

Clerk's Stamp

COURT FILE NO. 2001-05482
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, RSC 1985, c C-36, as amended
AND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. and
2161889 ALBERTA LTD.

AND IN THE MATTER OF A PLAN OF ARRANGEMENT OF JMB
CRUSHING SYSTEMS INC. and MANTLE MATERIALS GROUP,
LTD. UNDER THE *COMPANIES' CREDITORS ARRANGEMENT
ACT*, RSC 1985, c C-36, as amended, and the *BUSINESS
CORPORATIONS ACT*, SBC 2002, c 57, as amended

APPLICANTS JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.

DOCUMENT **ASSIGNMENT ORDER**
(pursuant to section 11.3 of the CCAA)

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DATE ON WHICH ORDER WAS PRONOUNCED: October 1, 2020

LOCATION AT WHICH ORDER WAS MADE: Calgary Court House

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice K.M. Eidsvik

UPON THE APPLICATION of JMB Crushing Systems Inc. and 2161889 Alberta Ltd.
(collectively, the “**Applicants**”) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985,
c. C-36, as amended (the “**CCAA**”) and pursuant to the Amended and Restated Asset Purchase
Agreement dated September 28, 2020 (the “**APA**”) between the Applicants and Mantle Materials

Group, Ltd. (“**Mantle**”) for an order (this “**Order**”), *inter alia*, assigning to Mantle the rights and obligations of the Applicants under and to the Restricted Agreements (as defined below) and any Additional Restricted Agreements (as defined below); **AND UPON** hearing read the Application, the Affidavit of Byron Levkulich sworn September 29, 2020, and the Seventh Report of FTI Consulting Canada Inc., the Court-appointed Monitor of the Applicants (in such capacity, the “**Monitor**”), all to be filed, and the pleadings and proceedings in this Action, including the Initial Order granted in the within proceedings on May 1, 2020 (the “**Filing Date**”), which was amended and restated on May 11, 2020, filed; **AND HAVING HEARD** the application by the Monitor for an order approving the sale transaction contemplated by the APA (the “**SAVO**”); **AND UPON** hearing the submissions of counsel for the Applicants, counsel for the Monitor and counsel for those parties present;

IT IS HEREBY ORDERED THAT:

Service

1. Service of this Application and supporting materials is hereby deemed to be good and sufficient, the time for notice is hereby abridged to the time provided, this application is properly returnable today, and no other person other than those listed on the service list attached as an exhibit to the Service Affidavit are entitled to service of is required to have been served with notice of the Application.

Defined Terms

2. Capitalized terms used but not otherwise defined in this Order shall have the meaning given to such terms in the APA.

Assignment of Restricted Agreements

3. Upon the delivery by the Monitor to the Applicants and Mantle of the Monitor’s Certificate (as defined in the SAVO), all of the rights and obligations of the Applicants under and to the Restricted Agreements, which are listed in **Schedule “A”** to this Order, shall be assigned, conveyed and transferred to, and assumed by, Mantle pursuant to section 11.3 of the CCAA.

4. The assignment of the Restricted Agreements is hereby declared valid and binding upon all of the counterparties to the Restricted Agreements notwithstanding any restriction, condition or prohibition contained in any such Restricted Agreements relating to the assignment thereof, including any provision requiring the consent of any party to the assignment.
5. The assignment and transfer of the Restricted Agreements shall be subject to the provisions herein directing that the Applicants' rights, title and interests in the Acquired Assets shall vest absolutely in Mantle free and clear of all Encumbrances other than the Permitted Encumbrances in accordance with the provisions of this Order.
6. No counterparty under any Assigned Contract, nor any other person, upon the assignment and transfer to, and assumption by, Mantle of the Restricted Agreements hereunder shall make or pursue any demand, claim, action or suit or exercise any right or remedy under any Assigned Contract against Mantle relating to:
 - (a) the Applicants having sought or obtained relief under the CCAA;
 - (b) the insolvency of the Applicants; or
 - (c) any failure by the Applicants to perform a non-monetary obligation under any Restricted Agreement;

and all such counterparties and persons shall be forever barred and estopped from taking such action. For greater certainty, nothing herein shall limit or exempt Mantle in respect of obligations accruing, arising or continuing after the Closing under the Restricted Agreements other than in respect of items (a) to (b), above.

7. All monetary defaults in relation to the Restricted Agreements existing prior to the Closing, if any, other than those arising by reason only of the insolvency of the Applicants, the commencement of these CCAA proceedings or the failure to perform a non-monetary obligation under any Restricted Agreement, shall be paid on Closing as part of the Purchase Price and in accordance with the APA.

8. Immediately following the assignment and transfer of the Restricted Agreements no counterparty under any Restricted Agreement shall have any claim, whatsoever against the Applicants or the Monitor.

9. Upon delivery of the Monitor's Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, "**Governmental Authorities**") are hereby authorized, requested, and directed to accept delivery of such Monitor's Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to Mantle or its nominee clear title to the Acquired Assets, subject only to Permitted Encumbrances. Without limiting the foregoing:
 - (a) upon payment of all applicable registration fees, Alberta Environment and Parks and the director (the "**Director**") appointed pursuant to the *Public Lands Act*, RSA 2000, c. P-40 (the "**PLA**") (collectively, "**AEP**") are hereby authorized and requested to forthwith transfer and assign unconditionally and absolutely all Crown dispositions listed in **Schedule "B"** to this Order, standing in the name of either or both of the Applicants (collectively, the "**Crown Dispositions**"), to Mantle (or its nominee), provided that Mantle (or its nominee) comply with all applicable licensing requirements, and to consent to and register the assignment of the Crown Dispositions to Mantle pursuant to section 114 of the PLA, and in doing so AEP shall not require any further proof of due execution of the transfer and assignment of the Crown Dispositions beyond the provisions of this Order and the presentment of the Monitor's Certificate;

 - (b) AEP is hereby authorized, requested, and directed to transfer and assign unconditionally and absolutely all of the Applicants' right, title and interest in:
 - (i) any other agreements, plans, instruments, licenses, permits, or other documents associated with the Crown Dispositions and registered with or approved by AEP in the name of either or both of the Applicants, the transfer and assignment of which may be necessary to give effect to the

transfer and assignment of the Crown Dispositions to Mantle, including without limitation, to the extent transferrable or assignable, any Conservation and Reclamation Business Plan or Licence of Occupation registered or executed in connection with or otherwise relating to the Crown Dispositions; and

- (ii) all formal dispositions, agreements, plans, instruments, licenses, permits, or other documents registered in the name of either or both of the Applicants, as set out in **Schedule “B”** to this Order,

(collectively, the “**Crown Disposition Documents**”),

to Mantle, and to consent to and register the assignment of such Crown Disposition Documents to Mantle, and in doing so AEP shall not require any further proof of due execution of the transfer and assignment of such Crown Disposition Documents beyond the provisions of this Order and the presentment of the Monitor’s Certificate; and

- (c) notwithstanding paragraphs 9(a) and 9(b) of this Order, AEP shall not be required to consent to and shall not transfer or assign any “formal dispositions” (as such term is defined in the PLA Regulations) in the name of either or both of the Applicants that, by virtue of section 109 or section 149 of the PLA Regulations, are by their nature not assignable or transferrable.

10. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the APA. Presentment of this Order and the Monitor’s Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Acquired Assets of any Claims including the Encumbrances but excluding the Permitted Encumbrances.

Additional Restricted Agreements

11. Following the date of this Order, including, for greater certainty, following the Closing, the Applicants are authorized to provide to the Counterparty or Counterparties to any additional Restricted Agreements not listed on **Schedule “A”** to this Order that are to be assigned to Mantle pursuant to the APA and in respect of which Counterparty consent is required thereunder but not obtained (each an “**Additional Restricted Agreement**”) a notice of the assignment to and assumption by Mantle of such Additional Restricted Agreement (each an “**Additional Assignment Notice**”).
12. Any counterparty to an Additional Restricted Agreement who receives an Additional Assignment Notice shall have seven (7) Business Days from the date of such Additional Assignment Notice (the “**Objection Deadline**”) to provide notice to the Monitor and the Applicants of any objection it has to such assignment to and assumption by Mantle of the applicable Additional Restricted Agreement.
13. If the Monitor and the Applicants do not receive any notice of objection to the assignment to and assumption by Mantle of an Additional Restricted Agreement by the Objection Deadline, the Applicants shall be authorized to assign such Additional Restricted Agreement to Mantle subject to paragraphs 3 to 7, inclusive, of this Order, which shall apply *mutatis mutandis* to the assignment and assumption of any Additional Restricted Agreements without any further Court order.
14. The applicable date of assignment and assumption of any Additional Restricted Agreements shall be the later of the date of service of the Additional Assignment Notice or delivery of the Monitor’s Certificate.
15. If notice of an objection to the assignment to and assumption by Mantle of an Additional Assigned Contract is received by the Monitor and Applicants from the Counterparty to such Additional Assigned Contract by the Objection Deadline, the Applicants are authorized to schedule an application with this Court for the resolution of such objection.

Unrestricted Agreements

16. For certainty, it is hereby declared that the transfer and vesting of the Unrestricted Agreements, which are listed in **Schedule “C”** to this Order, in Mantle is free and clear of any liabilities or monetary claims owing to or accruing in favour of the counterparties to such Unrestricted Agreements which arose prior to May 1, 2020, the Filing Date.

Pendency of Bankruptcy Proceedings

17. For greater certainty, notwithstanding:
- (a) the pendency of these proceedings and any declaration of insolvency made herein;
 - (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”), in respect of the Applicants, and any bankruptcy order issued pursuant to any such applications;
 - (c) any assignment in bankruptcy made in respect of the Applicants; and
 - (d) the provisions of any federal or provincial statute:

the assignment of the Restricted Agreements, and any Additional Restricted Agreements, to Mantle in accordance with this Order and the APA shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

18. Notwithstanding any other provisions of this Order, the Applicants shall continue to be entitled to exercise all of their rights to set-off (or any other contractual rights) and apply any and all post-filing amounts that the Applicants owes or may come to owe to any party, as the case may be, as against any amounts that are owed by such party to the Applicants.

Advice and Directions

19. The Applicants and the Monitor shall be at liberty to apply for further advice, assistance and direction as may be necessary or desirable in order to give full force and effect to the terms of this Order, including without limitation, as necessary, to effect the transfer of the Restricted Agreements and any Additional Restricted Agreements (including any transfer of title registrations in respect of such Restricted Agreements and any Additional Restricted Agreements), the interpretation of this Order or the implementation thereof, and for any further order that may be required, on notice to any party likely to be affected by the order sought or on such notice as this Court requires.

Aid and Recognition

20. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

Service

21. Service of this Order shall be deemed good and sufficient by:
 - (a) serving this Order upon those interested parties attending or represented at the within Application;
 - (b) posting a copy of this Order on the Monitor's website at <http://cfcanda.fticonsulting.com/jmb/>; and

(c) posting a copy of the Order to CaseLines in accordance with the CaseLines Order granted on May 29, 2020,

and service of this Order on any other person is hereby dispensed with.

J.C.C.Q.B.A.

SCHEDULE "A"
RESTRICTED AGREEMENTS

Counterparties	Agreement
489786 Alberta Ltd.	Lease Agreement Bonnyville Premises (JMB Yard)
Axon Development Corporation	Axon Inner Circle Membership & Extended Support Plan
Canadian Western Bank	Commitment Letter dated January 8, 2018
	Letter of credit issued in connection with SML 080085
	Letter of credit issued in connection with SML 100085
	Letter of credit issued in connection with SML 110025
	Letter of credit issued in connection with SML 110026
	Letter of credit issued in connection with SML 110045
	Letter of credit issued in connection with SML 110046
	Letter of credit issued in connection with SML 120006
	Letter of credit issued in connection with SML 120100
	Letter of credit issued in connection with SML 110047
	Letter of credit issued in connection with SML 120005
Cenovus Energy	Master service and supply agreement 700322
ComplyWorks Ltd.	Prequalification Subscription Solution
Enterprise Fleet Management	Master Equity Lease Agreement
Her Majesty the Queen in right of the Province of Alberta, as represented by the Department of Environment and Parks	Surface Mineral Lease No. 110046 Conservation and Reclamation Business Plan No. 120038
	Surface Mineral Lease No. 110045 Conservation and Reclamation Business Plan No. 120037
	Surface Mineral Lease No. 110026 Conservation and Reclamation Business Plan No. 120005
	Surface Mineral Lease No. 110025 Conservation and Reclamation Business Plan No. 120004
	Surface Mineral Lease No. 100085 Conservation and Reclamation Business Plan No. 140069

	Surface Mineral Lease No. 080085 Conservation and Reclamation Business Plan No. 100032
ISN Software Canada Ltd.	ISNetworld Subscription Agreement
Lafarge Canada Inc.	Moose River Royalty Agreement
Lafarge Canada Inc.	Oberg Royalty Agreement
Municipal District of Bonnyville No. 87	Supply Agreement, as amended by the first, second, and third amendment, and the amendment to agreement
Northbridge General Insurance Corporation	Bond issued in connection with the Buksa Royalty Agreement
	Bond issued in connection with the Havener Royalty Agreement
	Bond issued in connection with the Shankowski Royalty Agreement
Paramount Resources Ltd.	CAPLA Master Road Use Agreement
Smoky Lake County	Development Agreement

SCHEDULE "B"
CROWN DISPOSITIONS

Surface Material Lease No. 080085 dated April 26, 2012 in respect of Aggregate Pit JLG 3 (“**SML 080085**”) located within NW-12-63-19 W4M and SW-13-63-19 W4M.

Surface Material Lease No. 100085 dated June 24, 2016 in respect of Aggregate Pit JLG 4 (“**SML 100085**”) located within NE-12-63-19 W4M and NW-12-63-19 W4M.

Surface Material Lease No. 110025 dated February 11, 2014 in respect of Aggregate Pit JLG 5 (“**SML 110025**”) located within NE-11-61-18 W4M.

Surface Material Lease No. 110026 dated April 11, 2012 in respect of Aggregate Pit JLG 6 (“**SML 110026**”) located within SE-11-61-18 W4M.

Surface Material Lease No. 110045 dated March 18, 2015 in respect of Aggregate Pit JLG 7 (“**SML 110045**”) located within SE-15-61-18 W4M and NE-15-61-18 W4M.

Surface Material Lease No. 110046 dated March 18, 2015 in respect of Aggregate Pit JLG 8 (“**SML 110046**”) located within NE-15-61-18 W4M and NW-15-61-18 W4M.

Surface Material Lease No. 120006 dated October 5, 2017 in respect of Aggregate Pit JLG 11 (“**SML 120006**”) located within NW-14-61-18 W4M.

Surface Material Lease No. 120100 dated October 5, 2017 in respect of Aggregate Pit JLG 12 (“**SML 120100**”) located within SE-21-61-18 W4M.

Surface Material Lease No. 110047 (“**SML 110047**”) located within SE-15-61-18 W4M, SW-15-61-18 W4M, and NW-15-61-18 W4M.

Surface Material Lease No. 120005 (“**SML 120005**”) located within SW-14-61-18 W4M and NW-14-61-18 W4M.

SCHEDULE "C"
UNRESTRICTED AGREEMENTS

Counterparties	Agreement
302016 Alberta Ltd. c/o Rose Short	Buksa Royalty Agreement
Darren Andrychuk & Daphne Andrychuk	Andrychuk Royalty Agreement
Gail Havener & Helen Havener	Havener Royalty Agreement
Her Majesty the Queen in right of the Province of Alberta, as represented by the Department of Environment and Parks	Surface Mineral Lease No. SML 120100 Conservation and Reclamation Business Plan No. 150020
	Surface Mineral Lease No. 120006 Conservation and Reclamation Business Plan No. 140022
	Surface Mineral Lease No. 120005 Conservation and Reclamation Business Plan No. 140072
	Surface Mineral Lease No. 110047 Conservation and Reclamation Business Plan No. 120039
Jerry Shankowski (945441 Alberta Ltd.)	Shankowski Royalty Agreement