

COURT FILE NUMBER QB No. 1884 of 2019

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE SASKATOON

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c. C-36, AS  
AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 101098672  
SASKATCHEWAN LTD., MORRIS INDUSTRIES LTD., MORRIS SALES and SERVICE LTD.,  
CONTOUR REALTY INC., and MORRIS INDUSTRIES (USA) INC.

**SECOND AFFIDAVIT OF KEVIN ADAIR**

I, Kevin Adair, of the City of Saskatoon, in the Province of Saskatchewan, MAKE OATH AND SAY:

1. I am the Chief Operating Officer and President of the applicants, 101098672 Saskatchewan Ltd. ("672"), Morris Industries Ltd. ("**Morris Industries**"), Morris Sales and Service Ltd. ("**MSS**"), Contour Realty Inc. ("**CRI**"), and Morris Industries (USA) Inc. ("**Morris USA**") (collectively, the "**Morris Group**"), and in that capacity, I have access to the books and records of the Morris Group and personal knowledge of the matters and facts herein deposed, except where otherwise stated, and where so stated, I verily believe the same to be true.

2. Capitalized terms appearing herein will have the meanings given to them in my Affidavit sworn January 3, 2020 (the "**First Adair Affidavit**").

**I. CLARIFICATIONS TO FIRST AFFIDAVIT**

3. I have reviewed the First Adair Affidavit, and have identified certain items requiring clarification, correction, and/or updating.

4. In paragraphs 12 and 13, I indicated that Mel Karakochuk had resigned as Chief Financial Officer and was replaced by Cameron Johnson. To clarify, Mr. Karakochuk's resignation is not effective until March 2 and it is anticipated that he will continue in his present position until that time.

5. In paragraph 68, I indicated that the Temporary Bulge provided by BMO pursuant to the Amending Agreement will terminate as of January 8, 2020, which is incorrect. A copy of the final version of the Amending Agreement is attached as **Exhibit "A."** As stated therein, the Temporary Bulge will terminate on January 18, 2020.

## **II. UPDATE ON RESTRUCTURING**

6. Since the Initial Order of the Honourable Mr. Justice R.S. Smith was granted on January 8, 2020 (the “**Initial Order**”), the Morris Group has:

- (a) continued to carry on business in the ordinary course, except as otherwise affected by the Initial Order;
- (b) initiated discussions with (and responded to inquiries from) its dealer network, critical suppliers, and other creditors to discuss the effect of the Initial Order and collaborating on a path forward;
- (c) worked with its legal counsel to review and negotiate the terms of the proposed Sale and Investment Solicitation Process (“**SISP**”) and credit facility, each of which are discussed in more detail below; and
- (d) worked in consultation with A&M (the “**Monitor**”) to revise its 17 week cash flow forecasts to better quantify its interim financing needs in light of the changing circumstances.

7. Discussions with the Morris Group’s stakeholders and creditors are ongoing, and management will continue to work in consultation with the Monitor and its counsel to determine which of the possible restructuring initiatives set out in paragraph 71 of the First Adair Affidavit can be implemented concurrently with the SISP. Because these efforts may include the sale of redundant and non-material assets and winding up of the MSS dealership located in Virden, Manitoba, the Morris Group is seeking amendments to the Initial Order, as set out in the draft Amended and Restated Initial Order filed with this application.

## **III. ADDITIONAL TIME AND INTERIM FINANCING REQUIRED**

8. The form of SISP attached to the draft Sale and Investment Solicitation Process Order (the “**Draft SISP Order**”) filed with this application has the support of the Morris Group, the Monitor, BMO, and Avrio. The merits of the proposed SISP are discussed in the First Report of the Monitor (the “**First Report**”) and the Confidential Supplement to the same.

9. The Morris Group’s revised 13 week cash flow forecasts are included in the First Report. As set out therein, the Morris Group has an estimated need of approximately \$5.7 million in interim financing to operate from now until the end of week 13.

10. The Morris Group is presently in discussions with BMO about fulfilling the interim lender role. If concluded, the arrangement is anticipated to be on substantially similar to the terms and conditions to those set forth in the draft Interim Financing Term Sheet attached as **Exhibit “B.”**

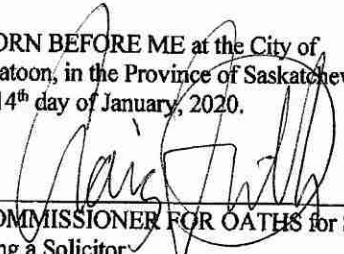
**V. RELIEF SOUGHT**

11. The Morris Group is therefore seeking, among other things, the following:

- (a) an Amended and Restated Initial Order authorizing it to:
  - (i) pursue additional restructuring activities, such as the sale of redundant assets;
  - (ii) obtain interim financing to meet its liquidity needs during the proposed stay period; and
  - (iii) have the Amended and Restated Initial Order recognized in other jurisdictions, such as Manitoba, if that becomes necessary;
- (a) an Order approving of the SISP and providing for its implementation.

12. I swear this affidavit on behalf of the Morris Group in support of the application that is presently before the Court.

SWORN BEFORE ME at the City of  
Saskatoon, in the Province of Saskatchewan,  
this 14<sup>th</sup> day of January, 2020.

  
A COMMISSIONER FOR OATHS for Saskatchewan  
- Being a Solicitor:

  
KEVIN ADAIR

**CONTACT INFORMATION AND ADDRESS FOR SERVICE:**

Name of firm:	McDougall Gauley LLP
Name of lawyer in charge of file:	Ian A. Sutherland / Craig Frith
Address of legal firm:	500-616 Main Street Saskatoon, SK S7H 0J6
Telephone / Fax number:	(306) 665-5417 / (306) 652-1323
Email address:	<a href="mailto:isutherland@mcdougallgauley.com">isutherland@mcdougallgauley.com</a> <a href="mailto:cfrith@mcdougallgauley.com">cfrith@mcdougallgauley.com</a>

THIS IS EXHIBIT "A" REFERRED TO IN  
THE SECOND AFFIDAVIT OF KEVIN ADAIR  
SWORN BEFORE ME AT SASKATOON,  
IN THE PROVINCE OF SASKATCHEWAN  
THIS 14TH DAY OF JANUARY, 2020.

  
A COMMISSIONER FOR OATHS FOR  
FOR THE PROVINCE OF SASKATCHEWAN  
BEING A SOLICITOR.

December 23, 2019

**Private and Confidential**

Morris Industries Ltd.  
Morris Sales & Service Ltd.  
2131 Airport Drive  
Saskatoon, SK S7L 7E1

**Attention: Ben Voss**

Dear Sir:

We refer to our amended and restated loan agreement dated June 28, 2019 (as amended, supplemented or otherwise modified prior to the date hereof, the "**Existing Loan Agreement**"), and are pleased to confirm the amendments described below, subject to the following terms and conditions. Capitalized terms used herein shall have the same meaning as attributed thereto in the Existing Loan Agreement.

Notwithstanding the date of this amending agreement, the amendments outlined herein are effective as of December 23, 2019.

**1. AMENDMENTS**

- (a) **Facility A:** Section 5(a) of the Existing Loan Agreement is amended by adding the following paragraph at the end of such section:

"Without limiting the foregoing, effective as of the First Amendment Effective Date up to and including January 18, 2020, an additional amount not in excess of three million (\$3,000,000) dollars (the "**Temporary Bulge**") shall, subject to satisfaction or waiver of each of the conditions precedent set forth in Section 17 of this Agreement, be available to the Borrowers under Facility A on an unmargined basis and shall be added to the Facility A Limit. On January 18, 2020, the Temporary Bulge shall automatically terminate without any notice or action required by the Bank, and the amount available to the Borrowers under Facility A shall be reduced to a maximum of \$20,000,000, as calculated above. The Borrowers shall repay to the Bank all outstanding amounts owing under Facility A in excess of the Facility A Limit on January 18, 2020."

- (b) **Conditions Precedent (Temporary Bulge):** Section 17 of the Existing Loan Agreement is amended by adding the following paragraph at the end of such section:

"Without limiting the application of the Drawdown Conditions Precedent, any Advance under the Temporary Bulge shall be subject to the additional condition precedent that each Drawdown Request received by the Bank in connection therewith shall be approved and delivered to the Bank jointly by the Borrowers and by Alvarez & Marsal Canada ULC, and shall be based upon ongoing monitoring of the Borrowers' receipts and disbursements by Alvarez & Marsal Canada ULC, and the reporting of same to the Bank on a weekly basis."

- (c) **Positive Covenants:** Section 20 of the existing Loan Agreement is amended by deleting the "and" at the end of Section 20(s), replacing the period at the end of Section 20(t) with "; and" and adding the following new Section 20(u):

"(u) in the event that either of the Borrowers institute proceedings under the *Bankruptcy Insolvency Act* or the *Companies' Creditors Arrangement Act* (in either case, a "**Proceeding**"), such Borrower will seek an Order of the supervising Court approving interim financing (the "**Interim Financing**") from a lender (the "**Interim Lender**"), and:

- (i) the Bank shall have the right, whether before or after such Borrower has entered into an agreement with an Interim Lender, to become the Interim Lender; and
- (ii) at the option of the Bank, such Borrower shall seek court approval to:
  - (A) provided the Bank is the Interim Lender, convert the amounts advanced pursuant to the Temporary Bulge into the Interim Financing, or part of it, such that any of the advances pursuant to the Temporary Bulge then outstanding shall form part of the Interim Financing; or
  - (B) repay all advances outstanding pursuant to the Temporary Bulge from the proceeds of the Interim Financing."

- (d) **Definitions:** Schedule A of the Existing Loan Agreement is amended by adding the following new definition in its proper alphabetical order:

"**First Amendment Effective Date**" means December 23, 2019."

## **2. CONDITIONS PRECEDENT**

This amending agreement will only become effective once the Bank has received:

- (a) confirmation from the Borrowers that all representations and warranties contained in Section 4 hereof are true and correct in all material respects;
- (b) a duly executed copy of this amending agreement;
- (c) such other documentation as the Bank may reasonably require; and
- (d) payment of the fees set forth in Section 3 hereof.



**3. FEES**

Concurrent with their execution of this amending agreement, the Borrowers shall pay to the Bank a non-refundable amendment and temporary increase fee in the amount of \$25,000 payable on acceptance of this amending agreement. The Bank is hereby authorized to debit the Borrowers' current account for any unpaid portion of such fee.

**4. REPRESENTATIONS AND WARRANTIES**

Each of the Borrowers represents and warrants to the Bank that:

- (a) except as disclosed by the Borrowers to the Bank in Schedule "A", each of the representations and warranties contained in section 15 of the Existing Loan Agreement are true and correct as at the date hereof;
- (b) the execution and delivery by it of this amending agreement and the performance by it of its obligations under the Existing Loan Agreement as amended hereby (the "**Amended Loan Agreement**"), have been duly authorized by all necessary actions and do not violate its governing documents or any applicable laws or agreements to which it is subject or by which it is bound;
- (c) its obligations under the Amended Loan Agreement and the Security Documents delivered by it in connection therewith, are legal, valid and binding obligations, enforceable against it in accordance with their respective terms, subject to applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally;
- (d) except as disclosed by the Borrowers to the Bank in Schedule "A", as of the date of acceptance of this amending agreement, no default has occurred under the Existing Loan Agreement or under any Security Document nor will such default occur as a result of Borrower entering into this amending agreement or performing its obligations under the Amended Loan Agreement; and
- (e) the Borrowers shall provide written notice to the Bank of any changes to Schedule "A" at least one Business Day prior to any Drawdown Request and Schedule "A" shall thereafter be updated, if necessary, upon the mutual agreement of the Borrowers and the Bank.

**5. GENERAL**

- (a) The Borrowers agree to pay all fees (including legal fees), costs and expenses incurred by the Bank in connection with the preparation, negotiation and documentation of this amending agreement.
- (b) The parties hereto shall, from time to time, do all such further acts and things and execute and deliver all such documents as are required in order to effect the full intent of and fully perform and carry out the terms of this amending agreement.
- (c) This amending agreement shall be governed by the laws of the Province of Saskatchewan and of Canada applicable therein.
- (d) This amending agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together constitute one and the same instrument.

- (e) All terms and provisions of the Existing Loan Agreement, except as amended hereby, remain in full force and effect. The Borrowers acknowledge and agree that each other Credit Document remains in full force and effect and hereby ratifies and confirms their obligations under each such Credit Document. For certainty, all Credit Documents provided by the Loan Parties are and shall remain in full force and effect in all respects and shall continue to exist and apply to all of the obligations, liabilities and indebtedness under, pursuant or relating to the Existing Loan Agreement, as amended hereby, and all other Loan Documents to which any Loan Party is a party. Each of the parties hereto hereby acknowledges and confirms that the Existing Loan Agreement and this amending agreement are and shall constitute Loan Documents under the Existing Loan Agreement.
- (f) This amending agreement shall not constitute (or be construed as an indication of) a consent or waiver of any provision of the Existing Loan Agreement nor a waiver of any other Default which may now exist or hereafter arise, other than the accuracy of the representations and warranties disclosed in Schedule "A" hereof for the purposes of the General Conditions Precedent contained at Sections 17(d)(i) and 17(d)(ii) of the Existing Loan Agreement.

**6. ACCEPTANCE**

This offer is open for acceptance until December \_\_\_\_, 2019, after which date it will be null and void, unless extended in writing by the Bank.

**[remainder of page intentionally left blank]**

Please confirm your acceptance of this amending agreement by signing the attached copy of this letter in the space provided below and returning it to the undersigned.

Yours truly,

**BANK OF MONTREAL**

By:  **SANDY HAYER**  
Senior Manager  
SAMU National Accounts

By: \_\_\_\_\_



Accepted as of this 24 day of December, 2019

**MORRIS SALES & SERVICE LTD.**

**MORRIS INDUSTRIES LTD.**

Per: 

Name: Kevin Adair  
Title: President + COO

Per: 

Name: Kevin Adair  
Title: President + COO

**101098672 SASKATCHEWAN LTD. as** **CONTOUR REALTY INC. as Guarantor**  
**Guarantor**

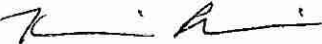
Per: 

Name: Kevin Adair  
Title: President + COO

Per: 

Name: Kevin Adair  
Title: President + COO

**MORRIS INDUSTRIES (USA) INC. as**  
**Guarantor**

Per: 

Name: Kevin Adair  
Title: President + COO

### **Schedule "A"**

The following representations and warranties in section 15 of the Existing Loan Agreement are not true and accurate as of the date of this amending agreement:

1. section 15(j) – 101098672 Saskatchewan Ltd. received a demand letter from Avrio Capital Inc. dated November 12, 2019;
2. section 15(m) – there are likely to be two material adjustments to the draft 2019 financial statements;
3. section 15(n) – the Borrowers have been unable to maintain the financial covenants set out in section 22 of the Existing Loan Agreement;
4. section 15(o) – 101098672 Saskatchewan Ltd. received a demand letter from Avrio Capital Inc. dated November 12, 2019; and
5. section 15(q) – Morris Industries Ltd. is in default under the terms of its leases with Terra Firma Inc. and 102058665 Saskatchewan Ltd. and 101098670 Saskatchewan Ltd. with respect to the following leased premises:
  - (a) 2131 Airport Drive in Saskatoon, Saskatchewan;
  - (b) 605 York Road West in Yorkton, Saskatchewan; and
  - (c) 671 York Road West in Yorkton, Saskatchewan.

The following Defaults have occurred under the Existing Loan Agreement:

1. section 22 – the Borrowers have been unable to maintain the financial covenants.

## INTERIM FINANCING TERM SHEET

Dated as of [•], 2020

  
A COMMISSIONER FOR OATHS FOR  
FOR THE PROVINCE OF SASKATCHEWAN  
BEING A SOLICITOR.

**WHEREAS**, the Borrower (as defined below) has requested that the Interim Lender (as defined below) provide financing to fund certain of the Credit Parties' (as defined below) obligations during the pendency of the Credit Parties' proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") commenced on January 8, 2020 in the Court of Queen's Bench for Saskatchewan (the "**Court**") and in accordance with the terms and conditions set out herein;

**AND WHEREAS**, the Interim Lender has agreed to provide funding in order to fund certain obligations of the Credit Parties in the context of the Credit Parties' CCAA Proceedings in accordance with the terms set out herein;

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

1. **BORROWER:** **Morris Industries Ltd. & Morris Sales and Service Ltd.** (collectively referred to as the "**Borrower**").
2. **INTERIM LENDER:** **Bank of Montreal** (as lender under the Interim Facility, the "**Interim Lender**").
3. **GUARANTOR:** **101098672 Saskatchewan Ltd., Morris Sales and Service Ltd., Contour Realty Inc., and Morris Industries (USA) Inc.** (the "**Guarantors and each a Guarantor**", and the Guarantors, together with the Borrower, are collectively referred to herein as the "**Credit Parties**" and, individually, a "**Credit Party**").
4. **DEFINED TERMS:** Capitalized terms used in this Interim Financing Term Sheet have the meanings given thereto in Schedule "A".
5. **PURPOSE:** To provide for the short-term liquidity needs of the Credit Parties pursuant to the Cash Flow Forecast while the Credit Parties are under CCAA protection pursuant to the CCAA Proceedings as more fully set forth herein.
6. **CLOSING DATE** The date upon which the Funding Conditions have been satisfied or waived by the Interim Lender (the "**Closing Date**").
7. **INTERIM FACILITY AND MAXIMUM AMOUNT:** A super priority (debtor-in-possession), interim, non-revolving credit facility (the "**Interim Facility**") up to a maximum principal amount of

Cdn.\$5,700,000 (as such amount may be reduced from time to time pursuant to Section 22 hereof, the "**Maximum Amount**"), subject to the terms and conditions contained herein. Interim Advances shall be deposited into the Deposit Account, and utilized by the Credit Parties in accordance with the terms hereof.

Interim advances shall be made to the Borrower from the Interim Facility (such advances being referred to herein as "**Interim Advances**", and "**Interim Advance**" means each such advance) by the Interim Lender in accordance with the conditions set out in Section 16 hereof.

8. **GUARANTEES:**

The obligations under the Interim Facility will be guaranteed by unlimited guarantees by the Guarantors of all obligations of the Borrower in form and substance satisfactory to the Interim Lender (acting reasonably).

9. **CONDITIONS PRECEDENT TO INTERIM ADVANCES:**

The Interim Lender's agreement to make Interim Advances to the Borrower is subject to the satisfaction of the following conditions precedent (these conditions, the "**Funding Conditions**") as determined by the Interim Lender in its sole and absolute discretion (unless otherwise specified herein):

1. The Court shall have issued the Amended and Restated Initial Order on or before **January 16, 2020** (the "**Filing Date**"), substantially in the form attached hereto as Schedule "B", approving this Interim Financing Term Sheet and the Interim Facility, and granting the Interim Lender a charge (the "**Interim Lender Charge**") securing all obligations owing by the Credit Parties to the Interim Lender hereunder including, without limitation, all principal of the Interim Advances, interest thereon and Interim Financing Fees and Expenses (collectively, the "**Interim Financing Obligations**"), which shall have priority over all Liens other than the Permitted Priority Liens, and the Initial Order shall not have been stayed, vacated or otherwise caused to be ineffective or amended, restated or modified in a way that adversely impacts the rights and interests of the Interim Lender, as determined by the Interim Lender (acting reasonably), without the consent of the Interim Lender;



2. The Interim Financing Credit Documentation shall be satisfactory to the Interim Lender, acting reasonably, and shall have been executed by the Credit Parties and the Interim Lender, as applicable;

3. The Interim Lender shall, acting reasonably, be satisfied that the Credit Parties have complied with and are continuing to comply in all material respects with all applicable laws, regulations and policies in relation to their businesses other than as may be permitted under a Restructuring Court Order or as to which any enforcement in respect of non-compliance is stayed by a Restructuring Court Order, provided the issuance of such Restructuring Court Order does not result in the occurrence of an Event of Default;

4. The Interim Lender shall have received a written request for an Interim Advance from the Borrower, substantially in the form of Schedule "C" hereto (a "**Drawdown Certificate**"), which shall be executed by an officer of the Borrower, and shall certify, *inter alia*, that the requested Interim Advance is within the Maximum Amount and the Cash Flow Forecast, and that the Borrower and the other Credit Parties are in compliance with the Interim Financing Credit Documentation and the Restructuring Court Orders;

5. The Interim Lender shall have received the Cash Flow Forecast in accordance with the terms of this Interim Financing Term Sheet;

6. The requested Interim Advance shall not cause the aggregate amount of all outstanding Interim Advances to exceed the Maximum Amount or be greater than the amount shown on the Cash Flow Forecast;

7. All Interim Financing Fees and Expenses for which invoices have been provided to the Borrower, shall have been paid, or will be paid from and at the time of the proceeds of the requested Interim Advance or within such period of time as is acceptable to the Interim Lender in its absolute discretion;

8. All of the representations and warranties of the Credit Parties as set forth in this Interim Financing Term Sheet and in any other Interim

Financing Credit Documentation are true and accurate;

9. No Default or Event of Default has occurred or will occur as a result of the requested Interim Advance;

10. The Interim Lender is satisfied that no Material Adverse Change shall have occurred after the date of the issuance of the Initial Order;

11. There are no Liens ranking in priority to the Interim Lender Charge, other than the Permitted Priority Liens;

12. In any calendar week, the Borrower shall not have made any previous request for an Interim Advance (that is, the Borrower shall only be entitled to request no more than a single Interim Advance in any calendar week).

For greater certainty, the Interim Lender shall not be obligated to make any Interim Advance or otherwise make available any funds pursuant to this Interim Financing Term Sheet unless and until all of the foregoing conditions have been satisfied and all of the foregoing documentation and confirmations have been obtained (for certainty, each of the same as a condition precedent to each Interim Advance), each in form and substance satisfactory to the Interim Lender.

## 10. COSTS AND EXPENSES

The Borrower shall pay all of the Interim Lender's reasonable legal fees and out-of-pocket disbursements and any costs of realization or enforcement, in each case in connection with or otherwise related to the Interim Facility, the Interim Lender Charge, the Interim Financing Credit Documentation or the CCAA Proceedings (collectively, the "**Interim Financing Fees and Expenses**").

## 11. INTERIM FACILITY SECURITY AND DOCUMENTATION

All Interim Financing Obligations shall be secured by the Interim Lender Charge.

The Interim Lender Charge shall be a priority Lien, subordinate only to the Permitted Priority Liens. Notwithstanding the foregoing, and subject to the concluding sentence of this paragraph, no proceeds of any Interim Advance may be used to: (a) investigate, object to or challenge in any way

any claims of the Interim Lender against any of the Credit Parties in respect of the Interim Facility; or (b) investigate, object to or challenge in any way the validity or enforceability of the Liens created pursuant to the Interim Lender Charge. Nothing in this paragraph shall restrict the Credit Parties or the Monitor, including the engagement by the Monitor of independent legal counsel, from conducting a claims process in accordance with any Restructuring Court Order (and receiving their fees, costs and expenses therefor), if necessary.

Subject to the Cash Flow Forecast and other limitations set forth herein, the Borrower may only request and apply Interim Advances through the Borrower's existing cash management system with the Bank of Montreal as in existence immediately prior to the Filing Date or otherwise as agreed to with the Interim Lender, acting reasonably. Except as set out in the Cash Flow Forecast, the Borrower shall not effect, and shall not permit to occur, any distribution of funds (whether from proceeds of the Interim Facility or otherwise) from a Credit Party to any subsidiary or affiliate that is not a Credit Party

**12. PERMITTED LIENS AND PRIORITY:**

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

**13. MONITOR:**

The proposed monitor in the CCAA Proceedings is **Alvarez & Marsal Canada Inc.** (the "**Monitor**"). The Monitor shall be authorized to have direct discussions with the Interim Lender, and subject to any just exceptions, the Interim Lender shall be entitled to receive information from the Monitor as may be requested by the Interim Lender from time to time.

**14. REPAYMENT:**

The Interim Facility shall be repayable in full on the earliest of: (a) the occurrence of any Event of Default hereunder which is continuing and has not been cured; (b) the implementation of a plan of compromise or arrangement within the CCAA Proceedings (a "**Plan**") which has been approved by the requisite majorities of the Credit Parties' creditors and by order entered by the Court; (c) the closing of a CCAA Sale within the CCAA Proceedings which has been approved by orders entered by the Court; (d) conversion of the CCAA Proceedings into a proceeding under the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**") or the termination of the CCAA Proceedings; and (e)



May 8, 2020 (the earliest of such dates being the "**Maturity Date**").

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

15. **CASH FLOW FORECAST AND  
REVISED CASH FLOW FORECAST:**

The Borrower shall prepare and provide, in form and substance satisfactory to the Interim Lender in its sole and absolute discretion, a weekly line item cash flow forecast (receipts and disbursements forecast), and supported by aged listings of accounts payable, inclusive of critical payments and statutory obligations, covering the period of at least 13 calendar weeks following the Closing Date (together with all updates thereto approved by the Interim Lender in its sole and absolute discretion, the "**Cash Flow Forecast**"). The Cash Flow Forecast shall set forth expected receipts and all of the operating and capital expenditure to be made during each calendar week and in the aggregate for the period of time covered by the Cash Flow Forecast.

Commencing on the Tuesday of the calendar week following **January 16, 2020 and continuing every second Tuesday thereafter**, the Borrower shall by 5:00 p.m. (Calgary time) deliver to the Interim Lender: (a) a report and variance analysis showing actual cash receipts and actual expenditures for each line item in the Cash Flow Forecast covering the previous week (including cumulative weeks since the Filing Date) and comparing the foregoing amounts with the previously forecasted cash receipts and expenditures, respectively, set forth in the Cash Flow Forecast for such line item during such one week period (as well as the cumulative period to date); and (b) an update and extension to the Cash Flow Forecast (the "**Revised Cash Flow**").

**Forecast**") for the period commencing from the end of the previous week through and including thirteen (13) weeks thereafter, which shall reflect the Borrower's good faith projections and be in form and detail consistent with the initial Cash Flow Forecast and subject to the approval of the Interim Lender. The Borrower shall, and shall use commercially reasonable efforts, if requested by the Interim Lender, to cause its non-legal advisors to, participate on weekly conference calls with the Interim Lender, and its respective advisors, to discuss the Revised Cash Flow Forecast, the Borrower's current and projected operational performance and any related financial matters.

The Borrower shall ensure that when measured as of each Variance Testing Date, the following cash flow test (the "**Cash Flow Test**") for each of the components of the Cash Flow Forecast or Revised Cash Flow Forecast as the case may be, is met:

1. Except as otherwise agreed by the Interim Lender, the Borrower's total expenditures (excluding any legal or advisory fees incurred on behalf of the Interim Lender paid before **January 8, 2020**) for the prior week period shall not have exceeded 110% of the amount of total expenditures for such prior week period as set forth in the most recent Cash Flow Forecast or Revised Cash Flow Forecast.
2. Except as otherwise agreed by the Interim Lender, the Borrower's net cash receipts for the prior week period shall not be less than 90% of the amount of forecasted cash receipts for such prior week period as set forth in the Cash Flow Forecast or Revised Cash Flow Forecast.
3. The Borrower shall provide detailed bridges (quantitative explanations of the forecast-to-actual variances) for each line-item of the Cash Flow Forecast or Revised Cash Flow Forecast as well as for any other line item variances outside of the management's direct control including, without limitation foreign exchange gains or losses, that impact the overall consolidated cash flow results (the "**Cash Flow Variance Report**").

Notwithstanding any other provision in this Section 15, the Borrower shall be permitted to incur extraordinary expenses not otherwise permitted

under the Cash Flow Test only with the prior written consent of the Interim Lender.

**16. AVAILABILITY UNDER INTERIM FACILITY:**

Provided that a Default or an Event of Default has not occurred, each Interim Advance shall be made by the Interim Lender to the Borrower within two (2) Business Days after satisfaction, as determined by the Interim Lender in its discretion, acting reasonably, of all of the applicable Funding Conditions set out in this Interim Financing Term Sheet. The Borrower acknowledges that the Monitor shall confirm and approve all of the Borrower's disbursements and expenditures.

Interim Advances shall be available to the Borrower in Canadian Dollars. Each Interim Advance shall be in a minimum aggregate amount that is no less than Cdn.\$100,000 and in excess thereof in integral multiples of Cdn.\$50,000, unless otherwise agreed to by the Interim Lender.

All proceeds of Interim Advances shall be deposited into the Deposit Account. The Deposit Account shall be subject to a priority Lien in favour of the Interim Lender, subordinate only to the Permitted Priority Liens.

**17. USE OF PROCEEDS:**

The proceeds of the Interim Facility shall only be used: (a) to finance operating expenses, restructuring costs (including professional fees, fees of the legal counsel to the Credit Parties, the Monitor and the Monitor's legal counsel), and for general corporate purposes of the Borrower and Credit Parties, all in accordance with the Cash Flow Forecast (or Revised Cash Flow Forecast), subject to the expenditure variances referenced in Section 24(c) below; (b) to pay fees and expenses related to the Interim Facility and the CCAA Proceedings; and (c) to repay to Bank of Montreal all advances made pursuant to the "Temporary Bulge" as defined in the amended and restated loan agreement between Bank of Montreal and the Credit Parties dated June 28, 2019, as further amended by the amending agreement dated December 23, 2019, provided that no proceeds from the Interim Facility or the Collateral shall be used other than in accordance with this Interim Financing Term Sheet unless otherwise agreed in writing by the Interim Lender.



**18. EVIDENCE OF INDEBTEDNESS:**

The Interim Lender's accounts and records constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the Interim Lender pursuant to the Interim Facility.

**19. PREPAYMENTS:**

Provided the Monitor is satisfied that there are sufficient cash reserves in the Credit Parties' bank accounts to satisfy amounts secured by the Permitted Priority Liens, the Borrower may prepay any amounts outstanding or any portion of any amounts outstanding under the Interim Facility at any time prior to the Maturity Date, without any prepayment fee or penalty.

**20. FEES, INTEREST RATE AND  
DEFAULT RATE:**

The Interim Advances shall bear interest at a rate of 12%.

The foregoing interest shall accrue daily and shall be payable monthly in arrears on each Interest Payment Date for each Interim Advance for the period from and including the date upon which the Interim Lender advances such Interim Advance to the Borrower to and including the day such Interim Advance is repaid or paid, as the case may be, to the Interim Lender, and shall be calculated on the principal amount of each Interim Advance outstanding during such period and on the basis of the actual number of days elapsed in a year of 365 days.

The Borrower shall pay a non-refundable financing fee of 3% of the Interim Facility commitment amount being Cdn.\$5,700,000 upon execution of this Interim Financing Term Sheet.

**21. CURRENCY:**

Unless otherwise stated, all monetary denominations shall be in Canadian Dollars. Any payment under this Interim Financing Term Sheet which any Credit Party pays to the Interim Lender in a currency other than Canadian Dollars (the "**Other Currency**"), whether voluntarily or pursuant to an order or judgment of a court or tribunal of any jurisdiction, will only discharge the Credit Parties' liability under this Interim Financing Term Sheet to the extent of the Equivalent Amount in Canadian Dollars of the Other Currency so paid.

**22. MANDATORY REPAYMENTS:**

- (a) As determined by the Monitor, surplus cash receipts or cash balances not required to fund disbursements and expenditures in the

Cash Flow Forecast or Revised Cash Flow Forecast.

- (b) Net proceeds from the sale or disposition of any capital assets or non-ordinary course inventory (i.e., redundant or obsolete inventory), which is approved by the Interim Lender.

**23. REPRESENTATIONS AND WARRANTIES:**

Each of the Credit Parties represents and warrants to the Interim Lender, upon which the Interim Lender is relying in entering into this Interim Financing Term Sheet and the other Interim Financing Credit Documentation, as follows:

- (a) The transactions contemplated by this Interim Financing Term Sheet and the other Interim Financing Credit Documentation:
  - (i) are within the powers of each of the Credit Parties;
  - (ii) have been duly authorized by all necessary corporate, partnership or trust, as the case may be, and, if required, shareholder, partner, trustee or administrator, as the case may be, approval of each of the Credit Parties;
  - (iii) have been duly executed and delivered by or on behalf of each of the Credit Parties;
  - (iv) constitute legal, valid and binding obligations of each of the Credit Parties; and
  - (v) do not require the consent or approval of, registration or filing with, or any other action by, any Governmental Authority, other than filings which may be made to register or otherwise record the Interim Lender Charge.
- (b) The activities of the Credit Parties have been conducted in material compliance with all applicable provincial, state and federal laws, subject to the provisions of the CCAA and any Restructuring Court Order, unless: (i)

otherwise ordered by the Court; or (ii) the sanctions for non-compliance are stayed by a Restructuring Court Order.

- (c) Each of the Credit Parties has maintained its obligations for payroll, source deductions, goods and services tax and harmonized sales tax, as applicable, and is not in arrears in respect of payment of these obligations.
- (d) The Cash Flow Forecast and each Revised Cash Flow Forecast are reasonable and prepared in good faith.
- (e) All representations and warranties made by each of the Credit Parties in all Interim Financing Credit Documentation are true and correct in all material respects as of the time such representations and warranties are made.
- (f) No Default or Event of Default has occurred and is continuing.
- (g) This Interim Financing Term Sheet, including Section 32 hereof and the constituent definitions herein and under the other Interim Financing Credit Documentation relating to interest and other amounts payable hereunder and thereunder, satisfies the requirements of section 4 of the *Interest Act* (Canada) to the extent that section 4 of the *Interest Act* (Canada) applies to the expression, statement or calculation of any rate of interest or other rate per annum hereunder or under any other Interim Financing Credit Documentation.
- (h) The Borrower and the Guarantor are each able to calculate the yearly rate or percentage of interest payable under any Interim Financing Credit Documentation based on the methodology set out herein and under the other Documents, including Section 32 hereof hereof and the constituent definitions herein and under the other Interim Financing Credit Documentation relating to interest and other amounts payable hereunder and thereunder.



## 24. AFFIRMATIVE COVENANTS:

In addition to all of the other covenants and obligations contained herein, the Credit Parties covenant and agree to perform and do each of the following until the Interim Financing Obligations are permanently and indefeasibly repaid in full and the Interim Facility is terminated:

- (a) Apply for an Order from the Court, on or before January 16, 2020, in a form satisfactory to the Interim Lender in its absolute discretion, approving a sales and investment solicitation process ("**SISP**") respecting the business and assets of the Credit Parties for the purpose of achieving a Restructuring Option.
- (b) Allow the Interim Lender or its agents and advisors, on reasonable notice during regular business hours, to enter on and inspect each of the Credit Parties' assets and properties, and provide the Interim Lender or its agents or advisors, on reasonable notice and during normal business hours, full access to the books and records of the Credit Parties' and cause management thereof to fully co-operate with the Interim Lender or its agents and advisors, as applicable.
- (c) Use reasonable efforts to keep the Interim Lender apprised on a timely basis of all material developments with respect to the business and affairs of the Credit Parties, including (without limitation) the development of a Plan or a Restructuring Option.
- (d) Deliver to the Interim Lender periodic reporting packages and other information requested by the Interim Lender from time to time, including: (i) annual and monthly unaudited financial statements for the Credit Parties, each together with officer compliance certificates and management reports, on a look-forward basis; (ii) Cash Flow Variance Reports as set forth above; provided that in the case of the Cash Flow Variance Report delivered on each Variance Testing Date, the Credit Parties' total expenditures for the prior rolling two week period shall not have exceeded 110% of the amount of total expenditures for such two



week period as set forth in the Cash Flow Forecast (or Revised Cash Flow Forecast); (iii) a reasonable period of time prior to filing with the Court, copies of all pleadings, motions, applications, judicial or financial information and other documents filed by or on behalf of any Credit Party with the Court; and (iv) notice of material events, including, without limitation, defaults, new litigation or changes in status of ongoing litigation, regulatory and other filings and any other event that could reasonably be expected to result in a Material Adverse Change. Without limiting the foregoing, the Credit Parties shall deliver to the Interim Lender copies of any financial reporting provided to the Monitor in a timely manner and forthwith provide to the Interim Lender any reports or commentary received from the Monitor regarding the financial position of the Credit Parties.

- (e) Use the proceeds of the Interim Facility only for the purposes described in Section 17, and in a manner consistent with the restrictions set out herein.
- (f) Comply with the provisions of the court orders made in the CCAA Proceedings applicable to the Credit Parties (collectively, the "**Restructuring Court Orders**" and each a "**Restructuring Court Order**"); provided that if any such Restructuring Court Order contravenes this Interim Financing Term Sheet or any of the Interim Financing Credit Documentation so as to adversely impact the rights or interests of the Interim Lender, the same shall be an Event of Default hereunder.
- (g) Preserve, renew and keep in full force its respective corporate, partnership or trust existence and its respective material licenses, permits, approvals, and other authorizations required in respect of its business, properties, assets or any activities or operations carried out therein, unless otherwise agreed by the Interim Lender.

- (h) Conduct all activities in a manner consistent with the Cash Flow Forecast or Revised Cash Flow Forecast.
- (i) Forthwith notify the Interim Lender of the occurrence of any Default or Event of Default, including an Updated Cash Flow Default.
- (j) Provide the Interim Lender with draft copies of all motions, applications, proposed orders or other material or documents that any of them intend to file in the CCAA Proceedings as soon as practically possible prior to any such filing.
- (k) Provide to the Interim Lender, on a monthly basis, reporting with respect to the Credit Parties' outstanding amounts, if any, of statutory obligations that would otherwise rank in priority to the secured creditors, including, but not limited, to payroll withholdings, GST/HST or other sales taxes and relevant pension obligations. For further clarity, the Credit Parties agree to remain current on all statutory obligations that would rank in priority to the secured creditors.
- (l) Provide to the Interim Lender regular updates regarding the status of the CCAA Proceedings including, without limitation, reports on the progress of any Plan or Restructuring Option, and any information which may otherwise be confidential subject to same being maintained as confidential by the Interim Lender.

## 25. NEGATIVE COVENANTS:

The Credit Parties covenant and agree not to do the following, other than with the prior written consent of the Interim Lender:

- (a) Transfer, lease or otherwise dispose of all or any part of its property, assets or undertaking over Cdn.\$25,000 at any one time, or through a series of related transactions over Cdn.\$100,000 in the aggregate after the date hereof (excluding dispositions of obsolete assets, which have been approved by the Interim Lender, and the disposition of inventory in the ordinary course of business), without the prior written

consent of the Interim Lender or the Court.

- (b) Make any payment of principal or interest in respect of existing (pre-filing) debt or obligation, other than as may be permitted by a Restructuring Court Order and that does not result in an Event of Default, and is provided for in the Cash Flow Forecast.
- (c) Create or permit to exist indebtedness (including guarantees thereof or indemnities or other financial assistance in respect thereof) other than existing (pre-filing) debt, debt contemplated by this Interim Financing Term Sheet and post-filing trade payables.
- (d) Make any payments not consistent with the Cash Flow Forecast.
- (e) Make or give any additional financial assurances, in the form of bonds, letters of credit, guarantees or otherwise, to any person (including, without limitation, any Governmental Authority).
- (f) Create, permit to exist or seek or support a motion by another party to provide to any third party a Lien on the Collateral which is senior to or *pari passu* with the Interim Lender Charge, other than the Permitted Priority Liens.
- (g) Change its name, amalgamate, consolidate with or merge into, or enter into any similar transaction with any other entity.
- (h) Make any payment in respect of post-employment benefit payments.

## 26. INDEMNITY AND RELEASE:

The Credit Parties agree, on a joint and several basis, to indemnify and hold harmless the Interim Lender and its directors, officers, employees, agents, attorneys, advisors and affiliates (all such persons and entities being referred to hereafter as "**Indemnified Persons**") from and against any and all actions, suits, proceedings (including any investigations or inquiries), claims, losses, damages, liabilities or expenses of any kind or nature whatsoever (excluding indirect or consequential damages and claims for lost profits) which may be incurred by or asserted against or



involve any Indemnified Person (collectively, "**Claims**") as a result of or arising out of or in any way related to or resulting from the Interim Facility, this Interim Financing Term Sheet or any other Interim Financing Credit Documentation (regardless of whether such Claim is made in the CCAA Proceedings or any other proceeding, including a bankruptcy or insolvency proceeding) and, upon demand, to pay and reimburse any Indemnified Person for any legal or other out-of-pocket expenses incurred in connection with investigating, defending or preparing to defend any such action, suit, proceeding (including, without limitation, any inquiry or investigation) or claim (whether or not any Indemnified Person is a party to any action or proceeding out of which any such expenses arise); provided, however, the Credit Parties shall not be obligated to indemnify pursuant to this paragraph any Indemnified Person against any loss, claim, damage, expense or liability: (a) to the extent it resulted from the gross negligence or wilful misconduct of such Indemnified Person as finally determined by a court of competent jurisdiction; or (b) to the extent arising from any dispute solely among Indemnified Persons other than any claims arising out of any act or omission on the part of a Credit Party. The Credit Parties shall not be responsible or liable to any Indemnified Person or any other person for consequential or punitive damages. Each of the Indemnified Persons undertakes to repay any and all costs paid to such Indemnified Person in accordance with this Section 26 if it is ultimately determined that such Indemnified Person is not entitled to be indemnified therefor.

The indemnities granted under this Interim Financing Term Sheet shall survive any termination of the Interim Facility.

## **27. EVENTS OF DEFAULT:**

The occurrence of any one or more of the following events without the Interim Lender's written consent shall constitute an event of default ("**Event of Default**") under this Interim Financing Term Sheet:

- (a) the issuance of an order of the Court (including any Restructuring Court Order) or any other court of competent jurisdiction:
  - (i) dismissing the CCAA Proceedings or lifting the stay in the CCAA

Proceedings to permit (A) the enforcement of any Lien against a Credit Party, or a material portion of their respective property, assets or undertaking, or (B) the appointment of a receiver and manager, receiver, interim receiver or similar official or the making of a bankruptcy order against a Credit Party;

- (ii) granting any Lien which is senior to or *pari passu* with the Interim Lender Charge, other than the Priority Charges;
  - (iii) staying, reversing, vacating or otherwise modifying the Interim Financing Credit Documentation or any Restructuring Court Order in a manner adverse to the interests of the Interim Lender;
  - (iv) adversely impacting the rights and interests of the Interim Lender, as determined by the Interim Lender, acting reasonably, without the prior written consent of the Interim Lender; or
  - (v) directing any Credit Party to pay any post-employment benefits;
- (b) the filing of any pleading by any Credit Party seeking any of the matters set forth in clause (a) above or failure of the Credit Parties to diligently oppose any party that brings an application or motion for the relief set out in clause (a) above and/or fails to secure the dismissal of such motion or application within 5 days from the date such application or motion is brought;
- (c) failure of any of the Credit Parties to comply with any positive covenants or negative covenants in this Interim Financing Term Sheet;
- (d) any Revised Cash Flow Forecast contemplates or forecasts an adverse change or changes from the then existing Cash Flow Forecast (or Revised Cash Flow

Forecast) and such change(s) constitute a Material Adverse Change, or any Revised Cash Flow Forecast contemplates that borrowings under the Interim Facility will exceed the Maximum Amount at any time (unless and until the Interim Lender consent to increase the Maximum Amount, which shall be in the Interim Lender's sole and absolute discretion) (each, an "**Updated Cash Flow Default**");

- (e) if any event or circumstance shall occur or exist that is a Material Adverse Change, as determined by the Interim Lender, in its sole discretion;
- (f) borrowings under the Interim Facility exceed the Maximum Amount at any time without the prior written consent of the Interim Lender;
- (g) any violation or breach of any Restructuring Court Order upon receipt by a Credit Party of notice from the Interim Lender, and confirmation by the Court, of such violation or breach;
- (h) an event of default under and as defined in any of the other Interim Financing Credit Documentation has occurred;
- (i) any proceeding, motion or application is commenced or filed by any of the Credit Parties, or if commenced by another party, supported or otherwise consented to by any Credit Party, seeking the invalidation, subordination or other challenging of the terms of the Interim Facility, the Interim Lender Charge, this Interim Financing Term Sheet, or any of the other Interim Financing Credit Documentation or, unless the Plan or Restructuring Option provides for repayment in full of the Interim Facility, the approval of any Plan or Restructuring Option which does not have the prior written consent of the Interim Lender;
- (j) any Plan is sanctioned or any Restructuring Option is consummated by any of the Credit Parties that is not consistent with or contravenes any provision of this Interim

Financing Term Sheet or other Interim Financing Credit Documentation in a manner that is adverse to the interests of the Interim Lender, as determined by the Interim Lender, or would reasonably be expected to adversely affect the interests of the Interim Lender, as determined by the Interim Lender, unless the Interim Lender has consented thereto;

- (k) except as set out in the Cash Flow Forecast (or Revised Cash Flow Forecast), or as otherwise previously agreed to in writing by the Interim Lender, any Credit Party is required by any Governmental Authority to make expenditures or pay damages, fines, claims, costs or expenses to remediate, in respect of any Environmental Liabilities, and such requirement is not stayed by a Restructuring Court Order;
- (l) if any Credit Party pays or agrees to pay any of the legal, consulting or other professional fees and/or disbursements not otherwise listed on the Cash Flow Forecast or Revised Cash Flow Forecast without the prior written consent of the Interim Lender;
- (m) failure of the Borrower to pay any principal amount owing under this Interim Financing Term Sheet when due;
- (n) failure of the Borrower to pay any interest or fees or any portion thereof owing under this Interim Financing Term Sheet or any other Interim Financing Credit Documentation when due and such default shall remain unremedied for a period of two (2) Business Days after written notice from the Interim Lender to the Borrower that such amount is overdue;
- (o) failure of any Credit Party to perform or comply with any other term or covenant under this Interim Financing Term Sheet, or any other Interim Financing Credit Documentation, and such default shall continue unremedied for a period of three (3) Business Days; or



- (p) if any Credit Party commences an action or takes any other proceeding to obtain any form of relief against the Interim Lender or any affiliate thereof, including, without limitation, a proceeding to recover damages or to obtain payment of any amounts purported to be owing by the Interim Lender or any affiliate thereof to any Credit Party or any affiliate thereof if the Interim Lender or such affiliate disputes any of the same.

## 28. REMEDIES:

Upon the occurrence of an Event of Default, and subject to the Restructuring Court Orders, the Interim Lender may, in its sole and absolute discretion, elect to terminate the Interim Lender's commitment to make Interim Advances to the Borrower hereunder and declare the obligations in respect of the Interim Financing Credit Documentation to be immediately due and payable and cease making any further Interim Advances. Without limiting the foregoing remedies, upon the occurrence of an Event of Default, the Interim Lender may, in its sole and absolute discretion, elect to permanently reduce the Maximum Amount. In addition, upon the occurrence of an Event of Default, the Interim Lender may, in its sole and absolute discretion, subject to any Restructuring Court Order:

- (a) apply to a court for the appointment of a receiver, an interim receiver or a receiver and manager over the Collateral, or for the appointment of a trustee in bankruptcy of the Credit Parties;
- (b) set-off or combine any amounts then owing by the Interim Lender to any of the Credit Parties against the obligations of any of the Credit Parties to the Interim Lender hereunder or under any other Interim Financing Credit Documentation;
- (c) apply to the Court for an order or orders, on terms satisfactory to the Monitor and the Interim Lender, providing the Monitor with the power, in the name of and on behalf of the Credit Parties, to take all necessary steps in the CCAA Proceedings;
- (d) subject to obtaining prior approval from the Court, exercise the powers and rights of a

secured party under the *Personal Property Security Act* (Saskatchewan) or any legislation of similar effect; and

- (e) subject to obtaining prior approval from the Court, exercise all such other rights and remedies under the Interim Financing Credit Documentation, the Restructuring Court Orders and applicable law.

**29. INTERIM LENDER'S APPROVALS:**

Any consent, approval, instruction or other expression of the Interim Lender to be delivered in writing may be delivered by any written instrument, including by way of electronic mail, by the Interim Lender, or its counsel, pursuant to the terms hereof.

**30. TERMINATION BY THE CREDIT PARTIES:**

At any time following the indefeasible payment in full in immediately available funds of all of the outstanding Interim Financing Obligations, the Credit Parties shall be entitled to terminate this Interim Financing Term Sheet upon notice to the Interim Lender. Effective immediately upon such termination, all obligations of the Credit Parties and the Interim Lender under this Interim Financing Term Sheet and the other Interim Financing Credit Documentation shall cease, except for those obligations in Section 26 that explicitly survive termination.

**31. TAXES:**

All payments by the Credit Parties under this Interim Financing Term Sheet and the other Interim Financing Credit Documentation to the Interim Lender, including any payments required to be made from and after the exercise of any remedies available to the Interim Lender upon an Event of Default, shall be made free and clear of, and without reduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any country or any political subdivision of any country (collectively "**Taxes**"); provided, however, that if any Taxes are required by applicable law to be withheld ("**Withholding Taxes**") from any amount payable to the Interim Lender under any Interim Financing Credit Documentation, the amount so payable to the Interim Lender shall be increased to the extent necessary to yield to the



Interim Lender on a net basis after payment of all Withholding Taxes (including any Withholding Taxes on such increases), the amount payable under such Interim Financing Credit Documentation at the rate or in the amount specified in such Interim Financing Credit Documentation and the applicable Credit Party, as the case may be, shall provide evidence satisfactory to the Interim Lender that the Taxes have been so withheld and remitted.

32. **INTEREST ACT (CANADA):**

Whenever a rate of interest or other rate per annum hereunder is calculated on the basis of a year (the "**deemed year**") which contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest shall be expressed as a yearly rate for purposes of the *Interest Act* (Canada) by multiplying such rate of interest by the actual number of days in the calendar year of calculation and dividing it by the number of days in the deemed year.

**THE BORROWER AND THE GUARANTOR ACKNOWLEDGES AND CONFIRMS THAT: (A) THIS INTERIM FINANCING TERM SHEET, INCLUDING THIS SECTION 32 AND THE CONSTITUENT DEFINITIONS HEREIN AND UNDER THE OTHER INTERIM FINANCING CREDIT DOCUMENTATION RELATING TO INTEREST AND OTHER AMOUNTS PAYABLE HEREUNDER AND THEREUNDER, SATISFIES THE REQUIREMENTS OF SECTION 4 OF THE *INTEREST ACT* (CANADA) TO THE EXTENT THAT SECTION 4 OF THE *INTEREST ACT* (CANADA) APPLIES TO THE EXPRESSION, STATEMENT OR CALCULATION OF ANY RATE OF INTEREST OR OTHER RATE PER ANNUM HEREUNDER OR UNDER ANY OTHER INTERIM FINANCING CREDIT DOCUMENTATION; AND (B) THE BORROWER AND THE GUARANTOR ARE ABLE TO CALCULATE THE YEARLY RATE OR PERCENTAGE OF INTEREST PAYABLE UNDER ANY INTERIM FINANCING CREDIT DOCUMENTATION BASED ON THE METHODOLOGY SET OUT HEREIN AND UNDER THE OTHER DOCUMENTS, INCLUDING THIS SECTION 32 AND THE CONSTITUENT DEFINITIONS HEREIN AND UNDER THE OTHER INTERIM FINANCING CREDIT DOCUMENTATION RELATING TO INTEREST AND OTHER AMOUNTS PAYABLE HEREUNDER AND THEREUNDER. THE**

BORROWER AND THE GUARANTOR HEREBY IRREVOCABLY AGREES NOT TO, AND AGREES TO CAUSE EACH OF ITS SUBSIDIARIES NOT TO, PLEAD OR ASSERT, WHETHER BY WAY OF DEFENCE OR OTHERWISE, IN ANY PROCEEDING RELATING TO THE INTERIM FINANCING CREDIT DOCUMENTATION, THAT THE INTEREST PAYABLE UNDER THE INTERIM FINANCING CREDIT DOCUMENTATION AND THE CALCULATION THEREOF HAS NOT BEEN ADEQUATELY DISCLOSED TO THE BORROWER, ANY SUBSIDIARY OR THE NOMINEE SHAREHOLDER, WHETHER PURSUANT TO SECTION 4 OF THE *INTEREST ACT (CANADA)* OR ANY OTHER APPLICABLE LAW OR LEGAL PRINCIPLE.

**33. FURTHER ASSURANCES:**

The Credit Parties shall, at their expense, from time to time do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) and things as the Interim Lender may reasonably request for the purpose of giving effect to this Interim Financing Term Sheet.

**34. ENTIRE AGREEMENT; CONFLICT:**

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

**35. AMENDMENTS, WAIVERS, ETC.:**

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

**36. ASSIGNMENT:**

The Interim Lender may assign this Interim Financing Term Sheet and its rights and obligations hereunder, in whole or in part, or grant a participation in its rights and obligations hereunder,



(i) at any time to an affiliate of the Interim Lender; (ii) prior to the occurrence of an Event of Default, subject to the consent of the Borrower, not to be unreasonably withheld; and (iii) following the occurrence of an Event of Default, to any person acceptable to the Interim Lender in its sole and absolute discretion (subject in all cases to providing the Monitor with reasonable evidence that such assignee has the financial capacity to fulfill the obligations of the Interim Lender hereunder). None of this Interim Financing Term Sheet, any other Interim Financing Creditor Documentation nor any right or obligation hereunder or thereunder may be assigned by any Credit Party.

**37. SEVERABILITY:**

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

**38. NO THIRD PARTY BENEFICIARY:**

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

**39. COUNTERPARTS AND FACSIMILE SIGNATURES:**

This Interim Financing Term Sheet may be executed in any number of counterparts and by facsimile or other electronic transmission, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

**40. NOTICES:**

Any notice, request or other communication hereunder to any of the parties shall be in writing and may be made or given by personal delivery or by transmittal by facsimile or, subject as provided below, other electronic means of communication addressed to the respective parties as follows:

In the case of the Credit Parties:

Mr. Kevin Adair  
Morris

President and COO  
2131 Airport Drive  
Saskatoon, Saskatchewan, S7L 7E1  
306-343-5276  
[kadair@morris-industries.com](mailto:kadair@morris-industries.com)

With a copy to:

Mr. Ian Sutherland  
McDougall Gauley LLP  
Partner  
500 - 616 Main Street  
Saskatoon, Saskatchewan, S7H 0J6  
306-665-5417  
[isutherland@mcdougallgauley.com](mailto:isutherland@mcdougallgauley.com)

In the case of the Interim Lender:

Mr. Sandy Hayer  
Bank of Montreal  
Senior Manager  
Special Accounts Management Unit  
600, 350 – 7 Ave SW  
Calgary, Alberta T2P 3N9  
403-503-7499  
[Sandy.hayer@bmo.com](mailto:Sandy.hayer@bmo.com)

With a copy to:

Mr. David LeGeyt  
Burnet, Duckworth & Palmer LLP  
Partner  
2400, 525 – 8<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 1G1  
403-260-0210  
[dlegeyt@bdplaw.com](mailto:dlegeyt@bdplaw.com)

In the case of the Proposed Monitor:

Mr. Orest M.P. Konowalchuk  
Alvarez & Marsal Canada Inc.  
Senior Vice President  
1110, 250 – 6 Ave SW  
Calgary, Alberta T2P 3H7  
403-538-4736  
[okonowalchuk@alvarezandmarsal.com](mailto:okonowalchuk@alvarezandmarsal.com)

or to such other address or facsimile number as any party may from time to time notify the others in accordance with this Section 40. Any notice,

request or other communication made or given by personal delivery or by facsimile or other electronic means of communication during normal business hours at the place of receipt on a Business Day shall be conclusively deemed to have been made or given at the time of actual delivery or transmittal, as the case may be, on such Business Day. Any demand, notice or communication made or given by personal delivery or by facsimile or other electronic means of communication after normal business hours at the place of receipt or otherwise than on a Business Day shall be conclusively deemed to have been made or given at 9:00 a.m. (Calgary time) on the first Business Day following actual delivery or transmittal, as the case may be.

Any notice, request or other communication hereunder to be made or given hereunder may be delivered or furnished by electronic communication (including email) pursuant to procedures approved by each such party accepting email communication. Unless a party otherwise prescribes, notices, requests and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgement), provided that, if such notice, request or other communication is not sent within normal business hours of the recipient, such demand, notice or other communication shall be deemed to have been sent at the opening of business on the next Business Day.

**41. GOVERNING LAW AND JURISDICTION:**

This Interim Financing Term Sheet shall be governed by, and construed in accordance with, the laws of the Province of Saskatchewan and the federal laws of Canada applicable therein. Without prejudice to the ability of the Interim Lender to enforce this Interim Financing Term Sheet in any other proper jurisdiction, the Credit Parties irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Saskatchewan, and further acknowledge and agree that any disputes arising in respect of the Interim Financing Credit Documentation shall be heard by the Court.

**[signature pages follow on separate pages]**



**IN WITNESS HEREOF**, the parties hereby execute this Interim Financing Term Sheet as at the date first above mentioned.

**Interim Lender:**

**Bank of Montreal**

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

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

**Borrower:**

**Morris Industries Ltd.**

Per:

\_\_\_\_\_  
Name:

Title:

Per:

\_\_\_\_\_  
Name:

Title:

**Morris Sales and Service Ltd.**

Per:

\_\_\_\_\_  
Name:

Title:

Per:

\_\_\_\_\_  
Name:

Title:

**Guarantor:**

**101098672 Saskatchewan Ltd.**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Guarantor:**

**Contour Realty Inc.**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Guarantor:**

**Morris Industries (USA) Inc.**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## SCHEDULE "A"

### DEFINED TERMS

**"Administration Charge"** means the administration charge on the Collateral in an aggregate amount not to exceed Cdn.\$175,000.

**"Borrower"** has the meaning given thereto in Section 1.

**"Business Day"** means a day, excluding Saturday and Sunday, on which banking institutions are open for the transaction of commercial business in Calgary, Alberta.

**"Canadian Dollars"** and "Cdn.\$" mean the lawful money of Canada.

**"Cash Flow Forecast"** has the meaning given thereto in Section 15.

**"CCAA"** has the meaning given thereto in the Recitals.

**"CCAA Proceedings"** has the meaning given thereto in the Recitals.

**"CCAA Sale"** means the sale of all or substantially all of the assets of the Borrower pursuant to a sale approved by the Court.

**"Collateral"** means all present and future assets and property of the Credit Parties, real and personal, tangible or intangible, and whether now owned or which are hereafter acquired or otherwise become the property of a Credit Party.

**"Court"** has the meaning given thereto in the Recitals.

**"Credit Parties"** has the meaning given thereto in Section 3.

**"Default"** means any event or condition which, with the giving of notice, lapse of time or upon a declaration or determination being made (or any combination thereof), would constitute an Event of Default.

**"Deposit Account"** means the following accounts maintained by the Borrower **[NTD: Borrower to provide account details.]** to which payments and transfers under this Interim Financing Term Sheet are to be effected:

Payment Format:	[•]
For Bank Use ONLY:	[•]

Beneficiary Bank:	[•]
Beneficiary Bank Address:	[•]
Institution Code:	[•]
Transit No.:	[•]
Beneficiary Account No.:	[•]

or such other account or accounts as the Interim Lender may from time to time designate by notice to the Borrower.



**"Directors' Charge"** means a directors and officers liability charge on the Collateral in an amount not to exceed Cdn.\$175,000.

**"Drawdown Certificate"** has the meaning given thereto in Section 9.4.

**"Environmental Liabilities"** means all liabilities, obligations, responses, remedial and removal costs, investigation and feasibility study costs, capital costs, operation and maintenance costs and other costs and expenses, including fines, penalties, sanctions and interest incurred as a result of or related to any claim, investigation, proceeding or demand of any Governmental Authority against any of the Credit Parties including, without limitation, arising under or related to any law relating to the environment or in connection with any substance which is or is deemed under any applicable law to be, alone or in combination, hazardous, hazardous waste, toxic, a pollutant, a contaminant or source of pollution or contamination whether on, at, in, under, from or about or in the vicinity of any real or personal property owned by any of the Credit Parties.

**"Equivalent Amount"** means, on any date, with respect to an amount in one currency, the amount in another currency that could be purchased by the amount in the first currency determined by reference to the noon rate of exchange for Canadian interbank transactions established by the Bank of Canada for converting the first currency to the other currency at approximately the close of business on the immediately preceding Business Day, or, if such rate is for any reason unavailable, on the first Business Day immediately preceding such immediately preceding Business Day.

**"Event of Default"** has the meaning given thereto in Section 27.

**"Filing Date"** means **January 8, 2020**.

**"Funding Conditions"** has the meaning given thereto in Section 9.

**"Governmental Authority"** means any federal, provincial, state, regional, municipal or local government or any department, agency, board, tribunal or authority thereof or other political subdivision thereof and any entity or person exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government or the operation thereof.

**"Guarantor"** has the meaning given thereto in Section 3.

**"Indemnified Persons"** has the meaning given thereto in Section 26.

**"Initial Order"** means the initial order of the Court dated **January 8, 2020**, 2019 pursuant to which the Borrower became subject to the CCAA Proceedings.

**"Interest Payment Date"** means the third day of each month; provided that, in any case, on the Maturity Date or, if applicable, any earlier date on which the Interim Facility is fully cancelled or permanently reduced in full, shall be an Interest Payment Date with respect to all Interim Advances then outstanding under the Interim Facility.

**"Interim Advance"** and **"Interim Advances"** have the meanings given thereto in Section 7.

**"Interim Facility"** has the meaning given thereto in Section 7.

**"Interim Financing Credit Documentation"** means this Interim Financing Term Sheet, all guarantees provided by the Guarantor, and any other documentation in respect of the Interim Facility or the Interim Lender Charge that is requested by the Interim Lender (which shall be in form and substance satisfactory to the Interim Lender, acting reasonably).

**"Interim Financing Fees and Expenses"** has the meaning given thereto in Section 10.

**"Interim Financing Obligations"** has the meaning given thereto in Section 9.

**"Interim Lender"** has the meaning given thereto in Section 2.

**"Interim Lender Charge"** has the meaning given thereto in Section 9.

**"Liens"** means all mortgages, charges, pledges, hypothecs, assignments by way of security, conditional sales or other title retention arrangements, security created under the *Bank Act* (Canada), liens, encumbrances, security interests or other interests in property, howsoever created or arising, whether fixed or floating, perfected or not, which secure payment or performance of an obligation and, including, in any event:

- (a) deposits or transfers of cash, marketable securities or other financial assets under any agreement or arrangement whereby such cash, securities or assets may be withdrawn, returned or transferred only upon fulfilment of any condition as to the discharge of any other indebtedness or other obligation to any creditor;
- (b) (i) rights of set-off or (ii) any other right of or arrangement of any kind with any creditor, which in any case are made, created or entered into, as the case may be, for the purpose of or having the effect (directly or indirectly) of (A) securing indebtedness, (B) preferring some holders of indebtedness over other holders of indebtedness or (C) having the claims of any creditor be satisfied prior to the claims of other creditors with or from the proceeds of any properties, assets or revenues of any kind now owned or later acquired (other than, with respect to (C) only, rights of set-off granted or arising in the ordinary course of business); and
- (d) absolute assignments of accounts receivable,

in each of the foregoing cases, granted by the Credit Parties or against the Collateral.

**"Material Adverse Change"** means any event, circumstance, occurrence or change which results, or which would reasonably be expected to result, in a material adverse change in:

- (a) the ability of any Credit Party to perform any material obligation under this Interim Financing Term Sheet, any other Interim Financing Credit Documentation or any Restructuring Court Order, or the ability of any Credit Party to carry out a Plan or Restructuring Option;
- (b) the validity or enforceability of any of the Interim Lender Charge or the ranking of any of the Liens granted thereby or the material rights or remedies intended or purported to be granted to the Interim Lender under or pursuant to such Interim Lender Charge; or
- (c) the business, operations, assets, condition (financial or otherwise) or results of operations of the Credit Parties, on a consolidated basis.

**"Maturity Date"** has the meaning given thereto in Section 14.

**"Maximum Amount"** has the meaning attributed thereto in Section 7.

**"Monitor"** has the meaning given thereto in Section 13.

**"Permitted Liens"** means: (a) the Priority Charges; (b) the Interim Lender Charge; (c) any charges created under the Initial Order or other order of the Court in the CCAA Proceedings subsequent in priority to the Interim Lender Charge, the limit and priority of each of which shall be acceptable to the Interim Lender in its discretion; (d) validly perfected Liens existing prior to the date hereof; (e) inchoate statutory Liens arising after the Filing Date in respect of any accounts payable arising after the Filing Date in the ordinary course of business, subject to the obligation to pay all such amounts as and when due; and (f) the Permitted Priority Liens.

**"Permitted Priority Liens"** means: (a) the Administration Charge; (b) statutory super-priority Liens for unpaid employee source deductions; and (c) such other Liens as may be agreed to in writing by the Interim Lender. For greater certainty, Liens arising from the construction, repair, maintenance and/or improvement of real or personal property, shall not be **"Permitted Priority Liens"**.

**"Plan"** has the meaning given thereto in Section 14.

**"Priority Charges"** means the Administration Charge and the Directors' Charge.

**"Restructuring Court Order"** and **"Restructuring Court Orders"** have the meanings given thereto in Section 24(f).

**"Restructuring Option"** means any transaction involving the refinancing of a Credit Party, the sale of all or substantially all of the assets of any Credit Party or any other restructuring of the Credit Parties' businesses and operations, including any liquidation, bankruptcy or other insolvency proceeding in respect of any of Credit Party.

**"Revised Cash Flow Forecast"** has the meaning given thereto in Section 15.

**"Taxes"** has the meaning given thereto in Section 31.

**"Updated Cash Flow Default"** has the meaning given thereto in Section 28(d).

**"Variance Testing Date"** means, collectively, the second Tuesday occurring after January 8, 2020 and each Tuesday thereafter.

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

**SCHEDULE "B"**  
**FORM OF INITIAL ORDER**  
**(See Attached.)**



**SCHEDULE "C"**  
**FORM OF DRAWDOWN CERTIFICATE**  
**DRAWDOWN CERTIFICATE**

TO: **Bank of Montreal**, as Interim Lender (the "**Interim Lender**")

FROM: **Morris Industries Ltd.** (the "**Borrower**")

DATE: \_\_\_\_\_, 202\_\_

1. This certificate is delivered to you, as Interim Lender, in connection with a request for an Interim Advance pursuant to the Interim Financing Term Sheet made as of [•], 2020 between the Borrower, the Guarantor and the Interim Lender, as amended, supplemented, restated or replaced from time to time (the "**Interim Financing Term Sheet**"). All defined terms used, but not otherwise defined, in this certificate shall have the respective meanings set forth in the Interim Financing Term Sheet, unless the context requires otherwise.
2. The Borrower hereby requests an Interim Advance as follows:
  - (a) Date of Interim Advance: \_\_\_\_\_
  - (b) Aggregate amount of Interim Advance (Cdn.\$): \_\_\_\_\_
3. All of the representations and warranties of the Credit Parties as set forth in the Interim Financing Term Sheet and the other Interim Financing Credit Documentation are true and accurate as at the date hereof, as though made on and as of the date hereof.
4. All of the covenants of the Credit Parties contained in the Interim Financing Term Sheet, together with all of the Funding Conditions applicable to the Interim Advance hereby requested and contained in the Interim Financing Term Sheet, and all other terms and conditions contained in the Interim Financing Term Sheet to be complied with by the Credit Parties, have been fully complied with.
5. In addition to the foregoing, the Borrower and the Guarantor are in compliance with the Interim Financing Credit Documentation and the Restructuring Court Orders.
6. The Interim Advance hereby requested is within the Maximum Amount and consistent with the relevant Cash Flow Forecast or Revised Cash Flow Forecast as the case may be.

7. No Default or Event of Default has occurred nor will any such event occur as a result of the Interim Advance hereby requested.

**Morris Industries Ltd.**

Per: \_\_\_\_\_

Name:

Title: