3<sup>rd</sup> Party Lands. The sub-contractors who provided work or materials to the Project may also have trust claims against funds paid to the Company in respect of the Project. Amounts owing to sub-contractors are summarized in the table below.

<b>Sub-contractor</b>	<b>Amount (\$000's)</b>
Techmation Electric & Controls Ltd.	11,036
CIF Construction Ltd.	2,094
Industrial Scaffold Services LP	1,418
Alberta Pipe Support & Fabrication Inc.	434
Transcendent Mining & Mobilization Inc.	291
Other (17 sub-contractors)	1,613
<b>Total</b>	<b>16,886</b>

- e) Other vendor obligations include amounts owing to equipment lessors, transport companies and other suppliers and service providers.

## 4.0 Court-Ordered Charges

### 4.1 Interim Financing Charge<sup>2</sup>

1. The Company is in default of its credit agreement with BMO. Since the termination of the Teck Contract, BMO has continued to make advances to the Company while the Company considered its restructuring options. BMO has advised that it requires the benefit of a court-ordered priority charge for any further advances to the Company. Absent additional financing, the Company will not have the ability to continue to fund its costs, the professional fees associated with its litigation and these proceedings. The Company cannot currently meet its obligations as they come due.
2. BMO has agreed to fund these proceedings under the Interim Financing Facility subject to the granting of the Interim Financing Charge. The Interim Financing Charge is proposed to rank in priority to all other creditors, except for the priority contemplated to be afforded to the proposed Administration Charge. The terms of the Interim Financing Facility are set out in a term sheet dated February 1, 2021 (the "Term Sheet"). The final Term Sheet, or a substantially final copy of it, is attached as an exhibit to the Affidavit. If the finalized version is not attached to the Affidavit, it is expected that it will be provided to interested parties in advance of the return of the Company's application.
3. The principal terms of the Interim Financing Facility are as follows:
  - a) Description of Facility: Senior secured super priority, interim, revolving credit facility of \$1.9 million, subject only to the Administration Charge.
  - b) Maturity Date: The earliest of: (i) the occurrence of any Event of Default which is continuing and has not been cured to BMO's satisfaction; (ii) the implementation of a proposal which has been approved by the court and the requisite majorities of the Company's creditors, including BMO; (iii) the conversion of the NOI proceedings into a proceeding under the *Companies' Creditors Arrangement Act*, absent BMO's approval; (iv) the conversion of the NOI proceedings into a receivership under the BIA; (v) the sale of all or substantially all of the Property; and (vi) March 3, 2021. All amounts outstanding under the Interim Financing Facility are payable in full on the Maturity Date, including all accrued interest and other amounts, fees and costs.
  - c) Interest Rate: 12% per annum, which shall accrue daily on the aggregate outstanding principal advanced under the Interim Financing Facility and shall be calculated and payable in arrears on the first Business Day of each month. The default rate of interest is 16%.
  - d) Closing Fee: \$65,000, which is payable on the date BMO makes the Initial Advance.

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<sup>2</sup> Terms not defined in this section have the meaning provided to them in the term sheet dated February 1, 2021 to the Interim Financing Facility unless otherwise defined herein.



- e) Security and Priority: A court-ordered super-priority charge on the Company's Property. All obligations, other than the Administration Charge, are proposed to be subordinate to the Interim Financing Charge, including all construction trusts and lien claims that may be asserted by the Company's sub-contractors.
- f) Conditions: The conditions precedent include, among others, the following:
  - i. BMO's satisfaction with all material documents filed in respect of the proposed court order regarding the Interim Financing Facility and Charge;
  - ii. the court issuing the proposed order and granting the Interim Financing Charge;
  - iii. BMO's receipt of, and satisfaction with, the initial Cash Flow Forecast;
  - iv. BMO's receipt of, and satisfaction with, the initial Business Update from the Company;
  - v. BMO's receipt of, and satisfaction with, an executed copy of a consent Receivership Order; and
  - vi. the absence of any liens ranking in priority to the Interim Financing Charge over the Property, other than the Administration Charge.
- g) Reporting: The Company shall deliver rolling cash flow projections and variance reports on a weekly basis. Further, the Company will, among other things, provide an update to the initial Business Update on February 16, 2021.
- h) Events of Default: Events of Default include, *inter alia*, the following:
  - i. failure of Fulcrum to pay BMO on or before February 9, 2021 the amount of its guarantee of the BMO debt;
  - ii. the aggregate amount of all Priority Governmental Claims outstanding, except for the Existing Source Deduction, at any time exceeding \$100,000;
  - iii. a Material Adverse Change, which includes: (i) the making of a Restructuring Court Order; and (ii) a liability arising or an event occurring, including any change in the Collateral, business, assets, or conditions (financial or otherwise), of a Credit Party, that will, in BMO's judgment, acting reasonably, materially impair: (A) BMO'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 the Interim Financing Facility, 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 BMO;

- iv. if a 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 Financing Facility will exceed the Maximum Amount at any time (unless and until BMO consents to increase the Maximum Amount, which shall be in BMO's sole and absolute discretion);
  - v. if a Business Update or any update thereof contemplates or forecasts an adverse change or changes from the initial Business Update and such change(s) constitute a Material Adverse Change; and
  - vi. failure of the Company to perform or comply with any other term or covenant under the Interim Financing Facility or any other Interim Financing Credit Documentation, and such default shall continue unremedied for a period of five Business Days from the breach first occurring.
- i) Prepayment: Upon five days' prior written notice, the Company may prepay any amounts outstanding under the Interim Financing Facility at any time prior to the Maturity Date, without any prepayment fee or penalty.

## 4.2 Administration Charge

1. The Company is seeking court approval of an Administration Charge in the amount of \$300,000 as protection for the fees and disbursements of the Proposal Trustee, Bennett Jones and Lawson. The Administration Charge provides security to these professionals in the event that these proceedings are terminated and such professionals have not been paid in full at the date of termination.
2. An Administration Charge is a common feature in restructuring proceedings. The Proposal Trustee is of the view that the Administration Charge is appropriate in this case due to the Company's lack of liquidity and the need for assistance from the beneficiaries of the Administration Charge. The Administration Charge is to have a senior ranking charge on the Company's Property, including in priority to the Interim Financing Charge and the potential trust and lien claims in favour of the Company's sub-contractors.
3. For the reasons set out below, the Proposal Trustee believes it is appropriate for the Administration Charge to rank in priority to all claims against the Company.

## 4.3 Recommendation

1. The Proposal Trustee has considered the factors set out in subsection 50.6(5) of the BIA with respect to the granting of an order for interim financing and a charge related thereto. The Proposal Trustee believes that the terms of the Interim Financing Facility are reasonable and that the Interim Financing Charge and Administration Charge should be granted for the following reasons:
  - a) the Interim Financing Facility and the corresponding Interim Financing Charge enhance the prospect that the Company will be able to successfully restructure;

- b) the Company is without liquidity to fund these proceedings and its litigation against Teck. The litigation is complex – it involves a Project with an estimated cost to complete that has increased by more than \$100 million since its outset by the issuance of approximately 900 change order requests, many of which were approved and others which are pending approval. There were also approximately 1,700 requests for information (“RFIs”) on the Project. The involvement of management and Company personnel with intimate knowledge of the Project, the documentation supporting each change order request and change order, the RFIs and the Project accounting is critical to the successful outcome of the litigation. The Interim Financing Facility is necessary to fund these costs;
- c) absent the Interim Financing Facility, the Company will have no ability to pursue its lien litigation with Teck to the prejudice of all of the Company’s stakeholders, including BMO, Fulcrum and sub-contractors who have claims against the Company;
- d) the Administration Charge and the Interim Financing Charge are proposed to rank in priority to trust and lien claims in favour of the Company’s sub-contractors. In this regard:
  - i. in the circumstances, the proposed priority of the Interim Financing Charge is necessary as no commercially reasonable lender can be expected to provide the financing urgently required by the Company subordinate to the Company’s existing obligations;
  - ii. the Proposal Trustee believes the Interim Financing Facility is in the best interest of all of the Company’s stakeholders, including sub-contractors, as the Interim Financing Facility is integral to fund the costs associated with the Lien litigation and the Company’s operations so that there may be a recovery for the Company’s sub-contractors, which would be made available through a proposal or otherwise; and
  - iii. in an immediate liquidation of the Company, creditors are unlikely to have any material recovery and it is unclear whether sub-contractors will be able to recover on any trust claims that arise;
- e) in the Proposal Trustee’s view, the commercial terms of the Interim Financing Facility are reasonable. The closing fee (\$65,000) and the rate of interest (12%) are consistent with the costs of DIP financing facilities approved by Canadian courts in formal insolvency proceedings as reflected in a DIP loan summary schedule as of January 4, 2021, a copy of which is attached as Appendix “B”. The Proposal Trustee is also cognizant of the risks associated with financing construction litigation and believes that the rate of interest under the Interim Financing Facility is reflective of that risk;
- f) the Proposal Trustee has reviewed the Company’s cash flow forecast which supports the Interim Financing Facility (which is attached as an exhibit thereto) and believes that its underlying assumptions are reasonable;

- g) the Company's principal economic stakeholders, being BMO and Fulcrum, have advised that they consent to the relief being sought by the Company; and
- h) in the Proposal Trustee's view, these proceedings cannot advance without funding under the Interim Financing Facility and the professionals involved require certainty that their fees will be paid.

## 5.0 Administrative Consolidation

1. The Company is seeking an order to administratively consolidate the NOI proceedings into one estate.
2. As the consolidation is for administrative purposes only, TELP and TEI would remain separate for the purpose of a claims process, filing a proposal or making distributions to creditors.
3. The Company and the Proposal Trustee believe that administratively consolidating the proceedings is appropriate as:
  - a) TEI is an inactive holding company with no business operations or assets other than its partnership interest in TELP;
  - b) it will facilitate the orderly administration of these proceedings;
  - c) TEI and TELP have common ownership and management; and
  - d) it will significantly reduce professional costs, including by filing materials in one proceeding only.

## 6.0 Conclusion and Recommendation

1. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1 (1)(g) of this Report.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.  
SOLELY IN ITS CAPACITY AS TRUSTEE UNDER THE  
NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
TRADESMEN ENTERPRISES LIMITED PARTNERSHIP AND  
TRADESMEN ENTERPRISES INC.  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “C”**

## 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:

## **Appendix “D”**

Professional Fees and Disbursements of the Receiver and its Legal Counsel  
April 1, 2021 to May 31, 2021  
(CAD\$)

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**KSV Restructuring Inc.**

<b>Invoice #</b>	<b>Invoice Date</b>	<b>Period</b>	<b>Fees</b>	<b>Disbursements</b>	<b>Taxes</b>	<b>Total</b>
2176	May 5, 2021	April	56,141.25	279.50	2,821.04	59,241.79
2204	June 4, 2021	May	34,137.25	171.29	1,715.43	36,023.97
Total			90,278.50	450.79	4,536.47	95,265.76

**Lawson Lundell LLP**

<b>Invoice #</b>	<b>Invoice Date</b>	<b>Period</b>	<b>Fees</b>	<b>Disbursements</b>	<b>Taxes</b>	<b>Total</b>
712760	May 4, 2021	April	102,592.50	4,175.82	12,518.48	119,286.80
715330	June 2, 2021	May	141,856.50	2,913.97	17,156.55	161,927.02
Total			244,449.00	7,089.79	29,675.03	281,213.82

**Bennett Jones LLP**

<b>Invoice #</b>	<b>Invoice Date</b>	<b>Period</b>	<b>Fees</b>	<b>Disbursements</b>	<b>Taxes</b>	<b>Total</b>
1391521	May 5, 2021	April	39,338.00	3,503.25	2,142.06	44,983.31
1396226	June 2, 2021	May	15,316.50	-	765.83	16,082.33
Total			54,654.50	3,503.25	2,907.89	61,065.64