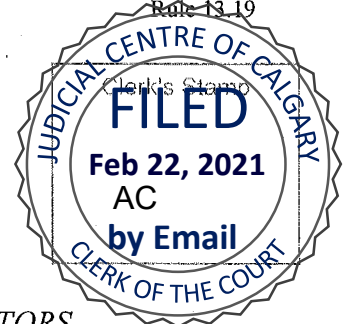


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Form 49
Rev. 13/19



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

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25322

AND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. and 2161889
ALBERTA LTD.

APPLICANTS JMB CRUSHING SYSTEMS INC.

DOCUMENT **AFFIDAVIT OF BLAKE M. ELYEA**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Gowling WLG (Canada) LLP
1600, 421 – 7th Avenue SW
Calgary, AB T2P 4K9

Attn: **Tom Cumming/Caireen E. Hanert/Stephen Kroeger**
Phone: 403.298.1938/403.298.1992/403.298.1018
Fax: 403.263.9193
File No.: A163514

AFFIDAVIT OF BLAKE M. ELYEA
sworn February 19, 2021

I, **BLAKE M. ELYEA**, of the City of Burnaby, in the Province of British Columbia,
MAKE OATH AND SAY THAT:

1. I am the Chief Restructuring Advisor for JMB Crushing Systems Inc. (“**JMB**”) and 2161889 Alberta Ltd. (“**216**”) and as such, I have personal knowledge of the matters herein deposed to, except where stated to be based upon information and belief, in which case I verily believe same to be true.
2. Following the commencement by JMB and 216 of their proceedings under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”, and such proceedings, the “**CCAA Proceedings**”), I have been the Chief Restructuring Advisor of

A handwritten signature in black ink, appearing to be the initials "AM" or similar, located in the bottom right corner of the page.

JMB since May 4, 2020. In that capacity, I have reviewed the business records of JMB relevant to the within proceedings and have satisfied myself that I am possessed of sufficient information and knowledge to swear this Affidavit.

3. I swear this Affidavit further to my Affidavits sworn August 6, 2020, October 16, 2020 November 20, 2020 and December 4, 2020 in these proceedings.
4. I am authorized to swear this Affidavit as the Chief Restructuring Advisor of JMB.
5. I make this affidavit in support of:
 - (a) an order approving the sale of certain equipment to McDonald Aggregates Inc. (“**McDonald**”), pursuant to an asset purchase agreement dated January 19, 2021 (the “**McDonald #1 APA**”) and vesting the assets in McDonald free and clear of any security interests or other claims;
 - (b) an order approving the sale of certain assets to McDonald, pursuant to an asset purchase agreement dated January 25, 2021 (the “**McDonald #2 APA**”) and together with the McDonald #1 APA, the “**APAs**”) and vesting the assets in McDonald free and clear of any security interests or other claims;
 - (c) an order approving the sale of certain equipment to Summit Trailer Ltd. (“**Summit**”), pursuant to an asset purchase agreement, to be executed (the “**Summit APA**” and together with the McDonald #1 APA and the McDonald #2 APA, the “**APAs**”) and vesting the assets in Summit free and clear of any security interests or other claims;
 - (d) an order extending the Stay Period, as defined in the Initial Order granted in these proceedings by Justice K.M. Eidsvik on May 1, 2020, which Order was amended and restated by the Amended and Restated Initial Order pronounced on May 11, 2020 (the “**Initial Order**”), up to and including April 16, 2021.
6. The initial background to these proceedings is described in detail in the Affidavit of Jeff Buck sworn April 16, 2020, and the background to the Mantle Transaction (defined below)

is described in the Affidavit of Levkulich sworn September 30, 2020 and filed October 2, 2020 (the "**Levkulich Affidavit**").

7. On May 20, 2020, this Honourable Court granted an amended and restated initial order (as amended and restated, the "**Initial Order**"), pursuant to which:
 - (a) a sale and investment solicitation process (the "**SISP**") was approved;
 - (b) appointed Sequeira Partners as sale advisor (the "**Sale Advisor**"); and
 - (c) authorized the Monitor, the Sale Advisor, and the Applicants to conduct the SISP and carry out their obligations thereunder.
8. I am advised by the Monitor and believe that the SISP was implemented in early June 2020 and ran until the end of September, 2020. There were three relatively small sales of equipment and other assets that came out of the SISP, each of which were approved by this Court. Mantle Materials Group, Ltd. ("**Mantle**") submitted a bid to acquire the core assets of JMB and 216, as described in the Levkulich Affidavit. The transaction with Mantle has not yet closed.
9. Since the SISP concluded, JMB has received separate offers on various pieces of equipment and other assets, which offers have been negotiated in consultation with the Monitor and affected secured creditors. JMB subsequently entered into asset purchase agreements with the offerors, and is seeking Court approval of the asset purchase agreements noted below.

McDonald #1 APA

10. The McDonald #1 APA provides that, *inter alia*, upon and subject to the terms and conditions of the McDonald #1 APA, in consideration of the payment of the purchase price contemplated therein, JMB will sell, transfer, convey, assign and deliver to McDonald, and McDonald will purchase, acquire and assume from JMB, free and clear of any claims and encumbrances, all of JMB's right, title, benefit, estate and interest in and to the assets, as described in Schedule "A" to the McDonald #1 APA (the "**McDonald #1 Assets**"). Attached hereto as **Exhibit "A"** is a redacted copy of the McDonald #1 APA. An

unredacted copy is attached to my Confidential Affidavit sworn February 19, 2021 as Exhibit "A".

McDonald #2 APA

11. The McDonald #2 APA provides that, *inter alia*, upon and subject to the terms and conditions of the McDonald #2 APA, in consideration of the payment of the purchase price contemplated therein, JMB will sell, transfer, convey, assign and deliver to McDonald, and McDonald will purchase, acquire and assume from JMB, free and clear of any claims and encumbrances, all of JMB's right, title, benefit, estate and interest in and to the assets, as described in Schedule "A" to the McDonald #2 APA (the "**McDonald #2 Assets**"). Attached hereto as **Exhibit "B"** is a redacted copy of the McDonald #1 APA. An unredacted copy is attached to my Confidential Affidavit sworn February 19, 2021 as Exhibit "B".

Summit APA

12. The Summit APA provides that, *inter alia*, upon and subject to the terms and conditions of the Summit APA, in consideration of the payment of the purchase price contemplated therein, JMB will sell, transfer, convey, assign and deliver to Summit, and Summit will purchase, acquire and assume from JMB, free and clear of any claims and encumbrances, all of JMB's right, title, benefit, estate and interest in and to the assets, as described in Schedule "A" to the Summit APA (the "**Summit Assets**"). Attached hereto as **Exhibit "C"** is a redacted copy of the draft Summit APA. An unredacted copy is attached to my Confidential Affidavit sworn February 19, 2021 as Exhibit "C". The Summit APA will be executed in a form substantially similar to that attached as Exhibit "C" and an executed version will be provided in advance of the Court application.

Approval of the APAs

13. I am advised by the Monitor and believe that no acceptable offers were received for the purchase of the McDonald #1 Assets, the McDonald #2 Assets and the Summit Assets (collectively, the "**Assets**") during the course of the SISP.

14. Each of the McDonald #1 APA, the McDonald #2 APA and the Summit APA (collectively, the “**APAs**”) represents the highest and best offer for the subject Assets that can be obtained in the current circumstances.
15. Each APA is conditional, *inter alia*, on Court approval.

Mantle Transaction

16. Mantle agreed to purchase the core assets of the Applicants (the “**Core Assets**”) pursuant to the Amended and Restated Asset Purchase Agreement dated September 28, 2020 (the “**Mantle APA**”) between the Applicants and Mantle (the purchase and sale transaction contemplated thereby being the “**Mantle Transaction**”). For the reasons summarized below the Mantle Transaction has not been completed.
17. On October 1, 2020, Justice Eidsvik granted an Order approving the Mantle APA and Mantle Transaction. On October 16, 2020, Her Ladyship granted the following Orders:
 - (a) the Amended and Restated Sale Approval and Vesting Order (the “**SAVO**”), vesting all of the right, title and interest of the Applicants in the Core Assets in Mantle free and clear of all encumbrances other than permitted encumbrances;
 - (b) the Reverse Vesting Order (the “**RVO**”), vesting in 216 all of the right, title and interest of JMB in the assets of JMB that were excluded from the Core Assets, and vesting in Eastside Rock Products, Inc. certain equipment owned by JMB located in the State of Washington;
 - (c) the Assignment Order (the “**Assignment Order**”), assigning certain contracts included in the Core Assets to Mantle; and
 - (d) the Sanction Order (the “**Sanction Order**”, and with the SAVO, RVO and Assignment Order, the “**October 16 Orders**”), sanctioning a plan of arrangement (the “**Plan**”) under the CCAA and British Columbia’s *Business Corporations Act*, RSC 1985, c C-36, as amended.

18. The effect of the SAVO was that Mantle was to acquire on closing the Core Assets of JMB and 216, consisting, *inter alia*, of:
- (a) certain public land dispositions (“**Dispositions**”) granted under the *Public Lands Act*, RSA 2000, c P-4 and the regulations thereunder (the “**PLA**”) held by 216 (such Dispositions, the “**Included Public 216 Dispositions**”) on which certain core aggregate pits are located (the “**Included Public 216 Pits**”);
 - (b) certain aggregate royalty agreements between JMB and (i) the holders of Dispositions, or (ii) the owners in fee simple of lands on which aggregate pits are located (aggregate pits on privately owned lands being “**Private Pits**”), together with the associated registrations issued by the AEP to JMB under the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 (“**Private Pit Registrations**”);
 - (c) certain agreements with JMB’s customers;
 - (d) equipment and tangible personal property of JMB subject to the prior ranking security of Fiera;
 - (e) the lease in favour of JMB of land and premises in the Town of Bonnyville where it stores aggregate, equipment and has an operational centre; and
 - (f) certain real property owned by JMB.
19. Further, under the Plan, the shares held by Canadian Aggregate Resources Corp. (“**CARC**”) in JMB would be transferred to RLF Canada Holdings Limited (“**RLF Holdings**”), of which both Mantle and CARC are wholly owned subsidiaries, and the shares of J Buck and Sons Inc. in JMB would be redeemed for no consideration and cancelled.
20. JMB would emerge from the CCAA Proceedings as a solvent corporation and wholly owned subsidiary of RLF Holdings, because on closing under the RVO:

- (a) all of the liabilities of JMB not being assumed by Mantle would be vested in and deemed to be assumed by 216;
 - (b) all of the assets of JMB that Mantle was not acquiring would be vested in 216, including (i) non-core Private Pits (the “**Excluded Private Pits**”) and the associated Private Pit Registrations, and (ii) Dispositions held by JMB (the “**Excluded Public JMB Dispositions**”) of certain non-core aggregate pits (the “**Excluded Public JMB Pits**”); and
 - (c) 216 would retain certain Dispositions held by it relating to non-core aggregate pits (the “**Excluded Public 216 Pits**”, and such Dispositions, the “**Excluded Public 216 Dispositions**”).
21. I am advised by counsel for the Applicants and believe that with respect to the Mantle Transaction, discussions with Alberta Environment and Parks (the “**AEP**”) have continued in an effort to obtain the AEP’s approval for the following:
- (a) the transfer by 216 to Mantle of the Included Public 216 Dispositions;
 - (b) the transfer by JMB to 216 of Excluded Public 216 Dispositions;
 - (c) the assignment by JMB to Mantle of Private Pit Registrations in respect of certain core aggregate pits (the “**Included Private Pits**”); and
 - (d) the assignment by JMB to 216 of Private Pit Registrations in respect of certain non-core aggregate pits (the “**Excluded Private Pits**”).
22. I am further advised by counsel and believe that with respect to Private Pit Registrations, the AEP continues to require that all non-compliances relating to the Included Private Pits and Excluded Private Pits be resolved before it is willing to consider applications to transfer the associated Private Pit Registration. Principally, the issues are as follows:
- (a) The AEP had informed a representative of JMB that the AEP had failed to demand payment under bonds (the “**Bonds**”) issued by Northbridge General Insurance Corporation (“**Northbridge**”) in favour of Her Majesty the Queen in right of

Alberta, as represented by the Minister of Environment and Parks (the “**Crown**”), to secure the obligations of JMB under each of the applicable Private Pit Registrations, other than with respect to one Bond, and all of the Bonds have now expired;

- (b) Therefore, there is no reclamation security in place in respect of seven Private Pit Registrations (being the Buksa, Havener, Hoye/Kucy, Okane, McDonald, Megley and Shankowski pits), other than any cash proceeds paid in respect of the one Bond under which demand was made; and
 - (c) There are certain existing non-compliances in respect of the Dispositions and Private Pit Registrations.
23. Mantle and JMB are currently attempting to confirm with the AEP whether in fact its statement is correct that it did not make demand under six of the seven Bonds, as a representative of Northbridge advised that they understood demand had been made under all of the Bonds. As of the date of this Affidavit, the AEP has not responded to these enquiries.
24. In an effort to complete the Mantle Transaction, which is the only way to preserve value for the principal stakeholders in JMB and 216, Mantle and JMB are preparing revisions to the Mantle Transaction and the October 16 Orders to eliminate the need for transfers of Dispositions and Private Pit Registrations that would require AEP consent and to address the reclamation liabilities and any non-compliances raised by the AEP. Those materials are currently being prepared and discussed with the principal stakeholders of JMB and 216.

Application for an Extension of the Stay of Proceedings

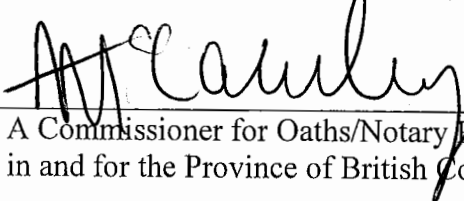
25. Since May 11, 2020, the Stay Period has been extended by Orders of this Honourable Court pronounced July 28, August 26, September 11, September 24, October 1, October 16 November 12, December 7, 2020, and January 12, 2021 (the latter Order being the “**January 12 Order**”). Under the January 12 Order, the Stay Period terminates on February 26, 2021.



26. Since the January 12 Order, the Applicants have continued to act diligently and in good faith in these proceedings by, among other things:
- (a) continuing to maintain the Applicants' property and assets;
 - (b) continuing discussions with the AEP in connection with the applications to the AEP for approval of the transfers of surface material leases and registrations to Mantle pursuant to the SAVO and to 216 pursuant to the RVO;
 - (c) working with the Monitor and the senior secured creditors to close the Mantle Transaction;
 - (d) negotiating a number of asset purchase agreements, including those requiring court approval (as noted above); and
 - (e) assessing the potential claim of Canada Revenue Agency (the "CRA") against JMB and whether such claim may be secured by a deemed trust or statutory lien under the *Income Tax Act*, RSC 1985, c 1.
27. Given the need to amend and restate the Mantle APA and the October 16 Orders, additional time is required to finalize those materials and seek Court approval, as well as to attend to various other matters, including the lien determination appeal of R Bee Aggregate Consulting Ltd. and the resolution of the potential claim of the CRA.
28. Based on my preparation and review of the Applicants' cash flow statement appended to the Thirteenth Report of the Monitor, the Applicants have sufficient funds through to April 16, 2021 to allow for the completion of the steps outlined above.
29. Having regard to the circumstances, I believe that the granting of an extension of the Stay Period to a date determined by this Honourable Court is necessary and in the best interests of the Applicants and their stakeholders.
30. The Applicants have acted, and continue to act, in good faith and with due diligence in respect of all matters relating to the CCAA proceedings, and no creditor will be prejudiced by the proposed extension of the Stay Period.

31. I was not physically present before the commissioner taking this affidavit, but was linked with the commissioner utilizing video technology, and the process described in the notice from the court date March 27, 2020 for remote commissioning affidavits was utilized.

SWORN BEFORE ME at the City of)
Burnaby, in the Province of British)
Columbia, this 19th day of February, 2021.)

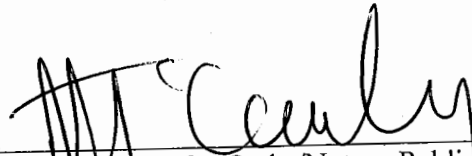
)
A Commissioner for Oaths/Notary Public)
in and for the Province of British Columbia)

BLAKE M. ELYEA

ALEXANDRA L. MCCAWLEY
GOWLING WLG (CANADA) LLP
BARRISTER & SOLICITOR
550 BURNARD STREET - SUITE 2300
BENTALL 5 - VANCOUVER, B.C. V6C 2B1
TELEPHONE: (604) 891-2772



THIS IS EXHIBIT "A" REFERRED TO IN
THE AFFIDAVIT OF BLAKE M. ELYEA
SWORN BEFORE ME
THIS 19TH DAY OF FEBRUARY, 2021



A Commissioner for Oaths/Notary Public in and
for the Province of British Columbia

ALEXANDRA L. MCCAWLEY
GOWLING WLG (CANADA) LLP
BARRISTER & SOLICITOR
550 BURRARD STREET - SUITE 2300
BENTALL 5 - VANCOUVER, B.C. V6C 2B5
TELEPHONE: (604) 891-2772



ASSET PURCHASE AGREEMENT

THIS AGREEMENT (the "Agreement") made as of the 19th day of January, 2021.

BETWEEN:

JMB CRUSHING SYSTEMS INC., a corporation formed under the laws of the Province of Alberta (the "Vendor")

- and -

MCDONALD AGGREGATES INC., a corporation formed under the laws of the Province of Alberta (the "Purchaser", and collectively with the Vendor, the "Parties")

WHEREAS the Vendor has sought and obtained an Order of the Court of Queen's Bench of Alberta (the "Court") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-35, as amended (the "CCAA Proceedings");

AND WHEREAS the Vendor wishes to sell the Equipment to the Purchaser and the Purchaser wishes to purchase the Equipment from the Vendor, all upon and subject to the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties hereby covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

The terms defined herein shall have, for all purposes of this Agreement, the following meanings:

"**Closing**" means the completion of the Transaction.

"**Closing Date**" means the fifth business day immediately following the date that the Sale Order is issued, or on such other date as the Parties may agree in writing.

"**Equipment**" means all of the Vendor's right, title and interest in and to certain equipment, as set out in Schedule A.

"**Monitor**" means FTI Consulting Canada Inc. in its capacity as the Court appointed monitor of the Vendor.

"**Permitted Encumbrances**" means any permitted claims or encumbrances as set out or defined in the Sale Order. For the purposes of this Agreement, permitted claims or encumbrances will be nil.

"Representatives" means, with, respect to any party, its affiliates, and the respective directors, officers, servants, agents, advisors, employees, consultants and representatives of that party and its affiliates.

"Sale Advisor" means Sequeira Partners in its capacity as the sales advisor of the Vendor.

"Sale Order" means an order to be granted by the Court in the CCAA Proceedings that approves this Agreement and the Transaction and vests in the Purchaser all of the right, title and interest of the Vendor in and to the Equipment, free and clear of all security interests, charges, liens, claims and encumbrances of any kind whatsoever.

"Transaction" means the purchase and sale transaction contemplated by this Agreement.

ARTICLE 2 PURCHASE AND SALE

2.1 Purchase and Sale of Equipment

Upon and subject to the terms and conditions of this Agreement, the Vendor will sell, transfer, convey, assign and deliver to the Purchaser, and the Purchaser will purchase, acquire and assume from the Vendor, free and clear of all claims other than Permitted Encumbrances, all of the Vendor's respective right, title, benefit, estate and interest in and to the Equipment in consideration of the payment of the Purchase Price (as defined hereinafter) (collectively, the **"Transaction"**). Closing shall occur at 10:00 am on the Closing Date, subject to the terms and conditions contained herein.

2.2 Acknowledgement of the Purchaser as Condition of Equipment

Notwithstanding the foregoing or anything contained herein or elsewhere, the Purchaser acknowledges and agrees that:

- (a) on Closing, title to the Equipment shall be subject to the Permitted Encumbrances;
- (b) In entering into this Agreement, the Purchaser has had an opportunity to conduct any and all due diligence regarding the Equipment and the Vendor; it has relied and will continue to rely solely upon its own independent review, investigations and inspection of any documents and the Equipment, including, without limitation, the physical and environmental condition of the Equipment;
- (c) the Equipment is being purchased and assumed by the Purchaser on an "as is, where is" basis as of the Closing Date;
- (d) in entering into this Agreement, the Purchaser has not relied upon any written or oral statements, representations, warranties or guarantees whatsoever made by the Sale Advisor, the Vendor, or the Monitor, whether express, implied, statutory, or otherwise, regarding the Equipment, or the Vendor, or the accuracy or completeness of any information provided in connection therewith;
- (e) except for its express rights under this Agreement, the Purchaser hereby waives all rights and remedies (whether now existing or hereinafter arising and including

all equitable, common law, tort, contractual, and statutory rights and remedies) against the Vendor, the Monitor, the Sales Advisor and their Representatives or in respect of the Equipment or the Transaction or any representations or statements made, direct or indirect, express or implied, or information or data furnished to the Purchaser or its Representatives, in connection therewith (whether made or furnished orally or by electronic, faxed, written, or any other means); and,

- (f) this Section 2.2 shall survive and not merge on Closing.

ARTICLE 3 PURCHASE PRICE AND PAYMENT

3.1 Purchase Price

The purchase price to be paid by the Purchaser to the Vendor for the Equipment shall be [REDACTED] (the "Purchase Price"), plus GST and any and all applicable taxes and fees payable under Section 3.3.

3.2 Payment of Purchase Price

The Purchase Price shall be satisfied on or before the Closing Date, by the Purchaser, by payment to the Monitor by way of wire transfer of immediately available funds.

3.3 Taxes and Fees

The Purchaser shall be liable for and shall pay all federal or provincial sales taxes, including GST, and all other taxes, duties, or other similar charges properly payable upon and in connection with the conveyance and transfer of the Equipment by the Vendor to the Purchaser and the Purchaser shall be responsible for all recording charges and registration fees payable in connection therewith, this Agreement, the Equipment, and the Transaction.

ARTICLE 4 CLOSING CONDITIONS

4.1 Conditions for the Benefit of the Vendor

The obligation of the Vendor to complete the Transaction pursuant to this Agreement is subject to the satisfaction of the following conditions precedent:

- (a) payment by the Purchaser of the Purchase Price, in its entirety;
- (b) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser shall have been complied with or performed in all material respects;
- (c) the representations and warranties of the Purchaser set out in Section 6.2 shall be true and accurate in all material respects; and
- (d) the Sale Order shall have been obtained.

Each of the foregoing conditions has been inserted for the benefit of the Vendor and may, without prejudice to any of the rights of the Vendor hereunder, be waived by it in writing, in whole

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or in part, at any time, provided that the Vendor is not entitled to waive the Sale Order condition contained in Section 4.1(d). In case any of the said conditions shall not be complied with, or waived by the Vendor, at or before the Closing Date, the Vendor may terminate this Agreement by written notice to the Purchaser.

4.2 Conditions for the Benefit of the Purchaser

The obligation of the Purchaser to complete the Transaction pursuant to this Agreement is subject to the satisfaction, on the Closing Date of the following conditions precedent:

- (a) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor shall have been complied with or performed in all material respects;
- (b) the representations and warranties of the Vendor set out in Section 6.1 shall be true and accurate in all material respects; and
- (c) the Sale Order shall have been obtained.

Each of the foregoing conditions has been inserted for the benefit of the Purchaser and may, without prejudice to any of the rights of the Purchaser hereunder, be waived by it by notice to the Vendor in writing, in whole or in part, at any time, provided that the Purchaser is not entitled to waive the Sale Order condition contained in Section 4.2(c). In case any of the said conditions shall not be complied with, or waived by the Purchaser, at or before the Closing Date, the Purchaser may terminate this Agreement by written notice to the Vendor.

ARTICLE 5 CLOSING

5.1 Pre-Closing Use of Equipment by the Purchaser

In the period between the full execution and delivery of this Agreement by the Parties and the Closing Date, the Purchaser may elect by notice in writing to the Vendor and Monitor to take possession of and operate the Equipment on and subject to the following terms:

- (a) prior to taking possession of the Equipment, the Purchaser shall deliver:
 - (i) to the Monitor in trust the full amount of the Purchase Price and taxes payable under section 3.3 of this Agreement; and
 - (ii) to the Vendor and the Monitor evidence satisfactory to the Vendor and Monitor that it has placed general liability and property and casualty insurance on the Equipment, naming the Vendor as additional insured as its interest may appear;
- (b) if Closing does not occur on the Closing Date, the Vendor by notice in writing to the Purchaser may require the Purchaser to deliver the Equipment to the Vendor, whereupon the Purchaser shall cease operating the Equipment and deliver the Equipment to the Vendor within seven (7) days thereafter at the Vendor's yard in Bonnyville;

- (c) the Purchaser shall indemnify and save harmless the Vendor any and all manner of actions, causes of action, accounts, bonds, contracts, covenants, debts, proceedings, suits, warranties, damages, losses, expenses and costs which the Vendor may suffer or incur for or by reason of any damage to or destruction of the Equipment or any claims made by any third party in connection with the Purchaser's use or operation of the Equipment.

5.2 Closing Deliveries

On the Closing Date, subject to the provisions of this Agreement, (a) the Vendor shall provide a copy of the Sale Order; and, (b) the Purchaser shall deliver or cause to be delivered to the Monitor, the Purchase Price plus all taxes, fees, and GST.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 Vendor's Representations and Warranties

The Vendor hereby represents and warrants to and in favour of the Purchaser that:

- (a) It is a corporation duly organized, validly subsisting and in good standing under the laws of the jurisdiction of its incorporation, continuance or amalgamation (as the case may be) and is duly registered and authorized to carry on business in Alberta;
- (b) the Vendor is not a "non-resident" for the purposes of Section 116 of the *Income Tax Act* (Canada) and the Vendor shall receive the Purchase Price on its own account and not as agent, trustee or nominee for any other person who is a non-resident of Canada.

6.2 No Additional Representations and Warranties

Notwithstanding anything to the contrary in this Agreement, the Vendor makes no representations or warranties except as expressly set forth in Section 6.1 and, in particular, and without limiting the generality of the foregoing, the Vendor disclaims and shall not be liable for any representation or warranty express or implied, of any kind, at law or in equity, which may have been made or alleged to be made in any instrument or document relative hereto, or in any statement or information made or communicated to the Purchaser in any manner including any opinion, information, or advice which may have been provided to the Purchaser by the Vendor in connection with the Equipment or in relation to the Transaction.

6.3 Purchaser's Representations and Warranties

The Purchaser hereby represents and warrants to and in favour of the Vendor that, as of the date of this Agreement and as of the Closing Date:

- (a) it is a valid and subsisting corporation under the laws of its jurisdiction of registration;
- (b) it has taken all action and has full power and authority to enter into this Agreement and the other documents and agreements executed and delivered hereunder and

it has taken all necessary action to consummate the Transaction and to perform its obligations thereunder; and,

- (c) it is a registrant for the purposes of Part IX of the *Excise Tax Act* (Canada).

ARTICLE 7 GENERAL

7.1 Governing Law

This Agreement shall, in all respects, be subject to and be interpreted, construed and enforced in accordance with the laws in effect in the Province of Alberta and the laws of Canada applicable therein.

7.2 Amendment and Waiver

No supplement, modification, waiver or termination of this Agreement (other than a termination pursuant to Section 4.1 or Section 4.2) shall be binding unless executed in writing by the Parties hereto.

7.3 Assignment

Neither Party may assign their interest in or under this Agreement or to the Equipment without the prior written consent of the other Party, which consent may be withheld in such other Party's sole and unfettered discretion.

7.4 Entire Agreement

This Agreement and any agreements, instruments and other documents herein contemplated to be entered into between, by or including the Parties hereto constitute the entire agreement between the Parties hereto pertaining to the Transaction and the Equipment.

7.5 Successors and Assigns

All of the covenants and agreements in this Agreement shall be binding upon the Parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the Parties hereto and their respective successors and their permitted assigns pursuant to the terms and conditions of this Agreement.

7.6 Electronic and Counterpart Execution

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed in original, pdf, or other electronic form by email or other electronic delivery, each of which shall constitute and be treated as such Parties original signature(s).

ADD

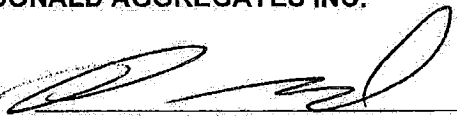
IN WITNESS WHEREOF the Vendor and the Purchaser have duly executed this Agreement as evidenced by their properly authorized officers as of the day and year first above written.

JMB CRUSHING SYSTEMS INC.

Per: Byron J Levkulich
Name: Byron J Levkulich
Title: Director

Per: _____
Name:
Title:

MCDONALD AGGREGATES INC.

Per: 
Name: Brad McDonald
Title: President

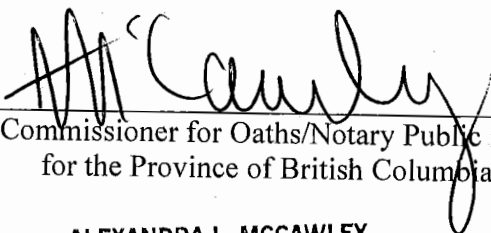


SCHEDULE A
EQUIPMENT

1. JS100 – 2002 Elrus M2943ER02JP Jaw and Chassis Serial and 2018 Elrus 6x20 2 Deck Screen 332 Series A00002869 Serial Number: M7102ERC18SC
2. JS300 - 2012 Elrus HD 20x54 Jaw Screen Plant E0003070
Serial Number: M6028ERC12CJS

AD

THIS IS EXHIBIT "B" REFERRED TO IN
THE AFFIDAVIT OF BLAKE M. ELYEA
SWORN BEFORE ME
THIS 19TH DAY OF FEBRUARY, 2021


A Commissioner for Oaths/Notary Public in and
for the Province of British Columbia

ALEXANDRA L. MCCAWLEY
GOWLING WLG (CANADA) LLP
BARRISTER & SOLICITOR
550 BURRARD STREET - SUITE 2300
BENTALL 5 - VANCOUVER, B.C. V6C 2B5
TELEPHONE: (604) 891-2772

AD

ASSET PURCHASE AGREEMENT

THIS AGREEMENT (the "**Agreement**") made as of the 25th day of January, 2021.

BETWEEN:

JMB CRUSHING SYSTEMS INC., a corporation formed under the laws of the Province of Alberta (the "**Vendor**")

- and -

MCDONALD AGGREGATES INC., a corporation formed under the laws of the Province of Alberta (the "**Purchaser**", and collectively with the Vendor, the "**Parties**")

WHEREAS the Vendor has sought and obtained an Order of the Court of Queen's Bench of Alberta (the "**Court**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-35, as amended (the "**CCAA Proceedings**");

AND WHEREAS the Vendor wishes to sell the Equipment to the Purchaser and the Purchaser wishes to purchase the Equipment from the Vendor, all upon and subject to the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties hereby covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

The terms defined herein shall have, for all purposes of this Agreement, the following meanings:

"Closing" means the completion of the Transaction.

"Closing Date" means the fifth business day immediately following the date that the Sale Order is issued, or on such other date as the Parties may agree in writing.

"Equipment" means all of the Vendor's right, title and interest in and to certain equipment, as set out in Schedule A.

"Monitor" means FTI Consulting Canada Inc. in its capacity as the Court appointed monitor of the Vendor.

"Permitted Encumbrances" means any permitted claims or encumbrances as set out or defined in the Sale Order. For the purposes of this Agreement, permitted claims or encumbrances will be nil.

"Representatives" means, with, respect to any party, its affiliates, and the respective directors, officers, servants, agents, advisors, employees, consultants and representatives of that party and its affiliates.

"Sale Advisor" means Sequeira Partners in its capacity as the sales advisor of the Vendor.

"Sale Order" means an order to be granted by the Court in the CCAA Proceedings that approves this Agreement and the Transaction and vests in the Purchaser all of the right, title and interest of the Vendor in and to the Equipment, free and clear of all security interests, charges, liens, claims and other encumbrances of any kind whatsoever.

"Transaction" means the purchase and sale transaction contemplated by this Agreement.

ARTICLE 2 PURCHASE AND SALE

2.1 Purchase and Sale of Equipment

Upon and subject to the terms and conditions of this Agreement, the Vendor will sell, transfer, convey, assign and deliver to the Purchaser, and the Purchaser will purchase, acquire and assume from the Vendor, free and clear of all claims other than Permitted Encumbrances, all of the Vendor's respective right, title, benefit, estate and interest in and to the Equipment in consideration of the payment of the Purchase Price (as defined hereinafter) (collectively, the **"Transaction"**). Closing shall occur at 10:00 am on the Closing Date, subject to the terms and conditions contained herein.

2.2 Acknowledgement of the Purchaser as Condition of Equipment

Notwithstanding the foregoing or anything contained herein or elsewhere, the Purchaser acknowledges and agrees that:

- (a) on Closing, title to the Equipment shall be subject to the Permitted Encumbrances;
- (b) in entering into this Agreement, the Purchaser has had an opportunity to conduct any and all due diligence regarding the Equipment and the Vendor, it has relied and will continue to rely solely upon its own independent review, investigations and inspection of any documents and the Equipment, including, without limitation, the physical and environmental condition of the Equipment;
- (c) the Equipment is being purchased and assumed by the Purchaser on an "as is, where is" basis as of the Closing Date;
- (d) in entering into this Agreement, the Purchaser has not relied upon any written or oral statements, representations, warranties or guarantees whatsoever made by the Sale Advisor, the Vendor, or the Monitor, whether express, implied, statutory, or otherwise, regarding the Equipment, or the Vendor, or the accuracy or completeness of any information provided in connection therewith;
- (e) except for its express rights under this Agreement, the Purchaser hereby waives all rights and remedies (whether now existing or hereinafter arising and including

AAA

all equitable, common law, tort, contractual, and statutory rights and remedies) against the Vendor, the Monitor, the Sales Advisor and their Representatives or in respect of the Equipment or the Transaction or any representations or statements made, direct or indirect, express or implied, or information or data furnished to the Purchaser or its Representatives, in connection therewith (whether made or furnished orally or by electronic, faxed, written, or any other means); and,

- (f) this Section 2.2 shall survive and not merge on Closing.

ARTICLE 3 PURCHASE PRICE AND PAYMENT

3.1 Purchase Price

The purchase price to be paid by the Purchaser to the Vendor for the Equipment shall be [REDACTED] (the "Purchase Price"), plus GST and any and all applicable taxes and fees payable under Section 3.3.

3.2 Payment of Purchase Price

The Purchase Price shall be satisfied on or before the Closing Date, by the Purchaser, by payment to the Monitor by way of wire transfer of immediately available funds.

3.3 Taxes and Fees

The Purchaser shall be liable for and shall pay all federal or provincial sales taxes, including GST, and all other taxes, duties, or other similar charges properly payable upon and in connection with the conveyance and transfer of the Equipment by the Vendor to the Purchaser and the Purchaser shall be responsible for all recording charges and registration fees payable in connection therewith, this Agreement, the Equipment, and the Transaction.

ARTICLE 4 CLOSING CONDITIONS

4.1 Conditions for the Benefit of the Vendor

The obligation of the Vendor to complete the Transaction pursuant to this Agreement is subject to the satisfaction of the following conditions precedent:

- (a) payment by the Purchaser of the Purchase Price, in its entirety;
- (b) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser shall have been complied with or performed in all material respects;
- (c) the representations and warranties of the Purchaser set out in Section 6.2 shall be true and accurate in all material respects; and
- (d) the Sale Order shall have been obtained.

Each of the foregoing conditions has been inserted for the benefit of the Vendor and may, without prejudice to any of the rights of the Vendor hereunder, be waived by it in writing, in whole

or in part, at any time, provided that the Vendor is not entitled to waive the Sale Order condition contained in Section 4.1(d). In case any of the said conditions shall not be complied with, or waived by the Vendor, at or before the Closing Date, the Vendor may terminate this Agreement by written notice to the Purchaser.

4.2 Conditions for the Benefit of the Purchaser

The obligation of the Purchaser to complete the Transaction pursuant to this Agreement is subject to the satisfaction, on the Closing Date of the following conditions precedent:

- (a) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor shall have been complied with or performed in all material respects;
- (b) the representations and warranties of the Vendor set out in Section 6.1 shall be true and accurate in all material respects; and
- (c) the Sale Order shall have been obtained.

Each of the foregoing conditions has been inserted for the benefit of the Purchaser and may, without prejudice to any of the rights of the Purchaser hereunder, be waived by it by notice to the Vendor in writing, in whole or in part, at any time, provided that the Purchaser is not entitled to waive the Sale Order condition contained in Section 4.2(c). In case any of the said conditions shall not be complied with, or waived by the Purchaser, at or before the Closing Date, the Purchaser may terminate this Agreement by written notice to the Vendor.

ARTICLE 5 CLOSING

5.1 Pre-Closing Use of Equipment by the Purchaser

In the period between the full execution and delivery of this Agreement by the Parties and the Closing Date, the Purchaser may elect by notice in writing to the Vendor and Monitor to take possession of and operate the Equipment on and subject to the following terms:

- (a) prior to taking possession of the Equipment, the Purchaser shall deliver:
 - (i) to the Monitor in trust the full amount of the Purchase Price and taxes payable under section 3.3 of this Agreement; and
 - (ii) to the Vendor and the Monitor evidence satisfactory to the Vendor and Monitor that it has placed general liability and property and casualty insurance on the Equipment, naming the Vendor as additional insured as its interest may appear;
- (b) If Closing does not occur on the Closing Date, the Vendor by notice in writing to the Purchaser may require the Purchaser to deliver the Equipment to the Vendor, whereupon the Purchaser shall cease operating the Equipment and deliver the Equipment to the Vendor within seven (7) days thereafter at the Vendor's yard in Bonnyville;

- (c) the Purchaser shall indemnify and save harmless the Vendor any and all manner of actions, causes of action, accounts, bonds, contracts, covenants, debts, proceedings, suits, warranties, damages, losses, expenses and costs which the Vendor may suffer or incur for or by reason of any damage to or destruction of the Equipment or any claims made by any third party in connection with the Purchaser's use or operation of the Equipment.

5.2 Closing Deliveries

On the Closing Date, subject to the provisions of this Agreement, (a) the Vendor shall provide a copy of the Sale Order; and, (b) the Purchaser shall deliver or cause to be delivered to the Monitor, the Purchase Price plus all taxes, fees, and GST.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 Vendor's Representations and Warranties

The Vendor hereby represents and warrants to and in favour of the Purchaser that:

- (a) it is a corporation duly organized, validly subsisting and in good standing under the laws of the jurisdiction of its incorporation, continuance or amalgamation (as the case may be) and is duly registered and authorized to carry on business in Alberta;
- (b) the Vendor is not a "non-resident" for the purposes of Section 116 of the *Income Tax Act* (Canada) and the Vendor shall receive the Purchase Price on its own account and not as agent, trustee or nominee for any other person who is a non-resident of Canada.

6.2 No Additional Representations and Warranties

Notwithstanding anything to the contrary in this Agreement, the Vendor makes no representations or warranties except as expressly set forth in Section 6.1 and, in particular, and without limiting the generality of the foregoing, the Vendor disclaims and shall not be liable for any representation or warranty express or implied, of any kind, at law or in equity, which may have been made or alleged to be made in any instrument or document relative hereto, or in any statement or information made or communicated to the Purchaser in any manner including any opinion, information, or advice which may have been provided to the Purchaser by the Vendor in connection with the Equipment or in relation to the Transaction.

6.3 Purchaser's Representations and Warranties

The Purchaser hereby represents and warrants to and in favour of the Vendor that, as of the date of this Agreement and as of the Closing Date:

- (a) it is a valid and subsisting corporation under the laws of its jurisdiction of registration;
- (b) it has taken all action and has full power and authority to enter into this Agreement and the other documents and agreements executed and delivered hereunder and

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it has taken all necessary action to consummate the Transaction and to perform its obligations thereunder; and,

- (c) it is a registrant for the purposes of Part IX of the *Excise Tax Act* (Canada).

ARTICLE 7 GENERAL

7.1 Governing Law

This Agreement shall, in all respects, be subject to and be interpreted, construed and enforced in accordance with the laws in effect in the Province of Alberta and the laws of Canada applicable therein.

7.2 Amendment and Waiver

No supplement, modification, waiver or termination of this Agreement (other than a termination pursuant to Section 4.1 or Section 4.2) shall be binding unless executed in writing by the Parties hereto.

7.3 Assignment

Neither Party may assign their interest in or under this Agreement or to the Equipment without the prior written consent of the other Party, which consent may be withheld in such other Party's sole and unfettered discretion.

7.4 Entire Agreement

This Agreement and any agreements, instruments and other documents herein contemplated to be entered into between, by or including the Parties hereto constitute the entire agreement between the Parties hereto pertaining to the Transaction and the Equipment.

7.5 Successors and Assigns

All of the covenants and agreements in this Agreement shall be binding upon the Parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the Parties hereto and their respective successors and their permitted assigns pursuant to the terms and conditions of this Agreement.

7.6 Electronic and Counterpart Execution

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed in original, pdf, or other electronic form by email or other electronic delivery, each of which shall constitute and be treated as such Parties' original signature(s).

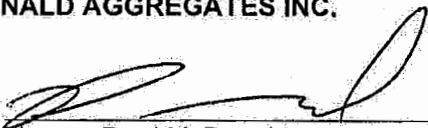
IN WITNESS WHEREOF the Vendor and the Purchaser have duly executed this Agreement as evidenced by their properly authorized officers as of the day and year first above written.

JMB CRUSHING SYSTEMS INC.

Per: Byron J Levkulich
Name: Byron J Levkulich
Title: Director

Per: _____
Name:
Title:

MCDONALD AGGREGATES INC.

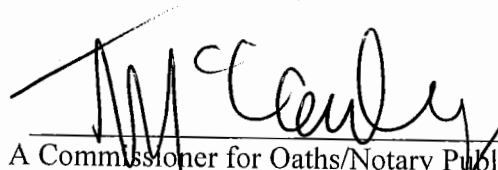
Per: 
Name: Brad McDonald
Title: President



SCHEDULE A
EQUIPMENT

1. TT012 - 2007 Western Star 4900SA complete with detached winch deck
Serial Number: 5KKXAM0067PX64941
2. CY201 - 2014 Tyalta 60' Transfer Belt Conveyor - Serial Number: 144260350
3. FS200 - 2011 Clemro 7X20-3D Portable Screen Plant - Serial Number: 1681-4600,
Chassis Serial Number: 1682-4471
4. FS300 - 2006 Fabtec 6x20 Portable Screen Plant - Serial Number: P620332506
5. TT026 - 2013 Peterbilt 367 Serial Number: 1XPTD40X6DD197601

THIS IS EXHIBIT "C" REFERRED TO IN
THE AFFIDAVIT OF BLAKE M. ELYEA
SWORN BEFORE ME
THIS 19TH DAY OF FEBRUARY, 2021


A Commissioner for Oaths/Notary Public in and
for the Province of British Columbia

ALEXANDRA L. MCCAWLEY
GOWLING WLG (CANADA) LLP
BARRISTER & SOLICITOR
550 BURRARD STREET - SUITE 2300
BENTALL 5 - VANCOUVER, B.C. V6C 2B5
TELEPHONE: (604) 891-2772



ASSET PURCHASE AGREEMENT

THIS AGREEMENT (the "Agreement") made as of the 17th day of February, 2021.

BETWEEN:

JMB CRUSHING SYSTEMS INC., a corporation formed under the laws of the Province of Alberta (the "Vendor")

- and -

SUMMIT TRAILER LTD., a corporation formed under the laws of the Province of Alberta (the "Purchaser", and collectively with the Vendor, the "Parties")

WHEREAS the Vendor has sought and obtained an Order of the Court of Queen's Bench of Alberta (the "Court") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-35, as amended (the "CCAA Proceedings");

AND WHEREAS the Vendor wishes to sell the Equipment to the Purchaser and the Purchaser wishes to purchase the Equipment from the Vendor, all upon and subject to the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties hereby covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

The terms defined herein shall have, for all purposes of this Agreement, the following meanings:

"Closing" means the completion of the Transaction.

"Closing Date" means the fifth business day immediately following the date that the Sale Order is issued, or on such other date as the Parties may agree in writing.

"Equipment" means all of the Vendor's right, title and interest in and to certain equipment, as set out in Schedule A.

"Monitor" means FTI Consulting Canada Inc. in its capacity as the Court appointed monitor of the Vendor.

"Permitted Encumbrances" means any permitted claims or encumbrances as set out or defined in the Sale Order. For the purposes of this Agreement, permitted claims or encumbrances will be nil.

"Representatives" means, with, respect to any party, its affiliates, and the respective directors, officers, servants, agents, advisors, employees, consultants and representatives of that party and its affiliates.

"Sale Advisor" means Sequeira Partners in its capacity as the sales advisor of the Vendor.

"Sale Order" means an order to be granted by the Court in the CCAA Proceedings that approves this Agreement and the Transaction and vests in the Purchaser all of the right, title and interest of the Vendor in and to the Equipment, free and clear of all security interests, charges, liens, claims and encumbrances of any kind whatsoever.

"Transaction" means the purchase and sale transaction contemplated by this Agreement.

ARTICLE 2 PURCHASE AND SALE

2.1 Purchase and Sale of Equipment

Upon and subject to the terms and conditions of this Agreement, the Vendor will sell, transfer, convey, assign and deliver to the Purchaser, and the Purchaser will purchase, acquire and assume from the Vendor, free and clear of all claims other than Permitted Encumbrances, all of the Vendor's respective right, title, benefit, estate and interest in and to the Equipment in consideration of the payment of the Purchase Price (as defined hereinafter) (collectively, the **"Transaction"**). Closing shall occur at 10:00 am on the Closing Date, subject to the terms and conditions contained herein.

2.2 Acknowledgement of the Purchaser as Condition of Equipment

Notwithstanding the foregoing or anything contained herein or elsewhere, the Purchaser acknowledges and agrees that:

- (a) on Closing, title to the Equipment shall be subject to the Permitted Encumbrances;
- (b) in entering into this Agreement, the Purchaser has had an opportunity to conduct any and all due diligence regarding the Equipment and the Vendor, it has relied and will continue to rely solely upon its own independent review, investigations and inspection of any documents and the Equipment, including, without limitation, the physical and environmental condition of the Equipment;
- (c) the Equipment is being purchased and assumed by the Purchaser on an "as is, where is" basis as of the Closing Date;
- (d) in entering into this Agreement, the Purchaser has not relied upon any written or oral statements, representations, warranties or guarantees whatsoever made by the Sale Advisor, the Vendor, or the Monitor, whether express, implied, statutory, or otherwise, regarding the Equipment, or the Vendor, or the accuracy or completeness of any information provided in connection therewith;
- (e) except for its express rights under this Agreement, the Purchaser hereby waives all rights and remedies (whether now existing or hereinafter arising and including



all equitable, common law, tort, contractual, and statutory rights and remedies) against the Vendor, the Monitor, the Sales Advisor and their Representatives or in respect of the Equipment or the Transaction or any representations or statements made, direct or indirect, express or implied, or information or data furnished to the Purchaser or its Representatives, in connection therewith (whether made or furnished orally or by electronic, faxed, written, or any other means); and,

- (f) this Section 2.2 shall survive and not merge on Closing.

ARTICLE 3 PURCHASE PRICE AND PAYMENT

3.1 Purchase Price

The purchase price to be paid by the Purchaser to the Vendor for the Equipment shall be [REDACTED] (the "Purchase Price"), plus GST and any and all applicable taxes and fees payable under Section 3.3.

3.2 Payment of Purchase Price

The Purchase Price shall be satisfied on or before the Closing Date, by the Purchaser, by payment to the Monitor by way of wire transfer of immediately available funds.

3.3 Taxes and Fees

The Purchaser shall be liable for and shall pay all federal or provincial sales taxes, including GST, and all other taxes, duties, or other similar charges properly payable upon and in connection with the conveyance and transfer of the Equipment by the Vendor to the Purchaser and the Purchaser shall be responsible for all recording charges and registration fees payable in connection therewith, this Agreement, the Equipment, and the Transaction.

ARTICLE 4 CLOSING CONDITIONS

4.1 Conditions for the Benefit of the Vendor

The obligation of the Vendor to complete the Transaction pursuant to this Agreement is subject to the satisfaction of the following conditions precedent:

- (a) payment by the Purchaser of the Purchase Price, in its entirety;
- (b) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser shall have been complied with or performed in all material respects;
- (c) the representations and warranties of the Purchaser set out in Section 6.2 shall be true and accurate in all material respects; and
- (d) the Sale Order shall have been obtained.

Each of the foregoing conditions has been inserted for the benefit of the Vendor and may, without prejudice to any of the rights of the Vendor hereunder, be waived by it in writing, in whole or in part, at any time, provided that the Vendor is not entitled to waive the Sale Order condition contained in Section 4.1(d). In case any of the said conditions shall not be complied with, or waived by the Vendor, at or before the Closing Date, the Vendor may terminate this Agreement by written notice to the Purchaser.

4.2 Conditions for the Benefit of the Purchaser

The obligation of the Purchaser to complete the Transaction pursuant to this Agreement is subject to the satisfaction, on the Closing Date of the following conditions precedent:

- (a) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor shall have been complied with or performed in all material respects;
- (b) the representations and warranties of the Vendor set out in Section 6.1 shall be true and accurate in all material respects; and
- (c) the Sale Order shall have been obtained.

Each of the foregoing conditions has been inserted for the benefit of the Purchaser and may, without prejudice to any of the rights of the Purchaser hereunder, be waived by it by notice to the Vendor in writing, in whole or in part, at any time, provided that the Purchaser is not entitled to waive the Sale Order condition contained in Section 4.2(c). In case any of the said conditions shall not be complied with, or waived by the Purchaser, at or before the Closing Date, the Purchaser may terminate this Agreement by written notice to the Vendor.

ARTICLE 5 CLOSING

5.1 Pre-Closing Use of Equipment by the Purchaser

In the period between the full execution and delivery of this Agreement by the Parties and the Closing Date, the Purchaser may elect by notice in writing to the Vendor and Monitor to take possession of and operate the Equipment on and subject to the following terms:

- (a) prior to taking possession of the Equipment, the Purchaser shall deliver:
 - (i) to the Monitor in trust the full amount of the Purchase Price and taxes payable under section 3.3 of this Agreement; and
 - (ii) to the Vendor and the Monitor evidence satisfactory to the Vendor and Monitor that it has placed general liability and property and casualty insurance on the Equipment, naming the Vendor as additional insured as its interest may appear;
- (b) if Closing does not occur on the Closing Date, the Vendor by notice in writing to the Purchaser may require the Purchaser to deliver the Equipment to the Vendor, whereupon the Purchaser shall cease operating the Equipment and deliver the



Equipment to the Vendor within seven (7) days thereafter at the Vendor's yard in Bonnyville;

- (c) the Purchaser shall indemnify and save harmless the Vendor any and all manner of actions, causes of action, accounts, bonds, contracts, covenants, debts, proceedings, suits, warranties, damages, losses, expenses and costs which the Vendor may suffer or incur for or by reason of any damage to or destruction of the Equipment or any claims made by any third party in connection with the Purchaser's use or operation of the Equipment.

5.2 Closing Deliveries

On the Closing Date, subject to the provisions of this Agreement, (a) the Vendor shall provide a copy of the Sale Order; and, (b) the Purchaser shall deliver or cause to be delivered to the Monitor, the Purchase Price plus all taxes, fees, and GST.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 Vendor's Representations and Warranties

The Vendor hereby represents and warrants to and in favour of the Purchaser that:

- (a) it is a corporation duly organized, validly subsisting and in good standing under the laws of the jurisdiction of its incorporation, continuance or amalgamation (as the case may be) and is duly registered and authorized to carry on business in Alberta;
- (b) the Vendor is not a "non-resident" for the purposes of Section 116 of the *Income Tax Act* (Canada) and the Vendor shall receive the Purchase Price on its own account and not as agent, trustee or nominee for any other person who is a non-resident of Canada.

6.2 No Additional Representations and Warranties

Notwithstanding anything to the contrary in this Agreement, the Vendor makes no representations or warranties except as expressly set forth in Section 6.1 and, in particular, and without limiting the generality of the foregoing, the Vendor disclaims and shall not be liable for any representation or warranty express or implied, of any kind, at law or in equity, which may have been made or alleged to be made in any instrument or document relative hereto, or in any statement or information made or communicated to the Purchaser in any manner including any opinion, information, or advice which may have been provided to the Purchaser by the Vendor in connection with the Equipment or in relation to the Transaction.

6.3 Purchaser's Representations and Warranties

The Purchaser hereby represents and warrants to and in favour of the Vendor that, as of the date of this Agreement and as of the Closing Date:

- (a) it is a valid and subsisting corporation under the laws of its jurisdiction of registration;

- (b) it has taken all action and has full power and authority to enter into this Agreement and the other documents and agreements executed and delivered hereunder and it has taken all necessary action to consummate the Transaction and to perform its obligations thereunder; and,
- (c) it is a registrant for the purposes of Part IX of the *Excise Tax Act* (Canada).

ARTICLE 7 GENERAL

7.1 Governing Law

This Agreement shall, in all respects, be subject to and be interpreted, construed and enforced in accordance with the laws in effect in the Province of Alberta and the laws of Canada applicable therein.

7.2 Amendment and Waiver

No supplement, modification, waiver or termination of this Agreement (other than a termination pursuant to Section 4.1 or Section 4.2) shall be binding unless executed in writing by the Parties hereto.

7.3 Assignment

Neither Party may assign their interest in or under this Agreement or to the Equipment without the prior written consent of the other Party, which consent may be withheld in such other Party's sole and unfettered discretion.

7.4 Entire Agreement

This Agreement and any agreements, instruments and other documents herein contemplated to be entered into between, by or including the Parties hereto constitute the entire agreement between the Parties hereto pertaining to the Transaction and the Equipment.

7.5 Successors and Assigns

All of the covenants and agreements in this Agreement shall be binding upon the Parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the Parties hereto and their respective successors and their permitted assigns pursuant to the terms and conditions of this Agreement.

7.6 Electronic and Counterpart Execution

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed in original, pdf, or other electronic form by email or other electronic delivery, each of which shall constitute and be treated as such Parties' original signature(s).

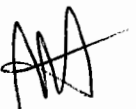
IN WITNESS WHEREOF the Vendor and the Purchaser have duly executed this Agreement as evidenced by their properly authorized officers as of the day and year first above written.

JMB CRUSHING SYSTEMS INC.

Per: _____
Name:
Title:

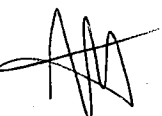
SUMMIT TRAILER LTD.

Per: _____
Name:
Title:



SCHEDULE A
EQUIPMENT

1. TR035 - 2015 Arnes End Dump Trailer
Serial Number: 2A9073730FA003575
2. TR036 - 2015 Arnes End Dump Trailer
Serial Number: 2A9073732FA003576
3. TR037 - 2015 Arnes End Dump Trailer
Serial Number: 2A9073738FA003596
4. TR038 - 2015 Arnes End Dump Trailer
Serial Number: 2A907373XFA003597
5. TR039 - 2015 Arnes End Dump Trailer
Serial Number: 2A9073733FA003599



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.

APPLICANTS JMB CRUSHING SYSTEMS INC.

DOCUMENT **AFFIDAVIT OF BLAKE M. ELYEA**

ADDRESS FOR **Gowling WLG (Canada) LLP**
SERVICE AND 1600, 421 – 7th Avenue SW
CONTACT Calgary, AB T2P 4K9

INFORMATION OF Attn: **Tom Cumming/Caireen E. Hanert/Stephen Kroeger**
PARTY FILING
THIS DOCUMENT Phone: 403.298.1938/403.298.1992/403.298.1018
Fax: 403.263.9193
File No.: A163514

AFFIDAVIT OF BLAKE M. ELYEA
sworn February 19, 2021

I, **BLAKE M. ELYEA**, of the City of Burnaby, in the Province of British Columbia,
MAKE OATH AND SAY THAT:

1. I am the Chief Restructuring Advisor for JMB Crushing Systems Inc. ("**JMB**") and 2161889 Alberta Ltd. ("**216**") and as such, I have personal knowledge of the matters herein deposed to, except where stated to be based upon information and belief, in which case I verily believe same to be true.
2. Following the commencement by JMB and 216 of their proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**", and such proceedings, the "**CCAA Proceedings**"), I have been the Chief Restructuring Advisor of



JMB since May 4, 2020. In that capacity, I have reviewed the business records of JMB relevant to the within proceedings and have satisfied myself that I am possessed of sufficient information and knowledge to swear this Affidavit.

3. I swear this Affidavit further to my Affidavits sworn August 6, 2020, October 16, 2020 November 20, 2020 and December 4, 2020 in these proceedings.
4. I am authorized to swear this Affidavit as the Chief Restructuring Advisor of JMB.
5. I make this affidavit in support of:
 - (a) an order approving the sale of certain equipment to McDonald Aggregates Inc. (“**McDonald**”), pursuant to an asset purchase agreement dated January 19, 2021 (the “**McDonald #1 APA**”) and vesting the assets in McDonald free and clear of any security interests or other claims;
 - (b) an order approving the sale of certain assets to McDonald, pursuant to an asset purchase agreement dated January 25, 2021 (the “**McDonald #2 APA**”) and together with the McDonald #1 APA, the “**APAs**”) and vesting the assets in McDonald free and clear of any security interests or other claims;
 - (c) an order approving the sale of certain equipment to Summit Trailer Ltd. (“**Summit**”), pursuant to an asset purchase agreement, to be executed (the “**Summit APA**”) and together with the McDonald #1 APA and the McDonald #2 APA, the “**APAs**”) and vesting the assets in Summit free and clear of any security interests or other claims;
 - (d) an order extending the Stay Period, as defined in the Initial Order granted in these proceedings by Justice K.M. Eidsvik on May 1, 2020, which Order was amended and restated by the Amended and Restated Initial Order pronounced on May 11, 2020 (the “**Initial Order**”), up to and including April 16, 2021.
6. The initial background to these proceedings is described in detail in the Affidavit of Jeff Buck sworn April 16, 2020, and the background to the Mantle Transaction (defined below)



is described in the Affidavit of Levkulich sworn September 30, 2020 and filed October 2, 2020 (the "**Levkulich Affidavit**").

7. On May 20, 2020, this Honourable Court granted an amended and restated initial order (as amended and restated, the "**Initial Order**"), pursuant to which:
 - (a) a sale and investment solicitation process (the "**SISP**") was approved;
 - (b) appointed Sequeira Partners as sale advisor (the "**Sale Advisor**"); and
 - (c) authorized the Monitor, the Sale Advisor, and the Applicants to conduct the SISP and carry out their obligations thereunder.
8. I am advised by the Monitor and believe that the SISP was implemented in early June 2020 and ran until the end of September, 2020. There were three relatively small sales of equipment and other assets that came out of the SISP, each of which were approved by this Court. Mantle Materials Group, Ltd. ("**Mantle**") submitted a bid to acquire the core assets of JMB and 216, as described in the Levkulich Affidavit. The transaction with Mantle has not yet closed.
9. Since the SISP concluded, JMB has received separate offers on various pieces of equipment and other assets, which offers have been negotiated in consultation with the Monitor and affected secured creditors. JMB subsequently entered into asset purchase agreements with the offerors, and is seeking Court approval of the asset purchase agreements noted below.

McDonald #1 APA

10. The McDonald #1 APA provides that, *inter alia*, upon and subject to the terms and conditions of the McDonald #1 APA, in consideration of the payment of the purchase price contemplated therein, JMB will sell, transfer, convey, assign and deliver to McDonald, and McDonald will purchase, acquire and assume from JMB, free and clear of any claims and encumbrances, all of JMB's right, title, benefit, estate and interest in and to the assets, as described in Schedule "A" to the McDonald #1 APA (the "**McDonald #1 Assets**"). Attached hereto as **Exhibit "A"** is a redacted copy of the McDonald #1 APA. An



unredacted copy is attached to my Confidential Affidavit sworn February 19, 2021 as Exhibit "A".

McDonald #2 APA

11. The McDonald #2 APA provides that, *inter alia*, upon and subject to the terms and conditions of the McDonald #2 APA, in consideration of the payment of the purchase price contemplated therein, JMB will sell, transfer, convey, assign and deliver to McDonald, and McDonald will purchase, acquire and assume from JMB, free and clear of any claims and encumbrances, all of JMB's right, title, benefit, estate and interest in and to the assets, as described in Schedule "A" to the McDonald #2 APA (the "**McDonald #2 Assets**"). Attached hereto as **Exhibit "B"** is a redacted copy of the McDonald #1 APA. An unredacted copy is attached to my Confidential Affidavit sworn February 19, 2021 as Exhibit "B".

Summit APA

12. The Summit APA provides that, *inter alia*, upon and subject to the terms and conditions of the Summit APA, in consideration of the payment of the purchase price contemplated therein, JMB will sell, transfer, convey, assign and deliver to Summit, and Summit will purchase, acquire and assume from JMB, free and clear of any claims and encumbrances, all of JMB's right, title, benefit, estate and interest in and to the assets, as described in Schedule "A" to the Summit APA (the "**Summit Assets**"). Attached hereto as **Exhibit "C"** is a redacted copy of the draft Summit APA. An unredacted copy is attached to my Confidential Affidavit sworn February 19, 2021 as Exhibit "C". The Summit APA will be executed in a form substantially similar to that attached as Exhibit "C" and an executed version will be provided in advance of the Court application.

Approval of the APAs

13. I am advised by the Monitor and believe that no acceptable offers were received for the purchase of the McDonald #1 Assets, the McDonald #2 Assets and the Summit Assets (collectively, the "**Assets**") during the course of the SISP.



14. Each of the McDonald #1 APA, the McDonald #2 APA and the Summit APA (collectively, the “**APAs**”) represents the highest and best offer for the subject Assets that can be obtained in the current circumstances.
15. Each APA is conditional, *inter alia*, on Court approval.

Mantle Transaction

16. Mantle agreed to purchase the core assets of the Applicants (the “**Core Assets**”) pursuant to the Amended and Restated Asset Purchase Agreement dated September 28, 2020 (the “**Mantle APA**”) between the Applicants and Mantle (the purchase and sale transaction contemplated thereby being the “**Mantle Transaction**”). For the reasons summarized below the Mantle Transaction has not been completed.
17. On October 1, 2020, Justice Eidsvik granted an Order approving the Mantle APA and Mantle Transaction. On October 16, 2020, Her Ladyship granted the following Orders:
 - (a) the Amended and Restated Sale Approval and Vesting Order (the “**SAVO**”), vesting all of the right, title and interest of the Applicants in the Core Assets in Mantle free and clear of all encumbrances other than permitted encumbrances;
 - (b) the Reverse Vesting Order (the “**RVO**”), vesting in 216 all of the right, title and interest of JMB in the assets of JMB that were excluded from the Core Assets, and vesting in Eastside Rock Products, Inc. certain equipment owned by JMB located in the State of Washington;
 - (c) the Assignment Order (the “**Assignment Order**”), assigning certain contracts included in the Core Assets to Mantle; and
 - (d) the Sanction Order (the “**Sanction Order**”, and with the SAVO, RVO and Assignment Order, the “**October 16 Orders**”), sanctioning a plan of arrangement (the “**Plan**”) under the CCAA and British Columbia’s *Business Corporations Act*, RSC 1985, c C-36, as amended.



18. The effect of the SAVO was that Mantle was to acquire on closing the Core Assets of JMB and 216, consisting, *inter alia*, of:
- (a) certain public land dispositions (“**Dispositions**”) granted under the *Public Lands Act*, RSA 2000, c P-4 and the regulations thereunder (the “**PLA**”) held by 216 (such Dispositions, the “**Included Public 216 Dispositions**”) on which certain core aggregate pits are located (the “**Included Public 216 Pits**”);
 - (b) certain aggregate royalty agreements between JMB and (i) the holders of Dispositions, or (ii) the owners in fee simple of lands on which aggregate pits are located (aggregate pits on privately owned lands being “**Private Pits**”), together with the associated registrations issued by the AEP to JMB under the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 (“**Private Pit Registrations**”);
 - (c) certain agreements with JMB’s customers;
 - (d) equipment and tangible personal property of JMB subject to the prior ranking security of Fiera;
 - (e) the lease in favour of JMB of land and premises in the Town of Bonnyville where it stores aggregate, equipment and has an operational centre; and
 - (f) certain real property owned by JMB.
19. Further, under the Plan, the shares held by Canadian Aggregate Resources Corp. (“**CARC**”) in JMB would be transferred to RLF Canada Holdings Limited (“**RLF Holdings**”), of which both Mantle and CARC are wholly owned subsidiaries, and the shares of J Buck and Sons Inc. in JMB would be redeemed for no consideration and cancelled.
20. JMB would emerge from the CCAA Proceedings as a solvent corporation and wholly owned subsidiary of RLF Holdings, because on closing under the RVO:



- (a) all of the liabilities of JMB not being assumed by Mantle would be vested in and deemed to be assumed by 216;
 - (b) all of the assets of JMB that Mantle was not acquiring would be vested in 216, including (i) non-core Private Pits (the “**Excluded Private Pits**”) and the associated Private Pit Registrations, and (ii) Dispositions held by JMB (the “**Excluded Public JMB Dispositions**”) of certain non-core aggregate pits (the “**Excluded Public JMB Pits**”); and
 - (c) 216 would retain certain Dispositions held by it relating to non-core aggregate pits (the “**Excluded Public 216 Pits**”, and such Dispositions, the “**Excluded Public 216 Dispositions**”).
21. I am advised by counsel for the Applicants and believe that with respect to the Mantle Transaction, discussions with Alberta Environment and Parks (the “**AEP**”) have continued in an effort to obtain the AEP’s approval for the following:
- (a) the transfer by 216 to Mantle of the Included Public 216 Dispositions;
 - (b) the transfer by JMB to 216 of Excluded Public 216 Dispositions;
 - (c) the assignment by JMB to Mantle of Private Pit Registrations in respect of certain core aggregate pits (the “**Included Private Pits**”); and
 - (d) the assignment by JMB to 216 of Private Pit Registrations in respect of certain non-core aggregate pits (the “**Excluded Private Pits**”).
22. I am further advised by counsel and believe that with respect to Private Pit Registrations, the AEP continues to require that all non-compliances relating to the Included Private Pits and Excluded Private Pits be resolved before it is willing to consider applications to transfer the associated Private Pit Registration. Principally, the issues are as follows:
- (a) The AEP had informed a representative of JMB that the AEP had failed to demand payment under bonds (the “**Bonds**”) issued by Northbridge General Insurance Corporation (“**Northbridge**”) in favour of Her Majesty the Queen in right of



Alberta, as represented by the Minister of Environment and Parks (the “**Crown**”), to secure the obligations of JMB under each of the applicable Private Pit Registrations, other than with respect to one Bond, and all of the Bonds have now expired;

- (b) Therefore, there is no reclamation security in place in respect of seven Private Pit Registrations (being the Buksa, Havener, Hoye/Kucy, Okane, McDonald, Megley and Shankowski pits), other than any cash proceeds paid in respect of the one Bond under which demand was made; and
- (c) There are certain existing non-compliances in respect of the Dispositions and Private Pit Registrations.

- 23. Mantle and JMB are currently attempting to confirm with the AEP whether in fact its statement is correct that it did not make demand under six of the seven Bonds, as a representative of Northbridge advised that they understood demand had been made under all of the Bonds. As of the date of this Affidavit, the AEP has not responded to these enquiries.
- 24. In an effort to complete the Mantle Transaction, which is the only way to preserve value for the principal stakeholders in JMB and 216, Mantle and JMB are preparing revisions to the Mantle Transaction and the October 16 Orders to eliminate the need for transfers of Dispositions and Private Pit Registrations that would require AEP consent and to address the reclamation liabilities and any non-compliances raised by the AEP. Those materials are currently being prepared and discussed with the principal stakeholders of JMB and 216.

Application for an Extension of the Stay of Proceedings

- 25. Since May 11, 2020, the Stay Period has been extended by Orders of this Honourable Court pronounced July 28, August 26, September 11, September 24, October 1, October 16 November 12, December 7, 2020, and January 12, 2021 (the latter Order being the “**January 12 Order**”). Under the January 12 Order, the Stay Period terminates on February 26, 2021.



26. Since the January 12 Order, the Applicants have continued to act diligently and in good faith in these proceedings by, among other things:
- (a) continuing to maintain the Applicants' property and assets;
 - (b) continuing discussions with the AEP in connection with the applications to the AEP for approval of the transfers of surface material leases and registrations to Mantle pursuant to the SAVO and to 216 pursuant to the RVO;
 - (c) working with the Monitor and the senior secured creditors to close the Mantle Transaction;
 - (d) negotiating a number of asset purchase agreements, including those requiring court approval (as noted above); and
 - (e) assessing the potential claim of Canada Revenue Agency (the "CRA") against JMB and whether such claim may be secured by a deemed trust or statutory lien under the *Income Tax Act*, RSC 1985, c 1.
27. Given the need to amend and restate the Mantle APA and the October 16 Orders, additional time is required to finalize those materials and seek Court approval, as well as to attend to various other matters, including the lien determination appeal of R Bee Aggregate Consulting Ltd. and the resolution of the potential claim of the CRA.
28. Based on my preparation and review of the Applicants' cash flow statement appended to the Thirteenth Report of the Monitor, the Applicants have sufficient funds through to April 16, 2021 to allow for the completion of the steps outlined above.
29. Having regard to the circumstances, I believe that the granting of an extension of the Stay Period to a date determined by this Honourable Court is necessary and in the best interests of the Applicants and their stakeholders.
30. The Applicants have acted, and continue to act, in good faith and with due diligence in respect of all matters relating to the CCAA proceedings, and no creditor will be prejudiced by the proposed extension of the Stay Period.



31. I was not physically present before the commissioner taking this affidavit, but was linked with the commissioner utilizing video technology, and the process described in the notice from the court date March 27, 2020 for remote commissioning affidavits was utilized.

SWORN BEFORE ME at the City of)
Burnaby, in the Province of British)
Columbia, this 19th day of February, 2021.)

A Commissioner for Oaths/Notary Public)
in and for the Province of British Columbia)



BLAKE M. ELYEA



THIS IS EXHIBIT "A" REFERRED TO IN
THE AFFIDAVIT OF BLAKE M. ELYEA
SWORN BEFORE ME
THIS 19TH DAY OF FEBRUARY, 2021

A Commissioner for Oaths/Notary Public in and
for the Province of British Columbia

A handwritten signature in black ink, consisting of several overlapping, slanted strokes, located in the bottom right corner of the page.

ASSET PURCHASE AGREEMENT

THIS AGREEMENT (the "Agreement") made as of the 19th day of January, 2021.

BETWEEN:

JMB CRUSHING SYSTEMS INC., a corporation formed under the laws of the Province of Alberta (the "Vendor")

- and -

MCDONALD AGGREGATES INC., a corporation formed under the laws of the Province of Alberta (the "Purchaser", and collectively with the Vendor, the "Parties")

WHEREAS the Vendor has sought and obtained an Order of the Court of Queen's Bench of Alberta (the "Court") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-35, as amended (the "CCAA Proceedings");

AND WHEREAS the Vendor wishes to sell the Equipment to the Purchaser and the Purchaser wishes to purchase the Equipment from the Vendor, all upon and subject to the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties hereby covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

The terms defined herein shall have, for all purposes of this Agreement, the following meanings:

"**Closing**" means the completion of the Transaction.

"**Closing Date**" means the fifth business day immediately following the date that the Sale Order is issued, or on such other date as the Parties may agree in writing.

"**Equipment**" means all of the Vendor's right, title and interest in and to certain equipment, as set out in Schedule A.

"**Monitor**" means FTI Consulting Canada Inc. in its capacity as the Court appointed monitor of the Vendor.

"**Permitted Encumbrances**" means any permitted claims or encumbrances as set out or defined in the Sale Order. For the purposes of this Agreement, permitted claims or encumbrances will be nil.



"Representatives" means, with respect to any party, its affiliates, and the respective directors, officers, servants, agents, advisors, employees, consultants and representatives of that party and its affiliates.

"Sale Advisor" means Sequeira Partners in its capacity as the sales advisor of the Vendor.

"Sale Order" means an order to be granted by the Court in the CCAA Proceedings that approves this Agreement and the Transaction and vests in the Purchaser all of the right, title and interest of the Vendor in and to the Equipment, free and clear of all security interests, charges, liens, claims and encumbrances of any kind whatsoever.

"Transaction" means the purchase and sale transaction contemplated by this Agreement.

ARTICLE 2 PURCHASE AND SALE

2.1 Purchase and Sale of Equipment

Upon and subject to the terms and conditions of this Agreement, the Vendor will sell, transfer, convey, assign and deliver to the Purchaser, and the Purchaser will purchase, acquire and assume from the Vendor, free and clear of all claims other than Permitted Encumbrances, all of the Vendor's respective right, title, benefit, estate and interest in and to the Equipment in consideration of the payment of the Purchase Price (as defined hereinafter) (collectively, the **"Transaction"**). Closing shall occur at 10:00 am on the Closing Date, subject to the terms and conditions contained herein.

2.2 Acknowledgement of the Purchaser as Condition of Equipment

Notwithstanding the foregoing or anything contained herein or elsewhere, the Purchaser acknowledges and agrees that:

- (a) on Closing, title to the Equipment shall be subject to the Permitted Encumbrances;
- (b) in entering into this Agreement, the Purchaser has had an opportunity to conduct any and all due diligence regarding the Equipment and the Vendor, it has relied and will continue to rely solely upon its own independent review, investigations and inspection of any documents and the Equipment, including, without limitation, the physical and environmental condition of the Equipment;
- (c) the Equipment is being purchased and assumed by the Purchaser on an "as is, where is" basis as of the Closing Date;
- (d) in entering into this Agreement, the Purchaser has not relied upon any written or oral statements, representations, warranties or guarantees whatsoever made by the Sale Advisor, the Vendor, or the Monitor, whether express, implied, statutory, or otherwise, regarding the Equipment, or the Vendor, or the accuracy or completeness of any information provided in connection therewith;
- (e) except for its express rights under this Agreement, the Purchaser hereby waives all rights and remedies (whether now existing or hereinafter arising and including



all equitable, common law, tort, contractual, and statutory rights and remedies) against the Vendor, the Monitor, the Sales Advisor and their Representatives or in respect of the Equipment or the Transaction or any representations or statements made, direct or indirect, express or implied, or information or data furnished to the Purchaser or its Representatives, in connection therewith (whether made or furnished orally or by electronic, faxed, written, or any other means); and,

- (f) this Section 2.2 shall survive and not merge on Closing.

ARTICLE 3 PURCHASE PRICE AND PAYMENT

3.1 Purchase Price

The purchase price to be paid by the Purchaser to the Vendor for the Equipment shall be [REDACTED] (the "Purchase Price"), plus GST and any and all applicable taxes and fees payable under Section 3.3.

3.2 Payment of Purchase Price

The Purchase Price shall be satisfied on or before the Closing Date, by the Purchaser, by payment to the Monitor by way of wire transfer of immediately available funds.

3.3 Taxes and Fees

The Purchaser shall be liable for and shall pay all federal or provincial sales taxes, including GST, and all other taxes, duties, or other similar charges properly payable upon and in connection with the conveyance and transfer of the Equipment by the Vendor to the Purchaser and the Purchaser shall be responsible for all recording charges and registration fees payable in connection therewith, this Agreement, the Equipment, and the Transaction.

ARTICLE 4 CLOSING CONDITIONS

4.1 Conditions for the Benefit of the Vendor

The obligation of the Vendor to complete the Transaction pursuant to this Agreement is subject to the satisfaction of the following conditions precedent:

- (a) payment by the Purchaser of the Purchase Price, in its entirety;
- (b) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser shall have been complied with or performed in all material respects;
- (c) the representations and warranties of the Purchaser set out in Section 6.2 shall be true and accurate in all material respects; and
- (d) the Sale Order shall have been obtained.

Each of the foregoing conditions has been inserted for the benefit of the Vendor and may, without prejudice to any of the rights of the Vendor hereunder, be waived by it in writing, in whole



or in part, at any time, provided that the Vendor is not entitled to waive the Sale Order condition contained in Section 4.1(d). In case any of the said conditions shall not be complied with, or waived by the Vendor, at or before the Closing Date, the Vendor may terminate this Agreement by written notice to the Purchaser.

4.2 Conditions for the Benefit of the Purchaser

The obligation of the Purchaser to complete the Transaction pursuant to this Agreement is subject to the satisfaction, on the Closing Date of the following conditions precedent:

- (a) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor shall have been complied with or performed in all material respects;
- (b) the representations and warranties of the Vendor set out in Section 6.1 shall be true and accurate in all material respects; and
- (c) the Sale Order shall have been obtained.

Each of the foregoing conditions has been inserted for the benefit of the Purchaser and may, without prejudice to any of the rights of the Purchaser hereunder, be waived by it by notice to the Vendor in writing, in whole or in part, at any time, provided that the Purchaser is not entitled to waive the Sale Order condition contained in Section 4.2(c). In case any of the said conditions shall not be complied with, or waived by the Purchaser, at or before the Closing Date, the Purchaser may terminate this Agreement by written notice to the Vendor.

ARTICLE 5 CLOSING

5.1 Pre-Closing Use of Equipment by the Purchaser

In the period between the full execution and delivery of this Agreement by the Parties and the Closing Date, the Purchaser may elect by notice in writing to the Vendor and Monitor to take possession of and operate the Equipment on and subject to the following terms:

- (a) prior to taking possession of the Equipment, the Purchaser shall deliver:
 - (i) to the Monitor in trust the full amount of the Purchase Price and taxes payable under section 3.3 of this Agreement; and
 - (ii) to the Vendor and the Monitor evidence satisfactory to the Vendor and Monitor that it has placed general liability and property and casualty insurance on the Equipment, naming the Vendor as additional insured as its interest may appear;
- (b) if Closing does not occur on the Closing Date, the Vendor by notice in writing to the Purchaser may require the Purchaser to deliver the Equipment to the Vendor, whereupon the Purchaser shall cease operating the Equipment and deliver the Equipment to the Vendor within seven (7) days thereafter at the Vendor's yard in Bonnyville;



- (c) the Purchaser shall indemnify and save harmless the Vendor any and all manner of actions, causes of action, accounts, bonds, contracts, covenants, debts, proceedings, suits, warranties, damages, losses, expenses and costs which the Vendor may suffer or incur for or by reason of any damage to or destruction of the Equipment or any claims made by any third party in connection with the Purchaser's use or operation of the Equipment.

5.2 Closing Deliveries

On the Closing Date, subject to the provisions of this Agreement, (a) the Vendor shall provide a copy of the Sale Order; and, (b) the Purchaser shall deliver or cause to be delivered to the Monitor, the Purchase Price plus all taxes, fees, and GST.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 Vendor's Representations and Warranties

The Vendor hereby represents and warrants to and in favour of the Purchaser that:

- (a) it is a corporation duly organized, validly subsisting and in good standing under the laws of the jurisdiction of its incorporation, continuance or amalgamation (as the case may be) and is duly registered and authorized to carry on business in Alberta;
- (b) the Vendor is not a "non-resident" for the purposes of Section 116 of the *Income Tax Act* (Canada) and the Vendor shall receive the Purchase Price on its own account and not as agent, trustee or nominee for any other person who is a non-resident of Canada.

6.2 No Additional Representations and Warranties

Notwithstanding anything to the contrary in this Agreement, the Vendor makes no representations or warranties except as expressly set forth in Section 6.1 and, in particular, and without limiting the generality of the foregoing, the Vendor disclaims and shall not be liable for any representation or warranty express or implied, of any kind, at law or in equity, which may have been made or alleged to be made in any instrument or document relative hereto, or in any statement or information made or communicated to the Purchaser in any manner including any opinion, information, or advice which may have been provided to the Purchaser by the Vendor in connection with the Equipment or in relation to the Transaction.

6.3 Purchaser's Representations and Warranties

The Purchaser hereby represents and warrants to and in favour of the Vendor that, as of the date of this Agreement and as of the Closing Date:

- (a) it is a valid and subsisting corporation under the laws of its jurisdiction of registration;
- (b) it has taken all action and has full power and authority to enter into this Agreement and the other documents and agreements executed and delivered hereunder and



it has taken all necessary action to consummate the Transaction and to perform its obligations thereunder; and,

- (c) it is a registrant for the purposes of Part IX of the *Excise Tax Act* (Canada).

ARTICLE 7 GENERAL

7.1 Governing Law

This Agreement shall, in all respects, be subject to and be interpreted, construed and enforced in accordance with the laws in effect in the Province of Alberta and the laws of Canada applicable therein.

7.2 Amendment and Waiver

No supplement, modification, waiver or termination of this Agreement (other than a termination pursuant to Section 4.1 or Section 4.2) shall be binding unless executed in writing by the Parties hereto.

7.3 Assignment

Neither Party may assign their interest in or under this Agreement or to the Equipment without the prior written consent of the other Party, which consent may be withheld in such other Party's sole and unfettered discretion.

7.4 Entire Agreement

This Agreement and any agreements, instruments and other documents herein contemplated to be entered into between, by or including the Parties hereto constitute the entire agreement between the Parties hereto pertaining to the Transaction and the Equipment.

7.5 Successors and Assigns

All of the covenants and agreements in this Agreement shall be binding upon the Parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the Parties hereto and their respective successors and their permitted assigns pursuant to the terms and conditions of this Agreement.

7.6 Electronic and Counterpart Execution

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed in original, pdf, or other electronic form by email or other electronic delivery, each of which shall constitute and be treated as such Parties' original signature(s).



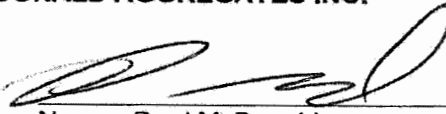
IN WITNESS WHEREOF the Vendor and the Purchaser have duly executed this Agreement as evidenced by their properly authorized officers as of the day and year first above written.

JMB CRUSHING SYSTEMS INC.

Per: Byron J Levkulich
Name: Byron J Levkulich
Title: Director

Per: _____
Name:
Title:

MCDONALD AGGREGATES INC.

Per: 
Name: Brad McDonald
Title: President



SCHEDULE A
EQUIPMENT

1. JS100 – 2002 Elrus M2943ER02JP Jaw and Chassis Serial and 2018 Elrus 6x20 2 Deck Screen 332 Series A00002869 Serial Number: M7102ERC18SC
2. JS300 - 2012 Elrus HD 20x54 Jaw Screen Plant E0003070
Serial Number: M6028ERC12CJS



THIS IS EXHIBIT "B" REFERRED TO IN
THE AFFIDAVIT OF BLAKE M. ELYEA
SWORN BEFORE ME
THIS 19TH DAY OF FEBRUARY, 2021

A Commissioner for Oaths/Notary Public in and
for the Province of British Columbia



ASSET PURCHASE AGREEMENT

THIS AGREEMENT (the "Agreement") made as of the 25th day of January, 2021.

BETWEEN:

JMB CRUSHING SYSTEMS INC., a corporation formed under the laws of the Province of Alberta (the "Vendor")

- and -

MCDONALD AGGREGATES INC., a corporation formed under the laws of the Province of Alberta (the "Purchaser", and collectively with the Vendor, the "Parties")

WHEREAS the Vendor has sought and obtained an Order of the Court of Queen's Bench of Alberta (the "Court") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-35, as amended (the "CCAA Proceedings");

AND WHEREAS the Vendor wishes to sell the Equipment to the Purchaser and the Purchaser wishes to purchase the Equipment from the Vendor, all upon and subject to the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties hereby covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

The terms defined herein shall have, for all purposes of this Agreement, the following meanings:

"**Closing**" means the completion of the Transaction.

"**Closing Date**" means the fifth business day immediately following the date that the Sale Order is issued, or on such other date as the Parties may agree in writing.

"**Equipment**" means all of the Vendor's right, title and interest in and to certain equipment, as set out in Schedule A.

"**Monitor**" means FTI Consulting Canada Inc. in its capacity as the Court appointed monitor of the Vendor.

"**Permitted Encumbrances**" means any permitted claims or encumbrances as set out or defined in the Sale Order. For the purposes of this Agreement, permitted claims or encumbrances will be nil.

"Representatives" means, with respect to any party, its affiliates, and the respective directors, officers, servants, agents, advisors, employees, consultants and representatives of that party and its affiliates.

"Sale Advisor" means Sequeira Partners in its capacity as the sales advisor of the Vendor.

"Sale Order" means an order to be granted by the Court in the CCAA Proceedings that approves this Agreement and the Transaction and vests in the Purchaser all of the right, title and interest of the Vendor in and to the Equipment, free and clear of all security interests, charges, liens, claims and other encumbrances of any kind whatsoever.

"Transaction" means the purchase and sale transaction contemplated by this Agreement.

ARTICLE 2 PURCHASE AND SALE

2.1 Purchase and Sale of Equipment

Upon and subject to the terms and conditions of this Agreement, the Vendor will sell, transfer, convey, assign and deliver to the Purchaser, and the Purchaser will purchase, acquire and assume from the Vendor, free and clear of all claims other than Permitted Encumbrances, all of the Vendor's respective right, title, benefit, estate and interest in and to the Equipment in consideration of the payment of the Purchase Price (as defined hereinafter) (collectively, the **"Transaction"**). Closing shall occur at 10:00 am on the Closing Date, subject to the terms and conditions contained herein.

2.2 Acknowledgement of the Purchaser as Condition of Equipment

Notwithstanding the foregoing or anything contained herein or elsewhere, the Purchaser acknowledges and agrees that:

- (a) on Closing, title to the Equipment shall be subject to the Permitted Encumbrances;
- (b) in entering into this Agreement, the Purchaser has had an opportunity to conduct any and all due diligence regarding the Equipment and the Vendor, it has relied and will continue to rely solely upon its own independent review, investigations and inspection of any documents and the Equipment, including, without limitation, the physical and environmental condition of the Equipment;
- (c) the Equipment is being purchased and assumed by the Purchaser on an "as is, where is" basis as of the Closing Date;
- (d) in entering into this Agreement, the Purchaser has not relied upon any written or oral statements, representations, warranties or guarantees whatsoever made by the Sale Advisor, the Vendor, or the Monitor, whether express, implied, statutory, or otherwise, regarding the Equipment, or the Vendor, or the accuracy or completeness of any information provided in connection therewith;
- (e) except for its express rights under this Agreement, the Purchaser hereby waives all rights and remedies (whether now existing or hereinafter arising and including



all equitable, common law, tort, contractual, and statutory rights and remedies) against the Vendor, the Monitor, the Sales Advisor and their Representatives or in respect of the Equipment or the Transaction or any representations or statements made, direct or indirect, express or implied, or information or data furnished to the Purchaser or its Representatives, in connection therewith (whether made or furnished orally or by electronic, faxed, written, or any other means); and,

- (f) this Section 2.2 shall survive and not merge on Closing.

ARTICLE 3 PURCHASE PRICE AND PAYMENT

3.1 Purchase Price

The purchase price to be paid by the Purchaser to the Vendor for the Equipment shall be [REDACTED] (the "**Purchase Price**"), plus GST and any and all applicable taxes and fees payable under Section 3.3.

3.2 Payment of Purchase Price

The Purchase Price shall be satisfied on or before the Closing Date, by the Purchaser, by payment to the Monitor by way of wire transfer of immediately available funds.

3.3 Taxes and Fees

The Purchaser shall be liable for and shall pay all federal or provincial sales taxes, including GST, and all other taxes, duties, or other similar charges properly payable upon and in connection with the conveyance and transfer of the Equipment by the Vendor to the Purchaser and the Purchaser shall be responsible for all recording charges and registration fees payable in connection therewith, this Agreement, the Equipment, and the Transaction.

ARTICLE 4 CLOSING CONDITIONS

4.1 Conditions for the Benefit of the Vendor

The obligation of the Vendor to complete the Transaction pursuant to this Agreement is subject to the satisfaction of the following conditions precedent:

- (a) payment by the Purchaser of the Purchase Price, in its entirety;
- (b) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser shall have been complied with or performed in all material respects;
- (c) the representations and warranties of the Purchaser set out in Section 6.2 shall be true and accurate in all material respects; and
- (d) the Sale Order shall have been obtained.

Each of the foregoing conditions has been inserted for the benefit of the Vendor and may, without prejudice to any of the rights of the Vendor hereunder, be waived by it in writing, in whole



or in part, at any time, provided that the Vendor is not entitled to waive the Sale Order condition contained in Section 4.1(d). In case any of the said conditions shall not be complied with, or waived by the Vendor, at or before the Closing Date, the Vendor may terminate this Agreement by written notice to the Purchaser.

4.2 Conditions for the Benefit of the Purchaser

The obligation of the Purchaser to complete the Transaction pursuant to this Agreement is subject to the satisfaction, on the Closing Date of the following conditions precedent:

- (a) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor shall have been complied with or performed in all material respects;
- (b) the representations and warranties of the Vendor set out in Section 6.1 shall be true and accurate in all material respects; and
- (c) the Sale Order shall have been obtained.

Each of the foregoing conditions has been inserted for the benefit of the Purchaser and may, without prejudice to any of the rights of the Purchaser hereunder, be waived by it by notice to the Vendor in writing, in whole or in part, at any time, provided that the Purchaser is not entitled to waive the Sale Order condition contained in Section 4.2(c). In case any of the said conditions shall not be complied with, or waived by the Purchaser, at or before the Closing Date, the Purchaser may terminate this Agreement by written notice to the Vendor.

ARTICLE 5 CLOSING

5.1 Pre-Closing Use of Equipment by the Purchaser

In the period between the full execution and delivery of this Agreement by the Parties and the Closing Date, the Purchaser may elect by notice in writing to the Vendor and Monitor to take possession of and operate the Equipment on and subject to the following terms:

- (a) prior to taking possession of the Equipment, the Purchaser shall deliver:
 - (i) to the Monitor in trust the full amount of the Purchase Price and taxes payable under section 3.3 of this Agreement; and
 - (ii) to the Vendor and the Monitor evidence satisfactory to the Vendor and Monitor that it has placed general liability and property and casualty insurance on the Equipment, naming the Vendor as additional insured as its interest may appear;
- (b) if Closing does not occur on the Closing Date, the Vendor by notice in writing to the Purchaser may require the Purchaser to deliver the Equipment to the Vendor, whereupon the Purchaser shall cease operating the Equipment and deliver the Equipment to the Vendor within seven (7) days thereafter at the Vendor's yard in Bonnyville;

- (c) the Purchaser shall indemnify and save harmless the Vendor any and all manner of actions, causes of action, accounts, bonds, contracts, covenants, debts, proceedings, suits, warranties, damages, losses, expenses and costs which the Vendor may suffer or incur for or by reason of any damage to or destruction of the Equipment or any claims made by any third party in connection with the Purchaser's use or operation of the Equipment.

5.2 Closing Deliveries

On the Closing Date, subject to the provisions of this Agreement, (a) the Vendor shall provide a copy of the Sale Order; and, (b) the Purchaser shall deliver or cause to be delivered to the Monitor, the Purchase Price plus all taxes, fees, and GST.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 Vendor's Representations and Warranties

The Vendor hereby represents and warrants to and in favour of the Purchaser that:

- (a) it is a corporation duly organized, validly subsisting and in good standing under the laws of the jurisdiction of its incorporation, continuance or amalgamation (as the case may be) and is duly registered and authorized to carry on business in Alberta;
- (b) the Vendor is not a "non-resident" for the purposes of Section 116 of the *Income Tax Act* (Canada) and the Vendor shall receive the Purchase Price on its own account and not as agent, trustee or nominee for any other person who is a non-resident of Canada.

6.2 No Additional Representations and Warranties

Notwithstanding anything to the contrary in this Agreement, the Vendor makes no representations or warranties except as expressly set forth in Section 6.1 and, in particular, and without limiting the generality of the foregoing, the Vendor disclaims and shall not be liable for any representation or warranty express or implied, of any kind, at law or in equity, which may have been made or alleged to be made in any instrument or document relative hereto, or in any statement or information made or communicated to the Purchaser in any manner including any opinion, information, or advice which may have been provided to the Purchaser by the Vendor in connection with the Equipment or in relation to the Transaction.

6.3 Purchaser's Representations and Warranties

The Purchaser hereby represents and warrants to and in favour of the Vendor that, as of the date of this Agreement and as of the Closing Date:

- (a) it is a valid and subsisting corporation under the laws of its jurisdiction of registration;
- (b) it has taken all action and has full power and authority to enter into this Agreement and the other documents and agreements executed and delivered hereunder and



it has taken all necessary action to consummate the Transaction and to perform its obligations thereunder; and,

- (c) it is a registrant for the purposes of Part IX of the *Excise Tax Act* (Canada).

ARTICLE 7 GENERAL

7.1 Governing Law

This Agreement shall, in all respects, be subject to and be interpreted, construed and enforced in accordance with the laws in effect in the Province of Alberta and the laws of Canada applicable therein.

7.2 Amendment and Waiver

No supplement, modification, waiver or termination of this Agreement (other than a termination pursuant to Section 4.1 or Section 4.2) shall be binding unless executed in writing by the Parties hereto.

7.3 Assignment

Neither Party may assign their interest in or under this Agreement or to the Equipment without the prior written consent of the other Party, which consent may be withheld in such other Party's sole and unfettered discretion.

7.4 Entire Agreement

This Agreement and any agreements, instruments and other documents herein contemplated to be entered into between, by or including the Parties hereto constitute the entire agreement between the Parties hereto pertaining to the Transaction and the Equipment.

7.5 Successors and Assigns

All of the covenants and agreements in this Agreement shall be binding upon the Parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the Parties hereto and their respective successors and their permitted assigns pursuant to the terms and conditions of this Agreement.

7.6 Electronic and Counterpart Execution

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed in original, pdf, or other electronic form by email or other electronic delivery, each of which shall constitute and be treated as such Parties' original signature(s).

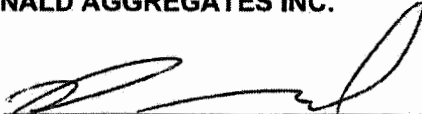
IN WITNESS WHEREOF the Vendor and the Purchaser have duly executed this Agreement as evidenced by their properly authorized officers as of the day and year first above written.

JMB CRUSHING SYSTEMS INC.

Per: Byron J Levkulich
Name: Byron J Levkulich
Title: Director

Per: _____
Name:
Title:

MCDONALD AGGREGATES INC.

Per: 
Name: Brad McDonald
Title: President

FILED AT THE COUNTY CLERK'S OFFICE, COUNTY OF SAN DIEGO, CALIFORNIA, ON 08/11/11 AT 10:00 AM. BY: [Signature]



**SCHEDULE A
EQUIPMENT**

1. TT012 - 2007 Western Star 4900SA complete with detached winch deck
Serial Number: 5KKXAM0067PX64941
2. CY201 - 2014 Tyalta 60' Transfer Belt Conveyor - Serial Number: 144260350
3. FS200 – 2011 Clemro 7X20-3D Portable Screen Plant - Serial Number: 1681-4600,
Chassis Serial Number: 1682-4471
4. FS300 – 2006 Fabtec 6x20 Portable Screen Plant – Serial Number: P620332506
5. TT026 – 2013 Peterbilt 367 Serial Number: 1XPTD40X6DD197601



THIS IS EXHIBIT "C" REFERRED TO IN
THE AFFIDAVIT OF BLAKE M. ELYEA
SWORN BEFORE ME
THIS 19TH DAY OF FEBRUARY, 2021

A Commissioner for Oaths/Notary Public in and
for the Province of British Columbia



ASSET PURCHASE AGREEMENT

THIS AGREEMENT (the "Agreement") made as of the 17th day of February, 2021.

BETWEEN:

JMB CRUSHING SYSTEMS INC., a corporation formed under the laws of the Province of Alberta (the "Vendor")

- and -

SUMMIT TRAILER LTD., a corporation formed under the laws of the Province of Alberta (the "Purchaser", and collectively with the Vendor, the "Parties")

WHEREAS the Vendor has sought and obtained an Order of the Court of Queen's Bench of Alberta (the "Court") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-35, as amended (the "CCAA Proceedings");

AND WHEREAS the Vendor wishes to sell the Equipment to the Purchaser and the Purchaser wishes to purchase the Equipment from the Vendor, all upon and subject to the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties hereby covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

The terms defined herein shall have, for all purposes of this Agreement, the following meanings:

"**Closing**" means the completion of the Transaction.

"**Closing Date**" means the fifth business day immediately following the date that the Sale Order is issued, or on such other date as the Parties may agree in writing.

"**Equipment**" means all of the Vendor's right, title and interest in and to certain equipment, as set out in Schedule A.

"**Monitor**" means FTI Consulting Canada Inc. in its capacity as the Court appointed monitor of the Vendor.

"**Permitted Encumbrances**" means any permitted claims or encumbrances as set out or defined in the Sale Order. For the purposes of this Agreement, permitted claims or encumbrances will be nil.



"Representatives" means, with, respect to any party, its affiliates, and the respective directors, officers, servants, agents, advisors, employees, consultants and representatives of that party and its affiliates.

"Sale Advisor" means Sequeira Partners in its capacity as the sales advisor of the Vendor.

"Sale Order" means an order to be granted by the Court in the CCAA Proceedings that approves this Agreement and the Transaction and vests in the Purchaser all of the right, title and interest of the Vendor in and to the Equipment, free and clear of all security interests, charges, liens, claims and encumbrances of any kind whatsoever.

"Transaction" means the purchase and sale transaction contemplated by this Agreement.

ARTICLE 2 PURCHASE AND SALE

2.1 Purchase and Sale of Equipment

Upon and subject to the terms and conditions of this Agreement, the Vendor will sell, transfer, convey, assign and deliver to the Purchaser, and the Purchaser will purchase, acquire and assume from the Vendor, free and clear of all claims other than Permitted Encumbrances, all of the Vendor's respective right, title, benefit, estate and interest in and to the Equipment in consideration of the payment of the Purchase Price (as defined hereinafter) (collectively, the **"Transaction"**). Closing shall occur at 10:00 am on the Closing Date, subject to the terms and conditions contained herein.

2.2 Acknowledgement of the Purchaser as Condition of Equipment

Notwithstanding the foregoing or anything contained herein or elsewhere, the Purchaser acknowledges and agrees that:

- (a) on Closing, title to the Equipment shall be subject to the Permitted Encumbrances;
- (b) in entering into this Agreement, the Purchaser has had an opportunity to conduct any and all due diligence regarding the Equipment and the Vendor, it has relied and will continue to rely solely upon its own independent review, investigations and inspection of any documents and the Equipment, including, without limitation, the physical and environmental condition of the Equipment;
- (c) the Equipment is being purchased and assumed by the Purchaser on an "as is, where is" basis as of the Closing Date;
- (d) in entering into this Agreement, the Purchaser has not relied upon any written or oral statements, representations, warranties or guarantees whatsoever made by the Sale Advisor, the Vendor, or the Monitor, whether express, implied, statutory, or otherwise, regarding the Equipment, or the Vendor, or the accuracy or completeness of any information provided in connection therewith;
- (e) except for its express rights under this Agreement, the Purchaser hereby waives all rights and remedies (whether now existing or hereinafter arising and including



all equitable, common law, tort, contractual, and statutory rights and remedies) against the Vendor, the Monitor, the Sales Advisor and their Representatives or in respect of the Equipment or the Transaction or any representations or statements made, direct or indirect, express or implied, or information or data furnished to the Purchaser or its Representatives, in connection therewith (whether made or furnished orally or by electronic, faxed, written, or any other means); and,

- (f) this Section 2.2 shall survive and not merge on Closing.

ARTICLE 3 PURCHASE PRICE AND PAYMENT

3.1 Purchase Price

The purchase price to be paid by the Purchaser to the Vendor for the Equipment shall be [REDACTED] (the "Purchase Price"), plus GST and any and all applicable taxes and fees payable under Section 3.3.

3.2 Payment of Purchase Price

The Purchase Price shall be satisfied on or before the Closing Date, by the Purchaser, by payment to the Monitor by way of wire transfer of immediately available funds.

3.3 Taxes and Fees

The Purchaser shall be liable for and shall pay all federal or provincial sales taxes, including GST, and all other taxes, duties, or other similar charges properly payable upon and in connection with the conveyance and transfer of the Equipment by the Vendor to the Purchaser and the Purchaser shall be responsible for all recording charges and registration fees payable in connection therewith, this Agreement, the Equipment, and the Transaction.

ARTICLE 4 CLOSING CONDITIONS

4.1 Conditions for the Benefit of the Vendor

The obligation of the Vendor to complete the Transaction pursuant to this Agreement is subject to the satisfaction of the following conditions precedent:

- (a) payment by the Purchaser of the Purchase Price, in its entirety;
- (b) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser shall have been complied with or performed in all material respects;
- (c) the representations and warranties of the Purchaser set out in Section 6.2 shall be true and accurate in all material respects; and
- (d) the Sale Order shall have been obtained.



Each of the foregoing conditions has been inserted for the benefit of the Vendor and may, without prejudice to any of the rights of the Vendor hereunder, be waived by it in writing, in whole or in part, at any time, provided that the Vendor is not entitled to waive the Sale Order condition contained in Section 4.1(d). In case any of the said conditions shall not be complied with, or waived by the Vendor, at or before the Closing Date, the Vendor may terminate this Agreement by written notice to the Purchaser.

4.2 Conditions for the Benefit of the Purchaser

The obligation of the Purchaser to complete the Transaction pursuant to this Agreement is subject to the satisfaction, on the Closing Date of the following conditions precedent:

- (a) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor shall have been complied with or performed in all material respects;
- (b) the representations and warranties of the Vendor set out in Section 6.1 shall be true and accurate in all material respects; and
- (c) the Sale Order shall have been obtained.

Each of the foregoing conditions has been inserted for the benefit of the Purchaser and may, without prejudice to any of the rights of the Purchaser hereunder, be waived by it by notice to the Vendor in writing, in whole or in part, at any time, provided that the Purchaser is not entitled to waive the Sale Order condition contained in Section 4.2(c). In case any of the said conditions shall not be complied with, or waived by the Purchaser, at or before the Closing Date, the Purchaser may terminate this Agreement by written notice to the Vendor.

ARTICLE 5 CLOSING

5.1 Pre-Closing Use of Equipment by the Purchaser

In the period between the full execution and delivery of this Agreement by the Parties and the Closing Date, the Purchaser may elect by notice in writing to the Vendor and Monitor to take possession of and operate the Equipment on and subject to the following terms:

- (a) prior to taking possession of the Equipment, the Purchaser shall deliver:
 - (i) to the Monitor in trust the full amount of the Purchase Price and taxes payable under section 3.3 of this Agreement; and
 - (ii) to the Vendor and the Monitor evidence satisfactory to the Vendor and Monitor that it has placed general liability and property and casualty insurance on the Equipment, naming the Vendor as additional insured as its interest may appear;
- (b) if Closing does not occur on the Closing Date, the Vendor by notice in writing to the Purchaser may require the Purchaser to deliver the Equipment to the Vendor, whereupon the Purchaser shall cease operating the Equipment and deliver the



Equipment to the Vendor within seven (7) days thereafter at the Vendor's yard in Bonnyville;

- (c) the Purchaser shall indemnify and save harmless the Vendor any and all manner of actions, causes of action, accounts, bonds, contracts, covenants, debts, proceedings, suits, warranties, damages, losses, expenses and costs which the Vendor may suffer or incur for or by reason of any damage to or destruction of the Equipment or any claims made by any third party in connection with the Purchaser's use or operation of the Equipment.

5.2 Closing Deliveries

On the Closing Date, subject to the provisions of this Agreement, (a) the Vendor shall provide a copy of the Sale Order; and, (b) the Purchaser shall deliver or cause to be delivered to the Monitor, the Purchase Price plus all taxes, fees, and GST.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 Vendor's Representations and Warranties

The Vendor hereby represents and warrants to and in favour of the Purchaser that:

- (a) it is a corporation duly organized, validly subsisting and in good standing under the laws of the jurisdiction of its incorporation, continuance or amalgamation (as the case may be) and is duly registered and authorized to carry on business in Alberta;
- (b) the Vendor is not a "non-resident" for the purposes of Section 116 of the *Income Tax Act* (Canada) and the Vendor shall receive the Purchase Price on its own account and not as agent, trustee or nominee for any other person who is a non-resident of Canada.

6.2 No Additional Representations and Warranties

Notwithstanding anything to the contrary in this Agreement, the Vendor makes no representations or warranties except as expressly set forth in Section 6.1 and, in particular, and without limiting the generality of the foregoing, the Vendor disclaims and shall not be liable for any representation or warranty express or implied, of any kind, at law or in equity, which may have been made or alleged to be made in any instrument or document relative hereto, or in any statement or information made or communicated to the Purchaser in any manner including any opinion, information, or advice which may have been provided to the Purchaser by the Vendor in connection with the Equipment or in relation to the Transaction.

6.3 Purchaser's Representations and Warranties

The Purchaser hereby represents and warrants to and in favour of the Vendor that, as of the date of this Agreement and as of the Closing Date:

- (a) it is a valid and subsisting corporation under the laws of its jurisdiction of registration;



- (b) it has taken all action and has full power and authority to enter into this Agreement and the other documents and agreements executed and delivered hereunder and it has taken all necessary action to consummate the Transaction and to perform its obligations thereunder; and,
- (c) it is a registrant for the purposes of Part IX of the *Excise Tax Act* (Canada).

ARTICLE 7 GENERAL

7.1 Governing Law

This Agreement shall, in all respects, be subject to and be interpreted, construed and enforced in accordance with the laws in effect in the Province of Alberta and the laws of Canada applicable therein.

7.2 Amendment and Waiver

No supplement, modification, waiver or termination of this Agreement (other than a termination pursuant to Section 4.1 or Section 4.2) shall be binding unless executed in writing by the Parties hereto.

7.3 Assignment

Neither Party may assign their interest in or under this Agreement or to the Equipment without the prior written consent of the other Party, which consent may be withheld in such other Party's sole and unfettered discretion.

7.4 Entire Agreement

This Agreement and any agreements, instruments and other documents herein contemplated to be entered into between, by or including the Parties hereto constitute the entire agreement between the Parties hereto pertaining to the Transaction and the Equipment.

7.5 Successors and Assigns

All of the covenants and agreements in this Agreement shall be binding upon the Parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the Parties hereto and their respective successors and their permitted assigns pursuant to the terms and conditions of this Agreement.

7.6 Electronic and Counterpart Execution

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed in original, pdf, or other electronic form by email or other electronic delivery, each of which shall constitute and be treated as such Parties' original signature(s).



IN WITNESS WHEREOF the Vendor and the Purchaser have duly executed this Agreement as evidenced by their properly authorized officers as of the day and year first above written.

JMB CRUSHING SYSTEMS INC.

Per: _____
Name:
Title:

SUMMIT TRAILER LTD.

Per: _____
Name:
Title:



SCHEDULE A
EQUIPMENT

1. TR035 - 2015 Arnes End Dump Trailer
Serial Number: 2A9073730FA003575
2. TR036 - 2015 Arnes End Dump Trailer
Serial Number: 2A9073732FA003576
3. TR037 - 2015 Arnes End Dump Trailer
Serial Number: 2A9073738FA003596
4. TR038 - 2015 Arnes End Dump Trailer
Serial Number: 2A907373XFA003597
5. TR039 - 2015 Arnes End Dump Trailer
Serial Number: 2A9073733FA003599



This is the Certificate to accompany
the Affidavit of Blake Elyea
made on February 19, 2021

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.

APPLICANTS JMB CRUSHING SYSTEMS INC.

DOCUMENT **AFFIDAVIT OF BLAKE M. ELYEA**

ADDRESS FOR **Gowling WLG (Canada) LLP**
SERVICE AND 1600, 421 – 7th Avenue SW
CONTACT Calgary, AB T2P 4K9


INFORMATION OF Attn: **Tom Cumming/Caireen E. Hanert/Stephen Kroeger**
PARTY FILING Phone: 403.298.1938/403.298.1992/403.298.1018
THIS DOCUMENT Fax: 403.263.9193
File No.: A163514

AFFIDAVIT OF BLAKE M. ELYEA

CERTIFICATE

I, Alexandra McCawley, am the commissioner who took the affidavit from Blake Elyea dated February 19, 2021, two copies of which are attached to this certificate. As commissioner I was satisfied that the process for taking the affidavit using video technology was necessary because it was impossible or unsafe, for medical reasons, for the deponent and me to be physically present together.

Certified February 19, 2021


Signature of lawyer
Alexandra L. McCawley

ALEXANDRA L. MCCAWLEY
GOWLING WLG (CANADA) LLP
BARRISTER & SOLICITOR
550 BURRARD STREET - SUITE 2300
BENTALL 5 - VANCOUVER, B.C. V6C 2B5
TELEPHONE: (604) 891-2772