



NO. B-250061

ESTATE NO. 11-254734

DISTRICT OF BRITISH COLUMBIA

VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN BANKRUPTCY & INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF  
TRILOGY CONCRETE 2021 LTD.

NOTICE OF MOTION

(Priority charge for Trustee's Fees )

NAME OF APPLICANT: Deloitte Restructuring Inc. (the "Trustee"), in its capacity as bankruptcy trustee of Trilogy Concrete 2021 Ltd. (the "Debtor")

To: The Service List attached as **Schedule "A"**

TAKE NOTICE that a Motion will be made by the Trustee to the presiding judge at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia, on April 17, 2025 at 9:45 a.m. for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. An Order, substantially in the form attached hereto as **Schedule "B"**:
  - (a) abridging the time for service of this Notice of Motion to the time actually given; and
  - (b) granting a charge in favour of the Trustee and its counsel over the Holdback Trust Funds (as defined herein) in priority to all security interests, trusts, liens charges and encumbrances, statutory or otherwise, in favour of any person.

**Part 2: FACTUAL BASIS**

**The Receivership Order**

2. On July 2, 2024, this Court granted a receivership order (the "**Receivership Order**") appointing Deloitte Restructuring Inc. as receiver (in such capacity, the "**Receiver**"), without security, of certain assets of Whitewater Concrete Ltd. ("**Concrete**"), Whitewater

Developments Ltd. (“**Developments**” and together with Concrete, the “**Operating Companies**”) along with the real property of 145 Golden Drive Ltd.

3. The Receiver’s appointment covers, among other things, all current assets, claims, and choses in action of the Operating Companies, including but not limited to accounts receivable, inventory, cash (including all bank deposits), and prepaid deposits.

### **The Operating Companies**

4. Concrete is the primary operating company, providing tower crane rentals and concrete forming services to multi-storey residential, commercial, and institutional projects. Developments, as the holding company, owns tower cranes, placing booms, and reusable formworks, which are rented to Concrete for its operations

### **The Project**

5. At the time of the Receivership Order on July 2, 2024, Concrete was engaged in eight ongoing projects, including the construction of a new hospital to replace the existing St. Paul’s Hospital (the “**Project**”) in Vancouver.
6. PCL Constructors Westcoast Inc. (“**PCL**”) serves as the general contractor for the Project. Under a subcontract dated February 23, 2022, between the Debtor and PCL, PCL engaged the Debtor as a sub-contractor for the Project.

### **The Indebtedness**

7. The Debtor reports an indebtedness to Concrete, in the sum of \$2,847,955 (the “**Indebtedness**”) as stated in the Petition. Concrete’s books and records suggest this amount may be as high as \$6.7 million as at May 31, 2024, but the Receiver has not received the necessary information to reconcile this amount.

### **The Holdback Funds**

8. The Receiver has undertaken efforts to assess the Project’s status, including obtaining an accounting of payments made, or due, to the Debtor under the Sub-Contract. On November 14, 2024, PCL’s counsel informed the Receiver that PCL would release certain holdback funds amounting to \$5.9 million (the “**Holdback Trust Funds**”) to the Debtor.
9. On November 18, 2024, the Receiver obtained a court order (the “**Holdback Order**”) directing PCL to remit the Holdback Trust Funds to the Receiver. Currently, the Receiver holds \$5,721,808 in trust pursuant to the *Builders Lien Act* to be distributed to the Debtor and its sub-subcontractors, including Concrete (collectively, the “**Trust Claimants**”).

## Additional Debt

10. Based on the Receiver's review of invoices issued to the Debtor, there is reason to believe the Debtor's debt to the Trust Claimants, including Concrete, is \$11,708,638.50, plus any applicable interest as of November 30, 2024. The Debtor has also informed the Receiver of an outstanding liability of approximately \$926,695 to the Canada Revenue Agency for collected but unremitted GST.

## Secured Claims

11. In addition to the Trust Claimants, potential secured claims exist in favour of Echelon Insurance and a group including Barry Charles Holdings Ltd. and Becision Holding Corporation, arising from their security interests against the Debtor's present and after-acquired personal property, as registered in the British Columbia Personal Property Registry.

## The Bankruptcy Order

12. As a result of the foregoing, on March 12, 2025, this Court granted an order adjudging the Debtor bankrupt and appointing the Trustee to administer the Debtor's bankruptcy estate (the "Estate").

## Part 3 LEGAL BASIS

### Statutory Framework

13. Under section 136(1) *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "BIA"), subject to the rights of secured creditors, payment of a trustee's fees and expenses from the proceeds of a bankrupt estate take priority over most creditors.
14. The BIA grants this Court with general jurisdiction under s. 183(1)(c) which provides:
 

183 (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

(c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;
15. Given that the potential claims of the Trust Claimants and secured creditors exceed the Holdback Trust Funds, the Trustee will likely not recover the cost of its professional fees and expenses. Therefore, the Trustee seeks an order from this Court granting the Trustee with a priority charge for its fees and expenses, relying on this Court's general jurisdiction.

**The Court's Jurisdiction**

16. Section 183 of the BIA confers jurisdiction to this Court in accordance with legal and equitable principles to give effect to its purpose.

*Payslate Inc. (Re)*, 2023 BCSC 608 at para 85;

*Peakhill Capital Inc. v. Southview Gardens Limited Partnership*, 2023 BCSC 1476 at para 21.

17. There are two preconditions to a court exercising its inherent jurisdiction: (i) the BIA must be silent on a point or not have dealt with a matter exhaustively; and (ii) after balancing competing interests, the benefit of granting the relief must outweigh the relative prejudice to those affected by it.

*Golfside Ventures Ltd. (Re)*, 2023 ABKB 86 at para 28 [*Golfside*], citing *Re Residential Warranty Company of Canada Inc. (Bankrupt)*, 2006 ABQB 236 [*Residential Warranty*]

18. The BIA does not exhaustively deal with the matter of priorities between secured creditors and trustees, and therefore, the court must weigh the competing interests and if the relief outweighs the relative prejudice.

*Golfside*, paras 47-48.

19. There is no dispute that this Court has jurisdiction to exercise its discretion to grant the charge sought in appropriate circumstances,

*Byer (Re)*, 2022 BCSC 2018, at para 160 [*Byer*], citing *Kingsway General Insurance Company v. Residential Warranty Company of Canada Inc. (Trustee of)*, 2006 ABCA 293; *In the Matter of the Bankruptcy of Tarsem Singh Gill*, 2002 BCSC 1401 [*Gill*] and *Michie (Re)*, 2020 BCSC 1611 [*Michie*]

20. In determining whether to grant such a charge, the court will consider various non-exhaustive factors:
- (a) the strength of the trust claim being asserted;
  - (b) the stage of the proceedings and the effect of such an order on them;
  - (c) the need to maintain the integrity of the bankruptcy process;
  - (d) the realistic alternatives in the circumstances;
  - (e) the impact on the trust claimants and on the trust property as well as on other creditors;

- (f) the anticipated time and costs involved;
- (g) the limits that can be placed on the fees or charge; and
- (h) the role that the trustee will take in the determination process.

*Byer at para 162.*

**Trustee's Access to Trust Funds**

21. The general rule is that trustees do not have access to trust funds to fund their own work. As an exception to this general rule, the court has jurisdiction to grant a trustee a charge over assets administered by the trustee, even where they do not form part of the estate divisible among creditors, to secure payment of the trustees fees and disbursements. Whether that charge should be granted is discretionary and in exercising its discretion, the court may consider:

- (a) whether the trustee is required to address the ownership of the assets in the course of the administration of the estate;
- (b) whether the trustee takes the initiative or otherwise positively contributes to the resolution of an uncertain situation;
- (c) the work the trustee completes and the public interest in the orderly administration of the bankrupt estates;
- (d) the interests of the persons entitled to the assets in question and their actions; and
- (e) the interests of justice.

*Michie, at paras 35 and 41;*

*Gill at para 23; and*

*Byer at para 163.*

22. Courts have also noted that:

- (a) trustees are a fundamental part of the bankruptcy system and assist the court and the parties in determining the validity and priority of trust claims; and
- (b) determining the validity and priority of claims has a real cost and trustees are entitled to receive reasonable compensation for their problem solving and exercise of judgment.

*Golfside at para 49.*

**The Factors Weigh in Favour of Granting a Priority Charge in Favour of the Trustee**

23. The factors noted above support granting a priority charge in favour of the Trustee. In particular:
- (a) The Trust Claimants and secured creditors' claims far exceed the Holdback Trust Funds. This shortfall underscores the necessity of the Trustee's role in ensuring fair and efficient administration of these claims.
  - (b) The bankruptcy is in its early stages. Without a bankruptcy process and a properly funded Trustee, disorganization would otherwise result in fragmented and costly litigation commenced by the Trust Claimants and secured creditors, which will cause significant delays in the distribution of the Holdback Trust Funds. Granting the priority charge ensures the Trustee is compensated and that the claims process can proceed efficiently and in an organized manner.
  - (c) The Trustee's oversight is crucial to maintaining the integrity of the bankruptcy process. Without a priority charge, the Trustee will lack resources to effectively manage the Estate, potentially undermining the process.
  - (d) The Trustee, in its capacity as Receiver, already holds the Holdback Trust Funds. Accordingly, the fees and expenses associated with the Holdback Order have already been incurred in the Receivership. The Trustee's fees and expenses for which it seeks the priority charge is limited to the those incurred in administering the Estate, including overseeing a claims process. This ensures fairness and a balance between the Trustee's needs and the interests of the Trust Claimants and secured creditors.
24. In addition, the Trustee is required to address each of the Trust Claimants and secured creditor's entitlement to the Holdback Trust Funds and address and resolve the potential for competing claims.
25. The Trustee, in its capacity as Receiver, demonstrated initiative by obtaining the Holdback Order and holding the Holdback Trust Funds. This proactive step ensures the preservation of the Holdback Trust Funds and will ultimately contribute to resolving the Estate and allows the Trustee to begin a robust claims process, which assists in the orderly administration of the Estate and serves the interests of all stakeholders involved.
26. The Trustee's actions have been carefully aligned with the interests of those entitled to the Estate's assets, notably the Trust Claimants and secured creditors. The Trustee is working to protect their claims by ensuring the proper administration of the Holdback Trust Funds, which are vital to fulfilling the obligations owed to them. The Trustee will also work to resolve the conflict between the Trust Claimants and other creditors,

including secured creditors, recognizing the importance of fairness in distributing the limited assets available.

27. Granting the Trustee a priority charge is in the interests of justice as it ensures the fair and orderly administration of the Estate. The Trustee has taken necessary steps to resolve complex issues, avoid delays, and treat claimants equitably. Denying the charge would jeopardize the effective distribution of assets and undermine the fairness of the process. By compensating the court's officer for its critical work, the Court upholds fairness and equity, facilitating an orderly resolution of the estate's affairs and protecting the rights of all parties involved.

**Part 4: MATERIAL TO BE RELIED ON**

28. The Affidavit of Jeff Keeble made February 4, 2025
29. Such further and other materials as counsel may advise and this Honourable Court may consider.

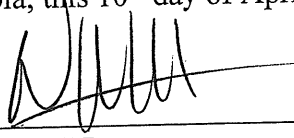
The Trustee estimates that the Motion will take 20 minutes.

- ☐ This matter is within the jurisdiction of a Master.
- ☒ This matter is not within the jurisdiction of a Master.

TO THE PERSONS RECEIVING THIS NOTICE OF MOTION: If you wish to respond to this Notice of Motion, you must, within 5 business days after service of this Notice of Motion.

- (a) file a Response in Form 33,
- (b) file the original of every affidavit, and every other document, that
  - (i) you intend to refer to at the hearing of this motion, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed Response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this motion and that has not already been served on that person;

Dated at the City of Vancouver, in the Province of British Columbia, this 10<sup>th</sup> day of April, 2025

  
 \_\_\_\_\_  
 Lawson Lundell LLP  
 Solicitors for the Trustee

This Notice of Motion is filed by Noor Mann, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, B.C., V6C 3L2; Telephone No: 604-631-9161; Email: nmann@lawsonlundell.com.

*To be completed by the court only:*

Order made

☐ in the terms requested in paragraphs \_\_\_\_\_  
of Part 1 of this Notice of Motion

☐ with the following variations and additional terms:

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Date:

Signature of ☐ Judge ☐ Master



**APPENDIX**

The following information is provided for data collection purposes only and is of no legal effect.

**THIS MOTION INVOLVES THE FOLLOWING:**

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ none of the above

## **SCHEDULE "A"**

### **Service List**

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**SERVICE LIST**

[As at April 10, 2025]

<p>1489933 BC Ltd (WCL Formwork Ltd) 27222 Lougheed Hwy Maple Ridge, BC V2W 1M4</p> <p>Email: <a href="mailto:craig@wclformwork.com">craig@wclformwork.com</a></p>	<p>1297649 BC Ltd (Greuter Engineering) 21667 89 Ave Langley, B.C. V1M 4C6</p> <p>Attention: Tony Bhullar Email: <a href="mailto:nick@greuter-eng.com">nick@greuter-eng.com</a> Tel: 604-866-6401</p>
<p>1388308 BC Ltd (MGL Construction) c/o Bhullar &amp; Associates Unit 109 - 13789 107A Ave Surrey, B.C. V3T 0B8</p> <p>Attention: Tony Bhullar Email: <a href="mailto:mgl_batbekherdeneochir@outlook.com">mgl_batbekherdeneochir@outlook.com</a> Tel: 778-708-2567</p>	<p>Atlas Scaffolding Ltd c/o JML Law5971 Beresford St 11531 134th St Surrey, BC V3R 0H5</p> <p>Attention: Michael Dew Email: <a href="mailto:mdew@jml.ca">mdew@jml.ca</a> Tel: 604-437-9468</p>
<p>A&amp;H Steel Vancouver 27222 Lougheed Hwy Maple Ridge, BC V2W 1M4</p> <p>Email: <a href="mailto:jacquelineh@ah-steel.com">jacquelineh@ah-steel.com</a> Tel: 780-465-6425</p>	<p>Aluma Systems Inc PO Box 578, Stn M Calgary, BC T2P 2J2</p> <p>Email: <a href="mailto:kshalman@aluma.com">kshalman@aluma.com</a> Tel: 780-440-1692</p>

<p>Astra Concrete Ltd. 1632 Broadway St Port Coquitlam, BC V3C 2M8</p> <p>Email: <a href="mailto:kayla@astraconcrete.ca">kayla@astraconcrete.ca</a></p> <p>Tel: 604-464-2681</p>	<p>Cooper Equipment Rentals Limited 3525 Lougheed Hwy Vancouver, BC V5M 2A6</p> <p>Email: <a href="mailto:ar@cooperequipment.ca">ar@cooperequipment.ca</a></p> <p>Tel: 604-431-2923</p>
<p>Central Concrete Accessories 100-10125 199B St Langley, BC V1M 3W9</p> <p>Email: <a href="mailto:info@centralconcrete.ca">info@centralconcrete.ca</a></p> <p>Tel: 604-881-4533</p>	<p>Coastal City Concrete 6251 Williams Rd Richmond, BC V7K 1K6</p> <p>Email: <a href="mailto:patrickv@coastalcityconcrete.ca">patrickv@coastalcityconcrete.ca</a></p>
<p>Hazmasters Inc Unit 4 651 Harwood Ave N Ajax, BC L1Z 0K4</p> <p>Email: <a href="mailto:jenn.panghulan@hazmasters.com">jenn.panghulan@hazmasters.com</a></p> <p>Tel: 905-4270-220</p>	<p>Doka Canada Ltd. / LTEE c/o McLean &amp; Armstrong LLP 9924 River Rd Delta, BC V4G 1B5</p> <p>Attention: Chris Moore</p> <p>Email: <a href="mailto:cmoore@mcleanarmstrong.com">cmoore@mcleanarmstrong.com</a></p> <p>Tel: 778-991-9405</p>
<p>F&amp;G Truck &amp; Crane Ltd 9324 192 St Surrey, BC V4N 3R8</p> <p>Email: <a href="mailto:lford@fgdelivery.com">lford@fgdelivery.com</a></p> <p>Tel: 604-888-5150</p>	<p>Frisco Forming Ltd. 4326 Gilpin Cres Burnaby, BC V5G 2K4</p> <p>Email: <a href="mailto:karesuma77@gmail.com">karesuma77@gmail.com</a></p> <p>Tel: 604-723-7637</p>
<p>Gegra Equipment Ltd c/o MJB Lawyers 5971 Beresford St Burnaby, BC V5J 1K4</p> <p>Attention: Chris Cavanagh</p> <p>Email: <a href="mailto:cfc@mjbblaw.com">cfc@mjbblaw.com</a></p> <p>Tel: 604-437-9468</p>	<p>Keltek Concrete Ltd c/o McLean &amp; Armstrong LLP 300 1090 Homer St Vancouver, BC V6B 2W9</p> <p>Attention: Curtis Simmonds</p> <p>Email: <a href="mailto:keltekconcrete@gmail.com">keltekconcrete@gmail.com</a> <a href="mailto:csimmonds@mcleanarmstrong.com">csimmonds@mcleanarmstrong.com</a> <a href="mailto:mthompson@mcleanarmstrong.com">mthompson@mcleanarmstrong.com</a></p> <p>Tel: 778-375-2343</p>

<p>JCC Construction 6974 Broadway Burnaby, BC V5B 2Z1</p> <p>Email: <a href="mailto:miguelcenteno55@yahoo.ca">miguelcenteno55@yahoo.ca</a></p>	<p>Jimmy Martinez 102-26620 56th Ave Langley, BC V4W 3X5</p> <p>Email: <a href="mailto:jimmydmciti@gmail.com">jimmydmciti@gmail.com</a></p>
<p>RK Tool and Crane</p> <p>Email: <a href="mailto:info@rktoolcrane.com">info@rktoolcrane.com</a></p>	<p>Legacy Cranes &amp; Equipment Ltd 27222 Lougheed Hwy Maple Ridge, BC V2W 1M4</p> <p>Email: <a href="mailto:craig@welformwork.com">craig@welformwork.com</a></p>
<p>Multivista Construction Documentation ULC 101-4299 Canada Way Burnaby, BC V5G 1H3</p> <p>Email: <a href="mailto:accounting@multivista.com">accounting@multivista.com</a></p> <p>Tel: 604-988-4280; Ext: 116</p>	<p>OptiCrane Inc 101-20285 Stewart Cres Maple Ridge, BC V2X 8G1</p> <p>Email: <a href="mailto:l.roussel@opticrane.com">l.roussel@opticrane.com</a></p> <p>Tel: 604-465-9965</p>
<p>Pacific Document Exchange Ltd 122-3016 10 Ave NE Calgary, AB T2A 6A3</p> <p>Email: <a href="mailto:tpreist@pdxcourier.com">tpreist@pdxcourier.com</a></p> <p>Tel: 604-684-3336</p>	<p>Pasman Smith &amp; Company Ltd 400 221 W Esplanade North Vancouver, BC V7M 3J3</p> <p>Email: <a href="mailto:dianel@pasman.ca">dianel@pasman.ca</a></p> <p>Tel: 604-985-8701</p>
<p>Pinpoint Construction Ltd 101-20133 Industrial Ave Langley, BC V3A 4K6</p> <p>Email: <a href="mailto:payables@pinpointconstructionltd.com">payables@pinpointconstructionltd.com</a></p>	<p>Rich Brodowski 102-26620 56th Ave Langley, BC V4W 3X5</p> <p>Email: <a href="mailto:rich.brodow@gmail.com">rich.brodow@gmail.com</a></p>
<p>Ulma Construction Systems Canada Inc c/o Ferrari Jaeger LLP 6-540 Jamieson Parkway Cambridge, O.N. N3C 0G5</p> <p>Attention: Bruce Jaeger</p> <p>Email: <a href="mailto:crennie@ulmaconstruction.ca">crennie@ulmaconstruction.ca</a> <a href="mailto:bjjaeger@ferrarijaeger.com">bjjaeger@ferrarijaeger.com</a></p> <p>Tel: 519-658-5656</p>	<p>RKM Crane Services Ltd c/o Lindsay Kenney LLP 5368 273A Street Langley, B.C. V4W 0A9</p> <p>Attention: Liam Y. Babbitt</p> <p>Email: <a href="mailto:matthewb@rkmc Crane.com">matthewb@rkmc Crane.com</a> <a href="mailto:lbabbitt@lklaw.ca">lbabbitt@lklaw.ca</a></p> <p>Tel: 6048-570-280</p>

<p>Tall Crane Equipment Ltd 22650 Fraser Hwy Langley, B.C. V2Z 2T8</p> <p>Email: <a href="mailto:kith.madanayake@alimakgroup.com">kith.madanayake@alimakgroup.com</a></p>	<p>Soyca Concrete 975 Pigeon Ave Williams Lake, B.C. V2G 2B8</p> <p>Email: <a href="mailto:soycaconcrete@gmail.com">soycaconcrete@gmail.com</a> Tel: 778-874-9437</p>
<p>Suspended Stages Inc. 6989 Merritt Ave Burnaby, B.C. V5J 4R7</p> <p>Email: <a href="mailto:ar@ssibc.ca">ar@ssibc.ca</a></p>	<p>Sutherland Concrete Ltd 1611 Patrick Street Richmond, B.C. V6V 3A7</p> <p>Email: <a href="mailto:info@sutherlandconcrete.com">info@sutherlandconcrete.com</a> Tel: 604-325-2311</p>
<p>Syber Concrete Forming Ltd. 102-26620 56th Ave Langley, B.C. V4W 3X5</p> <p>Email: <a href="mailto:roger@syberconcreteforming.com">roger@syberconcreteforming.com</a></p>	<p>Syber Engineering Ltd 102-26620 56th Ave Langley, B.C. V4W 3X5</p> <p>Email: <a href="mailto:roger@syberconcreteforming.com">roger@syberconcreteforming.com</a></p>
<p>Velocity Cranes Ltd c/o Hamilton Duncan 6210 171 Street Surrey, B.C. V3S 5S2</p> <p>Attention: Cole Rodocker</p> <p>Email: <a href="mailto:bryce@velocitycranes.net">bryce@velocitycranes.net</a> <a href="mailto:crodocker@hamiltonduncan.com">crodocker@hamiltonduncan.com</a></p> <p>Tel: 604-710-8046</p>	<p>Whitewater Concrete Ltd. c/o Deloitte Restructuring Inc. 1900-410 W Georgia Street Vancouver, B.C. V6B 1Z3</p> <p>Attention: Kaleb Butt</p> <p>Email: <a href="mailto:kbutt@deloitte.ca">kbutt@deloitte.ca</a> Tel: 604-595-5422</p>
<p>Brian C. Markus Law Corp. #930-777 Hornby Street Vancouver, BC, V6Z 1S4</p> <p>Tel: 604-688-9981</p> <p>Email: <a href="mailto:bcm@lightspeed.ca">bcm@lightspeed.ca</a></p> <p><i>Counsel for Barry Charles Holdings Ltd., Becision Holding Corporation, G.I.H. Properties Ltd., McVicar &amp; Company Holdings Inc., TNL Developments Ltd., Aman Gill, Peter Chappell, Sandra Chappell and Teresa Gautreau</i></p>	<p>Gehlen Dabbs Cash LLP 1201-1030 W Georgia Street Vancouver, BC V6E 2Y3 Attention: Geoffrey Dabbs</p> <p>Tel: T: 604.642.6422</p> <p>Email: <a href="mailto:gd@gdlaw.ca">gd@gdlaw.ca</a></p> <p><i>Counsel for Whitewater Concrete Ltd., Whitewater Developments Ltd., Robert Kyle Smith, Craig Smith, Krystle Holdings Ltd., Bastian Holdings Ltd. and 145 Golden Drive Ltd.</i></p>

<p>Office of the Superintendent of Bankruptcy  2000-300 West Georgia Street  Vancouver, BC, V6B 6E1  Email: <a href="mailto:osbservice-bsfservice@ised-isde.gc.ca">osbservice-bsfservice@ised-isde.gc.ca</a></p>	<p>Echelon Insurance  #300-2680 Matheson Blvd E.  Mississauga, ON, L4W 0A5</p>
<p>Borden Ladner Gervais LLP  Waterfront Centre, 200 Burrard St #1200,  Vancouver, BC V7X 1T2    Attention: Dirk H. Laudan    Email: <a href="mailto:DLaudan@blg.com">DLaudan@blg.com</a>    <i>Counsel for PCL Construction</i></p>	

### Email Service List

nick@greuter-eng.com; mgl\_batbekherdeneochir@outlook.com; craig@wclformwork.com;  
jacquelineh@ah-steel.com; kshalman@aluma.com; kayla@astraconcrete.ca; mdew@jml.ca;  
info@centralconcrete.ca; patrickv@coastalcityconcrete.ca; ar@cooperequipment.ca;  
cmoore@mcleanarmstrong.com; lford@fgdelivery.com; karesuma77@gmail.com;  
cfc@mjbllaw.com; jenn.panghulan@hazmasters.com; miguelcenteno55@yahoo.ca;  
jimmydmciti@gmail.com; keltekconcrete@gmail.com; csimmonds@mcleanarmstrong.com;  
mthompson@mcleanarmstrong.com; craig@wclformwork.com; accounting@multivista.com;  
l.roussel@opticrane.com; tpreist@pdxcourier.com; daniel@pasman.ca;  
payables@pinpointconstructionltd.com; rich.brodow@gmail.com; info@rktoolcrane.com;  
matthewb@rkmcrane.com; lbabbitt@lklaw.ca; AgenAd@rci.rogers.com;  
soycaconcrete@gmail.com; ar@ssibc.ca; info@sutherlandconcrete.com;  
roger@syberconcreteforming.com; roger@syberconcreteforming.com;  
kith.madanayake@alimakgroup.com; crennie@ulmaconstruction.ca;  
bjaeger@ferrarijaeger.com; bryce@velocitycranes.net; crodoker@hamiltonduncan.com;  
kbutt@deloitte.ca; bcm@lightspeed.ca; DLaudan@blg.com; gd@gdlaw.ca;  
osbservice-bsfservice@ised-isde.gc.ca;



## **SCHEDULE "B"**

NO. B-250061  
ESTATE NO. 11-254734  
DISTRICT OF BRITISH COLUMBIA  
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN BANKRUPTCY & INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF  
TRILOGY CONCRETE 2021 LTD.

**ORDER MADE AFTER MOTION**

BEFORE THE HONOURABLE	)	THURSDAY THE 17th
	)	
JUSTICE	)	DAY OF APRIL 2025

ON THE MOTION of Deloitte Restructuring Inc., in its capacity as trustee (in such capacity the “**Trustee**”), in the bankruptcy of Trilogy Concrete 2021 Ltd. (the “**Debtor**”) coming on for hearing at 800 Smithe Street, Vancouver, British Columbia on April 17, 2025; and on hearing Noor Mann, counsel for the Trustee, and those other counsel listed on **Schedule “A”** hereto, and on reading the materials filed herein;

THIS COURT ORDERS that:

1. The time for service of the Notice of Motion and supporting materials is hereby abridged and deemed good and sufficient so that the application is properly returnable April 17, 2025.
2. The Trustee and its legal counsel (and any replacement trustee and its counsel appointed pursuant to the provisions of the *Bankruptcy and Insolvency Act* (the “**BIA**”)) are granted a charge (the “**Trustee’s Charge**”) on the Holdback Trust Funds, as defined in the Notice of Motion filed in relation to this Order, as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order. The Trustee’s Charge shall form a first charge on Holdback Trust Funds in priority to all claims and encumbrances, including without limitation, all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person.

3. The Trustee (or any replacement trustee) shall be at liberty from time to time to apply amounts out of the Holdback Trust Funds against its fees and disbursements, including legal fees and disbursements incurred, at the standard rates and charges of the Trustee (or any replacement trustee) or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved pursuant to the BIA.
4. Endorsement of this Order by counsel appearing on this application, other than counsel for the Trustee, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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Noor Mann  
Counsel for the Trustee

By the Court:

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Registrar in Bankruptcy

**Schedule "A"**  
**List of Counsel Appearing**

<b>Name of Counsel</b>	<b>Appearing For</b>
Noor Mann	The Trustee

NO. B-250061

ESTATE NO. 11-254734

DISTRICT OF BRITISH COLUMBIA

VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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**ORDER AFTER MOTION**

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Barristers and Solicitors  
1600 Cathedral Place  
925 West Georgia Street  
Vancouver, British Columbia  
V6C 3L2

Phone: (604) 685-3456  
Attention: Bryan C. Gibbons//Noor Mann

Nos. B-250061  
Estate No. 11-254734  
District of British Columbia  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY**

**IN THE MATTER OF THE BANKRUPTCY OF TRILOGY  
CONCRETE (2021) LTD.**

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**NOTICE OF MOTION**

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Barristers & Solicitors  
1600 Cathedral Place  
925 West Georgia Street  
Vancouver, British Columbia  
V6C 3L2

Phone: (604) 631-9220

Email: [nlmann@lawsonlundell.com](mailto:nlmann@lawsonlundell.com)

Attention: Noor Mann