



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

February 7, 2022

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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 ALBERTA

SECOND REPORT OF KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER OF
TRADESMEN ENTERPRISES LIMITED PARTNERSHIP AND
TRADESMEN ENTERPRISES INC.

FEBRUARY 7, 2022

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, which litigation is now subject to arbitration proceedings (the "Arbitration") before Stuart Hankinson, as arbitrator (the "Arbitrator"); 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, 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 Teck 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 Arbitration; and
 - b) notify the Service List of the need to increase the quantum of the Receiver's borrowings and the Receiver's Borrowings Charge (as defined in the Receivership Order) from \$3 million to \$4 million in accordance with paragraph 27 of the Receivership Order.

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. 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 mechanical and piping general contractor on a project 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 contractual scope of approximately \$52 million. The Project is now projected to have a total cost of at least \$150 million. TELP's position is that due to the increased scope of, and the extraordinary number of changes on, 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.

4. The termination of the Teck Contract caused the Companies to commence the NOI Proceedings. On or around the commencement date of the NOI Proceedings, TELP reduced its employee headcount from approximately 614 to seven. 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 Arbitration 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. Bank of Montreal ("BMO") is the Companies' principal secured creditor and the applicant in these proceedings. 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 lands associated with the Project totalling approximately \$18.9 million for their unpaid work performed on the Project. There may be additional lien claims filed in due course. The Receiver has not reviewed any of the lien claims and no claims process has been commenced in the receivership proceedings;
 - b) Fulcrum was owed approximately \$1.8 million at the commencement of the NOI Proceedings and since that time has funded a partial guarantee it provided in respect 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 filed a counterclaim against TELP in the Arbitration.
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 attachments.
9. Court materials filed in the Companies' receivership, NOI and bankruptcy proceedings are available on KSV's website at <https://www.ksvadvisory.com/insolvency-cases/case/tradesmen-enterprises>.

2.1 The Arbitration

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 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.
3. Material developments since the commencement of the litigation include the following:
 - a) in April, 2021, TELP and Teck agreed to arbitrate the litigation. Mr. Hankinson was jointly engaged by Teck and TELP as the Arbitrator;
 - b) TELP sought to have Fluor¹ added as a party to the Arbitration. The application was heard by the Arbitrator on August 6, 2021. On September 15, 2021, the Arbitrator ruled that Fluor would not be added as a party to the Arbitration;
 - c) on May 26, 2021, representatives of TELP, Teck and the Receiver convened a "senior executive" meeting via videoconference. The senior executive meeting was 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 has not been resolved;
 - d) on June 3, 2021, TELP's Notice to Arbitrate was served;
 - e) on June 23, 2021, Teck served its counterclaim;
 - f) on November 19, 2021, the Arbitrator issued Procedural Order #1, which sets out the conduct of the Arbitration and its procedural timetable. Pursuant to Procedural Order #1, the dispute is scheduled for a 20-day hearing commencing June 19, 2023;
 - g) on December 15, 2021, Teck's application for security for costs was heard by the Arbitrator. Teck sought to have approximately \$3.035 million posted as security for costs. Teck's application was opposed by TELP;
 - h) on January 17, 2022, the Arbitrator ruled that \$1.5 million in security for costs must be posted by TELP, in three \$500,000 installments payable on February 28, 2022, July 31, 2022 and January 31, 2023; and
 - i) on January 31, 2022, TELP's response to Teck's counterclaim was served.
4. The substantive steps in the Arbitration are document production (January 14, 2022 to April 15, 2022), witness statements (May 16, 2022 to November 11, 2022), delivery of expert reports (November 25, 2022 to March 31, 2023) and hearing of the Arbitration (commencing June 19, 2023).

¹ Fluor was the design engineering firm retained by Teck for the Project.

3.0 Funding of these Proceedings

1. BMO has funded the NOI and receivership proceedings. BMO's pre-filing and post-filing indebtedness is summarized below.
 - a) BMO's pre-filing debt totals approximately \$22.5 million², plus interest and costs which continue to accrue. Fulcrum guaranteed a portion of this debt, which it has funded;
 - 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 \$2.955 million 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. Pursuant to a Court order dated July 15, 2021 (the "July 15th Order"), the maximum amount secured by the Receiver's Borrowings Charge was increased from \$2.5 million to \$3 million. A copy of the July 15th Order is attached as Appendix "C".
2. The status of each Court-ordered 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 December 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 through to the termination of the NOI Proceedings on April 17, 2021. |
| Receiver's Borrowings Charge | 3,000 | The Receiver has borrowed \$2.955 million 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 quarterly bonuses payable thereunder. Projected KERP payments are included in the Companies' cash flow, with funding made pursuant to the Receiver's Certificates. |

² Net of a \$2.6 million distribution paid by the Receiver pursuant to the July 15th Order, which represented the net proceeds generated from the liquidation of TELP's fixed assets.

3.1 Receiver's Borrowings Charge

1. In order 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.³ The July 15th Order increased the Receiver's Borrowings Charge from \$2.5 million to \$3 million. As at the date of this Report, BMO has advanced \$2.955 million under Receiver's Certificates, which advances are secured by the Receivers' Borrowings Charge.
2. In order to minimize the number of Court attendances in these proceedings, paragraph 27 of the Receivership Order authorizes the Receiver to increase the Receiver's Borrowings Charge 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.
3. If the Receiver serves a report on the Service List and a party files a Notice of Objection, the proposed increase in the Receiver's Borrowings Charge would require a further Court order. If no Notice of Objection is received within 10 days of serving such report, a further order of the Court is not required.
4. The Receiver is serving this Report on the Service List for the purpose of increasing the Receiver's Borrowings Charge in two increments of \$500,000, from \$3 million to \$4 million. The proposed increase is principally to fund:
 - a) professional fees incurred and to be incurred in connection with the Arbitration;
 - b) the first \$500,000 instalment required to be posted for security for costs in accordance with the Arbitrator's decision dated January 17, 2022, which must be posted by the end of February 2022;
 - c) employee costs secured by the KERP Charge; and
 - d) costs to store and maintain TELP's data, which is required for the Arbitration.
5. Paragraph 27 of the Receivership Order is debatably ambiguous as to whether a separate report is required for each increase of \$500,000 in the Receiver's Borrowings Charge or whether more than one \$500,000 increase can be sought at a time. The Receiver is of the view that a separate report is not required for each \$500,000 increase and that there is no prejudice to stakeholders if more than one \$500,000 increase is requested at a time. Given the immediate need for \$1 million, the alternative in the current situation is to file two separate reports seeking increases in the borrowing limit of \$500,000, for which there is no substantive difference, except for additional professional cost. Accordingly, the Receiver has served notice on stakeholders of the required increase on the basis set out in this Report.

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

6. The Receiver is of the view that the funding sought herein is required to continue the arbitration with Teck and to fund the security for cost award, which must be posted by February 28, 2022. In the event that increased funding is not available, the arbitration will be discontinued and there will be no recoveries for the Company's creditors from the arbitration.

* * *

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**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Josef G.A. Kruger, Q.C. / Jack R. Maslen
 Borden Ladner Gervais LLP
 1900, 520 3rd Ave. S.W.
 Calgary, AB T2P 0R3
 Telephone: (403) 232-9563 / 9790
 Facsimile: (403) 266-1395
 Email: JKruger@blg.com / JMAslen@blg.com
 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 'H. J.', 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 15th 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”



**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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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, KSV¹ 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");

¹ 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 “3rd 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 3rd 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

- 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.

| Liability | Note | (Unaudited) Amount (\$000's) |
|-------------------------------|-------------|---|
| 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 |
| Total | | 45,708 |

Notes:

- 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.
- 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.
- 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.
- 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 3rd 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.

| Sub-contractor | Amount (\$000's) |
|---|-------------------------|
| 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 |
| Total | 16,886 |

- 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 Charge²

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.

² 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,

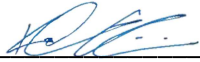
KSV Restructuring Inc.

**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”

I hereby certify this to be a true copy of
the original Order

Dated this 15 day of July, 2021



for Clerk of the Court

Clerk's Stamp:



COURT FILE NUMBER

2101-04670

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE OF

CALGARY

PLAINTIFF

BANK OF MONTREAL

RESPONDENTS

TRADESMEN ENTERPRISES LIMITED
PARTNERSHIP, and TRADESMEN ENTERPRISES
INC.

APPLICANT

KSV RESTRUCTURING INC., in its capacity as
receiver and manager of TRADESMEN
ENTERPRISES LIMITED PARTNERSHIP, and
TRADESMEN ENTERPRISES INC.

DOCUMENT

**ORDER APPROVING INTERIM
DISTRIBUTION, RECEIVER'S BORROWINGS,
FEES AND ACTIVITIES**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

BENNETT JONES LLP
4500 Bankers Hall East
855 2nd Street SW
Calgary, AB T2P 4K7
Chris Simard/Sean Zweig/Joshua Foster
Telephone: 403.298.3100
Facsimile: 403.265.7219
Email: simardc@bennettjones.com
/zweigs@bennettjones.com/[fosterj@bennettjones.com](mailto:/fosterj@bennettjones.com)

DATE ON WHICH ORDER WAS PRONOUNCED:

July 15, 2021

NAME OF JUDGE WHO MADE THIS ORDER:

The Honourable Madam Justice
Horner

LOCATION OF HEARING:

Calgary, Alberta

UPON THE APPLICATION of KSV Restructuring Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") of the undertakings, property and assets of Tradesmen Enterprises Limited Partnership and Tradesmen Enterprises Inc.

(together, the “**Debtors**”) for an Order, among other things, approving: (i) an increase to the Receiver’s borrowings and accompanying charge; (ii) the interim distribution of certain auction proceeds; (iii) the activities of the Receiver; and (iv) the fees and disbursements of the Receiver and its counsel;

AND UPON having read the Consent Receivership Order granted by the Honourable Madam Justice B.E.C. Romaine on April 15, 2021 (the “**Receivership Order**”), the Application of the Receiver, the First Report of the Receiver dated July 5, 2021 (the “**First Report**”), and other materials filed in the within proceedings; **AND UPON** noting the Affidavit of Service, filed; **AND UPON** hearing the submissions of counsel for the Receiver, counsel for Bank of Montreal (“**BMO**”), and any other counsel or interested parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE AND DEFINITIONS

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, the application for this Order is properly returnable today, and no other person other than those served is required to have been served with notice of this application.
2. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Receivership Order.

RECEIVER’S BORROWINGS

3. The Receiver’s borrowing limit in paragraph 22 of the Receivership Order be and is hereby increased from the maximum principal amount of \$2,500,000 to the maximum principal amount of \$3,000,000 (or such greater amount as provided for in paragraph 27 of the Receivership Order or as this Court may by further Order authorize). For greater certainty, the whole of the Property shall continue to be charged by 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 *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”).

INTERIM DISTRIBUTION

4. The Receiver is hereby authorized and directed to make an interim distribution (the “**Distribution**”) of the Net Proceeds (as defined in the Approval and Vesting Order of the Honourable Justice P.R. Jeffrey granted on March 16, 2021 in the proceedings bearing Estate Number BK01 095189) to BMO in partial repayment of the BMO Pre-Filing Indebtedness (as defined in the First Report).

5. Notwithstanding:

(a) the pendency of these proceedings and any declaration of insolvency made herein;

(b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the BIA, in respect of the Debtors and any bankruptcy order issued pursuant to any such applications;

(c) any assignment in bankruptcy made in respect of the Debtors; or

(d) any provisions of any federal or provincial legislation,

the Distribution shall be binding on any trustee in bankruptcy appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

APPROVAL OF ACTIVITIES AND FEES

6. The activities of the Receiver, as described in the First Report, are hereby ratified and approved.

7. The Receiver's accounts for fees and disbursements, as set out in the First Report, are hereby approved without the necessity of a formal passing of its accounts.
8. The accounts of the Receiver's legal counsel, Bennett Jones LLP and Lawson Lundell LLP, for their respective fees and disbursements, as set out in the First Report, are hereby approved without the necessity of a formal passing of their accounts.
9. This Order must be served only upon those interested parties attending or presented at the within application and 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.
10. Service of this Order on any party not attending this application is hereby dispensed with.



Justice of the Court of Queen's Bench of Alberta