

Clerk's Stamp:



COURT FILE NUMBER
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2301 16114
COURT OF KING'S BENCH OF ALBERTA
CALGARY

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, as amended

AND IN THE MATTER OF THE
COMPROMISE OR ARRANGEMENT OF
MANTLE MATERIALS GROUP, LTD.

APPLICANT:
DOCUMENT
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT:

MANTLE MATERIALS GROUP, LTD.
CCAA INITIAL ORDER
Gowling WLG (Canada) LLP
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File No. A171561
**Attention: Tom Cumming / Sam Gabor /
Stephen Kroeger**

**DATE ON WHICH ORDER WAS
PRONOUNCED:**
**NAME OF JUDGE WHO MADE
THIS ORDER:**
LOCATION OF HEARING:

January 10, 2024

The Honourable ACJ D.B. Nixon

Calgary Law Courts

UPON the application of Mantle Materials Group, Ltd. (the “**Applicant**”); **AND UPON** having read the Originating Application, the Affidavit of Byron Levkulich sworn November 27, 2023, filed (the “**Levkulich Affidavit**”), the third report and pre-filing report of FTI Consulting Inc. (“**FTI**”) as the Proposal Trustee and proposed monitor of Mantle dated December 11, 2023, filed, and the Affidavit of Service of Samah Zeineddine sworn December 18, 2023, filed; **AND UPON** reading the consent of FTI to act as Monitor; **AND UPON** being advised that the secured creditors who are likely to be affected by the charges created herein have been provided notice of this application; **AND UPON** hearing from counsel for the Applicant, counsel for FTI, counsel for Travelers Capital Corp. and the other counsel appearing at the hearing of this matter;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

APPLICATION

2. The Applicant is a company to which the *Companies’ Creditors Arrangement Act* of Canada (the “**CCAA**”) applies.
3. The proceedings commenced by the Applicant under Division I of Part III of the *Bankruptcy and Insolvency Act* (the “**BIA**”, and such proceedings, the “**Proposal Proceedings**”) are hereby taken up and continued under the CCAA and the provisions of Division I of Part III of the BIA shall have no further application to the Applicant and the Proposal Proceedings are hereby terminated, provided that, notwithstanding the termination of the Proposal Proceedings, the Orders of the Honourable Justice Feasby dated August 15, 2023 and August 28, 2023 (the “**Amended Order**”), the Auction Order (as defined in the Levkulich Affidavit) and the Sealing Order (as defined Levkulich Affidavit) each granted in the Order of the Honourable Justice Dunlop dated November 8, 2023 in the Proposal Proceedings are taken up and continued to apply in these CCAA proceedings.

PLAN OF ARRANGEMENT

4. The Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

5. The Applicant shall:
 - (a) remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”);
 - (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property;
 - (c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order; and
 - (d) be entitled to continue to utilize the central cash management system currently in place or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor

under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. To the extent permitted by law, the Applicant shall be entitled but not required to make the following advances or payments of the following expenses, incurred prior to or after this Order:
 - (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
 - (b) the reasonable fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order.

7. Except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
 - (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
 - (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

8. The Applicant shall remit, in accordance with legal requirements, or pay:
 - (a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority that are required to be deducted from employees' wages, including, without limitation, amounts in respect of:
 - (i) employment insurance,

- (ii) Canada Pension Plan,
- (iii) Quebec Pension Plan, and
- (iv) income taxes,

but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, unless otherwise ordered by the Court;

- (b) all goods and services or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
 - (c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and that are attributable to or in respect of the carrying on of the Business by the Applicant.
9. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicant from time to time for the period commencing from and including the date of this Order (“**Rent**”), but shall not pay any rent in arrears.
10. Except as specifically permitted in this Order, the Applicant is hereby directed, until further order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of the date of this Order;
- (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
- (c) not to grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. The Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Interim Financing Agreement (as hereinafter defined in paragraph 34), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any portion of its business or operations and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$500,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Applicant (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor (as defined below) or further Order of the Court, their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicant deems appropriate, in accordance with section 32 of the CCAA; and
- (d) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

12. The Applicant shall provide each of the relevant landlords with notice of the Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Applicant’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further order of this Court upon application by the Applicant on at least two (2) days’ notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute other than Rent payable for the notice period provided for in section 32(5) of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant’s claim to the fixtures in dispute.
13. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:
 - (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours’ prior written notice; and
 - (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. Until and including **January 20, 2024**, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.
15. During the Stay Period, except with the written consent of the Applicant and the Monitor, or with leave of this Court, no proceedings shall be commenced on continued against or in respect of RLF Canada Holdings Limited (“**RLF Canada**”), or any of its current and future assets, businesses, undertakings and properties of every nature and kind whatsoever and where situate including all proceedings thereof, arising upon or as a result of any default under the terms of any document entered into in connection with any of RLF Canada’s guarantees of any of the commitments or loans of the Applicant (the “**Guarantor’s Default Events**”). Without limitation, the operation of any provision of a contract or agreement between RLF Canada and any other Person (as hereinafter defined) that purports to effect or cause a termination or cessation of any rights of RLF Canada, or to accelerate, terminate, discontinue, alter, interfere with, repudiate, cancel, suspend, amend or modify such contract or agreement, in each case as a result of on or more Guarantor’s Default Events, is hereby stay and restrained during the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

16. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicant or the Monitor, or affecting the Business or 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 Applicant to carry on any business that the Applicant is not lawfully entitled to carry on;
 - (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;
 - (c) prevent the filing of any registration to preserve or perfect a security interest;
 - (d) prevent the registration of a claim for lien; or
 - (e) exempt the Applicant from compliance with statutory or regulatory provisions relating to health, safety or the environment.
17. 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 Monitor at the first available opportunity.

NO INTERFERENCE WITH RIGHTS

18. During the Stay Period, 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 Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

19. During the Stay Period, 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 Applicant, 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 Business or the Applicant

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 Applicant or exercising any other remedy provided under such agreements or arrangements. The Applicant 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 Applicant in accordance with the payment practices of the Applicant, or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any person, other than the Interim Lender where applicable, be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 17 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date of this Order and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

22. The Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors and or officers of the Applicants after the commencement of the within proceedings except to the extent that, with respect to any officer or director,

the obligation was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

23. The directors and officers of the Applicant shall continue to be entitled to the benefit of the charge (the "**Directors' Charge**") on the Property granted pursuant to the Amended Order in an amount not exceeding \$150,000, as security for the indemnity provided in paragraph 22 of this Order, and such Directors' Charge is continued and taken up under the CCAA together with the amounts secured thereby. The Directors' Charge shall have the priority set out in paragraphs 39 and 41 hereof.
24. Notwithstanding any language in any applicable insurance policy to the contrary:
 - (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and
 - (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 22 of this Order.

APPOINTMENT OF MONITOR

25. FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs and the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
26. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements, Business and dealings with the Property;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicant;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination to the Interim Lender and its counsel on a bi-weekly basis of financial and other information as agreed to between the Applicant and the Interim Lender which may be used in these proceedings, including reporting on a basis as reasonably required by the Interim Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the Interim Lender, which information shall be reviewed with the Monitor and delivered to the Interim Lender and its counsel on a periodic basis, but not less than bi-weekly, or as otherwise agreed to by the Interim Lender;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Applicant to the extent that is necessary to adequately assess the Property, Business, and financial affairs of the Applicant or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

- (i) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicants and any other Person; and
 - (j) perform such other duties as are required by this Order or by this Court from time to time.
27. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order be deemed to be in possession of any of the Property within the meaning of any federal or provincial environmental legislation.
28. The Monitor shall provide any creditor of the Applicant and the Interim Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.
29. In addition to the rights and protections afforded the Monitor under the CCAA or as an Officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any

gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. The Monitor, counsel to the Monitor, and counsel to the Applicant shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a monthly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor and counsel to the Monitor, and counsel to the Applicant, retainers in the respective amounts of \$40,000 and \$20,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.
31. The Monitor and its legal counsel shall pass their accounts from time to time.
32. The Monitor, counsel to the Monitor, if any, and the Applicant's counsel, as security for the professional fees and disbursements, shall continue to be entitled to the benefits of the charge (the "**Administration Charge**") on the Property granted pursuant to the Amended Order in an amount not to exceed the aggregate of \$425,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor (and as Proposal Trustee) and such counsel, both during the Proposal Proceeding and in these proceedings. The Administration Charge shall have the priority set out in paragraphs 39 and 41 hereof.

INTERIM FINANCING

33. The approval, authorization and empowerment of the Applicant under the Amended Order to obtain and borrow under a credit facility from RLF Canada Lender Limited (the "**Interim Lender**") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures is confirmed and such credit facility is taken up under the CCAA, provided that borrowings under such credit facility shall not exceed \$2,200,000.00 unless permitted by further order of this Court.

34. Such credit facility shall continue to be on the terms and subject to the conditions set forth in the interim financing agreement between the Applicant and the Interim Lender dated as of August 10, 2023 (the “**Interim Financing Agreement**”), filed.
35. The Applicant is hereby authorized and empowered to execute and deliver such mortgages, charges, hypothecs, and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the Interim Financing Agreement or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities, and obligations to the Interim Lender under and pursuant to the Interim Financing Agreement and the other Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.
36. The Interim Lender shall continue to be entitled to the benefits of the charge granted in its favour pursuant to the Amended Order (the “**Interim Lender’s Charge**”) on the Property to secure all obligations under the Interim Financing Agreement and Definitive Documents, and the Interim Lender’s Charge and the amounts advanced thereunder during the Proposal Proceedings are confirmed and taken up under the CCAA, which Interim Lender’s Charge shall not exceed the aggregate amount advanced on or after the date of this Order under the Definitive Documents. The Interim Lender’s Charge shall have the priority set out in paragraphs 39 and 41 hereof.
37. Notwithstanding any other provision of this Order:
 - (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender’s Charge or any of the Definitive Documents;
 - (b) upon the occurrence of an event of default under the Definitive Documents or the Interim Lender’s Charge, the Interim Lender, upon three (3) days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Interim Financing Agreement, Definitive Documents, and the Interim Lender’s Charge, including

without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the Interim Lender to the Applicant against the obligations of the Applicant to the Interim Lender under the Interim Financing Agreement, the Definitive Documents or the Interim Lender's Charge, to make demand, accelerate payment, and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

- (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

- 38. The Interim Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES

- 39. The priorities of the Directors' Charge, the Administration Charge and the Interim Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$425,000);

Second – Interim Lender's Charge; and

Third – Directors' Charge (to the maximum amount of \$150,000).

- 40. The filing, registration or perfection of the Directors' Charge, the Administration Charge or the Interim Lender's Charge (collectively, the "**Charges**") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

41. Each of the Directors' Charge, the Administration Charge, and the Interim Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and subject always to section 34(11) of the CCAA such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.
42. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge or the Interim Lender's Charge, unless the Applicant also obtains the prior written consent of the Monitor, the Interim Lender, and the beneficiaries of the Directors' Charge and the Administration Charge, or further order of this Court.
43. The Directors' Charge, the Administration Charge, the Interim Financing Agreement, the Definitive Documents, and the Interim Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the Interim Lender thereunder shall not otherwise be limited or impaired in any way by:
 - (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
 - (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;
 - (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
 - (d) the provisions of any federal or provincial statutes; or
 - (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") that binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, including the Interim Financing Agreement or the Definitive Documents, shall create or be deemed to constitute a new breach by the Applicant of any Agreement to which it is a party;
- (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, the Applicant entering into the Interim Financing Agreement, or the execution, delivery or performance of the Definitive Documents; and
- (iii) the payments made by the Applicant pursuant to this Order, including the Interim Financing Agreement or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

ALLOCATION

44. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Administration Charge, the Interim Lender's Charge, and the Directors' Charge amongst the various assets comprising the Property.

SERVICE AND NOTICE

45. The Monitor shall (i) without delay, publish in the Calgary Herald and Edmonton Journal a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000 and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.

46. The Applicant and, where applicable, the Monitor, are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.
47. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up-to-date form of the Service List on its website at:

<http://cfcanada.fticonsulting.com/mantle/default.htm>

GENERAL

48. The Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
49. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor 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 Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
50. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Applicant, the Business or the Property.
51. 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 Applicant, the Monitor and their respective 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 Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

52. Each of the Applicant and the Monitor 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 Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
53. Any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
54. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.



Justice of the Court of King's Bench of Alberta