COURT OF APPEAL OF ALBERTA

Clerk's Stamp

COURT OF APPEAL FILE NUMBERS	2001-0211 AC 2001-0213 AC
TRIAL COURT FILE NUMBER / ESTATE NUMBERS	2001-05482
REGISTRY OFFICE	CALGARY
	IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. AND 2161889 ALBERTA LTD.
APPLICANTS	JERRY SHANKOWSKI and 945411 ALBERTA LTD.
STATUS ON APPEAL STATUS ON APPLICATION	APPELLANTS APPLICANTS
RESPONDENTS	JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.
STATUS ON APPEAL STATUS ON APPLICATION	RESPONDENTS RESPONDENTS
DOCUMENT	**AFFIDAVIT IN RESPONSE TO APPLICATION**
APPELANT'S ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attention: Sean Collins / Pantelis Kyriakakis / Nathan Stewart Tel: 403-260-3531 / 3536 / 3534 Fax: 403-260-3501 Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca / nstewart@mccarthy.ca

Affidavit of Katie Doran
Sworn on December 4, 2020

I, Katie Doran, of Calgary, Alberta, SWEAR AND SAY THAT:

1. I am a legal assistant with the law firm of McCarthy Tétrault LLP ("**McCarthy Tétrault**"), counsel for FTI Consulting Canada Inc., in its capacity as the court-appointed monitor (the "**Monitor**") of JMB Crushing Systems Inc. and 2161889 Alberta Ltd., in the within proceedings (the "**CCAA Proceedings**"), and, as such, I have knowledge of the matters hereinafter deposed to.

2. I swear this Affidavit in connection with the Monitor's Memorandums of Argument in Court of Appeal File Numbers 2001-0211 AC and 2001-0213 AC, submitted in response to applications by Jerry Shankowski and 945411 Alberta Ltd. seeking: (i) leave to appeal certain orders issues in the CCAA Proceedings; and, (ii) a stay of enforcement of the orders pending the outcome of the appeals.

3. Various Court documents from the CCAA Proceedings are attached hereto.

Orders

4. Attached as **Exhibit "A"** is a copy of the Amended and Restated CCAA Initial Order, granted on May 11, 2020 by the Honourable Madam Justice K.M. Eidsvik.

5. Attached as **Exhibit "B"** is a copy of the Order – Lien Claims – MD of Bonnyville, granted on May 20, 2020 by the Honourable Madam Justice K.M. Eidsvik.

6. Attached as **Exhibit "C"** is a copy of the unfiled Order (Amended and Restated Mantle Sale Approval and Vesting Order), granted on October 16, 2020 by the Honourable Madam Justice K.M. Eidsvik.

7. Attached as **Exhibit "D"** is a copy of the unfiled Reverse Vesting Order, granted on October 16, 2020 by the Honourable Madam Justice K.M. Eidsvik.

Affidavits

8. Attached as **Exhibit "E"** is a copy of the body of the Affidavit of Jeff Buck, sworn on April 16, 2020.

9. Attached as **Exhibit "F"** is a copy of the body of the Affidavit of Jeff Buck, sworn on May 20, 2020.

10. Attached as **Exhibit "G"** is a copy of the body of the Affidavit of David Howells, sworn on May 29, 2020.

11. Attached as **Exhibit "H"** is a copy of the body of the Affidavit of Jason Panter, sworn on October 9, 2020 and Exhibit "C".

12. Attached as **Exhibit "I"** is a copy of the body of the Affidavit of Jerry Shankowski, sworn on November 6, 2020, in the CCAA Proceedings.

13. Attached as **Exhibit "J"** is a copy of the body of the Affidavit of Blake Elyea, sworn on November 20, 2020.

Monitor's Reports

14. Attached as **Exhibit "K"** is a copy of the body of the Fourth Report of the Monitor, dated August 25, 2020.

15. Attached as **Exhibit "L"** is a copy of the body of the Seventh Report of the Monitor, dated September 30, 2020, and Appendix "A" and Confidential Appendices "B" and "F".

16. Attached as **Exhibit "M"** is a copy of the Tenth Report of the Monitor, dated November 20, 2020.

Bench Briefs

17. Attached as **Exhibit "N"** is a copy of the Bench Brief of the Monitor, filed on October 14, 2020.

SWORN BEFORE ME at the City of Calgary, in the Province of Alberta, this 4th day of December, 2020.

A COMMISSIONER FOR OATHS in and for the Province of Alberta

KATIE DORAN

Connor E.J. O'Brien
Student-at-Law

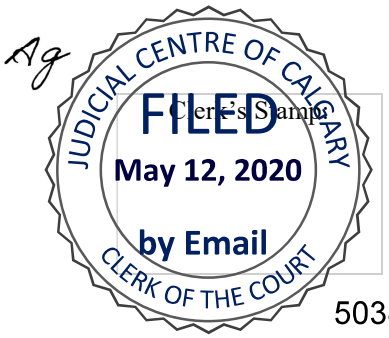
This is Exhibit "A" referred to in the Affidavit of

Katie Doran

sworn before me this 4th day of December, 2020.

A Commissioner for Oaths in and for the Province of Alberta

Connor E.J. O'Brien
Student-at-Law



Clerk's Stamp

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COURT FILE NUMBER	2001-05482
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF	CALGARY
	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.
APPLICANTS:	JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.
DOCUMENT:	**AMENDED AND RESTATED CCAA INITIAL ORDER**
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/Alex Matthews** Phone: 403.298.1938/403.298.1992/403.298.1018 Fax: 403.263.9193 File No.: A163514

DATE ON WHICH ORDER WAS PRONOUNCED: May 11, 2020

NAME OF JUDGE WHO MADE THIS ORDER: Madam Justice K.M. Eidsvik

LOCATION OF HEARING: Calgary Court House

UPON the application of JMB Crushing Systems Inc. and 2161889 Alberta Ltd. (the "**Applicants**"); **AND UPON** having read the Application filed by the Applicants on May 8, 2020,

the Affidavit of Jeff Buck sworn April 16, 2020 (the "**First Buck Affidavit**"), the Supplemental Affidavit of Jeff Buck sworn April 29, 2020, and the Affidavit of Jeff Buck sworn May 8, 2020 (the "**Second Buck Affidavit**"); **AND UPON** reading the First Report of FTI Consulting Canada Inc., in its capacity as Monitor of the Applicants (the "**Monitor**"); **AND UPON** being advised that the secured creditors who are likely to be affected by the charges created herein have been provided with notice of this Application; **AND UPON** hearing counsel for the Applicants, the Monitor, ATB Financial, Fiera Private Debt Fund VI LP and Fiera Private Debt Fund V LP, and those parties present; **AND UPON** reviewing the initial order granted in the within proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") by the Honourable Madam Justice K.M. Eidsvik on May 1, 2020 (the "**Initial Order**"); **IT IS HEREBY ORDERED AND DECLARED THAT**:

SERVICE

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

APPLICATION

2. The Applicants are companies to which the *Companies' Creditors Arrangement Act* of Canada (the "**CCAA**") applies.

PLAN OF ARRANGEMENT

3. The Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. The Applicants shall:

   (a) remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**");

   (b) subject to further order of this Court, continue to carry on business in a manner

consistent with the preservation of their business (the "**Business**") and Property; and

(c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. To the extent permitted by law, the Applicants shall be entitled but not required to make the following advances or payments of the following expenses, incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) the reasonable fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order;

(c) with the consent of the Monitor, amounts owing for goods or services supplied to the Applicants, including for the period prior to the date of this Order if, in the opinion of the Applicants following consultation with the Monitor, the supplier or vendor of such goods or services is critical for the operation or preservation of the Business or Property;

(d) in the case of goods or services supplied to the Applicants prior to the date of this Order, any amounts paid to the supplier or vendors shall be limited to those amounts secured by liens, where the Monitor is satisfied with respect to the claim and its lien protection, or amounts paid in connection with ongoing projects that the Monitor is satisfied is necessary in order to ensure the supplier or vendor continues to supply or perform work in respect of such project;

(e) repayment from the ATB Facility (as defined in paragraph 31 below) of amounts advanced by ATB Financial to JMB under a bulge facility created pursuant to an amending agreement dated April 17, 2020 between ATB Financial and the Applicants; and

(f) with consent of the Monitor, repayment of the $200,000 advanced by Canadian Aggregate Resource Corporation to JMB on or about April 10, 2020.

6. Except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order, subject to the requirements in paragraph (c) hereof.

7. The Applicants shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority that are required to be deducted from employees' wages, including, without limitation, amounts in respect of:

(i) employment insurance;

(ii) Canada Pension Plan; and

(iii) income taxes,

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

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of the Initial Order, or where such Sales Taxes were accrued or collected prior to the date of the Initial Order but not required to be remitted until on or after the date of the Initial Order; and

(c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and that are attributable to or in respect of the carrying on of the Business by the Applicants.

8. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicants from time to time for the period commencing from and including the date of the Initial Order ("**Rent**"), but shall not pay any rent in arrears.

9. Except as specifically permitted in this Order or authorized in the Interim Financing Agreement or the Definitive Documents, the Applicants are hereby directed, until further order of this Court:

(a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the date of the Initial Order, subject to paragraphs (c)and (d) herein;

(b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property, subject to those as may be authorized or required under the Interim Financing Agreements or approved by the Interim Lenders in writing; and

(c) not to grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. The Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Interim Financing Agreements or the Definitive Documents (as hereinafter defined in paragraph 33), have the right to:

(a) permanently or temporarily cease, downsize or shut down any portion of their business or operations and to dispose of redundant or non-material assets not exceeding $100,000 in any one transaction or $500,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Applicants (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA;

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;

(c) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor (as defined below) or further Order of the Court, their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicants deem appropriate, in accordance with section 32 of the CCAA; and

(d) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

11. The Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a

representative present in the leased premises to observe such removal. If the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further order of this Court upon application by the Applicants on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicants disclaim or resiliate the lease governing such leased premises in accordance with section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute other than Rent payable for the notice period provided for in section 32(5) of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

12. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:

(a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice; and

(b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

13. Until and including July 31, 2020, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all

Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**"), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:

    (a) empower the Applicants to carry on any business that the Applicants are not lawfully entitled to carry on;

    (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;

    (c) prevent the filing of any registration to preserve or perfect a security interest;

    (d) prevent the registration of a claim for lien; or

    (e) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment.

15. Nothing in this Order shall prevent any party from taking an action against the Applicants where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

NO INTERFERENCE WITH RIGHTS

16. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right,

contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. During the Stay Period, all persons having:

(a) statutory or regulatory mandates for the supply of goods and/or services; or

(b) oral or written agreements or arrangements with the Applicants (or either of them), including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicants

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Applicants or exercising any other remedy provided under such agreements or arrangements. The Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of the Initial Order are paid by the Applicants in accordance with the payment practices of the Applicants, or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 13 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Applicants with respect to any claim against the directors or officers that arose before the date of the Initial Order and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. The Applicants shall indemnify their current and future directors and officers against obligations and liabilities that they may incur in their capacity as directors and or officers of the Applicants after the commencement of the within proceedings except to the extent that, with respect to any officer or director, the obligation was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. The directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $250,000, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38 to 40 herein.

22. Notwithstanding any language in any applicable insurance policy to the contrary:

    (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and

    (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs and the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements, Business and dealings with the Property;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicants;

(c) assist the Applicants, to the extent required by the Applicants, in their dissemination to the Interim Lenders and their counsel of financial and other information as agreed to between the Applicants and the Interim Lenders which may be used in these proceedings, including reporting on a basis as reasonably required by the Interim Lenders;

(d) monitor all expenditures of the Applicants and approve any material expenditures;

(e) advise the Applicants in its preparation of the Applicants' cash flow statements and reporting required by the Interim Lenders, which information shall be reviewed with the Monitor and delivered to the Interim Lenders and their counsel on a periodic basis, but not less than bi-weekly, or as otherwise agreed to by the Interim Lenders;

(f) direct and manage any sale and investment solicitation process and all bids made therein;

(g) seek input into various aspects of these CCAA proceedings directly from the Applicants' senior secured lenders, ATB Financial, Fiera Private Debt Fund VI LP and Fiera Private Debt Fund V LP;

(h) advise the Applicants in their development of the Plan and any amendments to the Plan;

(i) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(j) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Applicants to the extent that is necessary to adequately assess the Property, Business, and financial affairs of the Applicants or to perform its duties arising under this Order;

(k) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(l) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicants and any other Person; and

(m) perform such other duties as are required by this Order or by this Court from time to time.

25. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any

federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order be deemed to be in possession of any of the Property within the meaning of any federal or provincial environmental legislation.

26. The Monitor shall provide any creditor of the Applicants and the Interim Lenders with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

27. In addition to the rights and protections afforded the Monitor under the CCAA or as an Officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. The Monitor, counsel to the Monitor, and counsel to the Applicants shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants, in each case on a bi-weekly basis.

29. The Monitor and its legal counsel shall pass their accounts from time to time.

30. The Monitor, counsel to the Monitor, and counsel to the Applicants, shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the

Property, which charge shall not exceed an aggregate amount of $300,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of the Initial Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 to 40 hereof.

INTERIM FINANCING

31. The Applicants are hereby authorized and empowered to obtain and borrow under an interim revolving credit facility in the maximum amount of $900,000 from ATB Financial ("**ATB Financial**", and such facility, the "**ATB Facility**") and an interim revolving credit facility in the maximum amount of $900,000 from Canadian Aggregate Resource Corporation ("**CARC**", such facility, the "**CARC Facility**", CARC and ATB Financial, collectively the "**Interim Lenders**", individually an "**Interim Lender**", and the ATB Facility and CARC Facility, collectively the "**Facilities**") during the Stay Period in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that (a) the Applicants shall not draw on the CARC Facility unless ATB Financial has terminated or is unwilling to permit advances under the ATB Facility; and (b) the maximum amount available under the CARC Facility shall be reduced by the amounts outstanding under the ATB Facility.

32. The ATB Facility shall be on the terms and subject to the conditions set forth in a commitment letter dated April 30, 2020 between ATB and the Applicants and the CARC Facility shall be on the terms and subject to the conditions set forth in a commitment letter dated April 30, 2020 between CARC and the Applicants (as may be amended from time to time by the parties thereto, with the consent of the Monitor, the "**Interim Financing Agreements**"), filed.

33. The Applicants are hereby authorized and empowered to execute and deliver such mortgages, charges, hypothecs, and security documents, guarantees and other definitive documents (which, together with the Interim Financing Agreements, are collectively referred to as the "**Definitive Documents**") as are contemplated by the Interim Financing Agreements or as may be reasonably required by the Interim Lenders pursuant to the terms

thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the Interim Lenders under and pursuant to the Interim Financing Agreements and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

34. The Interim Lenders shall be entitled to the benefits of and are hereby granted a charge (the "**Interim Lenders' Charge**") on the Property to secure all obligations under the Definitive Documents incurred on or after the date of this Order, which charge shall not exceed the aggregate amount outstanding under the Interim Facility Agreements. The Interim Lenders' Charge shall have the priority set out in paragraphs 38 to 40 hereof.

35. Notwithstanding any other provision of this Order:

(a) the Interim Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lenders' Charge or any of the Definitive Documents;

(b) upon the termination of the ATB Facility by ATB Financial, on notice in writing to JMB, CARC and the Monitor, if CARC does not make an advance under the CARC Facility that repays the amount outstanding under the ATB Facility in full within seven (7) business days, ATB Financial may without further notice exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Interim Financing Agreement and Definitive Documents in favour of ATB Financial and the Interim Lenders' Charge, including without limitation, to set off and/or consolidate any amounts owing by the Interim Lenders to the Applicants against the obligations of the Applicants to the Interim Lenders under such Definitive Documents or the Interim Lenders' Charge, to make demand, accelerate payment, and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants;

(c) upon the occurrence of an event of default under the Interim Financing Agreements, the Definitive Documents or the Interim Lenders' Charge, the Interim Lenders, upon seven (7) business days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Interim Financing Agreements, Definitive Documents, and the Interim Lenders' Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the Interim Lenders to the Applicants against the obligations of the Applicants to the Interim Lenders under the Interim Financing Agreements, the Definitive Documents or the Interim Lenders' Charge, to make demand, accelerate payment, and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(d) the foregoing rights and remedies of the Interim Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

36. Any amounts realized or received by an Interim Lender after an Interim Lender enforces the Interim Lenders' Charge in the manner contemplated by paragraph 35(b) or 35(c) of this Order shall be applied first to the outstanding obligations owing to ATB under the ATB Facility and second to the outstanding obligations owing to CARC under the CARC Facility. For greater certainty, the obligations to CARC secured by the Interim Lenders' Charge are subordinated to the obligations to ATB Financial secured by the Interim Lenders' Charge.

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

VALIDITY AND PRIORITY OF CHARGES

38. The priorities of the Directors' Charge, the Administration Charge, and the Interim Lenders' Charge as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $300,000);

Second – Interim Lenders' Charge, subject to, as between ATB Financial and CARC, paragraph 36 hereof; and

Third – Directors' Charge (to the maximum amount of $250,000).

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

40. Each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and subject always to section 34(11) of the CCAA such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person that has received notice of this Application.

41. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor and the persons entitled to the benefit of those Charges (collectively, the **Chargees**"), or as approved by further order of this Court.

42. Each of the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees thereunder shall not otherwise be limited or impaired in any way by:

(a) the pendency of these proceedings and the declarations of insolvency made in this Order;

(b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;

(c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;

(d) the provisions of any federal or provincial statutes; or

(e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") that binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(f) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof , including the Interim Financing Agreements or the Definitive Documents, shall create or be deemed to constitute a new breach by the Applicants of any Agreement to which either is a party;

(g) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, the Applicants entering into the Interim Financing Agreements or the Definitive Documents, or the execution, delivery or performance of the Definitive Documents; and

(h) the payments made by the Applicants pursuant to this Order, including the Interim Financing Agreements or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

APPROVAL OF SISP

43. The SISP attached as Schedule "A" hereto is hereby approved, and the Monitor is hereby authorized to commence the SISP, in consultation with the Sale Advisor (as defined in the

SISP), the Applicants, the Interim Lenders and the Applicants' senior secured lenders pursuant to the terms of the SISP. The Applicants, the Monitor and the Sale Advisor are hereby authorized and directed to perform their respective obligations and to do all things reasonably necessary to perform their obligations thereunder.

44. Sequeira Partners is hereby appointed pursuant to the CCAA as the Sale Advisor to carry out the SISP in cooperation with the Applicants and the Monitor.

45. Each of the Monitor and the Sale Advisor, and their respective affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the SISP, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Monitor or the Sale Advisor, as applicable, in performing its obligations under the SISP (as determined by this Court).

46. In connection with the SISP and pursuant to sections 20 and 22 of the *Personal Information Protection Act (Alberta)*, the Applicants, the Sale Advisor and the Monitor are authorized and permitted to disclose personal information of identifiable individuals to prospective bidders and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more potential transactions (each, a "**Transaction**"). Each prospective bidder to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the transaction, and if it does not complete a Transaction, shall: (a) return all such information to the Applicants, the Sale Advisor and the Monitor, as applicable; (b) destroy all such information; or (c) in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The purchaser of the Business or any Property shall be entitled to continue to use the personal information provided to it, and related to the Business or Property purchased, in a manner that is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants, the Sale Advisor or the Monitor, as applicable, or ensure that other personal information is destroyed.

ALLOCATION

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

SERVICE AND NOTICE

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

49. The Applicants and, where applicable, the Monitor, are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

50. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up-to-date form of the Service List on its website at: [http://cfcanada.fticonsulting.com/jmb].

51. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to the email addresses of counsel

as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at:
[http://cfcanada.fticonsulting.com/jmb].

52. Subject to further order of this Court in respect of urgent motions, any interested party wishing to object to the relief sought in an application brought by the Applicants or the Monitor in these proceedings shall, subject to further order of this Court, provide the Service List with responding application materials or a written notice (including by email) stating its objection to the application and the grounds for such objection by no later than 5:00pm Mountain Standard Time on the date that is four (4) days prior to the date such application is returnable (the "**Objection Deadline**"). The Monitor shall have the ability to extend the Objection Deadline after consulting with the Applicants. This paragraph shall not apply to any application served less than 7 days prior to its hearing date.

53. Following the expiry of the Objection Deadline, counsel for the Monitor or counsel for the Applicants shall inform the Commercial Coordinator in writing (which may be by email) of the absence or the status of any objections to the application, and the judge having carriage of the application may determine the manner in which the application and any objections to the application, as applicable, will be dealt with.

GENERAL

54. The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

55. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.

56. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Applicants, the Business or the Property.

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

58. Each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

59. Any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

60. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.

Justice of the Court of Queen's Bench of Alberta

SCHEDULE "A"

SALE AND INVESTMENT SOLICITATION PROCESS

INTRODUCTION

On May 1, 2020, JMB Crushing Systems Inc. ("**JMB Crushing**") and 2161889 Alberta Ltd. ("**216**", and together with JMB Crushing, collectively, "**JMB**") applied for an Initial Order (the "**Initial Order**") from the Alberta Court of Queen's Bench (the "**Court**") in Court Action No. 2001–05482 pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**"), to, among other things, appoint FTI Consulting Canada Inc. ("**FTI**") as the monitor (the "**Monitor**") of JMB,

The principal secured creditors of JMB are ATB Financial ("**ATB**") and Fiera Private Debt Fund VI LP, by its general partner Integrated Private Debt Fund GP Inc. ("**Fund VI**"), and Fiera Private Debt Fund V LP, by its general partner Integrated Private Debt Fund GP Inc., acting in its capacity as collateral agent for and on behalf of and for the benefit of Fund VI (collectively, "**Fiera**", and together with ATB, the "**Secured Creditors**").

In connection with the CCAA proceedings, a sale, re-capitalization and investment solicitation process is being implemented in respect of JMB (the "**SISP**") in order to solicit interest in and opportunities for a sale of, or investment in, JMB or all or any part of JMB's property, assets and undertakings ("**Property**") and its business operations ("**Business**"). Such opportunities may include one or more of a restructuring, recapitalization or other form of reorganization of the business and affairs of one or more of JMB Crushing and/or 216 as a going concern, or a sale of all, substantially all or one or more components of JMB's Property and Business as a going concern or otherwise.

The SISP will be conducted by the Monitor with the assistance of a sale advisor to be retained by the Monitor after consultation with JMB, ATB and Fund VI (the "**Sale Advisor**") and subject to the overall approval of the Court pursuant to the Initial Order.

The Applicants anticipate that there may be a stalking horse bidder. If that is the case, the Applicants reserve their right to amend the SISP to include provisions applicable to a stalking horse bid.

Parties who wish to have their bids and/or proposals considered shall be expected to participate in this SISP as conducted by the Monitor and the Sale Advisor.

OPPORTUNITY

1. The SISP is intended to solicit interest in, and opportunities for a sale of, or investment in, all or part of JMB's Property or Business (the "**Opportunity**"), which primarily consists of aggregate inventory, equipment, surface material leases and royalty agreements. The inventory and lands to which the leases and royalty agreements apply are located in Alberta.

2. In order to maximize the number of participants that may have an interest in the Opportunity, the SISP will provide for the solicitation of interest for:

(a) the sale of JMB's interest in the Property. In particular, interested parties may submit proposals to acquire all, substantially all or a portion of the Property of either JMB Crushing or 216 or both collectively (a "**Sale Proposal**"); and

(b) an investment in the Business as a going concern of JMB. Such proposals for the Business may take the form of an investment in the Business including by way of a plan of compromise or arrangement pursuant to the CCAA (an "**Investment Proposal**").

3. Except to the extent otherwise set forth in a definitive sale or investment agreement with a Successful Bidder (as hereinafter defined), any Sale Proposal or any Investment Proposal will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the Sale Advisor or JMB, or any of their respective affiliates, agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of JMB in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, except as otherwise provided in such Court orders.

SOLICITATION OF INTEREST

4. As soon as reasonably practicable following the Initial Order, the Sale Advisor shall, in consultation with the Monitor:

(a) prepare: (i) a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest in the Property or Business pursuant to the SISP; (ii) a non-disclosure agreement in form and substance satisfactory to the Monitor (an "**NDA**"); and (iii) a confidential information memorandum ("**CIM**");

(b) gather and review all required due diligence material to be provided to interested parties and continue the secure, electronic data room (the "**Data Room**"), which will be maintained and administered by the Sale Advisor during the SISP;

(c) prepare a list of potential bidders, including: (i) parties that have approached JMB, the Sale Advisor or the Monitor indicating an interest in the Opportunity; and (ii) local and international strategic and financial parties who the Sale Advisor, in consultation with the Monitor and JMB, believes may be interested in purchasing all or part of the Business or Property or investing in JMB pursuant to the SISP (collectively, the "**Known Potential Bidders**");

(d) cause a notice of the SISP (the "**Notice**") to be posted on the Sale Advisor's website and published in the Calgary Herald, Edmonton Journal, Bonnyville Nouvelle and Insolvency Insider once approved by the Court; and

(e) send the Teaser Letter and NDA to all Known Potential Bidders and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the

Sale Advisor, JMB or the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

5. As soon as reasonably practicable following the Initial Order, the Monitor shall issue a press release setting out the information contained in the Notice and such other relevant information that the Monitor` considers appropriate.

PHASE 1: NON-BINDING LETTERS OF INTENT

Qualified Bidders

6. Any party who expresses a desire to participate in the SISP (a "**Potential Bidder**") must, prior to being given any additional information such as the CIM or access to the Data Room, provide to the Sale Advisor written confirmation of the identity of the Potential Bidder, the contact information for such Potential Bidder, and disclosure of the direct and indirect principals of the Potential Bidder.

7. If a Potential Bidder has delivered the NDA and the confirmation contemplated in paragraph 6 above with disclosure that is satisfactory to the Sale Advisor, acting reasonably and in consultation with the Monitor, then such Potential Bidder will be deemed to be a "**Phase 1 Qualified Bidder**".

8. At any time during Phase 1 of the SISP, the Monitor may, acting reasonably, eliminate a Phase 1 Qualified Bidder from the SISP, in which case such bidder will be eliminated from the SISP and will no longer be a Phase 1 Qualified Bidder for the purposes of the SISP.

Due Diligence

9. The Sale Advisor, in consultation with the Monitor, subject to competitive and other business considerations, will afford each Phase 1 Qualified Bidder such access to due diligence materials through the Data Room and information relating to the Property and Business as it deems appropriate. Due diligence access may further include management presentations with the participation of the Monitor, and JMB where appropriate, on-site inspections, and other matters which a Phase 1 Qualified Bidder may reasonably request and to which the Sale Advisor, in its reasonable business judgment and in consultation with the Monitor, may agree. The Sale Advisor will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Phase 1 Qualified Bidders and the manner in which such requests must be communicated. Further, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Phase 1 Qualified Bidders if the Monitor determines it is information that pertains to proprietary or commercially sensitive competitive information.

10. Phase 1 Qualified Bidders must rely solely on their own independent review, investigation and/or inspection of all information relating to the Property and Business in connection with their participation in the SISP and any transaction they enter into with JMB.

Submission of Non-Binding Letters of Intent

11. A Phase 1 Qualified Bidder who wishes to pursue the Opportunity further must deliver an executed letter of intent ("**LOI**"), identifying such bidder's interest in each specific Property or Business, to the Monitor at the address specified in Schedule "A" hereto (including by email or fax transmission), so as to be received by them not later than 5:00 PM (Mountain Daylight Time) on or before **June 19, 2020** (the "**Phase 1 Bid Deadline**").

12. An LOI so submitted will be considered a qualified LOI (a "**Qualified LOI**") only if all of the following conditions are satisfied:

    (a) It is submitted to the Monitor on or before the Phase 1 Bid Deadline by a Phase 1 Qualified Bidder;

    (b) It contains an indication of whether the Phase 1 Qualified Bidder is making a:

        (i) Sale Proposal; or

        (ii) an Investment Proposal;

    (c) In the case of a Sale Proposal, it identifies or contains the following:

        (i) the purchase price, in Canadian dollars, including details of any liabilities to be assumed by the Phase 1 Qualified Bidder and key assumptions supporting the valuation. If a Phase 1 Qualified Bidder wishes to acquire Property owned by both JMB Crushing and 216, a price must be allocated for such Property as between the relevant entities;

        (ii) a description of the Property that is expected to be subject to the transaction and any of the Property, obligations or liabilities for each Property expected to be excluded; and

        (iii) a specific indication of the financial capability (including analysis of the Phase 1 Qualified Bidder's current available cash liquidity, summary of key covenants and or restrictions on such liquidity), together with evidence of such capability, of the Phase 1 Qualified Bidder and the expected structure and financing of the transaction;

    (d) In the case of an Investment Proposal, it identifies or contains the following:

        (i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment in the Business;

        (ii) the aggregate amount of the equity and/or debt investment to be made in the Business in Canadian dollars and key assumptions supporting the valuation;

        (iii) the underlying assumptions regarding the *pro forma* capital structure; and

        (iv) a specific indication of the sources of capital for the Phase 1 Qualified Bidder and the structure and financing of the proposed transaction;

(e) In the case of either a Sale Proposal or an Investment Proposal:

(i) it identifies or contains the following:

(A) a description of the conditions and approvals required for a final and binding offer;

(B) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer and expected timeline for same;

(C) an acknowledgement that any Sale Proposal or Investment Proposal, as applicable, is made on an "as-is, where-is" basis;

(D) all conditions to closing that the Phase 1 Qualified Bidder may wish to impose; and

(E) any other terms or conditions of the Sale Proposal or Investment Proposal, as applicable, that the Phase 1 Qualified Bidder believes are material to the proposed transaction;

(ii) it does not contain any requirement or provision for exclusivity, a break fee or reimbursement of expenses associated with submitting the Sale Proposal or Investment Proposal, conducting the due diligence in respect thereof or otherwise; and

(iii) it contains such other information as reasonably requested by the Sale Advisor or the Monitor from time to time.

13. The Monitor, in consultation with the Sale Advisor, may waive compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Qualified LOI. For the avoidance of doubt, the completion of any Sale Proposal or Investment Proposal shall be subject to the approval of the Court and the requirement of approval of the Court may not be waived.

Assessment of Phase 1 Bids

14. Following the Phase 1 Bid Deadline, the Monitor will assess the Qualified LOIs in consultation with, the Sale Advisor, JMB and the Secured Creditors, as appropriate. If it is determined that a Phase 1 Qualified Bidder that has submitted a Qualified LOI: (a) has a *bona fide* interest in completing a Sale Proposal or Investment Proposal (as the case may be); and (b) has the financial capability (based on availability of financing, experience and other considerations) to consummate such a transaction based on the financial information provided, then such Phase 1 Qualified Bidder will be deemed to be a "**Phase 2 Qualified Bidder**", provided that the Monitor, in consultation with the Sale Advisor, may limit the number of Phase 2 Qualified Bidders (and thereby eliminate some Phase 1 Qualified Bidders from the process). Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISP.

15. The Sale Advisor, in consultation with the Monitor, will prepare a bid process letter for Phase 2 (the "**Bid Process Letter**"), which will include a draft purchase/investment agreement (the "**Draft Purchase/Investment Agreement**") which will be made available in the Data Room, and the Bid Process Letter will be sent to all Phase 2 Qualified Bidders who are invited to participate in Phase 2.

PHASE 2: FORMAL BINDING OFFERS

16. Paragraphs 18 to 26 below and the conduct of the Phase 2 bidding are subject to paragraphs 17, 18 and 35, any adjustments made to the Phase 2 process as defined in the Bid Process Letter, and any further order of the Court.

Formal Binding Offers

17. Phase 2 Qualified Bidders that wish to make a formal Sale Proposal or an Investment Proposal shall submit to the Monitor at the address specified in Schedule "A" hereto (including by email or fax transmission), a sealed binding offer that complies with all of the following requirements, so as to be received by them by 5:00 pm. (Mountain Daylight Time) on **July 20, 2020**, or such later date that is determined by the Monitor, in consultation with the Sale Advisor and the Secured Creditors, and communicated to the Phase 2 Qualified Bidders (the "**Phase 2 Bid Deadline**"):

    (a) Subject to paragraph 13, it complies with all of the requirements set forth in respect of the Phase 1 Qualified LOIs;

    (b) It contains: (i) duly executed binding transaction document(s) generally in the form of the Draft Purchase/Investment Agreement; and (ii) a blackline to the Draft Purchase/Investment Agreement;

    (c) It contains evidence of authorization and approval from the Phase 2 Qualified Bidder's board of directors (or comparable governing body);

    (d) It (either individually or in combination with other bids that make up one bid) is an offer to purchase or make an investment in some or all of the Property or Business on terms and conditions reasonably acceptable to the Monitor;

    (e) It includes a letter stating that the Phase 2 Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Phase 2 Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the earlier of (i) the closing of the transaction with the Successful Bidder, and (ii) that number of days following the Sale Approval Application (as defined below) that the Monitor determines, acting reasonably, is appropriate in light of market conditions at the time, subject to further extensions as may be agreed to under the applicable transaction agreement(s);

    (f) It provides written evidence of a firm, irrevocable financial commitment for all required funding or financing;

(g) It is not conditional upon the outcome of unperformed due diligence by the bidder, and/or obtaining financing;

(h) It specifies any regulatory or other third party approvals the party anticipates would be required to complete the transaction;

(i) It fully discloses the identity of each entity that will be entering into the transaction or the financing, or that is participating or benefiting from such bid;

(j) It is accompanied by a cash deposit (the "**Deposit**") of 10%: (i) of the purchase price offered in respect of a Sale Proposal; (ii) of the total new investment contemplated in respect of an Investment Proposal; or (iii) of the total cash consideration, less the value of the consideration allocated to the credit portion, of a Credit Bid, which shall be paid to the Monitor by wire transfer (to a bank account specified by the Monitor) and held in trust by the Monitor in accordance with this SISP;

(k) It includes acknowledgments and representations of the Phase 2 Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Property, Business and JMB prior to making its offer; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents, the Business and/or the Property in making its bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever made by the Sale Advisor, JMB or the Monitor, whether express, implied, statutory or otherwise, regarding the Business, Property, or JMB, or the accuracy or completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Monitor for and on behalf of JMB; and

(l) It is received by the Phase 2 Bid Deadline.

18. Following the Phase 2 Bid Deadline, the Monitor, in consultation with JMB, the Sale Advisor and the Secured Creditors, will assess the Phase 2 Bids received with respect to the Property or Business. The Monitor, in consultation with and the Sale Advisor, will designate the most competitive bids that comply with the foregoing requirements to be "**Phase 2 Qualified Bids**". Only Phase 2 Qualified Bidders whose bids have been designated as Phase 2 Qualified Bids are eligible to become the Successful Bidder(s).

19. The Monitor may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Phase 2 Qualified Bid.

20. The Sale Advisor, upon receiving instructions from the Monitor, shall notify each Phase 2 Qualified Bidder in writing as to whether its bid constitutes a Phase 2 Qualified Bid within five (5) business days of the Phase 2 Bid Deadline, or at such later time as the Monitor deems appropriate.

21. If the Monitor is not satisfied with the number or terms of the Phase 2 Qualified Bids, it may, in consultation with the Sale Advisor and the Secured Creditors, extend the Phase 2 Bid Deadline without Court approval.

22. Without limiting anything else herein, the Monitor, in consultation with the Sale Advisor, may aggregate separate bids from unaffiliated Phase 2 Qualified Bidders to create one or more "Phase 2 Qualified Bid(s)".

Evaluation of Competing Bids

23. A Phase 2 Qualified Bid will be evaluated based upon several factors, including, without limitation, items such as the Purchase Price, the net value and form of consideration to be provided by such bid, the identity and circumstances of the Phase 2 Qualified Bidder, any conditions attached to the bid and the expected feasibility of such conditions, the proposed transaction documents, factors affecting the speed, certainty and value of the transaction, the assets included or excluded from the bid, any related restructuring costs, the likelihood and timing of consummating such transactions, and the ability of the bidder to finance and ultimately consummate the proposed transaction, each as determined by the Monitor, in consultation with the Sale Advisor.

Selection of Successful Bid

24. The Monitor, in consultation with the Sale Advisor, JMB and the Secured Creditors: (a) will review and evaluate each Phase 2 Qualified Bid, and shall be permitted to negotiate the terms of any Phase 2 Qualified Bid with the applicable Phase 2 Qualified Bidder, and such Phase 2 Qualified Bid may be amended, modified or varied as a result of such negotiations, and (b) identify the highest or otherwise best bid or bids (the "**Successful Bid**"), and the Phase 2 Qualified Bidder making such Successful Bid (the "**Successful Bidder**") for any particular Property or the Business in whole or part. The determination of any Successful Bid by the Monitor shall be subject to consultation with the Secured Creditors and approval by the Court.

25. If the Monitor determines that: (a) no Phase 2 Qualified Bids were received other than the Sale Agreement; (b) at least one Phase 2 Qualified Bid was received, but it is not likely that the transaction contemplated in any such Phase 2 Qualified Bid will be consummated; (c) proceeding with the SISP is not in the best interests of JMB and its stakeholders, then the Monitor shall forthwith: (i) terminate this SISP; (ii) notify each Phase 2 Qualified Bidder that this SISP has been terminated; and (iii) consult with JMB, the Secured Creditors and the Sales Advisor regarding next steps, including concluding the Sale Agreement.

26. The Monitor shall have no obligation to select a Successful Bid, and JMB with the consent of the Monitor, in consultation with the Secured Creditors and the Sale Advisor, shall the right to reject any or all Phase 2 Qualified Bids.

Sale Approval Hearing

27. At the hearing of the application to approve any transaction with a Successful Bidder (the "**Sale Approval Application**"), the Monitor shall seek, among other things, approval from the Court for the consummation of any Successful Bid. All the Phase 2 Qualified Bids other than the Successful Bid, if any, shall be deemed rejected by JMB on and as of the date of approval of the Successful Bid by the Court.

28. Any Deposit delivered with a Phase 2 Qualified Bid that is not selected as a Successful Bid, will be returned to the applicable bidder within ten (10) business days of the date on which the Successful Bid is approved by the Court, or such earlier date as may be determined by the Monitor, in consultation with the Sale Advisor.

CONFIDENTIALITY, STAKEHOLDER/BIDDER COMMUNICATION AND ACCESS TO INFORMATION

29. Except as otherwise permitted herein, participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Phase 1 Qualified Bidders, LOIs, Phase 2 Qualified Bidders, Phase 2 Qualified Bids, the details of any bids submitted or the details of any confidential discussions or correspondence between the Monitor and/or the Sale Advisor, and such other bidders or Potential Bidders in connection with the SISP.

30. All discussions regarding a Sale Proposal, Investment Proposal, LOI or Phase 2 Bid shall be directed through the Sale Advisor and/or the Monitor.

SUPERVISION OF THE SISP

31. The Monitor will oversee, in all respects, the conduct of the SISP by the Sale Advisor and will participate in the SISP in the manner set out herein, and is entitled to receive all information in relation to the SISP.

32. This SISP does not, and will not be interpreted to create any contractual or other legal relationship between JMB or the Monitor and any Phase 1 Qualified Bidder, any Phase 2 Qualified Bidder or any other party, other than as specifically set forth in any definitive agreement that may be signed by the Monitor for and on behalf of JMB.

33. Without limiting the preceding paragraph, neither the Monitor nor the Sale Advisor shall have any liability whatsoever to any person or party, including without limitation, any Potential Bidder, Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, the Successful Bidder, or any other creditor or other stakeholder of JMB, for any act or omission related to the process contemplated by this SISP procedure, except to the extent such act or omission is the result of gross negligence or willful misconduct by the Monitor or Sale Advisor. By submitting a bid, each Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, or Successful Bidder shall be deemed to have agreed that it has no claim against the Monitor or Sale Advisor for any reason whatsoever, except to the extent such claim is the result of gross negligence or willful misconduct of the Monitor or Sale Advisor.

34. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any LOI, bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

35. The Monitor shall have the right to modify the SISP if, in its reasonable business judgment in consultation with the Sale Advisor and the Secured Creditors, such modification will enhance the process or better achieve the objectives of the SISP; provided that the service list in these CCAA proceedings shall be advised of any substantive modification to the procedures set forth herein.

Schedule "A"

Sale Advisor

520 5 Ave SW, #400
Calgary, AB T2P 3R7
Facsimile: 1-877-790-6172
Email: asequeira@sequeirapartners.com
Attention: Arron Sequeira

Monitor

FTI Consulting Canada Inc.
520 5 Ave SW, #400
Calgary, AB T2P 3R7
Facsimile: 1 403 232 6116
Email: Deryck.Helkaa@fticonsulting.com
Attention: Deryck Helkaa

JMB

JMB Crushing Systems Inc.
PO Box 6977
Bonnyville, AB T9N 2H4
Email: jeffb@jmbcrush.com
Attention: Jeff Buck

This is Exhibit "B" referred to in the Affidavit of

Katie Doran

sworn before me this 4th day of December, 2020.

A Commissioner for Oaths in and for the Province of Alberta

Connor E.J. O'Brien
Student-at-Law

I hereby certify this to be a true copy of
the original Order
Dated this 21 day of May 2020
for Clerk of the Court

Order
Rule 9.1

JUDICIAL CENTRE OF CALGARY
FILED
May 21, 2020
LD
by Email
CLERK OF THE COURT

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

INV #501099

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

APPLICANT	JMB CRUSHING SYSTEMS INC.
DOCUMENT	**ORDER – LIEN CLAIMS – MD of BONNYVILLE**
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/Alex Matthews** Phone: 403.298.1938/403.298.1992/403.298.1018 Fax: 403.263.9193 File No.: A163514

DATE ON WHICH ORDER WAS PRONOUNCED: May 20, 2020

LOCATION AT WHICH ORDER WAS MADE: Calgary Court House

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

UPON THE APPLICATION of JMB Crushing Systems Inc. ("**JMB**"); **AND UPON HEARING** counsel for JMB; **AND UPON** reviewing the Affidavit of Jeff Buck sworn May 8, 2020 and the Affidavit of Jeff Buck sworn May 20, 2020; **AND UPON** hearing counsel for the Applicant and those parties present; **IT IS HEREBY ORDERED THAT:**

1. The time for service of notice of application for this Order is hereby abridged and deemed good and sufficient and this application is properly returnable today.

2. The Consent Order granted May 11, 2020 by the Honourable K.M. Eidsvik is hereby set aside and the process contemplated therein is replaced by the process set out herein.

Definitions

3. For the purpose of the within Order, the following terms shall have the following meanings:

   (a) "**BLA**" means the *Builders' Lien Act*, RSA 2000, c B-7;

   (b) "**Claims Bar Date**" means 5:00p.m. (Calgary time) on June 1, 2020, or such other date as may be ordered by the Court;

   (c) "**Contract**" means the agreement between MD of Bonnyville and JMB dated November 1, 2013, as amended, pursuant to which JMB provided Product to MD of Bonnyville and hauled the Product for stockpiling at the Lands;

   (d) "**CRA Amount**" means $236,000.00 to be paid to the CRA from the Funds less the Holdback Amount in accordance with this Order;

   (e) "**Determination Notice**" means written notice of a Lien Determination;

   (f) "**Disputed Amount**" means the amount disputed as owing by MD of Bonnyville to JMB, which is $131,237.60;

   (g) "**Funds**" means those amounts invoiced by JMB to MD of Bonnyville but not yet paid by MD of Bonnyville for the period up to and including April 30, 2020 in relation to the Contract, less the Disputed Amount, which is $3,563,768.40;

   (h) "**Holdback Amount**" means the amount to be held by the Monitor from the Funds, which is $1,850,000.00;

   (i) "**Interested Party**" means any party who gives notice in writing to the Monitor of its interest in a Lien Determination;

   (j) "**JMB**" is JMB Crushing Systems Inc.;

   (k) "**Lands**" means those lands legally described as:

LEGAL DESCRIPTION
MERIDIAN 4 RANGE 5 TOWNSHIP 61
SECTION 19
QUARTER NORTH EAST
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS

EXCEPTING THEREOUT:		HECTARES	(ACRES) MORE OR LESS
A) PLAN 8622670	ROAD	0.416	1.03
B) PLAN 0023231	DESCRIPTIVE	2.02	4.99
C) PLAN 0928625	SUBDIVISION	20.22	49.96

EXCEPTING THEREOUT ALL MINES AND MINERALS

(l) "**Lien**" means a lien registered under the BLA against the Lands in respect of the Work or the Contract;

(m) "**Lien Claim**" means a claim of any Lien Claimant to the extent of such Lien Claimant's entitlement to receive payment from the major lien fund, as defined in the BLA, as it relates to the Work performed by the Lien Claimant or a subrogated claim for such Work;

(n) "**Lien Claimant**" means a claimant who: (i) has registered a Lien for its Work against the Lands; or (ii) has a Lien Claim and has provided a Lien Notice to the Monitor as described herein;

(o) "**Lien Determination**" means a determination of the validity of a Lien, a Lien Claim and the quantum thereof, whether by the Monitor or this Court;

(p) "**Lien Notice**" means the form attached as Schedule "A" hereto;

(q) "**MD of Bonnyville**" is the Municipal District of Bonnyville No. 87;

(r) "**Monitor**" means FTI Consulting Canada Inc., in its capacity as the Court-appointed monitor of JMB, and not in its personal capacity or corporate capacity;

(s) "**Product**" means the aggregate produced by JMB pursuant to the Contract; and

(t) "**Work**" means work done or materials furnished with respect to the Contract or the Lands.

Stay of Lien Claims

4. No person shall be permitted to commence or serve any Lien Claims, or to preserve or perfect any Lien Claim under the BLA, for Work done in respect of the Contract or the Lands for the period up to and including April 30, 2020. Any such Lien or Lien Claim is hereby stayed, and any person seeking to serve or enforce any Lien or Lien Claim shall be required to seek the rights and remedies set out in this Order.

Claims Process

5. Within one (1) Business Day of the within Order being granted by this Court, MD of Bonnyville shall remit to the Monitor the Funds, and shall thereafter be deemed to have been in the same position as if (a) no written notices of Lien had been received; (b) no Lien Claims had been made, asserted, delivered, preserved or perfected; and (c) no Lien Notice had been received, and MD of Bonnyville shall have no further liability for such Funds.

6. The Monitor shall hold the Holdback Amount in trust in an interest bearing account in accordance with the terms of this Order, which Holdback Amount shall be deemed to be the amount MD of Bonnyville was required to hold back pursuant to section 18 of the BLA from payments it made or makes to JMB for those amounts invoiced up to and including April 30, 2020.

7. Any person who wishes to assert a Lien Claim against the Lands and who has not yet registered a Lien against the Lands shall deliver a Lien Notice by email to the Monitor's attention within the time frame prescribed by the BLA in order to preserve and perfect their Lien Claim.

8. Pursuant to section 48(2) of the BLA, the Holdback Amount shall stand as security in place of the Lands to the extent of any security granted under the BLA for all Lien Claims registered by Lien or provided to the Monitor by Lien Notice prior to the expiry of the time frame prescribed by the BLA.

9. Lien Claimants who have registered a Lien against the Lands or provided a Lien Notice to the Monitor as set out in paragraph 7 hereof shall only be required to take the steps set out

in this Order to prove their Lien, and shall not be required to take any steps set out in the BLA, including, but not limited to, filing a statement of claim or a certificate of lis pendens.

10. Upon the Monitor providing a certificate to the Registrar of Land Titles confirming receipt of the Funds by the Monitor and that the Funds are sufficient to pay the Liens, the Registrar is hereby authorized and directed under section 191(3)(a) of the *Land Titles Act*, RSA 2000, c L-4 to discharge the registration of the Liens registered on or before the date of this Order against title to the Lands, whereupon the Lien Claimants shall have no further claim against MD of Bonnyville in accordance with paragraph 5 hereof.

11. The Lien Claimant, JMB, any Interested Party and MD of Bonnyville, at the request in writing of the Monitor, shall provide to the Monitor information reasonably necessary for the Monitor to make a Lien Determination.

12. Upon receipt of the information relating to a Lien and Lien Claim contemplated by paragraph 12 hereof, the Monitor shall make its Lien Determination in respect thereof and provide a Determination Notice to the Lien Claimant, JMB and any other Interested Party.

13. If a Lien Claimant, JMB or any Interested Party does not accept a Lien Determination, each of the Lien Claimant, JMB and Interested Party is hereby granted leave to file and serve an application with this Court within 15 days of being served with the Determination Notice by the Monitor at the email address of the Lien Claimant as shown on the Lien or Lien Notice, and on JMB and any Interested Party in the records of the Monitor.

14. Once the 15-day period provided for in paragraph 13 hereof has expired without an application being served and filed with this Court, the Lien Determination of the Monitor shall be final and the Lien Claimant, JMB, and any Interested Parties shall not have any recourse to remedies set out in the BLA with respect to such Liens or Lien Claims, or as and against any of the Funds or the Holdback Amount.

15. The Monitor shall make the following payments from the Funds pursuant to this Order:

    (a) Once the certificate has been provided to the Registrar by the Monitor pursuant to paragraph 10 herein, the Monitor shall pay: (i) to JMB, the total amount of the

Funds less the Holdback Amount and the CRA Amount; and (ii) to CRA, the CRA Amount;

(b) Following each Lien Determination becoming final, the Monitor shall pay to each Lien Claimant the amount of its Lien Claim as set out in the Lien Determination from the Holdback Amount; and

(c) The Monitor, provided that it reserves a sufficient amount of the Holdback Amount to pay the Lien Claims, may pay the amount in excess thereof, if any, to JMB after the Claims Bar Date has passed, and upon the Lien Determinations becoming final in respect of all of the Liens, the Monitor shall pay the remaining Holdback Amount to JMB.

Disputed Amount

16. The Disputed Amount is not subject to the terms of this Order and shall be dealt with by way of separate application to this Court if required.

17. Each party shall be responsible for their own costs regarding the within matter.

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

Schedule "A"
Lien Notice

Claimant: _____

Address for Notices: _____

Telephone: _____

Fax: _____

Email: _____

I, _____ **residing in the** _____ **of**
(name) (city, town, etc.)

_____ **in the Province of** _____
(name of city, town, etc.) (name of province)

do hereby certify that:

1. ☐ I am the Claimant

OR ☐ I am the _____ of the Claimant
(title/position)

2. I have knowledge of all the circumstances connected with the claim referred to in this Lien Notice form.

3. The Claimant has a valid

   (a) **Builders' Lien Claim** in the amount of $_____ arising pursuant to work done or materials furnished on behalf of JMB Crushing Systems Inc.

   (b) **Subrogated Claim** in the amount of $_____ arising pursuant to work done or materials furnished on behalf of JMB Crushing Systems Inc.

4. Attached hereto as Schedule "A" is an affidavit setting out the full particulars of the Claimant's builders' lien claim or subrogated claim, including all applicable contracts,

sub-contracts, the nature of the work completed or materials furnished, the last day on which any work was completed or materials were furnished, any payments received by the Claimant, all invoices issued by the Claimant, and all written notices of a lien served by the Claimant.

DATED at _____, this _____ day of May, 2020.
(location)

_____ _____

Witness

Name: Name:

Must be signed and witnessed

This is Exhibit "C" referred to in the Affidavit of

Katie Doran

sworn before me this 4th day of December, 2020.

A Commissioner for Oaths in and for the Province of Alberta

Connor E.J. O'Brien
Student-at-Law

Clerk's Stamp

COURT FILE NUMBER	2001-05482
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. AND 2161889 ALBERTA LTD.
DOCUMENT	**ORDER (Amended and Restated Mantle Sale Approval and Vesting Order)**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, Alberta T2P 4K9 Attention: Sean Collins / Pantelis Kyriakakis Tel: 403-260-3531 / 3536 Fax: 403-260-3501 Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED:	**October 16, 2020**
LOCATION OF HEARING OR TRIAL:	**Calgary, Alberta**
NAME OF JUDGE WHO MADE THIS ORDER:	**Honourable Justice Eidsvik**

UPON the application (the "**Application**") of JMB Crushing Systems Inc. ("**JMB**") and 2161889 Alberta Ltd. ("**216**", JMB and 216 are collectively, the "**Applicants**") who commenced the within proceedings (the "**Proceedings**") pursuant to the initial order granted under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") on May 1, 2020, as subsequently amended and restated on May 11, 2020 (collectively, the "**Initial Order**"), for an order approving the sale transaction (collectively, the "**Transaction**") contemplated by the Amended and Restated Asset Purchase Agreement, dated September 28, 2020 (the "**APA**"), between the Applicants, as vendors, and Mantle Materials Group, Ltd. (the "**Purchaser**"), as purchaser, and vesting in the Purchaser (or its nominee), all of the Applicants' right, title, and interest in and to the assets described in the APA (collectively, the "**Acquired Assets**");

AND UPON HAVING READ the Initial Order and the sale and investment solicitation process attached as Schedule "A" to the Initial Order (the "**SISP**"); **AND UPON HAVING READ**

the Second Report of FTI Consulting Canada Inc. (the "**Monitor**"), in its capacity as the court-appointed monitor of the Applicants, dated July 6, 2020 (the "**Second Monitor's Report**"), the Fifth Report of the Monitor, dated September 10, 2020, and the Seventh Report of the Monitor, dated September 30, 2020 (the "**Seventh Monitor's Report**"), all filed; **AND UPON HAVING READ** the Applicants' application for an order pursuant to Section 11.3 of the CCAA, which has been applied for concurrently with this Order, and the proposed form of order attached as Schedule "A" thereto (the "**Section 11.3 Order**"); **AND UPON HAVING READ** the Affidavit of Byron Levkulich (the "**Levkulich Affidavit**"), sworn September 30, 2020, and the Affidavit of Service of Katie Doran (the "**Service Affidavit**"), to be filed; **AND UPON HAVING READ** the Order (Mantle Sale Approval Order), granted by the Honourable Justice K.M. Eidsvik on October 1, 2020; **AND UPON HEARING** the submissions of counsel for the Applicants, the Monitor, and for any other parties who may be present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Application and the Seventh Monitor's Report is abridged, the Application is properly returnable today, service of the Application and the Seventh Monitor's Report on the service list, in the manner described in the Service Affidavit, is good and sufficient, and no other persons, other than those listed on the service list (the "**Service List**") attached as an exhibit to the Service Affidavit, are entitled to service of the Application or the Seventh Monitor's Report.

DEFINED TERMS

2. Capitalized terms used herein but not otherwise defined shall have the same meaning as given to such terms in the APA.

APPROVAL OF THE TRANSACTION

3. The Transaction is hereby approved and execution of the APA is hereby authorized, ratified, confirmed, and approved, with such minor amendments as the Applicants (with the written consent of the Monitor) and the Purchaser may agree to. The Monitor and the Applicants are hereby authorized and directed to take such additional steps and the Applicants are hereby authorized and empowered to execute such additional documents as may be necessary or desirable for the completion of the Transaction or for the conveyance of the Acquired Assets, with the exception of any Designated Permits or Restricted Agreements (the Acquired Assets other

than the Designated Permits and Restricted Agreements are, collectively, the "**Transferred Acquired Assets**"), which Restricted Agreements shall be dealt with under the Section 11.3 Order, to the Purchaser (or its nominee), in accordance with the terms and conditions of the APA.

VESTING OF THE TRANSFERRED ACQUIRED ASSETS

4. Subject only to approval by Alberta Environment and Parks ("**AEP**") of the transfer of any Crown Dispositions (as defined below) and upon the delivery of a Monitor's certificate to the Purchaser (or its nominee), substantially in the form set out in Schedule "**A**" hereto (the "**Monitor's Certificate**"), subject only to the Permitted Encumbrances (as defined below), all of the Applicants' right, title, and interest in and to the Transferred Acquired Assets, in the manner described in the APA, shall vest absolutely, exclusively, and entirely in the name of the Purchaser (or its nominee) and, subject to the declarations under the 11.3 Order concerning the Assigned Contracts, shall be free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, options, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary, or otherwise, whether or not they have attached or been perfected, registered, or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing:

(a) any encumbrances or charges created by the Initial Order;

(b) all charges, security interests or claims evidenced by registrations pursuant to: (i) the *Personal Property Security Act* (Alberta) or any other personal property registry system; (ii) the *Land Titles Act*, RSA 2000, c L-7 (the "**Land Titles Act**"); and, (iii) the *Public Lands Act*, RSA 2000, c. P-40 (the "**PLA**"), and the regulations thereunder;

(c) any liens or claims of lien under the *Builders' Lien Act* (Alberta); and,

(d) those Claims listed in Schedule "**B**" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, caveats, interests, easements, and restrictive covenants listed in Schedule "**C**" and "**E**" hereto (collectively, "**Permitted Encumbrances**"));

and for greater certainty, this Court orders that all Claims, including the Encumbrances but excluding the Permitted Encumbrances, affecting or relating to the Transferred Acquired Assets are hereby expunged, discharged and terminated as against the Transferred Acquired Assets.

5. Upon delivery of the Monitor's Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, "**Governmental Authorities**") are hereby authorized, requested, and directed to accept delivery of such Monitor's Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchaser or its nominee clear title to the Transferred Acquired Assets, subject only to Permitted Encumbrances. Without limiting the foregoing:

(a) the Registrar of Land Titles ("**Land Titles Registrar**") for the lands defined below shall and is hereby authorized, requested, and directed to forthwith:

(i) cancel existing Certificate of Title No. 992 302 625 for those lands and premises legally described as:

THE NORTH EAST QUARTER OF SECTION THIRTY FIVE (35)
TOWNSHIP FIFTY SIX (56)
RANGE SIX (6)
WEST OF THE FOURTH MERIDIAN
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
EXCEPTING THEREOUT: HECTARES (ACRES) MORE OR LESS
A) PLAN 6430 KS - ROAD 0.417 1.03
B) PLAN 395 RS - ROAD 0.615 1.52
C) PLAN 9222585 - ROAD 0.407 1.01
EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "**Lands**").

(ii) issue a new Certificate of Title for the Lands in the name of the Purchaser (or its nominee);

(iii) transfer to the New Certificate of Title the existing instruments listed in Schedule "**C**", to this Order, and to issue and register against the New Certificate of Title such caveats, utility rights of ways, easements or other instruments as are listed in Schedule "**C**"; and

(iv) discharge and expunge the Encumbrances listed in Schedule "**B**" to this Order and discharge and expunge any Claims including Encumbrances (but excluding Permitted Encumbrances) which may be registered after the date of the APA against the existing Certificate of Title to the Lands;

(b) upon payment of all applicable charges and fees, AEP (subject to the approval of the AEP, as set out in paragraph 4 herein) is hereby requested to transfer and assign all Crown dispositions listed in Schedule "**D**" to this Order, standing in the name of either or both of the Applicants (collectively, the "**Crown Dispositions**"), to the Purchaser (or its nominee), provided that the Purchaser (or its nominee) comply with all applicable licensing requirements, and to consent to and register the assignment of the Crown Dispositions to the Purchaser, and in doing so no further proof of due execution of the transfer and assignment of the Crown Dispositions beyond the provisions of this Order and the presentment of the Monitor's Certificate shall be required;

(c) AEP is hereby authorized and requested, upon the appropriate applications for such transfer or assignment being made by the Applicants and Purchaser, to transfer and assign (subject to the approval of AEP) all of the Applicants' right, title and interest in:

(i) any other authorizations issued under legislation administered by AEP and registered in the name of either or both of the Applicants, the transfer and assignment of which may be necessary to give effect to the transfer and assignment of the Crown Dispositions to the Purchaser; and,

(ii) to the extent assignable or transferable, all Conservation and Reclamation Business Plans that relate to the Crown Dispositions and which are registered in the name of either or both of the Applicants (the "**Crown Disposition Documents**"),

to the Purchaser, and to consent to and register the assignment of such authorizations and Crown Disposition Documents to the Purchaser, and in doing so no further proof of due execution of the transfer and assignment of such Crown Disposition Documents beyond the provisions of this Order and the presentment of the Monitor's Certificate shall be required;

(d) the Registrar of the Alberta Personal Property Registry (the "**PPR Registrar**") shall and is hereby directed to forthwith cancel and discharge any registrations at the Alberta Personal Property Registry (whether made before or after the date of this Order) claiming security interests (other than Permitted Encumbrances) in the estate or interest of the Applicants in any of the Transferred Acquired Assets which are of a kind prescribed by applicable regulations as serial-number goods, including, but not limited to, those set out in Schedule "**B**" hereto.

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

7. The Monitor is authorized and directed to undertake and perform such activities and obligations as are contemplated to be undertaken or performed by the Monitor pursuant to this Order, the SISP, the APA, or any ancillary documents related thereto, and shall incur no liability, whatsoever, in connection therewith, save and except for any liability arising due to gross negligence or wilful misconduct on its part.

8. No authorization, approval or other action by and no notice to or filing with any Governmental Authority or regulatory body exercising jurisdiction over the Transferred Acquired Assets is required for the due execution, delivery, and performance by the Applicants of the APA, other than any required approval by AEP.

9. Upon delivery of the Monitor's Certificate together with a certified copy of this Order, this Order shall be immediately registered by the Land Titles Registrar notwithstanding the requirements of section 191(1) of the *Land Titles Act*, RSA 2000, c.L-7 and notwithstanding that the appeal period in respect of this Order has not elapsed. The Land Titles Registrar is hereby directed to accept all Affidavits of Corporate Signing Authority submitted by the Applicants.

10. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Acquired Assets shall stand in the place and stead of the Acquired Assets from and after delivery of the Monitor's Certificate and all Claims including the Encumbrances (but excluding the Permitted Encumbrances) shall not attach to, encumber, or otherwise form a

charge, security interest, lien, or other Claim against the Acquired Assets and may be asserted against the net proceeds from sale of the Acquired Assets with the same priority as they had with respect to the Acquired Assets immediately prior to the sale, as if the Acquired Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

11. Upon completion of the Transaction, the Applicants and all persons who claim by, through or under the Applicants in respect of the Transferred Acquired Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Transferred Acquired Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped, and foreclosed from and permanently enjoined from pursuing, asserting, or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Transferred Acquired Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Transferred Acquired Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Transferred Acquired Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).

12. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Transferred Acquired Assets for its own use and benefit without any interference of or by the Applicants, or any person claiming by, through or against the Applicants.

13. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada) and section 20(e) of the Alberta *Personal Information Protection Act*, the Applicants and the Monitor are authorized and permitted to disclose and transfer to the Purchaser (or its nominee) all human resources and payroll information in the Applicants' records pertaining to the Applicants' past and current employees. The Purchaser (or its nominee) shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use (of such information) to which the Applicants were entitled.

14. Immediately upon closing of the Transaction, holders of Permitted Encumbrances shall have no claim whatsoever against the Applicants or the Monitor.

15. The Monitor is directed to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof to the Purchaser (or its nominee).

16. The Monitor may rely on written notice or correspondence from the Applicants and the Purchaser or their respective counsel regarding the fulfillment of conditions to closing under the APA and shall incur no liability, whatsoever, with respect to the delivery of the Monitor's Certificate.

MISCELLANEOUS MATTERS

17. Notwithstanding:

(a) the pendency of these proceedings and any declaration of insolvency made herein;

(b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "**BIA**"), in respect of JMB, and any bankruptcy order issued pursuant to any such applications;

(c) any assignment in bankruptcy made in respect of the Applicants; and

(d) the provisions of any federal or provincial statute:

the vesting of the Transferred Acquired Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

or desirable to give effect to this Order or to assist the Applicants, the Monitor, and their agents in carrying out the terms of this Order.

19. The Applicants, the Monitor, the Purchaser (or its nominee), and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

20. Service of this Order shall be deemed good and sufficient by:

(a) Serving the same on:

(i) the persons listed on the service list created in these proceedings;

(ii) any other person served with notice of the application for this Order;

(iii) any other parties attending or represented at the application for this Order;

(iv) the Purchaser or the Purchaser's solicitors;

(b) Posting a copy of this Order on the Monitor's website at: http://cfcanada.fticonsulting.com/jmb/default.htm; and,

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

and service on any other person is hereby dispensed with.

21. Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted on May 29, 2020.

Justice of the Court of Queen's Bench of Alberta

SCHEDULE "A" TO THE ORDER (SALE APPROVAL AND VESTING)
MONITOR'S CERTIFICATE

Clerk's Stamp

COURT FILE NUMBER	2001-05482
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICATIONS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. AND 2161889 ALBERTA LTD.
DOCUMENT	**MONITOR'S CERTIFICATE**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, Alberta T2P 4K9 Attention: Sean Collins / Pantelis Kyriakakis Tel: 403-260-3531 / 3536 Fax: 403-260-3501 Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca

RECITALS

A. Pursuant to an Order of the Honourable Justice K.M. Eidsvik of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**"), dated May 1, 2020, as subsequently amended and restated on May 11, 2020, FTI Consulting Canada Inc., was appointed as the monitor (the "**Monitor**") of JMB Crushing Systems Inc. and 2161889 Alberta Ltd. (collectively, the "**Applicants**").

B. Pursuant to an Order of the Court, dated October 1, 2020 (the "**Sale Approval Order**"), the Court approved the Amended and Restated Asset Purchase Agreement, dated September 28, 2020 (the "**APA**"), between the Applicants, as vendors, and Mantle Materials Group Ltd. (the "**Purchaser**"), as purchaser, and provided for the vesting in the Purchaser of Applicants' right, title, and interest in and to the Transferred Acquired Assets, which vesting is to be effective with respect to the Transferred Acquired Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Transferred Acquired Assets; (ii) that all

conditions to the closing of the APA have been satisfied or waived by the Applicants and the Purchaser; and, (iii) the Transaction has been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, all capitalized terms have the meanings set out in the Sale Approval Order.

THE MONITOR CERTIFIES the following:

1. The Purchaser (or its nominee) has paid and the Monitor has received the Purchase Price for the Acquired Assets, in accordance with and as contemplated by the terms of the APA;

2. The conditions to the closing of the APA have been satisfied or waived by the Applicants and the Purchaser (or its nominee); and,

3. The Transaction has been completed to the satisfaction of the Monitor.

This Certificate was delivered by the Monitor at **[Time]** on **[Date]**.

FTI CONSULTING CANADA INC., in its capacity as the monitor of **JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.**, and not in its personal or corporate capacity.

Per: _____
Name:
Title:

SCHEDULE "B" THE ORDER (SALE APPROVAL AND VESTING)
ENCUMBRANCES

Encumbrances Registered against Certificates of Title:

I. The "Lands" - NE ¼ of 35-56-6-W4M
LEGAL DESCRIPTION

THE NORTH EAST QUARTER OF SECTION THIRTY FIVE (35)
TOWNSHIP FIFTY SIX (56)
RANGE SIX (6)
WEST OF THE FOURTH MERIDIAN
CONTAINING 64.7 HECTARES (160) ACRES MORE OR LESS
EXCEPTING THEREOUT: HECTARES (ACRES) MORE OR LESS

A) PLAN 6430 KS - ROAD 0.417 1.03

B) PLAN 395 RS - ROAD 0.615 1.52

C) PLAN 9222585 - ROAD 0.407 1.01

EXCEPTING THEREOUT ALL MINES AND MINERALS

LINC	TITLE NUMBER	REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
N/A	N/A	N/A	N/A	NO ENCUMBRANCES

II. "Shankowski" - SW 21-56-7-W4

LEGAL DESCRIPTION

FIRST

MERIDIAN 4 RANGE 7 TOWNSHIP 56
SECTION 21
QUARTER NORTH WEST
CONTAINING 64.7 HECTARES (160) ACRES MORE OR LESS
EXCEPTING THEREOUT: HECTARES (ACRES) MORE OR LESS

A) PLAN 1722948 - ROAD 0.417 1.03

EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

SECOND

MERIDIAN 4 RANGE 7 TOWNSHIP 56
SECTION 21
QUARTER SOUTH WEST
CONTAINING 64.7 HECTARES (160) ACRES MORE OR LESS
EXCEPTING THEREOUT: HECTARES (ACRES) MORE OR LESS

A) PLAN 1722948 - ROAD 0.417 1.03

EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

LINC	TITLE NUMBER	REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
0037 711 538	172 269 783 +5	202 104 972	13/05/2020	BUILDER'S LIEN LIENOR – J.R. PAINE & ASSOCIATES LTD. C/O SCOTT LAW 17505 106 AVE

				EDMONTON ALBERTA T5S1E7 AGENT – JOHN SCHRODER AMOUNT: $64,207
		202 106 447	15/05/2020	BUILDER'S LIEN LIENOR – RBEE AGGREGATE CONSULTING LTD. C/O PUTNAM & LAWSON 9702-100 STREET MORINVILLE ALBERTA T8R1G3 AGENT – MAXWELL C PUTNAM AMOUNT: $1,270,791

III. "Buksa" - N ¼ of 24-56-7-W4M

LEGAL DESCRIPTION

FIRST

ALL OF THAT PORTION OF THE NORTH WEST QUARTER OF SECTION TWENTY FOUR (24)
TOWNSHIP FIFTY SIX (56)
RANGE SEVEN (7)
WEST OF THE FOURTH MERIDIAN
NOT COVERED BY THE WATERS OF NORTH SASKATCHEWAN RIVER, AS SHOWN ON A PLAN OF SURVEY OF THE SAID TOWNSHIP SIGNED AT OTTAWA ON THE 20TH DAY OF OCTOBER, A.D. 1922, CONTAINING 58.5 HECTARES (144.60 ACRES) MORE OR LESS.
EXCEPTING THEREOUT: .829 HECTARES (2.05 ACRES) MORE OR LESS,
AS SHOWN ON ROAD PLAN 2208 E.T.
EXCEPTING THEREOUT ALL MINES AND MINERALS

SECOND

ALL OF THAT PORTION OF THE NORTH EAST QUARTER OF SECTION TWENTY FOUR (24)
TOWNSHIP FIFTY SIX (56)
RANGE SEVEN (7)
WEST OF THE FOURTH MERIDIAN

NOT COVERED BY THE WATERS OF SASKATCHEWAN RIVER, AS SHOWN ON A PLAN OF SURVEY OF THE SAID TOWNSHIP SIGNED AT OTTAWA ON THE 6TH DAY OF JUNE A.D. 1906, CONTAINING 63.7 HECTARES, (157.60 ACRES) MORE OR LESS.
EXCEPTING THEREOUT:

		HECTARES	(ACRES) MORE OR LESS
A) PLAN 2208ET -	ROAD	1.19	2.94
B) PLAN 9120726 -	ROAD	12.344	30.50

EXCEPTING THEREOUT ALL MINES AND MINERALS

LINC	TITLE NUMBER	REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
N/A	N/A	N/A	N/A	N/A

IV. "Andrychuk" - <u>SW 15-57-14-W4</u>

LEGAL DESCRIPTION

MERIDIAN 4 RANGE 14 TOWNSHIP 57
SECTION 15
ALL THAT PORTION OF THE SOUTH WEST QUARTER
LYING TO THE WEST OF THE RIGHT BANK OF THE NORTH SASKATCHEWAN RIVER
AS SHOWN ON A PLAN OF SURVEY OF THE SAID TOWNSHIP DATED 6 OCTOBER 1913
CONTAINING 64.462 HECTARES (159.40 ACRES) MORE OR LESS
EXCEPTING THEREOUT: 0.19 OF AN ACRE MORE OR LESS
AS SHOWN ON ROAD PLAN 2915ET
EXCEPTING THEREOUT ALL MINES AND MINERALS

LINC	TITLE NUMBER	REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
N/A	N/A	N/A	N/A	NO ENCUMBRANCES

V. "Havener" - NW 16-56-7-W4

LEGAL DESCRIPTION

MERIDIAN 4 RANGE 7 TOWNSHIP 56
SECTION 16
QUARTER NORTH WEST
CONTAINING 64.7 HECTARES (160) ACRES MORE OR LESS
EXCEPTING THEREOUT: HECTARES (ACRES) MORE OR LESS

A) PLAN 4286BM -ROAD 0.0004 0.001

B) ALL THAT PORTION COMMENCING AT THE SOUTH WEST CORNER OF THE SAID QUARTER SECTION; THENCE EASTERLY ALONG THE SOUTH BOUNDARY 110 METRES; THENCE NORTHERLY AND PARALLEL TO THE WEST BOUNDARY OF THE SAID QUARTER 110 METRES; THENCE WESTERLY AND PARALLEL TO THE SAID SOUTH BOUNDARY TO A POINT ON THE WEST BOUNDARY; THENCE SOUTHERLY ALONG THE SAID WEST BOUNDARY TO THE POINT OF COMMENCEMENT CONTAINING ……... 1.21 3.00

C) PLAN 1722948 - ROAD 0.360 0.89

EXCEPTING THEREOUT ALL MINES AND MINERALS

LINC	TITLE NUMBER	REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
0037 711 496	172 269 783 +2	002 170 374	20/06/2000	CAVEAT RE: ROYALTY AGREEMENT CAVEATOR – JMB CRUSHING SYSTEMS LTD. PO BOX 478 ELK POINT ALBERTA T0A1A0
		202 104 972	13/05/2020	BUILDER'S LIEN LIENOR – J.R. PAINE & ASSOCIATES LTD. C/O SCOTT LAW 17505 106 AVE EDMONTON

				ALBERTA T5S1E7 AGENT – JOHN SCHRODER AMOUNT: $64,207
		202 106 449	15/05/2020	BUILDER'S LIEN LIENOR – RBEE AGGREGATE CONSULTING LTD. C/O PUTNAM & LAWSON 9702-100 STREET MORINVILLE ALBERTA T8R1G3 AGENT – MAXWELL C PUTNAM AMOUNT: $1,270,791

SCHEDULE "C" TO THE ORDER (SALE APPROVAL AND VESTING)
PERMITTED ENCUMBRANCES

1. The terms and conditions of the Assigned Contracts and Aggregate Pit Agreements, including any depth limitations or similar limitations that may be set forth therein and any liens or security interests reserved therein for royalty, bonus or rental, or for compliance with the terms thereof;

2. Inchoate Liens incurred or created as security in favour of any Person with respect to a Vendor's share of costs and expenses for the extraction, processing or hauling of Aggregates which are not due or delinquent as of are adjusted to the date of Closing;

3. Defects or irregularities of title which are waived by the Purchaser;

4. Easements, rights of way, servitudes or other similar rights on, over, or in respect of any of the Transferred Acquired Assets, including rights of way for highways and other roads, railways, sewers, drains, pipelines, gas or water mains, power, telephone or cable television towers, poles and wires;

5. Applicable Laws and any rights reserved to or vested in any Government Authority to levy taxes, require periodic payment of rentals, fees or other amounts or otherwise to control or regulate any of the Transferred Acquired Assets in any manner, including (a) any rights, obligations, or duties reserved to or vested in any Governmental Authority to control or regulate any Acquired Asset in any manner including to purchase, condemn, expropriate, or recapture any Acquired Asset, and (b) any requirements to obtain the consent or approval of, or to submit notices or filings with, or other actions by, Governmental Authorities in connection with the transfer of the Permits;

6. Statutory exceptions to title and the reservations, limitations and conditions in any grants or transfers from the Crown of any of the Transferred Acquired Assets or interests therein;

7. Liens granted in the ordinary course of business to a public utility, municipality or governmental authority respecting operations pertaining to any of the Transferred Acquired Assets for which any required payments are not delinquent or are adjusted as of the Closing;

8. Undetermined or inchoate securing Taxes not yet due and payable that are adjusted as of the Closing;

9. Security Interest in favour of ATB against the Acquired Tranche B Inventory and the JMB Real Property;

10. Security Interests in favour of Fiera against the Transferred Acquired Assets;

11. Security interests in favour of Canadian Western Bank under and pursuant to the CWB Agreement (as defined in the APA); and,

12. All encumbrances, claims, Liens, registrations, interests, instruments, and Crown Dispositions, as set out below in this Schedule "**C**" and in "**E**" hereto.

Alberta Personal Property Registry Encumbrances

Year	Manufacturer	Model	Serial # / VIN	PPR Registration No.	Secured Party
2001	Travco	Travco 12'x56' 5-Unit Wel	1256110534, 1256110533, 1256110532, 1256110531, 1256110530	18062002625	FIERA PRIVATE DEBT FUND V LP
2007	Bold Developments	Bold Developments 12'x56'	T06012	18062002625	FIERA PRIVATE DEBT FUND V LP
2007	Arctic	Arctic 10' x 30' Tri-Axle	2GRTV30T975073015	18062002625	FIERA PRIVATE DEBT FUND V LP
2007	Arctic	Arctic 10' x 30' Tri-Axle	2GRTN30T075070316	18062002625	FIERA PRIVATE DEBT FUND V LP
2007	Britco	Britco 12'x62' 6-Sleeper	070663	18062002625	FIERA PRIVATE DEBT FUND V LP
2007	Britco	Britco 12'x62' 6-Sleeper	070668	18062002625	FIERA PRIVATE DEBT FUND V LP
2007	Britco	Britco 12'x62' 6-Sleeper	070669	18062002625	FIERA PRIVATE DEBT FUND V LP
2015	Stratis	Stratis 2500 gallon Water	S0SWS035	18062002625	FIERA PRIVATE DEBT FUND V LP
2014	Komatsu	HM400-3	3384	18062002625	FIERA PRIVATE DEBT FUND V LP
2014	Komatsu	HM400-3	3578	18062002625	FIERA PRIVATE DEBT FUND V LP
2014	Komatsu	HM400-3	3420	18062002625	FIERA PRIVATE DEBT FUND V LP
2006	Volvo	L180E	L180EV8273	18062002625	FIERA PRIVATE DEBT FUND V LP
2008	Caterpillar	988H	CAT0988HCBXY02382	18062002625	FIERA PRIVATE DEBT FUND V LP
2006	Volvo	L180E	L180EV8379	18062002625	FIERA PRIVATE DEBT FUND V LP
1999	Komatsu	WA450-3	53372	18062002625	FIERA PRIVATE DEBT FUND V LP
2013	Caterpillar	988H	CAT0988HABXY05172	18062002625	FIERA PRIVATE DEBT FUND V LP
2012	Caterpillar	246C	CAT0246CJJAY07005	18062002625	FIERA PRIVATE DEBT FUND V LP
2012	Caterpillar	246C	CAT0246CVJAY08691	18062002625	FIERA PRIVATE DEBT FUND V LP
2013	Volvo	L220G	VCEL220GC00012444	18062002625	FIERA PRIVATE DEBT FUND V LP
2013	Volvo	L220G	VCEL220GA00012852	18062002625	FIERA PRIVATE DEBT FUND V LP
2009	Volvo	L220F	VCEL220FP00006937	18062002625	FIERA PRIVATE DEBT FUND V LP
2004	Caterpillar	D6N LGP	ALY01814	18062002625	FIERA PRIVATE DEBT FUND V LP
2005	Daewoo	Solar 470LC-V	1357	18062002625	FIERA PRIVATE DEBT FUND V LP
1996	Hitachi	EX55UR	1BG02075	18062002625	FIERA PRIVATE DEBT FUND V LP
2012	Caterpillar	345D	CAT0345DJEEH01226	18062002625	FIERA PRIVATE DEBT FUND V LP
2009	Caterpillar	160M	CAT0160MAB9E00358	18062002625	FIERA PRIVATE DEBT FUND V LP
2001	Toyota	7FGU30	61607	18062002625	FIERA PRIVATE DEBT FUND V LP
2001	Caterpillar	535B	AAE00408	18062002625	FIERA PRIVATE DEBT FUND V LP
2014	Wacker	G100	20278208	18062002625	FIERA PRIVATE DEBT FUND V LP
2006	Terex Amida	AL5200D-4MH	G0F24939	18062002625	FIERA PRIVATE DEBT FUND V LP
2014	Wacker	LTW20	20239723	18062002625	FIERA PRIVATE DEBT FUND V LP
2014	Wacker	LTW20	20239727	18062002625	FIERA PRIVATE DEBT FUND V LP

Year	Manufacturer	Model	Serial # / VIN	PPR Registration No.	Secured Party
2014	Wacker	LTW20	20241937	18062002625	FIERA PRIVATE DEBT FUND V LP
2004	Precision		1420500044	18062002625	FIERA PRIVATE DEBT FUND V LP
2015	Precision	100-Ton Truck S	15-589	18062002625	FIERA PRIVATE DEBT FUND V LP
1980	Midland	Midland 48' Tandem-Axle V	2ATD10186AM110007	18062002625	FIERA PRIVATE DEBT FUND V LP
1979	Fruehauf	28 crusher wat	DXV180718	18062002625	FIERA PRIVATE DEBT FUND V LP
1999	Manac	Super B Tri-Axle	2M5931033X1062925	18062002625 (Block 136)	FIERA PRIVATE DEBT FUND V LP
1999	Manac	Super B	2M5931033X1062925	18062002625 (Block 229)	FIERA PRIVATE DEBT FUND V LP
1997	Great Dane	7911TJW-53	1GRAA0625VB117102	18062002625	FIERA PRIVATE DEBT FUND V LP
2004	Detroit Diesel	Series 60	6R753345	18062002625	FIERA PRIVATE DEBT FUND V LP
2013	MTU Onsite Energy	DP550D65-AH1484	366258101013	18062002625	FIERA PRIVATE DEBT FUND V LP
1998	Stamford	60-kW Portable D	E980749726	18062002625	FIERA PRIVATE DEBT FUND V LP
2004	Elrus	25YD3 SB	M3461ER04SB	18062002625	FIERA PRIVATE DEBT FUND V LP
2008	Kolberg-Pioneer	L3-36125	407136	18062002625	FIERA PRIVATE DEBT FUND V LP
2006	Powerscreen	36"x80' Porta	6002232	18062002625	FIERA PRIVATE DEBT FUND V LP
2008	Kolberg-Pioneer	36"x70' P	408560	18062002625	FIERA PRIVATE DEBT FUND V LP
2004	Elrus	36"x60' Portable Be	M3445ER04PC	18062002625	FIERA PRIVATE DEBT FUND V LP
2004	Elrus	36X60FT-PC	M3446ER04PC	18062002625	FIERA PRIVATE DEBT FUND V LP
1999	Elrus	2434	ER99PC1524	18062002625	FIERA PRIVATE DEBT FUND V LP
2014	Tyalta	42"x60' Transfer B	144260350	18062002625	FIERA PRIVATE DEBT FUND V LP
2010	CEC	30"X60' Portable Belt	30600606J	18062002625	FIERA PRIVATE DEBT FUND V LP
2011	Clemro Industries, Ltd.	7X20-3D	16824471	18062002625	
2006	Fabtec	6'x20' Portable Sc	P620332506	18062002625	FIERA PRIVATE DEBT FUND V LP
2004	Elrus	6X20-3D SC	M3490ER04SC	18062002625	
2002	Elrus	M2943 2236	M2943ER02JP	18062002625	FIERA PRIVATE DEBT FUND V LP
2011	Clemro Industries, Ltd.		16794599	18062002625	FIERA PRIVATE DEBT FUND V LP
2008	Dodge	Ram 2500HD	3D7KS29D78G155808	18062002625	FIERA PRIVATE DEBT FUND V LP
2008	Ford	F350 Super Duty XL	1FTWW31568ED84921	18062002625	FIERA PRIVATE DEBT FUND V LP
2008	Ford	F350 Super Duty XLT	1FTWW31598EE44965	18062002625	FIERA PRIVATE DEBT FUND V LP
2012	Ford	F250 Super Duty XLT	1FT7W2B69CEB71377	18062002625	FIERA PRIVATE DEBT FUND V LP
2012	Ford	F250 Super Duty XLT	1FT7W2B61CEB76184	18062002625	FIERA PRIVATE DEBT FUND V LP
2012	Ford	F150 XLT	1FTFW1EF2CFA97764	18062002625	FIERA PRIVATE DEBT FUND V LP
2012	Ford	F150 XLT	1FTFW1EF0CFA97763	18062002625	FIERA PRIVATE DEBT FUND V LP
2012	Ford	F350 Super Duty	1FT8W3B60CEA94375	18062002625	FIERA PRIVATE DEBT FUND V LP

Year	Manufacturer	Model	Serial # / VIN	PPR Registration No.	Secured Party
2012	Ford	F350 Super Duty	1FT8W3B60CEB56034	18062002625	FIERA PRIVATE DEBT FUND V LP
2008	Kenworth	T800	1NKDL40X68J936318	18062002625	FIERA PRIVATE DEBT FUND V LP
2008	Kenworth	T800	1NKDL40X88J936319	18062002625	FIERA PRIVATE DEBT FUND V LP
2008	Peterbilt	367	1NPTX4EX48D737575	18062002625	FIERA PRIVATE DEBT FUND V LP
2009	Peterbilt	367	1NPTL40X19D778993	18062002625	FIERA PRIVATE DEBT FUND V LP
2009	Kenworth	T800	1XKDP40X49R941482	18062002625	FIERA PRIVATE DEBT FUND V LP
2009	Peterbilt	367	1XPTP40X79D789572	18062002625	FIERA PRIVATE DEBT FUND V LP
2007	International	4200 SBA	1HTMPAFM67H406957	18062002625	FIERA PRIVATE DEBT FUND V LP
2007	Western Star	4900SA	5KKXAM0067PX64941	18062002625	FIERA PRIVATE DEBT FUND V LP
2013	Peterbilt	337	2NP2HN8X1DM205263	18062002625	FIERA PRIVATE DEBT FUND V LP
2015	Peterbilt	567	1XPCDP0X6FD284564	18062002625	FIERA PRIVATE DEBT FUND V LP
2015	Peterbilt	567	1XPCDP0X8FD284565	18062002625	FIERA PRIVATE DEBT FUND V LP
2015	Peterbilt	563 Tandem Axel	1XPCDP0XXFD284566	18062002625	FIERA PRIVATE DEBT FUND V LP
2015	Peterbilt	564 Tandem Axel	1XPCDP0X1FD284567	18062002625	FIERA PRIVATE DEBT FUND V LP
2015	Peterbilt	565 Tandem Axel	1XPCDP0X3FD284568	18062002625	FIERA PRIVATE DEBT FUND V LP
2015	Peterbilt	566 Tandem Axel	1XPCDP0X5FD284569	18062002625 (Block 185)	FIERA PRIVATE DEBT FUND V LP
2015	Peterbilt	568 Tandem Axel	1XPCDP0X5FD284569	18062002625 (Block 187)	FIERA PRIVATE DEBT FUND V LP
2015	Peterbilt	569 Tandem Axel	1XPCDP0X5FD284569	18062002625 (Block 188)	FIERA PRIVATE DEBT FUND V LP
2015	Peterbilt	570 Tandem Axel	1XPCDP0X5FD284569	18062002625 (Block 189)	FIERA PRIVATE DEBT FUND V LP
2015	Peterbilt	Arnes Tri-Axle	1XPCDP0X5FD284569	18062002625 (Block 190)	FIERA PRIVATE DEBT FUND V LP
2015	Peterbilt	567 Tandem Axel	1XPCDP0X1FD284570	18062002625	FIERA PRIVATE DEBT FUND V LP
2013	Peterbilt	367	1XPTP4TX9DD184358	18062002625	FIERA PRIVATE DEBT FUND V LP
2013	Peterbilt	367	1XPTD40X6DD197601	18062002625	FIERA PRIVATE DEBT FUND V LP
2014	Peterbilt	348	2NP3LJ0X2EM242007	18062002625	FIERA PRIVATE DEBT FUND V LP
1996	Arrow	Arrow Jeep	259CSCB2XT1073252	18062002625	FIERA PRIVATE DEBT FUND V LP
1994	Arnes	Arnes Jeep	AR804203	18062002625	FIERA PRIVATE DEBT FUND V LP
2000	Decap	Super B	2D9D54C37YL017498	18062002625	FIERA PRIVATE DEBT FUND V LP
2000	Decap	Super B	2D9DS2B31YL017499	18062002625	FIERA PRIVATE DEBT FUND V LP
2006	Arnes	Arnes Pup	2A92142466A003242	18062002625	FIERA PRIVATE DEBT FUND V LP
2006	Decap	Super B	2D9DS4C476L017782	18062002625	FIERA PRIVATE DEBT FUND V LP
2006	Decap	Super B	2D9DS2B326L017783	18062002625	FIERA PRIVATE DEBT FUND V LP
2006	Decap	Super B	2D9DS4C406L017784	18062002625	FIERA PRIVATE DEBT FUND V LP

Year	Manufacturer	Model	Serial # / VIN	PPR Registration No.	Secured Party
2006	Decap	Super B	2D9DS2B366L017785	18062002625	FIERA PRIVATE DEBT FUND V LP
2006	Decap	Super B	2D9DS4C446L017786	18062002625	FIERA PRIVATE DEBT FUND V LP
2006	Decap	Super B	2D9DS2B3X6L017787	18062002625	FIERA PRIVATE DEBT FUND V LP
2007	Arnes	Tri-Axle	2A90737307A003528	18062002625	FIERA PRIVATE DEBT FUND V LP
2008	Arnes		2A92142498A003884	18062002625	FIERA PRIVATE DEBT FUND V LP
2008	Arnes	Quad-Axle	2A92142408A003885	18062002625	FIERA PRIVATE DEBT FUND V LP
2009	Arnes	Tri-Axle End Dump T	2A90737359A003298	18062002625	FIERA PRIVATE DEBT FUND V LP
2009	Arnes	Tri-Axle End Dump T	2A90737379A003299	18062002625	FIERA PRIVATE DEBT FUND V LP
2009	Arnes	Tri-Axle End Dump T	2A907373X9A003300	18062002625	FIERA PRIVATE DEBT FUND V LP
2009	Arnes	Tri-Axle End Dump T	2A90737319A003301	18062002625	FIERA PRIVATE DEBT FUND V LP
2009	Arnes	Tri-Axle End Dump T	2A90737339A003302	18062002625	FIERA PRIVATE DEBT FUND V LP
2009	Arnes	Quad-Axle End Dump	2A92142499A003238	18062002625	FIERA PRIVATE DEBT FUND V LP
1999	Argo	8' x 21' Tandem-Axl	2AABDE821X1000122	18062002625	FIERA PRIVATE DEBT FUND V LP
2008	Doepker	Tri-Axle End Dump	2DEGEDZ3381023677	18062002625	FIERA PRIVATE DEBT FUND V LP
2006	Doepker		2DESNSZ3161018845	18062002625	FIERA PRIVATE DEBT FUND V LP
2015	Arnes	Tri-Axle	2A9073731FA003598	18062002625	FIERA PRIVATE DEBT FUND V LP
2015	Arnes	Tri-Axle	2A9074131FA003583	18062002625	FIERA PRIVATE DEBT FUND V LP
2015	Arnes	Tri-Axle	2A9073732FA003576	18062002625	FIERA PRIVATE DEBT FUND V LP
2015	Arnes	Tri-Axle	2A9073738FA003596	18062002625	FIERA PRIVATE DEBT FUND V LP
2015	Arnes	Tri-Axle	2A907373XFA003597	18062002625	FIERA PRIVATE DEBT FUND V LP
2015	Arnes	Tri-Axle	2A9073733FA003599	18062002625	FIERA PRIVATE DEBT FUND V LP
2013	Arnes	40-Ton Tri-Axle	2A9125335DA003461	18062002625	FIERA PRIVATE DEBT FUND V LP
2013	Lode King	SDS53-3	2LDSD5331DS055478	18062002625	FIERA PRIVATE DEBT FUND V LP
2015	Arnes	50-Ton Tri-Axle	2A9105630FA003016	18062002625	FIERA PRIVATE DEBT FUND V LP
1980	Willock	Single-Axle Float	2ATA06238AM107038	18062002625	FIERA PRIVATE DEBT FUND V LP
1999	Manac	Tandem-Axle	2M5920884X1062932	18062002625	FIERA PRIVATE DEBT FUND V LP
2007	Dodge	Ram 3500HD	3D7MX48A27G781634	18062002625	FIERA PRIVATE DEBT FUND V LP
2008	Ford	F350 Super Duty XLT	1FTWW31518EE16691	18062002625	FIERA PRIVATE DEBT FUND V LP
2008	Ford	F350 Super Duty XLT	1FTWW31598ED98117	18062002625	FIERA PRIVATE DEBT FUND V LP
2008	Ford	F350 Super Duty XLT	1FTWW31538EE44962	18062002625	FIERA PRIVATE DEBT FUND V LP
2012	Dodge	Ram 2500 SLT	3C6TD5JT2CG113379	18062002625	FIERA PRIVATE DEBT FUND V LP

Permitted Encumbrances Registered with Alberta Parks and Environment:

All Conditional Surrenders of Leases registered in respect of the Crown Dispositions described in Schedule "**D**" hereto, pursuant to the Memorandum of Agreement, dated January 13, 2020, between Her Majesty the Queen in right of the Province of Alberta, as represented by the Department of Environment and Sustainable Resource Development, and, Fiera Private Debt Fund V LP, by its general partner Fiera Private Debt Fund GP Inc., in its own capacity and as collateral agent for Fiera Private Debt Fund VI LP, by its general partner Fiera Private Debt Fund GP Inc.

Without limiting the generality of the foregoing, the following Conditional Surrenders of Leases are Permitted Encumbrances:

Conditional Surrender of Lease between Her Majesty the Queen in right of the Province of Alberta, as represented by the Department of Environment and Sustainable Resource Development, as lessor, 2161889 Alberta Ltd., as lessee, and, Fiera Private Debt Fund V LP, by its general partner Fiera Private Debt Fund GP Inc., in its own capacity and as collateral agent for Fiera Private Debt Fund VI LP, by its general partner Fiera Private Debt Fund GP Inc., as mortgagee, dated December 18, 2019 ("**CSL 200014**"), in respect of SML 080085 (as defined in Schedule "**D**");

Conditional Surrender of Lease between Her Majesty the Queen in right of the Province of Alberta, as represented by the Department of Environment and Sustainable Resource Development, as lessor, 2161889 Alberta Ltd., as lessee, and, Fiera Private Debt Fund V LP, by its general partner Fiera Private Debt Fund GP Inc., in its own capacity and as collateral agent for Fiera Private Debt Fund VI LP, by its general partner Fiera Private Debt Fund GP Inc., as mortgagee, dated December 18, 2019 ("**CSL 200015**"), in respect of SML 100085 (as defined in Schedule "**D**");

Conditional Surrender of Lease between Her Majesty the Queen in right of the Province of Alberta, as represented by the Department of Environment and Sustainable Resource Development, as lessor, 2161889 Alberta Ltd., as lessee, and, Fiera Private Debt Fund V LP, by its general partner Fiera Private Debt Fund GP Inc., in its own capacity and as collateral agent for Fiera Private Debt Fund VI LP, by its general partner Fiera Private Debt Fund GP Inc., as mortgagee, dated December 18, 2019 ("**CSL 200016**"), in respect of SML 110025 (as defined in Schedule "**D**");

Conditional Surrender of Lease between Her Majesty the Queen in right of the Province of Alberta, as represented by the Department of Environment and Sustainable Resource Development, as lessor, 2161889 Alberta Ltd., as lessee, and, Fiera Private Debt Fund V LP, by its general partner Fiera Private Debt Fund GP Inc., in its own capacity and as collateral agent for Fiera Private Debt Fund VI LP, by its general partner Fiera Private Debt Fund GP Inc., as mortgagee, dated December 18, 2019 ("**CSL 200017**"), in respect of SML 110026 (as defined in Schedule "**D**");

Conditional Surrender of Lease between Her Majesty the Queen in right of the Province of Alberta, as represented by the Department of Environment and Sustainable Resource Development, as lessor, 2161889 Alberta Ltd., as lessee, and, Fiera Private Debt Fund V LP, by its general partner Fiera Private Debt Fund GP Inc., in its own capacity and as collateral agent for

Fiera Private Debt Fund VI LP, by its general partner Fiera Private Debt Fund GP Inc., as mortgagee, dated December 18, 2019 ("**CSL 200018**"), in respect of SML 110045 (as defined in Schedule "**D**");

Conditional Surrender of Lease between Her Majesty the Queen in right of the Province of Alberta, as represented by the Department of Environment and Sustainable Resource Development, as lessor, 2161889 Alberta Ltd., as lessee, and, Fiera Private Debt Fund V LP, by its general partner Fiera Private Debt Fund GP Inc., in its own capacity and as collateral agent for Fiera Private Debt Fund VI LP, by its general partner Fiera Private Debt Fund GP Inc., as mortgagee, dated December 18, 2019 ("**CSL 200019**"), in respect of SML 110046 (as defined in Schedule "**D**");

Conditional Surrender of Lease between Her Majesty the Queen in right of the Province of Alberta, as represented by the Department of Environment and Sustainable Resource Development, as lessor, 2161889 Alberta Ltd., as lessee, and, Fiera Private Debt Fund V LP, by its general partner Fiera Private Debt Fund GP Inc., in its own capacity and as collateral agent for Fiera Private Debt Fund VI LP, by its general partner Fiera Private Debt Fund GP Inc., as mortgagee, dated December 18, 2019 ("**CSL 200020**"), in respect of SML 110047 (as defined in Schedule "**D**");

Conditional Surrender of Lease between Her Majesty the Queen in right of the Province of Alberta, as represented by the Department of Environment and Sustainable Resource Development, as lessor, 2161889 Alberta Ltd., as lessee, and, Fiera Private Debt Fund V LP, by its general partner Fiera Private Debt Fund GP Inc., in its own capacity and as collateral agent for Fiera Private Debt Fund VI LP, by its general partner Fiera Private Debt Fund GP Inc., as mortgagee, dated December 18, 2019 ("**CSL 200021**"), in respect of SML 120005 (as defined in Schedule "**D**");

Conditional Surrender of Lease between Her Majesty the Queen in right of the Province of Alberta, as represented by the Department of Environment and Sustainable Resource Development, as lessor, 2161889 Alberta Ltd., as lessee, and, Fiera Private Debt Fund V LP, by its general partner Fiera Private Debt Fund GP Inc., in its own capacity and as collateral agent for Fiera Private Debt Fund VI LP, by its general partner Fiera Private Debt Fund GP Inc., as mortgagee, dated December 18, 2019 ("**CSL 200022**"), in respect of SML 120006 (as defined in Schedule "**D**"); and,

Conditional Surrender of Lease between Her Majesty the Queen in right of the Province of Alberta, as represented by the Department of Environment and Sustainable Resource Development, as lessor, 2161889 Alberta Ltd., as lessee, and, Fiera Private Debt Fund V LP, by its general partner Fiera Private Debt Fund GP Inc., in its own capacity and as collateral agent for Fiera Private Debt Fund VI LP, by its general partner Fiera Private Debt Fund GP Inc., as mortgagee, dated December 18, 2019 ("**CSL 200023**"), in respect of SML 120100 (as defined in Schedule "**D**").

Permitted Encumbrances Registered against Certificates of Title:

I. The "Lands" - NE ¼ of 35-56-6-W4M
LEGAL DESCRIPTION

THE NORTH EAST QUARTER OF SECTION THIRTY FIVE (35)
TOWNSHIP FIFTY SIX (56)
RANGE SIX (6)
WEST OF THE FOURTH MERIDIAN
CONTAINING 64.7 HECTARES (160) ACRES MORE OR LESS
EXCEPTING THEREOUT: HECTARES (ACRES) MORE OR LESS

A) PLAN 6430 KS - ROAD 0.417 1.03

B) PLAN 395 RS - ROAD 0.615 1.52

C) PLAN 9222585 - ROAD 0.407 1.01

EXCEPTING THEREOUT ALL MINES AND MINERALS

LINC	TITLE NUMBER	REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
0023 485 379	922 302 625	7814UH	21/02/1974	CAVEAT CAVEATOR – K+S WINDSOR SALT LTD. / K+S SEL WINDSOR LTEE. 755 BOUL ST-JEAN, SUITE 700 POINTE-CLAIRE QUEBEC H9R5M9 (DATA UPDATED BY: CHANGE OF NAME 142209827)
		792 233 325	25/09/1979	CAVEAT RE: EASEMENT CAVEATOR – ALBERTA POWER LIMITED.
		832 213 053	02/09/1983	CAVEAT RE: EASEMENT CAVEATOR – CENTRA GAS ALBERTA INC. 5509 – 45 ST., LEDUC ALBERTA T9E6T6

				(DATA UPDATED BY: TRANSFER OF CAVEAT 982397886)
		122 244 840	30/07/2012	CAVEAT RE: LEASE INTEREST UNDER 20 ACRES CAVEATOR – CANADIAN NATURAL RESOURCES LIMITED. BOX 6926, STATION “D” CALGARY ALBERTA T2P2G1 AGENT – D.R. HURL & ASSOCIATES LTD.
		202 177 243	20/08/2020	CAVEAT RE: AGREEMENT CHARGING LAND CAVEATOR – ATB FINANCIAL. C/O DENTONS CANADA LLP ATTN TOM GUSA 2500 STANTEC TOWER 10220 103 AVENUE NW EDMONTON ALBERTA T5J0K4 AGENT – JAMES B EDGAR

II. “Shankowski” - <u>SW 21-56-7-W4</u>

LEGAL DESCRIPTION

FIRST

MERIDIAN 4 RANGE 7 TOWNSHIP 56
SECTION 21
QUARTER NORTH WEST
CONTAINING 64.7 HECTARES (160) ACRES MORE OR LESS
EXCEPTING THEREOUT: HECTARES (ACRES) MORE OR LESS

A) PLAN 1722948 - ROAD 0.417 1.03

EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

SECOND

MERIDIAN 4 RANGE 7 TOWNSHIP 56
SECTION 21
QUARTER SOUTH WEST
CONTAINING 64.7 HECTARES (160) ACRES MORE OR LESS
EXCEPTING THEREOUT: HECTARES (ACRES) MORE OR LESS

A) PLAN 1722948 - ROAD 0.417 1.03

EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

LINC	TITLE NUMBER	REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
0037 711 538	172 269 783 +5	862 021 825	30/01/1986	UTILITY RIGHT OF WAY GRANTEE – ALBERTA POWER LIMITED AS TO PORTION OR PLAN: 4286BM
		972 235 435	08/08/1997	CAVEAT RE: RIGHT OF WAY AGREEMENT CAVEATOR – CANADIAN NATURAL RESOURCES LIMITED. BOX 6926, STATION “D” CALGARY ALBERTA T2P2G1 AGENT – DONNA FELLOWS AFFECTED LAND: 4;7;56;21;SW (DATA UPDATED BY: CHANGE OF NAME 042462560)

III. “Buksa” - <u>N ¼ of 24-56-7-W4M</u>

LEGAL DESCRIPTION

FIRST

ALL OF THAT PORTION OF THE NORTH WEST QUARTER OF SECTION TWENTY FOUR (24)
TOWNSHIP FIFTY SIX (56)
RANGE SEVEN (7)
WEST OF THE FOURTH MERIDIAN
NOT COVERED BY THE WATERS OF NORTH SASKATCHEWAN RIVER, AS SHOWN ON A PLAN OF SURVEY OF THE SAID TOWNSHIP SIGNED AT OTTAWA ON THE 20TH DAY OF OCTOBER, A.D. 1922, CONTAINING 58.5 HECTARES (144.60 ACRES) MORE OR LESS.
EXCEPTING THEREOUT: .829 HECTARES (2.05 ACRES) MORE OR LESS,
AS SHOWN ON ROAD PLAN 2208 E.T.
EXCEPTING THEREOUT ALL MINES AND MINERALS

SECOND

ALL OF THAT PORTION OF THE NORTH EAST QUARTER OF SECTION TWENTY FOUR (24)
TOWNSHIP FIFTY SIX (56)
RANGE SEVEN (7)
WEST OF THE FOURTH MERIDIAN
NOT COVERED BY THE WATERS OF SASKATCHEWAN RIVER, AS SHOWN ON A PLAN OF SURVEY OF THE SAID TOWNSHIP SIGNED AT OTTAWA ON THE 6TH DAY OF JUNE A.D. 1906, CONTAINING 63.7 HECTARES, (157.60 ACRES) MORE OR LESS.
EXCEPTING THEREOUT:

		HECTARES	(ACRES) MORE OR LESS
A) PLAN 2208ET -	ROAD	1.19	2.94
B) PLAN 9120726 -	ROAD	12.344	30.50

EXCEPTING THEREOUT ALL MINES AND MINERALS

LINC	TITLE NUMBER	REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
0014 312 011 0017 352 246	912 059 126 +2	6667HE	25/01/1949	CAVEAT CAVEATOR – CANADIAN UTILITIES LIMITED. AFFECTED LAND: 4;7;56;24; NE

		832 064 361	18/03/1983	CAVEAT RE: RIGHT OF WAY AGREEMENT CAVEATOR – HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA AS REPRESENTED BY THE MINISTER OF TRANSPORTATION 50TH STREET ATRIA, 4949 – 94B AVENUE, EDMONTON ALBERTA T6B2T5 AFFECTED LAND: 4;7;56;24;NW 4;7;56;24;NE
		912 059 125	12/03/1991	DISCHARGE OF CAVEAT 832064361 AFFECTED LAND: 4;7;56;24;NE
		132 414 533	19/12/2013	CAVEAT ROYALTY AGREEMENT CAVEATOR – JMB CRUSHING SYSTEMS ULC C/O EUGENE BUCK PO BOX 6977 BONNYVILLE ALBERTA T9N2H4 AGENT – ALLAN W FRASER AFFECTED LAND: 4;7;56;24;NE

IV. "Andrychuk" - <u>SW 15-57-14-W4</u>

LEGAL DESCRIPTION

MERIDIAN 4 RANGE 14 TOWNSHIP 57
SECTION 15
ALL THAT PORTION OF THE SOUTH WEST QUARTER
LYING TO THE WEST OF THE RIGHT BANK OF THE NORTH SASKATCHEWAN RIVER
AS SHOWN ON A PLAN OF SURVEY OF THE SAID TOWNSHIP DATED 6 OCTOBER 1913
CONTAINING 64.462 HECTARES (159.40 ACRES) MORE OR LESS
EXCEPTING THEREOUT: 0.19 OF AN ACRE MORE OR LESS
AS SHOWN ON ROAD PLAN 2915ET
EXCEPTING THEREOUT ALL MINES AND MINERALS

LINC	TITLE NUMBER	REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
0023 553 580	202 076 980 +1	762 127 955	19/07/1976	UTILITY RIGHT OF WAY GRANTEE – THE COUNTY OF TWO HILLS NO. 21.

V. "Havener" - NW 16-56-7-W4

LEGAL DESCRIPTION

MERIDIAN 4 RANGE 7 TOWNSHIP 56
SECTION 16
QUARTER NORTH WEST
CONTAINING 64.7 HECTARES (160) ACRES MORE OR LESS
EXCEPTING THEREOUT: HECTARES (ACRES) MORE OR LESS

A) PLAN 4286BM -ROAD 0.0004 0.001

B) ALL THAT PORTION COMMENCING AT THE SOUTH WEST CORNER OF THE SAID QUARTER SECTION; THENCE EASTERLY ALONG THE SOUTH BOUNDARY 110 METRES; THENCE NORTHERLY AND PARALLEL TO THE WEST BOUNDARY OF THE SAID QUARTER 110 METRES; THENCE WESTERLY AND PARALLEL TO THE SAID SOUTH BOUNDARY TO A POINT ON THE WEST BOUNDARY; THENCE SOUTHERLY ALONG THE SAID WEST BOUNDARY TO THE POINT OF COMMENCEMENT
CONTAINING …….. 1.21 3.00

C) PLAN 1722948 - ROAD 0.360 0.89

EXCEPTING THEREOUT ALL MINES AND MINERALS

LINC	TITLE NUMBER	REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
0037 711 496	172 269 783 +2	882 162 859	19/07/1988	CAVEAT RE: EASEMENT CAVEATOR – JIMMY DAVID YARMUCH BOX 645

				ELK POINT ALBERTA T0A1A0 (DATA UPDATED BY: TRANSFER OF CAVEAT 012383325)
		972 003 876	06/01/1997	CAVEAT RE: SURFACE LEASE CAVEATOR: CANADIAN NATURAL RESOURCES LIMITED. BOX 6926, STATION “D” CALGARY ALBERTA T2P2G1 AGENT – DONNA FELLOWS (DATA UPDATED BY: CHANGE OF NAME 042462572)
		972 229 534	05/08/1997	UTILITY RIGHT OF WAY GRANTEE – CANADIAN NATURAL RESOURCES LIMITED. BOX 6926, STATION “D” CALGARY ALBERTA T2P2G1 (DATA UPDATED BY: CHANGE OF NAME 042463878)

SCHEDULE "D"
CROWN DISPOSITIONS

Crown Dispositions

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

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

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

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

Surface Material Lease No. 110045 dated March 18, 2015 in respect of Aggregate Pit JLG 7 ("**SML 110045**") located within E ½ of 15-61-18-W4M.

Surface Material Lease No. 110046 dated March 18, 2015 in respect of Aggregate Pit JLG 8 ("**SML 110046**") located within N ½ of 15-61-18-W4M.

Surface Material Lease No. 120006 dated October 5, 2017 in respect of Aggregate Pit JLG 11 ("**SML 120006**") located within NW14-61-18-W4.

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

Surface Material Lease No. 110047 dated March 18, 2015 ("**SML 110047**") located within SE 15-61-18-W4M, SW 15-61-18-W4M, and NW-15-61-18-W4M.

Surface Material Lease No. 120005 dated October 5, 2017 ("**SML 120005**") located within SW 14-61-18 W4M and NW 14-61-18 W4M.

Land Keys	Document ID	Client ID	Participant
W4-18-061-11-SE	TFA 201290	1021767-001	2161889 ALBERTA LTD.
W4-18-061-14-NW W4-18-061-14-SW	TFA 202260	1021767-001	2161889 ALBERTA LTD.
W4-18-065-13-SE W4-18-065-13-SW	DLO 170011	1021767-001	2161889 ALBERTA LTD.

W4-18-065-13-SE W4-18-065-13-SW	TFA 201094	1021767-001	2161889 ALBERTA LTD.
W4-18-065-13-SW	DLO 170011	1021767-001	2161889 ALBERTA LTD.
W4-18-065-13-SW	TFA 201094	1021767-001	2161889 ALBERTA LTD.
W4-19-063-12-NE W4-19-063-12-NW	DLO 200059	1021767-001	2161889 ALBERTA LTD.

Crown Disposition Documents:

Land Keys	Document ID	Client ID	Participant
W4-08-063-30-SW	CRB 120047	1022044-001	JMB CRUSHING SYSTEMS INC.
W4-12-063-21-SW	CRB 000104	1022044-001	JMB CRUSHING SYSTEMS INC.
W4-18-061-11-NE	CRB 120004	1021767-001	2161889 ALBERTA LTD.
W4-18-061-11-SE	CRB 120005	1021767-001	2161889 ALBERTA LTD.
W4-18-061-14-NW W4-18-061-14-SW	CRB 140022	1021767-001	2161889 ALBERTA LTD.
W4-18-061-15-NE W4-18-061-15-NW	CRB 120037	1021767-001	2161889 ALBERTA LTD.
W4-18-061-15-NE W4-18-061-15-NW	CRB 120039	1021767-001	2161889 ALBERTA LTD.
W4-18-061-15-NE W4-18-061-15-SE	CRB 120037	1021767-001	2161889 ALBERTA LTD.
W4-18-061-15-NE	CRB 120039	1021767-001	2161889 ALBERTA LTD.

Land Keys	Document ID	Client ID	Participant
W4-18-061-15-SE			
W4-18-061-15-NW	CRB 120039	1021767-001	2161889 ALBERTA LTD.
W4-18-061-15-SE W4-18-061-15-SW	CRB 120037	1021767-001	2161889 ALBERTA LTD.
W4-18-061-15-SE W4-18-061-15-SW	CRB 120039	1021767-001	2161889 ALBERTA LTD.
W4-18-061-21-SE	CRB 150020	1021767-001	2161889 ALBERTA LTD.
W4-18-065-13-SE W4-18-065-13-SW	CRB 100024	1021767-001	2161889 ALBERTA LTD.
W4-18-065-13-SW	CRB 100024	1021767-001	2161889 ALBERTA LTD.
W4-19-063-12-NE W4-19-063-12-NW	CRB 100032	1021767-001	2161889 ALBERTA LTD.
W4-19-063-12-NE W4-19-063-12-NW	CRB 140069	1021767-001	2161889 ALBERTA LTD.
W4-19-063-13-SW	CRB 100032	1021767-001	2161889 ALBERTA LTD.

Water Act Authorizations re SMLs

SML	Necessary Permits
SML 110045	Water Act License 00384205 Water Act Approval 00395017
SML 110026	Water Act License 00368596 Water Act Approval 00383852
SML 110025	Water Act License 00368589 Water Act Approval 00383854

This is Exhibit "D" referred to in the Affidavit of

Katie Doran

sworn before me this 4th day of December, 2020.

A Commissioner for Oaths in and for the Province of Alberta

Connor E.J. O'Brien
Student-at-Law

Clerk's Stamp

COURT FILE NUMBER	2001-05482
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. AND 2161889 ALBERTA LTD.
DOCUMENT	**REVERSE VESTING ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, Alberta T2P 4K9 Attention: Sean Collins / Pantelis Kyriakakis Tel: 403-260-3531 / 3536 Fax: 403-260-3501 Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED:	**October 16, 2020**
LOCATION AT WHICH ORDER WAS MADE:	**Calgary Court House**
NAME OF JUSTICE WHO MADE THIS ORDER:	**Honourable Justice Eidsvik**

UPON THE APPLICATION (the "**Application**") of FTI Consulting Canada Inc. (the "**Monitor**") in its capacity as the Court-appointed monitor of JMB Crushing Systems Inc. ("**JMB**") and 2161889 Alberta Ltd. ("**216**", 216 and JMB are collectively, the "**Companies**", and individually, each a "**Company**") for an order pursuant to an amended and restated asset purchase agreement dated September 27, 2020 (the "**Mantle APA**") between the Companies, as vendors, and Mantle Materials Group Ltd. ("**Mantle**"), as purchaser: (i) transferring and vesting in 216 all of the right, title and interest of JMB in and to the Remaining JMB Assets and the Remaining JMB Liabilities (each as defined in the Mantle APA) (collectively, the "**Reverse Vesting**"); and, (ii) transferring and vesting in and to Eastside Rock Products, Inc. ("**Eastside**") all of the right, title and interest of JMB in and to the Eastside Equipment (as defined in paragraph 2(a) below).

AND UPON HAVING READ (a) the Initial Order pronounced on May 1, 2020, as amended and restated by the Amended and Restated Initial Order, pronounced on May 11, 2020 (as amended, the "**Initial Order**"); (b) the Seventh Report of the Monitor, dated September 30, 2020 (the "**Seventh Monitor's Report**"); (c) the Affidavit of Service of Katie Doran (the "**Service Affidavit**"), to be filed; (d) the sale approval and vesting order (the "**Mantle Sale Approval and Vesting Order**") approving the purchase and sale transaction contemplated by the Mantle APA and transferring to and vesting in Mantle all of the right, title and interest of the Companies in and to the Acquired Assets (as such term is defined in the Mantle APA) which has been applied for contemporaneously with the application for this order; (e) the joint plan of arrangement of Mantle and JMB under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 and the *Business Corporations Act*, SBC 2002, c 57 (the "**Plan**"); (f) the Sanction Order which has been applied for contemporaneously with the application for this order; (g) the sale and investment solicitation process attached as Schedule "A" to the Initial Order (the "**SISP**"); (h) the Affidavit of Byron Levkulich, sworn on September 30, 2020; **AND UPON HEARING** the submissions of counsel for the Monitor, the Companies, Mantle, and for any other parties who may be present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Application and the Seventh Monitor's Report is abridged, the Application is properly returnable today, service of the Application and the Seventh Monitor's Report on the service list, in the manner described in the Service Affidavit, is good and sufficient, and no other persons, other than those listed on the service list (the "**Service List**") attached as an exhibit to the Service Affidavit, are entitled to service of the Application or the Seventh Monitor's Report.

DEFINED TERMS

2. Capitalized terms used in this Order and not otherwise defined shall have the meanings given to them in the Mantle APA or as defined below, except to the extent otherwise defined herein:

    (a) "**Eastside Equipment**" means the equipment in which JMB holds title to, is secured by Fiera, and is located on property that Eastside had access to in the State of Washington, as set out in **Schedule "A"**;

(b) "**Effective Time**" has the meaning given to it in the Plan;

(c) "**Excluded Aggregate**" means the Aggregate (as defined in the Mantle APA) which has been extracted and is being stored or is located in or around the Excluded Aggregate Pits, including that listed in **Schedule "D"**;

(d) "**Excluded Aggregate Pits**" means the pits and infrastructure located on lands and premises which are not included in the Acquired Assets (as defined in the Mantle APA), including those listed on **Schedule "E"**, together with any Royalty Agreements (as defined in the Mantle APA) or Surface Material Leases, and Crown Disposition Documents concerning or in the name of JMB;

(e) "**Excluded Assets**" means (i) the Fiera Disposed Equipment, (ii) the Eastside Equipment, (iii) the PMSI Property, (iv) the Edmonton Lease (as defined in the Mantle APA), (v) the Excluded Aggregate, (vi) debts, accounts receivable, claims, actions or liabilities, owing to JMB, (vii) the Excluded Aggregate Pits, (viii) the Excluded Books and Records (as defined in the Mantle APA) and (ix) any Designated Permits (as defined in the Mantle APA);

(f) "**Excluded Liabilities**" means any Liabilities (as defined in the Mantle APA) of any kind to any Person (as defined in the Mantle APA) other than the Assumed Liabilities (as defined in the Mantle APA);

(g) "**Fiera Disposed Equipment**" means any personal property in which a Company has or had an interest against which the Security Interest (as defined in the Mantle APA) in favour of Fiera (as defined in the Mantle APA) ranked in priority to any Security Interest in favour of any other Person (as defined in the Mantle APA) that was sold or subject to an agreement to sell, to a Person other than Mantle prior to Closing (as defined in the Mantle APA) pursuant to the SISP or otherwise, including the equipment listed in **Schedule "B"**;

(h) "**PMSI Holder**" has the meaning given to it in the Plan;

(i) "**PMSI Property**" has the meaning given to it in the Plan, including the equipment listed in **Schedule "C"**;

(j) "**Remaining JMB Assets**" means (i) all proceeds of the Fiera Disposed Equipment; (ii) all proceeds derived by JMB under the Mantle APA; and, (iii) all Excluded Assets other than (a) the Fiera Disposed Equipment, (b) the Eastside Equipment, and (c) the Edmonton Lease (as defined in the Mantle APA);

(k) "**Surface Material Lease**" means a Contract (as defined in the Mantle APA) consisting of a surface material lease granted by a Governmental Authority (as defined in the Mantle APA) referred to therein in favour of either Company which provides, *inter alia*, in exchange for the payment specified therein, the grant to such Company of rights to enter the lands legally identified therein for the purpose of the extraction of Aggregate (as defined in the Mantle APA) from in or under such lands and to carry out construction, operation, use and reclamation in respect thereof, together with the associated conservation reclamation business plan associated with such lands;

APPROVAL OF REVERSE VESTING

3. The Reverse Vesting is hereby approved and JMB, 216 and the Monitor are hereby authorized and empowered to take such additional steps and JMB and 216 are hereby authorized and directed to execute such additional documents as may be necessary or desirable for completion of the Reverse Vesting and conveyance of the Remaining JMB Assets and the Remaining JMB Liabilities to 216, in accordance with this Order.

REVERSE VESTING IN 216

4. Subject only to approval by Alberta Environment and Parks ("**AEP**") of the transfer of any Crown Dispositions (as defined below) and upon delivery of a Monitor's certificate to Mantle and the Companies, substantially in the form attached as Schedule "A" to Mantle Sale Approval and Vesting Order (the "**Mantle Monitor's Certificate**"), the following shall occur and shall be deemed to have occurred at the Effective Time and in the following order:

(a) all of JMB's right, title and interest in and to the Remaining JMB Assets shall vest absolutely in the name of 216, but shall remain subject to any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges,

interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including, without limiting the generality of the foregoing:

(i) any encumbrances or charges created by the Initial Order;

(ii) all charges, security interests or claims evidenced by registrations pursuant to: (i) the *Personal Property Security Act* (Alberta) or any other real or personal property registry system; (ii) the *Land Titles Act*, RSA 2000, c L-7 (the "**Land Titles Act**"); and, (iii) the *Public Lands Act*, RSA 2000, c. P-40 (the "**PLA**"), and the regulations thereunder;

(iii) any liens or claims of lien under the Builders' Lien Act (Alberta);,

(all of which are collectively referred to as the "**Remaining JMB Encumbrances**"), all of which shall continue to attach to the Remaining JMB Assets and to any and all proceeds of the Remaining JMB Assets (any such proceeds being the "**Remaining JMB Proceeds**") and to secure the payment and performance of any Remaining JMB Liabilities secured thereby, with such Remaining JMB Encumbrances and Remaining JMB Liabilities having the same nature and priority as against the Remaining JMB Assets and their Remaining JMB Proceeds as they had immediately prior to the transfer and vesting;

(b) the Remaining JMB Assets and their Remaining JMB Proceeds shall be held in trust by 216 for and on behalf of Persons to whom the Remaining JMB Liabilities are owed and the Persons holding any Remaining JMB Encumbrances securing the payment and performance thereof (such Persons being collectively referred to as the "**JMB Creditors**" and individually referred to as a "**JMB Creditor**");

(c) any and all Remaining JMB Liabilities (including, for greater certainty, the Remaining ATB Debt and Remaining Fiera Debt) shall be transferred to and vest absolutely in 216 and 216 shall be deemed to have assumed and become liable for such Remaining JMB Liabilities up to and solely to the extent of the Remaining JMB Assets and the Remaining JMB Proceeds, and subject to the Initial Order and any other applicable Order in these proceedings, the JMB Creditors (including, for

greater certainty, ATB and Fiera) will have all of the rights, remedies, recourses, benefits and interests against 216 up to and solely to the extent of the Remaining JMB Assets, which immediately prior to the Reverse Vesting they had against JMB, and the nature of the Remaining JMB Liabilities, including, without limitation, their amount, priority, and secured or unsecured status, shall not be affected or altered as a result of their transfer to and vesting in 216;

(d) subject to sub-paragraph 4(e) of this Order:

(i) the JMB Creditors shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with pursuant to the Remaining JMB Liabilities or the Remaining JMB Encumbrances against JMB or any assets held by JMB subsequent to the Reverse Vesting;

(ii) any JMB Creditor that prior to the Effective Time had a valid right or claim against JMB under or pursuant to any Remaining JMB Liability shall no longer have such right or claim against JMB but shall have an equivalent Remaining JMB Liability claim against 216 in respect of the Remaining JMB Liability up to and as against 216's interests in the Remaining JMB Assets, from and after the Effective Time in its place and stead, and nothing in this Order limits, lessens, extinguishes, or alters the Remaining JMB Liability claimed by any such JMB Creditor as against 216 up to and to the extent of the Remaining JMB Assets and the Remaining JMB Proceeds; and

(iii) JMB shall be deemed released from any and all Remaining JMB Liabilities such that no Encumbrance securing any Remaining JMB Liabilities shall attach to, encumber or otherwise remain as a claim against or interest in any property or assets of JMB, and no JMB Creditor shall have any claim therefor against JMB in respect thereof; and

(e) notwithstanding anything in sub-paragraph 4(d) of this Order, JMB shall continue to be liable to ATB for the Remaining ATB Debt and to Fiera for the Remaining

Fiera Debt, and the Remaining JMB Encumbrances granted by JMB to ATB and Fiera shall continue to attach to any property and assets of JMB, subject to the terms and provisions of the Plan.

5. Upon delivery of the Mantle Monitor's Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all Governmental Authorities are hereby authorized, requested and directed to accept delivery of such Mantle Monitor's Certificate and certified copy of this Order as though they were originals and to register such transfers or conveyances as may be required to convey to 216 title to the Remaining JMB Assets. Without limiting the foregoing:

(a) the Registrar of Land Titles ("**Land Titles Registrar**") for the lands defined below shall and is hereby authorized, requested and directed to forthwith:

(i) cancel the existing Certificate of Title No. 982 003 308 (the "**Existing Certificate**") for those lands and premises municipally and legally described as:

ALL THAT PORTION OF THE SOUTH WEST QUARTER OF SECTION ELEVEN (11)
TOWNSHIP FIFTY SEVEN (57)
RANGE SIX (6)
WEST OF THE FOURTH MERIDIAN,
LYING TO THE WEST OF THE WESTERLY LIMIT OF LAND REQUIRED FOR RAILWAY PURPOSES,
AS SHOWN ON PLAN 7521297 AND SOUTH OF THE SOUTH LIMIT OF ROAD PLAN 3445BM
CONTAINING 7.17 HECTARES (17.72 ACRES) MORE OR LESS
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

(the "**Lands**") ;

(ii) issue a new certificate of title for the Lands in the name of 216 (the "**New Certificate**"); and

(iii) transfer to the New Certificate all existing encumbrances, including caveats, utility rights of ways, easements or other instruments, listed on the Existing Certificate, and to issue and register against the New Certificate such encumbrances;

(b) upon payment of all applicable charges and fees, AEP (subject to the approval of the AEP, as set out in paragraph 4 herein) is hereby requested to transfer and assign all Crown dispositions associated with the Excluded Aggregate Pits, as set out in Schedule "**E**" to this Order, which are in the name of JMB (collectively, the "**Crown Dispositions**"), to 216, subject to all encumbrances affecting such Crown Dispositions, provided that 216 (or its nominee) comply with all applicable licensing requirements (other than those affecting its solvency), and to consent to and register the assignment of the Crown Dispositions to 216, and in doing so, no further proof of due execution of the transfer and assignment of the Crown Dispositions, beyond the provisions of this Order and the presentment of the Monitor's Certificate, shall be required;

(c) upon payment of all applicable charges and fees, the Land Titles Registrar is hereby requested to transfer and assign all registrations concerning the Excluded Aggregate Pits, which are not Crown Dispositions or governed by the PLA, to 216, provided that 216 comply with all applicable licensing requirements and, in doing so, no further proof of due execution, beyond the provisions of this Order and the presentment of the Monitor's Certificate, shall be required;

(d) AEP is hereby authorized and requested, upon the appropriate application(s) for such transfer or assignment being made by the Applicants, to transfer and assign (subject to the approval of AEP) all of JMB's' right, title, and interest in:

(i) any other authorizations issued under legislation administered by AEP and registered in the name JMB, the transfer and assignment of which may be necessary to give effect to the transfer and assignment of the Crown Dispositions to 216; and,

(ii) to the extent assignable or transferable, all Conservation and Reclamation Business Plans that relate to the Crown Dispositions and which are registered in the name of JMB (the "**Crown Disposition Documents**"),

to 216, and to consent to and register the assignment of such authorizations and Crown Disposition Documents to 216, subject to all encumbrances affecting such interests, and in doing so no further proof of due execution of the transfer and

assignment of such Crown Disposition Documents beyond the provisions of this Order and the presentment of the Monitor's Certificate shall be required;

6. In order to effect the transfers described in paragraph 5 above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order. Presentment of this Order and the Mantle Monitor's Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest to or in any of the Remaining JMB Assets.

7. No authorization, approval or other action by and no notice to or filing with any Governmental Authority or regulatory body exercising jurisdiction over the Remaining JMB Assets is required for the due execution, delivery and performance by JMB of the Reverse Vesting, other than any required approval by the AEP.

8. Upon delivery of the Mantle Monitor's Certificate together with a certified copy of this Order, this Order shall be immediately registered by the Land Titles Registrar notwithstanding the requirements of section 191(1) of the *Land Titles Act*, RSA 2000, c. L-7 and notwithstanding that the appeal period in respect of this Order has not elapsed. The Land Titles Registrar is hereby directed to accept all Affidavits of Corporate Signing Authority submitted by JMB.

9. From and after the Effective Time:

   (a) where any Person was liable to JMB for any existing or potential Liability that is included in the Remaining JMB Assets (any such Liability being a "**JMB Claim**"), such JMB Claim shall not be affected by, and such Person shall have no defence, claim, set-off or other rights as a result of, the transfer and vesting of the Remaining JMB Assets and Remaining JMB Liabilities in 216;

   (b) 216 may, and is hereby authorized to, commence, continue and prosecute proceedings in respect of the JMB Claims, in JMB's name, and all benefits to be derived from the proceedings taken by 216 in respect of the JMB Claims, as authorized by this Order, together with the costs of same, shall belong exclusively to 216 and not JMB, and shall form part of the Remaining JMB Assets to be held in trust by 216 for and on behalf of the JMB Creditors in accordance with this Order; and,

(c) in the event that paragraph 9(b) is or becomes for any reason ineffective, then with the consent of the Monitor, ATB, and Fiera, JMB shall act as agent for and on behalf of 216 in taking any steps or commencing any action or proceeding to enforce the JMB Claim for and on behalf of 216.

10. From and after the Effective Time:

(a) 216 shall hold the Remaining JMB Assets in trust for and on behalf of any JMB Creditors; and,

(b) 216 shall hold all of its undertaking, property and assets which was not included in the Acquired Assets or sold or otherwise disposed of in the SISP or in the CCAA Proceedings (the "**Remaining 216 Assets**") and any and all proceeds of the Remaining 216 Assets (any such proceeds being the "**Remaining 216 Proceeds**") in trust for and on behalf of any Persons in respect of Liabilities owing by 216 to such Persons prior to the Effective Time (the "**Remaining 216 Liabilities**"), which Persons (such Persons being collectively referred to as the "**216 Creditors**" and individually referred to as a "**216 Creditor**") shall have the same rights, priority and entitlement in respect of such Remaining 216 Assets, Remaining 216 Proceeds, and Remaining 216 Liabilities, up to and solely to the extent of the Remaining 216 Assets and Remaining 216 Proceeds as they had against 216 prior to the Effective Time.

11. For greater clarity and notwithstanding anything contained herein:

(a) the 216 Creditors shall have no recourse, right, or interests against the Remaining JMB Assets or the Remaining JMB Proceeds; and,

(b) the JMB Creditors shall have no recourse, right, or interests against the Remaining 216 Assets or the Remaining 216 Proceeds.

12. 216 shall be entitled to enter into and upon, hold and enjoy the Remaining JMB Assets for its use and benefit in accordance with the Initial Order, this Reverse Vesting Order, and any other Order made in the CCAA Proceedings.

VESTING IN EASTSIDE

13. Upon delivery of the Mantle Monitor's Certificate, all of JMB's right, title and interest in and to the Eastside Equipment shall vest absolutely in the name of Eastside, but subject to any and all Remaining JMB Encumbrances which specifically affect and attach to the Eastside Equipment, all of which shall continue to attach to the Eastside Equipment and to any and all proceeds of the Eastside Equipment (any such proceeds being the "**Eastside Proceeds**") and to secure the payment and performance of any Liabilities secured thereby, with such Remaining JMB Encumbrances and Liabilities having the same nature and priority as against the Eastside Equipment and the Eastside Proceeds as they had immediately prior to the transfer and vesting.

PMSI HOLDERS

14. On a without prejudice basis with respect to any of the parties' potential cost allocation positions, each PMSI Holder is hereby authorized and directed to do the following:

    (a) to take possession or control of the PMSI Property within a reasonable period of time after the later of: (i) this Order; or (ii) the Monitor advising such PMSI Holder that the Monitor is satisfied with their Security Interest(s) in favour of such PMSI Holder, as and against their respective PMSI Property;

    (b) to dispose of such PMSI Property, in accordance with Applicable Law, including the PPSA; and

    (c) to account to the Monitor, 216 and Fiera in respect of the proceeds of sale of such PMSI Property in accordance with Applicable Law, including the PPSA.

MISCELLANEOUS MATTERS

15. The Monitor is authorized and directed to undertake and perform such activities and obligations as are contemplated to be undertaken or performed by the Monitor pursuant to this Order, the SISP, the Mantle APA, the Reverse Vesting, or any ancillary document related thereto, and shall incur no liability, whatsoever, in connection therewith, save and except for any liability arising due to gross negligence or wilful misconduct on its part.

16. Notwithstanding:

(a) the pendency of these proceedings and any declaration of insolvency made in the CCAA Proceedings;

(b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "**BIA**"), in respect of 216, and any bankruptcy order issued pursuant to any such applications;

(c) any assignment in bankruptcy made in respect of 216; and

(d) the provisions of any federal or provincial statute:

the Reverse Vesting pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of 216 and shall not be void or voidable by creditors of 216, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

17. The Monitor, Mantle and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

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

19. Service of this Order shall be deemed good and sufficient by:

(a) Serving the same on:

(i) the persons listed on the service list created in these proceedings;

(ii) any other person served with notice of the application for this Order;

(iii) any other parties attending or represented at the application for this Order;

(iv) Mantle or Mantle's solicitors; and

(b) Posting a copy of this Order on the Monitor's website at: http://cfcanada.fticonsulting.com/jmb/default.htm

and service on any other person is hereby dispensed with.

20. Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted on May 29, 2020.

Justice of the Court of Queen's Bench of Alberta

Schedule "A"
Eastside Equipment

Year	Manufacturer	Model	Size / Capacity / Asset Type	Serial # / VIN
2010	John Deere	844K	Articulated Wheel Loader	1DW844KX627428
2013	Volvo	L180G	Articulated Wheel Loader	VCEL180GC00022042
2006	Volvo	EC330B LC	Crawler Excavator	EC330V10699
2012	Caterpillar	345D	Crawler Excavator	CAT0345DJRAJ00435
	Precision	10'x80' Survivor Truck Scale	100 ton Scale Indicator	Scale s/n 3842 Indicator s/n 1479500073
2005	Fintec	542 5x12	Tracked Feeder Screen Plant	2005542575
	Bobcat	225	Engine Driven Welder	

Schedule “B”
Fiera Disposed Equipment

Asset
WP001 - Global 6GSTAP 6" Diesel Trash Pump (S/N:1496808)
CY002 - 2008 Kolberg/Pioneer 36"X150' telescopic radial super stacker (S/N 409329)
CY003 - 70' Portable belt conveyor - 2010 Kolberg-Pioneer 47-3670S
CY004 - 70' Portable belt conveyor - 2010 Kolberg-Pioneer
CY005 - 70' Portable stacking belt conveyor - 2010 Kolberg-Pioneer
DZ001 - Crawler dozer - 1998 Caterpillar D8R
PV200 - Control van trailer - 2010 Wabash
SS200 - Initial Supplies to build splitter bin - fab from scratch
CC201 - Portable cone crusher - 2001 Svedala H-6000 (S/N SW5873)
TF001 - Dozer trap feeder - 1999 Red Deer Industries (S/N RD1BF99000010)
2004 Elrus H4800 Portable Cone Crusher M3314ER04CC

Schedule "C"
PMSI Property

Priority Secure Creditor	Year	Manufacturer	Model	Size / Capacity / Asset Type	Serial # / VIN
Ford Credit Canada Company					
	2015	Ford	F150	Supercrew Pickup Truck	1FTFW1EF3FFC07984
	2015	Ford	F150	Supercrew Pickup Truck	1FTFW1EF7FFC07986
	2015	Ford	F150	Supercrew Pickup Truck	1FTFW1EF0FFC07988
	2015	Ford	F150	Supercrew Pickup Truck	1FTFW1EF9FFC07990
	2015	Ford	F150	Supercrew Pickup Truck	1FTFW1EF0FFC07991
Ford Credit Canada Leasing, Division of Canadian Road Leasing Company					
	2016	Ford	F250	Crew Cab Pickup Truck	1FT7W2B66GEB46457
	2018	Ford	F150		1FTEW1EG7JFC34831
	2019	Ford	F150		1FTFW1E53KFA45940
Ford Credit Canada Limited					
	2016	Ford	F150	Super Crew Pickup Truck	1FTFW1EFXGFC63082
Proven Financial Group and Canadian Western Bank Leasing Inc. – Broker Buying Centre					
	2012	Smith - Co	Super B	Tri-Axle Lead Side Dump Trailer	1S9SS3735CL476517
	2012	Smith - Co	Super B	Tandem Axle Pup Side Dump Trailer	1S9SS2929CL476518
	2018	Elrus		6" x 20"Deck Screen	M7102ERC18SC
	2012	Elrus	HD2054	Portable Jaw Crusher	M6028ERC12CJS
	2002	Elrus	M2943 2236	Portable Jaw Crusher	M7102ERC18SC
Caterpillar Financial Services Limited					
	2015	Caterpillar	972MXE	Articulated Wheel Loader	CAT0972MKEDW00340
	2016	Caterpillar	980M	Wheel Loader	CAT0980MCKRS01308
	2012	Caterpillar	D8T	Crawler Dozer	CAT00D8TEMLN01555
	2014	Caterpillar	246D	Skid Steer Loader	CAT0246DLBYF00587
	2016	Caterpillar	246D	Skid Steer Loader	CAT0246DTBYF02460
VFS Canada Inc.					
	2017	Volvo	L220H	Wheel Loader	VCEL220HL00002736
TD Equipment Finance, A Division of the Toronto Dominion Bank and Toronto Dominion Bank					
	2015	Superior		36" x 50' Stackable Belt Conveyor with Legs	817775
	2015	Superior		36" x 50' Stackable Belt Conveyor with Legs	847651
	2015	Superior		36" x 50' Stackable Belt Conveyor with Legs	847652
	2015	Superior		36" x 50' Stackable Belt Conveyor with Legs	847655
	2015	Superior		36" x 50' Stackable Belt Conveyor with Legs	847656
	2015	Superior		36" x 50' Stackable Belt Conveyor with Legs	847657
	2015	Superior		36" x 50' Stackable Belt Conveyor with Legs	847658
	2015	Terex Cedarapids	6203	6' x 20' Portable Screening Plant	TRX620HSCOKFK0807

Priority Secure Creditor	Year	Manufacturer	Model	Size / Capacity / Asset Type	Serial # / VIN
	2014	AMI	Thunderbird II 3054JVE	Electric Portable Jaw Plant with Switchgear	2807-14
	2014	CR		30" x 54"Jaw Crusher	TRXJ3054COKEE0657
	2014	AMI	C04521	50" x 20" VGF	2806-14
Komatsu International (Canada) Inc. and SMS Equipment Inc.					
	2014	Komatsu	WA470-7	Articulated Wheel Loader	10123
	2019	Komatsu	WA500-8	Wheel Loader	A96809
	2019	Komatsu	PC490LC-11	Crawler Excavator	A42247
		Hensley		7.5 CY Spade Nose Bucket	85680
				Wheel Loader C/W 5.5 CYD GP Bucket	
Bank of Montreal					
	2015	AMI	380C6203CC-D06319	Portable Cone Crusher	2836-15
	2015	AMI	CRC380X	CC Plant	
			MVP380X	Terex Rollercone Crusher	TRXRX380EOKEL0708
			LJ-TSV6203-32	Terex Screen	TRXV6203TDUEG1886
	2018	Midland	TW3000	TR045 - Side Dump Trailer	2MFB2R5D9JR008909
	2016	Midland	TW2500	TR046 - Side Dump Trailer	2MFB2R5C0GR008281
	2018	Midland	TW2500	TR047 - Side Dump Trailer	2MFB2R5C0JR008840
	2019	Midland	TW3000	TR048 - Side Dump Trailer	
	2019	Midland	TW2500	TR049 - Side Dump Trailer -	
	2019	Midland	TW3000	TR050 - Side Dump Trailer -	
	2019	Midland	TW2500	TR051 - Side Dump Trailer -	
	2019	Midland	TW3000	TR052 - Side Dump Trailer -	
	2019	Midland	TW2500	TR053 - Side Dump Trailer -	
	2019	Midland	TW3000	TR054 - Side Dump Trailer -	
	2019	Arnes	Quad Wagon	TR055 - Trailer	
	2019	Arnes	Quad Wagon	TR056 - Trailer	
	2019	Arnes	Quad Wagon	TR057 - Trailer	
	2019	Arnes	Quad Wagon	TR058 - Trailer	
	2019	Arnes	Quad Wagon	TR059 - Trailer	
	2019	Peterbilt	567 Tandem	TT027 - Truck tractor	
	2019	Peterbilt	567 Tandem	TT028 - Truck tractor	
	2019	Peterbilt	567 Tandem	TT029 - Truck tractor	
	2019	Peterbilt	567 Tandem	TT030 - Truck tractor	
	2019	Peterbilt	567 Tandem	TT031 - Truck tractor	
	2019	Peterbilt	567 Tri-Drive/Box	TT032 - Truck tractor	
	2019	Peterbilt	567 Tri-Drive/Box	TT033 - Truck tractor	

Priority Secure Creditor	Year	Manufacturer	Model	Size / Capacity / Asset Type	Serial # / VIN
	2019	Peterbilt	567 Tri-Drive/Box	TT034 - Truck tractor	
	2019	Peterbilt	567 Tri-Drive/Box	TT035 - Truck tractor	
	2019	Peterbilt	567 Tri-Drive/Box	TT036 - Truck tractor	
	2015	AMI	LJ-TSV 6203-32	Trailer	TRXV6203TDUEG1886

Schedule "D"
Excluded Aggregate

Extracted Aggregate stored or located on the lands where the following Aggregate pits are located:

Pit Registration or SML Number	Pit Name
149949-00-00	Megley
263318-00-00	Okane
293051-00-00	MacDonald
306490-00-00	Kucy
SML020038	Al's Contracting Pit (Quigley)
KM156 SH881	Carmacks Pit
SML 010005	P19 West
SML 030046	Dupre/Moose Creek
SML 030074	Crow Lake
SML 060060	JLG 1
SML 100057	Truman
SML 100112	KM 242 Chard/Quigley
SML 110065	Pad 58
SML 120004	KM 242
SML 130003	KM 160
SML 110069	Stoney Valley

Schedule "E"
Excluded Aggregate Pits

Aggregate pits located on the lands and premises subject to Surface Material Leases or Royalty Agreements identified below, or on the real property owned by JMB, and any property or assets located thereon other than Excluded Aggregate:

Pit Registration	Pit Name	Legal Description
149949-00-00	Megley	SE 35-58-16-W4
263318-00-00	Okane	NE 10-57-6-W4
293051-00-00	MacDonald	SE 34-56-7-W4
306490-00-00	Kucy	NW 17, NE 18, SE 19-63-9-W4
JMB Owned		SW quarter of Section 11, Township 57, Range 6, West of 4th Meridian 4;6;57;11;SW, County of St. Paul No. 19;

Crown Dispositions		
SML Number	**Pit Name**	**Legal Description**
SML 000034	Sand River	NE 11-63-8 W4M
SML 010005	P19 West	NW-18-62-7 W4M SW-19-62-7 W4M NE-13-62-8 W4M
SML 010032	P27/Pad 68/Bourque Lake	NW-28-66-4 W4M SW-28-66-4 W4M NE-20-66-4 W4M SW-34-66-4 W4M NW-21-66-4 W4M SW-16-66-4 W4M NE-9-66-4 W4M
SML 020014	P31	NE-12-62-8 W4M SE-7-62-7 W4M SW-7-62-7 W4M NW-12-62-8 W4M
SML 030046	Dupre/Moose Creek	SE-9-62-7 W4M
SML 030074	Crow Lake	Access Point SW 01-79-14-W4
SML 040122	Tower	NE-21-66-5 W4M NW-22-66-5 W4M NW-21-66-5 W4M SW-28-66-5 W4M
SML 060060	JLG 1	SW 13-65-18-W4
SML 100016	N Marie Lake	NW-35-65-3 W4M SW-2-66-3 W4M NE-34-65-3 W4M SE-34-65-3 W4M
SML 100050	Marie Creek	NW-34-65-3 W4M NE-33-65-3 W4M SW-10-66-3 W4M
SML 100057	Truman	NW-7-63-8 W4M SW-7-63-8 W4M NE-7-63-8 W4M SE-7-63-8 W4M

Pit Registration	Pit Name	Legal Description
SML 100075	KM 242 / Chard	NW-14-82-7 W4M NE-14-82-7 W4M
SML 100101	Cheechum	SW-1-84-6 W4M NE-2-84-6 W4M NW-1-84-6 W4M SE-2-84-6 W4M
SML 100112	KM 242 Chard/Quigley	NE-8-82-7 W4M SE-9-82-7 W4M SW-9-82-7 W4M NW-9-82-7 W4M NE-9-82-7 W4M
SML 110037	P19 East / Extension	SE-19-62-7 W4M NW-18-62-7 W4M SW-19-62-7 W4M
SML 110044	KM 160/Conklin	SW-24-75-8 W4M NW-13-75-8 W4M
SML 110065	Pad 58	NE-20-66-4 W4M SW-16-66-4 W4M SE-16-66-4 W4M NW-9-66-4 W4M NE-9-66-4 W4M
SML 110072	KM 242 East/Kettle River	SE-9-82-7 W4M NE-9-82-7 W4M
SML 120004	KM 242	SE-3-82-7 W4M NE-3-82-7 W4M
SML 120027		SW-30-63-8 W4M
SML 120076	Truman	NE-7-63-8 W4M
SML 130003	KM 160	SW-13-75-8 W4M NW-12-75-8 W4M SE-14-75-8 W4M
SML 130017	Wabasca / Rock Island	NW-35-76-23 W4M SW-35-76-23 W4M NE-27-76-23 W4M SE-34-76-23 W4M NE-34-76-23 W4M NW-26-76-23 W4
SML 130124		NW-15-73-13 W4M NE-15-73-13 W4M SE-22-73-13 W4M
SML 140015	OCR	NE-32-72-13 W4M SE-32-72-13 W4M
SML 140026	KM 28 / Quigley	SE-6-83-6 W4M SW-6-83-6 W4M
SML 140046	Highway 41	NW-27-64-6 W4M SE-27-64-6 W4M NE-27-64-6 W4M
SML 140080	May Lake	NW-15-66-3 W4M NE-15-66-3 W4M SE-15-66-3 W4M SW-15-66-3 W4M
SML 150031		NW-9-63-3 W4M NE-8-63-3 W4M SE-17-63-3 W4M
SML 930040		LSD 8-23-61-7 W4M
SML 980116		SW-21-63-12 W4M

This is Exhibit "E" referred to in the Affidavit of

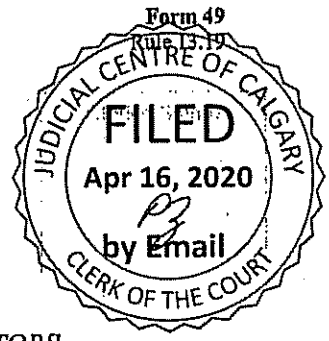
Katie Doran

sworn before me this 4th day of December, 2020.

A Commissioner for Oaths in and for the Province of Alberta

Connor E.J. O'Brien
Student-at-Law

Form 49
Rule 13.19



COURT FILE NO.	2001- 05482
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	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.
DOCUMENT	**AFFIDAVIT**
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/Alex Matthews** Phone: 403.298.1938/403.298.1992/403.298.1018 Fax: 403.263.9193 File No.: A163514

#44672

AFFIDAVIT OF JEFF BUCK
sworn April 16, 2020

I, **JEFF BUCK**, of the City of Edmonton, in the Province of Alberta, **MAKE OATH AND SAY THAT:**

1. I am the President and Chief Executive Officer of the Applicant JMB Crushing Systems Inc. ("**JMB**") and a director of the Applicant 2161889 Alberta Ltd. ("**216**") and 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. I am authorized to swear this Affidavit as corporate representative of the Applicants.

3. All references to dollar amounts contained herein are to Canadian Dollars unless otherwise stated.

I. RELIEF REQUESTED

4. This Affidavit is sworn in support of an Application by the Applicants for an Order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**"), for the following relief:

(a) declaring that JMB and 216 are companies to which the CCAA applies;

(b) dispensing with service of the Originating Application and supporting materials on all creditors of the Applicants, and/or deeming service thereof to be good and sufficient and abridging the time for service, if any;

(c) authorizing the Applicants to remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**") and to continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property;

(d) entitling the Applicants to make payment of all obligations owing in respect of employee wages and benefits;

(e) entitling the Applicants to pay reasonable expenses incurred by them in operating the Business in the ordinary course, including making payment of obligations owing in respect of goods and services supplied to JMB prior to the date of the Initial Order to the extent permitted by the Initial Order;

(f) staying, for an initial period of not more than ten (10) days (the "**Stay Period**"), all proceedings and remedies taken or that might be taken in respect of the Applicants, the Business, or the Property, except as otherwise set forth in the Initial Order or otherwise permitted by law;

(g) preventing any Person from accelerating performance of any rights in respect of the Applicants, except with the written consent of the relevant Applicant and the Monitor, or leave of the Court;

(h) restraining any Person from interfering with the supply of goods or services to any of the Applicants;

(i) staying all proceedings and remedies taken or that might be taken in respect of claims against the directors or officers of the Applicants that relate to liability of such Persons in their capacity as directors or officers of the Applicants, except as otherwise set forth in the Initial Order or otherwise permitted by law;

(j) appointing FTI Consulting Canada Inc. ("**FTI**") as Monitor of the Applicants in these proceedings;

(k) providing enhanced powers to the Monitor;

(l) authorizing the Applicants to obtain interim financing;

(m) authorizing the Applicants to pay all reasonable fees and disbursements of their counsel, the Monitor and the Monitor's counsel;

(n) granting the following charges on the Applicants' Property in priority to all other charges:

(i) a charge in favour of the Monitor, its counsel, and the Applicants' counsel in respect of their fees and disbursements;

(ii) a charge in favour of the interim lender to the Applicants; and

(iii) a charge in favour of the directors and officers of the Applicants;

(o) scheduling a comeback application for hearing at a date and time to be set the Court; and

(p) such further and other relief as the Applicants may request and the Court may grant.

II. OVERVIEW

5. For the reasons set out herein, I do verily believe that the Applicants are insolvent and are companies to which the CCAA applies.

6. JMB's principal office is located in Bonnyville, Alberta, which is shared with 216. 216 is a holding company for surface material leases and has no operations or employees.

7. JMB produces and supplies aggregates for the oil and gas industry, for road building and for industrial projects throughout Alberta. JMB's has a highly experienced team with extensive knowledge of road building, site development and management of pits from opening to reclamation. Its services include lease and road maintenance, gravel pit management, excavation and reclamation, mobile gravel crushing, scaling, weighing and loading services, trucking and delivery, and heavy haul trucking operations. JMB has traditionally had two divisions – the crushing division and the trucking division.

8. Through a series of agreements, JMB owns or has exclusive access to 48 gravel pit locations in Alberta. 216 holds ten surface material leases over Crown lands.

9. JMB's primary clients include the construction industry, municipal and provincial governments, and companies within the oil and gas sector in Alberta. JMB maintains a significant inventory of aggregate, including granular base course gravels, asphalt concrete pavement aggregates, screened sand, manufactured fines, pea gravel, traffic gravel, concrete rock and weeping tile rock. The aggregate inventory is very specifically sized material scattered across the province. The majority of the inventory has been excavated from the pit and processed through JMB's gravel crushers. It is then stockpiled in anticipation of sale. Some inventory is crushed to a very large size (10") and reprocessed in accordance with customer specifications once a contract has been signed. Most customers need smaller size aggregate, so the gravel, even if it has been previously crushed, must be crushed again to customer specifications.

10. JMB's sales team and I work very hard to source opportunities to sell our products. Our business is largely driven by relationships and our networks of contacts built up over years of being in the industry. Collectively, our team has an extensive network of contacts that we use to find work. I have 35 years of experience in this industry and my team also has extensive experience in this industry.

11. JMB coordinates all of the logistics for processing the aggregate and delivery to any location in Alberta. JMB currently operates with 25 units in its gravel fleet and has over 100 units of crushing, excavation, loading and trucking equipment, including three mobile crushing plants, rock trucks, excavators, crawler dozers, graders, wheel loaders, truck scales, tractors, winch tractors and trailers. Our customers know that they can rely on us to provide a quality product processed to their specifications.

12. The 2015 downturn in oil and gas prices reduced the cash flow and liquidity available to JMB ULC (JMB's predecessor, described below) which in turn reduced the demand for JMB ULC's crushed gravel by the oil and gas industry. The downturn also reduced the demand of the construction industry for its gravel.

13. As a result, JMB ULC looked for opportunities to refinance or obtain an injection of funds into its operations. JMB ULC, and subsequently JMB, worked with ATB Financial ("**ATB**") and Integrated Private Debt Fund V LP ("**Integrated**"), its primary secured lenders, to obtain increased credit under the existing facilities. JMB ULC also found an equity investor, Resource Land Fund V, LP ("**RLH**"), which culminated in a purchase and sale transaction in November 2018 (further described below) pursuant to which RLH acquired a majority interest through its wholly owned subsidiary from Canadian Aggregate Resources Corp. ("**CARC**"). JMB also negotiated with Integrated's successor, Fiera Private Debt Fund VI LP ("**Fiera**"), in the fall of 2019 for an additional credit facility which is now administered together with the facilities originally provided by Integrated (as further described below).

14. Since its acquisition, JMB has worked with RLH to streamline its operations and implement an up-to-date accounting system. JMB hired Jeff Ryks in April 2019 as its first Chief Financial Officer, who has focussed on implementing the system in order to enhance JMB's financial reporting and modeling, improve the accuracy of its record keeping, and enable JMB to analyze its operations and assess the profitability of new projects and its ability to accurately price its projects.

15. Additionally, since the share purchase and amalgamation in November 2018, RLH's wholly-owned subsidiary CARC has injected $19,375,626 of capital into JMB in order to enhance the net working capital of the company.

16. In December 2019, ATB issued a notice of default to JMB outlining its concerns and providing a cure period for JMB to address those concerns. The cure period was extended several times, with the current period to end on April 15, 2020.

17. Prior to and during the cure period, the Applicants have implemented cost cutting measures, and have been working to identify additional sources of capital or opportunities to refinance. However, these efforts have been seriously hampered by the public health emergency caused by COVID-19 and the states of emergency and public health orders requiring social distancing, self-isolation and restricting gatherings that have been declared by the governments of Alberta and Canada and by local, state and federal governments in the United States. As a result, the Applicants are unable to cure the defaults by April 15, 2020, thereby entitling ATB to accelerate payment of all amounts due and owing.

18. As set out in more detail below, management of JMB believes that the value available to the various stakeholders will be maximized by (a) implementing a business reorganization plan developed by JMB (described in more detail below), (b) continuing operations to permit the completion of ongoing, profitable contracts and permit JMB to perform profitable contracts that are awarded to it after the commencement of the proceedings, and (c) carrying out through the Monitor a sale, re-capitalization and investment solicitation process (the "**SISP**") to permit either the sale, recapitalization or restructuring of JMB's business.

19. In order to implement the business plan, permit the reduced level of operations described above, and implement and carry out of the SISP, CARC has agreed to provide interim financing during the CCAA proceedings on terms as set out below (the "**Interim Financing**"). ATB has also expressed interest in providing Interim Financing provided that its concerns with respect to the CCAA proceedings were addressed. JMB, CARC and ATB are currently in discussions with respect to which party would provide the Interim Financing and on what terms.

III. BACKGROUND AND BUSINESS OPERATIONS

20. The original company was founded in the late 1970s by my father. I purchased the company over 20 years ago from my father and have been serving the oilfield and construction industry ever since. The company started with one piece of hauling equipment and has grown through acquisition of additional gravel holdings and equipment to running a fleet in excess of 100 units and employing one of the most experienced work forces in northeastern Alberta.

21. JMB's predecessor company was JMB Crushing Systems ULC ("**JMB ULC**"). JMB Crushing Services Inc. acquired all of the issued and outstanding shares in JMB ULC as of November 21, 2018 and then carried out a series of transactions culminating in an amalgamation on or about December 14, 2018 with JMB ULC to form JMB.

22. JMB is a privately held corporation incorporated by amalgamation pursuant to the laws of the Province of British Columbia and is extra-provincially registered in the Province of Alberta. JMB's registered office is in Edmonton. A copy of the corporate search is attached hereto as **Exhibit "A"**. JMB has two shareholders: (a) CARC, which owns 95.2% of the shares in JMB, and (b) my company, J. Buck & Sons, which owns the remaining 4.8%.

23. 216 became a wholly owned subsidiary of JMB pursuant to a purchase and sale agreement dated March 15, 2019 between JMB and 541466 Alberta Ltd. 216 is incorporated pursuant to the laws of the Province of Alberta. Its registered office is located in the City of Edmonton. As further described below, 216 is a guarantor for JMB. A copy of the corporate search is attached hereto as **Exhibit "B"**.

24. Eastside Rock Products, Inc. ("**Eastside**") is a company incorporated pursuant to the laws of the State of Washington and is a wholly owned subsidiary of JMB. As further described below, Eastside is a guarantor for JMB.

25. JMB holds 32.4% of the shares in Atlas Aggregates Inc., which in turn owns an interest in a joint venture doing business under the name Glacier JV. Glacier JV owns a gravel property in northeastern Alberta that is operated by JMB.

A. Core Business and Services

26. JMB produces and supplies aggregates for leading oil field companies, industrial projects, and road construction throughout Alberta. The aggregates are produced to customer specifications for road and other surface infrastructure needs. JMB's services also include lease and road maintenance, gravel pit management, excavation and reclamation, mobile gravel crushing, scaling, weighing, loading, trucking and delivery.

27. Until early 2020, JMB operated two divisions: crushing and trucking. As described below, starting February 2020, JMB implemented a business plan under which it significantly reduced its in-house crushing and trucking divisions and instead retained highly reputable trucking and crushing subcontractors.

B. Lands/Leases

28. JMB owns two properties in the Elk Point area of Alberta. JMB also holds leases over a number of privately held lands that permit it exclusive access to process and remove gravel from the lands.

29. As noted above, 216 holds ten surface materials leases (also known as SMLs) over Crown lands.

C. Employees

30. As of March 27, 2020, JMB had 56 employees. JMB previously had 120 employees, but proactively reduced its workforce over the past few months to reduce operational costs, streamline its business and improve efficiency.

31. There are currently 17 salaried employees and 39 hourly employees who carry out the following functions:

    (a) 30 employees work in the trucking department and include drivers, supervisors and foremen;

    (b) 12 employees work in the administration department;

(c) 6 employees work in the shop department and include foremen and mechanics;

(d) 4 employees work in operations (including me) and are operations and project managers; and

(e) 4 employees operate equipment.

32. JMB is a significant industrial services company in Bonnyville and just over half of the employees live in the Bonnyville area.

D. Material Contracts

33. JMB has a number of material contracts, including but not limited to the following:

(a) Supply Agreement with the Municipal District of Bonnyville No. 87 for the production, hauling and stockpiling of crushed aggregate materials for use in road construction;

(b) Supply Agreement with the Alberta Municipal Affairs Special Areas Board for the crushing and stockpiling of aggregate materials; and

(c) Supply Agreement with Ellis Don Industrial Inc. for the supply and delivery of various crushed aggregate materials to a pipeline project, which agreement has been substantially performed by JMB.

IV. CURRENT STATUS OF THE COMPANY

A. Financial Statements

34. A copy of JMB's draft unaudited financial statements for the year ending December 31, 2018 is attached as **Exhibit "C"**. Work is still ongoing to finalize these financial statements, specifically in relation to the reconciliation and verification of inventory quantities and values reported for 2018 and prior years.

35. A copy of JMB's draft unaudited interim internal financial statements for the year ending December 31, 2019 is attached as **Exhibit "D"**. A copy of JMB's draft balance sheet for the two months ending February 29, 2020 is attached as **Exhibit "E"**.

36. As noted above, 216 became a wholly owned subsidiary in early 2019. The financial statements for 216 have not been finalized, as JMB is finalizing an internal fair market value assessment of the assets of 216 at the time of acquisition to facilitate the close of 216 financials and allow the consolidation into JMB to be completed.

B. Assets

37. As of February 29, 2020, the book value of JMB's assets was approximately $60,540,485 (not including intercompany debt), including accounts receivable of approximately $6,469,405, accrued receivables of approximately $69,454, prepaid expenses and deposits of approximately $248,268, contract costs of approximately $231,935, inventory of approximately $23,682,161 (of which $23,373,343 is gravel and sand, and $308,818 is parts), property, plant and equipment of approximately $9,650,432, right of use assets (largely equipment leases used in trucking and production) of approximately $3,110,143, and investments of approximately $17,079,790.

C. Liabilities

38. As of February 29, 2020, JMB had total liabilities of approximately $55,166,159, including accounts payable of approximately $8,887,987, accrued liabilities of approximately $1,342,209, indebtedness under the ATB Facilities (defined below) of approximately $12,050,000, indebtedness to the Fiera Funds (defined below) of approximately $19,451,381, and long term debt under the right of use agreement of approximately $2,070,294.

ATB Credit Facilities

39. On or about April 20, 2017, JMB ULC, as borrower, and Eastside, as guarantor, entered into a commitment letter with ATB, as lender. This commitment letter was amended and restated pursuant to subsequent commitment letters dated August 29, 2017, December 19,

2017, May 24, 2018, September 27, 2018, and June 24, 2019 (collectively, the "**Prior ATB Commitment Letters**"). The Prior ATB Commitment Letters established an operating (revolving) loan facility (the "**ATB Operating Facility**") along with a corporate MasterCard, and cash management, foreign exchange, interest rate and commodity derivatives facilities (collectively with the ATB Operating Facility, the "**ATB Facilities**", with each being an "**ATB Facility**").

40. On October 16, 2019, JMB, as borrower, and Eastside and 216, as guarantors, entered into a commitment letter (the "**ATB Loan Agreement**") which further amended and restated the Prior Commitment Letters, pursuant to which ATB continued the ATB Operating Facility in the principal amount of $13,500,000 and continued to offer the remaining ATB Facilities. Attached hereto as **Exhibit "F"** is a copy of the ATB Loan Agreement.

41. The indebtedness, liabilities and obligations of JMB to ATB under the ATB Loan Agreement are secured by the following security and guarantee documents:

(a) General Security Agreement providing a first-ranking security interest over all present and after acquired personal property and a floating charge on all land, account receivables and inventory from JMB;

(b) Assignment of Insurance in favour of ATB from JMB;

(c) Unlimited Continuing Guarantee and Postponement and Assignment of Claims in favour of ATB from each of Eastside and 216; and

(d) General Security Agreement providing a security interest over all present and after acquired personal property from each of Eastside and 216.

42. As of February 29, 2020, the total amount outstanding under the ATB Loan Agreement is approximately $12,050,000.

Integrated Credit Facility

43. Pursuant to a loan agreement dated March 28, 2017 (the "**Original Integrated Loan Agreement**") between Integrated as lender, JMB ULC as borrower, and Eastside as

guarantor, Integrated established a non-revolving term loan credit facility in the amount of $14,000,000 (the "**Original Integrated Loan**").

44. The Original Integrated Loan Agreement as amended pursuant to a first amending agreement between Integrated, JMB ULC and Eastside dated June 21, 2017 creating an additional non-revolving term loan credit facility in the amount of $4,000,000 (the "**Second Integrated Loan**"), and a second amending agreement dated June 7, 2018 between Integrated, JMB ULC and Eastside and Integrated creating an additional $5,000,000 non-revolving term loan credit facility (the "**Third Integrated Loan**", and with the Original Integrated Loan and the Second Integrated Loan, the "**Integrated Loans**").

45. Integrated agreed to continue to provide the Integrated Loans following the amalgamation of JMB ULC and JMB on the terms and conditions set out in the amended and restated loan agreement made effective December 14, 2018 between JMB as borrower, Eastside as guarantor and Integrated as lender (the "**Integrated Loan Agreement**"). A blackline copy of the Integrated Loan Agreement which is substantially the same as the final version is attached hereto as **Exhibit "G"**.

46. The amounts advanced by Integrated under the Integrated Loans and other obligations of JMB to Integrated Loans were secured by the following security documents:

(a) General Security Agreement from JMB ULC providing a first-ranking security interest over all present and after acquired personal property other than account receivables and inventory;

(b) Assignment of Material Agreements from JMB ULC;

(c) Unlimited Guarantees and Postponements of Claim in favour of Integrated from Eastside;

(d) General Security Agreement from Eastside providing a first-ranking security interest over all present and after acquired personal property; and

(e) Assignment of Insurance in favour of Integrated from JMB ULC

(collectively, the "**Integrated Security**").

47. The amounts outstanding under the Integrated Loan Agreement are detailed below.

Priority Agreement between ATB and Integrated

48. On or about December 14, 2018, ATB and Integrated, as lenders, and JMB and Eastside, as debtors, entered into an amended and restated priority agreement in relation to specified collateral (the "**Priority Agreement**"). The Priority Agreement amended and restated a prior agreement between the parties dated May 31, 2017. The terms of the Priority Agreement provide that, *inter alia*:

(a) The principal obligations owed by JMB to ATB under the ATB Facilities were not to exceed a specified amount, which after March 31, 2019 was $10 million, or such other amount as may be agreed by the parties (the "**ATB Debt Cap**");

(b) ATB has priority over the inventory and accounts receivable of JMB and Eastside, as well as cash and cash proceeds used as cash collateral in connection with any letters of credit issued by ATB up to a maximum of $100,000.00 in the aggregate (the "**ATB Priority Collateral**"); and

(c) Integrated has priority over all present and after acquired personal property of JMB and Eastside other than the ATB Priority Collateral.

A copy of the Priority Agreement is attached hereto as **Exhibit "H"**.

49. From time to time, the ATB Debt Cap has been amended by the parties. It is currently set at $13,500,000, which will be reduced to $10 million as of April 15, 2020. A copy of the letter agreement indicating same is attached hereto as **Exhibit "I"**.

Fiera Credit Facility

50. On October 21, 2019, Fiera, as lender, JMB, as borrower, and Eastside and 216, as guarantors, entered into a loan agreement (the "**Fiera Loan Agreement**"), pursuant to which Fiera granted a non-revolving term loan credit facility (the "**Fiera Facility**") in the

principal amount of $2,500,000 to finance the acquisition of 216. Attached hereto as **Exhibit "J"** is a copy of the Fiera Loan Agreement.

51. Some time before the Fiera Facility was established, Fiera acquired Integrated and Integrated changed its name to Fiera Private Debt Fund V LP ("**FPDF**", and with Integrated and Fiera, the "**Fiera Funds**"). Both of the Fiera Funds have the same general partner, Fiera Private Debt Fund GP Inc. Fiera appointed FPDF as collateral agent and representative of Fiera for all security granted by JMB, 216, and Eastside in favour of Fiera or FPDF.

52. The Fiera Loan Agreement includes in its definition of indebtedness the aggregate of any amounts outstanding at any given time of all loans and advances made, or which may be made, by the Fiera Funds to JMB, including the loans and advances under the Integrated Loans and the Fiera Facility, as well as interest on such loans and advances and all related costs, charges and expenses of the Fiera Funds in relation to the Integrated Loans. The Fiera Loan Agreement also provides that the Integrated Security granted to Integrated pursuant to the Integrated Loans continues in full force and effect as valid and binding obligations of each of JMB, 216 and Eastside to FPDF.

53. The indebtedness, liabilities and obligations of JMB to Fiera Funds are secured by the following security and guarantee documents:

(a) General Security Agreement providing a first-ranking security interest over all present and after acquired personal property other than accounts receivable and inventory from JMB;

(b) Assignment of Material Agreements from JMB;

(c) Unlimited Guarantees and Postponements of Claim in favour of the Fiera Funds from each of Eastside and 216;

(d) General Security Agreement each of Eastside and 216 providing a first-ranking security interest over all present and after acquired personal property; and

(e) Assignment of Insurance in favour of the Fiera Funds.

54. As of February 29, 2020, the total amount outstanding under the Fiera Loan Agreement, including the Integrated Loans, is approximately $19,255,392.

CARC Facility

55. In order to address the defaults under the ATB Loan Agreement and implement its business plan, JMB determined in January and February of 2020 that it required additional liquidity. CARC offered to provide financing for JMB's liquidity requirements. CARC intended to advance up to $3,500,000 to JMB on a subordinated basis provided that ATB and Fiera consented to the financing and provided certain waivers and deferrals.

56. While the parties were in the process of discussing the terms under which the subordinated funding would be provided by CARC, JMB had immediate liquidity requirements and therefore CARC agreed to advance $700,000 to JMB on the terms set out in a promissory note dated March 20, 2020 (the "**CARC Note**"). Attached hereto as **Exhibit "K"** is a copy of the CARC Note. The advance under the CARC Note bore interest at a rate of 10% per annum and was due and payable twelve months from the date of issuance of the CARC Note.

57. The CARC Note provided that the amounts advanced thereunder are secured by the following security and guarantee documents:

(a) General Security Agreement providing a security interest over all present and after acquired personal and real property of JMB, Eastside and 216; and

(b) Unlimited Continuing Guarantee and Postponement and Assignment of Claims in favour of CARC from each of Eastside and 216.

58. The CARC Note is subject to a subordination and postponement agreement dated March 20, 2020 between CARC, JMB, Eastside, 216, ATB and Fiera (the "**Subordination Agreement**"), pursuant to which ATB and Fiera consented to the creation of indebtedness owed by JMB to CARC, provided that CARC postpone and subordinate that indebtedness in favour of ATB and Fiera. A copy of the Subordination Agreement is attached hereto as **Exhibit "L"**.

59. Because JMB was able to collect certain accounts receivable, JMB did not require the emergency advance under the CARC Note. The $3.5 million subordinated financing also did not proceed, as JMB and ATB were unable to agree upon the timeline for ATB to be paid out.

60. In this period, JMB also carried out further financial modelling based on the assumption that a portion of its payables may be subject to builder lien claims, as its earlier modelling had not included this as a consideration. ATB, in determining the margins that should be applicable to JMB's accounts receivable for the purposes of determining availability under its operating loan to JMB, had not previously been subtracting accounts payable subject to potential lien claims. Once JMB recalculated the margins to provide for liens, it was determined that the $3.5 million liquidity advance by CARC would be insufficient and that JMB would run out of cash in June 2020. As a result, management of JMB and RLH determined that it was necessary for the Applicants to seek CCAA protection in order to permit the reorganization and recapitalization of the business.

61. To date, no funds have been advanced under the CARC Note.

JLG Ball Enterprises Debt

62. JMB acquired 10 surface material leases from JLG Ball Enterprises ("**JLG Ball**") for a purchase price equal to $15.5 million, of which JMB paid cash to JLG Ball equal to $12.5 million and issued a promissory note in favour of JLG Ball in the principal amount of $3,000,000, maturing five years from the date of issuance, and bearing interest at a rate equal to 5% per annum (the "**JLG Ball Note**").

63. The total amount outstanding under the JLG Ball Note is approximately $3,138,082. To date, JMB has not paid anything under the JLG Ball Note, having sought and been granted forgiveness of payments to March 31, 2020.

Security Registrations

64. Now shown to me and marked as **Exhibit "M"** to this my Affidavit, but not attached hereto, are copies of searches of the Applicants of the Personal Property Registry in each of

Alberta, British Columbia and Saskatchewan (the "**PPR Searches**"). Attached hereto as **Exhibit "N"** is a summary of the PPR Searches.

Equipment Leases

65. JMB has entered into a number of equipment leases with various lessors, including:

(a) Leases for heavy equipment with Caterpillar Financial Services Limited, Komatsu Financial, CAT Financial and Volvo Financial;

(b) Leases for operations vehicles from Ford Credit, Enterprise Fleet Management, Royal Bank of Canada and Tricor Lease & Finance Corp.;

(c) Leases for trucking equipment from BMO Transportation Finance and Wells Fargo;

(d) Leases for crushing equipment from General Electric, Proven Financial Group, and TD Equipment Finance;

(collectively, the "**Equipment Leases**").

66. The total amount of all remaining payments under the Equipment Leases is approximately $3,136,760 as of March 31, 2020. The Applicants' monthly equipment lease expense is approximately $150,000.

CRA Audit

67. The Canada Revenue Agency ("**CRA**") is auditing the November 21, 2018 and December 14, 2018 tax returns submitted by JMB. JMB has been working with RSM Canada ("**RSM**") to comply with the CRA's requests for documentation. With the COVID-19 outbreak, compliance with the CRA's requests has become difficult, as RSM has closed its office and JMB has reduced the number of employees in its office. As a result, there are limited resources to collect the requested information, and the key people handling the audit are working remotely.

68. On or around March 18, 2020, RSM requested an extension of the deadline to submit all documentation required for the audit to May 29, 2020. The CRA has granted the extension.

Legal Proceedings

69. JMB has been named in a lawsuit commenced by a surface material lease owner for non-payment of amounts allegedly owed under an agreement permitting JMB to remove aggregate from the subject lands. The Statement of Claim was recently served, and no defence has yet been filed. The value of the aggregate located at the subject lands is approximately $300,000. JMB is concerned that the agreement providing it access to the pits may be terminated as a result of this litigation.

70. In addition, there are two pending matters that may result in litigation.

71. JMB previously entered into an agreement with another company whereby JMB was to perform crushing services in exchange for earthmoving services. Following its performance of the earthmoving services, the other company demanded cash payment, rather than the previously agreed upon exchange of services. The other company also leases a property from a third party with whom JMB has an agreement for the storage of crushed aggregate at the same site. JMB had previously sold the stored aggregate and is to receive payment once the aggregate is removed from the site. The other company has blocked JMB's access to the site and is refusing to permit JMB to remove any of the stored gravel. The other company has threatened to seize the aggregate, which has an estimated value of $1,000,000, far in excess of what the other company claims is owed to it.

72. JMB has also received a demand for payment of invoices issued by an owner of a gravel and aggregate pit for arrears of outstanding royalties. JMB disputes the amount claimed. The value of the aggregate and gravel in these pits is approximately $6,100,000. JMB is concerned that it may lose access to the pits due to the royalty arrears and the potential litigation between it and the SML owner.

73. If a stay is not granted in the Applicants' favour, the Applicants anticipate that one or more of these parties may commence proceedings or exercise self-help remedies, thereby potentially eroding the security held by both ATB and the Fiera Funds and prejudicing their interests.

Advance from CARC

74. Because JMB was advised not to make any further drawdowns on the ATB Facilities, JMB required liquidity in order to fund its payroll due April 10, 2020. CARC advanced $200,000 to JMB for this reason (the "**CARC Advance**"). This amount is in addition to the $298,650 provided by CARC to cover JMB's payroll due March 10, 2020.

75. I am advised by counsel for the Applicants and do verily believe that funding the April 10, 2020 payroll with the CARC Advance was protective, preventing the loss of goodwill with JMB's employees. In the event that payroll was not funded, it is unclear that JMB would have been able to continue to operate because its employees may not have been willing to continue working. I am further advised that because arrears of wages are secured in part by charges under the *Bankruptcy and Insolvency Act* and unremitted withholding payments are subject to priority deemed trust protection, funding the payroll and withholding obligations prevented the erosion of ATB's security position.

76. The $200,000 was advanced by CARC with the intent of covering the JMB payroll. However, funds came in from accounts receivable, which were used to cover the JMB payroll expense.

77. Accordingly, the Applicants believe that in the circumstances, it is fair that the CARC Advance be repaid out of cash flow, which is reflected in the draft Initial Order.

V. EVENTS LEADING TO APPLICANTS' CURRENT CIRCUMSTANCES

A. Acquisition of JMB by CARC/RLH

78. JMB's predecessor started as a small family run business in the 1970s. Over the past several years, we identified opportunities for significant growth and aggressively expanded our business through ongoing acquisitions of gravel resources, equipment and workforce. As noted above, JMB has become an established and well-known Alberta business with more than 100 units of equipment and significant supply contracts.

79. As part of this overall growth strategy, in or about November 2018, RLH acquired JMB through CARC (the "**Transaction**"). CARC was created as part of the Transaction, and is

a wholly owned subsidiary of RLH incorporated in the State of Delaware. Once the Transaction closed, RLH commenced a review of JMB's processes and procedures. Given the pace of JMB's growth to that point and its anticipated trajectory, it was determined that JMB needed to implement more robust financial reporting and modelling systems to enable a more detailed, granular analysis of its business and to satisfy various reporting requirements, including to RLH, as well as the maintenance of certain financial ratios. We also identified that increased financial controls were required.

80. To implement these systems, Jeff Ryks ("**Mr. Ryks**") was hired as Chief Financial Officer on April 8, 2019. The implementation required significant time and effort, as most of the books and records were stored in physical files and were not in electronic form. This made document retrieval and data analysis extremely time consuming. Mr. Ryks undertook the digitization of the books and records, as well as the implementation of better financial controls and systems, including modelling.

81. JMB is in the process of implementing a Microsoft Dynamics ERP system and has implemented in part a financial modelling system to permit costing of contract proposals and projects, permit management to determine where cost efficiencies can be, and permit the forecasting of variables affecting the costing of projects. JMB is able to review operations with a level of detail that was not previously possible, has a much better understanding of its cash flow problems and is able to implement specific and targeted steps to remedy these issues. I am confident that JMB's financial information and systems are now much more robust and reliable.

B. Restructuring of JMB

82. In 2019, JMB encountered issues meeting the cash flow projections delivered to its lenders due to a number of unforeseen events, including, but not limited to, the following:

(a) Forest fires in the Wabasca region in May and June delayed completion of a $10,000,000 project by more than two months, resulting in inefficiencies in the timing of other projects and greatly reducing JMB's utilization of its own trucking force;

(b) The wettest summer in Northern Alberta since 1996 led to significant lost hauling and crushing days, which translated to greater per unit production costs and reduced utilization of JMB's trucking assets;

(c) The wet summer also led to the six- month delay of another $10,000,000 project that JMB had secured;

(d) A major personnel overhaul at the Municipal District of Bonnyville, including a new Reeve and elected Council, Chief Administrative Officer, Director of Transportation, and 80% of staff within the Transportation and Utilities Department resulted in JMB having to re-crush the 2019 supply quantities and to fully deliver the 2019 gravel prior to receiving payment. As a result, JMB incurred approximately $665,000 of additional expenses pertaining to increased subcontract trucking usage and a large increase in net working capital;

(e) Challenging weather, project delays, and slowing paving and energy markets led to increased collection cycles throughout the year;

(f) Litigation between the Rural Municipality of Wood Buffalo and its contractors (not including JMB) led to nearly a 12-month lag in payment to JMB of more than $1,500,000 in accounts receivable;

(g) Energy customers extended payment terms from 45 to 90 days and refused to honor previous agreements to pay for crushing in advance due to decline in oil and gas prices; and

(h) The conversion to IFRS and other accounting changes created challenges in financial reporting, particularly with regards to restating prior periods, and useful and meaningful year-over-year comparisons. It also created substantial demands on the company's accounting department.

83. Because of the impact of these events on its business, JMB started a review its business operations using its new financial modelling tools. In February 2020, JMB finalized and implemented a plan to change JMB's business model to one where JMB primarily retains

subcontractors to crush and deliver the gravel and JMB handles management of the sales pipeline, acquisition of resources and management of logistics. Primary responsibility for aggregate production would be subcontracted to a few high-quality crushing companies, and a significant number of JMB's fixed assets would be sold to pay down existing debt. Initial steps have involved reducing the staff and management complement, as well as modifying how its trucking staff is remunerated for their work. JMB continues to review the trucking division to determine if additional changes will further assist in reducing costs and increasing profitability.

84. In or around February 2020, JMB started significantly reducing the size of its crushing division. In addition, JMB engaged an auctioneer to appraise its crushing equipment with a view to selling it.

85. The current global COVID-19 pandemic hastened the pace of the planned reductions in the crushing division. However, the pandemic, along with the states of emergency declared by the government of Alberta (on March 17, 2020) and others across North America has complicated and delayed the ongoing restructuring of the Applicants. The resulting public health orders requiring social distancing and the operation of only those businesses deemed essential services have negatively impacted the implementation of the business plan. Further, since early March, the availability of capital from investors and lenders has dropped precipitously and the pace of business across North America has significantly slowed or in some cases ceased all together.

86. Notwithstanding COVID-19, JMB has continued to perform its current contacts because this has mostly involved trucking aggregate to various locations, which can be done without breaching public health requirements. JMB has also temporarily laid off a few employees, and those employees left in the crushing division are self-isolating at home. As noted above, most of those employees who are still employed are working remotely. It is unclear at this time whether further public health or other orders will be made that could affect JMB's operations.

87. JMB had historically enjoyed good relationships with its lenders. However, missed projections, difficulties in providing accurate financial reporting, and a delayed audit

resulting in ATB issuing a default notice on December 13, 2019 to JMB, Eastside and 216 (the "**Default Notice**") relating to financial reporting, the maintenance of financial ratios, and the existence and registration of a letter of credit facility from Canadian Western Bank and related security. The Default Notice required that the defaults be cured no later than January 15, 2020. On December 23, 2019, ATB issued an extension to the Default Notice with a new cure date of January 31, 2020 (the "**Default Notice Extension**"). Copies of the Default Notice and Default Notice Extension are attached hereto as **Exhibits "O"** and **"P"** respectively.

88. On January 29, 2020, ATB agreed to extend the deadline in the Default Notice Extension to March 31, 2020, provided that: (a) JMB and 216 (collectively, the "**ATB Loan Parties**") engage Ernst & Young Inc. to carry out a financial review ("**EY**"); (b) certain amendments were made to the ATB Loan Agreement; (c) the ATB Loan Parties did not commit any further defaults under the ATB Loan Agreement; and (d) Fiera and each of the ATB Loan Parties provides written consent to extend to March 31, 2020 the $13,500,000 ATB Debt Cap (as that term is defined in the Priority Agreement). The Loan Parties agreed to these conditions. Attached hereto as **Exhibit "Q"** is a copy of the letter from ATB providing the extension.

89. JMB engaged EY on January 28, 2020 to provide a financial review of JMB and of ATB's and Fiera's risk. Among other things, EY was to:

(a) Review JMB's cash flow projections in relation to both the 13-week period from the date of engagement and a monthly projection thereafter up to June 30, 2020;

(b) Test and report on the reasonableness of the underlying assumptions used in the preparation of these forecasts;

(c) Review all contracts (current, pending and potential), their inclusion in the cash flow projections provided, and the reasonability of their gross profit margin assumptions;

(d) Review JMB's accounting systems, internal controls and records management;

(e) Review JMB's equipment assets, business operations and aggregate reserves and the value, condition and maintenance of same; and

(f) Estimate the value in relation to both ATB's and Fiera's security positions.

90. Management attempted to provide information on request to the EY team, including our financial information and books and records, and made best efforts to ensure that the information being provided was complete and accurate. Management attempted to provide updated information when required, to make itself available to the EY team when requested, and were not made aware of outstanding requests for information that had not been addressed.

91. A redacted report was provided by EY to JMB on March 18, 2020 (the "**EY Report**"). Although the EY Report identified matters that were of concern to ATB, ATB agreed to provide JMB with a further extension of the deadline under the Default Notice Extension to April 15, 2020 in light of JMB's effort to explore possible financing and restructuring alternatives to address those concerns. A copy of the letter is attached hereto as Exhibit "I".

92. With the assistance of FTI, the proposed Monitor, JMB determined that the proposed injection of $3.5 million by CARC would be insufficient to resolve JMB's financial difficulties and JMB would run out of cash by June 2020 without a stay of proceedings and interim financing.

C. Restructuring Plan and SISP

93. As noted above, the Applicants started a process to investigate, evaluate and consider possible financing and restructuring alternatives in late 2019, and have taken steps to implement that plan.

94. JMB presented its plan to ATB and the Fiera Funds. Fiera Funds was supportive of the shift in JMB's business model and the injection of additional funds by CARC. As noted above, however, ATB requested that JMB refinance the ATB Facilities but JMB and ATB were unable to agree upon the appropriate timeframe within which the refinancing had to

be accomplished. Notwithstanding this, in order to accommodate discussions, ATB provided JMB with a further extension to permit JMB additional time to address the concerns identified. As noted above, that extension ends April 15, 2020.

95. The Applicants seek a stay of proceedings to give them a reasonable time within which to market and either sell, recapitalize or seek investment in JMB pursuant to a SISP and, if appropriate, implement a plan under the CCAA. If the Initial Order is granted, the Applicants will in consultation with the Monitor, ATB and Fiera prepare a SISP, assist the Monitor in preparing to launch the SISP, and as soon as possible following the extension of the initial 10-day stay period, if the Court deems it appropriate, the Monitor would launch the SISP. At the comeback application after the initial 10-day stay period, the Applicants anticipate seeking approval of the SISP. It is intended that the SISP would be launched shortly after Court approval, and would be as expeditious as possible in the circumstances.

96. In order to commence the various steps outlined above, the Applicants seek a 10-day stay pursuant to section 11.02(1) of the CCAA and anticipate seeking a further extension of three months at the comeback hearing to be held pursuant to section 11.02(2) of the CCAA. The Applicants also anticipate seeking approval of their proposed SISP at the comeback hearing.

97. Given the benefit of time and access to working capital, the Applicants' cash flows demonstrate an ability to repay the amounts required by way of interim financing.

VI. THE APPLICANTS MEET THE CCAA STATUTORY REQUIREMENTS

A. The Applicants are "Companies" under the CCAA

98. The Applicants are both companies to which the CCAA applies.

B. The Applicants have Claims against them in Excess of $5,000,000

99. As discussed above, each of the Applicants has claims against them in excess of $5 million.

C. The Applicants are Insolvent

100. As discussed above, the cure period provided by the Default Notice Extension expires on April 15, 2020. If the relief requested herein is not granted, the Applicants expect that ATB will take enforcement action in the near term and that other creditors may also seek remedies against the Applicants. The Applicants do not have sufficient liquidity to pay the accelerated amounts that would be due to ATB or the Fiera Funds. Accordingly, the Applicants would be unable to meet their obligations as they come due.

VII. RELIEF SOUGHT

101. As discussed above, the Applicants do not have sufficient liquidity to repay all amounts owing in respect of the ATB Facilities, the Integrated Loans and the Fiera Facility, all of which could become due and owing imminently, but for the continued *de facto* forbearance of their creditors, or the relief sought herein. Accordingly, a stay of proceedings is required.

A. Stay of Proceedings

102. The Applicants require a stay of proceedings to:

(a) Maintain the status quo in order to preserve the value of the Applicants, their Property, and to ensure that no creditor of the Applicants obtains preferred treatment relative to other creditors; and

(b) Provide the Applicants with the opportunity to finalize the arrangements and agreements necessary to be able to formally present a CCAA Plan for approval by their creditors and this Honourable Court.

B. Appointment of Monitor

103. I believe that FTI is qualified and competent to act as appointed Monitor for these proceedings. FTI has consented to act as Monitor and its signed Consent to Act is attached hereto as **Exhibit "R"**.

104. While undergoing its operations review, JMB recognized the need for an external financial advisor to assist with the review and the implementation of further changes. JMB also

recognized that it needed to ensure that the interests of JMB's lenders would not be harmed in the result.

C. Administration Charge

105. It is contemplated that the Monitor, counsel for the Monitor and counsel for the Applicants would be granted a first priority Court-ordered charge against the Property of the Applicants in priority to all other charges (the "**Administration Charge**") to secure obligations owing in respect of the fees and expenses incurred by such parties. The proposed Initial Order provides for an Administration Charge up to the maximum amount of $300,000. The Applicants believe that the Administration Charge is fair and reasonable in the circumstances.

106. The Applicants require the expertise, knowledge and continuing participation of the proposed beneficiaries of the Administration Charge in order to complete a successful restructuring. I believe the Administration Charge is necessary to ensure their continued participation.

D. Interim Financing

107. As noted above, the Applicants require access to capital in order to continue their operations during these proceedings and to pursue restructuring options either through the SISP or an alternative arrangement with their stakeholders.

108. Attached as **Exhibit "S"** hereto are the weekly cash flow projections for the Applicants on a consolidated basis (the "**Cash Flow Projections**") commencing the week ending April 17, 2020 and ending the week ending June 26, 2020. As set out therein, the Applicants will principally be using cash during these proceedings to pay ongoing day-to-day operational expenses, office expenses, and professional fees and disbursements in connection with these proceedings.

109. The cash flow forecast projects that the Applicants will need additional credit during these proceedings, particularly given the current depressed economy and the effect of the COVID-19 pandemic on the availability of investment capital or refinancing. Without

interim financing, the Applicants have no means to cover all of their expenses during these proceedings, and will not be able to carry on business, to the detriment of their stakeholders.

110. CARC has agreed to provide an interim lending facility pursuant to the terms of the executed term sheet attached hereto as **Exhibit "T"** (the **"Interim Financing Term Sheet"**), which will serve as the basis for a credit agreement (the **"Interim Financing Agreement"**) to be negotiated and settled with CARC following the Initial Order if granted by this Honourable Court. As indicated above, ATB has also indicated that it wishes to provide interim financing in the event that its concerns with respect to the Applicants' CCAA proceedings can be addressed. This matter is still under discussion.

111. The key terms of the Interim Financing Term Sheet are:

(a) CARC shall provide the Interim Financing by way of a revolving first priority interim credit facility to a maximum amount of $1,300,000. The interim credit facility shall bear interest at a rate of 10% per annum, calculated and compounded daily and payable monthly on the last business day of each month;

(b) The Interim Financing shall be secured by a charge created by the Initial Order against all of the Applicants' Property (the **"Interim Lender's Charge"**), which shall rank in priority to all other mortgages, charges, security interests, liens, trust claims, or other encumbrances, other than the Administration Charge;

(c) The Interim Financing shall be used to fund the working capital requirements of the Applicants during these CCAA proceedings and shall not be used to pay indebtedness of the Applicants that arose prior to the commencement of the proceedings, except as permitted by the Court or contemplated by the Cash Flow Projections; and

(d) The term of the Interim Financing shall terminate on the earlier of: (i) the last banking day of the twelfth month following the commencement of these CCAA proceedings; (ii) the implementation of a plan of arrangement or compromise; (iii) the completion of a recapitalization or sale of substantially all of the Applicants' assets pursuant to the SISP; (iv) the termination of these CCAA proceedings; or (v)

the occurrence of an event of default as defined in the Interim Financing Term Sheet.

112. Based on the Cash Flow Projections, the requirement for Interim Financing during the initial 10-day stay period is not expected to exceed $90,000 for the first week and $360,000 for the second week. The intent is to limit the Interim Financing during the initial 10-day period to what is necessary to preserve the value of JMB's business and the Applicants' assets, as well as to permit the Applicants to finalize the proposed SISP. The Applicants, CARC and ATB are negotiating the terms of the interim financing in the initial 10-day period and thereafter in the hopes of achieving a consensus.

113. Access to Interim Financing, including approval of the Interim Lender's Charge, is crucial to enable the Applicants to proceed with a successful restructuring. Given their current financial situation, the Applicants believe that:

(a) The proposed interim financing is the only feasible alternative available to them;

(b) The terms contained within the Interim Financing Term Sheet are fair, reasonable and adequate; and

(c) They will be unable to obtain interim financing for these proceedings on an unsecured basis, as ATB and Fiera have security over substantially all of the Applicants' assets.

114. Accordingly, the Applicants believe that the Interim Financing Term Sheet, the proposed Interim Lenders' Charge and the related grant of security interests are fair and reasonable in the circumstances, are necessary, and are in the best interests of all of the Applicants' stakeholders.

E. Directors' and Officers' Charge

115. It is contemplated that the Applicants' directors and officers would be granted a priority Court-ordered charge (the "**Directors' Charge**") on the Property of the Applicants in priority to all other charges, other than the Administration Charge and the Interim

Financing Charge, up to a maximum initial amount of $250,000. The Applicants believe that the Directors' Charge is fair and reasonable in the circumstances.

116. The Directors' Charge is intended to address potential claims that may be brought against directors and officers that are not covered under existing insurance described below or to the extent coverage is insufficient to cover such claims.

117. A successful restructuring of the Applicants will only be possible with the continued participation of the Applicants' directors and officers. These individuals have specialized expertise and relationships with the Applicants' stakeholders. In addition, the directors and officers have gained significant knowledge that cannot be easily replicated or replaced.

118. The quantum of the Directors' Charge was developed with the assistance and support of the proposed Monitor, and is supported by CARC.

119. The Applicants maintain insurance policies in relation to the potential liability of their directors and officers (the "**D&O Insurance Policies**"). Although the D&O Insurance Policies insure the directors and officers of the Applicants for certain claims that may arise against them in their capacity as directors and/or officers of the Applicants, coverage is subject to several exclusions and limitations, including, *inter alia*, certain employee and statutory obligations. As a result, there is a potential for insufficient insurance coverage in respect of potential director and officer liabilities. The directors and officers of the Applicants have expressed their desire for certainty with respect to potential personal liability if they continue in their current capacity in the context of a CCAA proceeding.

VIII. CASH FLOW PROJECTIONS

120. As noted above, the weekly Cash Flow Projections for the Applicants commencing the week of April 13, 2020 and ending the week of June 22, 2020 are attached hereto as Exhibit "T". The Applicants' management team and their advisors have worked with the proposed Monitor to prepare the Cash Flow Projections.

121. In order to be able to collect upon accounts receivable related to ongoing projects, certain amounts payable prior to the date of the Initial Order may have to be paid in order to secure

the release of those funds, and in order to permit the completion of ongoing projects without disruption. Such payments would be limited to what is necessary in order to preserve value and would be under the supervision of the Monitor.

IX. ENHANCED POWERS FOR MONITOR

122. The Applicants also seek enhanced powers for the Monitor. Specifically, the Applicants seek an Order authorizing and empowering the Monitor to:

(a) Monitor all expenditures of the Applicants and approve any material expenditures;

(b) Monitor and run the SISP and all bids made therein; and

(c) Seek input into various aspects of these CCAA proceedings directly from ATB and Fiera.

123. I swear this Affidavit in support of an Application for the relief set out in paragraph 4 of this Affidavit and for no other or improper purpose.

124. I was not physically present before the Commissioner for Oaths, but was connected to him by video technology and followed the process for remote commissioning.

SWORN ~~(OR AFFIRMED)~~ BEFORE ME)
at Calgary, Alberta, this 16th day of April,)
2020.)
)
)
)
)
A Commissioner for Oaths/Notary Public)
in and for the Province of Alberta)

JEFF BUCK

Alex Matthews
Barrister & Solicitor

This is Exhibit "F" referred to in the Affidavit of

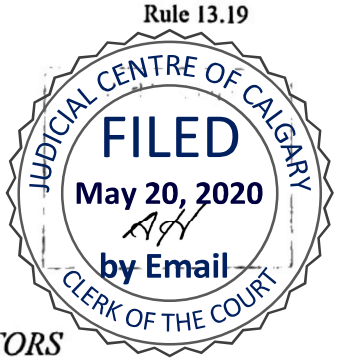
Katie Doran

sworn before me this 4th day of December, 2020.

A Commissioner for Oaths in and for the Province of Alberta

Connor E.J. O'Brien
Student-at-Law

Form 49
Rule 13.19



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COURT FILE NO.	2001-05482
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	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.
DOCUMENT	**AFFIDAVIT**
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/Alex Matthews** Phone: 403.298.1938/403.298.1992/403.298.1018 Fax: 403.263.9193 File No.: A163514

AFFIDAVIT OF JEFF BUCK
sworn May 20, 2020

I, **JEFF BUCK**, of the City of Edmonton, in the Province of Alberta, **MAKE OATH AND SAY THAT**:

1. I am the President and Chief Executive Officer of the Applicant JMB Crushing Systems Inc. ("**JMB**") and a director of the Applicant 2161889 Alberta Ltd. ("**216**") and 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. This Affidavit is supplemental to my Affidavit sworn May 8, 2020 in respect of the application brought by JMB for a lien claims process order (the "**Application**") in respect of work performed by JMB and its subcontractors for the Municipal District of Bonnyville No. 87 ("**MD Bonnyville**").

3. I am authorized to swear this Affidavit as corporate representative of the Applicants.

4. All references to dollar amounts contained herein are to Canadian Dollars unless otherwise stated.

5. MD Bonnyville is a municipality under the provisions of the *Municipal Government Act*, RSA 2000, c M-26, as amended, with offices at or near the town of Bonnyville, Alberta.

6. MD Bonnyville and JMB Crushing Systems ULC, the amalgamation predecessor of JMB, are parties to an agreement dated effective November 1, 2013 (as amended, the "**Contract**"), pursuant to which JMB is required to produce and supply 200,000 tonnes of aggregate materials ("**Product**") per year for MD Bonnyville and deliver and stockpile the Product at the lands in Alberta legally described as:

TITLE NUMBER 122 412 899

LEGAL DESCRIPTION
MERIDIAN 4 RANGE 5 TOWNSHIP 61
SECTION 19
QUARTER NORTH EAST
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS

EXCEPTING THEREOUT:			HECTARES	(ACRES) MORE OR LESS
A)	PLAN 8622670	ROAD	0.416	1.03
B)	PLAN 0023231	DESCRIPTIVE	2.02	4.99
C)	PLAN 0928625	SUBDIVISION	20.22	49.96

EXCEPTING THEREOUT ALL MINES AND MINERALS

(collectively, the "**Lands**").

7. JMB retained subcontractors (the "**Subcontractors**") to perform certain services in connection with the Contract, including testing, crushing, hauling, and surveying of Product at the Lands (the "**Services**").

8. The total outstanding amount payable to the Subcontractors by JMB for Product supplied and Services performed at the Lands is $1,792,560.18.

9. I am advised by Alex Matthews, counsel to JMB, and believe that some of the Subcontractors have filed liens against the Lands in respect of the amounts owing to them by JMB.

10. The last day that any Subcontractor supplied Product or Services to JMB in connection with the Contract and the Lands was April 17, 2020. Since that date, JMB has not used the Subcontractors or any other subcontractors to complete the work required at the Lands pursuant to the Contract.

11. JMB intends to set aside the Order granted on May 11, 2020 setting out a lien process in favour of the proposed Order attached as Schedule "A" hereto. I am advised by Mr. Matthews and believe that the May 11th order is not sufficiently detailed as to the lien claims process, and that the additional clarity provided by the proposed Order attached as Schedule "A" hereto will be beneficial to all stakeholders in the lien claims process.

12. I swear this Affidavit in support of an Application for a lien claims process order as set out above and for no other or improper purpose.

13. I was not physically present before the Commissioner for Oaths, but was connected to him by video technology and followed the process for remote commissioning.

SWORN (OR AFFIRMED) BEFORE ME)
at Calgary, Alberta, this 20th day of May,)
2020.)
)
)
)
)
_____)
A Commissioner for Oaths/Notary Public)
in and for the Province of Alberta)

_____
JEFF BUCK

This is Exhibit "G" referred to in the Affidavit of

Katie Doran

sworn before me this 4th day of December, 2020.

A Commissioner for Oaths in and for the Province of Alberta

Connor E.J. O'Brien
Student-at-Law

SCHEDULE "A"
TO THE LIEN NOTICE OF RBEE AGGREGATE CONSULTING LTD.

COURT FILE NUMBER	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.
CLAIMANT	RBEE AGGREGATE CONSULTING LTD.
DOCUMENT	**AFFIDAVIT**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Bishop & McKenzie LLP 2300, 10180 – 101 Street Edmonton, AB, T5J 1V3 Telephone: 780-426-5550 Facsimile: 780-426-1305 Attention: Jerritt R. Pawlyk File No. 110151-003 JRP/GWS

AFFIDAVIT OF DAVID HOWELLS

Sworn on May 29, 2020

I, David Howells, of the City of Fort Saskatchewan, in the Province of Alberta, SWEAR OATH AND SAY THAT:

1. I am a Director and Vice President of the Claimant, RBEE Aggregate Consulting Ltd. ("RBEE"), and as such I have personal knowledge of the facts and matters hereinafter deposed to, except where stated otherwise, in which case I believe the same to be true.

2. I understand from my review of the records herein, and I do believe, that JMB Crushing Systems Inc. ("JMB") was a party to an agreement with The Municipal District of Bonnyville No. 87 (the "Municipality") dated November 1, 2013 (the "Prime Contract"). Pursuant to the Prime Contract, JMB was to perform certain services for the Municipality, including crushing rock and gravel.

3. On around February 25, 2020, RBEE entered into a Subcontractor Services Agreement with JMB (the "Subcontractor Agreement"). Pursuant to the Subcontract Agreement, RBEE agreed to perform services on behalf of JMB under the Prime Contract. A copy of the Subcontractor Agreement is attached to this Affidavit as **Exhibit "A"**.

GS

Lands

The Shankowski Pit

4. Pursuant to the Subcontractor Agreement, RBEE's services consisted of crushing rock and gravel (the "Services"), at a site located within St. Paul County No. 19 approximately 10 km southwest of the Town of Elk Point, referred to in the Subcontractor Agreement as the "Shankowski Pit".

5. In the Subcontractor Agreement, JMB represented to RBEE that it was the owner of the Shankowski Pit, identified therein as being located at SW 21-56-7-4, being the SW Quarter of Section 21, Township 56, Range 7, West of the 4th Meridian.

6. Attached to this Affidavit as **Exhibit "B"** is a satellite image of the Shankowski Pit captured from Google Maps.

7. Attached to this Affidavit as **Exhibit "C"** is a map evidencing the registered owners of the lands located at Sections 16, 17, 20, and 21 of Township 56, Range 7, West of the 4th Meridian.

8. Based on my review of Exhibits "B" and "C", I believe that RBEE's Services in respect of the Shankowski Pit were conducted upon multiple titled parcels of land, including:

   (a) The Northwest and Southwest Quarters of Section 21 (NW 21-56-7-4; SW 21-56-7-4), identified at Exhibit "C" as being owned by Shankowski, J (the "Shankowski Land"); and

   (b) The Northwest Quarter of Section 16 (NW 16-56-7-4), identified at Exhibit "C" as being owned by Havener, G&H (the "Havener Land").

9. The Shankowski Land is legally described as:

   FIRST

   MERIDIAN 4 RANGE 7 TOWNSHIP 56
   SECTION 21
   QUARTER NORTH WEST
   CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
   EXCEPTING THEREOUT: HECTARES (ACRES) MORE OR LESS
   A) PLAN 1722948 – ROAD 0.417 1.03

   EXCEPTING THEREOUT ALL MINES AND MINERALS
   AND THE RIGHT TO WORK THE SAME

   SECOND

   MERIDIAN 4 RANGE 7 TOWNSHIP 56
   SECTION 21
   QUARTER SOUTH WEST
   CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
   EXCEPTING THEREOUT: HECTARES (ACRES) MORE OR LESS
   A) PLAN 1722948 – ROAD 0.417 1.03

   EXCEPTING THEREOUT ALL MINES AND MINERALS
   AND THE RIGHT TO WORK THE SAME

10. Attached to this Affidavit as **Exhibit "D"** is a copy of a certificate of title to the Shankowski Land.

GS

11. The Havener Land is legally described as:

MERIDIAN 4 RANGE 7 TOWNSHIP 56
SECTION 16
QUARTER NORTH WEST
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
EXCEPTING THEREOUT: HECTARES (ACRES) MORE OR LESS
A) PLAN 4286BM – ROAD 0.0004 0.001
B) ALL THAT PORTION COMMENCING AT THE SOUTH WEST CORNER OF THE SAID SAID QUARTER SECTION; THENCE EASTERLY ALONG THE SOUTH BOUNDARY 110 METRES; THENCE NORTHERLY AND PARALLEL TO THE WEST BOUNDARY OF THE SAID QUARTER 110 METRES; THENCE WESTERLY AND PARALLEL TO THE SAID SOUTH BOUNDARY TO A POINT ON THE WEST BOUNDARY; THENCE SOUTHERLY ALONG THE SAID WEST BOUNDARY TO THE POINT OF COMMENCEMENT
CONTAINING..... 1.21 3.00
C) PLAN 1722948 – ROAD 0.360 0.89

EXCEPTING THEREOUT ALL MINES AND MINERALS

12. Attached to this Affidavit as **Exhibit "E"** is a certificate of title to the Havener Land.

13. The Certificate of Title to the Havener Land also evidences the registration of a caveat in respect of a royalty agreement by JMB as registration no. 002 170 374 on June 20, 2000 (the "Caveat"). A copy of the Caveat is attached to this Affidavit as **Exhibit "F"**.

The Municipality Lands

14. The aggregate rock and gravel that was crushed by JBEE is being delivered to lands owned by the Municipality and located within the Municipality at the Northeast Quarter of Section 19, Township 61, Range 5, West of the 4th Meridian (the "Municipality Lands").

15. Title to the quarter section of land that makes up the Municipality Lands consists of three registered plans (road, descriptive, and subdivision), and a title for the entire quarter section excepting those registered plans.

16. Attached to this Affidavit as **Exhibit "G"** is a map of the Municipality Lands captured from the Alberta Land Titles and Surveys Spatial Information System.

17. Attached to this Affidavit as **Exhibit "H"** is a certificate of title to lands identified at Exhibit "G" and owned by the Municipality, legally described as:

PLAN 0928625
BLOCK 1
LOT 1
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 20.22 HECTARES (49.96 ACRES) MORE OR LESS

(the "Plan 0928625 Land")

18. Attached to this Affidavit as **Exhibit "I"** is a certificate of title to lands identified at Exhibit "G" and owned by the Municipality, legally described as:

MERIDIAN 4 RANGE 5 TOWNSHIP 61
SECTION 19
QUARTER NORTH EAST
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS

EXCEPTING THEREOUT:	HECTARES	(ACRES) MORE OR LESS
A) PLAN 8622670 ROAD	0.416	1.03
B) PLAN 0023231 DESCRIPTIVE	2.02	4.99
C) PLAN 0928625 SUBDIVISION	20.22	49.96

EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "Municipality Quarter Section")

19. Based on my review of Exhibits "G", "H", and "I", I believe that the aggregate rock and gravel excavated by RBEE was deposited upon the Municipality Lands at either, or both, of the Plan 0928625 Land and the Municipality Quarter Section.

Invoices and Amounts Unpaid

20. RBEE performed its Services pursuant to the Subcontractor Agreement and rendered invoices for its Services to JMB.

21. In accordance with the Subcontractor Agreement, RBEE rendered the following invoices for its Services:

Date	Invoice		Invoice Total	Invoice Total (w/ GST)
March 2, 2020	259		$236,196.00	$248,005.80
March 31, 2020	266		$663,804.00	$696,994.20
April 16, 2020	270		$474,428.00	$498,149.40
May 10, 2020	278		$72,045.82	$75,648.11
		Total	**$1,446,473.82**	**$1,518,797.51**

(collectively, the "Invoices")

22. Attached to this Affidavit as **Exhibit "J"** are copies of the Invoices.

23. On or around April 3, 2020, RBEE received payment from JMB in respect of Invoice #259 in the full amount of **$248,005.80**, inclusive of GST.

24. No further payment has been received by RBEE, and the remainder of the Invoices remain outstanding in the sum of **$1,270,791.71**, inclusive of GST.

25. Attached to this Affidavit as **Exhibit "K"** is an Application for Progress Payment prepared by JMB and dated May 10, 2020, evidencing that RBEE had performed Services to date of $1,446,473.82 before GST, or $1,518,797.51 inclusive of GST.

26. RBEE last provided its Services to the Shankowski Pit on April 6, 2020.

27. I understand that, as of the date of this Affidavit, the aggregate rock and gravel crushed by JBEE continues to be transported from the Shankowski Pit to the Municipality Lands.

GS

Liens

Shankowski Pit

28. On May 15, 2020, RBEE registered a builder's lien at the Alberta Land Titles Office as registration No. 202 106 447 against the Shankowski Land.

29. Attached to this Affidavit as **Exhibit "L"** is a copy of RBEE's builder's lien registered against the Shankowski Land.

30. On May 15, 2020, RBEE registered a builder's lien at the Alberta Land Titles Office as registration No. 202 106 449 against the Havener Land.

31. Attached to this Affidavit as **Exhibit "M"** is a copy of RBEE's lien registered against the Havener Land.

32. RBEE also claims a builders' lien against JMB's registered interest in the Havener Land.

33. Accordingly, in addition to the liens filed by RBEE, RBEE seeks to enforce all rights and remedies ordinarily available to it under the *Builders' Lien Act* in respect of JMB's interest in the Havener Land as evidenced by the Caveat.

Municipality Lands

34. On May 15, 2020, RBEE registered a builder's lien at the Alberta Land Titles Office as registration No. 202 106 439 against the Plan 0928625 Land.

35. Attached to this Affidavit as **Exhibit "N"** is a copy of RBEE's lien registered against the Plan 0928625 Land.

36. RBEE also claims a builder's lien against the Municipality Quarter Section.

37. I have reviewed certain materials filed in the within action, including the Order pronounced by Justice K.M. Eidsvik on May 20, 2020 and filed in the within action on May 21, 2020 (the "Lien Claims Order")

38. Paragraph 3(k) of the Lien Claims Order defines the "Lands" to which the Lien Claims Order applies to mean the Municipality Quarter Section.

39. Accordingly, in addition to the liens filed by RBEE to date, RBEE seeks to enforce all rights and remedies ordinarily available to it under the *Builders' Lien Act* with respect to the Municipality Quarter Section (defined in the Lien Claim Order as the "Lands").

40. I make this affidavit in support of the Notice of RBEE Aggregate Consulting Ltd. in response to the Lien Claim Order.

41. I swear this Affidavit despite not being physically present before the commissioner, but having been linked with the commissioner utilizing video technology and following the process described in the Notice to Profession NPP#2020-01: Remote Commissioning of Affidavits for Use in Civil and Family Proceedings During the COVID-19 Pandemic.

SWORN BEFORE ME at the City of Edmonton, in the Province of Alberta this 29th day of May, 2020

Commissioner for Oaths in and for the Province of Alberta

Graham W. Sanson
Barrister & Solicitor

DAVID HOWELLS

175

This is Exhibit "H" referred to in the Affidavit of

Katie Doran

sworn before me this 4th day of December, 2020.

A Commissioner for Oaths in and for the Province of Alberta

Connor E.J. O'Brien
Student-at-Law

Form 49
Rule 13.19

Clerk's Stamp

COURT FILE NO.	2001-05482
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c C-36, as amended AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD. AND IN THE MATTER OF A PLAN OF ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. and MANTLE MATERIALS GROUP, LTD.
APPLICANTS	JMB CRUSHING SYSTEMS INC., 2161889 ALBERTA LTD., and MANTLE MATERIALS GROUP, LTD.
DOCUMENT	**AFFIDAVIT OF JASON PANTER**
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/Alison J. Gray** Phone: 403.298.1938/403.298.1992/403.298.1841 Fax: 403.263.9193 File No.: A163514

AFFIDAVIT OF JASON PANTER
sworn October ___, 2020

I, Jason Panter, of the Hamlet of Ardrossan, in the Province of Alberta, **MAKE OATH AND SAY THAT**:

1. I am a Project Manager/Estimator at the Applicant JMB Crushing Systems Inc. ("**JMB**"). 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.

3

2. In preparing this Affidavit, I reviewed the business records of JMB relevant to this Application and have satisfied myself that I am possessed of sufficient information and knowledge to swear this Affidavit.

3. I am authorized to swear this Affidavit as corporate representative of JMB.

Background

4. JMB's business is the extraction, processing, transportation and sale of gravel, sand and other aggregates in the Province of Alberta. JMB either directly or through its subsidiary 2161889 Alberta Ltd., has rights of access to over 50 aggregate pits in Alberta through surface material leases with the Province of Alberta and royalty agreements with private individuals or companies, and has freehold title to one aggregate pit. The aggregates are produced to customer specifications and delivery services are provided to various locations in northeastern Alberta.

5. JMB, through its predecessor company JMB Crushing Systems ULC ("**JMB ULC**"), entered into an Aggregates Royalty Agreement (the "**Shankowski Royalty Agreement**") with Jerry Shankowski ("**Shankowski**"). Shankowski is the owner of lands located at SW-21-56-7-W4 (the "**Shankowski Land**").

6. Pursuant to the Shankowski Royalty Agreement, JMB was granted the exclusive right to access the Shankowski Land to explore, prospect for, test, get, process and dispose of aggregates contained in the Shankowski Land. Attached hereto as **Exhibit "A"** is a copy of the Shankowski Royalty Agreement.

7. In exchange for the exclusive rights granted to JMB, JMB was to pay royalties to Shankowski at differing rates depending upon the type and size of the aggregate removed from the Shankowski Land. The royalties were payable 90 days after the aggregate was removed from the Shankowski Land. In the aggregate industry it is common for land owners to grant licenses to aggregate companies in exchange for the payment of royalties on the volume of aggregate extracted from the land.

8. JMB ULC also entered into an Aggregates Royalty Agreement dated November 8, 2018 with Helen and Gail Havener (the "**Havener Royalty Agreement**"). The Estate of Helen Havener and Gail Havener own the land described as NW-16-56-7-W4M (the "**Havener Land**").

9. Pursuant to the Havener Royalty Agreement, JMB was granted the exclusive right to access the Havener Land to explore, prospect for, test, get, process and dispose of aggregates contained in the Havener Land. JMB was also granted the right of first refusal to match any offer to purchase made on the Havener Land. Attached hereto as **Exhibit "B"** is a copy of the Havener Royalty Agreement.

10. In exchange for the exclusive rights granted to JMB, JMB was to pay royalties to the Haveners at differing rates depending upon the type and size of the aggregate removed from the Havener Land. The royalties were payable 90 days after the monthly report of aggregate removed from the Havener Land was produced.

Bonnyville Project

11. On or about November 1, 2013, JMB ULC contracted with the Municipal District of Bonnyville No. 87 (the "**MD of Bonnyville**") for the production, hauling and stockpiling of crushed aggregate materials for use in road construction (the "**Bonnyville Contract**"). Attached hereto as **Exhibit "C"** is a copy of the Bonnyville Contract, as amended.

12. In order to complete the 2020 supply for the Bonnyville Contract, JMB:

    (a) Extracted aggregate from the Shankowski Land. In the aggregates industry, the removal of top soil and overburden to expose the raw aggregate pit run is also often referred to as "stripping". The exposed raw aggregate pit run is then kept in what is referred to as a gravel bank;

    (b) Entered into a Subcontractor Services Agreement with RBEE Aggregate Consulting Ltd. ("**RBEE**"), on or around February 25, 2020, pursuant to which RBEE agreed to provide crushing services to produce gravel from the raw

aggregate pit run. RBEE was to provide crushing services in respect of the Bonnyville Contract;

(c) Between approximately February 25, 2020 and April 8, 2020, RBEE crushed the raw aggregate pit run that was extracted from the Shankowski Land. To do so, RBEE would move the raw aggregate pit run from the gravel bank (also referred to in the industry as "gravel marshalling") to RBEE's mobile crushing unit. This mobile crushing unit was brought onto the Shankowski Land by RBEE to perform the crushing services. Once the crushing services were complete, the mobile crushing unit would be removed from the Shankowski Land and returned to RBEE's premises. Attached hereto as **Exhibit "D"** is a AbaData map of the Shankowski Land and the Havener Land, showing the approximate RBEE crushing footprint;

(d) Asked RBEE to perform some stripping on the Shankowski Land. While JMB did the vast majority of stripping on the Shankowski Land for the Bonnyville Contract, RBEE did perform a small amount of stripping, as JMB did not strip and expose enough raw aggregate pit run to complete the volume of crushing for the 2020 supply for the Bonnyille Contract. RBEE invoiced JMB $7,500 in stripping costs. Attached hereto as **Exhibit "E"** is a copy of the April 16, 2020 invoice from RBEE to JMB;

(e) Engaged J.R. Paine on or about April 1, 2020, to perform aggregate testing services in respect of the Bonnyville Contract. As part of the aggregate testing services provided, J.R. Paine tested the crushed aggregate from the Shankowski Land to ensure it complied with the specifications in the Bonnyville Contract. J.R. Paine's testing services were completed by April 8, 2020. J.R. Paine did not perform any testing services on the Havener Land or of aggregate from the Havener Land in respect of the Bonnyville Contract. Attached hereto as **Exhibits "F"** and **"G"** are copies of the Purchase Order dated April 1, 2020 and the invoices submitted by J.R. Paine to JMB for testing services performed from February 25 to April 8, 2020; and

(f) After the raw aggregate pit run was crushed to contract specifications, stockpiled the aggregate on the Shankowski Land until transported to the MD of Bonnyville yard, where I understand it was stored until needed.

13. RBEE did not crush or extract any raw aggregate pit run from the Havener Land, and no aggregate testing was done by J.R. Paine of aggregate from the Havener Land, in respect of the Bonnyville Contract. Had aggregate been extracted from the Havener Land and supplied to the MD of Bonnyville, JMB would have paid royalties to the Haveners, which it did not. Attached hereto as **Exhibits "H"** and **"I"** are copies of the Havener Royalty Statements for February to April, 2020, and the ticket data showing aggregate hauled by JMB for the supply of the Bonnyville Contract was hauled from the Shankowski Land, which information was used to calculate royalties owing to Shankowski.

The Liens

13. On May 13 and May 15, 2020 respectively, J.R. Paine and RBEE registered liens pursuant to the *Builders Lien Act*, RSA 2000, c B-7, being instrument numbers 202 104 972 (J.R. Paine) and 202 106 449 (RBEE) on title to the Havener Land (the "**Havener Liens**"), which is legally described as:

> MERIDIAN 4 RANGE 7 TOWNSHIP 56
> SECTION 16
> QUARTER NORTH WEST
> CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
> EXCEPTING THEREOUT: HECTARES (ACRES) MORE OR LESS
> A) PLAN 4286BM – ROAD 0.0004 0.001
> B) ALL THAT PORTION COMMENCING AT THE SOUTH WEST CORNER OF THE SAID QUARTER SECTION; THENCE EASTERLY ALONG THE SOUTH BOUNDARY
> 110 METRES; THENCE NORTHERLY AND PARALLEL TO THE WEST BOUNDARY
> OF THE SAID QUARTER 110 METRES; THENCE WESTERLY AND PARALLEL TO THE SAID SOUTH BOUNDARY TO A POINT ON THE WEST BOUNDARY; THENCE SOUTHERLY ALONG THE

SAID WEST BOUNDARY TO THE POINT OF COMMENCEMENT
CONTAINING 1.21 3.00
C) PLAN 1722948 – ROAD 0.360 0.89

Attached hereto as **Exhibit "J"** is a copy of the Certificate of Title to the Havener Land.

14. On May 13 and May 15, 2020 respectively, J.R. Paine and RBEE registered liens pursuant to the *Builders Lien Act*, RSA 2000, c B-7, being instrument numbers 202 104 972 (J.R. Paine) and 202 106 447 (RBEE) on title to the Shankowski Land (the "**Shankowski Liens**"), which is legally described as:

FIRST
MERIDIAN 4 RANGE 7 TOWNSHIP 56
SECTION 21
QUARTER NORTH WEST
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
A) PLAN 1722948 – ROAD 0.417 1.03
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK SAME

SECOND
MERIDIAN 4 RANGE 7 TOWNSHIP 56
SECTION 21
QUARTER SOUTH WEST
CONTAINING 64.7 HECTARES (ACRES) MORE OR LESS
A) PLAN 1722948 – ROAD 0.417 1.03
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

Attached hereto as **Exhibit "K"** is a copy of the Certificate of Title to the Shankowski Land.

14. RBEE also asserts a builder's lien claim against JMB's registered interest in the Havener Land, which interest is evidenced by a caveat registered as 002 170 374 on June 20, 2000 (the "**Additional RBEE Lien Claim**").

15. I swear this Affidavit in support of an Application to declare the Havener Liens, Shankowski Liens and the Additional RBEE Lien Claim invalid and to have the Havener Liens and Shankowski Liens discharged from the Havener Land.

SWORN (OR AFFIRMED) BEFORE ME at Calgary, Alberta this ___ day of October, 2020.

A Commissioner for Oaths in and for the Province of Alberta

JASON PANTER

This is Exhibit "C" referred to in the Affidavit of Jason Panter sworn before me this _____ day of October, 2020.

_____

A Commissioner for Oaths in and for the Province of Alberta

3

TERMS AND CONDITIONS AGREEMENT

This Agreement is made effective the 1st day of November, 2013.

Between:

Municipal District of Bonnyville No. 87
(" hereinafter the "MD")

- and -

JMB Crushing Systems ULC
(hereinafter "JMB")

Definitions

1. In this Agreement, capitalized words will have the following meanings:

    a. "Agreement" means this Terms and Conditions Agreement;

    b. "MD" means the Municipal District of Bonnyville No. 87, a municipality under the provisions of the *Municipal Government Act*, R.S.A. 2000, c. M-26, as amended, with offices at or near the town of Bonnyville, Alberta;

    c. "JMB" means JMB Crushing Systems ULC, a corporation under the laws of Alberta with offices in the town of Bonnyville, Alberta;

    d. "Parties" means the Municipal District of Bonnyville No. 87 and JMB Crushing Systems ULC;

    e. "Product" means the production by JMB of the aggregate described in this Agreement which includes the crushing and cleaning of rock/gravel, and all related services whereby rock/gravel is made into usable crushed aggregate for the MD in accordance with the required specifications set out in this Agreement;

    f. "Services" means the hauling and stockpiling of crushed aggregate by JMB as set out in this Agreement and anything else which is required to be done to give effect to this Agreement;

3

g. "Term" means the period of time this Agreement is in effect; and

h. "Year" means a calendar year commencing on January 1 and ending on December 31 of the same year.

JMB Responsibilities

2. At all times, JMB will comply with all applicable laws.

3. At its own cost, JMB will provide all labour, materials, equipment, supplies and anything else required to produce the Product and provide the Services to the satisfaction of the MD.

4. All personnel of JMB who are directly or indirectly involved with producing the Product and providing the Services are under the direction and control of JMB.

5. JMB will exercise good workmanship and quality control regarding the Product and Services.

6. JMB will prioritize, schedule, plan and establish deadlines such that the Product and Services are provided to the MD in accordance with the terms of this Agreement.

7. JMB shall forthwith report to the MD any damage it causes to MD property.

8. At all times, JMB shall ensure it is meeting all legal requirements to carry on its business and provide the Product and Services to the MD.

9. JMB represents that it is a resident of Canada for the purposes of Canadian income tax legislation.

Prime Contractor

10. JMB will be the prime contractor in the specific areas and geographic locations where the Product and Services are provided, including the pit where the Product is made and for all areas related to providing the Services.

Product & Services

11. At its own cost, JMB is responsible for crushing rock/gravel at a pit to produce the Product which is in a usable aggregate form for the MD and which is in accordance with the following required specifications:

    a. Modified Designation 4 Class 20mm, Modified Designation 4 Class 40 mm in accordance with the following specifications in the table below:

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DESIGNATION	4	
CLASS (MM)	20	40
40 000		100
PERCENT 25 000		
PASSING METRIC 20 000	100	55-
SIEVE 10 000	35-77	25-
(COSB 8-GP 8 000		
2M)*M 5 000	15-55	8-55
1 250	0-30	0-30
80	0-12	0-12
%FRACTURE BY ALL WEIGHT FACES +5000	40+	25+
PLASITICITY INDEX (PI)	NP-8	NP-8

b. Product specifications are as set out above, or otherwise agreed by the Parties in writing, and are generally described as crushed gravel being Modified Des 4 Class 20/Des 4 Class 40 with no more than 25% passing the 1250um.

c. A minimum of 200,000 (two-hundred-thousand) tonnes of Product per Year, shall be delivered and stockpiled at designated locations within the geographic boundaries of the MD, as determined by the MD acting reasonably.

d. The stockpile locations designated by the MD for the 2013 Year are the MD's yard at NE 19-61-5 W4m and at the Harco Oilfield Services Ltd. NW 14-62-2 W4M. JMB will have unlimited access to the Harco Oilfield Services Ltd. location. JMB will have reasonable access to the MD's yard.

e. Annual quantities, and locations where the Product will be hauled and stockpiled by JMB, shall be confirmed in writing by September 1st of each year. Unless the Parties agree otherwise in writing, the annual quantities shall not be less than 200,000 (two-hundred-thousand) tonnes of Product delivered and stockpiled for the MD by JMB.

f. JMB may make the Product, haul and stockpile to the MD designated locations for the given year as mutually agreed upon by both parties.

g. For delivery and stockpiling of the Product, JMB shall have reasonable access to locations designated by the MD.

Delivery and Stockpiling

12. JMB shall deliver the Product to the MD, and in cooperation with MD staff, stockpile the Product in a continuous cone to a minimum height of 10 (ten) meters. JMB shall supply all equipment and labour for delivering and stockpiling the Product, including trucks, a stacking conveyor(s), bulldozer(s) and any other equipment.

Changes to Product

13. Changes may be made to the Product amounts or specifications as agreed upon by the Parties. When such changes are agreed upon, the Parties shall prepare and execute an amendment to this Agreement.

Ownership of Product

14. JMB shall own the Product until the MD has paid all invoices for the crushing of the Product in a Year, or when all of the Product for the same Year has been delivered to the MD, whichever first occurs.

Term

15. The Term of this Agreement shall be ten (10) years, commencing on November 1, 2013.

Price

16. The price for the Product and Services provided in accordance with the provisions of this Agreement shall be as follows:

    a. For the first 5 years of this Agreement, the MD will pay JMB $25.00 (twenty-five dollars) per tonne; and

    b. The last 5 years of this Agreement, the MD will pay JMB $27.00 (twenty-seven dollars) per tonne.

17. Unless agreed to in writing by the Parties, the MD will not pay JMB any monies other than the amounts per tonne specified in this Agreement for the Product and Services, plus GST.

Invoicing & Set-Off

18. Invoices of JMB shall state the quantity of Product being invoiced, the period the invoice covers, the amount being invoiced, whether the invoice is for crushing or delivery/stockpiling of the Product, GST, and any other reasonable information required by the MD.

19. When crushing is being done in a Year, JMB shall invoice the MD on a bi-weekly basis for 50% (fifty percent) of the applicable price per tonne of the Product which has been crushed and which will subsequently be delivered to the MD in the same Year.

20. When the Product is delivered and stockpiled in a Year as per this Agreement, JMB shall invoice the MD bi-weekly, or other period agreed on in writing by the Parties, for the remaining 50% (fifty percent) of the applicable price per tonne for the Product which is scaled/weighed by JMB and delivered and stockpiled by JMB.

21. Within 30 days of receiving JMB invoices, the MD will pay undisputed amounts.

22. The MD may make adjustments for any overpayments to JMB at any time.

23. For each Year, all invoices for that Year are to be submitted by JMB to the MD by December 31 of that Year.

24. At all times, the MD reserves the right to verify the quantity and quality of Product which JMB invoices it. The MD is not required to pay for Product which does not meet the specifications and the permitted deviations from them in accordance with this Agreement.

25. JMB shall be responsible to remit all amounts required by provincial and federal laws to the appropriate governmental agency.

26. From the amounts paid to JMB by the MD, JMB is deemed to hold that part of them in trust which are required or needed to pay for any salaries, wages, compensation, overtime pay, statutory holiday pay, vacation pay, entitlements, employee and employer Canada Pension Plan contributions, employee and employer Employment Insurance contributions, Workers' Compensation premiums and assessments, income taxes, withholdings, GST and all costs directly or indirectly related to the Product and Services. JMB shall pay the foregoing from such trust funds.

27. The MD may set-off and deduct any monies payable to JMB against any financial obligation JMB owes the MD.

Other Fees

28. JMB reserves the right to negotiate with the MD for reasonable and necessary ancillary charges which are assessed by other municipalities or the provincial or federal governments. The MD must agree in writing to any such ancillary charges before they are paid by the MD.

GST

29. The Parties shall comply with the *Excise Tax Act* (Canada) pertaining to GST. JMB shall set out applicable GST as a separate item on all invoices and the MD shall pay such GST. JMB shall be responsible for remitting GST in accordance with the *Excise Tax Act*.

30. JMB and the MD shall have registered Goods & Services Tax ("GST") accounts.

Changes

31. The MD may at any time issue changes to the general scope of the Product and the Services in this Agreement. In such event, the MD and JMB shall agree to an equitable adjustment to the price. Any such agreed changes and adjustments shall be in writing.

Quality Control

32. JMB will ensure the quality of the Product meets the required specifications stated in this Agreement.

33. At JMB's cost, sieve samples shall be taken by a qualified independent geotechnical testing firm at a frequency of 1 (one) sieve per 1,000 (one-thousand) tonnes of Product produced and records shall be kept of such samples. Copies of the sample results will be provided to the MD by JMB within 72 (seventy-two) hours of them being taken.

34. JMB will ensure that the variances from the specifications for the Product do not deviate more than 2% (two percent) from the required specifications. If the variance from the Product specifications continues to deviate from the required specifications for more than 2 (two) consecutive sieves without satisfactory correction by JMB, until the required specifications are met, the MD reserves the right to reject the Product which does not meet the required specifications. Should such deviation occur the MD shall undertake to notify JMB is writing prior to any further action.

35. Test sampling of the Product shall be performed by JMB at the pit and records will be kept of the samples. Such test sampling will be done as frequently as required to ensure the required specifications for the Product is in accordance with the terms of this Agreement. Copies of the test sample results will be provided to the MD by JMB within 72 (seventy-two) hours of them being taken.

36. Spot testing of the Product will be performed by the MD when the Product is delivered to the designated locations specified by the MD and records of such testing will be kept by the MD. Copies of the spot testing results will be provided to JMB by the MD within 72 hours (seventy-two) hours of them being taken. JMB will ensure that the variances from the specifications for the delivered Product do not

deviate more than 2% (two percent) from the required specifications for the Product. If the variance from the Product specifications continues to deviate from the required specifications for more than 2 (two) consecutive sieves of delivered Product without satisfactory correction by JMB, the delivery of the Product will be suspended until an independent geotechnical consultant can verify that the specifications of the Product delivered is meeting the required specifications. JMB will pay the costs for such an independent assessment.

Insurance

37. At all times, JMB shall maintain Workers' Compensation insurance and shall pay its assessments and premiums as required by applicable Workers' Compensation legislation. JMB shall provide the MD with proof of Workers' Compensation coverage as required by the MD.

38. At all times, JMB shall have general liability insurance, with limits of not less than five-million dollars ($5,000,000) per occurrence for bodily injury, death, property damage, loss of use and consequential losses. At the MD's request, JMB shall furnish certificates of insurance as proof of coverage.

Indemnification & Liability

39. JMB shall indemnify and hold harmless the MD, its directors, trustees, officers, councillors, agents and employees, against and from any actions, claims, demands, proceedings, loss, liability, damages on account of injury to or death of persons, damage to or destruction of property belonging to the MD or others, which are directly or indirectly caused by JMB's acts, breach of contract or negligence related to the Product and Services.

40. Nothing in this Agreement shall obligate JMB to indemnify the MD for any loss, liability or damages caused by breach of contract or negligence by the MD, its directors, trustees, officers, councillors, agents or employees.

41. JMB indemnifies the MD for all amounts related to the Product and Services, or related to its personnel, including interest and penalties, which it is required to pay or remit to any governmental agency as required by law, including the Workers' Compensation Board.

Non-Agent

42. The Parties agree that none of the provisions of this Agreement shall be construed so as to constitute JMB as being the agent, partner or servant of the MD. JMB shall have no authority to make any statements, representations or commitments of any kind, or take any action, which may be binding upon the MD, except as may be authorized in writing by the MD.

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Termination & Suspension

43. This Agreement automatically terminates without notice and without penalty when the Term expires.

44. Without notice to JMB and without penalty to the MD, this Agreement automatically terminates when JMB goes into receivership, becomes insolvent or is assigned or petitioned into bankruptcy.

45. By notifying JMB in writing, the MD may terminate this Agreement forthwith for a material breach of the terms of this Agreement and without further obligation on the MD beyond the date of such termination.

46. By notifying the MD in writing, JMB may terminate this Agreement forthwith for a material breach of the terms of this Agreement and without further obligation on JMB beyond the date of such termination.

47. At any time, the MD and JMB may mutually agree in writing to terminate this Agreement regardless of the foregoing termination provisions.

48. Upon written notice, the MD may suspend the operation of this Agreement, without penalty, when JMB is not complying with the terms of this Agreement and such suspension shall continue until JMB complies with the terms of this Agreement or the MD terminates this Agreement for a material breach of its terms.

49. Upon written notice, JMB may suspend the operation of this Agreement, without penalty, when the MD is not complying with the terms of this Agreement and such suspension shall continue until the MD complies with the terms of this Agreement or JMB terminates this Agreement for a material breach of its terms.

Mediation & Arbitration

50. Without prejudice to any other right or remedy the Parties may have, in the event of a dispute, the Parties shall make best efforts to resolve the dispute and use mediation before arbitration. When the parties cannot agree on a mediator, the Court of Queen's Bench of Alberta, upon application, shall appoint a mediator.

51. The Parties agree that any disputes arising from the performance of this Agreement, which cannot be settled in negotiation or mediation between the Parties, shall be submitted to a single arbitrator subject to the rules and procedures of the Alberta *Arbitration Act*, which shall be binding and subject to the limitations expressed in this Agreement. Each party shall bear its own costs for arbitration. The Parties shall equally share the costs of the arbitrator. Unless the Parties agree otherwise in writing, the place of the arbitration shall be Edmonton, Alberta. An arbitrator must be qualified to perform the arbitration by having the knowledge, experience, ability and

expertise to perform the arbitration relative to the nature of the dispute between the Parties.

52. When the Parties cannot agree in writing on an arbitrator, the Court of Queen's Bench, upon application, shall appoint an arbitrator.

Notices & Correspondence

53. Any notice required or permitted to be given hereunder shall be in writing, may be delivered personally or by facsimile, email, courier or registered mail, and shall be addressed to the representative of each Party at the address below, until changed by notification in writing to the other Party:

a. To JMB at:

Attention: Jeff Buck
JMB Crushing Systems ULC
P.O. Box 6977
Junction Secondary HWY #660 & Range Road 445
Bonnyville, AB T9N 2H4
Fax: 780-826-6280
Email: admin@jmbcrush.com

b. To the MD:

Attention: Darcy Zelisko
Municipal District of Bonnyville No. 87
Bag 1010
61330 RR 455
Bonnyville, AB T9N 2J7
Fax: 780-826-5064
Email: dzelisko@md.bonnyville.ab.ca

General

54. All references to dollars and "$" in this Agreement are to Canadian Dollars.

55. Time shall be of the essence in this Agreement.

56. In this Agreement, unless otherwise stated, all references to the masculine or feminine gender shall include the other and vice-versa.

57. This Agreement shall be construed and enforced in accordance with the laws applicable in the province of Alberta. The Parties hereto irrevocably attorn to the jurisdiction of the courts and arbitration in Alberta.

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58. This Agreement contains the entire agreement and understanding between the MD and JMB and supersedes all prior representations and discussions pertaining to all matters directly or indirectly covered in this Agreement. There are no conditions, warranties, representations, understandings or agreements of any nature other than as set out in this Agreement.

59. This Agreement may only be amended by a subsequent written instrument signed by both Parties.

60. Failure of the Parties to insist upon or to enforce strict performance of any of the terms of this Agreement shall not be construed as a waiver of their rights to assert or rely upon such terms subsequently.

61. Should any part of this Agreement be held invalid or illegal, that part shall be severed from the Agreement and the remainder shall continue in full force and effect.

62. This Agreement shall not be assigned, except as may be agreed upon by the Parties in writing.

63. Neither Party shall be responsible for any delay or failure to perform its obligations under this Agreement where such delay or failure is due to natural disasters, fire, flood, explosion, acts of terrorism, war, embargo, labour strikes, Acts of God, or any other cause beyond their control. Within seven (7) days from the beginning of such events, the affected Party shall notify the other Party in writing of the existence of the event and its probable impact on its obligations in this Agreement.

64. This Agreement may be executed and delivered by the Parties in counterparts (each of which shall be considered an original) and by facsimile, email or other electronic means, and when a counterpart has been executed and delivered by each of the Parties, all such counterparts shall together constituted one agreement.

IN WITNESS THEREOF the authorized representatives of the Parties have executed this Agreement as of the date first written above.

JMB CRUSHING SYSTEMS ULC
Per:

Jeff Buck, President

MUNICIPAL DISTRICT OF BONNYVILLE No. 87
Per:

AMENDMENT TO AGREEMENT

This is an amendment to the terms and conditions of the agreement signed on the 30th day of September, 2015.

BETWEEN:

Municipal District of Bonnyville No. 87
("hereinafter the "MD")

- And –

JMB Crushing Systems ULC
(Hereinafter "JMB")

WHEREAS the parties wish to amend certain terms of the agreement and WHEREAS both parties have reviewed and agreed upon the following terms and references being amended as follows:

Clause 11 c.

- A minimum of 200,000 (two-hundred-thousand) tonnes of Product per year, shall be supplied and/or stockpiled at designated locations within the geographic boundaries of the MD, mutually agreed upon by both parties. Should the Product be stockpiled in one of the designated pits both quantities and quality of Product shall be monitored and any shortfall shall be supplied in the same year as hauled. The MD will weight Product based on Loadrite scale and provide such records to JMB for confirmation if required.

Clause 11 d.

- ~~The stockpile locations designated by the MD for the 2013 Year are the MD's yard at NE 19-61-5 W4M and at the Harco Oilfeild Services Ltd. NW 14-62-2 W4M. JMB will have unlimited access e Harco Oilfield Services Ltd location. JMB will have reasonable access to the MD's yard.~~

- The stockpile locations designated by the MD for 2015 as agreed upon by both parties will be Pit #19 - with gravel remaining in the Pit until the MD uses the gravel. For 2016 ONLY the designated stockpile locations shall be Pit #19, the Truman pit or the MD yard or as mutually agreed upon.

Clause 11 e.

- Annual quantities, and locations where the Product will be hauled and stockpiled by JMB, shall be confirmed in writing by September 1st of each year except for 2016 ONLY confirmation of quantities and location will be January 1st. With 50% of payment at time of crushing and the remainder September 1st of 2016 providing it is stockpiled in one of the designated pits for $21.00/tonne. Every year thereafter moving forward notification will be September 1st unless the Parties agree otherwise. The annual quantities shall not be less than 200,000 (two-hundred-thousand) tonnes of Product delivered and stockpiled for the MD by JMB.

Clause 16.

- The price for the Product and Services provided in accordance with the provisions of this Agreement shall be as follows:
    a. For the remaining 2 years and moving forward , the MD will pay JMB:
        a. For 2016 - Product is in either of the following pits, namely Pit #19 or Truman Pit $21.00 (twenty-one dollars) per tonne or in MD yard $25.00 (twenty-five dollars) per tonne;
    b. The last five years of this Agreement, the MD will pay JMB $27.00 (twenty-seven dollars) per tonne.

Except as set forth in this Agreement, the Agreement is unaffected and shall continue in full force and effect in accordance with the terms. If there is a conflict between this Amendment and Agreement or any earlier Agreement, the terms of this Amendment will prevail.

JMB CRSHING SYSTEMS ULC
Per:

Jeff Buck, President

MUNICIPAL DISTRICT OF BONNVYILLE NO. 87
Per:

CAO, Chris Cambridge

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AMENDMENT TO AGREEMENT

This is an amendment to the terms and conditions of the agreement signed on the 12th day of December, 2016.

BETWEEN:

Municipal District of Bonnyville No. 87
("hereinafter the "MD")

- And –

JMB Crushing Systems ULC
(Hereinafter "JMB")

WHEREAS the parties wish to amend certain terms of the agreement and WHEREAS both parties have reviewed and agreed upon the following terms and references being amended as follows:

The MD to receive a $1 (one dollar) reduction per tonne on the Product with the following conditions:

- Crush and stockpile 200,000 (two hundred thousand) tonnes of Product at an earlier mutually agreed upon time – starting as soon as December of the prior year and enforceable for the remainder of the term of the Agreement;
- Invoices payable within 90 days of receipt for Product – invoices to be dated within calendar year of Product delivery;
- Failure to notify the MD for Quality Control may result in the Product being refused.

Except as set forth in this Agreement, the Agreement is unaffected and shall continue in full force and effect in accordance with the terms. If there is a conflict between this Amendment and Agreement or any earlier Agreement, the terms of this Amendment will prevail.

JMB CRUSHING SYSTEMS ULC
Per:

Jeff Buck, President

MUNICIPAL DISTRICT OF BONNVYILLE NO. 87
Per:

CAO, Chris Cambridge

AMENDMENT TO AGREEMENT

This is an amendment to the terms and conditions of the agreement signed on the 26th day of February 2018.

BETWEEN:

Municipal District of Bonnyville No. 87
("hereinafter the "MD")

- And –

JMB Crushing Systems ULC
(Hereinafter "JMB")

WHEREAS the parties wish to amend certain terms of the agreement and WHEREAS both parties have reviewed and agreed upon the following terms and references being amended as follows:

The MD to receive a $.50 (fifty cent) reduction per tonne on Product haul for 2018 gravel supply with the following conditions:

- As per request from JMB for full payment of 2018 interim crush by the end of February 2018
- And as per council motion:
  Resolution No. 18.152
  That Council agrees to an early payment on February 28, 2018 to JMB Crushing Systems ULC for the 2018 gravel crushing contract, subject to the Municipal District receiving a reduction of $.50 per tonne on the fall gravel haul portion of the 2018 gravel supply contract with JMB Crushing.

Background:

- As per original agreement dated 1st November 2013 and in particular Clause 16
  a) For the first 5 years of this Agreement, the MD will pay JMB $25.00 (twenty-five dollars) per tonne; and
  b) The last five years of this Agreement, the MD will pay JMB $27.00 (twenty-seven dollars per tonne.

- Amending agreement dated 30th September 2015 and in particular Clause 16
  a) For the remaining two(2) years and moving forward, the MD will pay JMB:
  For 2016 product is in either of the following pits, namely pit #19 or Truman Pit
  $21.00 (twenty-one dollars) per tonne or in the MD yard $25.00 (twenty-five dollars) per tonne
  b) The last five (5) years of this Agreement, the MD will pay JMB $27.00 (twenty-seven dollars) per tonne.

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- Amending agreement dated 12th of December 2016 and in particular Clause 16:
    - The MD will receive a $1.00 (one dollar) reduction per tonne on the Product with the following conditions:
        - Crush and stockpile 200,000 (two hundred thousand) tonnes of Product at an earlier mutually agreed upon time – starting as soon as December of the prior year and enforceable for the remainder of the term of this Agreement.
        - Invoices payable within 90 days of receipt for Product – Invoices to be dated within calendar year of Product delivery.
        - Failure to notify the MD for Quality Control may result in the Product being refused.

Keeping in mind that as per Amending Agreement dated 16th December 2016 and this amending agreement the MD will be receiving a $1.50 (one dollar and fifty cent) reduction for the 2018 crush and supply contract.

Except as set forth in this Agreement, the Agreement is unaffected and shall continue in full force and effect in accordance with the terms. If there is a conflict between this Amendment and Agreement or any earlier Agreement, the terms of this Amendment will prevail.

JMB CRSHING SYSTEMS ULC
Per:

Jeff Buck, President

MUNICIPAL DISTRICT OF BONNVYILLE NO. 87
Per:

CAO, Chris Cambridge

This is Exhibit "I" referred to in the Affidavit of

Katie Doran

sworn before me this 4th day of December, 2020.

A Commissioner for Oaths in and for the Province of Alberta

Connor E.J. O'Brien
Student-at-Law

ENTERED

1101923

COURT FILE NUMBER	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 A PLAN OF ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.
APPLICANTS	JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.
DOCUMENT	**AFFIDAVIT OF JERRY SHANKOWSKI**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	HAJDUK LLP Barristers & Solicitors #202 Platinum Place 10120 – 118 Street NW Edmonton, AB, T5K 1Y4 **Attention: Richard B. Hajduk** Ph. 780-428-4258 Fax. 780-425-9439 **FILE NO.: 5448 RBH**

JUDICIAL CENTRE OF CALGARY
Clerk's Stamp
FILED
Nov 06, 2020
by Email
CLERK OF THE COURT

COM
Nov. 27, 2020
Justice Eidsvik

AFFIDAVIT OF JERRY SHANKOWSKI SWORN NOVEMBER 6, 2020

I, JERRY SHANKOWSKI, Businessman, of the City of Edmonton, Alberta, SWEAR AND SAY THAT:

1. I am a personal claimant against JBM CRUSHING SYSTEMS INC. ("JMB"), and the President and sole director of 945441 ALBERTA LTD. ("945441"), another claimant, and as such I have personal knowledge of the matters hereinafter deposed to, except where stated to be based upon information and belief. I and 945411 are sometimes collectively referred to in this Affidavit as the "Applicants".

2. Other capitalized terms in this Affidavit have the meanings ascribed in the Order granted in this Action on May 20, 2020, by the Honourable Justice K.M. Eidsvik ("Eidsvik J."), staying builders' lien claims under the *Builders' Lien Act (Alberta)* ("*BLA*") regarding the "Contract" between JMB and the Municipal District of Bonnyville No. 87 ("MD of Bonnyville") and establishing a separate protocol for the determination of such Lien Claims (the "Eidsvik May 20 Order"). A true copy of the Eidsvik May 20 Order is attached as Exhibit "B" to my Affidavit sworn August 10, 2020, filed in this Action. I continue to rely on my said Affidavit sworn August 10, 2020, and my Affidavit sworn May 29, 2020 attached to my said Affidavit sworn August 10, 2020 as part of Exhibit "C" except to the extent such earlier Affidavits are corrected, supplemented or contradicted by this Affidavit.

3. I and 945411 are seeking to set aside 2 Orders granted by the Honourable Madam Justice K.M. Eidsvik on October 16, 2020 being the Order (Amended and Restated Mantle Sale Approval and Vesting Order) ("Mantle Order") and the Order (Reverse Vesting Order) ("Reverse Vesting Order") in Action No. 2001-05482 pursuant to the *Companies' Creditors Arrangement Act (Canada)* ("*CCAA*"). A true copy of the Mantle Order is attached and marked **Exhibit "A"** to this my Affidavit and a true copy of the Reverse Vesting Order is attached and marked **Exhibit "B"** to this my Affidavit.

4. I am advised by my lead lawyer, Richard B. Hajduk ("Hajduk"), and do verily believe that:

   a. the first time that JMB, the Counsel for JMB, the Monitor or Counsel for the Monitor or any other person disclosed a copy of the Contract between JMB and the MD of Bonnyville referred to in the Eidsvik May 20 Order was when an unfiled copy of the Affidavit of Jason Panter ("Panter") was provided to Hajduk on October 9, 2020, and that he did not read and review the Contract until the evening of October 17, 2020 when Hajduk was preparing for Questioning on Affidavit of Panter and for the Special Chambers Application then scheduled for October 22, 2020 for the consideration of challenges to the Determinations of the Monitor of the Lien Claims of the Applicants and of RBEE Aggregates Consulting Ltd. ("RBEE");

   b. Hajduk then discovered paragraph 26 of the Contract provided for a Trust and established JMB as a Trustee of all sums paid by the MD of Bonnyville to JMB;

   c. neither JMB, nor Counsel for JMB (nor the Monitor, nor Counsel for the Monitor), disclosed the complete terms of the Contract, nor the existence of paragraph 26 thereof and the Trust established thereby, to either the Court or to the Applicants or any other Lien Claimant pursuant to the *Builders' Lien Act* ("*BLA*") at any time or pursuant to the Lien Claims process established by the Eidsvik May 20 Order prior to the provision of the Affidavit of Panter on or about October 9 2020;

   d. Neither JMB, nor Counsel for JMB, nor the Monitor, nor Counsel for the Monitor, disclosed to either the Court or to the Applicants or any other Lien Claimant pursuant to the *Builders' Lien Act* ("*BLA*") at any time or pursuant to the Lien Claims

process established by the Eidsvik May 20 Order the fact that the only purpose for which the Aggregate provided to the MD of Bonnyville pursuant to the Contract was put or intended to be put was for use in construction of or repairs to public highways such that no Builders' Lien could arise in any such public highways or at all in connection with the provision of the Product (usable crushed aggregate) by JMB to the MD of Bonnyville or in connection with the provision of any materials or services to or at the request of JMB or the MD of Bonnyville in connection with the Contract;

e. The Applicants acted to their prejudice in not opposing the Order (Amended and Restated Mantle Sale Approval and Vesting Order) and the Reverse Vesting Order based on the non-disclosure of the Contract and of paragraph 26 thereof and the breach of the duty of full and frank disclosure by JMB and its Counsel;

f. The Applicants are or may be beneficiaries of the Trust established by paragraph 26 of the Contract and JMB had a duty to take all reasonable steps to disclose the existence of the Trust to all of the beneficiaries or potential beneficiaries of the Trust.

5. No copy of the Contract had previously been provided to myself or 945411 and the Applicants had not previously had a reason to request a copy of the Contract as the Applicants were not parties to the Contract and had no reason to believe that they had any right to enforce any provision of the Contract. I am advised by Hajduk and do verily believe that a beneficiary of a Trust has a right to enforce the terms of the Trust, even if the Trust is established by a contract to which the beneficiary is not a party. I am advised by Hajduk and do verily believe that the first time that Hajduk received a copy of the Contract was by service of an unfiled copy of the Affidavit of Jason Panter sworn October 9, 2020, in relation to the applications to discharge builders' liens from the lands of myself and 945411, but Hajduk did not notice the terms of the Contract at that time and particularly paragraph 26 and the definitions of "Product" and "Services" until the night of October 16, 2020 after Court had already ended, and when he was preparing for the next Court application scheduled for October 22, 2020, and by reference to the Affidavit of Blake Elyea sworn October 16, 2020, which was provided at 11:51 P.M. on October 16, 2020. And the Monitor only provided its Brief and the 8th Monitor's Report at 5:41 AM on October 17, 2020, as a result of which Hajduk realized the significance of both paragraph 26 of the Contract and the sole use to which the aggregate was being put being road repair or construction for which no builders' lien can arise.

6. I am further advised by Hajduk and do verily believe that the existence of the Trust may mean that the Applicants have enforceable rights against JMB and a claim to the Holdback Amount and the other monies paid or payable by the MD of Bonnyville to JMB pursuant to the Contract, even if they might not have a valid builders' lien in the Lands of the MD of Bonnyville or any other lands of the MD of Bonnyville.

7. Hajduk has also recently obtained from Counsel for JMB copies of numerous additional Statements of Account between JMB and 945411 for 2019 and 2020 and such proof of payment as I have been able to locate and has discovered and realized that JMB owes 945411 and myself $588,457.61 in respect of aggregate ("Product" as defined in the Eidsvik May 20 Order), instead of the amount previously submitted as a Lien Claim of $424,674.05, as I did not realize that amounts removed in December, 2019 by JMB and provided to the MD of Bonnyville of 26,747.13 tonnes of Des 4 Class 20, at $4.00 / tonne, for a total of $106,988.52, plus GST of $5,349.43 = $112,337.95, and I did not realize that certain of the aggregates in the March and April, 2020 Statements provided by JMB had ascribed the wrong price to certain of the aggregates. Attached and marked **Exhibit "C"** to this my Affidavit is a true copy of a Statement of Account and attached tickets summaries provided by JMB to 945411 for December 2019.

8. Attached and marked **Exhibit "D"** to this my affidavit is a true copy of the Affidavit of Jason Panter sworn October 9, 2020, which attaches a copy of the Contract as Exhibit "C" to that Affidavit.

9. Attached and marked **Exhibit "E"** to this my Affidavit is a true copy of the Affidavit of Blake Elyea sworn October 16, 2020.

10. Attached and marked **Exhibit "F"** to this my Affidavit is a true copy of the email from Counsel for the Monitor serving the said Affidavit.

11. Attached and marked **Exhibit "G"** to this my Affidavit is a true copy of the email from Counsel for the Monitor of October 17, 2020 attaching the Monitor's Brief and the 8th Report of the Monitor.

12. Attached and marked **Exhibit "H"** to this my Affidavit is a true copy of the body of the Monitor's Brief served at 5:41 AM on October 17, 2020.

13. Attached and marked **Exhibit "I"** to this my Affidavit is a true copy of the body of the 8th Report of the Monitor served at 5:41 AM on October 17, 2020.

14. Attached and marked **Exhibit "J"** to this my Affidavit is a true copy of correspondence received by Hajduk from Counsel for JMB dated November 1, 2020, as a result of which he discovered that JMB had ascribed the wrong price to certain of the aggregate removed from the lands of the Applicants and provided to the MD of Bonnyville pursuant to the Aggregates Royalty Agreement between myself and 945411 and JMB Crushing Systems ULC, the predecessor of JMB.

15. Attached and marked **Exhibit "K"** to this my Affidavit are a true copy of an email string ending with an email from Hajduk to Counsel for JMB on October 15, 2020 by which Hajduk agreed to an Agreement Amending the Aggregates Royalty Agreement, and attached and marked **Exhibit "L"** is a true copy of the Agreement Amending the Aggregates Royalty Agreement attached to the said email string.

16. Attached and marked **Exhibit "M"** to this my Affidavit is a true copy of the Aggregates Royalty Agreement ("Royalty Agreement"). Pursuant to the Royalty Agreement, I and 945411 are entitled to $5.00 / tonne for aggregate used for asphalt, instead of $4.00 / tonne, and Hajduk has just discovered pursuant to documents received from Counsel for JMB on November 1, 2020, that some of the aggregates removed were to be used for asphalt, and therefore the amount owing by JMB would be higher.

17. I am further advised by Hajduk and do verily believe that during a telephone conversation he had with Mr. Tom Cummings of Gowlings LLP ("Cummings") on October 30, 2020, Cummings first disclosed that there was an issue with under-allocation to 945411 regarding the royalty rate charged for gravel designated as "12.5", as that gravel was used for "asphalt", and also required prior consent from 945411, and if consent was given, then 945411 would have received an extra $1.00 per tonne of product.

18. I was advised today by Mr. J. R. Paine of J.R. Paine & Associates (who performed the quality control on the rock supplied from the "Shankowski pit" to the MD of Bonnyville No. 87 in 2020), and do verily believe, that any gravel that is designated "Class 1" is for use as asphalt. Prior to today, I was not aware that gravel with the designation of "Class 1" was higher quality gravel used for asphalt.

19. Under the terms of the Royalty Agreement entered into between JMB Crushing Systems ULC (the predecessor to JMB) and dated October 29, 2018 (the "Royalty Agreement"), Article VIII states:

> *ARTICLE VIII ADDITIONAL CONDITIONS*
> *[...]*
>
> - *JMB will only sell asphalt or rock products from this pit with the prior consent of the owner. Royalty base rate for asphalt and rock products would be $5.00/tonne for 2019 and be subject to the same royalty increase in 2020 and review every two years thereafter.*

20. The Royalty Agreement was prepared by JMB.

21. Attached hereto as **Exhibit "N"** are copies of the Statements of Account from JMB to 945411 for the period from and including December 1, 2019 to and including April 30, 2020 (the "945 Statements of Account"). The 945 Statements of Account were prepared by JMB with no input or involvement by 945. The statements of account that relate to the processing or rock and gravel from the Shankowski Pit constituting Designation 1 Class 12.5 rock (and forming part of the 945 Statements of Account), are constituted by the statement of account for the period for April 1 – 30 2020, appearing at pages 5 - 15 of Exhibit "N" (the "April Account").

22. I am further advised by Hajduk and do verily believe that the issue of under allocation of payment for the gravel used as asphalt from the Shankowski Pit, relates to the April Account and the "Material" described therein (at page 5 of Exhibit "N") as, Des 1 Class 12.5 with a quantity of 48,997.62 tonnes and charged out at a rate of $4.00 per tonne for a total amount owing to 945411 of $195,990.48. If I had provided prior consent, then the charge out rate would not have been less than $5.00 per tonne. Payment out at $5.00/tonne would have required an extra payment allocation on the April Account of $48,997.62 for a revised total amount of $244,9808.10 for any rock designated as 1 Class 12.5.

23. 945411 has not been paid for any of the amounts owing to it under the 945 Statements of Account.

24. Under the terms of the Royalty Agreement, I did not consent to any gravel being processed in 2020 for the purposes of sale as "asphalt". At no time did anyone from JMB request consent from myself as the representative of 945411 to process or sell any gravel for asphalt in 2020. The reason for the requirement of my prior consent was to control the amount of loss in revenue that would result to 945, from the wastage that is produced from such processing for the higher quality product required for asphalt, which wastage correlates into lost revenue for 945, as prior to any such processing the wastage could have been sold as gravel, but after processing the wastage has no value.

25. I would not have provided my prior consent to process the quantity of 48,997.62 tonnes of gravel to be sold for asphalt as provided in the April Account. I verily believe that Mr. Jeff Buck of JMB, who was the representative of JMB that I dealt with, was very aware of my proclivities in this regard, and that he intentionally failed to request my prior consent for such processing and sale knowing that I would withhold consent for same. 945411 would have either outright denied consent or commanded an amount higher than $5.00/tonne for the processing of such volume of gravel to be used as asphalt, after making determinations as to the wasted product volumes and lost revenue resulting therefrom. I verily believe that the price designation of $4.00 per tonne of the 48,997.62 was intentionally reflected to hide and coverup the true nature of the gravel sold so as to avoid any objection from 945411 and the issues that would have resulted if the April Account would have reflected $5.00/tonne.

26. Attached as **Exhibit "O"** are true copies of the invoices (without tickets) that JMB provided to the MD of Bonnyville in 2020 (the "2020 Bonnyville Invoices"). Attached as **Exhibit "P"** are true copies of the invoices (without tickets) that JMB provided to the MD of Bonnyville in December of 2019 (the "2019 Bonnyville Invoices").

27. I am further advised by Hajduk and do verily believe that all aggregate supplied to the MD of Bonnyville originated from the Shankowski Pit. Invoice #'s 10845, 10851, 10855, 10861 and 10864.01 of the 2020 Bonnyville Invoices (and pages 11, 13, 15 - 16, 17 and 20 – 23 thereof respectively), pertain to gravel Designated 1 Class 12.5 that originated from the Shankowski Pit. I am further advised by Hajduk and do verily

believe that the first time Hajduk was provided the Bonnyville Invoices from JMB was on November 4, 2020.

28. JMB received the increased rate and payment of $33.28 per tonne from the MD of Bonnyville with respect to the sale to them of the 48,997.62 tonnes of Designated 1 Class 12.5 gravel from the Shankowski Pit as evidenced by Invoices No. 10845, 10851 and 10861 forming part of the 2020 Bonnyville Invoices (and pages 11, 13 and 17 thereof respectively)(the "Asphalt Gravel").

29. Prior to October 16, 2020, I did not believe that 945411 had any possibility of recourse, as an unsecured creditor, to any arrear's amounts owing to it other than as a potential claimant under the lien hold back fund established pursuant to the Eidsvik May Order. Had the existence of the trust created under paragraph 26 of the Contract been disclosed to me by JMB, I would not have entered into the Amended Assignment Agreement, unless all of the arrears had been cured including the issue of the damages resulting from the processing of the 48,997.62 tonnes of gravel for asphalt. Further, had the existence of the issues relating to the failure to obtain the required prior consent of 945411 for the processing of the Asphalt Gravel been disclosed prior to the October 15, 2020, I would not have entered into the Amending Assignment Agreement due to the trust issues I already had with JMB, and including what I understood was simply a restructuring into the new corporate vehicle of "Mantel". In this regard, I refused to agree to the insertion of a renewal agreement provision in the Amending Assignment Agreement, as was being requested by JMB/Mantel, on the specific basis of issues of trust from my historical dealings with JMB.

30. I am further advised by Hajduk and do verily believe, that 945411 only provided its consent to the form of Amended Assignment Agreement at 10:50 pm on October 15, 2020 as evidenced by the emails from Hajduk to Cumming dated October 15, 2020 at 10:50 pm and the further email from Hajduk to Cumming dated October 16, 2020 at 3:42 am, attached respectively as **Exhibit "Q"** and **Exhibit "R"**.

31. I am further advised by Hajduk and do verily believe that he received the following documents, including emails as follows:

    a. The email Hajduk received from Caireen Hanert of Gowlings dated November 5, 2020 at 3:16:03 pm, a true copy of which is attached hereto as **Exhibit "S"**;

    b. The documents received and being attached to the email of Lauren Pearson of Bishop & McKenzie LLP dated November 5, 2020 at 6:22 pm, and specifically the documents identified as being schedules A and B forming part of the Subcontractor Services Agreement between JMB Crushing Systems Inc and RBEE Aggregate Consulting Ltd., which agreement is attached as Exhibit "A" to the Affidavit of David Howells (a director and Vice President of RBEE Aggregate Consulting Ltd.) sworn November 5, 2020, and constituting the crushing services for the rock and gravel from the Shankowski Pit for 2020, and which Schedules A and B are attached hereto as **Exhibit "T"**;

32. I also rely on my Affidavit filed in the Court of Queen's Bench of Alberta sworn August 10, 2020.

33. I make this Affidavit in support of an application for an Order for the following Relief:

a. An Order setting aside the Orders granted by the Honourable Madam Justice K.M Eidsvik ("Eidsvik J.") on October 16, 2020, being the Order (Amended and Restated Mantle Sale Approval and Vesting Order) and the Reverse Vesting Order;

b. An Order declaring JMB Crushing Systems Inc. ("JMB") a Trustee by virtue of paragraph 26 of the Contract between JMB Crushing Systems ULC, the predecessor of JMB, and the Municipal District of Bonnyville No. 87 ("MD of Bonnyville") dated effective November 1, 2013, as amended (the "Contract"), of the "Funds" less the "CRA Amount" each as defined by the Order granted by Eidsvik J. on May 20, 2020 (the "Eidsvik May 20 Order") establishing a Builders' Lien Claim process in respect of the sums owing by the MD of Bonnyville to JMB pursuant to the Contract, in the sum $3,327,768.40, or such other sums as may be proven and as this Honourable Court deems appropriate and just in favour of all unpaid suppliers of materials, labour or other services in relation to the Contract;

c. An Order requiring JMB to deposit sufficient additional funds with the Clerk of the Court or with the Monitor which will be sufficient when added to the Holdback Amount as defined by the Eidsvik May 20 Order to equal the sum set out in paragraph 2 hereof;

d. An order setting aside the Amended Royalty Aggregates Agreement agreed to between Counsel for JMB and Counsel for the Applicants on October 15, 2020 by email;

e. Directing that notice be provided to all actual or potential beneficiaries of the Trust of the complete terms of the Contract and of their right to claim to be a beneficiary of the Trust and for payment out of their claims from the Holdback Amount and the additional funds contemplated by subparagraph c. hereof in accordance with their entitlements;

f. Directing payment to Jerry Shankowski and 945411 Alberta Ltd. (the "Applicants") in care of their solicitors, Hajduk LLP, of the sum of $588,457.61, or such other sums as may be proven and as this Honourable Court deems appropriate and just, from the Holdback Amount and the additional funds contemplated by paragraph 3 hereof;

g. An Order requiring indemnification by JMB, Counsel for JMB, the Monitor and Counsel for the Monitor in favour of the Applicants and the other actual or potential beneficiaries of the Trust constituted by paragraph 26 of the Contract to the extent

of any monies unrecoverable from the "Funds" as defined by the Eidsvik May 20 Order;

h. Such other and further relief as may be required and as this Honourable Court deems appropriate and just; and,

i. Costs of this Application in any event of the cause, payable forthwith by JMB, Counsel for JMB, the Monitor and Counsel for the Monitor, on a scale as between a solicitor and own client (full indemnity) or on such other scale or in such other amounts as this Honourable Court deems appropriate and just.

SWORN BEFORE ME on the 6th day of November, 2020 at Edmonton, in the Province of Alberta.

A Commissioner for Oaths in and for Alberta

RODGER C. GIBBS
Barrister & Solicitor
(Province of Alberta)

JERRY SHANKOWSKI

This is Exhibit "J" referred to in the Affidavit of

Katie Doran

sworn before me this 4th day of December, 2020.

A Commissioner for Oaths in and for the Province of Alberta

Connor E.J. O'Brien
Student-at-Law

ENTERED

JUDICIAL CENTRE OF CALGARY
FILED
Nov 23, 2020
by Email
CLERK OF THE COURT

This is the Certificate to accompany
Affidavit of Blake Elyea
made on November 20, 2020

JS
Nov. 27 2020
Justice Eidsvik

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.
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

CERTIFICATE

I, Alexandra McCawley, am the commissioner who took the affidavit from Blake Elyea dated November 20, 2020, 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 November 20, 2020

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

V50838\ACTIVE_CA\ 42116604\1

05.16-2322

Form 49
Rule 13.19

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.
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AFFIDAVIT OF BLAKE M. ELYEA
sworn November 20, 2020

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 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. 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 am authorized to swear this Affidavit as a corporate representative of JMB.

05.16-2322

4. I swear this Affidavit further to my Affidavits sworn August 6, 2020 and October 16, 2020 in these proceedings.

5. On or about November 1, 2013 the MD of Bonnyville No. 87 (the "**MD**") and JMB entered into a contract for the supply of aggregate (the "**Supply Contract**").

6. On April 14, 2020, RBee Aggregate Consulting Ltd. ("**RBee**") advised the MD that it would be registering a lien to secure payment of amounts owed to RBee by JMB for crushing services. At that time, RBee had knowledge that the aggregate it was crushing was being hauled to the MD's yard. The MD sent JMB the correspondence from RBee, and advised that Matt Silver Trucking Ltd. had also complained of non-payment. Attached hereto as **Exhibit "A"** is a copy of the correspondence.
05.16-2329

7. On April 27, 2020, the MD advised JMB that it would require written confirmation from RBee that its issues had been resolved before the MD would pay the outstanding invoices.

8. On April 29, 2020, Shamrock Valley Enterprises Ltd. advised the MD that it had not been paid for trucking services. The MD again forwarded the correspondence to JMB and advised that the JMB invoices would not be processed until the issues raised by subcontractors had been resolved. Attached hereto as **Exhibit "B"** is a copy of the correspondence.
05.16-2331

9. Upon being appointed the Chief Restructuring Adviser of JMB in May 2020, I reviewed the books and records of JMB. On my review, it quickly became apparent that without payment of the invoices issued to the MD by JMB, JMB would not be able to continue with the within proceedings to restructure for the benefit of its stakeholders. Accordingly, JMB worked with the MD and the Monitor to create a process by which any additional lien claims would be stayed, the MD would pay the monies to the Monitor, the MD would no longer have any liability in relation to those monies, the Monitor would hold sufficient funds to cover any lien claims related to the Supply Contract in trust, and the Monitor would pay the excess funds to JMB to permit it to continue its operations and support the within proceedings (the "**Lien Claims Process**").

10. On May 20, 2020, Justice K.M. Eidsvik granted an Order (the "**Lien Claim Process Order**") establishing this Lien Claims Process.

11. I am advised by counsel for JMB and do verily believe that:

(a) On May 21, 2020, a letter was sent to Richard Hajduk ("**Hajduk**"), counsel for the Applicants Jerry Shankowski and 945441 Alberta Ltd. (collectively, "**Shankowski**"), advising him of the Lien Claim Process Order, a copy of which is attached hereto as **Exhibit "C"**;
05.16-2336

(b) Other potentially interested parties not on the service list were also advised of the Lien Claim Process Order;

(c) The Claims Bar Date under the Lien Claim Process Order was June 1, 2020;

(d) On May 29, 2020, Hajduk served a Lien Notice and Affidavit pursuant to the Lien Claims Process Order, a copy of which is attached hereto as **Exhibit "D"**;
05.16-2338

(e) No inquiries were made of counsel for JMB by any of the potentially interested parties requesting additional information or copies of any documents, including the Supply Contract before the Claims Bar Date. To the best of my knowledge, JMB also did not receive any requests for additional information or copies of any documents, including the Supply Contract, at any time;

(f) On June 26, 2020, Hajduk served an unfiled Application and Affidavit (the "**Shankowski Lien Removal Application**") seeking the removal of two liens that had been registered against title to lands owned by Shankowski (the "**Shankowski Lands Liens**"). JMB has a royalty agreement with Shankowski with respect to the extraction of aggregate from the subject lands (the "**Shankowski Royalty Agreement**"). The Shankowski Land Liens had been filed by the Applicants RBee and J.R. Paine and Associates Ltd. for amounts owed for work done by them for JMB relating to the Supply Contract. A copy of the Shankowski Lien Removal Application is attached hereto as **Exhibit "E"**;
05.16-2385

(g) On July 6, 2020, Jerritt Pawlyk ("**Pawlyk**"), counsel for RBee, set out RBee's position with respect to the Shankowski Lien Removal Application, a copy of which is attached hereto as **Exhibit "F"**;
05.16-2430

(h) Sometime at the end of July 2020, Pawlyk requested and was provided with a copy of the Supply Contract;

(i) On or about July 27, 2020, the Monitor issued Determination Notices to all Lien Claimants pursuant to the Lien Claims Process Order;

(j) On August 11, 2020, Hajduk served Shankowski's Application and Affidavit to appeal the Determination Notice issued by the Monitor to Shankowski;

(k) As part of the potential sale of JMB assets to Mantle Materials Group, Ltd. ("**Mantle**"), counsel for Mantle approached Hajduk to discuss obtaining Shankowski's support for the potential sale and to ensure that the Shankowski Royalty Agreement would be included in the potential sale; and

(l) During the course of the discussions between Mantle and Shankowski, it was clear that Shankowski would require Mantle or JMB to ensure that the Shankowski Lands Liens were removed from title.

12. Accordingly, on October 9, 2020, counsel for JMB served an Application seeking the discharge of the Shankowski Lands Liens (the "**Lien Removal Application**"), along with the Affidavit of Jason Panter sworn October 9, 2020 in support (the "**Panter Affidavit**"). The Panter Affidavit appended the Supply Contract as an exhibit. The Lien Removal Application was scheduled to be heard on October 16, 2020 at the same time as had been scheduled for the following Applications, all in relation to the sale of JMB assets to Mantle: (a) Application for Amended and Restated Approval and Vesting Order; (b) Application for a Reverse Vesting Order; (c) Application for an Assignment Order; (d) Application for a Plan Sanction Order; and (e) Application for a Stay Extension Order (collectively, the "**October 16th Applications**"). All application materials for the October 16th Applications were served on the service list by October 1, 2020.

13. Prior to October 16, 2020, when the Lien Removal Application was heard, RBee and Mantle reached an agreement, pursuant to which the RBee lien was removed from the Shankowski lands.

14. I am advised by counsel for Mantle and believe that during this time, Mantle and Shankowski continued to negotiate the terms of an agreement, pursuant to which Shankowski would consent to the vesting of the Shankowski Royalty Agreement pursuant to the Amended and Restated Vesting Order and Mantle or JMB would ensure that the Shankowski Lands Liens were discharged from title, among other things. The parties reached agreement on October 15, 2020. A copy of the executed agreement is attached hereto as **Exhibit "G"**.

15. The Lien Removal Application was heard and granted on October 16, 2020, and accordingly, the remaining Shankowski Lands Lien was discharged by Court order. I am advised by counsel for JMB and believe that Hajduk was present at the Shankowski Lien Removal Application on October 16, 2020, having brought an Application seeking similar relief on behalf of Shankowski on that same date, and made submissions to the Court in respect of same.

16. I am further advised by counsel for JMB and believe that:

(a) The Applications appealing the Determination Notices were scheduled to be heard on October 22, 2020;

(b) On October 17, 2020, Hajduk advised that he wished to cross-examine on the Panter Affidavit, which examination was scheduled for October 20, 2020;

(c) On the morning of October 20, 2020, a few hours before the cross-examination was scheduled to start, Hajduk advised that he would be seeking an adjournment of his client's Application, as he wished to amend it to seek additional relief, including a declaration that the Holdback Amount constitutes trust funds and an order to have those trust funds further supplemented and contributed to as necessary to fully constitute a trust he alleged is contemplated by the Supply Contract in favour of Shankowski and other subcontractors. A copy of the email message is attached hereto as **Exhibit "H"**; and
05.16-2440

(d) On October 23, 2020, counsel for JMB sent a letter to Hadjuk responding to his email of October 20, 2020, a copy of which is attached hereto as **Exhibit "I"**.
05.16-2455

17. I am advised by my review of the JMB books and records and believe that the vendors and amounts set out in **Exhibit "J"** attached hereto reflect all of the amounts outstanding in relation to the Supply Contract for the 2019 and 2020 contract years.
05.16-2459

18. To the best of my knowledge, the only amounts payable in connection with the supply of aggregate to the MD yard was under the Havener Royalty Agreement for the 2018 contract year which is approximately $400,000.00.

19. It is JMB's accounting practice to attribute identifiable costs, including, indirect costs to various projects, like the Supply Contract. For the 2020 contract year, those indirect costs include costs for equipment repairs, fuel, and accommodation. For prior years, costs for items like portable

toilets and waste receptacles have been allocated. Any indirect costs as they have been allocated to the Supply Contract that were not paid as of April 30, 2020 have not been included in the above table.

20. With respect to the amounts owing under the Shankowski Royalty Agreement, a legible copy of which is attached hereto as **Exhibit "K"**, I am advised by JMB operations personnel and believe that:

05.16-2461

(a) Typically, aggregate classified as Des 1 (asphalt material) under the specifications set out by Alberta Transportation ("**AT Specifications**") can attract a higher royalty rate due to the greater amount of waste/elimination material generated during crushing/processing;

(b) Although the product required by the MD for the 2020 contract year was described as "modified Des 1 Class 12.5", the actual product produced to meet the specifications of the MD met the AT Specifications for Des 2 Class 16 product and could be classified as such;

(c) The MD described the specified product as "modified Des 1 Class 12.5" in its specifications, as it was different from the AT Specifications for Des 1 Class 12.5. The description of "modified Des 1 Class 12.5" was carried through to the JMB accounting system;

(d) The JMB accounting system does not have a "modified" class option for the purposes of categorizing the product supplied, and accordingly, "modified" was left off of the description of the product supplied to the MD;

(e) The product supplied to the MD based on its specifications is in fact a "modified base course material" and not an asphalt product;

(f) The product supplied to the MD in March and April 2020 and described as "Des 1 Class 12.5" on the statements of account sent to Shankowski in fact generated less waste than the Des 2 Class 16 product previously provided. There was an approximate 50% waste rate for the Des 2 Class 16 product, as compared to an approximate 40% waste rate for the modified Des 1 Class 12.5 product; and

(g) The difference in the waste rate is attributable to the smaller size of the modified Des 1 Class 12.5 product.

21. I have reviewed the Affidavit of Keith Hayduk ("**Hayduk**") sworn November 17, 2020 in support of the Application of Quest Disposal & Recycling Inc. ("**Quest**") for a declaration of trust and related relief and note the following:

(a) In paragraph 5, Hayduk refers to services provided by Quest for the "MD project" in the amount of $22,941.14; however, Hayduk's Affidavit includes all services provided at aggregate pits located within the Municipal District of Bonnyville, rather than only those services provided to JMB that were attributable to the Supply Contract for the 2019 contract year; and

(b) The balance of Quest's claim of $142,903.57 relates to pits located in various locations in Alberta and does not relate to the Supply Contract;

22. JMB did not haul aggregate supply under the Supply Contract to the MD Yard between August and November 2019. All aggregate excavated from the Shankowski pit during that period related to other projects.

23. The Supply Contract for the 2019 contract year was completed in December 2019.

24. I swear this Affidavit in response to applications seeking a declaration of trust and other relief.

25. 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 dated March 27, 2020 for remote commissioning of affidavits was utilized.

SWORN (OR AFFIRMED) BEFORE ME)
at Vancouver, British Columbia, this 20th)
day of November, 2020.)
)
)
)

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

BLAKE M. ELYEA

This is Exhibit "K" referred to in the Affidavit of

Katie Doran

sworn before me this 4th day of December, 2020.

A Commissioner for Oaths in and for the Province of Alberta

Connor E.J. O'Brien
Student-at-Law

802666
000194

JUDICIAL CENTRE OF CALGARY
FILED
Aug 25, 2020
by Email
CLERK OF THE COURT

JS
Aug 26 2020
Justice Eidsvik

COURT FILE NUMBER	2001-05482
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT	IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. AND 2161889 ALBERTA LTD.
DOCUMENT	FOURTH REPORT OF FTI CONSULTING CANADA INC., IN ITS CAPACITY AS MONITOR OF JMB CRUSHING SYSTEMS INC. AND 2161889 ALBERTA LTD. **August 25, 2020**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**MONITOR** FTI Consulting Canada Inc. 1610, 520, 5th Ave. SW Calgary, AB T2P 3R7 Deryck Helkaa / Tom Powell Telephone: (403) 454-6031 / (604) 484-9525 Fax: (403) 232-6116 E-mail: deryck.helkaa@fticonsulting.com tom.powell@fticonsulting.com **COUNSEL** McCarthy Tétrault LLP Suite 4000, 421 7th Avenue S.W. Calgary, AB T2P 4K9 Sean Collins / Pantelis Kyriakakis Telephone: (403) 260-3531 / (403) 260-3536 Fax: (403) 260-3501 E-mail: scollins@mccarthy.ca pkyriakakis@mccarthy.ca

FTI CONSULTING

FOURTH REPORT OF THE MONITOR

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INTRODUCTION

1. On May 1, 2020, JMB Crushing Systems Inc. and 2161889 Alberta Ltd. ("**JMB**" or the "**Applicants**") commenced proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to an order granted by this Honourable Court which was subsequently amended and restated on May 11, 2020 (the "**ARIO**").

2. The ARIO provides for, among other things:

    a. a stay of proceedings (the "**Stay of Proceedings**") in favour of the Applicants until July 31, 2020;

    b. the appointment of FTI Consulting Canada Inc. as Monitor in the CCAA Proceedings (the "**Monitor**"); and

    c. the approval of a sale or investment solicitation process ("**SISP**").

3. On July 28, 2020, this Honourable Court granted an order extending the Stay of Proceedings until September 4, 2020.

4. On August 21, 2020, the Applicants filed a Notice of Application for an order extending the Stay of Proceedings for one week until September 11, 2020 (the "**Extension Order**").

5. On August 25, 2020, the Monitor filed a Notice of Application for a sale and vesting order (the "**McDonald SAVO**") which provides for:

    a. the approval of the sale of certain pieces of crushing equipment to McDonald Aggregates Inc. ("**McDonald**"); and

    b. the vesting of the subject equipment free and clear of any security interests or other claims.

6. The purpose of this report is to provide this Honourable Court and the Applicants' stakeholders with information with respect to:

    a. an update on the SISP;

    b. the Monitor's application for the McDonald SAVO;

    c. the Applicants' actual cash receipts and disbursements for the 15-week period ended August 14, 2020 as compared to the Second Cash Flow Statement filed with the third report of the Monitor (the "**Third Report**");

    d. an updated cash flow statement (the "**Third Cash Flow Statement**") prepared by the Applicants for the 19 weeks ending September 11, 2020 including the key assumptions on which the Third Cash Flow Statement is based;

    e. JMB's application for the Extension Order; and

    f. the Monitor's conclusions and recommendations.

TERMS OF REFERENCE

7. In preparing this report, the Monitor has relied upon certain information (the "**Information**") including JMB's unaudited financial information, books and records and discussions with senior management and the Chief Restructuring Advisor (the "**CRA**" and collectively, "**Management**").

8. Except as described in this report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.

9. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.

10. Future oriented financial information reported to be relied on in preparing this report is based on Management's assumptions regarding future events. Actual results may vary from forecast and such variations may be material.

11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

UPDATE ON THE SISP

12. As described in the Third Report of the Monitor, Sequeira Partners, in its capacity as sales agent (the "**Sales Agent**"), has been marketing the business and assets of JMB in accordance with the SISP and the Phase II bid deadline for submitting binding offers was on July 20, 2020.

13. Highlights of the SISP are as follows:

    a. the Sales Agent contacted 196 potentially interested parties including 90 strategic, 70 financial and 36 other investors;

    b. 53 potential purchasers executed non-disclosure agreements and were provided with a confidential information memorandum and access to an electronic data room;

    c. 8 non-binding expressions of interest were received by the Sales Agent and the Monitor on or before the Phase 1 bid deadline, of which 7 potential purchasers were invited to participate in Phase II of the SISP;

    d. a number of binding bids were received by the Sales Agent and Monitor on or before the Phase II bid deadline for binding bids; and

e. a summary of the binding bids has been provided to certain affected secured lenders including Fiera Debt Fund VI LLP ("**Fiera**") and ATB Financial ("**ATB**").

14. The binding bids include different parcels of assets which in some cases overlap with other offers and some of which include collateral of multiple secured lenders.

15. The Sales Agent, in consultation with the Monitor, the CRA, and certain secured lenders, has engaged in discussions with the bidders to clarify certain aspects of the bids, negotiate additional consideration in order to select one or more preferred bids and to apportion and segregate assets with multiple bids to maximize value and recoveries for the Applicants' estates.

16. The Monitor, in consultation with the affected secured lenders, has accepted the Phase 2 Qualified Bid provided by McDonald (the "**McDonald Offer**").

17. The Monitor has engaged in ongoing discussions with other bidders, ATB and Fiera to determine the preferred approach to the remaining bids. The Monitor and JMB have had concurrent discussions with ATB and Fiera regarding possible methodologies for allocating the costs of the CCAA Proceedings to the various stakeholders of JMB. These discussions are ongoing and the Applicants are hopeful that one or more additional bids will be selected during the period of the proposed extension to the Stay of Proceedings.

MCDONALD OFFER

18. A copy of the asset purchase agreement between JMB and McDonald is attached as Appendix "A".

19. Highlights of the McDonald Offer are provided below:

a. McDonald will purchase certain crushing assets from JMB including the following:

i. a 1998 D8R 1998 with angle blade;
ii. a 2009 Lonetrack Power Van;
iii. a 2020 KPI 36X70 Stack Pack set of three conveyors; and
iv. a Sand Splitter SS200.

b. the purchase price will be $264,000 plus applicable taxes;

c. the target closing date will be 5 days following Court approval; and

d. contemplates an ultimate outside closing date of September 4, 2020.

20. The Monitor's observations with respect to the SISP and comments with respect to the McDonald Offer are as follows:

a. the Monitor, with the assistance of the Sales Agent, has marketed the business and assets in accordance with the procedures outlined in the SISP;

b. the SISP was fair and transparent and all participants were treated consistently and with equal access to information;

c. the SISP was conducted in a manner that managed against potential conflicts of interest among related parties that chose to participate in the SISP, as described in the second report of the Monitor;

d. the price and terms of the McDonald Offer represent the highest and best offer in respect of the subject assets and is reasonable and fair, taking into account their market value;

e. key stakeholders including ATB and Fiera as senior secured creditors in respect of the subject assets are supportive of the Monitor accepting the McDonald Offer;

f. concluding the McDonald Offer will provide for cash consideration to fund estate costs and potential distributions to secured creditors;

g. the sale of the equipment subject to the McDonald Offer would be more beneficial to the Applicants' creditors than a sale or disposition under a bankruptcy; and

h. overall, concluding the transaction contemplated by the McDonald Offer is in the best interests of the creditors of JMB.

CASH FLOW VARIANCE ANALYSIS

21. The Monitor has undertaken weekly reviews of JMB's actual cash flows in comparison to those contained in the Second Cash Flow Statement. JMB's actual cash receipts and disbursements as compared to the Cash Flow Statement for the period of May 1, 2020, to August 14, 2020, are summarized below:

($000's)	Weeks 1 - 15 Actual	Forecast	Variance
Operating Receipts			
Collection of Pre-Filing AR - Ellis Don	$ 2,032	$ 2,032	$ -
Collection of Pre-Filing AR - MD of Bonnyville	1,478	1,478	-
Collection of Post Filing AR - MD of Bonnyville	1,042	1,566	(524)
Other Receipts	745	698	47
Total Operating Receipts	**5,296**	**5,773**	**(477)**
Operating Disbursements			
Payroll And Source Deductions	(1,212)	(1,211)	(1)
Pre-filing Lienable Payables	-	-	-
Royalties	(408)	(408)	-
Fuel	(204)	(204)	-
Repair & Maintenance	(49)	(49)	-
Office Administration	(21)	(29)	8
Insurance & Benefits	(139)	(139)	-
Jobsite Lodging	(21)	(23)	2
Equipment Loan & Lease Payments	(133)	(132)	(1)
Occupancy	(127)	(142)	15
Other	(24)	(35)	11
Total Operating Disbursements	**(2,337)**	**(2,371)**	**34**
Non-Operating Receipts & Disbursements			
Interim Financing (Repayment)	(211)	(211)	-
CARC Repayment	-	-	-
Professional Fees	(1,087)	(1,322)	236
Total Disbursements	**(3,635)**	**(3,904)**	**270**
Net Cash Flow	**1,661**	**1,869**	**(207)**
Opening Cash Balance	-	-	-
Ending Cash	**$ 1,661**	**$ 1,869**	**$ (207)**

22. Overall, the Applicants realized an unfavourable net cash flow variance of approximately $207,000. The key components of the variance are as follows:

    a. post-filing accounts receivable from the MD of Bonnyville are approximately $524,000 lower than forecast as a result of a delay in collections. Management has advised that the delayed receivable was subsequently collected on August 18, 2020; and

b. professional fees are approximately $236,000 lower than forecast as a result of timing differences.

THIRD CASH FLOW STATEMENT

23. Management has prepared the Third Cash Flow Statement which includes forecast results for the four weeks ending September 11, 2020 (the "**Forecast Period**"). A copy of the Third Cash Flow Statement is attached as Appendix "B".

24. The Third Cash Flow Statement is limited to the period of the short extension being sought by the Applicants as the ongoing discussions among secured lenders regarding potential transactions, cost allocation methodologies and related matters may impact the amount and nature of costs to be incurred by the Applicants for the remainder of the CCAA Proceedings.

25. A summary of the Third Cash Flow Statement is set out in the below table:

($000's)	Weeks 1-15 Actual	Weeks 16-19 Forecast	Total Pro-Forma
Operating Receipts			
Collection of Pre-Filing AR - Ellis Don	$ 2,032	$ -	$ 2,032
Collection of Pre-Filing AR - MD of Bonnyville	1,478	154	1,632
Collection of Post Filing AR - MD of Bonnyville	1,042	524	1,566
Other Receipts	745	-	745
Total Operating Receipts	**5,296**	**678**	**5,974**
Operating Disbursements			
Payroll And Source Deductions	(1,212)	(77)	(1,289)
Royalties	(408)	-	(408)
Fuel	(204)	(1)	(205)
Repair & Maintenance	(49)	-	(49)
Office Administration	(21)	(14)	(35)
Insurance & Benefits	(139)	(23)	(162)
Jobsite Lodging	(21)	-	(21)
Equipment Loan & Lease Payments	(133)	(2)	(135)
Occupancy	(127)	(33)	(160)
Other	(24)	(4)	(28)
Total Operating Disbursements	**(2,337)**	**(154)**	**(2,491)**
Non-Operating Receipts & Disbursements			
Interim Financing (Repayment)	(211)	-	(211)
Professional Fees	(1,087)	(509)	(1,596)
Total Disbursements	**(3,635)**	**(663)**	**(4,298)**
Net Cash Flow	1,661	15	1,677
Opening Cash Balance	-	1,661	-
Ending Cash	**$ 1,661**	**$ 1,677**	**$ 1,677**

26. The Third Cash Flow Statement is based on the following key assumptions:

a. lien determination notices with respect to the MD of Bonnyville and EllisDon projects were issued by the Monitor on July 17, 2020 and August 20, 2020, respectively. The notice period for lien claimants of the MD of Bonnyille project to dispute the Monitor's lien determination has now expired, with two parties having filed disputes. Those applications are being scheduled to be heard during the week of October 19, 2020. The Third Cash Flow Statement includes the release to JMB of approximately $154,000 relating to the portion of the MD of

Bonnyville holdback for those lien claimants that did not dispute the Monitor's determination;

b. the collection of post-filing accounts receivable from the MD of Bonnyville relates to operating receipts on contract accounts receivable;

c. operating disbursements relate primarily to ordinary course payments to fund payroll for the limited amount of staff remaining, basic office needs, insurance, benefits and occupancy costs prior to the approval of a sale. It is assumed that remaining staff are retained through the Forecast period; and

d. professional fees are forecast to be approximately $509,000 during the Forecast Period and include accrued and current fees for the Applicants' legal counsel, the Monitor, the Monitor's legal counsel, certain contract executives of JMB and the Sales Agent's work fee.

27. Overall, the Applicants are forecasting to achieve a net cash flow of approximately $15,000 during the Forecast Period and have a remaining cash balance of approximately $1.7 million as at September 11, 2020.

STAY EXTENSION

28. The Monitor has considered JMB's application to extend the Stay of Proceedings and has the following comments:

a. the proposed extension will provide the Applicants with time to conclude the transaction contemplated by the McDonald Offer and pursue one or more additional Phase 2 Qualified Bids;

b. the Applicants require additional time to consider the appropriate methodology for allocating the costs of the CCAA against the assets of JMB;

c. the Third Cash Flow Statement forecasts that the Applicants have available liquidity during the period of the proposed extension;

d. the Monitor has been advised that certain stakeholders, including the senior secured creditors, are supportive of the proposed extension;

e. the Applicants are acting in good faith and with due diligence; and

f. overall, JMB's prospects of effecting a viable restructuring will be enhanced by an extension of the Stay of Proceedings until September 11, 2020.

MONITOR'S CONCLUSIONS AND RECOMMENDATIONS

29. The McDonald SAVO will allow JMB to conclude the transaction contemplated by the McDonald Offer which is in the best interests of the Applicants' stakeholders.

30. The Extension Order will provide the Monitor with time to negotiate and potentially accept one or more additional offers under the SISP.

31. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court grant the McDonald SAVO as well as the Extension Order.

*****

All of which is respectfully submitted this 25th day of August, 2020.

FTI Consulting Canada Inc.
in its capacity as Monitor of the Applicants

Deryck Helkaa
Senior Managing Director

Tom Powell
Senior Managing Director

Appendix A

Asset Purchase Agreement Between JMB Crushing Systems Inc. and McDonald Aggregates Inc.

ASSET PURCHASE AGREEMENT

BETWEEN

JMB CRUSHING SYSTEMS INC.,
a corporation incorporated pursuant to the laws of the Province of Alberta

(the "Vendor")

- AND -

McDONALD AGGREGGATES INC.,
a corporation incorporated pursuant to the laws of the Province of Alberta

(the "Purchaser")

August 25, 2020

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ASSET PURCHASE AGREEMENT

THIS AGREEMENT made as of the 25th day of August, 2020.

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**")

WHEREAS the Vendor has agreed to transfer to the Purchaser, and the Purchaser has agreed to purchase and assume, the Acquired Assets from the Vendor upon the terms and subject to the conditions set forth hereinafter.

AND 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 by an order approved by the Court on May 1, 2020, as subsequently amended and restated on May 11, 2020, the Court approved a sale and investor solicitation process (the "**SISP**") for: (a) the solicitation of offers for the sponsorship of a plan of compromise and arrangement under the CCAA; or (b) the purchase and sale of the business and assets of the Vendor;

AND WHEREAS in accordance with the defined terms and procedures of the SISP the Purchaser is a Qualified Bidder, has provided to the Vendor a Qualified Letter of Intent, and is now desirous of submitting to the Vendor a formal Sale Proposal in accordance with Phase 2 of the SISP; and,

AND WHEREAS the Vendor wishes to sell the Acquired Assets to the Purchaser and the Purchaser wishes to purchase the Acquired Assets 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, unless the context expressly or by necessary implication otherwise requires:

"**Acquired Assets**" means all of the Vendor's right, title and interest in and to the Equipment.

"**Affiliate**" means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under common control with, such Person. The term "**control**" (including the terms "**controlled by**" and "**under common control with**") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" means this asset purchase agreement and the schedules attached hereto, as amended or supplemented from time to time, and the expressions "**hereof**", "**herein**", "**hereto**", "**hereunder**", "**hereby**" and similar expressions refer to this asset purchase agreement. "**Article**", "**Section**" and "**Subsection**" mean and refer to the specified article, section and subsection of this Agreement.

"**Applicable Law**" means, with respect to any Person, property, transaction, event, business or other matter, any federal, state, provincial, local, domestic or foreign constitution, treaty, law, statute, regulation, code, ordinance, principle of common law or equity, rule, municipal by-law, Permit, order or other requirement of any Governmental Authority whether or not having the force of law relating or applicable to such Person, property, transaction, event, business or other matter.

"Business Day" means any day, other than a Saturday, Sunday or legal holiday in the Province of Alberta.

"**CCAA**" means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-35, as amended.

"**CCAA Proceedings**" has the meaning ascribed thereto in the recitals.

"**Claims**" means all past, present and future Proceedings, claims, suits, actions, charges, penalties, causes of action, demands, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees (on a full solicitor and their own client indemnity basis) and other professional fees and disbursements of any nature or any kind whatsoever.

"**Closing**" means the closing and consummation of the agreement of purchase and sale for the Acquired Assets, including without limitation the payment of the Purchase Price and the delivery of the Closing Documents, on the Closing Date.

"**Closing Date**" means 12:00 p.m. (Mountain time) on the fifth Business Day immediately following the date that the Sale Order has been issued or on such other Business Day as the Parties may agree in writing.

"**Closing Documents**" means, collectively, all of the agreements, instruments and other documents to be delivered by the Vendor to the Purchaser pursuant to Section 6.1 and the agreements, instruments and other documents to be delivered by the Purchaser to the Vendor pursuant to Section 6.3.

"**Confidentiality Agreement**" means the confidentiality and non-disclosure agreement between Sales Advisor and the Purchaser, dated July 7th, 2020.

"**Court**" means the Court of Queen's Bench of Alberta.

"**Data Room Information**" means all information provided to the Purchaser in relation to the Vendor, or it's Affiliates, or the Acquired Assets.

"**Deposit**" has the meaning ascribed thereto in Subsection 3.2.

"**Equipment**" means those certain items of equipment owned by the Vendor or which the Vendor otherwise has an interest in as explicitly set out in Schedule A.

"**Final Order**" means an order that is issued by the Court in the CCAA Proceedings that is not: (i) subject to any appeal process; (ii) stayed; or (iii) otherwise enjoined.

"**Governmental Authority**" means any (i) domestic or foreign government, whether national, federal, provincial, state, territorial, municipal or local (whether administrative, legislative, executive or otherwise), (ii) agency, authority, ministry, department, regulatory body, commission, court, central bank, bureau, board or other instrumentality having legislative, judicial (including courts and arbitrators), regulatory, prosecutorial, administrative or taxing authority or powers, or having functions of, or pertaining to, government, (iii) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange or professional association, in each case, having requisite jurisdiction or authority in the relevant circumstances, and (iv) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above.

"**GST**" means goods and services tax and/or harmonized sales tax payable pursuant to the *Excise Tax Act* (Canada).

"**Independent Accountant**" means any nationally recognized firm of chartered accountants mutually acceptable to the Vendor and the Purchaser, each acting reasonably.

"**Letter of Intent**" means the Qualified Letter of Intent dated July 15th, 2020, provided by the Purchaser to the Monitor and the Sales Agent in accordance with the SISP.

"**Lien**" means any lien, mortgage, charge, pledge or security interest, hypothec (including legal hypothecs), encumbrance, servitude, easement, encroachment, right-of-way, restrictive covenant on real or immovable property, contingent rights (including options and rights of first refusal), adverse claims and other encumbrances on ownership rights of any kind or character or agreements to create the same.

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

"**Notice**" has the meaning ascribed thereto in Section 11.13.

"**Parties**" means each of the parties hereto collectively, and "**Party**" means any of them, as the case may be.

"**Permit**" means any permit, license, approval, consent, authorization, registration, or certificate issued by a Governmental Authority.

"**Permitted Encumbrances**" means any Liens, Claims, or encumbrances as set out in Schedule B hereto as well as those set out or otherwise disclosed in any Schedule hereto or in the Sale Order.

"**Person**" means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation (with or without share capital), unincorporated association, trust, trustee, executor, administrator or other legal personal representative, or Governmental Authority.

"**Proceeding**" means any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding) or hearing commenced, brought, conducted or heard by or before, or otherwise involving, any court or other Governmental Authority or any arbitrator or arbitration panel.

"**Purchase Price**" means TWO HUNDRED SIXTY FOUR THOUSAND DOLLARS ($264,000.00), exclusive of GST.

"**Purchaser**" has the meaning ascribed thereto in the recitals.

"**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, *inter alia*, authorizes, approves or confirms this Agreement and the sale of the Acquired Assets by the Vendor to the Purchaser, free and clear of all Claims and Liens, in accordance with the terms and conditions of this Agreement and subject only to Permitted Encumbrances, which shall be acceptable to the Purchaser, the Vendor, the Monitor and the Sale Advisor, acting reasonably, or as ultimately approved by the Court.

"**SISP**" has the meaning ascribed to such term in the recitals.

"**Transaction**" means the purchase and sale of the Acquired Assets provided for in this Agreement.

"**Vendor**" has the meaning ascribed thereto in the recitals.

1.2 Interpretation

The following rules of construction shall apply to this Agreement unless the context otherwise requires:

(a) the headings in this Agreement are inserted for convenience of reference only and shall not affect the meaning, interpretation or construction of this Agreement;

(b) all documents executed and delivered pursuant to the provisions of this Agreement are subordinate to the provisions hereof and the provisions hereof shall govern and prevail in the event of a conflict;

(c) any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto and in force at the date hereof;

(d) whenever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning plural or feminine or referring to a body politic or corporate, and vice versa, as the context requires;

(e) the words “hereto”, “herein”, “hereof”, “hereby”, “hereunder” and similar expressions refer to this Agreement and not to any particular provision of this Agreement;

(f) reference to any Article, Section, or Schedule means an Article, Section, or Schedule of this Agreement, unless otherwise specified;

(g) if any provision of a Schedule hereto conflicts with or is at variance with any provision in the body of this Agreement, the provisions in the body of this Agreement shall prevail to the extent of the conflict;

(h) “include” and derivatives thereof shall be read as if followed by the phrase “without “limitation”.

1.3 Schedules

The following schedules are attached to and form part of this Agreement:

SCHEDULE A - EQUIPMENT
SCHEDULE B - PERMITTED ENCUMBRANCES

ARTICLE 2
PURCHASE AND SALE

2.1 Purchase and Sale of Acquired Assets

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 and Liens other than Permitted Encumbrances, all of the Vendor’s respective right, title, benefit, estate and interest in and to the Acquired Assets in consideration of the payment of the Purchase Price. This Agreement shall be completed on the Closing Date, subject to the terms and conditions contained herein.

2.2 Binding Agreement

The agreements of the Vendor and the Purchaser set forth in Section 2.1 create and constitute a binding agreement of purchase and sale for the Acquired Assets upon and subject to the terms and conditions set forth in this Agreement notwithstanding the inclusion herein of (but subject to) any condition or conditions the satisfaction of which is to be determined in the sole and absolute discretion of either Party or otherwise on a subjective basis.

2.3 Acknowledgement of the Purchaser as Condition of Acquired Assets

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

(a) on Closing, title to the Acquired Assets 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 Acquired Assets 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 Acquired Assets, including, without limitation, the physical and environmental condition of the Acquired Assets and its review of the Data Room Information;

(c) the Acquired Assets are 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 Acquired Assets, 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 Acquired Assets 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);

(f) the Vendor, the Sale Advisor and the Monitor shall have no obligations or responsibility to the Purchaser after Closing with respect to any matter relating to the Acquired Assets or the condition thereof; and

(g) this Section 2.3 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 Acquired Assets shall be TWO HUNDRED SIXTY FOUR THOUSAND DOLLARS ($264,000) (the "**Purchase Price**"), exclusive of GST.

3.2 Deposit

The Purchaser shall pay to the Monitor, by wire transfer, a deposit of TWENTY SIX THOUSAND FOUR HUNDRED DOLLARS ($26,400.00) on or before the date that it executes this Agreement (referred to hereinafter as the "**Deposit**"). The Deposit shall be held by the Monitor in trust and applied in accordance with the following terms:

(a) if Closing occurs, the Deposit Amount paid shall be applied to payment of the Purchase Price;

(b) if Closing does not occur due to a breach of this Agreement by the Purchaser, the Deposit Amount shall be forfeited to the Vendor on account and as part of the damages suffered by the Vendor as a consequence of the Purchaser's breach.

(c) if Closing does not occur for any reason or circumstance other than that described in Subsection 3.2(b), the Monitor shall refund the Deposit Amount to the Purchaser within ten (10) Business Days.

3.3 Payment of Purchase Price

The Purchase Price shall be satisfied on Closing by the Purchaser as follows:

(a) by the crediting of the Deposit; and

(b) by payment to the Vendor or as the Vendor may otherwise direct in writing, by wire transfer on Closing the remaining portion of Purchase Price plus any and all applicable taxes and fees (including GST) payable under Section 3.4.

3.4 Taxes and Fees

(a) The Purchase Price does not include GST. At Closing, the Purchaser shall pay to the Vendor an amount equal to the statutory rate of GST. The Purchaser shall be liable for the payment and remittance of any additional amount of GST payable in respect of the purchase of the Acquired Assets pursuant hereto, including any interest, penalties, or any other costs payable in respect of such additional GST, and shall indemnify and save harmless the Vendor in respect thereof. The GST Registration Number of the Vendor is 102665056 RT0001. The GST Registration Number of the Purchaser is 851730283 RT0001.

(b) The Purchaser shall also be liable for and shall pay any and all, federal or provincial sales taxes and all other taxes, duties, or other similar charges properly payable upon and in connection with the conveyance and transfer of the Acquired Assets 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 Acquired Assets and the Transaction.

(c) The Parties shall work together and cooperate reasonably to minimize any taxes that may be imposed on any Vendor and the Purchaser as a result of the Transaction, including by cooperating and the filing of necessary elections, documents and other records in accordance with Applicable Law to minimize taxes imposed.

ARTICLE 4
PRE-CLOSING MATTERS

4.1 Operation Before Closing

Subject to any terms imposed by the Court in the CCAA Proceedings, from the date hereof until Closing the Vendor shall operate and maintain the Acquired Assets in accordance with its business and management practices as at the date hereof.

4.2 Title to Acquired Assets

The Purchaser acknowledges and agrees that title to the Acquired Assets will be subject to the Permitted Encumbrances and the Purchaser agrees to accept title to the Acquired Assets subject to the Permitted Encumbrances. Any Lien registered against title to an Acquired Asset that is not a Permitted Encumbrance shall be discharged pursuant to the Sale Order by the Vendor at its sole expense, or arrangements satisfactory to the Purchaser acting reasonably, shall have been made in respect of the discharge thereof as soon as practicable following Closing.

ARTICLE 5
CLOSING CONDITIONS

5.1 Conditions for the Benefit of the Vendor

The obligation of the Vendor to complete sale of the Acquired Assets pursuant to this Agreement is subject to the satisfaction at Closing of the following conditions precedent:

(a) payment by the Purchaser to the Vendor of the balance of the Purchase Price in its entirety along with the unconditional release of the Deposit to the Vendor;

(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 7.2 shall be true and accurate in all material respects; and

(d) the Sale Order shall have been obtained and shall constitute a Final Order.

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 excluding reliance on or enforcement of any representations, warranties or covenants dealing with the subject of or similar to the condition waived, 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 5.1(d). The Vendor shall proceed diligently and in good faith and use all reasonable efforts to fulfill and assist in the fulfillment of the foregoing conditions 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.

5.2 Conditions for the Benefit of the Purchaser

The obligation of the Purchaser to complete the purchase of the Acquired Assets pursuant to this Agreement is subject to the satisfaction, at Closing 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 7.1 shall be true and accurate in all material respects; and

(c) the Sale Order shall have been obtained and shall constitute a Final Order.

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 (excluding reliance on or enforcement of any representations, warranties, or covenants dealing with the subject of or similar to the condition waived), 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 5.2(c). The Purchaser shall proceed diligently and in good faith and use all reasonable efforts to fulfill and assist in the fulfillment of the foregoing conditions. 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 6
CLOSING

6.1 Closing

Closing shall take place at the offices of McCarthy Tétrault LLP, Suite 4000, 421 7th Avenue SW, Calgary, Alberta, on the Closing Date.

6.2 Vendor's Closing Deliveries

On or before Closing, but subject to the provisions of this Agreement, the Vendor shall prepare, execute or cause to be executed and shall deliver or cause to be delivered to the Purchaser the following:

(a) a certified copy of the Sale Order; and

(b) any and all such other documentation, instruments, and records required: (i) pursuant to the Sale Order; or (ii) pursuant to this Agreement.

6.3 Purchaser's Closing Deliveries

On or before Closing, subject to the provisions of this Agreement, the Purchaser shall execute or cause to be executed and shall deliver or cause to be delivered to the Vendor the following:

(a) the balance of the Purchase Price plus all taxes, fees, and GST; and

(b) any and all such other documentation, instruments, and records required: (i) pursuant to the Sale Order; or (ii) pursuant to this Agreement.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES

7.1 Vendor's Representations and Warranties

Each Party comprising the Vendor jointly and severally hereby represents and warrants to and in favour of the Purchaser that:

(a) the Vendor 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) except for the Sale Order, 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 hereunder and the other documents and agreements executed and delivered hereunder;

(c) provided the Sale Order is obtained and constitutes a Final Order, this Agreement has been, and all documents and agreements to be executed and delivered by it at Closing pursuant to this Agreement shall be, duly executed and delivered by it, and upon execution by the Vendor, this Agreement constitutes, and all documents and agreements required to be executed and delivered by it at Closing will constitute legal, valid, and binding obligations of it enforceable against it in accordance with their respective terms, subject to bankruptcy, insolvency, preference, reorganization, moratorium and other similar laws affecting creditor's rights generally and the discretionary nature of equitable remedies and defences; and

(d) the Vendor is not a "non-resident" for the purposes of Section 116 of the *Income Tax Act* (Canada) and such Vendor shall receive its share of 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.

7.2 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 7.1 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 Acquired Assets or in relation to the Transaction. For greater certainty, the Vendor does not make any representation or warranty, express or implied, of any kind, at law or in equity, with respect to:

(a) the accuracy or completeness of the Data Room Information or any other data or information supplied by the Vendor or any of its Representatives in connection with the Acquired Assets;

(b) the quality, condition, fitness, suitability, serviceability, or merchantability of any of the Acquired Assets; or,

(b) the right, title, estate or interest of the Vendor in and to the Acquired Assets.

7.3 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 and is authorized to carry out business in the jurisdiction where the Acquired Assets are located;

(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 hereunder and the other documents and agreements executed and delivered hereunder;

(c) provided the Sale Order is obtained and constitutes a Final Order, this Agreement has been, and all documents and agreements to be executed and delivered by it at Closing pursuant to this Agreement shall be, duly executed and delivered by it, and upon execution by the Vendor and it, this Agreement constitutes, and all documents and agreements required to be executed and delivered by it at Closing will constitute legal, valid, and binding obligations of it enforceable against it in accordance with their respective terms, subject to bankruptcy, insolvency, preference, reorganization, moratorium and other similar laws affecting creditor's rights generally and the discretionary nature of equitable remedies and defences;

(d) to its knowledge after due inquiry, and provided that the Sale Order is obtained, no authorization or approval or other action by, and no notice to or filing with, any Government Authority exercising jurisdiction over the Acquired Assets is required by it or on its behalf for the due execution and delivery of this Agreement;

(e) provided the Sale Order is obtained, the consummation of the Transaction will not constitute or result in a material violation, breach, or default by it under any provision of any agreement or instrument to which it is a party or by which is it bound or any judgment, law, decree, order, or ruling applicable to it;

(f) it has not received notice of any Claims in existence, contemplated, pending or threatened against it seeking to prevent the consummation of the Transaction;

(g) it has sufficient funds available to it to enable it to pay in full the Purchase Price to the Vendor as herein provided and otherwise to fully perform its obligations under this Agreement;

(h) the Person or Persons who at Closing purchase the beneficial interests in the Acquired Assets will be registrants for the purposes of Part IX of the *Excise Tax Act* (Canada); and

(i) the Purchaser is and will be on Closing a "Canadian" within the meaning of the *Investment Canada Act*.

ARTICLE 8
TERMINATION

8.1 Grounds for Termination

This Agreement may be terminated at any time prior to Closing;

(a) by mutual written agreement of the Vendor and the Purchaser;

(b) by either the Vendor or the Purchaser, pursuant to the provisions of Section 5.1 or Section 5.2, as applicable; or

(c) by the Vendor, if Closing has not occurred on or before September 4, 2020.

8.2 Effect of Termination

If this Agreement is terminated by the Vendor or the Purchaser, as permitted under Section 8.1, Article 10 and Section 11.10 shall remain in full force and effect following any such permitted termination. Furthermore, the Purchaser and the Vendor hereby covenant, acknowledge, and agree that, notwithstanding anything to the contrary in this Agreement, in addition to the forfeiture and release of the Deposit, as contemplated in Section 3.2 herein, in the event this Agreement is terminated as a result of 3.2(b), the Vendor shall be entitled to pursue any and all additional claims, rights, remedies, and damages associated with the Transaction, this Agreement, and the Purchaser's default hereunder.

ARTICLE 9
CONFIDENTIALITY, PUBLIC ANNOUNCEMENTS AND SIGNS

9.1 Confidentiality

Each Party agrees to keep in strict confidence:

(a) subject to Section 9.2, all information regarding the terms of this Agreement and the Purchase Price; and

(b) any information exchanged or received in connection with:

(i) the performance of due diligence by the Purchaser prior to or after the date hereof (including due diligence conducted under or in connection with the Letter of Intent); or

(ii) negotiation or drafting of this Agreement;

provided that the Vendor shall be entitled to disclose all information as may be required or desirable in connection with obtaining the Sale Order. If this Agreement is terminated, each Party

upon request will promptly return to the other Party all documents, contracts, records or other information received by it that disclose or embody confidential information of the other Party.

In addition to the foregoing, the Purchaser shall continue to be bound by the Confidentiality Agreement in accordance with the terms thereof.

9.2 Public Announcements

(a) If a Party intends to issue a press release or other public disclosure of this Agreement, the terms hereof or the transactions contemplated herein, the disclosing Party shall provide the other Party with an advance copy of any such press release or other public disclosure with sufficient time to enable the other Parties to review such press release or other public disclosure and advise of any comments they may have with respect thereto.

(b) Notwithstanding Section 9.1 or 9.2(a), a Party may release or provide information about the Transaction insofar as is required by Applicable Law (including as may be required to obtain the Sale Order) or stock exchange requirements applicable to the disclosing Party or its Affiliates; provided that such disclosing Party shall make reasonable commercial efforts to provide the other Party with the details of the nature and substance of such required disclosure as soon as practicable and in any event prior to such disclosure. A Party may provide information about the Transaction to a bank or other financial institution to obtain financing on any required consent of the bank or other financial lender of such Party or any of its Affiliates. A Party may also disclose such information pertaining to this Agreement, including the identity of the Parties, insofar as is required to enable such Party to fulfil its obligations under this Agreement, including obtaining any approvals or consents to the Transaction required from Governmental Authorities (including the Sale Order) or Third Parties.

ARTICLE 10
GOVERNING LAW AND DISPUTE RESOLUTION

10.1 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 to the laws of Canada applicable therein.

10.2 Resolution of Disputes

(a) Each Party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Court, and waives any defences it might have regarding jurisdiction in any action or proceeding arising out of or relating to this Agreement or any ancillary agreement to which it is a Party, or for recognition or enforcement of any judgment in respect thereof, and each Party hereto hereby irrevocably and unconditionally agrees that all Claims in respect of any such action or proceeding may be heard and determined by the Court.

(b) Each Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have

to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any ancillary agreement to which it is a Party in any court of competent jurisdiction in the Province of Alberta. Each of the Parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defence of an inconvenient forum to the maintenance of such action or proceeding in any such court.

ARTICLE 11
GENERAL

11.1 Obligations as Covenants

Each agreement and obligation of any of the Parties hereto in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.

11.2 Currency

All reference to currency in this Agreement shall be deemed to be reference to Canadian dollars.

11.3 Invalidity

If any immaterial covenant, obligation, agreement or part thereof or the application thereof to any person or circumstance, to any extent, shall be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or agreement or part thereof to any person, Party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby. Each covenant, obligation and agreement in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

11.4 Amendment of Agreement

No supplement, modification, waiver or termination of this Agreement (other than a termination permitted to be unilaterally made by the Vendor or Purchaser pursuant to the terms of this Agreement) shall be binding unless executed in writing by the Parties hereto in the same manner as the execution of this Agreement.

11.5 Time of the Essence

Time shall be of the essence of this Agreement.

11.6 Personal Information

The Purchaser covenants and agrees to use and disclose any personal information contained in any of the books, records, or files transferred to the Purchaser or otherwise obtained by the Purchaser in connection with the Transaction only for those purposes for which it was initially collected from or in respect of the individual to which such information relates or as otherwise permitted or authorized by Applicable Law. The Purchaser's obligations set forth in this Section 11.6 shall survive the Closing Date indefinitely.

11.7 Assignment

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

(b) No assignment, transfer, or other disposition of this Agreement or the Acquired Assets or any portion of the Acquired Assets shall relieve the Purchaser from its obligations to the Vendor herein. The Vendor shall have the option to claim performance or payment of the obligations from the Purchaser or the assignee or transferee, and to bring proceedings in the event of default against either or all of them, provided that nothing herein shall entitle the Vendor to receive duplicate performance or payment of the same obligation.

11.8 Further Assurances

From time to time, as and when reasonably requested by a Party, each Party shall execute and deliver or cause to be executed and delivered all such documents and instruments and shall take or cause to be taken all such further or other actions to implement or give effect to the Transaction, provided such documents, instruments, or actions are consistent with the provisions of this Agreement. All such further documents, instruments, or actions shall be delivered or taken at no additional consideration other than reimbursement of any expenses reasonably incurred by the Party providing such further documents or instruments or performing such further acts, by the Party at whose request such documents or instruments were delivered or acts performed.

11.9 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 agreement of purchase and sale provided for herein and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, with respect thereto, including the Letter of Intent, and there are no other warranties or representations and no other agreements between the Parties hereto in connection with the agreement of purchase and sale provided for herein except as specifically set forth in this Agreement or the schedules attached hereto.

11.10 Costs

Except as otherwise specified in this Agreement, each Party shall pay its respective costs incurred in connection with the preparation, negotiation, and execution of this Agreement and the consummation of the Transaction, subject to Section 11.8 of this Agreement.

11.11 Waiver

No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided.

11.12 Merger

Except as otherwise provided in this Agreement: (a) this Agreement shall merge with the closing of the Transaction contemplated herein; and (b) no representations, warranties, covenants or agreements of either the Vendor or the Purchaser shall survive and all such representations, warranties, covenants, or agreements shall merge on Closing, unless otherwise indicated herein. The provisions of this Section 11.12 shall survive and not merge on Closing.

11.13 Notice

Any notice, direction or other communication given regarding the matters contemplated by this Agreement (each a "**Notice**") must be in writing, sent by personal delivery, electronic mail, courier or facsimile and addressed:

(a) to the Vendor at:

JMB Crushing Systems Inc.
PO Box 6977 Bonnyville, AB T9N 2H4

Email: blakeelyea@jmbcrush.com
Attention: Blake Elyea

with a copy to:

Sequeira Partners
520 5 Ave SW, #400
Calgary, AB T2P 3R7

Facsimile: 1-877-790-6172
Email: asequeira@sequeirapartners.com
Attention: Aroon Sequeira

with a copy to:

FTI Consulting Canada Inc.
520 5 Ave SW, #400
Calgary, AB T2P 3R7

Facsimile: 1 403 232 6116
Email: Deryck.Helkaa@fticonsulting.com and Tom.Powell@fticonsulting.com
Attention: Deryck Helkaa & Powell, Tom

(b) to the Purchaser at:

McDonald Aggregates Inc.
Box 1017
Camrose, AB T4V 4E7

E-mail: Brad@mcagg.ca
Attention: Brad McDonald

A Notice is deemed to be given and received (i) if sent by personal delivery, electronic mail or same-day courier, on the date of delivery if it is a Business Day and the delivery was made prior to 5:00 p.m. (Mountain time) and otherwise on the next Business Day, (ii) if sent by overnight courier, on the next Business Day if the delivery was made prior to 5:00 p.m. (local time in place of receipt) on such Business Day and otherwise on the next Business Day, or (iii) if sent by facsimile or email, on the Business Day of confirmation of transmission by the originating facsimile or email if such confirmation of transmission indicates that such facsimile or email was received prior to 5:00 p.m. (Mountain time) on a Business Day and otherwise on the next Business Day. A Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a party's address that is not specifically changed in a Notice will be assumed not to be changed. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a Party.

11.14 Non-Business Days

Whenever payments are required to be made or an action is required to be taken on a day which is not a Business Day, such payment shall be required to be made or such action shall be required to be taken on and not later than the next succeeding Business Day.

11.15 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.

11.16 Electronic and Counterpart Execution

All Parties agree that 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 either in original or electronic form and the Parties adopt any signatures received by email or other electronic delivery as original signatures of the Parties, provided, however, that any Party providing its signature in such manner shall promptly forward to the other Party an original of the signed copy of this agreement which was so electronically delivered.

[Remainder of Page Intentionally Blank]

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 Levkulich
Name: Byron Levkulich
Title: Director

Per: _____
Name: Aaron M. Patsch
Title: Director

McDONALD AGGREGATES INC.

Per: _____
Name: Brad McDonald
Title: President

SCHEDULE A
EQUIPMENT

1. D8R 1998 with angle blade - 7XM02813 – $67,000
2. Lonetrack Power Van 2009 - 1JJV533W99L314662 – $128,000
3. Set of three (3) KPI 36X70 Stack Pack 2010 Conveyors - 410244, 410245, 410246 – $56,000
4. Sand Splitter – SS200 – $13,000

SCHEDULE B
PERMITTED ENCUMBRANCES

None.

Appendix B

Third Cash Flow Statement

for the 19 Weeks Ending September 11, 2020

JMB Crushing Systems Inc. 08/25/2020

Second Cash Flow Statement (Notes 1)

	Actual	*Forecast*	*Forecast*	*Forecast*	*Forecast*			
Week #	Weeks 1 - 15	Week 16	Week 17	Week 18	Week 19	Weeks 16-19	Weeks 1 -19	
Week Ending		21-Aug-20	28-Aug-20	4-Sep-20	11-Sep-20	Total	Total	Notes
Opening Cash	$ -	$ 1,661,419	$ 1,922,590	$ 2,037,590	$ 1,715,090	$ 1,661,419	$ -	
Cash Receipts								
Collection of Canadian Emergency Wage Subsidy	612,786	-	-	-	-	-	612,786	
Collection of Pre-Filing AR - EllisDon (net of lien payouts)	2,031,521	-	-	-	-	-	2,031,521	**2**
Collection of Pre-Filing AR - MD of Bonnyville	1,477,612	-	154,000	-	-	154,000	1,631,612	**3**
Collection of Post Filing AR - MD of Bonnyville	1,041,734	524,011	-	-	-	524,011	1,565,745	**4**
Other Receipts	132,489	-	-	-	-	-	132,489	
Total Receipts	5,296,142	524,011	154,000	-	-	678,011	5,974,153	
Operating Disbursements								
Payroll And Source Deductions	(1,211,670)	(12,000)	(26,500)	(12,000)	(26,500)	(77,000)	(1,288,670)	**5,6**
Royalties	(407,629)	-	-	-	-	-	(407,629)	
Fuel	(204,404)	-	(500)	-	-	(500)	(204,904)	**5**
Repair & Maintenance	(48,916)	-	-	-	-	-	(48,916)	
Office Administration	(20,896)	(3,500)	(3,500)	(3,500)	(3,500)	(14,000)	(34,896)	**5**
Insurance & Benefits	(138,553)	-	-	(23,000)	-	(23,000)	(161,553)	**7**
Jobsite Lodging	(20,605)	-	-	-	-	-	(20,605)	**5**
Equipment Loan & Lease Payments	(133,151)	(2,340)	-	-	-	(2,340)	(135,491)	**8**
Occupancy	(127,345)	-	-	(33,000)	-	(33,000)	(160,345)	**9**
Other	(23,680)	(1,000)	(1,000)	(1,000)	(1,000)	(4,000)	(27,680)	**10**
Total Disbursements	(2,336,849)	(18,840)	(31,500)	(72,500)	(31,000)	(153,840)	(2,490,689)	
Non-Operating Receipts & Disbursements								
DIP Financing (Repayment)	(211,188)	-	-	-	-	-	(211,188)	
Professional Fees	(1,086,687)	(244,000)	(7,500)	(250,000)	(7,500)	(509,000)	(1,595,687)	**11**
Total Disbursements	(1,297,875)	(244,000)	(7,500)	(250,000)	(7,500)	(509,000)	(1,806,875)	
Net Cash Flow	1,661,419	261,171	115,000	(322,500)	(38,500)	15,171	1,676,590	
Ending Cash Balance	$ 1,661,419	$ 1,922,590	$ 2,037,590	$ 1,715,090	$ 1,676,590	$ 1,676,590	$ 1,676,590	

Notes

1 The Third Cash Flow Statement has been prepared to set out the post filing liquidity requirements of JMB Crushing Systems Inc. during the four weeks ending September 11, 2020 under the Companies' Creditors Arrangement Act proceeding (the "CCAA Proceedings") which commenced effective May 1, 2020.

2 Cash receipts and timing of payment of pre-filing amounts due from Ellis Don and held by the Monitor are based upon the issuance of the Monitor's Lien Determination Notices and are dependent upon the outcome of any potential disputes.

3 Cash receipts and timing of payment of pre-filing amounts due from MD of Bonnyville and held by the Monitor are dependent on the outcome of a Court hearing tentatively being scheduled the week October 19, 2020 in respect of two appeals to the Monitor's Lien Determination Notices.

4 Post-filing amounts due from MD of Bonnyville relate to the collection of invoiced amounts for work completed with the timing of receipt of payment based on recent payment terms.

5 Active business operations ceased on June 26, 2020 with the completion of the MD of Bonnyville project and the majority of the company's employees were terminated. Forecast operating expenses are based on necessary costs to maintain operations to complete the SISP.

6 Payroll and source deductions represent forecast payments to remaining employees for wages.

7 Insurance represents monthly payments for the company's general insurance policy which is anticipated to be extended to October 31, 2020.

8 Equipment Loan and Lease payments represent scheduled payments for automotive equipment currently being utilized.

9 Occupancy represents scheduled monthly payments for the company's Edmonton and Bonnyville premises.

10 Other disbursements include miscellaneous payments and contingent costs.

11 Professional fees relate to the Company's legal counsel, the Monitor, the Monitor's legal counsel, sale consultant, operational consultant and Chief Restructuring Advisor.

This is Exhibit "L" referred to in the Affidavit of

Katie Doran

sworn before me this 4th day of December, 2020.

A Commissioner for Oaths in and for the Province of Alberta

Connor E.J. O'Brien
Student-at-Law

COURT FILE NUMBER	2001-05482
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT	IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. AND 2161889 ALBERTA LTD.
DOCUMENT	SEVENTH REPORT OF FTI CONSULTING CANADA INC., IN ITS CAPACITY AS MONITOR OF JMB CRUSHING SYSTEMS INC. AND 2161889 ALBERTA LTD. **September 30, 2020**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**MONITOR** FTI Consulting Canada Inc. 1610, 520, 5th Ave. SW Calgary, AB T2P 3R7 Deryck Helkaa / Tom Powell Telephone: (403) 454-6031 / (604) 484-9525 Fax: (403) 232-6116 E-mail: deryck.helkaa@fticonsulting.com tom.powell@fticonsulting.com **COUNSEL** McCarthy Tétrault LLP Suite 4000, 421 7th Avenue S.W. Calgary, AB T2P 4K9 Sean Collins / Pantelis Kyriakakis Telephone: (403) 260-3531 / (403) 260-3536 Fax: (403) 260-3501 E-mail: scollins@mccarthy.ca pkyriakakis@mccarthy.ca

FTI CONSULTING

SEVENTH REPORT OF THE MONITOR

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INTRODUCTION

1. On May 1, 2020 (the "**Filing Date**"), JMB Crushing Systems Inc. ("**JMB**") and 2161889 Alberta Ltd. ("**216**" and together with JMB, the "**Applicants**") commenced proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to an order granted by this Honourable Court which was subsequently amended and restated on May 11, 2020 (the "**ARIO**").

2. The ARIO provides for, among other things:

    a. a stay of proceedings (the "**Stay of Proceedings**") in favour of the Applicants until July 31, 2020;

    b. the appointment of FTI Consulting Canada Inc. as Monitor in the CCAA Proceedings (the "**Monitor**"); and

    c. the approval of a sale or investment solicitation process ("**SISP**").

3. On September 25, 2020, this Honourable Court granted an order extending the Stay of Proceedings until and including October 2, 2020.

4. On September 29, 2020, the Monitor filed a Notice of Application for the following orders:

    a. an order approving the sale of certain equipment to Sandhill Equipment Corp. ("**Sandhill**") and vesting the assets free and clear of any security interests or other claims (the "**Sandhill SAVO**");

    b. an order approving the sale of certain equipment to McDonald Aggregates Inc. ("**McDonald**") and vesting the assets free and clear of any security interests or other claims (the "**McDonald SAVO #2**");

c. an order approving the sale of certain assets to Mantle Materials Group, Ltd. ("**Mantle**") and vesting the assets free and clear of any security interests or other claims other than the Permitted Encumbrances[1] (the "**Mantle SAVO**" and together with the Sandhill SAVO and McDonald SAVO #2, the "**SAVOs**");

d. an order transferring and vesting all of the remaining assets and liabilities of JMB in 216 and Eastside Rock Products, Inc. ("**Eastside**") and authorizing and directing certain secured parties with prior ranking purchase-money security interests or leases to take possession or control of their collateral or leased property (collectively, the "**Equipment Lenders**") and account for the proceeds of sale thereof pursuant to a reverse vesting order (the "**RVO**").

5. The amended and restated asset purchase agreement between JMB and Mantle (the "**Mantle APA**") is conditional upon, among other things, JMB and Mantle submitting a joint plan of arrangement (the "**Plan**") under the *Business Corporations Act, SBC 2002, c 57, as amended* (British Columbia) and the CCAA. A copy of the Plan is attached as Appendix "**A**".

6. On September 29, 2020, the Applicants filed a Notice of Application (the "**Applicants' Application**") for the following orders:

a. an Order (the "**Assignment Order**"): (i) assigning the rights and obligations of the Applicants under certain agreements which contain provisions restricting their assignment (the "**Restricted Agreements**") to Mantle under section 11.3 of the CCAA, subject to the payment of applicable cure costs by Mantle; and, (ii) declaring that the transfer and vesting of the remaining contracts to be assigned under the Mantel APA (the "**Unrestricted Agreements**" and together with the Restricted Agreements, the "**Assigned Agreements**") vest, pursuant to the Mantle SAVO, in Mantle free and clear of any monetary claims of the counterparties to such Unrestricted Agreements, absent the payment of any associated cure costs;

[1] As defined in the SAVO

b. an order sanctioning the Plan (the "**Sanction Order**"); and

c. an order extending the Stay of Proceedings until and including October 30, 2020 (the "**Extension Order**").

7. The purpose of this report is to provide this Honourable Court and the Applicants' stakeholders with information with respect to:

a. an independent opinion on the validity and enforceability of security held by JMB's senior secured lenders, Fiera Private Debt Fund VI LP ("**Fiera**") and ATB Financial ("**ATB**"), prepared by McCarthy Tetrault LLP ("**McCarthy**") in its capacity as legal counsel to the Monitor (the "**Security Opinion**");

b. the conclusion of the SISP;

c. background of the CCAA Proceedings;

d. the Monitor's application for the Sandhill SAVO;

e. the Monitor's application for the McDonald SAVO #2;

f. the Monitor's application for the Mantle SAVO;

g. the Applicants' application for the Assignment Order;

h. the Monitor's application for the RVO;

i. the key commercial terms of the Plan;

j. the Applicants' application for the Sanction Order;

k. an updated cash flow statement (the "**Fifth Cash Flow Statement**") prepared by the Applicants for the 26 weeks ending October 30, 2020 including the key assumptions on which the Fifth Cash Flow Statement is based;

l. the Applicants' application for the Extension Order; and

m. the Monitor's conclusions and recommendations.

TERMS OF REFERENCE

8. In preparing this report, the Monitor has relied upon certain information (the "**Information**") including information provided by JMB concerning the various assets subject to the various transactions and JMB's unaudited financial information, books and records and discussions with senior management and the Chief Restructuring Advisor (the "**CRA**" and collectively, "**Management**").

9. Except as described in this report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.

10. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.

11. Future oriented financial information reported to be relied on in preparing this report is based on Management's assumptions regarding future events. Actual results may vary from forecast and such variations may be material.

12. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

SECURITY OPINION

13. McCarthy was engaged to complete an independent review of the security held by Fiera and ATB over the assets of the Applicants that were subject to the SISP. Subject to standard qualifications and assumptions, McCarthy has opined that the security held by Fiera and ATB is valid and enforceable.

14. Fiera has first-ranking security in all of JMB's present and after-acquired personal property while ATB has first-ranking security over inventory, accounts receivable, a parcel of real property owned by JMB and cash proceeds in connection with letters of credit issued by ATB up to a maximum amount not exceeding $100,000 in the aggregate.

15. In addition to ATB and Fiera, the Equipment Lenders hold prior ranking purchase-money security interests, serial number registrations or constitute equipment lessors. McCarthy has reviewed the security of certain Equipment Lenders and subject to the standard qualifications and assumptions, has opined that their security is valid and enforceable.

16. As part of the RVO, the Monitor is seeking direction to have JMB release the equipment related to the Equipment Lenders' lease or financing agreements subject to such Equipment Lenders providing an accounting of the proceeds of sale and on a without prejudice basis to any parties positions concerning any future cost allocation to be approved by this Honourable Court.

CONCLUSION OF THE SISP

17. In accordance with the SISP, Sequeira Partners, in its capacity as sales agent ("**Sales Agent**"), has marketed the business and assets of the Applicants, in consultation with the Monitor.

18. Highlights of the SISP (as have been previously reported to this Honourable Court) are as follows:

a. the Sales Agent contacted 196 potentially interested parties including 90 strategic, 70 financial and 36 other investors;

b. 53 potential purchasers executed non-disclosure agreements and were provided with a confidential information memorandum and access to an electronic data room;

c. eight non-binding expressions of interest were received by the Sales Agent and the Monitor on or before the Phase 1 bid deadline, of which 7 potential purchasers were invited to participate in Phase II of the SISP; and

d. four binding bids were received by the Sales Agent and Monitor on or before the Phase II bid deadline for binding bids.

19. Attached at as Confidential Appendix "**B**", is a summary of the SISP results and details of the binding bids received at the end of Phase II.

20. Over the past several weeks, the Sales Agent, in consultation with the Monitor, the CRA, and certain secured lenders, has been working to clarify certain aspects of the bids, negotiate additional consideration in order to select one or more preferred bids and to apportion and segregate assets with multiple bids to maximize value and recoveries for the Applicants' estates.

21. The result of those negotiations was the acceptance of the initial sale of certain pieces of crushing equipment to McDonald which was approved by this Honourable on August 26, 2020. As discussed in the Fifth Report of the Monitor, negotiations then continued with a potential purchaser regarding an additional bid that would provide for the sale of the majority of the Applicants' remaining assets.

22. The Monitor has now accepted the Phase 2 Bid from Mantle along with the Equipment Offers, as defined and discussed below.

23. As set out in the Second Report of the Monitor, the SISP was conducted by the Sales Agent under the supervision of the Monitor with the assistance of the CRA. As Resource Land Fund V LP ("**RLFV LP**"), the ultimate parent of JMB and 216, participated in the SISP, representatives of RLFV LP (and its counsel) were not consulted with respect to the progress of the SISP or the details of the bids submitted in the SISP.

BACKGROUND

24. The Monitor provides the following brief background with respect to these CCAA Proceedings of the Applicants to provide the reader with a reference in reviewing the various orders and relief being sought.

25. As set out in the affidavit of Byron Levkulich dated September 30, 2020, the Applicants' business was in the extraction, processing and transportation and sale of aggregate in Alberta. JMB, and through its subsidiary 216, had rights of access to over 50 aggregate pits in Alberta along with various contracts, office equipment and other equipment used in the operations. A subsidiary of JMB, Eastside, owned certain equipment which remains physically located in the State of Washington.

26. The primary secured creditors are:

    a. ATB has a first ranking security with respect to the inventory and accounts receivable of JMB and 216 along with a parcel of real property owned by JMB;

    b. Fiera has first charge against all other assets of JMB, 216 and Eastside with the exceptions of personal property subject to the Equipment Lenders' claims; and

    c. there are nine Equipment Lenders with first ranking charges over specific equipment which are not part of any sales contemplated under the SISP process.

27. The Monitor's estimate of the net recoveries from the SISP along with the expected recoveries of the Applicants' working capital are expected to be significantly less than the $10.7 million and $19.3 million, ATB and Fiera are owed respectively.

28. Given the significant shortfall to the secured lenders and that the primary security of the ATB (i.e. collection of accounts receivable) was being used to fund the ongoing CCAA process, the Monitor and the Applicants had concurrent discussions with ATB and Fiera concerning the allocation of costs associated with these CCAA Proceedings. Agreement on the allocations of costs was required to be completed in order for ATB, Fiera and Mantle to conclude certain commercial terms associated with the Mantle APA. Such agreement was substantially agreed to in late August yet further discussions were necessary due to the ongoing stay extensions. However, the Monitor understands that ATB, Fiera and Mantle are in general agreement of a cost allocation methodology assuming a closing of the Mantle APA in the near-term.

29. As a part of the cost-sharing discussions, it was determined that Fiera would support the sale of certain pieces of its equipment to generate additional cash consideration to fund the process and consummate the Mantle APA. The Sales Agent was then able to solicit additional offers from Sandhill and McDonald as discussed below.

30. The Monitor acknowledges the complexity in the various orders and relief being sought and provides the following comments with respect to the transaction contemplated by the Mantle APA:

    a. The Mantle APA contemplates an acquisition of a substantial majority of the Applicants' assets: 16 aggregate pits and related leases, certain inventory located on at the aggregate pits, customer contracts, office equipment and related equipment. The Mantle APA contemplates a 'going concern' acquisition including offers of employment to certain employees once the operations are fully operational;

b. the RVO is required by Mantle in order to effectively 'cleanse' the corporate shell of JMB in order to allow certain positive tax attributes. The mechanics of the RVO is discussed in further detail below;

c. the Assignment Order addresses contracts which cannot be assigned without the consent of the counter-party, therefore the Assignment Order contemplates the assignment of approximately 21 Restricted Agreements and certain related or ancillary instruments thereto, all pursuant to section 11.3 of the CCAA on the condition that all corresponding cure costs are paid. The Assignment Order also declares that all Unrestricted Agreements (being all remaining Assigned Contracts under the Mantel APA which are not Restricted Agreements) shall be assigned under the Mantel APA and vest, pursuant to the Mantle SAVO, in Mantle free and clear of any monetary claims of the counterparties to such Unrestricted Agreements, absent the payment of any associated cure costs. The listing of Restricted Agreements and Unrestricted Agreements, along with outstanding cure amounts, as provided and calculated by the Applicants, are set out Confidential Appendix "**C**";

d. A plan of arrangement is also contemplated to address the equity ownership of JMB at the completion of the proposed Mantle transaction (as discussed below); and

e. The Mantle APA is conditional upon the granting of the SAVO, the Assignment Order, the RVO and the Sanction Order.

31. The details of the Equipment Offers (as subsequently defined) and the Mantle APA along with the orders and relief being sought are set out in further detail below.

EQUIPMENT OFFERS

32. The Monitor, in consultation with the affected secured lenders, has accepted offers from Sandhill (the "**Sandhill Offer**") and McDonald (the "**McDonald Offer #2**", together with the Sandhill Offer, the "**Equipment Offers**") to purchase certain specific pieces of

equipment. Copies of the asset purchase agreements are attached as Appendices "**D**" and "**E**".

33. Highlights of the Sandhill Offer are provided below:

a. Sandhill will purchase certain crushing assets from JMB including the following:

i. a 2011 Svedala H-6000 Hydrocone M2802 Portable Cone Crusher;

ii. a 2004 Sandvik H4800 Hydrocone Portable Crusher; and

iii. a 1999 Red Deer 25-Cubic Yard Portable Trap Feeder.

b. the Sandhill purchase price will be $185,000 plus applicable taxes.

34. Highlights of the McDonald Offer #2 are provided below:

c. McDonald will purchase certain assets from JMB including the following:

i. a 6" Diesel Trash Pump; and

ii. a 2008 Kolberg/Pioneer telescopic radial super stacker.

d. the McDonald purchase price will be $105,000 plus applicable taxes.

35. The Monitor's comments with respect to the Equipment Offers are as follows:

a. the price and terms of the Equipment Offers represent the highest and best offer in respect of the subject assets;

b. key stakeholders including Fiera, as a senior secured creditor in respect of the subject assets, are supportive of the Monitor accepting the Equipment Offers;

c. concluding the Equipment Offers will provide for cash consideration to fund estate costs and potential distributions to secured creditors; and

d. overall, concluding the transactions contemplated by the Equipment Offers are in the best interests of the creditors of JMB.

MANTLE APA

36. The Mantle APA is attached as Confidential Appendix "**F**" to this report.

37. The key commercial terms of the Mantle APA are as follows:

a. Mantle will purchase the majority of JMB's assets, including the following:

i. certain aggregate pit agreements, real property and related aggregate reserves and permits;

ii. inventory located on two SMLs as well as inventory pursuant to an agreement with ATB;

iii. certain equipment, contracts and shares in a joint venture subsidiary; and

iv. the books and records and other miscellaneous assets.

b. Mantle will not purchase the following assets (the "**Excluded Assets**"):

i. certain equipment with a security interest in favour of Fiera that has been sold or is to be sold or that is located on property that Eastside, a subsidiary of JMB, had access to in the State of Washington;

ii. any of the Equipment Lenders' assets;

iii. a lease of a property in Edmonton, Alberta that is to be disclaimed pursuant to the Mantle APA;

iv. certain aggregate pits and related inventory, including the pits related to Kalinko Enterprises Ltd., that will vest in 216 pursuant to the RVO; and

v. the debts or accounts receivable owing to the Applicants of which any collection will be applied against the ATB indebtedness, which will also vest in 216.

c. Mantle will assume the following liabilities:

i. certain cure costs in accordance the Assignment Order;

ii. the portion of Fiera's debt that Mantle becomes liable for pursuant to its loan agreement with Fiera (the "**Fiera Assumed Debt**");

iii. the portion of ATB's secured debt that Mantle becomes liable for associated with the sell-off agreement of inventory and a security interest in JMB's real property subject to the Mantle APA (the "**ATB Assumed Debt**");

iv. the go forward liabilities under the assigned contracts;

v. any liabilities with respect to transferred employees; and

vi. any liabilities with respect to the acquired assets following the applicable adjustment date.

d. the details of the purchase price are set out in the Confidential Appendix "**B**";

e. certain adjustments relating to revenues, costs and expenses of the acquired assets and transferred employees are to be apportioned as at the date before closing;

f. in order to facilitate the transaction, the Mantle APA requires the approval of this Honourable Court of the following orders, in addition to the Mantle SAVO, which are described in further detail below:

    i. the Assignment Order;

    ii. the RVO; and

    iii. the Sanction Order.

g. the material conditions to closing are as follows:

    i. payment by Mantle to JMB of the purchase price;

    ii. the issuance of the Sanction Order, RVO, the Assignment Order, which shall be in form and substance satisfactory to all parties;

    iii. there shall not be in effect any preliminary or final order, decision or decree by a governmental authority, no application, action or proceeding shall have been commenced with any government authority, and no action or investigation shall have been announced, threatened or commenced by any governmental authority in connection with the tractions contemplated by the Sanction Order or RVO, which restrains, impedes or prohibits such transaction or any material part thereof or requires or purports to require a material variation thereof;

    iv. the Unrestricted Agreements shall have been vested in Mantle free and clear of any liabilities accrued as of the Filing Date; and

    v. there will have been obtained from all appropriate governmental authorities and counterparties such material approvals or consents and

such permits as are required to permit the change of ownership of the acquired assets.

38. The Monitor's observations with respect to the SISP and comments with respect to the Mantle APA are as follows:

    a. the Monitor, with the assistance of the Sales Agent, has marketed the business and assets in accordance with the procedures outlined in the SISP;

    b. the SISP was fair and transparent and all participants were treated consistently and with equal access to information;

    c. the SISP was conducted in a manner that managed against potential conflicts of interest among related parties that chose to participate in the SISP, particularly as it relates to RLFV LP being the ultimate parent of both CARC and Mantle. As it was anticipated that RLFV LP would submit a bid in the SISP, none of the representatives of RLFV LP were consulted with or involved in the review or selection of the bids or the SISP in general;

    d. the price and terms of the Mantle APA represent the highest and best offer in respect of the subject assets and is reasonable and fair, taking into account their market value;

    e. key stakeholders including ATB and Fiera as senior secured creditors in respect of the subject assets are supportive of the Monitor accepting the Mantle APA;

    f. no stakeholders, aside from ATB and Fiera, are impacted by the RVO and Plan as the majority of the remaining assets and liabilities attach to 216 in the same order and priority as exists immediately prior to the RVO taking effect;

    g. the Mantle APA will provide for cash consideration to fund estate costs and potential distributions to secured creditors;

h. there is no viable alternative to the transaction contemplated by the Mantle APA and the sale of the assets subject to the Mantle APA would be more beneficial to the Applicants' creditors than a sale or disposition under a bankruptcy whereby a going concern sale may not be achievable; and

i. overall, concluding the transaction contemplated by the Mantle APA is in the best interests of the creditors of JMB.

ASSIGNMENT ORDER

39. The Applicants are seeking the Assignment Order pursuant to section 11.3 of the CCAA assigning to Mantle any Restricted Agreements where the counterparty has not consented to the assignment, provided that any applicable cure costs are paid.

40. Mantle has advised that it will be able to perform the obligations under the Assigned Agreements and has set aside sufficient working capital to deal with all such go forward obligations. The Monitor also notes that the parties to the Restricted Agreements are not materially prejudiced given the requirement that Mantle first pay all related cure costs.

41. With respect to any Unrestricted Agreements that do not contain any restriction on the transfer of the agreement, the Mantle SAVO contemplates that such Unrestricted Agreement be vested in Mantle without the payment of any associated cure costs. The Monitor understands that there are eight Unrestricted Agreements with the details and arrears amounts, as provided by the Applicants to the Monitor, set out on Confidential Appendix "**C**". The Monitor understands that the parties to the Unrestricted Agreements have been notified of this application and that negotiations between the counterparties to the Unrestricted Agreements and Mantle are ongoing.

42. Finally, to the extent a resolution is not reached between the counterparties to the Unrestricted Contracts and the Purchaser, prior to the return of the Applicants' Application, the declaratory relief that the Unrestricted Contracts shall be vested free and clear of any liabilities or claims, absent the payment of any associated cure costs, will be

argued by the Applicants, as part of the contemplated Assignment Order under the Applicants' Application.

REVERSE VESTING ORDER

43. The RVO is critical to the viability of the transaction and its purpose is to utilize certain regulatory licenses and preserve certain tax attributes, such as paid up capital, in JMB that cannot otherwise be transferred to Mantle.

44. The RVO authorizes the applicants to undertake a reverse vesting transaction whereby JMB will convey all of its remaining assets (the "**Remaining JMB Assets**") and liabilities (the "**Remaining JMB Liabilities**") that are excluded from the Mantle APA to 216, in a siloed and structured manner.

45. Pursuant to the RVO, upon issuance of a Monitor's Certificate, the following shall be deemed to have occurred at the effective time of the RVO:

    a. JMB's interest in the Remaining JMB Assets shall vest in 216, subject to all existing encumbrances which shall remain attached to the applicable assets;

    b. all Remaining JMB Assets and their proceeds shall be held in trust by 216 for and on behalf of persons to whom the Remaining JMB Liabilities are owed;

    c. all Remaining JMB Liabilities shall be transferred to and vest in 216 and 216 shall be deemed to have assumed and become liable for such Remaining JMB Liabilities;

    d. JMB creditors shall be forever barred from commencing any steps or proceedings with respect to the Remaining JMB Liabilities or encumbrances against JMB subsequent to the reverse vesting;

e. any JMB creditor that had a right or claim against JMB pursuant to a Remaining JMB Liability shall no longer have such claim but shall have an equivalent claim against 216;

f. JMB shall be deemed released from any and all Remaining JMB Liabilities; and

g. notwithstanding the above, JMB shall continue to be liable to ATB for the remaining ATB debt (the "**Remaining ATB Debt**") and to Fiera for the remaining Fiera debt (the "**Remaining Fiera Debt**") and the encumbrances granted by JMB to ATB and Fiera shall continue to attach to any property and assets of JMB, subject to the terms and provisions of the Plan.

PLAN OF ARRANGEMENT

46. The Mantle APA is conditional upon, among other things, JMB and Mantle submitting the Plan. The purpose of the Plan is to enable Mantle to continue the business as a going concern and arrange the Remaining ATB Debt and the Remaining Fiera Debt as well has altering the current Original Articles, as set out further below.

47. The primary secured creditors of JMB and 216 are ATB and Fiera and the security interests of ATB and Fiera rank in priority to another creditor of JMB and 216, other than certain PMSIs as set out the Plan. ATB and 216 are the sole affected creditors under the Plan

48. The Plan, should it be sanctioned by this Honourable Court, will have the effect of:

a. cancelling all equity securities in JMB other than the Class A JMB shares;

b. transferring the Class A JMB shares from Canadian Aggregate Resource Corporation ("**CARC**") to RLF Canada Holdings Limited ("**RLF**"), the sole shareholder of all issued and outstanding shares of Mantle and an affiliate of CARC. Both CARC and RLF are wholly owned subsidiaries of RLFV LP, a US private equity fund;

c. arranging the indebtedness of ATB such that ATB shall have recourse against Mantle and JMB for the ATB Assumed Debt, to the extent of the acquired aggregate inventory and proceeds thereof;

d. arranging the indebtedness of Fiera such that Fiera shall have recourse against Mantle and JMB for the Fiera Assumed Debt;

e. arranging the indebtedness of ATB and Fiera, such that upon amalgamation of Mantle and JMB, they do not have recourse against Mantle for the Remaining ATB Debt or the Remaining Fiera Debt, which shall continue to attach to the Remaining JMB Assets and 216 as they had immediately prior to Plan implementation; and,

f. providing that JMB holds all permits of JMB in trust for and on behalf of Mantle.

49. The Mantle APA will result in a shortfall to ATB and Fiera and there will be no proceeds available to pay any of the indebtedness, liabilities or obligations to unsecured creditors of JMB and 216 and they are therefore unaffected by the Plan (the "**Unaffected Creditors**"). The Plan contemplates that the shares of JMB have no value and that the existing shareholders are therefore also unaffected by the Plan (the "**Existing Shareholder**s"). The only affected creditors will be Fiera and ATB as a result of their assumed debt (the "**Affected Creditors**").

50. The Plan contains a provision allowing the Applicants to amend, restate, modify and/or supplement the Plan, with the prior consent of the Monitor provided that it is filed and approved by this Honourable Court. Court approval is not required if the matter is of an administrative nature, in the opinion of JMB, Mantle and the Monitor, and is required to better give effect to Plan implementation and the Sanction Order or to cure any errors, omissions or ambiguities.

51. The Plan contemplates that if both of the Affected Creditors agree to the Plan pursuant to proxies provided to the Monitor, JMB and Mantle, the Monitor may dispense with

holding a creditors' meeting to confirm the Plan. For greater certainty, no Unaffected Creditor or Existing Shareholder will be entitled to vote or attend the creditors' meeting in respect of the Plan.

52. Plan implementation is then conditional on the satisfaction or waiver of the following:

    a. the Affected Creditors shall have agreed to the Plan;

    b. the Court will have granted the Sanction order; and

    c. all closing conditions precedent pursuant to the Mantle APA have been satisfied.

53. The lack of available liquidity in the Mantle APA and the overall results of the SISP make the completion of typical plan of arrangement problematic. As discussed above, both ATB and Fiera are expected to recover amounts significantly less than their secured debts under the above noted transactions, accordingly there will be no recovery to the unsecured creditors. However, the Monitor agrees that the recoveries under the Mantle APA (which requires the Plan and RVO) will provide recoveries greater than the most likely alternative which would be a receivership and/or bankruptcy.

54. The Monitor understands that ATB and Fiera are supportive of the Plan. Based on the results of the SISP and the recoveries under the Mantle APA (with shortfalls being to the two primary secured creditors, ATB and Fiera), no other creditors or equity holders are being affected by the Plan.

SANCTION ORDER

55. The Sanction Order provides for, among other things, the following relief:

    a. sanctioning of the Plan;

    b. authorization for the Applicants, Mantle and the Monitor to take such steps as may be necessary to implement the Plan and complete such transactions as may

be necessary to implement the Plan and complete such transactions as are contemplated by the Plan;

c. broad third-party releases to the Applicants' legal counsel, the Monitor, Mantle and their respective subsidiaries and affiliates and each of their respective shareholders, partners, officers, directors, current and former employees, financial advisors, legal counsel and agents for any liabilities and claims for acts and omissions in respect of the Plan.

Monitor's Comments on the Sanction Order

56. The Monitor's Comments on the Sanction Order are as follows:

a. the Plan provides for an effective way to complete the transactions contemplated by the Mantle APA and transfer ownership of the purchased assets to Mantle;

b. based on the Mantle APA, the outcome of the SISP, no other creditors have an interest in the subject assets aside from Fiera and ATB and all other creditors are unaffected by the Plan;

c. ATB and Fiera are the only intended affected creditors and both have approved the Plan and are supportive of the application for the Sanction Order;

d. the Plan complies with the statutory requirements of the CCAA;

e. nothing has been done or purported to have been done that is not authorized by the CCAA.

57. Overall, the Monitor is of the view that the relief sought in the Sanction Order is fair and reasonable and is in the best interests of the Applicants' stakeholders as it is condition precedent to the closing of the Mantle Transactions and the going concern operation of the assets and business subject to same.

FIFTH CASH FLOW STATEMENT

58. The Applicants have prepared the Fifth Cash Flow Statement which includes forecast results for the five weeks ending October 30, 2020 (the "**Forecast Period**"). A copy of the Fifth Cash Flow Statement is attached as Appendix "**G**".

59. A summary of the Fifth Cash Flow Statement is set out in the table below:

($000's)	Weeks 1-21 Actual	Weeks 22-26 Forecast	Total Pro-Forma
Operating Receipts			
Collection of Pre-Filing AR - Ellis Don	$ 2,032	$ 167	$ 2,199
Collection of Pre-Filing AR - MD of Bonnyville	1,478	1,850	3,328
Collection of Post Filing AR - MD of Bonnyville	1,566	-	1,566
SISP Proceeds	277	305	582
Other Receipts	807	20	827
Total Operating Receipts	**6,159**	**2,342**	**8,501**
Operating Disbursements			
Payroll And Source Deductions	(1,322)	(36)	(1,358)
Royalties	(408)	-	(408)
Fuel	(207)	(1)	(207)
Repair & Maintenance	(49)	-	(49)
Office Administration	(27)	(6)	(33)
Insurance & Benefits	(202)	(2)	(203)
Jobsite Lodging	(21)	-	(21)
Equipment Loan & Lease Payments	(136)	-	(136)
Occupancy	(176)	(30)	(206)
Other	(36)	(28)	(64)
Total Operating Disbursements	**(2,584)**	**(102)**	**(2,686)**
Non-Operating Receipts & Disbursements			
Interim Financing (Repayment)	(211)	-	(211)
Professional Fees	(1,429)	(529)	(1,958)
Total Disbursements	**(4,224)**	**(631)**	**(4,855)**
Net Cash Flow	1,935	1,711	3,646
Opening Cash Balance	-	1,935	-
Ending Cash	**$ 1,935**	**$ 3,646**	**$ 3,646**

60. The Fifth Cash Flow Statement is based on the following assumptions:

a. lien determination notices with respect to the MD of Bonnyville and EllisDon projects were issued by the Monitor on July 17, 2020 and August 20, 2020, respectively. The notice period for lien claimants of the MD of Bonnyville and EllisDon projects to dispute the Monitor's lien determination has now expired, with two parties having filed disputes. Those applications are scheduled to be heard on October 22, 2020. The Fifth Cash Flow Statement includes the release of the approximately $2.0 million to JMB in holdbacks related to the EllisDon and MD of Bonnyville projects based on the Monitor's determinations, of which approximately $1.7 million will be subject to the decisions of this Honourable Court;

b. receipts related to the sale of equipment to the Equipment Offers are expected to be received by the week ending October 16, 2020;

c. operating disbursements relate primarily to ordinary course payments to fund payroll for the limited amount of staff remaining, basic office needs, insurance, benefits and occupancy costs; and

d. professional fees are forecast to be approximately $529,000 during the Forecast Period and include accrued and current fees for the Applicants' legal counsel, the Monitor, the Monitor's legal counsel, certain contract executives of JMB and the Sales Agent's monthly work fee.

61. Overall, the Applicants are forecasting to achieve a net cash flow of approximately $1.7 million during the Forecast Period and have a remaining cash balance of approximately $3.6 million as at October 30, 2020.

STAY EXTENSION

62. The Monitor has considered JMB's application to extend the Stay of Proceedings and has the following comments:

a. the proposed extension will provide the Applicants and the Monitor with time to complete the transactions contemplated by the SAVOs, resolve lien determinations and address other remaining restructuring matters;

b. the Fifth Cash Flow Statement forecasts that the Applicants have available liquidity during the period of the proposed extension;

c. the Monitor has been advised that certain stakeholders, including the senior secured lenders, are supportive of the proposed extension;

d. the Applicants are acting in good faith and with due diligence;

e. the Applicants have sufficient liquidity to fund near term operating costs; and

f. JMB's prospects of effecting a viable restructuring will be enhanced by an extension of the Stay of Proceedings until October 30, 2020.

MONITOR'S CONCLUSIONS AND RECOMMENDATIONS

63. The transactions contemplated by the SAVOs, RVO and Plan will allow the Applicants to transition the business to a recapitalized ownership structure with the support of the senior secured lenders.

64. The Applicants will require additional time to complete the transactions, address remaining restructuring matters and conclude the CCAA Proceedings.

65. Based on the forgoing, the Monitor respectfully recommends that this Honourable Court grant the following orders:

a. the Sandhill SAVO;

b. the McDonald SAVO #2;

c. the Mantle SAVO;

d. the Assignment Order;

e. the RVO;

f. the Sanction Order; and

g. the Extension Order.

*****

All of which is respectfully submitted this 30th day of September, 2020.

FTI Consulting Canada Inc.
in its capacity as Monitor of the Applicants

Deryck Helkaa
Senior Managing Director

Tom Powell
Senior Managing Director

Appendix A

Plan of Arrangement dated September 29, 2020

Clerk's Stamp

COURT FILE NO.	2001-05482
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c C-36, as amended
	AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. AND 2161889 ALBERTA LTD.
	AND IN THE MATTER OF A PLAN OF ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. AND MANTLE MATERIALS GROUP, LTD. UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c C-36, as amended, and the *BUSINESS CORPORATIONS ACT*, SBC 2002, c 57, as amended
APPLICANTS	JMB CRUSHING SYSTEMS INC. AND MANTLE MATERIALS GROUP, LTD.
DOCUMENT	**PLAN OF ARRANGEMENT**
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/Alex Matthews** Phone: 403.298.1938/403.298.1992/403.298.1018 Fax: 403.263.9193 File No.: A163514

PLAN OF ARRANGEMENT

WHEREAS:

A. JMB Crushing Systems Inc. ("**JMB**") is a corporation incorporated under the *Business Corporations Act*, SBC 2002, c 57, as amended (the "**BC BCA**"). All of the Class A Common Shares in JMB are owned by Canadian Aggregate Resources Corporation ("**CARC**"), a corporation incorporated under the laws of the State of Delaware. All of the Class B Common Shares in JMB are owned by J Buck and Sons Inc. ("**JBAS**"). JMB owns all of the shares in 2161889 Alberta Ltd. ("**216**"), a corporation incorporated under the laws of Alberta, and in Eastside Rock Products Inc. ("**Eastside**"), a corporation incorporated under the laws of the State of Washington.

B. The primary secured creditors of JMB and 216 are ATB Financial ("**ATB**") and Fiera Private Debt Fund VI LP, by its general partner Fiera Private Debt Fund GP Inc. ("**Fund VI**") and Fiera Private Debt Fund V LP, by its general partner Fiera Private Debt Fund GP Inc., acting in its capacity as collateral agent for and on behalf of and for the benefit of Fund VI (collectively, "**Fiera**"), each of whom have Security Interests over all of the undertaking, property and assets of JMB, 216 and Eastside.

C. The Security Interests in favour of ATB and Fiera rank in priority to any other Creditors of JMB and 216, other than certain PMSIs in respect of specific PMSI Property.

D. JMB and 216 commenced proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**") and obtained an initial order of the Court pronounced by the Honourable Madam Justice Eidsvik on May 1, 2020 (the "**Filing Date**") which, among other things, appointed the Monitor and stayed all proceedings against JMB and 216, which initial order was amended and restated by a further order of Honourable Madam Justice Eidsvik pronounced on May 11, 2020 (the initial order, as amended, being the "**Initial Order**") under which the initial stay of proceedings was extended, a sale and investment solicitation process (the "**SISP**") was approved and Sequeira Partners was appointed as sale advisor (the "**Sale Advisor**") under the SISP.

E. Mantle Materials Group, Ltd. ("**Mantle**"), formerly 1257568 B.C. Ltd., is a corporation incorporated under the BC BCA. RLF Canada Holdings Limited ("**RLF Holdings**"), a corporation incorporated under the laws of the State of Colorado, is the sole shareholder of all issued and outstanding shares of Mantle. Both CARC and RLF Holdings are wholly owned subsidiaries of Resource Land Fund V LP, a US private equity fund.

F. On July 20, 2020, Mantle submitted a Phase 2 Bid (as defined in the SISP) to the Sale Advisor and Monitor pursuant to which Mantle would purchase certain assets of JMB and 216 and would assume certain liabilities of JMB. The Monitor negotiated with Fiera and ATB in order to obtain their support for a transaction with Mantle and in the last week of August, 2020, and with Mantle to revise the Phase 2 Bid.

G. With the consent of the Monitor and the concurrence of Fiera and ATB, Mantle, JMB and 216 then entered into an asset purchase agreement dated September 27, 2020 (the "**APA**").

H. The purchase and sale transaction contemplated by the APA (the "**Purchase and Sale**

Transaction") is conditional upon JMB and Mantle submitting this joint plan of arrangement under the BC BCA and the CCAA (as amended, modified or supplemented from time to time, the "**Plan**") pursuant to which: (1) the Class B Common Shares owned by JBAS will be redeemed and cancelled without consideration and the class of Class B Common Shares, the class of Class C Common Shares and any class of other securities issued by JMB will be terminated; (2) the Class A Common Shares owned by CARC will be transferred to RLF Holdings; (3) Mantle shall assume the ATB Assumed Debt, the Fiera Assumed Debt and the Assumed Liabilities in partial payment of the Purchase Price; and (4) effective upon the occurrence of the Non-Recourse Event, ATB shall cease to have recourse against JMB for the Remaining ATB Debt and Fiera shall cease to have recourse against JMB for the Remaining Fiera Debt.

I. The Monitor has requested that all Secured Creditors other than ATB and Fiera that have first ranking Security Interests in personal property of JMB take possession of and realize upon such personal property and account to JMB, the Monitor and Fiera in respect of the proceeds of sale thereof.

J. The Monitor has determined that there will be insufficient proceeds arising from the sale of the assets of JMB and 216 pursuant to the APA, other sale transactions under the SISP, and any other anticipated sales, dispositions or collections during the CCAA to repay the Remaining ATB Debt or the Remaining Fiera Debt, and therefore that there will be no proceeds available to pay any of the ordinary unsecured Liabilities owing to unsecured creditors of JMB and 216 that was owing as of the Filing Date.

NOW THEREFORE JMB and Mantle hereby propose and present this Plan under and pursuant to the CCAA and the BC BCA:

ARTICLE 1 – DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following capitalized terms will have the meanings set out below:

(a) "**11.3 Order**" is defined in the APA.

(b) "**216**" is defined in Recital A.

(c) "**Acquired Assets**" means all of the right, title, benefit, estate and interest of JMB and 216 in and to certain assets to be acquired by Mantle under and pursuant to the APA.

(d) "**Acquired Tranche B Inventory**" is defined in the APA.

(e) "**Acquisition Closing**" means the completion of the Purchase and Sale Transaction.

(f) "**Affected Claim**" mean the ATB Indebtedness, the Fiera Indebtedness and any Liabilities owing to any other Affected Creditor secured by a Lien ranking in priority to any other Lien attaching to Acquired Assets.

(g) "**Affected Creditor**" means any Secured Creditor that has a Lien attaching to some or all of the Acquired Assets that ranks in priority to any other Lien attaching to such Acquired Assets, including to the Security Interests in favour of ATB and Fiera.

(h) "**Aggregate**" means aggregates including granular base course gravels, asphalt pavement aggregates, concrete and weeping tile rock, sand and other aggregates.

(i) "**Aggregate Pit**" means a pit from which Aggregate is extracted and other infrastructure located on lands subject to an Aggregate Pit Agreement.

(j) "**Aggregate Pit Agreement**" is defined in the Plan.

(k) "**Amended Articles**" means the amended articles of JMB, reflecting the alterations to the Original Articles as provided for in this Plan, substantially in the form attached as **Schedule "A"**.

(l) "**Applicable Law**" means, with respect to any Person, property, transaction, event, business or other matter, any federal, state, provincial, local, domestic or foreign constitution, treaty, law, statute, regulation, code, ordinance, principle of common law or equity, rule, municipal by-law, Permit, order or other requirement of any Governmental Authority whether or not having the force of law relating or applicable to such Person, property, transaction, event, business or other matter.

(m) "**APA**" is defined in Recital G.

(n) "**Assumed Liabilities**" means the Liabilities of JMB that Mantle assumes in partial payment of the purchase price for the Acquired Assets pursuant to section 2.2 of the APA.

(o) "**ATB**" is defined in Recital B.

(p) "**ATB Agreement**" means an agreement between ATB and Mantle with respect to the ATB Assumed Debt.

(q) "**ATB Assumed Debt**" means that portion of the ATB Indebtedness that Mantle becomes liable for pursuant to this Plan and which is subject to the terms and provisions of the ATB Agreement.

(r) "**ATB Indebtedness**" means any Liabilities which immediately prior to Acquisition Closing and Plan Implementation are owing by JMB to ATB.

(s) "**ATB Security Documents**" means the agreements, indentures and other documents granted by JMB to ATB which create Security Interests in favour of ATB.

(t) "**BC BCA**" is defined in Recital A.

(u) "**Business**" means business carried on by JMB specifically utilizing the Acquired Assets including the operation of Aggregate Pits and the extraction and sale of Aggregates therefrom.

(v) "**Business Day**" means any day other than a Saturday, Sunday or statutory holiday in Calgary, Alberta.

(w) "**CARC**" is defined in Recital A.

(x) "**CCAA**" is defined in Recital D.

(y) "**CCAA Proceedings**" means the proceedings initiated by JMB and 216 with the Court pursuant to an originating application under the CCAA.

(z) "**Class A Common Shares**" means the Class A common shares in the authorized share structure of JMB with the special rights and restrictions set out in Article 26 of the Original Articles.

(aa) "**Class A Shareholder**" means a Person that legally or beneficially has any interest in any issued and outstanding Class A Common Shares.

(bb) "**Class B Common Shares**" means the Class B common shares in the authorized share structure of JMB with the special rights and restrictions set out in Article 27 of the Original Articles.

(cc) "**Class B Shareholder**" means a Person that legally or beneficially has any interest in any issued and outstanding Class B Common Shares.

(dd) "**Class C Common Shares**" means the Class C common shares in the authorized share structure of JMB with the special rights and restrictions set out in Article 28 of the Original Articles.

(ee) "**Class C Shareholder**" means a Person that legally or beneficially has any interest in any issued and outstanding Class C Common Shares.

(ff) "**Court**" means the Alberta Court of Queen's Bench presiding over the CCAA Proceedings or any appeals court therefrom.

(gg) "**Creditor**" means any Person to whom JMB owes, is liable for or is required to pay or perform Liabilities.

(hh) "**Creditors' Meeting**" means a meeting of the Affected Creditors to be called and held for the purpose of considering and voting upon this Plan.

(ii) "**Designated Permit**" means a Permit issued to JMB that is included in the Acquired Assets, but cannot be transferred to Mantle prior to the Plan Implementation, which Permit Mantle elects by written notice to JMB and the Monitor that JMB will continue to have an interest in such Permit notwithstanding the SAVO.

(jj) "**Eastside**" is defined in Recital A.

(kk) "**Effective Time**" means the effective time at which Plan Implementation occurs on the Plan Implementation Date or such other time on such date as the Vendors, Mantle and the Monitor agree.

(ll) "**Existing Shareholders**" means the Class A Shareholders, the Class B Shareholders, the Class C Shareholders, and the Other Security Holders, and "**Existing Shareholder**" means any one of them.

(mm) "**Existing Shares**" means the Class A Common Shares, the Class B Common Shares, the Class C Shareholders, and Other Securities, if any, and "**Existing Share**" means any one of them.

(nn) "**Fiera**" is defined in Recital B.

(oo) "**Fiera Assumed Debt**" means that portion of the Fiera Indebtedness that Mantle becomes liable for pursuant to this Plan and which is subject to the terms and provisions of the Fiera Exit Loan Agreement.

(pp) "**Fiera Exit Loan Agreement**" means a loan agreement between Fiera and Mantle in respect of the Fiera Assumed Debt.

(qq) "**Fiera Indebtedness**" means any Liabilities which immediately prior to the Acquisition Closing or Plan Implementation are owing by JMB to Fiera.

(rr) "**Fiera Security Documents**" means the agreements, indentures and other documents granted by JMB to Fiera which create Security Interests in favour of Fiera.

(ss) "**Filing Date**" is defined in Recital D.

(tt) "**Fund VI**" is defined in Recital B.

(uu) "**Governmental Authority**" means any federal, provincial, state, local, municipal, regional, territorial, aboriginal, or other government, governmental or public department, branch, ministry, or court, domestic or foreign, including any district, agency, commission, board, arbitration panel or authority and any subdivision of any of them exercising or entitled to exercise any administrative, executive, judicial, ministerial, prerogative, legislative, regulatory, or taxing authority or power of any nature; and any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of them, and any subdivision of any of them.

(vv) "**Initial Order**" is defined in Recital D.

(ww) "**JBAS**" is defined in Recital A.

(xx) "**JMB**" is defined in Recital A.

(yy) "**JMB Assets**" means all of the undertaking, property and assets of JMB immediately prior to the Acquisition Closing and Plan Implementation, including the Acquired Assets.

(zz) "**Liabilities**" means debts, liabilities and obligations, whether accrued or fixed, liquidated or unliquidated, absolute or contingent, matured or unmatured or determined or undeterminable, including those arising under any Applicable Law, under any agreement or contract to which a Person is party or otherwise, and "**Liability**" means any one of the Liabilities.

(aaa) "**Lien**" means any lien, hypothec (including legal hypothecs), Security Interest, encumbrance, servitude, easement, encroachment, right-of-way, restrictive covenant on real or immovable property, contingent rights (including options and rights of first refusal), adverse claims and other encumbrances on ownership rights of any kind or character or agreements to create the same.

(bbb) "**Mantle**" is defined in Recital E.

(ccc) "**Monitor**" means FTI Consulting Canada Inc., in its capacity as Court appointed monitor of JMB and 216 in the CCAA Proceedings.

(ddd) "**Notice of Alteration**" means the notice of alteration to be filed with the Registrar pursuant to section 259(4) of the BC BCA to give effect to the alterations to the Notice of Articles and Original Articles as contemplated by this Plan, which Notice of Alteration is substantially in the form attached as **Schedule "B"**.

(eee) "**Notice of Articles**" means the notice of articles issued on December 14, 2018 by the Registrar under the BC BCA.

(fff) "**Non-Recourse Event**" is defined in Section 4.2.

(ggg) "**Order**" means any order of a Court in the CCAA Proceedings.

(hhh) "**Original Articles**" mean the articles of JMB dated November 13, 2018 and executed by CARC.

(iii) "**Other Security**" means any share or other security in the capital of or issued by JMB other than the Class A Common Shares, the Class B Common Shares or the Class C Common Shares, and "**Other Securities**" means more than one.

(jjj) "**Other Security Holder**" means any Person with any interest in any Other Securities.

(kkk) "**Permit**" means any permit, license, approval, consent, authorization, registration, or certificate issued by and conservation and reclamation business plans approved by a Governmental Authority including registrations issued by Alberta Environment and Parks under Alberta's Code of Practice for Pits.

(lll) "**Person**" will be broadly interpreted and includes: (i) a natural person, whether acting in his or her own capacity, or in his or her capacity as executor, administrator, estate trustee, trustee or personal or legal representative, and the heirs, executors, administrators, estate trustees, trustees or other personal or legal representatives of a natural person; (ii) a corporation or a company of any kind, a partnership of any kind, a sole proprietorship, a trust, a joint venture, an association, an unincorporated association, an unincorporated syndicate, an

unincorporated organization or any other association, organization or entity of any kind; and (iii) a Governmental Authority.

(mmm) "**Plan**" is defined in Recital H.

(nnn) "**Plan Implementation**" means the fulfillment, satisfaction or waiver of the conditions set out in Section 7.1 and the occurrence or effecting of the sequential steps set out in Section 5.1.

(ooo) "**Plan Implementation Date**" means the date on which Plan Implementation occurs.

(ppp) "**PMSI**" means any Security Interest attaching to PMSI Property which constitutes a purchase-money security interest contemplated under PPS Legislation or any lease of PMSI Property to JMB.

(qqq) "**PMSI Holder**" means any Person holding a PMSI as secured party or lessor or whose interest therein is derived therefrom.

(rrr) "**PMSI Property**" means any tangible personal property contemplated by PPS Legislation and any proceeds to which a PMSI attaches.

(sss) "**PPS Legislation**" means the Applicable Laws providing for the creation of Security Interests in personal property, including the *Personal Property Security Act*, RSA 2000, c. P-7, as amended.

(ttt) "**Proceeds**" has the meaning given to that term in the PPS Legislation.

(uuu) "**Proxy**" means a form of proxy and voting letter pursuant to which an Affected Creditor may vote upon the Plan for the purposes of section 6 of the CCAA in advance or *in lieu* of a Creditors' Meeting or appoint a proxyholder to attend and vote at a Creditors Meeting, which proxy and voting letter shall be substantially in the form attached as **Schedule "C"**, and "**Proxies**" means more than one Proxy.

(vvv) "**Purchase and Sale Transaction**" is defined in Recital H.

(www) "**Purchase Price**" is defined in the APA.

(xxx) "**Registrar**" means the person appointed as the Registrar of Companies under section 400 of the BC BCA.

(yyy) "**Remaining ATB Debt**" means the ATB Indebtedness in excess of the ATB Assumed Debt.

(zzz) "**Remaining Fiera Debt**" means the Fiera Indebtedness in excess of the Fiera Assumed Debt.

(aaaa) "**Remaining JMB Assets**" means any property or assets of JMB which, as of the date the Reverse Vesting Order is pronounced, have not been subject to the APA or any agreement of purchase and sale with a third party pursuant to the

SISP, provided that to the extent that there are any Designated Permits, they shall be excluded from the Remaining JMB Assets.

(bbbb) "**Remaining JMB Liabilities**" means any Liabilities of JMB other than the Assumed Liabilities.

(cccc) "**Required Majority**" means a majority in number of the Affected Creditors who represent at least two-thirds in value of the Affected Claims.

(dddd) "**Reverse Vesting Order**" means an Order vesting all Remaining JMB Assets and Remaining JMB Liabilities in 216, with the effect that:

(i) JMB shall have no further obligations or liability in respect of the Remaining JMB Liabilities, other than the Remaining ATB Debt and the Remaining Fiera Debt, and JMB shall have no further right, title or interest in the Remaining JMB Assets; and

(ii) 216 shall have all the right, title and interest of JMB in and to the Remaining JMB Assets and 216 shall be liable to the creditors of JMB for the Remaining JMB Liabilities.

(eeee) "**RLF Holdings**" is defined in Recital E.

(ffff) "**Sale Advisor**" is defined in Recital D.

(gggg) "**Sanction Order**" means the Order under section 6 of the CCAA sanctioning this Plan.

(hhhh) "**SAVO**" is defined in the APA.

(iiii) "**Secured Creditor**" means a Creditor to whom JMB owes Liabilities the payment and performance of which is secured by a Lien.

(jjjj) "**Security Interest**" means any mortgage, charge, security interest, lien or other charge or leasehold interest of a lessor of property.

(kkkk) "**SISP**" is defined in Recital D.

(llll) "**Vendors**" means, collectively, JMB and 216.

(mmmm) "**Unaffected Claims**" means the Liabilities of JMB to Persons other than an Affected Creditor.

(nnnn) "**Unaffected Creditor**" means a Creditor that holds an Unaffected Claim.

1.2 **Certain Rules of Interpretation**

For the purposes of this Plan:

(a) any reference in this Plan to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or

substantially on such terms and conditions;

(b) any reference in this Plan to an Order or an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified, or supplemented;

(c) the division of this Plan into Articles and Sections are for convenience of reference only and do not affect the construction or interpretation of this Plan, nor are the descriptive headings of Articles and Sections intended as complete or accurate descriptions of the content thereof;

(d) the use of words in the singular or plural, or with a particular gender, including a definition, will not limit the scope or exclude the application of any provision of this Plan to such Person (or Persons) or circumstances as the context otherwise permits;

(e) the words "**includes**" and "**including**" and similar terms of inclusion will not, unless expressly modified by the words "**only**" or "**solely**", be construed as terms of limitation, but rather will mean "**includes but is not limited to**" and "**including but not limited to**", so that references to included matters will be regarded as illustrative without being either characterizing or exhaustive;

(f) unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Calgary, Alberta (Mountain Time) and any reference to an event occurring on a Business Day will mean prior to 5:00 p.m. on such Business Day;

(g) unless otherwise specified, time periods within or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day;

(h) unless otherwise provided, any reference to a statute or other enactment of parliament, a legislature or other Government Authority includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation;

(i) references to a specific Recital, Article or Section will, unless something in the subject matter or context is inconsistent therewith, be construed as references to that specific Recital, Article or Section of this Plan, whereas the terms "**this Plan**", "**hereof**", "**herein**", "**hereto**", "**hereunder**" and similar expressions will be deemed to refer generally to this Plan and not to any particular Recital, Article, Section or other portion of this Plan and include any documents supplemental hereto; and

(j) the word "**or**" is not exclusive.

1.3 **Successors and Assigns**

This Plan will be binding upon and will enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in this Plan.

1.4 **Currency**

For the purposes of this Plan, all amounts will be denominated in Canadian dollars and all payments and distributions to be made in cash will be made in Canadian dollars. Any claims or other amounts denominated in a foreign currency will be converted to Canadian dollars at the Reuters closing rate on the Filing Date.

1.5 **Governing Law**

This Plan will be governed by and construed in accordance with the laws of British Columbia (to the extent that the BC BCA is applicable), the laws of Alberta and the federal laws of Canada applicable therein. All questions as to the interpretation of or application of this Plan and all proceedings taken in connection with this Plan and its provisions will be subject to the jurisdiction of the Court acting pursuant to the CCAA.

1.6 **Schedules**

The following Schedules are attached to, incorporated by reference into and form part of this Plan:

Schedule "A"	Amended Articles
Schedule "B"	Notice of Alteration
Schedule "C"	Form of Proxy

ARTICLE 2 – PURPOSE AND EFFECT OF THE PLAN

2.1 **Purpose**

The purpose of this Plan is:

(a) to enable Mantle to continue the Business as a going concern from and after the Plan Implementation Date;

(b) to provide for the arrangement of the ATB Indebtedness such that Mantle is deemed to assume the ATB Assumed Debt and, upon the occurrence of the Non-Recourse Event, ATB shall cease to have any right, remedy or recourse for the Remaining ATB Debt as against JMB, but in any event without prejudice to any rights, remedies or recourses of ATB against 216 for the Remaining ATB Debt;

(c) to provide for the arrangement of the Fiera Indebtedness such that Mantle is deemed to assume the Fiera Assumed Debt and, upon the occurrence of the Non-Recourse Event, Fiera shall cease to have right, remedy or recourse for the

Remaining Fiera Debt as against JMB, but without prejudice to any rights, remedies or recourses of Fiera as against 216 for the Remaining Fiera Debt;

(d) to redeem and cancel all issued and outstanding Class B Common Shares, Class C Common Shares and Other Securities for no consideration, such that none of the shares of those classes of shares are allotted or issued;

(e) to terminate the classes of Class B Common Shares and the Class C Common Shares from the authorized share structure of JMB and terminate any classes of any Other Securities;

(f) to alter the Original Articles substantially in the form set out on Schedule "A";

(g) to alter the Notice of Articles to reflect the elimination of the Class B Common Shares and the Class C Common Shares in the authorized share structure of JMB; and

(h) to effect the transfer by CARC of the Class A Common Shares registered in its name, being the sole issued and outstanding Class A Common Shares, to RLF Holdings.

This Plan is put forward in the expectation that the Persons with an economic interest in JMB, when considered as a whole, will derive a greater benefit from the implementation of this Plan and the continuation of the Business as a going concern than would result from a bankruptcy, receivership or liquidation of JMB.

2.2 **Persons Affected by this Plan**

This Plan affects:

(a) the Affected Creditors through the arrangement of the Affected Claims as against JMB only;

(b) JBAS through the redemption and cancellation of the Class B Common Shares;

(c) CARC through the transfer of its Class A Common Shares to RLF Holdings; and

(d) JMB, 216 and Mantle as applicants of the Plan.

2.3 **Unaffected Creditors and Existing Shareholders**

(a) The Unaffected Creditors are not affected by this Plan for the following reasons:

(i) pursuant to the Reverse Vesting Order, the Remaining JMB Liabilities and the Remaining JMB Assets will vest in 216 and the rights, remedies and recourses of the Unaffected Creditors as against any Remaining JMB Assets will continue and be uncompromised and unaffected by this Plan; and

(ii) each PMSI Holder is being permitted to take possession of the PMSI Property subject to its PMSI and to exercise all of its rights, remedies and recourses as against such PMSI Property, subject to its duty to account to

JMB, the Monitor and Fiera, and as a result of the Reverse Vesting Order shall have a claim against 216 and the Remaining JMB Assets in respect of any Liabilities remaining owing to it following its disposition of such PMSI Property.

(b) Because there are insufficient funds or property to repay the ATB Indebtedness and Fiera Indebtedness in full, or to repay the Remaining JMB Liabilities, the Existing Shareholders are not entitled to vote on this Plan.

ARTICLE 3 – CLASSIFICATION, APPROVAL AND RELATED MATTERS

3.1 Claims Procedure

The Monitor has confirmed the validity and quantum of the Affected Claims of the Affected Creditors and therefore the Affected Creditors shall not be obliged to take any additional steps for the purposes of this Plan and voting thereon or agreeing thereto under sections 5 and 6 of the CCAA and for the purposes of receiving the benefit of this Plan.

3.2 Corporate Actions

(a) The adoption, execution, delivery, implementation and consummation of all matters contemplated under this Plan involving corporate action of JMB will occur and be effective as of Plan Implementation, and will be authorized and approved under this Plan and by the Court, where appropriate, as part of the Sanction Order, in all respects and for all purposes without any requirement of further action by the directors of JMB or the Existing Shareholders. All necessary approvals to take actions will be deemed to have been obtained from the directors of JMB and the Existing Shareholders including the deemed passing by any class of Existing Shareholders of any resolution or special resolution.

(b) The adoption, execution, delivery, implementation and consummation of all matters contemplated under this Plan involving corporate action of Mantle have been authorized by all necessary resolutions of its directors and sole shareholder and will be authorized and approved by the Court as part of the Sanction Order in all respects and for all purposes without any requirement of further action by the shareholders or directors or officers of Mantle.

3.3 SAVO and Reverse Vesting Order

Pursuant to the APA, the Monitor, with the support and assistance of the Vendors and Mantle, will apply to the Court for the SAVO and the Reverse Vesting Order.

3.4 Class of Creditors entitled to Vote upon this Plan

The Affected Creditors will constitute a single class for the purposes of considering and voting upon this Plan. The Affected Creditors will be entitled to vote their Affected Claims in person at a Creditors' Meeting or by Proxy.

3.5 **Creditors' Meeting**

(a) In order for this Plan to be approved by the Affected Creditors, the Plan must be agreed to by the Required Majority of Affected Creditors voting in person at a Creditors Meeting or by Proxy.

(b) In the event that all of the Affected Creditors deliver Proxies to the Monitor in which they each vote in favour of this Plan the Monitor may dispense with holding a Creditors' Meeting and such Proxies shall be treated for all purposes as votes of such Affected Creditors agreeing to this Plan pursuant to section 6(1) of the CCAA.

(c) For greater certainty, no Unaffected Creditor in respect of an Unaffected Claim and no Existing Shareholder in respect of its Existing Shares will be entitled to vote on this Plan or attend any Creditors' Meeting or any other meeting in respect of this Plan.

ARTICLE 4 – TERMS OF RESTRUCTURING

4.1 **Arrangement of Affected Claims of Affected Creditors**

Upon Plan Implementation, the Affected Claims of the Affected Creditors shall be arranged as follows:

(a) Mantle shall be deemed to have assumed and become liable for the ATB Assumed Debt and the rights and obligations of Mantle and ATB in respect of the ATB Assumed Debt shall be governed by the terms of the ATB Agreement;

(b) the transfer to and vesting in 216 of the Remaining ATB Debt pursuant to the Reverse Vesting Order shall be without prejudice to the continuing liability of JMB for the Remaining ATB Debt in accordance with this Plan and the Reverse Vesting Order, and the Security Interests created by the ATB Security Documents shall severally attach to:

(i) the Acquired Tranche B Inventory and its Proceeds as security for the ATB Assumed Debt, but upon repayment in full of the ATB Assumed Debt in accordance with the ATB Agreement, such Security Interests shall cease to attach to any property or assets of JMB or Mantle; and

(ii) all of the property and assets of JMB as security for the Remaining ATB Debt, but upon the occurrence of the Non-Recourse Event, shall cease to attach to any such property or assets of JMB or, for greater certainty, any property or assets of Mantle.

The Reverse Vesting Order shall not affect the nature or priority of the ATB Assumed Debt, the Remaining ATB Debt or the Security Interests created by the ATB Security Documents, which Security Interests shall continue to be of the same nature and have the same priority as they had immediately prior to the Reverse Vesting Order becoming effective and the Plan Implementation being completed;

(c) Mantle shall be deemed to have assumed and become liable for the Fiera Assumed Debt and the rights and obligations of Mantle and Fiera shall be governed by the terms of the Fiera Exit Loan Agreement;

(d) the transfer to and vesting in 216 of the Remaining Fiera Debt pursuant to the Reverse Vesting Order shall be without prejudice to the continuing liability of JMB for the Remaining Fiera Debt in accordance with this Plan and the Reverse Vesting Order, the Security Interests created by the Fiera Security Documents shall severally attach to:

(i) all of the property and assets of JMB as security for the Fiera Assumed Debt; and

(ii) all of the property and assets of JMB and 216 as security for the Remaining Fiera Debt, but upon the occurrence of the Non-Recourse Event, shall cease to attach to any such property or assets of JMB or, for greater certainty, any property or assets of Mantle as security for such Remaining Fiera Debt,

and the Reverse Vesting Order shall not affect the nature or priority of the Fiera Assumed Debt, the Remaining Fiera Debt or the Security Interests created by the Fiera Security Documents, which Security Interests shall continue to be of the same nature and have the same priority as they had immediately prior to the Reverse Vesting Order becoming effective and the Plan Implementation being completed; and

(e) the nature of the Remaining ATB Debt and the Remaining Fiera Debt, including their secured status, shall not be affected or altered as a result of their transfer to and vesting in 216, and the indebtedness, liabilities and obligations of 216 under the Remaining ATB Debt and Remaining Fiera Debt shall not be limited, lessoned or extinguished as a result of anything in this Plan or the limitation of recourse against JMB as a result of the occurrence of the Non-Recourse Event.

4.2 **Effect of Amalgamation**

In the event that following Plan Implementation JMB and Mantle amalgamate, effective immediately prior to such amalgamation becoming effective:

(a) ATB shall cease to have recourse against JMB for the Remaining ATB Debt, but without prejudice to the continuing liability of 216 for the Remaining ATB Debt;

(b) the Security Interests created by the ATB Security Documents that secure the Remaining ATB Debt shall cease to attach to any property or assets of JMB or, for greater certainty Mantle, but without prejudice to the attachment of Security Interests created by the ATB Security Documents to the Acquired Tranche B Inventory and their Proceeds to secure the ATB Assumed Debt;

(c) Fiera shall cease to have recourse against JMB for the Remaining Fiera Debt, but without prejudice to the continuing liability of 216 for the Remaining Fiera Debt; and

(d) the Security Interests created by the Fiera Security Documents that secure the Remaining Fiera Debt shall cease to attach to any property or assets of JMB or, for greater certainty Mantle, but without prejudice to the attachment of Security Interests created by the Fiera Security Documents to secure the Fiera Assumed Debt,

(such amalgamation, and the termination of recourse against JMB, being the "**Non-Recourse Event**").

4.3 **Crown Priority Claims**

Within six (6) months after Plan Implementation, JMB will pay in full to Her Majesty in Right of Canada or any province any Liabilities of a kind that could be subject to a demand under the statutory provision referred to in section 6(3) of the CCAA that was outstanding on the Filing Date which has not been paid by Plan Implementation.

4.4 **Existing Shareholders**

(a) No Existing Shareholder in respect of its Existing Shares will be entitled to receive any consideration or distributions under this Plan, including from the redemption, cancellation and termination of the Class B Common Shares, the Class C Common Shares and the Other Securities, or for the transfer of the Class A Common Shares to RLF Holdings.

(b) Effective on Plan Implementation:

(i) the issued and outstanding Class B Common Shares will be deemed to be redeemed and to be fully, finally and irrevocably cancelled and terminated by JMB, no consideration shall be payable by JMB or any other Person hereunder or otherwise to the Class B Shareholders or any other Person in respect of such redemption, cancellation and termination, and any and all claims of the Class B Shareholders in respect of or arising from the Class B Common Shares will be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred;

(ii) any issued and outstanding Class C Common Shares will be deemed to be redemption and to be fully, finally and irrevocably cancelled and terminated by JMB, no consideration shall be payable by JMB or any other Person hereunder or otherwise to the Class C Shareholders in respect of such redemption, cancellation and termination, and any and all claims of the Class C Shareholders in respect of or arising from any Class C Common Shares will be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred;

(iii) any issued and outstanding Other Securities will be deemed to be redemption and to be fully, finally and irrevocably cancelled and terminated by JMB, no consideration shall be payable by JMB or any other Person hereunder or otherwise to the Other Security Holders in respect of such redemption, cancellation and termination, and any and all claims of the Other Security Holders in respect of or arising from the

Other Securities will be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred; and

(iv) CARC and any other Class A Shareholder will be deemed to have transferred all of their Class A Common Shares to RLF Holdings such that, upon completion of such transfer, RLF Holdings shall be the sole Existing Shareholder of JMB.

4.5 **Share Structure**

Effective upon Plan Implementation:

(a) The Original Articles are altered by (i) deleting in their entirety Articles 27 and 28 of the Original Articles, and (ii) altering Article 26 of the Original Articles to read as follows:

"**ARTICLE 26**
AUTHORIZED SHARE STRUCTURE

Without restricting the rights of the holders of Class A Common Shares provided under the Business Corporations Act, the Class A Common Shares will have the following attributes:

26.1 **Voting Rights**. The holders of the Class A Common Shares shall be entitled to receive notice of, and to attend, all meetings of the shareholders of the Company and shall have one vote for each Class A Common Share held, at all meetings of the shareholders of the Company, except for meetings at which only of another specified class or series of shares of the Company (if and as applicable) are entitled to vote separately as a class or series.

26.2 **Dividends**. The holders of the Class A Common Shares shall be entitled to receive dividends and the Company shall pay dividends, as and when declared by the Board of Directors of the Company in their absolute discretion, in such amount and in such form as the Board of Directors of the Company may from time to time determine, and all dividends which the Board of Directors of the Company may declare on the Class A Common Shares shall be declared and paid in equal amounts per share on all Class A Common Shares at the time outstanding.

26.3 **Dissolution**. In the event of the dissolution, liquidation or winding up of the Company, whether voluntary or involuntary, or any other distribution of assets of the Company among its shareholders for the purpose of winding up its affairs, the holders of Class A Common Shares shall be entitled to participate equally in the distribution of the Company's assets pursuant to the liquidation, dissolution or winding up of the Company."

(b) the Amended Articles are deemed to be approved by the Existing Shareholders and are hereby adopted and implemented;

(c) the alterations to the Notice of Articles as set out in the Notice of Alteration is deemed to be approved by the Existing Shareholders and JMB is authorized and directed to file all documents and orders necessary or desirable with the Registrar;

(d) JMB shall have as its notice of articles the amended notice of articles issued by the Registrar, implementing the terms of this Plan;

(e) the Class A Common Shares registered in the name of CARC in the central securities register of JMB, being the sole issued and outstanding Class A Common Shares, are deemed to be transferred by CARC to RLF Holdings, the directors of JMB are deemed to have approved such transfer, and JMB is authorized and directed to record such transfer in its central securities register; and

(f) JMB is authorized and directed to record the redemption and cancellation of the Class B Common Shares, the Class C Common Shares and the Other Securities, if any, and the elimination of such classes of Class B Common Shares, Class C Common Shares and Other Securities.

ARTICLE 5 – PLAN IMPLEMENTATION MECHANICS

5.1 Implementation Steps

Upon completing the deliveries contemplated by this Plan, and the satisfaction, fulfillment or waiver of the conditions set out in Section 7.1, the following steps to occur, be taken and be effected in order to implement this Plan will occur and be taken and effected, and be deemed to have occurred and been taken and effected, immediately in the following sequence and order, without any further act or formality, on the Plan Implementation Date and beginning at the Effective Time:

(a) the vesting of the Acquired Assets in Mantle pursuant to paragraph 4 of the SAVO, the assumption by Mantle of the ATB Assumed Debt and Fiera Assumed Debt in partial payment of the Purchase Price pursuant to this Plan, and the assignment of the Restricted Contracts pursuant to the 11.3 Order shall be simultaneously effective and the Acquisition Closing and Plan Implementation shall be deemed to be completed;

(b) the Reverse Vesting Order shall become effective;

(c) the Amended Articles shall be deemed to be approved and adopted as the articles of JMB and JMB shall file the Notice of Alteration with the Registrar, whereupon JMB shall have, as its notice of articles, the notice of articles issued by the Registrar as a result of the filing of the Notice of Alteration and the following shall be deemed to have simultaneously occurred:

(i) all Class B Common Shares shall have been redeemed, cancelled and terminated for no consideration, and any rights of the Class B

Shareholders under, pursuant to or arising from, the Class B Common Shares shall have been cancelled and extinguished;

(ii) all Class C Common Shares shall have been redeemed, cancelled and terminated for no consideration, and any rights of the Class C Shareholders under, pursuant to or arising from, the Class C Common Shares shall have been cancelled and extinguished;

(iii) all Other Securities shall have been redeemed, cancelled and terminated for no consideration, and any rights of any Other Security Holders under, pursuant to or arising from, the Other Securities shall have been cancelled and extinguished; and

(iv) all Class A Common Shares shall have been transferred to RLF Holdings such that JMB will be a wholly-owned subsidiary of RLF Holdings.

5.2 **JMB Corporate Minute Books**

Upon Plan Implementation, the officers and directors of JMB are authorized and directed record in the minute books of JMB this Plan, the Sanction Order, the Amended Articles, the Notice of Alteration, the redemptions, the cancellations and extinguishments and the transfers contemplated by Section 5.1(c).

5.3 **Designated Permits**

Following Plan Implementation, JMB shall hold any Designated Permits in trust for and on behalf of Mantle as bare trustee, carry out any lawful directions of Mantle under and in connection with the Designated Permits, and at the request of Mantle take such steps as are necessary to surrender the Designated Permits in order to permit the issuance of replacement Permits to and in favour of Mantle. Mantle shall indemnify JMB for or in respect of any Liabilities that JMB may suffer or incur as a result of JMB acting as bare trustee in respect of the Designated Permits.

ARTICLE 6 – COURT SANCTION

6.1 **Application for the Sanction Order**

JMB and Mantle will promptly apply for the Sanction Order.

6.2 **Sanction Order**

The Sanction Order will be pursuant to the CCAA and BC BCA and, among other things:

(a) declare that this Plan is fair and reasonable;

(b) declare that any meeting or meetings of Class A Shareholders, Class B Shareholders, Class C Shareholders or Other Security Holders, whether together or separately, to consider and vote upon whether to accept or vote in favour of this Plan shall be dispensed with;

(c) declare that JMB is authorized to alter its Notice of Articles as set out in the Notice of Alteration;

(d) declare that the only Persons entitled to vote on whether to approve this Plan are the Affected Creditors;

(e) declare that this Plan and all associated steps, transactions, arrangements, assignments and reorganizations effected hereby are approved, binding and effective as herein set out upon JMB, the Affected Creditors and the Existing Shareholders;

(f) declare that the steps to occur, be taken and be effected on the Plan Implementation are deemed to occur, be taken and effected, and to be effective in the sequential order contemplated by Section 5.1 on Plan Implementation, beginning at the Effective Time;

(g) declare that all Designated Permits will be and remain in full force and effect, unamended, as at Plan Implementation, and no Governmental Authority will on or following Plan Implementation terminate, rescind or refuse to renew in JMB or Mantle any Designated Permit, or enforce or exercise (or purport to enforce or exercise) any right or remedy under or in respect of such Designated Permit or the Applicable Laws governing it by reason of:

(i) any event which occurred prior to, and not continuing after, Plan Implementation or which is or continues to be suspended or waived under this Plan, which would have entitled such Governmental Authority to enforce those rights or remedies;

(ii) JMB having sought or obtained relief under the CCAA or BC BCA or as part of this Plan;

(iii) any default or event of default arising as a result of the financial condition or insolvency of JMB;

(iv) the effect upon JMB of the completion of any of the transactions contemplated under this Plan; or

(v) any restructurings or reorganizations effected pursuant to this Plan;

(h) declare that effective upon Plan Implementation, JMB shall cease to be an Applicant in the CCAA Proceedings, and JMB shall be released from the purview of the Initial Order and all other orders of this Court granted in respect of these CCAA Proceedings, save and except for the Sanction Order, the Reverse Vesting Order and the SAVO shall continue to apply to JMB in all respects;

(i) authorize the Monitor to perform its functions and fulfil its obligations under this Plan and the Sanction Order in order to facilitate the implementation of this Plan; and

(j) declare that JMB, Mantle, RLF Holdings, the Affected Creditors and the Monitor may apply to the Court for advice and direction in respect of any matter arising from or under this Plan.

ARTICLE 7 – CONDITIONS TO PLAN IMPLEMENTATION

7.1 Conditions to Plan Implementation

Plan Implementation will be conditional upon the fulfillment, satisfaction or waiver of the following conditions:

(a) the Affected Creditors shall have agreed to this Plan in accordance with Section 3.5;

(b) the Court will have granted the Sanction Order, the operation and effect of which will not have been stayed, reversed or amended, and all applicable appeal periods in respect of the Sanction Order will have expired and in the event of an appeal or application for leave to appeal, final determination will have been made by the applicable appellate Court; and

(c) the conditions set out in Sections 5.1, 5.2 and 5.3 of the APA shall have been fulfilled, satisfied or waived in accordance with the APA.

7.2 Monitor's Certificate of Plan Implementation

(a) Upon the satisfaction, fulfillment or waiver of the conditions set out in Section 7.1, the Monitor shall issue to JMB, Mantle, CARC, RLF Holdings and the Affected Creditors a certificate stating that such conditions have been satisfied, fulfilled and/or waived in accordance with this Plan and file such certificate with the Court.

(b) Upon the completion of the Plan Implementation in accordance with Section 5.1, the Monitor shall issue to CARC, RLF Holdings and the Affected Creditors a certificate stating that Plan Implementation has occurred and is effective in accordance with this Plan and the Sanction Order and shall file such certificate with the Court.

ARTICLE 8 – GENERAL

8.1 Binding Effect

At the Effective Time:

(a) this Plan will become effective;

(b) the treatment of Existing Shareholders under this Plan will be final and binding for all purposes and enure to the benefit of JMB, Mantle, RLF Holdings and all Persons named or referred to in, or subject to, this Plan and their respective heirs, executors, administrators and other legal representatives, successors and assigns;

(c) each Existing Shareholder will be deemed to have consented and agreed to all of the provisions of this Plan in its entirety; and

(d) each Existing Shareholder will be deemed to have executed and delivered to JMB all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Plan in its entirety.

8.2 **Deeming Provisions**

In this Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

8.3 **Non-Consummation**

If Plan Implementation does not occur by October 2, 2020, or such later period as agreed to in writing by Mantle and the Monitor, (a) this Plan will be null and void in all respects, and (b) nothing contained in this Plan, and no acts taken in preparation for consummation of this Plan, will (i) constitute or be deemed to constitute a waiver or release of any claims by or against JMB or any other Person; (ii) prejudice in any manner the rights of JMB or any other Person in any further proceedings involving JMB; or (iii) constitute an admission of any sort by JMB or any other Person.

8.4 **Modification of Plan**

(a) Prior to the Sanction Order being made, Mantle and JMB may amend, restate, modify and/or supplement this Plan with the prior consent of the Monitor and on notice to the Affected Creditors provided that any such amendment, restatement, modification or supplement must be contained in a written document which is filed with the Court, and if such amendment, restatement, modification or supplement is made subsequent to the Affected Creditors voting to approve this Plan, any such amendment, restatement, modification or supplement that materially affects the rights and benefits of the Affected Creditors shall require the prior written consent of the Affected Creditors.

(b) Subsequent to the Sanction Order being made:

(i) Mantle and JMB shall be permitted to make any amendment, restatement, modification or supplement to this Plan that does not materially alter any rights or benefits of the Affected Creditors under this Plan, and, in the opinion of JMB, Mantle and the Monitor, is of an administrative nature required to better give effect to Plan Implementation and the Sanction Order or to cure any errors, omissions or ambiguities; and

(ii) With respect to any amendment, restatement, modification or supplement to this Plan that is not within the scope of Section 8.4(b)(i), Mantle and JMB shall be permitted to make such amendment, restatement, modification or supplement with the consent in writing of the Affected Creditors and approval of the Court.

(c) Any amendment, restatement, modification or supplement to this Plan which is made in accordance with this Section 8.4 and filed or, if applicable, approved by the Court will for all purposes form part of and incorporated into this Plan.

8.5 **Severability of Plan Provisions**

If, prior to the Plan Implementation Date, any term or provision of this Plan is held by the Court to be invalid, void or unenforceable, (a) JMB and Mantle, with the prior consent of the Monitor, may amend sever such term or provision from this Plan and proceed with Plan Implementation, or (b) JMB, Mantle or the Monitor may apply to the Court for advice and direction or to amend this Plan to make such term or provision or this Plan valid and enforceable to the maximum extent practicable, consistent with the purpose of the original term or provision. Notwithstanding, the foregoing, if Plan Implementation proceeds, the remaining the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by a term or provision being invalid, void or unenforceable.

8.6 **Responsibilities of the Monitor**

The Monitor is acting in its capacity as Monitor in the CCAA Proceedings and this Plan with respect to JMB and will not be responsible or liable for any claims against JMB or Mantle for any Liabilities of JMB.

8.7 **Notices**

Any notice of other communication to be delivered hereunder must be in writing and refer to this Plan and may, subject as hereinafter provided, be made or given by personal delivery, ordinary mail, email or by a functionally equivalent form of electronic transmission addressed to the recipient as follows:

(a) If to JMB:

JMB Crushing Systems Inc.
PO Box 6977
Bonnyville, Alberta T9N 2H4

Email: blakeelyea@jmbcrush.com
Attention: Blake M. Elyea, CPA, CGA, CIRP, LIT
Chief Restructuring Advisor

with a copy to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary Alberta T2P 4K9

Attention: Tom Cumming
E-mail: tom.cumming@gowlingwlg.com

(b) If to the Monitor:

FTI Consulting Canada Inc.

1000, 888-3rd Street SW
Bankers Hall, West Tower
Calgary, Alberta T2P 5C5

Attention: Deryck Helkaa
E-mail: deryck.helkaa@fticonsulting.com

with a copy to:

McCarthy Tétrault LLP
4000, 421 - 7th Avenue SW
Calgary, Alberta T2P 4K9

Attention: Sean Collins
E-mail: scollins@mccarthy.ca

(c) If to Mantle:

Mantle Materials Group, Ltd.
1400 16th St, Suite 320
Denver, Colorado 80209

E-mail: Byron.Levkulich@RLHoldings.com
Attention: Byron Levkulich, CFA, CPA

with a copy to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary Alberta T2P 4K9

Attention: Tom Cumming
E-mail: tom.cumming@gowlingwlg.com

or to such other address as any such party may from time to time notify the others in accordance with this Section. Any such communication so given or made will be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of being emailed or sent by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, emailed or sent before 5:00 p.m. on such day. Otherwise, such communication will be deemed to have been given and made and to have been received on the next following Business Day.

8.8 **Further Assurances**

Each of the Persons named or referred to in, or subject to, this Plan will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of this Plan and to give effect to the transactions contemplated herein.

DATED as of the 27th day of September, 2020.

Schedule "A"
Amended Articles

Incorporation number: BC1190335

JMB CRUSHING SYSTEMS INC.
(the "**Company**")

The Company has as its articles the following articles.

Full name and signature of director	**Date of signing**
_____	_____, 2020

JMB CRUSHING SYSTEMS INC.

ARTICLE 1
INTERPRETATION

1.1 **Definitions**. In these Articles, unless the context otherwise requires:

(a) "board of directors", "directors" and "board" mean the directors or sole director of the Company for the time being;

(b) "*Business Corporations Act*" means the *Business Corporations Act* (British Columbia) from time to time in force and all amendments thereto and includes all regulations and amendments thereto made pursuant to that Act;

(c) "legal personal representative" means the personal or other legal representative of the shareholder;

(d) "registered address" of a shareholder means the shareholder's address as recorded in the central securities register;

(e) "seal" means the seal of the Company, if any.

1.2 ***Business Corporations Act*** **and** ***Interpretation Act*** **Definitions Applicable**. The definitions in the *Business Corporations Act* and the definitions and rules of construction in the *Interpretation Act*, with the necessary changes, so far as applicable, and unless the context requires otherwise, apply to these Articles as if they were an enactment. If there is a conflict between a definition in the *Business Corporations Act* and a definition or rule in the *Interpretation Act* relating to a term used in these Articles, the definition in the *Business Corporations Act* will prevail in relation to the use of the term in these Articles. If there is a conflict between these Articles and the *Business Corporations Act*, the *Business Corporations Act* will prevail.

ARTICLE 2
SHARES AND SHARE CERTIFICATES

2.1 **Authorized Share Structure**. The authorized share structure of the Company consists of shares of the class or classes and series, if any, described in the Notice of Articles of the Company.

2.2 **Form of Share Certificate**. Each share certificate issued by the Company must comply with, and be signed as required by, the *Business Corporations Act*.

2.3 **Shareholder Entitled to Certificate or Acknowledgement**. Each shareholder is entitled, without charge, to (a) one share certificate representing the shares of each class or series of shares registered in the shareholder's name or (b) a non-transferable written acknowledgement of the shareholder's right to obtain such a share certificate, provided that in respect of a share held jointly by several persons, the Company is not bound to issue more than one share certificate and delivery of a share certificate for a share to one of several joint shareholders or to one of the shareholders' duly authorized agents will be sufficient delivery to all.

2.4 **Delivery by Mail**. Any share certificate or non-transferable written acknowledgement of a shareholder's right to obtain a share certificate may be sent to the

shareholder by mail at the shareholder's registered address and neither the Company nor any director, officer or agent of the Company is liable for any loss to the shareholder because the share certificate or acknowledgement is lost in the mail or stolen.

2.5 Replacement of Worn Out or Defaced Certificate or Acknowledgement. If the directors are satisfied that a share certificate or a non-transferable written acknowledgement of the shareholder's right to obtain a share certificate is worn out or defaced, they must, on production to them of the share certificate or acknowledgement, as the case may be, and on such other terms, if any, as they think fit:

(a) order the share certificate or acknowledgement, as the case may be, to be cancelled; and

(b) issue a replacement share certificate or acknowledgement, as the case may be.

2.6 Replacement of Lost, Stolen or Destroyed Certificate or Acknowledgement. If a share certificate or a non-transferable written acknowledgement of a shareholder's right to obtain a share certificate is lost, stolen or destroyed, a replacement share certificate or acknowledgement, as the case may be, must be issued to the person entitled to that share certificate or acknowledgement, as the case may be, if the directors receive:

(a) proof satisfactory to them that the share certificate or acknowledgement is lost, stolen or destroyed; and

(b) any indemnity the directors consider adequate.

2.7 Splitting Share Certificates. If a shareholder surrenders a share certificate to the Company with a written request that the Company issue in the shareholder's name two or more share certificates, each representing a specified number of shares and in the aggregate representing the same number of shares as the share certificate so surrendered, the Company must cancel the surrendered share certificate and issue replacement share certificates in accordance with that request.

2.8 Certificate Fee. There must be paid to the Company, in relation to the issue of any share certificate under Articles 2.5, 2.6 or 2.7, the amount, if any and which must not exceed the amount prescribed under the *Business Corporations Act*, determined by the directors.

2.9 Recognition of Trusts. Except as required by law or statute or these Articles, no person will be recognized by the Company as holding any share upon any trust, and the Company is not bound by or compelled in any way to recognize (even when having notice thereof) any equitable, contingent, future or partial interest in any share or fraction of a share or (except as by law or statute or these Articles provided or as ordered by a court of competent jurisdiction) any other rights in respect of any share except an absolute right to the entirety thereof in the shareholder.

ARTICLE 3
ISSUE OF SHARES

3.1 Directors Authorized. Subject to the *Business Corporations Act* and the rights of the holders of issued shares of the Company, the Company may issue, allot, sell or otherwise

dispose of the unissued shares, and issued shares held by the Company, at the times, to the persons, including directors, in the manner, on the terms and conditions and for the issue prices (including any premium at which shares with par value may be issued) that the directors may determine. The issue price for a share with par value must be equal to or greater than the par value of the share.

3.2 Commissions and Discounts. The Company may at any time, pay a reasonable commission or allow a reasonable discount to any person in consideration of that person purchasing or agreeing to purchase shares of the Company from the Company or any other person or procuring or agreeing to procure purchasers for shares of the Company.

3.3 Brokerage. The Company may pay such brokerage fee or other consideration as may be lawful for or in connection with the sale or placement of its securities.

3.4 Conditions of Issue. Except as provided for by the *Business Corporations Act*, no share may be issued until it is fully paid. A share is fully paid when:

(a) consideration is provided to the Company for the issue of the share by one or more of the following:

(i) past services performed for the Company;

(ii) property;

(iii) money; and

(b) the value of the consideration received by the Company equals or exceeds the issue price set for the share under Article 3.1.

3.5 Share Purchase Warrants and Rights. Subject to the *Business Corporations Act*, the Company may issue share purchase warrants, options and rights upon such terms and conditions as the directors determine, which share purchase warrants, options and rights may be issued alone or in conjunction with debentures, debenture stock, bonds, shares or any other securities issued or created by the Company from time to time.

ARTICLE 4
SHARE REGISTERS

4.1 Central Securities Register. As required by and subject to the *Business Corporations Act*, the Company must maintain in British Columbia a central securities register. The directors may, subject to the *Business Corporations Act*, appoint an agent to maintain the central securities register. The directors may also appoint one or more agents, including the agent which keeps the central securities register, as transfer agent for its shares or any class or series of its shares, as the case may be, and the same or another agent as registrar for its shares or such class or series of its shares, as the case may be. The directors may terminate such appointment of any agent at any time and may appoint another agent in its place.

4.2 Closing Register. The Company must not at any time close its central securities register.

ARTICLE 5
SHARE TRANSFERS

5.1 Registering Transfers. A transfer of a share of the Company must not be registered unless:

(a) a duly signed instrument of transfer in respect of the share has been received by the Company;

(b) if a share certificate has been issued by the Company in respect of the share to be transferred, that share certificate has been surrendered to the Company; and

(c) if a non-transferable written acknowledgement of the shareholder's right to obtain a share certificate has been issued by the Company in respect of the share to be transferred, that acknowledgement has been surrendered to the Company.

5.2 Form of Instrument of Transfer. The instrument of transfer in respect of any share of the Company must be either in the form, if any, on the back of the Company's share certificates or in any other form that may be approved by the directors from time to time.

5.3 Transferor Remains Shareholder. Except to the extent that the *Business Corporations Act* otherwise provides, the transferor of shares is deemed to remain the holder of the shares until the name of the transferee is entered in a securities register of the Company in respect of the transfer.

5.4 Signing of Instrument of Transfer. If a shareholder, or his or her duly authorized attorney, signs an instrument of transfer in respect of shares registered in the name of the shareholder, the signed instrument of transfer constitutes a complete and sufficient authority to the Company and its directors, officers and agents to register the number of shares specified in the instrument of transfer or specified in any other manner, or, if no number is specified, all the shares represented by the share certificates or set out in the written acknowledgements deposited with the instrument of transfer:

(a) in the name of the person named as transferee in that instrument of transfer; or

(b) if no person is named as transferee in that instrument of transfer, in the name of the person on whose behalf the instrument is deposited for the purpose of having the transfer registered.

5.5 Enquiry as to Title Not Required. Neither the Company nor any director, officer or agent of the Company is bound to inquire into the title of the person named in the instrument of transfer as transferee or, if no person is named as transferee in the instrument of transfer, of the person on whose behalf the instrument is deposited for the purpose of having the transfer registered or is liable for any claim related to registering the transfer by the shareholder or by any intermediate owner or holder of the shares, of any interest in the shares, of any share certificate representing such shares or of any written acknowledgement of a right to obtain a share certificate for such shares.

5.6 Transfer Fee. There must be paid to the Company, in relation to the registration of any transfer, the amount, if any, determined by the directors.

ARTICLE 6
TRANSMISSION OF SHARES

6.1 Legal Personal Representative Recognized on Death. In case of the death of a shareholder, the legal personal representative, or if the shareholder was a joint holder, the surviving joint holder, will be the only person recognized by the Company as having any title to the shareholder's interest in the shares. Before recognizing a person as a legal personal representative, the directors may require proof of appointment by a court of competent jurisdiction, a grant of letters probate, letters of administration or such other evidence or documents as the directors consider appropriate.

6.2 Rights of Legal Personal Representative. The legal personal representative has the same rights, privileges and obligations that attach to the shares held by the shareholder, including the right to transfer the shares in accordance with these Articles, provided the documents required by the *Business Corporations Act* and the directors have been deposited with the Company.

ARTICLE 7
PURCHASE OF SHARES

7.1 Company Authorized to Purchase Shares. Subject to Article 7.2, the special rights and restrictions attached to the shares of any class or series and the *Business Corporations Act*, the Company may, if authorized by the directors, purchase or otherwise acquire any of its shares at the price and upon the terms specified in such resolution.

7.2 Purchase When Insolvent. The Company must not make a payment or provide any other consideration to purchase or otherwise acquire any of its shares if there are reasonable grounds for believing that:

(a) the Company is insolvent; or

(b) making the payment or providing the consideration would render the Company insolvent.

7.3 Sale and Voting of Purchased Shares. If the Company retains a share redeemed, purchased or otherwise acquired by it, the Company may sell, gift or otherwise dispose of the share, but, while such share is held by the Company, it:

(a) is not entitled to vote the share at a meeting of its shareholders;

(b) must not pay a dividend in respect of the share; and

(c) must not make any other distribution in respect of the share.

ARTICLE 8
BORROWING POWERS

8.1 Borrowing Powers. The Company, if authorized by the directors, may:

(a) borrow money in the manner and amount, on the security, from the sources and on the terms and conditions that they consider appropriate;

(b) issue bonds, debentures and other debt obligations either outright or as security for any liability or obligation of the Company or any other person and at such discounts or premiums and on such other terms as they consider appropriate;

(c) guarantee the repayment of money by any other person or the performance of any obligation of any other person; and

(d) mortgage, charge, whether by way of specific or floating charge, grant a security interest in, or give other security on, the whole or any part of the present and future assets and undertaking of the Company.

ARTICLE 9
ALTERATIONS

9.1 Alteration of Authorized Share Structure. Subject to Article 9.2 and the *Business Corporations Act*, the Company may by special resolution:

(a) create one or more classes or series of shares or, if none of the shares of a class or series of shares are allotted or issued, eliminate that class or series of shares;

(b) increase, reduce or eliminate the maximum number of shares that the Company is authorized to issue out of any class or series of shares or establish a maximum number of shares that the Company is authorized to issue out of any class or series of shares for which no maximum is established;

(c) subdivide or consolidate all or any of its unissued, or fully paid issued, shares;

(d) if the Company is authorized to issue shares of a class of shares with par value:

(i) decrease the par value of those shares; or

(ii) if none of the shares of that class of shares are allotted or issued, increase the par value of those shares;

(e) change all or any of its unissued, or fully paid issued, shares with par value into shares without par value or any of its unissued shares without par value into shares with par value;

(f) alter the identifying name of any of its shares; or

(g) otherwise alter its shares or authorized share structure when required or permitted to do so by the *Business Corporations Act*.

9.2 Special Rights and Restrictions. Subject to the *Business Corporations Act*, the Company may by special resolution:

(a) create special rights or restrictions for, and attach those special rights or restrictions to, the shares of any class or series of shares, whether or not any or all of those shares have been issued; or

(b) vary or delete any special rights or restrictions attached to the shares of any class or series of shares, whether or not any or all of those shares have been issued.

9.3 Change of Name. The Company may by ordinary resolution authorize an alteration of its Notice of Articles in order to change its name.

9.4 Other Alterations. If the *Business Corporations Act* does not specify the type of resolution and these Articles do not specify another type of resolution, the Company may by special resolution alter these Articles.

ARTICLE 10
MEETINGS OF SHAREHOLDERS

10.1 Annual General Meetings. Unless an annual general meeting is deferred or waived in accordance with the *Business Corporations Act*, the Company must hold its first annual general meeting within 18 months after the date on which it was incorporated or otherwise recognized, and after that must hold an annual general meeting at least once in each calendar year and not more than 15 months after the last annual reference date at such time and place as may be determined by the directors.

10.2 Resolution Instead of Annual General Meeting. If all the shareholders who are entitled to vote at an annual general meeting consent by a unanimous resolution under the *Business Corporations Act* to all of the business that is required to be transacted at that annual general meeting, the annual general meeting is deemed to have been held on the date of the unanimous resolution. The shareholders must, in any unanimous resolution passed under this Article 10.2, select as the Company's annual reference date a date that would be appropriate for the holding of the applicable annual general meeting.

10.3 Calling of Meetings of Shareholders. The directors may, whenever they think fit, call a meeting of shareholders.

10.4 Notice for Meetings of Shareholders. The Company must send notice of the date, time and location of any meeting of shareholders, in the manner provided in these Articles, or in such other manner, if any, as may be prescribed by ordinary resolution (whether previous notice of the resolution has been given or not), to each shareholder entitled to attend the meeting, to each director and to the auditor of the Company, unless these Articles otherwise provide, at least the following number of days before the meeting:

(a) if and for so long as the Company is a public company, 21 days;

(b) otherwise, 10 days.

10.5 Record Date for Notice. The directors may set a date as the record date for the purpose of determining shareholders entitled to notice of any meeting of shareholders. The record date must not precede the date on which the meeting is to be held by more than two months or, in the case of a general meeting requisitioned by shareholders under the *Business Corporations Act*, by more than four months. The record date must not precede the date on which the meeting is held by fewer than:

(a) if and for so long as the Company is a public company, 21 days;

(b) otherwise, 10 days.

If no record date is set, the record date is 5 p.m. on the day immediately preceding the first date on which the notice is sent or, if no notice is sent, the beginning of the meeting.

10.6 Record Date for Voting. The directors may set a date as the record date for the purpose of determining shareholders entitled to vote at any meeting of shareholders. The record date must not precede the date on which the meeting is to be held by more than two months or, in the case of a general meeting requisitioned by shareholders under the *Business Corporations Act*, by more than four months. If no record date is set, the record date is 5 p.m. on the day immediately preceding the first date on which the notice is sent or, if no notice is sent, the beginning of the meeting.

10.7 Failure to Give Notice and Waiver of Notice. The accidental omission to send notice of any meeting to, or the non-receipt of any notice by, any of the persons entitled to notice does not invalidate any proceedings at that meeting. Any person entitled to notice of a meeting of shareholders may, in writing or otherwise, waive or reduce the period of notice of such meeting.

10.8 Notice of Special Business at Meetings of Shareholders. If a meeting of shareholders is to consider special business within the meaning of Article 11.1, the notice of meeting must:

(a) state the general nature of the special business; and

(b) if the special business includes considering, approving, ratifying, adopting or authorizing any document or the signing of or giving of effect to any document, have attached to it a copy of the document or state that a copy of the document will be available for inspection by shareholders:

(i) at the Company's records office, or at such other reasonably accessible location in British Columbia as is specified in the notice; and

(ii) during statutory business hours on any one or more specified days before the day set for the holding of the meeting.

10.9 Location of Meetings of Shareholder. Meeting of shareholders of the Company may be held outside British Columbia anywhere within Canada, United States of America, or by telephone.

ARTICLE 11
PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

11.1 Special Business. At a meeting of shareholders, the following business is special business:

(a) at a meeting of shareholders that is not an annual general meeting, all business is special business except business relating to the conduct of or voting at the meeting;

(b) at an annual general meeting, all business is special business except for the following:

(i) business relating to the conduct of or voting at the meeting;

(ii) consideration of any financial statements of the Company presented to the meeting;

(iii) consideration of any reports of the directors or auditor;

(iv) the setting or changing of the number of directors;

(v) the election or appointment of directors;

(vi) the appointment of an auditor;

(vii) the setting of the remuneration of an auditor;

(viii) business arising out of a report of the directors not requiring the passing of a special resolution or an exceptional resolution;

(ix) any other business which, under these Articles or the *Business Corporations Act*, may be transacted at a meeting of shareholders without prior notice of the business being given to the shareholders.

11.2 Special Majority. The majority of votes required for the Company to pass a special resolution at a meeting of shareholders is two-thirds of the votes cast on the resolution.

11.3 Quorum. Subject to the special rights and restrictions attached to the shares of any class or series of shares, the quorum for the transaction of business at a meeting of shareholders is two persons who are, or who represent by proxy, shareholders who, in the aggregate, hold at least 5% of the issued shares entitled to be voted at the meeting.

11.4 One Shareholder May Constitute Quorum. If there is only one shareholder entitled to vote at a meeting of shareholders:

(a) the quorum is one person who is, or who represents by proxy, that shareholder, and

(b) that shareholder, present in person or by proxy, may constitute the meeting.

11.5 Other Persons May Attend. The directors, the president (if any), the secretary (if any), the assistant secretary (if any), any lawyer for the Company, the auditor of the Company and any other persons invited by the directors are entitled to attend any meeting of shareholders, but if any of those persons does attend a meeting of shareholders, that person is not to be counted in the quorum and is not entitled to vote at the meeting unless that person is a shareholder or proxy holder entitled to vote at the meeting.

11.6 Requirement of Quorum. No business, other than the election of a chair of the meeting and the adjournment of the meeting, may be transacted at any meeting of shareholders unless a quorum of shareholders entitled to vote is present at the commencement of the meeting, but such quorum need not be present throughout the meeting.

11.7 **Lack of Quorum**. If, within one-half hour from the time set for the holding of a meeting of shareholders, a quorum is not present:

(a) in the case of a general meeting requisitioned by shareholders, the meeting is dissolved, and

(b) in the case of any other meeting of shareholders, the meeting stands adjourned to the same day in the next week at the same time and place.

11.8 **Lack of Quorum at Succeeding Meeting**. If, at the meeting to which the meeting referred to in Article 11.7(b) was adjourned, a quorum is not present within one-half hour from the time set for the holding of the meeting, the person or persons present and being, or representing by proxy, one or more shareholders entitled to attend and vote at the meeting constitute a quorum.

11.9 **Chair**. The following individual is entitled to preside as chair at a meeting of shareholders:

(a) the chair of the board, if any; or

(b) if the chair of the board is absent or unwilling to act as chair of the meeting, the president, if any.

11.10 **Selection of Alternate Chair**. If, at any meeting of shareholders, there is no chair of the board or president present within 15 minutes after the time set for holding the meeting, or if the chair of the board and the president are unwilling to act as chair of the meeting, or if the chair of the board and the president have advised the secretary, if any, or any director present at the meeting, that they will not be present at the meeting, the directors present must choose one of their number to be chair of the meeting or if all of the directors present decline to take the chair or fail to so choose or if no director is present, the shareholders entitled to vote at the meeting who are present in person or by proxy may choose any person present at the meeting to chair the meeting.

11.11 **Adjournments**. The chair of a meeting of shareholders may, and if so directed by the meeting must, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

11.12 **Notice of Adjourned Meeting**. It is not necessary to give any notice of an adjourned meeting or of the business to be transacted at an adjourned meeting of shareholders except that, when a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of the original meeting.

11.13 **Decision by Show of Hands or Poll**. Subject to the *Business Corporations Act*, every motion put to a vote at a meeting of shareholders will be decided on a show of hands unless a poll, before or on the declaration of the result of the vote by show of hands, is directed by the chair or demanded by at least one shareholder entitled to vote who is present in person or by proxy.

11.14 **Declaration of Result**. The chair of a meeting of shareholders must declare to the meeting the decision on every question in accordance with the result of the show of hands

or the poll, as the case may be, and that decision must be entered in the minutes of the meeting. A declaration of the chair that a resolution is carried by the necessary majority or is defeated is, unless a poll is directed by the chair or demanded under Article 11.13, conclusive evidence without proof of the number or proportion of the votes recorded in favour of or against the resolution.

11.15 Motion Need Not be Seconded. No motion proposed at a meeting of shareholders need be seconded unless the chair of the meeting rules otherwise, and the chair of any meeting of shareholders is entitled to propose or second a motion.

11.16 Casting Vote. In case of an equality of votes, the chair of a meeting of shareholders does not, either on a show of hands or on a poll, have a second or casting vote in addition to the vote or votes to which the chair may be entitled as a shareholder.

11.17 Manner of Taking Poll. Subject to Article 11.18, if a poll is duly demanded at a meeting of shareholders:

(a) the poll must be taken:

(i) at the meeting, or within seven days after the date of the meeting, as the chair of the meeting directs; and

(ii) in the manner, at the time and at the place that the chair of the meeting directs;

(b) the result of the poll is deemed to be the decision of the meeting at which the poll is demanded; and

(c) the demand for the poll may be withdrawn by the person who demanded it.

11.18 Demand for Poll on Adjournment. A poll demanded at a meeting of shareholders on a question of adjournment must be taken immediately at the meeting.

11.19 Chair Must Resolve Dispute. In the case of any dispute as to the admission or rejection of a vote given on a poll, the chair of the meeting must determine the dispute, and his or her determination made in good faith is final and conclusive.

11.20 Casting of Votes. On a poll, a shareholder entitled to more than one vote need not cast all the votes in the same way.

11.21 Demand for Poll. No poll may be demanded in respect of the vote by which a chair of a meeting of shareholders is elected.

11.22 Demand for Poll. Not to Prevent Continuance of Meeting. The demand for a poll at a meeting of shareholders does not, unless the chair of the meeting so rules, prevent the continuation of a meeting for the transaction of any business other than the question on which a poll has been demanded.

11.23 Retention of Ballots and Proxies. The Company must, for at least three months after a meeting of shareholders, keep each ballot cast on a poll and each proxy voted at the meeting, and, during that period, make them available for inspection during normal business

hours by any shareholder or proxy holder entitled to vote at the meeting. At the end of such three month period, the Company may destroy such ballots and proxies.

11.24 Meeting by Telephone or Other Communications Medium. A shareholder or proxy holder may participate in a meeting of the shareholders in person or by telephone if all shareholders or proxy holders participating in the meeting, whether in person or by telephone or other communications medium, are able to communicate with each other. A shareholder or proxy holder may participate in a meeting of the shareholders by a communications medium other than telephone if all shareholders or proxy holders participating in the meeting, whether in person or by telephone or other communications medium, are able to communicate with each other and if all shareholders or proxy holders who wish to participate in the meeting agree to such participation. A shareholder or proxy holder who participates in a meeting in a manner contemplated by this Article 11.24 is deemed for all purposes of the *Business Corporations Act* and these Articles to be present at the meeting and to have agreed to participate in that manner.

ARTICLE 12
VOTES OF SHAREHOLDERS

12.1 Number of Votes by Shareholder or by Shares. Subject to any special rights or restrictions attached to any shares and to the restrictions imposed on joint shareholders under Article 12.3:

(a) on a vote by show of hands, every person present who is a shareholder or proxy holder and entitled to vote on the matter has one vote; and

(b) on a poll, every shareholder entitled to vote on the matter has one vote in respect of each share entitled to be voted on the matter and held by that shareholder and may exercise that vote either in person or by proxy.

12.2 Votes of Persons in Representative Capacity. A person who is not a shareholder may vote at a meeting of shareholders, whether on a show of hands or on a poll, and may appoint a proxy holder to act at the meeting, if, before doing so, the person satisfies the chair of the meeting, or the directors, that the person is a legal personal representative or a trustee in bankruptcy for a shareholder who is entitled to vote at the meeting.

12.3 Votes by Joint Holders. If there are joint shareholders registered in respect of any share:

(a) any one of the joint shareholders may vote at any meeting, either personally or by proxy, in respect of the share as if that joint shareholder were solely entitled to it; or

(b) if more than one of the joint shareholders is present at any meeting, personally or by proxy, and more than one of them votes in respect of that share, then only the vote of the joint shareholder present whose name stands first on the central securities register in respect of the share will be counted.

12.4 Legal Personal Representatives as Joint Shareholders. Two or more legal personal representatives of a shareholder in whose sole name any share is registered are, for the purposes of Article 12.3, deemed to be joint shareholders.

12.5 Representative of a Corporate Shareholder. If a corporation, that is not a subsidiary of the Company, is a shareholder, that corporation may appoint a person to act as its representative at any meeting of shareholders of the Company, and:

(a) for that purpose, the instrument appointing a representative must:

(i) be received at the registered office of the Company or at any other place specified, in the notice calling the meeting, for the receipt of proxies, at least the number of business days specified in the notice for the receipt of proxies, or if no number of days is specified, two business days before the day set for the holding of the meeting; or

(ii) be provided, at the meeting, to the chair of the meeting or to a person designated by the chair of the meeting;

(b) if a representative is appointed under this Article 12.5:

(i) the representative is entitled to exercise in respect of and at that meeting the same rights on behalf of the corporation that the representative represents as that corporation could exercise if it were a shareholder who is an individual, including, without limitation, the right to appoint a proxy holder; and

(ii) the representative, if present at the meeting, is to be counted for the purpose of forming a quorum and is deemed to be a shareholder present in person at the meeting.

Evidence of the appointment of any such representative may be sent to the Company by written instrument, fax or any other method of transmitting legibly recorded messages.

12.6 Proxy Provisions Do Not Apply to All Companies. Articles 12.7 to 12.15 do not apply to the Company if and for so long as it is a public company or a pre-existing reporting company which has the Statutory Reporting Company Provisions as part of its Articles or to which the Statutory Reporting Company Provisions apply.

12.7 Appointment of Proxy Holders. Every shareholder of the Company, including a corporation that is a shareholder but not a subsidiary of the Company, entitled to vote at a meeting of shareholders of the Company may, by proxy, appoint one or more (but not more than five) proxy holders to attend and act at the meeting in the manner, to the extent and with the powers conferred by the proxy.

12.8 Alternate Proxy Holders. A shareholder may appoint one or more alternate proxy holders to act in the place of an absent proxy holder.

12.9 When Proxy Holder Need Not Be Shareholder. A person must not be appointed as a proxy holder unless the person is a shareholder, although a person who is not a shareholder may be appointed as a proxy holder if:

(a) the person appointing the proxy holder is a corporation or a representative of a corporation appointed under Article 12.5;

(b) the Company has at the time of the meeting for which the proxy holder is to be appointed only one shareholder entitled to vote at the meeting; or

(c) the shareholders present in person or by proxy at and entitled to vote at the meeting for which the proxy holder is to be appointed, by a resolution on which the proxy holder is not entitled to vote but in respect of which the proxy holder is to be counted in the quorum, permit the proxy holder to attend and vote at the meeting.

12.10 Deposit of Proxy. A proxy for a meeting of shareholders must:

(a) be received at the registered office of the Company or at any other place specified, in the notice calling the meeting, for the receipt of proxies, at least the number of business days specified in the notice, or if no number of days is specified, two business days before the day set for the holding of the meeting; or

(b) unless the notice provides otherwise, be provided, at the meeting, to the chair of the meeting or to a person designated by the chair of the meeting.

A proxy may be sent to the Company by written instrument, fax or any other method of transmitting legibly recorded messages.

12.11 Validity of Proxy Vote. A vote given in accordance with the terms of a proxy is valid notwithstanding the death or incapacity of the shareholder giving the proxy and despite the revocation of the proxy or the revocation of the authority under which the proxy is given, unless notice in writing of that death, incapacity or revocation is received:

(a) at the registered office of the Company, at any time up to and including the last business day before the day set for the holding of the meeting at which the proxy is to be used; or

(b) by the chair of the meeting, before the vote is taken.

12.12 Form of Proxy. A proxy, whether for a specified meeting or otherwise, must be either in the following form or in any other form approved by the directors or the chair of the meeting:

[Name of Company]
(the "**Company**")

The undersigned, being a shareholder of the Company, hereby appoints [name] or, failing that person, [name], as proxy holder for the undersigned to attend, act and vote for and on behalf of the undersigned at the meeting of shareholders of the Company to be held on [month, day, year] and at any adjournment of that meeting.

Number of shares in respect of which this proxy is given (if no number is specified, then this proxy is given in respect of all shares registered in the name of the shareholder):

Signed this ____ day of _____, _____.

_____
(Signature of shareholder)

_____
(Name of shareholder - printed)

12.13 Revocation of Proxy. Subject to Article 12.14, every proxy may be revoked by an instrument in writing that is:

(a) received at the registered office of the Company at any time up to and including the last business day before the day set for the holding of the meeting at which the proxy is to be used; or

(b) provided, at the meeting, to the chair of the meeting.

12.14 Revocation of Proxy Must Be Signed. An instrument referred to in Article 12.13 must be signed as follows:

(a) if the shareholder for whom the proxy holder is appointed is an individual, the instrument must be signed by the shareholder or his or her legal personal representative or trustee in bankruptcy;

(b) if the shareholder for whom the proxy holder is appointed is a corporation, the instrument must be signed by the corporation or by a representative appointed for the corporation under Article 12.5.

12.15 Production of Evidence of Authority to Vote. The chair of any meeting of shareholders may, but need not, inquire into the authority of any person to vote at the meeting and may, but need not, demand from that person production of evidence as to the existence of the authority to vote.

ARTICLE 13
DIRECTORS

13.1 First Directors; Number of Directors. The first directors are the persons designated as directors of the Company in the Notice of Articles that applies to the Company when it is recognized under the *Business Corporations Act*. The number of directors, excluding additional directors appointed under Article 14.8, is set at:

(a) subject to paragraphs (b) and (c), the number of directors that is equal to the number of the Company's first directors;

(b) if the Company is a public company, the greater of three and the most recently set of:

(i) the number of directors set by ordinary resolution (whether or not previous notice of the resolution was given); and

(ii) the number of directors set under Article 14.4;

(c) if the Company is not a public company, the most recently set of:

(i) the number of directors set by ordinary resolution (whether or not previous notice of the resolution was given); and

(ii) the number of directors set under Article 14.4.

13.2 Change in Number of Directors. If the number of directors is set under Articles 13.1(b)(i) or 13.1(c)(i):

(a) the shareholders may elect or appoint the directors needed to fill any vacancies in the board of directors up to that number;

(b) if the shareholders do not elect or appoint the directors needed to fill any vacancies in the board of directors up to that number contemporaneously with the setting of that number, then the directors may appoint, or the shareholders may elect or appoint, directors to fill those vacancies.

13.3 Directors' Acts Valid Despite Vacancy. An act or proceeding of the directors is not invalid merely because fewer than the number of directors set or otherwise required under these Articles is in office.

13.4 Qualifications of Directors. A director is not required to hold a share in the capital of the Company as qualification for his or her office but must be qualified as required by the *Business Corporations Act* to become, act or continue to act as a director.

13.5 Remuneration of Directors. The directors are entitled to the remuneration for acting as directors, if any, as the directors may from time to time determine. If the directors so decide, the remuneration of the directors, if any, will be determined by the shareholders. That remuneration may be in addition to any salary or other remuneration paid to any officer or employee of the Company as such, who is also a director.

13.6 Reimbursement of Expenses of Directors. The Company must reimburse each director for the reasonable expenses that he or she may incur in and about the business of the Company.

13.7 Special Remuneration for Directors. If any director performs any professional or other services for the Company that in the opinion of the directors are outside the ordinary duties of a director, or if any director is otherwise specially occupied in or about the Company's business, he or she may be paid remuneration fixed by the directors, or, at the option of that director, fixed by ordinary resolution, and such remuneration may be either in addition to, or in substitution for, any other remuneration that he or she may be entitled to receive.

13.8 Gratuity, Pension or Allowance on Retirement of Director. Unless otherwise determined by ordinary resolution, the directors on behalf of the Company may pay a gratuity or pension or allowance on retirement to any director who has held any salaried office or place of profit with the Company or to his or her spouse or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

ARTICLE 14
ELECTION AND REMOVAL OF DIRECTORS

14.1 Election at Annual General Meeting. At every annual general meeting and in every unanimous resolution contemplated by Article 10.2:

(a) the shareholders entitled to vote at the annual general meeting for the election of directors must elect, or in the unanimous resolution appoint, a board of directors consisting of the number of directors for the time being set under these Articles; and

(b) all the directors cease to hold office immediately before the election or appointment of directors under paragraph (a), but are eligible for re-election or re-appointment.

14.2 Consent to be a Director. No election, appointment or designation of an individual as a director is valid unless:

(a) that individual consents to be a director in the manner provided for in the *Business Corporations Act*;

(b) that individual is elected or appointed at a meeting at which the individual is present and the individual does not refuse, at the meeting, to be a director; or

(c) with respect to first directors, the designation is otherwise valid under the *Business Corporations Act*.

14.3 Failure to Elect or Appoint Directors. If:

(a) the Company fails to hold an annual general meeting, and all the shareholders who are entitled to vote at an annual general meeting fail to pass the unanimous resolution contemplated by Article 10.2, on or before the date by which the annual general meeting is required to be held under the *Business Corporations Act*; or

(b) the shareholders fail, at the annual general meeting or in the unanimous resolution contemplated by Article 10.2, to elect or appoint any directors;

then each director then in office continues to hold office until the earlier of:

(c) the date on which his or her successor is elected or appointed; and

(d) the date on which he or she otherwise ceases to hold office under the *Business Corporations Act* or these Articles.

14.4 Places of Retiring Directors Not Filled. If, at any meeting of shareholders at which there should be an election of directors, the places of any of the retiring directors are not filled by that election, those retiring directors who are not re-elected and who are asked by the newly elected directors to continue in office will, if willing to do so, continue in office to complete the number of directors for the time being set pursuant to these Articles until further new directors are elected at a meeting of shareholders convened for that purpose. If any such

election or continuance of directors does not result in the election or continuance of the number of directors for the time being set pursuant to these Articles, the number of directors of the Company is deemed to be set at the number of directors actually elected or continued in office.

14.5 Directors May Fill Casual Vacancies. Any casual vacancy occurring in the board of directors may be filled by the directors.

14.6 Remaining Directors Power to Act. The directors may act notwithstanding any vacancy in the board of directors, but if the Company has fewer directors in office than the number set pursuant to these Articles as the quorum of directors, the directors may only act for the purpose of appointing directors up to that number or of summoning a meeting of shareholders for the purpose of filling any vacancies on the board of directors or, subject to the *Business Corporations Act*, for any other purpose.

14.7 Shareholders May Fill Vacancies. If the Company has no directors or fewer directors in office than the number set pursuant to these Articles as the quorum of directors, the shareholders may elect or appoint directors to fill any vacancies on the board of directors.

14.8 Additional Directors. Notwithstanding Articles 13.1 and 13.2, between annual general meetings or unanimous resolutions contemplated by Article 10.2, the directors may appoint one or more additional directors, but the number of additional directors appointed under this Article 14.8 must not at any time exceed:

(a) one-third of the number of first directors, if, at the time of the appointments, one or more of the first directors have not yet completed their first term of office; or

(b) in any other case, one-third of the number of the current directors who were elected or appointed as directors other than under this Article 14.8.

Any director so appointed ceases to hold office immediately before the next election or appointment of directors under Article 14.1(a), but is eligible for re-election or re-appointment

14.9 Ceasing to be a Director. A director ceases to be a director when:

(a) the term of office of the director expires;

(b) the director dies;

(c) the director resigns as a director by notice in writing provided to the Company or a lawyer for the Company; or

(d) the director is removed from office pursuant to Articles 14.10 or 14.11.

14.10 Removal of Director by Shareholders. The Company may remove any director before the expiration of his or her term of office by special resolution. In that event, the shareholders may elect, or appoint by ordinary resolution, a director to fill the resulting vacancy. If the shareholders do not elect or appoint a director to fill the resulting vacancy contemporaneously with the removal, then the directors may appoint or the shareholders may elect, or appoint by ordinary resolution, a director to fill that vacancy.

14.11 Removal of Director by Directors. The directors may remove any director before the expiration of his or her term of office if the director is convicted of an indictable offence, or if the director ceases to be qualified to act as a director of a company and does not promptly resign, and the directors may appoint a director to fill the resulting vacancy.

ARTICLE 15
POWERS AND DUTIES OF DIRECTORS

15.1 Powers of Management. The directors must, subject to the *Business Corporations Act* and these Articles, manage or supervise the management of the business and affairs of the Company and have the authority to exercise all such powers of the Company as are not, by the *Business Corporations Act* or by these Articles, required to be exercised by the shareholders of the Company.

15.2 Appointment of Attorney of Company. The directors may from time to time, by power of attorney or other instrument, under seal if so required by law, appoint any person to be the attorney of the Company for such purposes, and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these Articles and excepting the power to fill vacancies in the board of directors, to remove a director, to change the membership of, or fill vacancies in, any committee of the directors, to appoint or remove officers appointed by the directors and to declare dividends) and for such period, and with such remuneration and subject to such conditions as the directors may think fit. Any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such attorney as the directors think fit. Any such attorney may be authorized by the directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in him or her.

ARTICLE 16
DISCLOSURE OF INTEREST OF DIRECTORS

16.1 Obligation to Account for Profits. A director or senior officer who holds a disclosable interest (as that term is used in the *Business Corporations Act*) in a contract or transaction into which the Company has entered or proposes to enter is liable to account to the Company for any profit that accrues to the director or senior officer under or as a result of the contract or transaction only if and to the extent provided in the *Business Corporations Act*.

16.2 Restrictions on Voting by Reason of Interest. A director who holds a disclosable interest in a contract or transaction into which the Company has entered or proposes to enter is not entitled to vote on any directors' resolution to approve that contract or transaction, unless all the directors have a disclosable interest in that contract or transaction, in which case any or all of those directors may vote on such resolution.

16.3 Interested Director Counted in Quorum. A director who holds a disclosable interest in a contract or transaction into which the Company has entered or proposes to enter and who is present at the meeting of directors at which the contract or transaction is considered for approval may be counted in the quorum at the meeting whether or not the director votes on any or all of the resolutions considered at the meeting.

16.4 Disclosure of Conflict of Interest or Property. A director or senior officer who holds any office or possesses any property, right or interest that could result, directly or indirectly, in the creation of a duty or interest that materially conflicts with that individual's duty or

interest as a director or senior officer, must disclose the nature and extent of the conflict as required by the *Business Corporations Act*.

16.5 Director Holding Other Office in the Company. A director may hold any office or place of profit with the Company, other than the office of auditor of the Company, in addition to his or her office of director for the period and on the terms (as to remuneration or otherwise) that the directors may determine.

16.6 No Disqualification. No director or intended director is disqualified by his or her office from contracting with the Company either with regard to the holding of any office or place of profit the director holds with the Company or as vendor, purchaser or otherwise, and no contract or transaction entered into by or on behalf of the Company in which a director is in any way interested is liable to be voided for that reason.

16.7 Professional Services by Director or Officer. Subject to the *Business Corporations Act*, a director or officer, or any person in which a director or officer has an interest, may act in a professional capacity for the Company, except as auditor of the Company, and the director or officer or such person is entitled to remuneration for professional services as if that director or officer were not a director or officer.

16.8 Director or Officer in Other Corporations. A director or officer may be or become a director, officer or employee of, or otherwise interested in, any person in which the Company may be interested as a shareholder or otherwise, and, subject to the *Business Corporations Act*, the director or officer is not accountable to the Company for any remuneration or other benefits received by him or her as director, officer or employee of, or from his or her interest in, such other person.

ARTICLE 17
PROCEEDINGS OF DIRECTORS

17.1 Meetings of Directors. The directors may meet together for the conduct of business, adjourn and otherwise regulate their meetings as they think fit, and meetings of the directors held at regular intervals may be held at the place, at the time and on the notice, if any, as the directors may from time to time determine.

17.2 Voting at Meetings. Questions arising at any meeting of directors are to be decided by a majority of votes and, in the case of an equality of votes, the chair of the meeting does not have a second or casting vote.

17.3 Chair of Meetings. The following individual is entitled to preside as chair at a meeting of directors:

(a) the chair of the board, if any;

(b) in the absence of the chair of the board, the president, if any, if the president is a director; or

(c) any other director chosen by the directors if:

(i) neither the chair of the board nor the president, if a director, is present at the meeting within 15 minutes after the time set for holding the meeting;

(ii) neither the chair of the board nor the president, if a director, is willing to chair the meeting; or

(iii) the chair of the board and the president, if a director, have advised the secretary, if any, or any other director, that they will not be present at the meeting.

17.4 Meetings by Telephone or Other Communications Medium. A director may participate in a meeting of the directors or of any committee of the directors in person or by telephone if all directors participating in the meeting, whether in person or by telephone or other communications medium, are able to communicate with each other. A director may participate in a meeting of the directors or of any committee of the directors by a communications medium other than telephone if all directors participating in the meeting, whether in person or by telephone or other communications medium, are able to communicate with each other and if all directors who wish to participate in the meeting agree to such participation. A director who participates in a meeting in a manner contemplated by this Article 17.4 is deemed for all purposes of the *Business Corporations Act* and these Articles to be present at the meeting and to have agreed to participate in that manner.

17.5 Calling of Meetings. A director may, and the secretary or an assistant secretary of the Company, if any, on the request of a director must, call a meeting of the directors at any time.

17.6 Notice of Meetings. Other than for meetings held at regular intervals as determined by the directors pursuant to Article 17.1, reasonable notice of each meeting of the directors, specifying the place, day and time of that meeting must be given to each of the directors by any method set out in Article 23.1 or orally or by telephone.

17.7 When Notice Not Required. It is not necessary to give notice of a meeting of the directors to a director if:

(a) the meeting is to be held immediately following a meeting of shareholders at which that director was elected or appointed, or is the meeting of the directors at which that director is appointed; or

(b) the director has waived notice of the meeting.

17.8 Meeting Valid Despite Failure to Give Notice. The accidental omission to give notice of any meeting of directors to, or the non-receipt of any notice by, any director does not invalidate any proceedings at that meeting.

17.9 Waiver of Notice of Meetings. Any director may send to the Company a document signed by him or her waiving notice of any past, present or future meeting or meetings of the directors and may at any time withdraw that waiver with respect to meetings held after that withdrawal. After sending a waiver with respect to all future meetings and until that waiver is withdrawn, no notice of any meeting of the directors need be given to such director and all meetings of the directors so held are deemed not to be improperly called or constituted by reason of notice not having been given to such director.

17.10 Quorum. The quorum necessary for the transaction of the business of the directors may be set by the directors and, if not so set, is deemed to be set at two directors or, if

the number of directors is set at one, is deemed to be set at one director, and that director may constitute a meeting.

17.11 Validity of Acts Where Appointment Defective. Subject to the *Business Corporations Act*, an act of a director or officer is not invalid merely because of an irregularity in the election or appointment or a defect in the qualification of that director or officer.

17.12 Consent Resolutions in Writing. A resolution of the directors or of any committee of the directors consented to in writing by all of the directors entitled to vote on it, whether by signed document, fax, email or any other method of transmitting legibly recorded messages, is as valid and effective as if it had been passed at a meeting of the directors or of the committee of the directors duly called and held. Such resolution may be in two or more counterparts which together are deemed to constitute one resolution in writing. A resolution passed in that manner is effective on the date stated in the resolution or on the latest date stated on any counterpart. A resolution of the directors or of any committee of the directors passed in accordance with this Article 17.12 is deemed to be a proceeding at a meeting of directors or of the committee of the directors and to be as valid and effective as if it had been passed at a meeting of the directors or of the committee of the directors that satisfies all the requirements of the *Business Corporations Act* and all the requirements of these Articles relating to meetings of the directors or of a committee of the directors.

ARTICLE 18
EXECUTIVE AND OTHER COMMITTEES

18.1 Appointment and Powers of Executive Committee. The directors may, by resolution, appoint an executive committee consisting of the director or directors that they consider appropriate, and this committee has, during the intervals between meetings of the board of directors, all of the directors' powers, except:

(a) the power to fill vacancies in the board of directors;

(b) the power to remove a director;

(c) the power to change the membership of, or fill vacancies in, any committee of the directors; and

(d) such other powers, if any, as may be set out in the resolution or any subsequent directors' resolution.

18.2 Appointment and Powers of Other Committees. The directors may, by resolution:

(a) appoint one or more committees (other than the executive committee) consisting of the director or directors that they consider appropriate;

(b) delegate to a committee appointed under paragraph (a) any of the directors' powers, except:

(i) the power to fill vacancies in the board of directors;

(ii) the power to remove a director;

(iii) the power to change the membership of, or fill vacancies in, any committee of the directors; and

(iv) the power to appoint or remove officers appointed by the directors; and

(c) make any delegation referred to in paragraph (b) subject to the conditions set out in the resolution or any subsequent directors' resolution.

18.3 Obligations of Committees. Any committee appointed under Articles 18.1 or 18.2, in the exercise of the powers delegated to it, must:

(a) conform to any rules that may from time to time be imposed on it by the directors; and

(b) report every act or thing done in exercise of those powers at such times as the directors may require.

18.4 Powers of Board. The directors may, at any time, with respect to a committee appointed under Articles 18.1 or 18.2:

(a) revoke or alter the authority given to the committee, or override a decision made by the committee, except as to acts done before such revocation, alteration or overriding;

(b) terminate the appointment of, or change the membership of, the committee; and

(c) fill vacancies in the committee.

18.5 Committee Meetings. Subject to Article 18.3(a) and unless the directors otherwise provide in the resolution appointing the committee or in any subsequent resolution, with respect to a committee appointed under Articles 18.1 or 18.2:

(a) the committee may meet and adjourn as it thinks proper;

(b) the committee may elect a chair of its meetings but, if no chair of a meeting is elected, or if at a meeting the chair of the meeting is not present within 15 minutes after the time set for holding the meeting, the directors present who are members of the committee may choose one of their number to chair the meeting;

(c) a majority of the members of the committee constitutes a quorum of the committee; and

(d) questions arising at any meeting of the committee are determined by a majority of votes of the members present, and in case of an equality of votes, the chair of the meeting does not have a second or casting vote.

ARTICLE 19
OFFICERS

19.1 Directors May Appoint Officers. The directors may, from time to time, appoint such officers, if any, as the directors determine and the directors may, at any time, terminate any such appointment.

19.2 Functions, Duties and Powers of Officers. The directors may, for each officer:

(a) determine the functions and duties of the officer;

(b) entrust to and confer on the officer any of the powers exercisable by the directors on such terms and conditions and with such restrictions as the directors think fit; and

(c) revoke, withdraw, alter or vary all or any of the functions, duties and powers of the officer.

19.3 Qualifications. No officer may be appointed unless that officer is qualified in accordance with the *Business Corporations Act*. One person may hold more than one position as an officer of the Company. Any person appointed as the chair of the board or as the managing director must be a director. Any other officer need not be a director.

19.4 Remuneration and Terms of Appointment. All appointments of officers are to be made on the terms and conditions and at the remuneration (whether by way of salary, fee, commission, participation in profits or otherwise) that the directors thinks fit and are subject to termination at the pleasure of the directors, and an officer may in addition to such remuneration be entitled to receive, after he or she ceases to hold such office or leaves the employment of the Company, a pension or gratuity.

ARTICLE 20
INDEMNIFICATION

20.1 Definitions. In this Article 20:

(a) "eligible penalty" means a judgment, penalty or fine awarded or imposed in, or an amount paid in settlement of, an eligible proceeding;

(b) "eligible proceeding" means a legal proceeding or investigative action, whether current, threatened, pending or completed, in which a director or former director of the Company (an "eligible party") or any of the heirs and legal personal representatives of the eligible party, by reason of the eligible party being or having been a director of the Company:

(i) is or may be joined as a party; or

(ii) is or may be liable for or in respect of a judgment, penalty or fine in, or expenses related to, the proceeding;

(c) "expenses" has the meaning set out in the *Business Corporations Act*.

20.2 Mandatory Indemnification of Directors and Former Directors. Subject to the *Business Corporations Act*, the Company must indemnify a director or former director of the Company and his or her heirs and legal personal representatives against all eligible penalties to which such person is or may be liable, and the Company must, after the final disposition of an eligible proceeding, pay the expenses actually and reasonably incurred by such person in respect of that proceeding. Each director is deemed to have contracted with the Company on the terms of the indemnity contained in this Article 20.2.

20.3 Indemnification of Other Persons. Subject to any restrictions in the *Business Corporations Act*, the Company may indemnify any person.

20.4 Non-Compliance with *Business Corporations Act*. The failure of a director or officer of the Company to comply with the *Business Corporations Act* or these Articles does not invalidate any indemnity to which he or she is entitled under this Article 20.

20.5 Company May Purchase Insurance. The Company may purchase and maintain insurance for the benefit of any person (or his or her heirs or legal personal representatives) who:

(a) is or was a director, officer, employee or agent of the Company;

(b) is or was a director, officer, employee or agent of a corporation at a time when the corporation is or was an affiliate of the Company;

(c) at the request of the Company, is or was a director, officer, employee or agent of a corporation or of a partnership, trust, joint venture or other unincorporated entity;

(d) at the request of the Company, holds or held a position equivalent to that of a director or officer of a partnership, trust, joint venture or other unincorporated entity;

against any liability incurred by him or her as such director, officer, employee or agent or person who holds or held such equivalent position.

ARTICLE 21
DIVIDENDS

21.1 Payment of Dividends Subject to Special Rights. The provisions of this Article 21 are subject to the rights, if any, of shareholders holding shares with special rights as to dividends.

21.2 Declaration of Dividends. Subject to 'the *Business Corporations Act* and the rights of the holders of issued shares of the Company, the directors may from time to time declare and authorize payment of such dividends as they may deem advisable.

21.3 No Notice Required. The directors need not give notice to any shareholder of any declaration under Article 21.2.

21.4 Record Date. The directors may set a date as the record date for the purpose of determining shareholders entitled to receive payment of a dividend. The record date must not precede the date on which the dividend is to be paid by more than two months. If no record date is set, the record date is 5 p.m. on the date on which the directors pass the resolution declaring the dividend.

21.5 Manner of Paying Dividend. A resolution declaring a dividend may direct payment of the dividend wholly or partly by the distribution of specific assets or of fully paid shares or of bonds, debentures or other securities of the Company, or in any one or more of those ways.

21.6 **Settlement of Difficulties**. If any difficulty arises in regard to a distribution under Article 21.5, the directors may settle the difficulty as they deem advisable, and, in particular, may:

(a) set the value for distribution of specific assets;

(b) determine that cash payments in substitution for all or any part of the specific assets to which any shareholders are entitled may be made to any shareholders on the basis of the value so fixed in order to adjust the rights of all parties; and

(c) vest any such specific assets in trustees for the persons entitled to the dividend.

21.7 **When**. Dividend. Payable. Any dividend may be made payable on such date as is fixed by the directors.

21.8 **Dividends to be Paid in Accordance with Number of Shares**. All dividends on shares of any class or series of shares must be declared and paid according to the number of such shares held.

21.9 **Receipt by Joint Shareholders**. If several persons are joint shareholders of any share, any one of them may give an effective receipt for any dividend, bonus or other money payable in respect of the share.

21.10 **Dividend Bears No Interest**. No dividend bears interest against the Company.

21.11 **Fractional Dividends**. If a dividend to which a shareholder is entitled includes a fraction of the smallest monetary unit of the currency of the dividend, that fraction may be disregarded in making payment of the dividend and that payment represents full payment of the dividend.

21.12 **Payment of Dividends**. Any dividend or other distribution payable in cash in respect of shares may be paid by cheque, made payable to the order of the person to whom it is sent, and mailed to the address of the shareholder, or in the case of joint shareholders, to the address of the joint shareholder who is first named on the central securities register, or to the person and to the address the shareholder or joint shareholders may direct in writing. The mailing of such cheque will, to the extent of the sum represented by the cheque (plus the amount of the tax required by law to be deducted), discharge all liability for the dividend unless such cheque is not paid on presentation or the amount of tax so deducted is not paid to the appropriate taxing authority.

21.13 **Capitalization of Surplus**. Notwithstanding anything contained in these Articles, the directors may from time to time capitalize any surplus of the Company and may from time to time issue, as fully paid, shares or any bonds, debentures or other securities of the Company as a dividend representing the surplus or any part of the surplus.

ARTICLE 22
DOCUMENTS, RECORDS AND REPORTS

22.1 **Recording of Financial Affairs**. The directors must cause adequate accounting records to be kept to record properly the financial affairs and condition of the Company and to comply with the *Business Corporations Act*.

22.2 Inspection of Accounting Records. Unless the directors determine otherwise, or unless otherwise determined by ordinary resolution, no shareholder of the Company is entitled to inspect or obtain a copy of any accounting records of the Company.

ARTICLE 23
NOTICES

23.1 Method of Giving Notice. Unless the *Business Corporations Act* or these Articles provides otherwise, a notice, statement, report or other record required or permitted by the *Business Corporations Act* or these Articles to be sent by or to a person may be sent by any one of the following methods:

(a) mail addressed to the person at the applicable address for that person as follows:

(i) for a record mailed to a shareholder, the shareholder's registered address;

(ii) for a record mailed to a director or officer, the prescribed address for mailing shown for the director or officer in the records kept by the Company or the mailing address provided by the recipient for the sending of that record or records of that class;

(iii) in any other case, the mailing address of the intended recipient;

(b) delivery at the applicable address for that person as follows, addressed to the person:

(i) for a record delivered to a shareholder, the shareholder's registered address;

(ii) for a record delivered to a director. or officer, the prescribed address for delivery shown for the director or officer in the records kept by the Company or the delivery address provided by the recipient for the sending of that record or records of that class;

(iii) in any other case, the delivery address of the intended recipient;

(c) sending the record by fax to the fax number provided by the intended recipient for the sending of that record or records of that class;

(d) sending the record by email to the email address provided by the intended recipient for the sending of that record or records of that class;

(e) physical delivery to the intended recipient;

(f) as otherwise permitted by any securities legislation (together with all regulations and rules made and promulgated thereunder and all administrative policy statements, blanket orders, and rulings, notices, and other administrative directions issued by securities commissions or similar authorities appointed thereunder) in any province or territory of Canada or in the federal jurisdiction of

the United States or in any state of the United States that is applicable to the Company.

23.2 Deemed Receipt of Mailing. A record that is mailed to a person by ordinary mail to the applicable address for that person referred to in Article 23.1 is deemed to be received by the person to whom it was mailed on the day, Saturdays, Sundays and holidays excepted, following the date of mailing.

23.3 Certificate of Sending. A certificate signed by the secretary, if any, or other officer of the Company or of any other corporation acting in that behalf for the Company stating that a notice, statement, report or other record was addressed as required by Article 23.1, prepaid and mailed or otherwise sent as permitted by Article 23.1 is conclusive evidence of that fact

23.4 Notice to Joint Shareholders. A notice, statement, report or other record may be provided by the Company to the joint shareholders of a share by providing the notice to the joint shareholder first named in the central securities register in respect of the share.

23.5 Notice to Trustees. A notice, statement, report or other record may be provided by the Company to the persons entitled to a share in consequence of the death, bankruptcy or incapacity of a shareholder by:

(a) mailing the record, addressed to them:

(i) by name, by the title of the legal personal representative of the deceased or incapacitated shareholder, by the title of trustee of the bankrupt shareholder or by any similar description; and

(ii) at the address, if any, supplied to the Company for that purpose by the persons claiming to be so entitled; or

(b) if an address referred to in paragraph (a)(ii) has not been supplied to the Company, by giving the notice in a manner in which it might have been given if the death, bankruptcy or incapacity had not occurred.

ARTICLE 24
SEAL AND EXECUTION OF DOCUMENTS

24.1 Who May Attest Seal. Except as provided in Articles 24.2 and 24.3, the Company's seal, if any, must not be impressed on any record except when that impression is attested by the signatures of:

(a) any two directors;

(b) any officer, together with any director;

(c) if the Company only has one director, that director; or

(d) any one or more directors or officers or persons as may be determined by the directors.

24.2 **Sealing Copies**. For the purpose of certifying under seal a certificate of incumbency of the directors or officers of the Company or a true copy of any resolution or other document, despite Article 24.1, the impression of the seal may be attested by the signature of any director or officer.

24.3 **Mechanical Reproduction of Seal**. The directors may authorize the seal to be impressed by third parties on share certificates or bonds, debentures or other securities of the Company as they may determine appropriate from time to time. To enable the seal to be impressed on any share certificates or bonds, debentures or other securities of the Company, whether in definitive or interim form, on which facsimiles of any of the signatures of the directors or officers of the Company are, in accordance with the *Business Corporations Act* or these Articles, printed or otherwise mechanically reproduced, there may be delivered to the person employed to engrave, lithograph or print such definitive or interim share certificates or bonds, debentures or other securities one or more unmounted dies reproducing the seal and the chair of the board or any senior officer together with the secretary, treasurer, secretary-treasurer, an assistant secretary, an assistant treasurer or an assistant secretary-treasurer may in writing authorize such person to cause the seal to be impressed on such definitive or interim share certificates or bonds, debentures or other securities by the use of such dies. Share certificates or bonds, debentures or other securities to which the seal has been so impressed are for all purposes deemed to be under and to bear the seal impressed on them.

24.4 **Execution of Documents Generally**. The Directors may from time to time by resolution appoint any one or more persons, officers or Directors for the purpose of executing any instrument, document or agreement in the name of and on behalf of the Company for which the seal need not be affixed, and if no such person, officer or Director is appointed, then any one officer or Director of the Company may execute such instrument, document or agreement.

ARTICLE 25
PROHIBITIONS

25.1 **Definitions**. In this Article 25:

(a) "**designated security**" means:

(i) a voting security of the Company;

(ii) a security of the Company that is not a debt security and that carries a residual right to participate in the earnings of the Company or, on the liquidation or winding up of the Company, in its assets; or

(iii) a security of the Company convertible, directly or indirectly, into a security described in paragraph (i) or (ii);

(b) "**security**" has the meaning assigned in the *Securities Act* (British Columbia);

(c) "**voting security**" means a security of the Company that:

(i) is not a debt security, and

(ii) carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing.

25.2 **Application**. Article 25.3 does not apply to the Company if and for so long as it is a public company or a pre-existing reporting company which has the Statutory Reporting Company Provisions as part of its Articles or to which the Statutory Reporting Company Provisions apply.

25.3 **Consent Required for Transfer of Shares or Designated Securities**. No share or designated security may be sold, transferred or otherwise disposed of without the consent of the directors and the directors are not required to give any reason for refusing to consent to any such sale, transfer or other disposition.

ARTICLE 26
AUTHORIZED SHARE STRUCTURE

Without restricting the rights of the holders of Class A Common Shares provided under the *Business Corporations Act*, the Class A Common Shares will have the following attributes:

26.1 **Voting Rights**. The holders of the Class A Common Shares shall be entitled to receive notice of, and to attend, all meetings of the shareholders of the Company and shall have one vote for each Class A Common Share held, at all meetings of the shareholders of the Company, except for meetings at which only of another specified class or series of shares of the Company (if and as applicable) are entitled to vote separately as a class or series.

26.2 **Dividends**. The holders of the Class A Common Shares shall be entitled to receive dividends and the Company shall pay dividends, as and when declared by the Board of Directors of the Company in their absolute discretion, in such amount and in such form as the Board of Directors of the Company may from time to time determine, and all dividends which the Board of Directors of the Company may declare on the Class A Common Shares shall be declared and paid in equal amounts per share on all Class A Common Shares at the time outstanding.

26.3 **Dissolution**. In the event of the dissolution, liquidation or winding up of the Company, whether voluntary or involuntary, or any other distribution of assets of the Company among its shareholders for the purpose of winding up its affairs, the holders of Class A Common Shares shall be entitled to participate equally in the distribution of the Company's assets pursuant to the liquidation, dissolution or winding up of the Company.

Schedule "B"
Notice of Alteration

BRITISH COLUMBIA | BC Registry Services

NOTICE OF ALTERATION
FORM 11 – BC COMPANY
Section 257(4) *Business Corporations Act*

Telephone: 1 877 526-1526
www.bcregistryservices.gov.bc.ca

DO NOT MAIL THIS FORM to BC Registry Services unless you are instructed to do so by registry staff. The Regulation under the *Business Corporations Act* requires the electronic version of this form to be filed on the Internet at www.corporateonline.gov.bc.ca

Freedom of Information and Protection of Privacy Act (FOIPPA): Personal information provided on this form is collected, used and disclosed under the authority of the *FOIPPA* and the *Business Corporations Act* for the purposes of assessment. Questions regarding the collection, use and disclosure of personal information can be directed to the Executive Coordinator of the BC Registry Services at 1 877 526-1526, PO Box 9431 Stn Prov Govt, Victoria BC V8W 9V3.

A INCORPORATION NUMBER OF COMPANY
BC1190335

B NAME OF COMPANY
JMB Crushing Systems Inc.

C ALTERATIONS TO THE NOTICE OF ARTICLES
Please indicate what information on the Notice of Articles is to be altered:
("altered" means create, add to, vary or delete)

- ☐ Company name
- ☐ A translation of company name
- ☐ Pre-existing Company Provisions
- ☑ Date of a Resolution or Court Order **(applies to special rights or restrictions only)**
- ☑ Authorized Share Structure

D ALTERATION EFFECTIVE DATE – *Choose **one** of the following:*

- ☑ The alteration is to take effect at the time that this notice is filed with the registrar.
- ☐ The alteration is to take effect at 12:01a.m. Pacific Time on YYYY / MM / DD being a date that is not more than ten days after the date of the filing of this notice.
- ☐ The alteration is to take effect at _____ ☐ a.m. or ☐ p.m. Pacific Time on YYYY / MM / DD being a date and time that is not more than ten days after the date of the filing of this notice.

E CHANGE OF COMPANY NAME
The company is to change its name from _____
to *(choose **one** of the following):*

- ☐ _____. This name has been reserved for the company under name reservation number _____, or
- ☐ a name created by adding "B.C. Ltd." after the incorporation number of the company.

F TRANSLATION OF COMPANY NAME
Set out every new translation of the company name, or set out any change or deletion of an existing translation of the company name to be used outside of Canada.

Additions: Set out every new translation of the company name that the company intends to use outside of Canada.

Changes: Change the following translation(s) of the company name:

PREVIOUS TRANSLATION OF THE COMPANY NAME	NEW TRANSLATION OF THE COMPANY NAME

Deletions: Remove the following translation(s) of the company name:

G PRE-EXISTING COMPANY PROVISIONS (refer to Part 17 and Table 3 of the Regulation under the *Business Corporations Act*)

Complete this item only if the company has resolved that none of the Pre-existing Company Provisions are to apply to this company.

☐ The company has resolved that the Pre-existing Company Provisions are no longer to apply to this company.

H AUTHORIZED SHARE STRUCTURE

Set out the date of each resolution or court order altering special rights or restrictions attached to a class or series of shares.

YYYY / MM / DD

Set out the new authorized share structure

Identifying name of class or series of shares	Maximum number of shares of this class or series of shares that the company is authorized to issue, or indicate there is no maximum number.		Kind of shares of this class or series of shares.			Are there special rights or restrictions attached to the shares of this class or series of shares?	
	THERE IS NO MAXIMUM (✔)	MAXIMUM NUMBER OF SHARES AUTHORIZED	WITHOUT PAR VALUE (✔)	WITH A PAR VALUE OF ($)	Type of currency	YES (✔)	NO (✔)
Class A Common	✔		✔				✔

I CERTIFIED CORRECT – I have read this form and found it to be correct.

NAME OF AUTHORIZED SIGNING AUTHORITY FOR THE COMPANY	SIGNATURE OF AUTHORIZED SIGNING AUTHORITY FOR THE COMPANY	DATE SIGNED
	X	YYYY / MM / DD

RESET

Schedule "C"
Form of Proxy

FORM OF PROXY AND VOTING LETTER
FOR AFFECTED CREDITORS

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "***CCAA***"), AND IN THE MATTER OF the proceedings of JMB Crushing Systems Inc. ("**JMB**") AND 2161889 Alberta Ltd. ("**216**") under the *CCAA* (the "***CCAA* Proceedings**"), AND IN THE MATTER OF a Plan of Arrangement of JMB and Mantle Materials Group, Ltd. (the "**Plan**") under the *CCAA* and the *Business Corporations Act*, SBC 2002, c 57, as amended

TO: FTI Consulting Canada Inc., in its capacity as Court appointed monitor of JMB and 216 in the CCAA Proceedings

_____ *(insert name of creditor)* (the "**Creditor**") is an "Affected Creditor" (as such term is defined under the Plan) of JMB.

The Creditor hereby:

1. votes FOR the approval of the Plan;

2. acknowledges that if all of the other Affected Creditors vote for the approval of the Plan by Proxy and Voting Letter, the Monitor is authorized to dispense with holding a Creditors' Meeting;

3. in the event that the Monitor holds a Creditors' Meeting, appoints _____ *(insert name of proxyholder)*, with full power of substitution, as proxyholder for the Creditor (the "**Proxyholder**") to attend, vote and otherwise act for and on behalf of the Creditor at any Creditors' Meeting (as defined in the Plan);

4. empowers the Proxyholder to vote FOR the approval of the Plan and otherwise act for and on behalf of the Creditor at the Creditors' Meeting, or any adjournment, postponement or rescheduling thereof, including with respect to any amendment, restatement, modification or supplement of the Plan, and with respect to any matters that may come before any such Creditors' Meeting.

DATED this _____ day of _____, 2020.

CREDITOR'S SIGNATURE:

_____ *(name of Affected Creditor)*
By:

_____
Name:
Title:

Confidential Appendix B

Summary of SISP Results

THIS DOCUMENT IS CONFIDENTIAL AND SEALED PURSUANT TO AN ORDER (SEALING), GRANTED BY THE HONOURABLE MADAM JUSTICE K.M. EIDSVIK ON OCTOBER 1, 2020

Confidential Appendix F

Asset Purchase Agreement between JMB Crushing Systems Inc. and Mantle Materials Group Ltd.

THIS DOCUMENT IS CONFIDENTIAL AND SEALED PURSUANT TO AN ORDER (SEALING), GRANTED BY THE HONOURABLE MADAM JUSTICE K.M. EIDSVIK ON OCTOBER 1, 2020

This is Exhibit "M" referred to in the Affidavit of

Katie Doran

sworn before me this 4th day of December, 2020.

A Commissioner for Oaths in and for the Province of Alberta

Connor E.J. O'Brien
Student-at-Law

ENTERED

JUDICIAL CENTRE OF CALGARY
FILED
Nov 24, 2020
by Email
CLERK OF THE COURT

1103920
000326

JS
Nov. 27 2020
Justice Eidsvik

COURT FILE NUMBER	2001-05482
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT	IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. AND 2161889 ALBERTA LTD.
DOCUMENT	TENTH REPORT OF FTI CONSULTING CANADA INC., IN ITS CAPACITY AS MONITOR OF JMB CRUSHING SYSTEMS INC. AND 2161889 ALBERTA LTD. **November 20, 2020**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**MONITOR** FTI Consulting Canada Inc. 1610, 520, 5th Ave. SW Calgary, AB T2P 3R7 Deryck Helkaa / Tom Powell Telephone: (403) 454-6031 / (604) 484-9525 Fax: (403) 232-6116 E-mail: deryck.helkaa@fticonsulting.com tom.powell@fticonsulting.com **COUNSEL** McCarthy Tétrault LLP Suite 4000, 421 7th Avenue S.W. Calgary, AB T2P 4K9 Sean Collins / Pantelis Kyriakakis Telephone: (403) 260-3531 / (403) 260-3536 Fax: (403) 260-3501 E-mail: scollins@mccarthy.ca pkyriakakis@mccarthy.ca

FTI CONSULTING

TENTH REPORT OF THE MONITOR

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INTRODUCTION

1. On May 1, 2020 (the "**Filing Date**"), JMB Crushing Systems Inc. ("**JMB**") and 2161889 Alberta Ltd. ("**216**" and together with JMB, the "**Applicants**") commenced proceedings (the "**CCAA Proceedings**") under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to an order granted by this Honourable Court which was subsequently amended and restated on May 11, 2020 (the "**ARIO**").

2. The ARIO appointed FTI Consulting Canada Inc. as Monitor in the CCAA Proceedings (the "**Monitor**") and established a stay of proceedings (the "**Stay of Proceedings**") in favour of the Applicants until July 31, 2020. On November 12, 2020, this Honourable Court granted an order extending the Stay of Proceedings to December 11, 2020.

3. On May 20, 2020, this Honourable Court granted an order (the "**MD Lien Order**") which set aside the Consent Order, granted on May 11, 2020 and replaced the process set out therein to address the validity of any builders' lien claims associated with any work done or materials furnished (the "**Builders' Lien Protocol**") with respect to the agreement between the Municipal District of Bonnyville No. 87 (the "**MD**") and JMB, dated November 1, 2013, as subsequently amended (the "**MD Contract**").

4. On May 29, 2020, following the Builders' Lien Protocol established in the MD Lien Order, this Honourable Court granted an order (the "**ED Lien Order**" and together with the MD Lien Order, the "**Lien Orders**") which set out a similar Builders' Lien Protocol but with respect to a project involving 1598313 Alberta Ltd. and Kuwait Petrochemical Limited Partnership as owners and EllisDon Industrial Inc. ("**ED**") as contractor.

5. Details concerning the MD Lien Order and the corresponding Builders' Lien Protocol are set out in the Monitor's Eight Report, dated October 16, 2020.

6. Following the issuance of the Monitor's Eight Report, dated October 16, 2020, the determination of RBEE Aggregate Consulting Ltd.'s ("**RBEE**") and Jerry Shankowski's

and 945441 Alberta Ltd.'s (collectively, "**Shankowski**") contested builder's lien claims was adjourned, to November 27, 2020, to allow RBEE and Shankowski additional time to advance any trust claims such parties may have against the approximately $1.85MM held back by the Monitor pursuant to the MD Lien Order (the "**MD Holdback Amount**").

7. Between November 5 and 18,, 2020, six parties filed applications to be heard on November 27, 2020, claiming, among other relief, a trust over the MD Holdback Funds under and pursuant to paragraph 26 of the MD Contract (the "**Trust Claimants**") with such trust claims ("**Trust Claims**") totalling approximately $2.0 to $2.1 million in respect of their Trust Claims plus interest and costs are funds held by JMB in trust for the claimants and awarding costs in favour of the claimants.

8. The purpose of this report is to provide this Honourable Court and the Applicants' stakeholders with information with respect to:

    a. the funds received and disbursed by the Monitor pursuant to the Lien Orders;

    b. a summary of the Applicants' interim statement of cash receipts and disbursements (the "**R&D**") for the period of May 1, 2020 to November 13, 2020; and,

    c. details concerning a contingent claim by the Canada Revenue Agency (the "**CRA**") in respect of certain withholdings associated with a voluntary disclosure made by JMB's predecessor, JMB Crushing Systems ULC ("**JMB ULC**")

TERMS OF REFERENCE

9. In preparing this report, the Monitor has relied upon certain information (the "**Information**") including information provided by JMB concerning the various assets subject to the various transactions and JMB's unaudited financial information, books and records and discussions with senior management and the Chief Restructuring Advisor (collectively, "**Management**").

10. Except as described in this report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.

11. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.

12. Future oriented financial information reported to be relied on in preparing this report is based on Management's assumptions regarding future events. Actual results may vary from forecast and such variations may be material.

13. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

MONITOR'S TRUST ACCOUNT

14. As discussed in the first report of the Monitor, JMB engaged subcontractors (the "**Subcontractors**") to perform certain services in respect of projects owned or managed by the MD and ED (the "**Projects**"). JMB was unable to make payments in full to certain of these Subcontractors for the services they performed. As a result of this non-payment, a number of the Subcontractors filed builders' liens against the Projects.

15. Both MD and ED had advised JMB that they would not pay any amounts owing to JMB until the builders' liens registered against their respective Projects had been discharged.

16. The Lien Orders established the Builders' Lien Protocol to provide for the orderly payment of amounts owing to Subcontractors who had registered valid builders' liens against the Projects and to facilitate the timely collection of the Project accounts receivable in order to provide liquidity to the Applicants.

17. The general terms of the Builders' Lien Protocol are as follows:

    a. MD and ED remitted to the Monitor the full amount owing to JMB in respect of work performed on the Projects;

    b. the Monitor, in consultation with its legal counsel, confirmed the validity and quantum of each lien or lien notice claimed by each claimant; and

    c. where appropriate and in accordance with the terms of the Lien Orders, the Monitor paid to each lien claimant the amount validated by the Monitor in respect of the lien registered by the lien claimant and remit the remainder to the Applicants.

18. Pursuant to the Lien Orders, the Monitor opened a trust account to facilitate payments under the Builders' Lien Protocol. A summary of the transactions in the Monitor's trust account is provided below:

Monitor's Trust Account History by Project
For the period of May 1, 2020 to November 13, 2020
$000's

Description	Date	MD	ED	Balance
Collection of pre-filing accounts receivable from MD	21-May-20	$ 3,564	$ -	$ 3,564
Disbursement to JMB of amounts in excess of MD Holdback	25-May-20	(1,478)	-	2,086
Collection of pre-filing accounts receivable from ED	3-Jun-20	-	1,434	3,521
Disbursement to JMB of amounts in excess of ED Holdback	9-Jun-20	-	(1,020)	2,501
Disbursement to CRA for outstanding source deductions	9-Jun-20	(236)	-	2,265
Collection of pre-filing accounts receivable from ED	24-Jun-20	-	1,012	3,276
Disbursement to JMB of amounts in excess of ED Holdback	8-Jul-20	-	(512)	2,765
Disbursement to JMB of amounts in excess of ED Holdback	20-Aug-20	-	(500)	2,265
Disbursement to valid Lien Claimants	11-Sep-20	-	(208)	2,057
Total		**$ 1,850**	**$ 207**	**$ 2,057**

19. Following the granting of the MD Lien Order, the Monitor collected approximately $3.6 million (the "**MD Lien Funds**") in pre-filing accounts receivable from the MD. Pursuant

to the MD Lien Order, the MD Lien Funds were allocated as follows: (i) approximately $1.5 million was disbursed to JMB and $236,000 was remitted to the Canada Revenue Agency with respect to unremmitted payroll source deductions, in accordance with paragraph 15(a) of the MD Lien Order; and (ii) approximately $1.85 million, as the MD Holdback Amount, was held back in trust as security for any lien claims, in accordance with paragraph 6 of the MD Lien Order.

20. The Monitor collected approximately $2.4 million in pre-filing accounts receivable from ED. Pursuant to the ED Lien Order, approximately $2.0 million was disbursed to JMB, $208,000 was paid to the corresponding lien claimants in respect of valid and enforceable builders' liens and $207,000 remains in trust with the Monitor, pending distribution to JMB.

21. On October 20, 2020, the application scheduled for October 21, 2020 to determine the validity of RBEE's and Shankowski's builder's lien claims was adjourned to November 27, 2020 to allow the Trust Claimants with additional time to prepare their applications to have the holdback amounts under the Builders' Lien Protocol declared trust funds.

INTERIM STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS

22. The Applicants' R&D by week for the period of May 1, 2020 to November 13, 2020 is attached as Appendix "**A**".

23. A summary of the R&D is set out below:

R&D **For the period of May 1, 2020 to November 13, 2020** ***$000's***	
Operating Receipts	
Collection of Pre-Filing AR - Ellis Don	$ 2,032
Collection of Pre-Filing AR - MD of Bonnyville	1,478
Collection of Post Filing AR - MD of Bonnyville	1,566
Post-filing Gravel Sales	49
SISP Proceeds	577
Other Receipts	840
Total Operating Receipts	**6,541**
Operating Disbursements	
Payroll And Source Deductions	(1,416)
Royalties	(408)
Fuel	(207)
Repair & Maintenance	(52)
Office Administration	(40)
Insurance & Benefits	(207)
Jobsite Lodging	(21)
Equipment Loan & Lease Payments	(137)
Occupancy	(236)
Other	(55)
Total Operating Disbursements	**(2,779)**
Non-Operating Receipts & Disbursements	
Interim Financing (Repayment)	(211)
Professional Fees	(1,886)
Total Disbursements	**(4,876)**
Net Cash Flow	1,665
Opening Cash Balance	-
Ending Cash	**$ 1,665**

24. JMB has collected a total of approximately $5.1 million in project accounts receivable, of which approximately $3.5 million was collected pursuant to the Builders' Lien Protocol.

25. During the CCAA Proceedings, the Applicants have used only one bank account and do not maintain a segregated account relating to the MD project accounts receivable. For clarity, the holdback amounts have been retained, separately, by the Monitor in accordance with the Builders' Lien Protocol.

26. As at November 13, 2020, the Applicants' are holding an ending cash balance of approximately $1.7 million.

CRA VOLUNTARY DISCLOSURE AND CONTIGENT CLAIM

27. Pursuant to the Share Purchase Agreement, dated November 21, 2018 (the "**SPA**"), between JMB, as purchaser, Resource Land Fund V, LP ("**RLF**"), as guarantor, JMB ULC, and the Shareholders of JMB ULC (the "**Sellers**") as vendors, JMB purchased certain shares of JMB ULC.

28. During RLF's due diligence leading to the acquisition of the shares of JMB ULC, RLF discovered certain potential tax reporting deficiencies and unresolved potential tax liabilities (the "**Unresolved Tax Liabilities**"). As a result, the purchase price to be paid under the SPA was subject to certain adjustments on account of such Unresolved Tax Liabilities.

29. Pursuant to the SPA and in order to address these Unresolved Tax Liabilities, counsel to the Sellers initiated a voluntary disclosure to the CRA, on or around July 9, 2019 (the "**Voluntary Disclosure**").

30. On November 17, 2020, Counsel to the Sellers first informed the Monitor of: (i) the outstanding adjustment issues under the SPA; and, (ii) the Voluntary Disclosure and corresponding potential CRA claims associated with the Unresolved Tax Liabilities.

31. Following the Monitor becoming aware of the Unresolved Tax Liabilities and the pending Voluntary Disclosure on November 17, 2020, and its subsequent correspondence with counsel to the CRA, the Monitor currently understands that: (i) the CRA has not yet completed its review or analysis associated the Voluntary Disclosure; (ii) the CRA may seek to assert a contingent priority claim in connection with any or all of the Unresolved Tax Liabilities; and, (iii) in the event the CRA has a valid deemed trust claim, in priority to the Applicants' secured creditors, depending on the outcome of the Trust Claims and

the corresponding priority to the MD Holdback Amount there may not be sufficient funds to satisfy the CRA's claim.

*****

All of which is respectfully submitted this 20th day of November, 2020.

FTI Consulting Canada Inc.
in its capacity as Monitor of the Applicants

Deryck Helkaa
Senior Managing Director

Tom Powell
Senior Managing Director

Appendix A

Interim Statement of Receipts and Disbursements
by Week

JMB Crushing Systems Inc.

Cash Flow Summary for the Period May 1 to November 13, 2020

	Actual	*Actual*	*Actual*	*Actual*	*Actual*	*Actual*	*Actual*	*Actual*
Week #	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8
Week Ending	8-May-20	15-May-20	22-May-20	29-May-20	5-Jun-20	12-Jun-20	19-Jun-20	26-Jun-20
Opening Cash	$ -	$ 195,738	$ 15,348	$ 28,124	$ 1,250,180	$ 928,880	$ 578,301	$ 719,359
Cash Receipts								
Collection of Canadian Emergency Wage Subsidy		-	-	-	-	-	353,736	-
Collection of Pre-Filing AR - EllisDon (net of lien payouts)		-	-	-	-	1,019,837	-	-
Collection of Pre-Filing AR - MD of Bonnyville		-	-	1,477,612	-	-	-	-
Collection of Post Filing AR - MD of Bonnyville		-	-	-	-	-	-	-
SISP Proceeds		-	-	-	-	-	-	-
Post-Filing Gravel Sales	-	-	-	-	-	-	-	-
Other Receipts	16,371	195	2,623	8,386	670	-	22,936	-
Total Receipts	16,371	195	2,623	1,485,998	670	1,019,837	376,672	-
Operating Disbursements								
Payroll And Source Deductions	(146,505)	(225,403)	(119,022)	-	(150,713)	(43,099)	(123,095)	(59,968)
Royalties		-	-	(115,744)	(46,959)	(64,734)	(44,246)	(73,403)
Fuel	-	(41,501)	(11,000)	(25,000)	(30,000)	(23,041)	(34,000)	(38,500)
Repair & Maintenance	(13,325)	(1,500)	(4,200)	(800)	(13,050)	(8,392)	(7,089)	(200)
Office Administration	-	(574)	(1,100)	(494)	(2,372)	(2,336)	(299)	(1,930)
Insurance & Benefits	-	(23,811)	(2,657)	-	(22,917)	-	(2,657)	-
Jobsite Lodging	-	(4,994)	-	(2,500)	-	(2,351)	(2,579)	(2,955)
Equipment Loan & Lease Payments	-	-	(4,881)	(62,541)	(9,699)	(6,743)	(939)	(8,856)
Occupancy	(29,353)	-	-	-	(29,630)	(3,218)	(1,180)	(565)
Other	-	-	-	(2,465)	(221)	(2,441)	(2,625)	-
Total Disbursements	(189,183)	(297,783)	(142,860)	(209,544)	(305,561)	(156,355)	(218,709)	(186,377)
Non-Operating Receipts & Disbursements								
DIP Financing (Repayment)	427,032	117,198	153,013	-	-	(908,431)	-	-
Professional Fees	(58,482)	-	-	(54,398)	(16,409)	(305,630)	(16,905)	(244)
Total Disbursements	368,550	117,198	153,013	(54,398)	(16,409)	(1,214,061)	(16,905)	(244)
Net Cash Flow	195,738	(180,390)	12,776	1,222,056	(321,300)	(350,579)	141,058	(186,621)
Ending Cash Balance	$ 195,738	$ 15,348	$ 28,124	$ 1,250,180	$ 928,880	$ 578,301	$ 719,359	$ 532,738

JMB Crushing Systems Inc.

Cash Flow Summary for the Period May 1 to November 13, 2020

	Actual	*Actual*	*Actual*	*Actual*	*Actual*	*Actual*	*Actual*	*Actual*
Week #	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14	Week 15	Week 16
Week Ending	3-Jul-20	10-Jul-20	17-Jul-20	24-Jul-20	31-Jul-20	7-Aug-20	14-Aug-20	21-Aug-20
Opening Cash	$ 532,738	$ 338,172	$ 674,962	$ 797,560	$ 1,073,205	$ 984,830	$ 1,215,403	$ 1,661,418
Cash Receipts								
Collection of Canadian Emergency Wage Subsidy	128,381	-	130,669	-	-	-	-	-
Collection of Pre-Filing AR - EllisDon (net of lien payouts)	-	511,684	-	-	-	-	500,000	-
Collection of Pre-Filing AR - MD of Bonnyville	-	-	-	-	-	-	-	-
Collection of Post Filing AR - MD of Bonnyville	-	-	434,700	295,427	-	311,607	-	524,011
SISP Proceeds	-	-	-	-	-	-	-	-
Post-Filing Gravel Sales	-	-	-	-	-	-	-	-
Other Receipts	-	8,765	25,410	-	27,564	-	19,568	-
Total Receipts	128,381	520,449	590,779	295,427	27,564	311,607	519,568	524,011
Operating Disbursements								
Payroll And Source Deductions	(140,358)	(69,587)	(31,756)	(16,120)	(40,013)	(19,558)	(26,474)	(11,468)
Royalties	(62,541)	-	-	-	-	-	-	-
Fuel	(140)	-	(561)	-	(662)	-	-	-
Repair & Maintenance	-	(360)	-	-	-	-	-	-
Office Administration	(3,598)	(2,232)	(70)	(455)	(4,532)	(864)	(76)	(547)
Insurance & Benefits	(61,772)	(1,822)	-	-	(22,917)	-	-	-
Jobsite Lodging	(1,226)	(1,000)	(1,000)	(1,000)	(1,000)	-	-	-
Equipment Loan & Lease Payments	(674)	(35,805)	-	(1,400)	(674)	(939)	-	(2,338)
Occupancy	(31,256)	(247)	(645)	(520)	(30,063)	(484)	(147)	(147)
Other	(3,099)	(10,204)	-	-	-	(2,625)	-	-
Total Disbursements	(304,664)	(121,257)	(34,032)	(19,495)	(99,861)	(24,470)	(26,697)	(14,500)
Non-Operating Receipts & Disbursements								
DIP Financing (Repayment)	-	-	-	-	-	-	-	-
Professional Fees	(18,283)	(62,402)	(434,149)	(287)	(16,078)	(56,564)	(46,856)	-
Total Disbursements	(18,283)	(62,402)	(434,149)	(287)	(16,078)	(56,564)	(46,856)	-
Net Cash Flow	(194,566)	336,790	122,598	275,645	(88,375)	230,573	446,015	509,511
Ending Cash Balance	$ 338,172	$ 674,962	$ 797,560	$ 1,073,205	$ 984,830	$ 1,215,403	$ 1,661,418	$ 2,170,929

JMB Crushing Systems Inc.

Cash Flow Summary for the Period May 1 to November 13, 2020

	Actual	*Actual*	*Actual*	*Actual*	*Actual*	*Actual*	*Actual*	*Actual*
Week #	Week 17	Week 18	Week 19	Week 20	Week 21	Week 22	Week 23	Week 24
Week Ending	28-Aug-20	4-Sep-20	11-Sep-20	18-Sep-20	25-Sep-20	2-Oct-20	9-Oct-20	16-Oct-20
Opening Cash	$ 2,170,929	$ 2,111,492	$ 2,317,188	$ 2,001,304	$ 2,015,341	$ 1,934,814	$ 1,877,587	$ 1,844,606
Cash Receipts								
Collection of Canadian Emergency Wage Subsidy	29,289	-	-	23,716	-	-	-	14,677
Collection of Pre-Filing AR - EllisDon (net of lien payouts)	-	-	-	-	-	-	-	-
Collection of Pre-Filing AR - MD of Bonnyville	-	-	-	-	-	-	-	-
Collection of Post Filing AR - MD of Bonnyville	-	-	-	-	-	-	-	-
SISP Proceeds	-	250,800	26,400	-	-	-	194,265	105,525
Post-Filing Gravel Sales	-	-	-	-	-	-	-	-
Other Receipts	-	2,494	3,069	3,192	-	-	-	4,486
Total Receipts	29,289	253,294	29,469	26,908	-	-	194,265	124,688
Operating Disbursements								
Payroll And Source Deductions	(25,639)	(11,414)	(29,868)	(11,876)	(20,421)	(7,257)	(21,275)	(7,923)
Royalties	-	-	-	-	-	-	-	-
Fuel	(1,052)	-	(669)	(605)	-	(554)	-	-
Repair & Maintenance	-	-	-	-	-	-	-	(1,100)
Office Administration	(941)	(3,349)	(207)	(243)	(1,110)	(3,138)	(2,710)	(929)
Insurance & Benefits	-	-	(18,804)	-	(44,353)	-	-	-
Jobsite Lodging	-	-	-	-	-	-	-	-
Equipment Loan & Lease Payments	-	-	-	-	(939)	-	-	-
Occupancy	(545)	(30,210)	(17,520)	(147)	(474)	(29,789)	(147)	(147)
Other	-	(2,625)	(9,707)	-	-	(16,489)	-	-
Total Disbursements	(28,177)	(47,598)	(76,775)	(12,871)	(67,297)	(57,227)	(24,132)	(10,099)
Non-Operating Receipts & Disbursements								
DIP Financing (Repayment)	-	-	-	-	-	-	-	-
Professional Fees	(60,549)	-	(268,578)	-	(13,230)	-	(203,114)	(3,859)
Total Disbursements	(60,549)	-	(268,578)	-	(13,230)	-	(203,114)	(3,859)
Net Cash Flow	(59,437)	205,696	(315,884)	14,037	(80,527)	(57,227)	(32,981)	110,730
Ending Cash Balance	$ 2,111,492	$ 2,317,188	$ 2,001,304	$ 2,015,341	$ 1,934,814	$ 1,877,587	$ 1,844,606	$ 1,955,336

JMB Crushing Systems Inc. 11/19/2020

Cash Flow Summary for the Period May 1 to November 13, 2020

	Actual	*Actual*	*Actual*	*Actual*	
Week #	Week 25	Week 26	Week 27	Week 28	Weeks 1 - 28
Week Ending	23-Oct-20	30-Oct-20	6-Nov-20	13-Nov-20	Total
Opening Cash	$ 1,955,336	$ 1,804,462	$ 1,689,078	$ 1,648,886	$ -
Cash Receipts					
Collection of Canadian Emergency Wage Subsidy	-	-	-	-	680,468
Collection of Pre-Filing AR - EllisDon (net of lien payouts)	-	-	-	-	2,031,521
Collection of Pre-Filing AR - MD of Bonnyville	-	-	-	-	1,477,612
Collection of Post Filing AR - MD of Bonnyville	-	-	-	-	1,565,745
SISP Proceeds	-	-	-	-	576,990
Post-Filing Gravel Sales	-	-	-	49,094	49,094
Other Receipts	934	-	160	12,261	159,084
Total Receipts	934	-	160	61,355	6,540,514
Operating Disbursements					
Payroll And Source Deductions	(21,546)	(7,569)	(21,324)	(7,087)	(1,416,338)
Royalties	-	-	-	-	(407,627)
Fuel	-	-	-	-	(207,285)
Repair & Maintenance	(1,900)	-	-	-	(51,916)
Office Administration	(841)	(3,345)	(1,937)	(107)	(40,336)
Insurance & Benefits	-	-	-	(5,000)	(206,710)
Jobsite Lodging	-	-	-	-	(20,605)
Equipment Loan & Lease Payments	(939)	-	-	-	(137,367)
Occupancy	(604)	(28,034)	(315)	(147)	(235,534)
Other	-	(2,625)	-	-	(55,126)
Total Disbursements	(25,830)	(41,573)	(23,576)	(12,341)	(2,778,844)
Non-Operating Receipts & Disbursements					
DIP Financing (Repayment)	-	-	-	-	(211,188)
Professional Fees	(125,978)	(73,811)	(16,776)	(33,075)	(1,885,657)
Total Disbursements	(125,978)	(73,811)	(16,776)	(33,075)	(2,096,845)
Net Cash Flow	(150,874)	(115,384)	(40,192)	15,939	1,664,825
Ending Cash Balance	$ 1,804,462	$ 1,689,078	$ 1,648,886	$ 1,664,825	$ 1,664,825

This is Exhibit "N" referred to in the Affidavit of

Katie Doran

sworn before me this 4th day of December, 2020.

A Commissioner for Oaths in and for the Province of Alberta

Connor E.J. O'Brien
Student-at-Law

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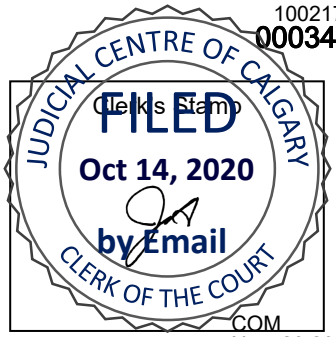

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Nov. 23 2020
Justice Romaine

COURT FILE NUMBER	2001-05482
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. AND 2161889 ALBERTA LTD.
DOCUMENT	**BRIEF OF LAW AND ARGUMENT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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File No.: 207091-532338

**BENCH BRIEF OF FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS THE COURT-APPOINTED
MONITOR OF THE APPLICANTS**

**APPLICATION SEEKING A SALE APPROVAL AND VESTING ORDER
AND A REVERSE VESTING ORDER
TO BE HEARD BY
THE HONOURABLE JUSTICE EIDSVIK**

OCTOBER 16, 2020 at 9:45 a.m.

Contents

I. INTRODUCTION

1. This bench brief of FTI Consulting Canada Inc., in its capacity as the court-appointed monitor (the "**Monitor**") of JMB Crushing Systems Inc. ("**JMB**") and 2161889 Alberta Ltd. ("**216**", JMB and 216 are collectively referred to as, the "**Companies**"), is submitted in support of the remaining relief originally sought pursuant to the Monitor's application, filed on September 30, 2020 (the "**Application**"), and adjourned until October 16, 2020, seeking the: (i) approval of the Amended and Restated Asset Purchase Agreement, dated September 28, 2020 (the "**Mantle APA**"), between the Companies, as vendors, and Mantle Materials Group Ltd. ("**Mantle**"), as purchaser, and the transfer and vesting of the Mantle Assets (as defined below) in Mantle (the "**Mantle SAVO**"); and, (ii) transfer and vesting in 216 of all remaining right, title, and interest of JMB in and to the Remaining JMB Assets and the Remaining JMB Liabilities (each as defined below) (the "**Reverse Vesting Order**"). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Seventh Report of the Monitor, dated September 30, 2020 (the "**Seventh Monitor's Report**").

2. The Mantle APA represents the highest and best offer received as a result of the Companies' court-approved sale and investment solicitation process ("**SISP**"). The Mantle APA contemplates a number of related and ancillary transactions (collectively, the "**Mantle Transactions**"). The Reverse Vesting Order is a critical component of the Mantle Transactions and a condition precedent to the Mantle APA.

3. As in recent proceedings, the Reverse Vesting Order is appropriate in the current circumstances and is necessitated by: (i) the need to preserve the approximately $40 million of paid up capital ("**PUC**") in the Class A Common Shares of JMB**,** which cannot be transferred to Mantle and which is a significant consideration in completing the sale of JMB, as a going concern; (ii) the need to preserve and utilize certain regulatory permits (the "**Designated Permits**") which may not be immediately transferable; and, (iii) the fact that a traditional plan of arrangement and compromise under the CCAA is not viable in the current circumstances, as a result of the following factors: (a) the Companies' severe liquidity constraints; (b) secured creditors who will suffer a significant shortfall are unwilling to fund continued operations; (c) a court-approved SISP which produced only one viable going concern transaction, the Mantle APA; and, (d) that no corresponding claims process will be conducted as the Companies' unsecured creditors are not expected to receive any distribution or recoveries, as both ATB and Fiera (each as defined below) will suffer significant shortfalls.

II. STATEMENT OF FACTS

The SISP

4. The Monitor was appointed as the monitor of the Companies, pursuant to the Initial Order.[1]

5. Prior to the commencement of the SISP, Canadian Aggregate Resources Corp. ("**CARC**"), the primary equity holder of the Companies, declared that it may submit a bid in the process and retained the Companies' legal counsel.[2]

6. In order to manage the potential conflict of interest, the Companies, the Monitor, and Sequeira Partners, in its capacity as sales agent under the SISP (the "**Sales Agent**"), took a number of steps, including, among others: (i) not sharing any information with CARC, Resource Land Fund V LP, RLF Canada Holdings Limited ("**RLF**"), or their legal counsel concerning bids, potential purchasers, or non-binding letters of intent; and, (ii) enhancing the role of the Monitor under and in connection with the SISP, including, *inter alia*, the authorization to (a) direct and manage any sale and investment solicitation process and all bids made therein, (b) assess bids in consultation with the Sales Agent, the Companies, and secured creditors, as appropriate, and, (c) seek approval from the Court for the consummation of any successful bid.[3]

7. In accordance with the terms of the SISP, the Monitor and the Sales Agent marketed the business and assets of the Companies, as detailed in the Seventh Monitor's Report.[4]

8. A summary of the bids received by the Monitor as part of Phase 2 of the SISP is set out in Confidential Appendix "B" to the Seventh Monitor's Report (the "**Confidential Appendix B**").

The Mantle APA and Mantle Transactions

9. Mantle, a RLF subsidiary, put forward the selected Phase 2 bid, which contemplated the acquisition of a large portion of JMB's assets and operations. The Mantle Phase 2 bid was

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[1] First Report of the Monitor, dated May 8, 2020 at para. 2 [**"Monitor's First Report**"]; Amended and Restated CCAA Initial Order, dated May 11, 2020 at para. 23 ["**Initial Order**"].

[2] Second Report of the Monitor, dated July 6, 2020 at para. 12 [**"Monitor's Second Report**"]**.**

[3] Monitor's Second Report, *supra* at para. 13; First Report, *supra* at paras. 31-34; Initial Order, *supra* at para. 24(f); Initial Order, *supra* at Schedule "A" thereto ["**SISP**"], at page 1 and paras. 14, 18, 23-24, 27.

[4] Seventh Report of the Monitor, dated September 30, 2020 at paras. 18(a)-(d), 38 ["**Monitor's Seventh Report**"]. See also, Initial Order, *supra* at para. 24; Monitor's First Report, *supra* at para. 33; Monitor's Second Report, *supra* at paras. 11(d)-(e).

subsequently negotiated and expanded until it ultimately evolved into the Mantle APA and the Mantle Transactions.[5]

10. The Mantle APA provides, among other things, that:

(a) subject to the terms and conditions of the Mantle APA, in consideration of the payment of the purchase price contemplated therein, the Companies will sell, transfer, convey, assign and deliver to Mantle, and Mantle will purchase, acquire, and assume from the Companies, free and clear of all Claims and Liens other than Permitted Encumbrances (each as defined in the Mantle APA), all of the Companies' respective right, title, benefit, estate and interest in and to the "Acquired Assets", as described in the Mantle APA (collectively, the "**Mantle Assets**"); and,

(b) at Closing (as defined in the Mantle APA), in addition to paying the cash portion of the purchase price, Mantle shall assume, and become responsible for, and agree to discharge and perform when due the Assumed Liabilities (as defined below).[6]

11. The Mantle APA is conditional upon the closing of various related transactions and agreements which form part of the Mantle Transactions, including, among others:

(a) the issuance of: (i) the Mantle SAVO; (ii) the Reverse Vesting Order; (iii) the Assignment Order sought by the Companies; (iv) the Sanction Order sought by the Companies; and, (v) an order directing equipment lenders holding valid priority security interests to take possession of their equipment;[7]

(b) certain loan and/or assumption agreements to be entered into between Mantle and: (i) ATB Financial ("**ATB**"), with respect to the assumption by Mantle of certain of JMB's indebtedness to ATB (the "**ATB Liabilities**"); and, (ii) Fiera Private Debt Fund V LP, by its general partner Fiera Private Debt Fund GP Inc. (collectively, "**Fund V**") and Fiera Private Debt Fund VI LP, by its general partner Fiera Private Debt Fund GP Inc. (collectively, "**Fund VI**", Fund V and Fund VI are collectively referred to as, "**Fiera**"), with respect to the assumption by Mantle of certain of

[5] Monitor's Seventh Report, *supra* at paras. 22, 28-30; Fifth Report of the Monitor, dated September 23, 2020 at paras. 11-12.

[6] Monitor's Seventh Report, *supra* at paras. 37(a), (c), (d), (g), and Confidential Appendix "B".

[7] See Monitor's Seventh Report, *supra* at paras. 4(d), 16, 37(f), 37(g)(ii).

JMB's indebtedness to Fiera (the "**Fiera Liabilities**", the ATB Liabilities and the Fiera Liabilities are collectively referred to as, the "**Assumed Liabilities**");[8]

(c) Mantle, ATB and Fiera shall enter into the Cooperation Agreement (as defined in the Mantle APA);

(d) Mantle and JMB shall have filed a plan of arrangement jointly under the CCAA and the *Business Corporations Act* (British Columba) (the "**Plan**"); and,

(e) Mantle must pay JMB the cash portion of the purchase price.[9]

12. The Plan contemplates that the Mantle Transactions shall occur in the following order:

(a) the vesting of the Mantle Assets pursuant to the Mantle SAVO shall become effective simultaneously with: (i) the assumption by Mantle of the Assumed Liabilities; and, (ii) the assignment of the Assigned Agreements pursuant to the Assignment Order and the Mantle SAVO;

(b) ***subsequently***, the Reverse Vesting Order shall become effective; and,

(c) ***subsequently***, the remainder of the relief sought in the Plan shall become effective, including, *inter alia*, the arrangement and compromise of the affected creditor claims as contemplated under the Plan.[10]

13. Due to the sequence in which the various Mantle Transactions are structured to occur, with the Reverse Vesting Order becoming effective prior to the compromise of any claims under the Plan, the only affected creditors (other than the equity holders of JMB), are ATB and Fiera.[11] All other creditors of JMB shall become creditors of 216 prior to such time, by operation of the Reverse Vesting Order, and, as set out below, will have recourse to the same assets and in the same priorities as they had prior to the Reverse Vesting Order taking effect.

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[8] See Monitor's Seventh Report, *supra* at paras. 37(c)(ii)-(iii). Further details are set out in the Mantle APA, a copy of which is attached to the Seventh Monitor's Report as Confidential Appendix "F". See also the Plan of Arrangement, attached as Appendix "A" to the Monitor's Seventh Report, at paras. 1.1(p), 1.1(pp), 4.1(a)-(e) ["**Plan of Arrangement**"].

[9] See Monitor's Seventh Report, *supra* at para. 37(g).

[10] Plan of Arrangement, *supra* at s. 5.1.

[11] Plan of Arrangement, *supra* at ss. 2.2, 2.3, 5.1.

14. The Companies' senior secured creditors, ATB and Fiera, being those creditors intended to be affected by the Plan, support the approval of the Mantle APA, the Plan, the Reverse Vesting Order, and the Mantle Transactions.[12]

The Reverse Vesting Order Component of the Mantle Transactions

15. The Mantle Transactions contemplate that Mantle may amalgamate with JMB, pursuant to the Plan, so as to allow Mantle to take the: (i) the tax benefits associated with the PUC; and, (ii) the benefit of the Designated Permits which cannot be transferred to Mantle and remain held by JMB, as bare trustee for and on behalf of Mantle.[13] To give effect to this, the Remaining JMB Assets and the Remaining JMB Liabilities (both as defined below) must be transferred out of JMB prior to the implementation of the Plan.[14]

16. As a result, the Monitor's proposed form of Reverse Vesting Order contemplates that: (a) all liabilities of JMB, other than those assumed by Mantle pursuant to the Mantle APA (the "**Remaining JMB Liabilities**") shall be transferred to and assumed by 216; and, (b) all (i) proceeds of the Fiera Disposed Equipment (as defined in the Mantle APA), (ii) proceeds derived by JMB under the Mantle APA, and (iii) Excluded Assets (as defined in the Mantle APA), other than (A) the Fiera Disposed Equipment, (B) the Eastside Equipment (as defined and set out in Schedule "A" to the proposed form of Reverse Vesting Order), and (C) the Edmonton Lease (as defined in the Mantle APA) (collectively, the "**Remaining JMB Assets**"), shall be transferred to 216, subject to appropriate trust conditions. In short, the Remaining JMB Liabilities and Remaining JMB Assets will be transferred to 216 in a "siloed" approach to preserve the priority of all claims and assets available to satisfy same.[15]

III. ISSUE

17. The primary issue for this Honourable Court to determine on the within Application is whether the Mantle SAVO and the Reverse Vesting Order should be approved.

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[12] Monitor's Seventh Report, *supra* at para. 38(e), 54, 56(c).

[13] Monitor's Seventh Report, *supra* at para. 48(e); Plan of Arrangement, *supra* at paras. 1.1(ii), 1.1(aaaa), 4.2, 5.3, 6.2(g).

[14] Monitor's Seventh Report, *supra* at paras. 43-44.

[15] Monitor's Seventh Report, *supra* at paras. 44-45.

IV. LAW

A. Approval of Asset Sales

18. Section 36 of the CCAA states that this Court may authorize a debtor company to sell assets outside the ordinary course of business, with reference to the factors under sections 36(3) and 36(4), which state:

> **Factors to be considered**
>
> (3) In deciding whether to grant the authorization, the court is to consider, among other things,
>
> (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
>
> (b) whether the monitor approved the process leading to the proposed sale or disposition;
>
> (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
>
> (d) the extent to which the creditors were consulted;
>
> (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
>
> (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.
>
> **Additional factors — related persons**
>
> (4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that
>
> (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
>
> (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

B. Reverse Vesting Orders

19. Section 11 of the CCAA permits a Court to make any order that is appropriate in the circumstances, and has been expressly referred to, in conjunction with section 36 of the CCAA,

by Courts in recent proceedings when granting reverse vesting orders. Specifically, section 11 states:

> **General power of court**
>
> 11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

V. ARGUMENT

A. The Mantle APA is Appropriate in the Circumstances

20. The approval of the Mantle APA is appropriate in the circumstances and is in the best interests of the Companies' estate and stakeholders. The Mantle APA contemplates the sale of, among other things, the portion of JMB's operating business which is associated with the Mantle Assets. Specifically, the Mantle APA and the related Mantle Transactions, are intended to allow JMB's acquired business to continue as a going concern.[16]

21. Pursuant to section 36 of the CCAA, this Court has the authority to approve the sale of substantially all of a debtor company's assets, including where there is no plan of arrangement.[17] In addition to the factors set out under sections 36(3) and 36(4) of the CCAA, Courts will typically also examine those set out in *Royal Bank v. Soundair Corp.* ("***Soundair***").[18]

22. In accordance with the factors set out under section 36(3) of the CCAA and *Soundair*, the Mantle SAVO is appropriate in the circumstances, as:

(a) the Mantle Assets being conveyed pursuant to the Mantle APA were sufficiently exposed to the relevant market in a commercially reasonable and fair marketing process, in accordance with the terms of the SISP and the Initial Order, as:

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[16] Monitor's Seventh Report, *supra* at paras. 46, 57.

[17] *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 at s. 36(1) [***CCAA***] **(TAB 3)**; see *Re Komtech Inc.*, 2011 ONSC 3230 at paras. 26-29 **(TAB 4)** and *Re Brainhunter Inc*, 2009 CanLII 67659 at paras. 8, 13-14 **(TAB 5)**.

[18] *Royal Bank v. Soundair Corp.*, (1991) 83 D.L.R. (4th) at para. 16 **(TAB 1)**. The *Soundair* test being: (1) whether sufficient effort has been made to obtain the best price and that the receiver or debtor (as applicable) has not acted improvidently; (2) whether the interests of all parties have been considered; (3) the efficacy and integrity of the process by which offers have been obtained; and, (4) whether there has been unfairness in the working out of the process.

(i) the Mantle APA arose from a comprehensive two-step, court-approved SISP, which involved, among other things: (i) broadly canvassing the market; (ii) widely publishing the details of the SISP and marketing the Mantle Assets to strategic, financial, and other potential bidders; (iii) soliciting eight Phase 1 bids, seven of which were invited to participate in Phase 2; and (iv) obtaining four binding Phase 2 bids;[19] and,

(ii) upon reviewing the Phase 2 bids, a summary of which is set out in Confidential Appendix B, the Mantle APA was selected as the highest and best bid received as a result of the court-approved SISP, which was supervised by the Monitor and the Sales Agent;[20]

(b) the Monitor and the Court approved the SISP process leading to the proposed sale;[21]

(c) the Monitor has stated that the Mantle APA would be more beneficial to the Companies' creditors than a sale or disposition under a bankruptcy;[22]

(d) the Companies' creditors were extensively consulted. Specifically, during the SISP and the negotiation of the Mantle APA, related agreements, and the Mantle Transactions, the affected secured creditors were directly consulted and involved;[23]

(e) the Monitor is of the view that the Mantle APA represents the best available outcome for all stakeholders;[24]

(f) the price to be paid for the Mantle Assets, pursuant to the Mantle APA, represents the highest and best price that can be obtained for the Mantle Assets in the current circumstances and is reasonable and fair, taking into account their market value,[25]

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[19] Monitor's Seventh Report, *supra* at paras. 18(a)-(d); Monitor's Second Report, *supra* at paras. 11(d)-(e).

[20] Monitor's Seventh Report, *supra* at para. 38(d) and Confidential Appendix "B".

[21] Monitor's Seventh Report, *supra* at para. 38(a)-(b); Monitor's First Report, *supra* at paras. 34, 36, 51.

[22] Monitor's Seventh Report, *supra* at para. 38(h).

[23] See *e.g.* Monitor's First Report, *supra* at paras. 30, 34(b); Monitor's Seventh Report, *supra* at para. 20; Fourth Report of the Monitor, dated August 25, 2020 at paras. 13(e), 15, 17 [**"Monitor's Fourth Report"]**.

[24] Monitor's Seventh Report, *supra* at paras. 38(d)-(i).

[25] Monitor's Seventh Report, *supra* at para. 38(d).

as demonstrated by the summary of all bids received, as set out as Confidential Appendix B;

(g) the interests of the affected parties has been considered and the Mantle APA is supported by both ATB and Fiera,[26] the only creditors which have an economic interest in the Mantle Transactions; both of which will suffer a significant shortfall as a result of same.[27] While the creditors of the Remaining JMB Liabilities will not recover any outstanding amounts owing to them, there is no reasonable prospect of any alternative solution that would provide a recovery for such creditors;

(h) the efficacy and integrity of the SISP has been preserved; and,

(i) there is no unfairness in the working out of the court-approved SISP. The Monitor and Sales Agent undertook substantial efforts to obtain the best value and avoid any conflict of interest which might arise.

23. As the purchaser is a "related party", the factors set out under section 36(4) of the CCAA are also applicable and have been met in the circumstances, as:

(a) the Mantle APA is the result of the SISP, as approved by this Honourable Court, and the marketing efforts undertaken by the Monitor and the Sales Agent were extensive;[28] and,

(b) the Monitor has confirmed that the Mantle APA is the highest and best offer for the Mantle Assets, pursuant to the SISP[29] and there is no other transaction available to the Companies in the circumstances, as no other Phase 2 bid was received which would: (A) provide for a higher total consideration for the Mantle Assets; or, (B) permit a going concern sale of JMB's business.

B. The Reverse Vesting Order is Appropriate in the Circumstances

(a) Use and Effect of a Reverse Vesting Order

[26] Monitor's Seventh Report, *supra* at para. 38(e).

[27] Monitor's Seventh Report, *supra*, *supra* at paras. 49, 54.

[28] Monitor's Seventh Report, *supra* at para. 18; Monitor's Second Report, *supra* at paras. 11(d), 11(e); Monitor's First Report, *supra* at para. 33.

[29] Monitor's Seventh Report, *supra* at para. 38(d).

24. In recent CCAA proceedings, where it was not practical to compromise amounts owed to creditors through a traditional plan of compromise and arrangement, but it was critical to the viability of a transaction to "cleanse" the debtor company, such that a prospective purchaser may: (i) utilize non-transferrable regulatory licences (by way of amalgamation or the purchase of the shares of the debtor company); or, (ii) make use of tax attributes of the debtor company, such as PUC, Courts have recently approved and utilized reverse vesting orders to achieve such objectives.

25. The purpose of a reverse vesting order is to transfer and vest all of the assets and liabilities of a debtor company, which are not subject to a sale, to another company within the same CCAA proceedings. The cleansed debtor company is then able to: (i) be utilized by a purchaser as a go-forward vehicle, without any concern regarding creditors and obligations that may otherwise be "laying in the weeds"; and, (ii) allow the purchaser to make use of the debtor company's tax attributes and non-transferable regulatory licences. This approach is necessary in situations where the parties would otherwise be unable to preserve the value of significant assets that are subject to restraints on alienation and to provide a corresponding realizable benefit for creditors and stakeholders.

(b) Authority to Grant a Reverse Vesting Order

26. Courts have recently held that the jurisdiction to grant reverse vesting orders exists under sections 11 and 36 of the CCAA.

27. Pursuant to section 11 of the CCAA, this Honourable Court has the jurisdiction to make any order that it considers appropriate in the circumstances, provided that it meets the following requirements identified by the Supreme Court of Canada in *9354-9186 Quebec Inc. v Callidus Capital Corp.*:

> "The anchor of this discretionary authority is s. 11, which empowers a judge "to make any order that [the judge] considers appropriate in the circumstances". **[…]** The discretionary authority conferred by the CCAA, while broad in nature, is not boundless. This authority must be exercised in furtherance of the remedial objectives of the CCAA, which we have explained above. ***Additionally, the court must keep in mind three "baseline considerations", which the applicant bears the burden of demonstrating: (1) that the order sought is appropriate***

in the circumstances, and (2) that the applicant has been acting in good faith and (3) with due diligence."[30] [citations and footnotes omitted].

28. Courts have recently approved reverse vesting orders in the following circumstances:

(a) in *Plasco*, the Ontario Superior Court of Justice approved the transfer of substantially all of the debtor company's assets into an acquisition corporation, and its liabilities into a "newco", by way of a settlement agreement. The reverse vesting was approved pursuant to section 11 of the CCAA, on the basis that the transaction furthered "the purposes of the CCAA... an orderly wind-up of the applicants' business and a maximization of recoveries for creditors and other stakeholders.";[31]

(b) in *Stornoway*, the Superior Court of Québec authorized a sale of the debtors' principal assets through a share purchase agreement where unsold assets and liabilities were transferred to a newly incorporated entity. The reverse vesting was approved pursuant to the Court's authority under section 36 of the CCAA;[32]

(c) in *Wayland*, the Ontario Superior Court of Justice approved the sale of substantially all of a debtor company's assets via a share purchase agreement where unsold assets and liabilities were transferred to a newly incorporated subsidiary. The reverse vesting was approved pursuant to the Court's authority under section 36 of the CCAA;[33] and,

(d) in *Beleave*, the Ontario Superior Court of Justice approved the sale of a debtor company's business, partly by asset purchase and partly by sale purchase, where excluded assets and liabilities were transferred to a newly incorporated subsidiary. The reverse vesting was approved pursuant to the Court's authority under section 36 of the CCAA and the test set out in *Soundair*.[34]

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[30] *9354-9186 Quebec Inc. v Callidus Capital Corp.*, 2020 SCC 10 at paras. 48-49 **(TAB 2)**.

[31] Further Endorsement of Justice Wilton-Siegel, in the matter of *Plasco Energy et al.,* dated July 17, 2015, Toronto, Court File No. CV-15-10869-00C (ONSC [Comm. List]) ["***Plasco* Endorsement**"] **(TAB 6)**.

[32] Approval and Vesting Order, issued October 07, 2019, in the matter of *Stornoway Diamonds Inc et al*., District of Montreal, Court File No: 500-11-057094-191 (QCSC [Comm. Div.]) at paras. 26, 34 **(TAB 7)**.

[33] Approval and Vesting Order, issued April 21, 2020, in the matter of *Wayland Group Corp. et al*., Ontario Superior Court of Justice, Court File No: CV-19-00632079-00CL (ONSC [Comm. List]) **(TAB 8)**; Endorsement of Justice Hainey, dated April 21, 2020, in the matter of *Wayland Group Corp. et al*., Ontario Superior Court of Justice, Court File No: CV-19-00632079-00CL (ONSC [Comm. List]) **(TAB 9)**.

[34] Endorsement of Justice Conway, dated September 18, 2020, in the matter of *Beleave Inc. et al.*, Ontario Superior Court of Justice, CV-20-00642097-00CL (ONSC [Comm. List]) [***Beleave* Endorsement**] **(TAB 10)**; see also,

29. The endorsement of Justice Wilton-Siegel in *Plasco* states:

> The Global Settlement contemplates implementation of a corporate reorganization by which the shares of Plasco will be transferred to an acquisition corporation owned by [the purchasers] and ***the remaining assets of the applicants will be held by a new corporation, referred to as "New Plasco", which will assume all of the liabilities and obligations of Plasco. I am satisfied that the Court has authority under section 11 of the CCAA to authorize such transactions*** notwithstanding that the applicants are not proceeding under s. 6(2) of the CCAA insofar as it is not contemplated that the applicants will propose a plan of arrangement or compromise.[35]

(c) The Reverse Vesting Order is Appropriate in the Current Circumstances

30. The Reverse Vesting Order is appropriate in the current circumstances.

31. Where a reverse vesting order was to be granted in connection with an agreement of purchase and sale, in addition to the *Soundair* factors and section 36 of the CCAA,[36] the Court in *Plasco* considered the following factors:

> The settlement ***advances the CCAA proceedings insofar as it provides for disposition of the assets*** loaned by these parties to the applicant and thereby for the decommissioning of the demonstration facility [in] a cost effective way through the Maynards transaction. As such, the Global Settlement ***satisfies the requirements of fairness and reasonableness and is consistent with the purpose of the CCAA***. **[…]** For this purpose, I consider that the Global Settlement is analogous to a plan in the context of these particular proceedings.[37]

32. In *Beleave*, Justice Conway referred to the following factors in approving a sale transaction and associated reverse vesting order:

> The order is structured as a reverse vesting order, in which excluded liabilities and assets will be transferred to "Residualco", which will then become one of the Applicants in the CCAA proceeding. Reverse vesting orders have been approved by the courts in other cases: see *Re Stornaway Diamond Corporation et al*, **[…]** and *Re Wayland Group Corp. et al*, **[…]**. ***The transaction is the culmination of a stalking horse sales process approved by the court***. The motion is unopposed. The Monitor recommends and supports the transaction in its Fourth Report. In particular, the Monitor states that ***the proposed transaction is economically superior to the estimated liquidation value of the Beleave Group's assets and operations, will allow the Purchaser to maintain***

Approval and Vesting Order, issued September 18, 2020, in the matter of *Beleave Inc. et al.*, Ontario Superior Court of Justice, CV-20-00642097-00CL (ONSC [Comm. List]) at paras. 5(a), 5(c), 14(c)-(d) **(TAB 11)**.

[35] *Plasco* Endorsement, *supra* at p. 3 (unnumbered para. 5) **(TAB 6)**.

[36] *Plasco* Endorsement, *supra* at pp. 1-2 (unnumbered para. 2) **(TAB 6)**.

[37] *Plasco* Endorsement, *supra* at pp. 2-3 (unnumbered para. 4) and pp. 3-4 (unnumbered para. 5) **(TAB 6)**.

> ***operations and use of the Cannabis licenses and will provide for continued employment for a majority of the existing employees***. In my view, ***the transaction satisfies both s. 36(3) of the CCAA and the Soundair test and should be approved***.[38]

33. The circumstances facing the debtors in *Plasco*, *Stornoway*, *Wayland*, and *Beleave* resemble those facing the Companies. In each case, the debtors/Companies: (i) conducted a SISP process that generated only a single viable transaction; (ii) faced significant funding challenges requiring an expeditious and cost-effective transaction; and, (iii) the transaction at issue represented the best option by which to generate value for creditors and stakeholders, who would otherwise have faced an even greater shortfall in a liquidation.

34. Furthermore, similar to in *Wayland*: (i) a traditional plan of arrangement and compromise is not possible in the circumstances, as there is no value for unsecured creditors; and, (ii) a reverse vesting order is necessary to preserve and utilize non-transferrable assets (*i.e.* cannabis licenses in *Wayland* and *Beleave*, and the Designated Permits in these proceedings)[39] and tax benefits, such as the PUC, which are "critical to the viability of the transaction".[40]

35. In the event the Mantle SAVO is approved and the transactions contemplated thereunder closed, the Reverse Vesting Order will not further prejudice any of the Companies' creditors. As there is no Newco in the within proceedings, the proposed form of the Reverse Vesting Order provides for a "siloed" approach to the transferring of the Remaining Assets and Remaining Liabilities, to ensure that the Companies' creditors' claims, the priority thereof, and the assets available to satisfy same, will all remain the same before and after implementation of the Reverse Vesting Order. Specifically, existing creditors of JMB shall have no recourse against the assets, which were held by 216 prior to the Reverse Vesting Order becoming effective and *vice versa*.[41]

(d) The Reverse Vesting Order is in the Best Interests of the Companies' Stakeholders

36. The Reverse Vesting Order is in the best interests of the Companies' stakeholders and is appropriate in the circumstances. Specifically, the transfer of the Remaining JMB Assets and Remaining JMB Liabilities pursuant to the Reverse Vesting Order meets the requisite criteria as:

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[38] *Beleave* Endorsement, *supra* **(TAB 10)**.

[39] *Beleave* Endorsement, *supra* **(TAB 10)**; Monitor's Seventh Report, *supra* at paras. 30(b), 43.

[40] Monitor's Seventh Report, *supra* at para. 43.

[41] Monitor's Seventh Report, *supra* at paras. 44-45.

(i) it advances the within CCAA Proceedings; (ii) furthers the remedial purpose of the CCAA – by permitting the going concern sale of JMB; (iii) is the result of a Court approved sales process, in which the Mantle APA was the only viable transactions which would see the continuation of JMB's operations; (iv) is a necessary part of the Mantle APA; (v) is reasonable and fair in the circumstances, as it is structured in a "siloed" approach to preserve creditors' priorities and claims and avoid any corresponding prejudice as a result of same; and, (iv) is in the best interests of stakeholders and creditors. Without the Reverse Vesting Order the Mantle Transactions cannot be completed, to the ultimate detriment of all of the Companies' stakeholders, as there is no reasonable alternative.

RELIEF REQUESTED

37. The Monitor respectfully requests that this Honourable Court grant the Mantle SAVO and the Reverse Vesting Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of October, 2020

McCarthy Tétrault LLP

Per: *"McCarthy Tétrault LLP"*
Sean F. Collins / Pantelis Kyriakakis / Nathan Stewart
Counsel for FTI Consulting Canada Inc., in its capacity as the court-appointed monitor of JMB Crushing Systems Inc. and 2161889 Alberta Ltd., and not in its personal or corporate capacity

LIST OF AUTHORITIES

1. *Royal Bank v. Soundair Corp.*, (1991) 83 D.L.R. (4th);

2. *9354-9186 Quebec Inc. v Callidus Capital Corp.*, 2020 SCC 10.

3. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36;

4. *Re Komtech Inc.*, 2011 ONSC 3230;

5. *Re Brainhunter Inc.*, 2009 CanLII 67659;

6. Further Endorsement of Justice Wilton-Siegel, in the matter of *Plasco Energy et al.,* dated July 17, 2015, Toronto, Court File No. CV-15-10869-00C (ONSC [Comm. List]);

7. Approval and Vesting Order, issued October 07, 2019, at paras. 26, 34, in the matter of *Stornoway Diamonds Inc. et al*., District of Montreal, Court File No: 500-11-057094-191 (QCSC [Comm. Div.]);

8. Approval and Vesting Order, issued April 21, 2020, in the matter of *Wayland Group Corp. et al*., Ontario Superior Court of Justice, Court File No: CV-19-00632079-00CL (ONSC [Comm. List]);

9. Endorsement of Justice Hainey, dated April 21, 2020, in the matter of *Wayland Group Corp. et al*., Ontario Superior Court of Justice, Court File No: CV-19-00632079-00CL (ONSC [Comm. List]);

10. Endorsement of Justice Conway, dated September 18, 2020, in the matter of *Beleave Inc. et al.*, Ontario Superior Court of Justice, CV-20-00642097-00CL (ONSC [Comm. List]);

11. Approval and Vesting Order, issued September 18, 2020, in the matter of *Beleave Inc. et al.*, Ontario Superior Court of Justice, CV-20-00642097-00CL (ONSC [Comm. List]).

TAB 1

Royal Bank of Canada v. Soundair Corp., Canadian Pension Capital Ltd. and Canadian Insurers Capital Corp.

Indexed as: Royal Bank of Canada v. Soundair Corp. (C.A.)

4 O.R. (3d) 1
[1991] O.J. No. 1137
Action No. 318/91

ONTARIO
Court of Appeal for Ontario
Goodman, McKinlay and Galligan JJ.A.
July 3, 1991

Debtor and creditor -- Receivers -- Court-appointed receiver accepting offer to purchase assets against wishes of secured creditors -- Receiver acting properly and prudently -- Wishes of creditors not determinative -- Court approval of sale confirmed on appeal.

Air Toronto was a division of Soundair. In April 1990, one of Soundair's creditors, the Royal Bank, appointed a receiver to operate Air Toronto and sell it as a going concern. The receiver was authorized to sell Air Toronto to Air Canada, or, if that sale could not be completed, to negotiate and sell Air Toronto to another person. Air Canada made an offer which the receiver rejected. The receiver then entered into negotiations with Canadian Airlines International (Canadian); two subsidiaries of Canadian, Ontario Express Ltd. and Frontier Airlines Ltd., made an offer to purchase on March 6, 1991 (the OEL offer). Air Canada and a creditor of Soundair, CCFL, presented an offer to purchase to the receiver on March 7, 1991 through 922, a company formed for that purpose (the 922 offer). The receiver declined the 922 offer because it contained an unacceptable condition and accepted the OEL offer. 922 made a

IN AGREEING TO SELL TO OEL?

Before dealing with that issue there are three general observations which I think I should make. The first is that the sale of an airline as a going concern is a very complex process. The best method of selling an airline at the best price is something far removed from the expertise of a court. When a court appoints a receiver to use its commercial expertise to sell an airline, it is inescapable that it intends to rely upon the receiver's expertise and not upon its own. Therefore, the court must place a great deal of confidence in the actions taken and in the opinions formed by the receiver. It should also assume that the receiver is acting properly unless the contrary is clearly shown. The second observation is that the court should be reluctant to second-guess, with the benefit of hindsight, the considered business decisions made by its receiver. The third observation which I wish to make is that the conduct of the receiver should be reviewed in the light of the specific mandate given to him by the court.

The order of O'Brien J. provided that if the receiver could not complete the sale to Air Canada that it was "to negotiate and sell Air Toronto to another person". The court did not say how the receiver was to negotiate the sale. It did not say it was to call for bids or conduct an auction. It told the receiver to negotiate and sell. It obviously intended, because of the unusual nature of the asset being sold, to leave the method of sale substantially in the discretion of the receiver. I think, therefore, that the court should not review minutely the process of the sale when, broadly speaking, it appears to the court to be a just process.

As did Rosenberg J., I adopt as correct the statement made by Anderson J. in Crown Trust Co. v. Rosenberg (1986), 60 O.R. (2d) 87, 39 D.L.R. (4th) 526 (H.C.J.), at pp. 92-94 O.R., pp. 531-33 D.L.R., of the duties which a court must perform when deciding whether a receiver who has sold a property acted properly. When he set out the court's duties, he did not put them in any order of priority, nor do I. I summarize those duties as follows:

1. It should consider whether the receiver has made a sufficient effort to get the best price and has not acted improvidently.

2. It should consider the interests of all parties.

3. It should consider the efficacy and integrity of the process by which offers are obtained.

4. It should consider whether there has been unfairness in the working out of the process.

I intend to discuss the performance of those duties separately.

1. Did the receiver make a sufficient effort to get the best price and did it act providently?

Having regard to the fact that it was highly unlikely that a commercially viable sale could be made to anyone but the two national airlines, or to someone supported by either of them, it is my view that the receiver acted wisely and reasonably when it negotiated only with Air Canada and Canadian Airlines International. Furthermore, when Air Canada said that it would submit no further offers and gave the impression that it would not participate further in the receiver's efforts to sell, the only course reasonably open to the receiver was to negotiate with Canadian Airlines International. Realistically, there was nowhere else to go but to Canadian Airlines International. In doing so, it is my opinion that the receiver made sufficient efforts to sell the airline.

When the receiver got the OEL offer on March 6, 1991, it was over ten months since it had been charged with the responsibility of selling Air Toronto. Until then, the receiver had not received one offer which it thought was acceptable. After substantial efforts to sell the airline over that period, I find it difficult to think that the receiver acted improvidently in accepting the only acceptable offer which it had.

TAB 2

SUPREME COURT OF CANADA

CITATION: 9354-9186 Québec inc. *v.* Callidus Capital Corp., 2020 SCC 10

APPEALS HEARD AND JUDGMENT RENDERED: January 23, 2020
REASONS FOR JUDGMENT: May 8, 2020
DOCKET: 38594

BETWEEN:

9354-9186 Québec inc. and 9354-9178 Québec inc.
Appellants

and

Callidus Capital Corporation, International Game Technology, Deloitte LLP, Luc Carignan, François Vigneault, Philippe Millette, Francis Proulx and François Pelletier
Respondents

- and -

Ernst & Young Inc., IMF Bentham Limited (now known as Omni Bridgeway Limited), Bentham IMF Capital Limited (now known as Omni Bridgeway Capital (Canada) Limited), Insolvency Institute of Canada and Canadian Association of Insolvency and Restructuring Professionals
Interveners

AND BETWEEN:

IMF Bentham Limited (now known as Omni Bridgeway Limited) and Bentham IMF Capital Limited (now known as Omni Bridgeway Capital (Canada) Limited)
Appellants

and

Callidus Capital Corporation, International Game Technology, Deloitte LLP, Luc Carignan, François Vigneault, Philippe Millette, Francis Proulx and François Pelletier

Respondents

- and -

**Ernst & Young Inc., 9354-9186 Québec inc., 9354-9178 Québec inc.,
Insolvency Institute of Canada and
Canadian Association of Insolvency and Restructuring Professionals**
Interveners

CORAM: Wagner C.J. and Abella, Moldaver, Karakatsanis, Côté, Rowe and Kasirer JJ.

JOINT REASONS FOR JUDGMENT: (paras. 1 to 117)	Wagner C.J. and Moldaver J. (Abella, Karakatsanis, Côté, Rowe and Kasirer JJ. concurring)

9354-9186 Québec inc. and
9354-9178 Québec inc. *Appellants*

v.

Callidus Capital Corporation,
International Game Technology,
Deloitte LLP, Luc Carignan,
François Vigneault, Philippe Millette,
Francis Proulx and François Pelletier *Respondents*

and

Ernst & Young Inc.,
IMF Bentham Limited (now known as Omni Bridgeway Limited),
Bentham IMF Capital Limited (now known as Omni Bridgeway Capital (Canada) Limited), Insolvency Institute of Canada and
Canadian Association of Insolvency and Restructuring Professionals *Interveners*

- and -

IMF Bentham Limited (now known as Omni Bridgeway Limited) and
Bentham IMF Capital Limited (now known as Omni Bridgeway Capital (Canada) Limited) *Appellants*

v.

Callidus Capital Corporation,

International Game Technology,
Deloitte LLP, Luc Carignan,
François Vigneault, Philippe Millette,
Francis Proulx and François Pelletier *Respondents*

and

Ernst & Young Inc.,
9354-9186 Québec inc.,
9354-9178 Québec inc., Insolvency Institute of Canada and
Canadian Association of Insolvency and Restructuring Professionals *Interveners*

Indexed as: 9354-9186 Québec inc. *v.* Callidus Capital Corp.

2020 SCC 10

File No.: 38594.

Hearing and judgment: January 23, 2020.
Reasons delivered: May 8, 2020.

Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Côté, Rowe and Kasirer JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Bankruptcy and insolvency — Discretionary authority of supervising judge in proceedings under Companies' Creditors Arrangement Act — Appellate review of decisions of supervising judge — Whether supervising judge has discretion

to bar creditor from voting on plan of arrangement where creditor is acting for improper purpose □ Whether supervising judge can approve third party litigation funding as interim financing □ Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, ss. 11, 11.2.

The debtor companies filed a petition for the issuance of an initial order under the *Companies' Creditors Arrangement Act* ("*CCAA*") in November 2015. The petition succeeded, and the initial order was issued by a supervising judge, who became responsible for overseeing the proceedings. Since then, substantially all of the assets of the debtor companies have been liquidated, with the notable exception of retained claims for damages against the companies' only secured creditor. In September 2017, the secured creditor proposed a plan of arrangement, which later failed to receive sufficient creditor support. In February 2018, the secured creditor proposed another, virtually identical, plan of arrangement. It also sought the supervising judge's permission to vote on this new plan in the same class as the debtor companies' unsecured creditors, on the basis that its security was worth nil. Around the same time, the debtor companies sought interim financing in the form of a proposed third party litigation funding agreement, which would permit them to pursue litigation of the retained claims. They also sought the approval of a related super-priority litigation financing charge.

The supervising judge determined that the secured creditor should not be permitted to vote on the new plan because it was acting with an improper purpose. As

with residual assets, the objective of maximizing creditor recovery from those assets may take centre stage. As we will explain, the architecture of the *CCAA* leaves the case-specific assessment and balancing of these remedial objectives to the supervising judge.

(2) The Role of a Supervising Judge in *CCAA* Proceedings

[47] One of the principal means through which the *CCAA* achieves its objectives is by carving out a unique supervisory role for judges (see Sarra, *Rescue! The Companies' Creditors Arrangement Act*, at pp. 18-19). From beginning to end, each *CCAA* proceeding is overseen by a single supervising judge. The supervising judge acquires extensive knowledge and insight into the stakeholder dynamics and the business realities of the proceedings from their ongoing dealings with the parties.

[48] The *CCAA* capitalizes on this positional advantage by supplying supervising judges with broad discretion to make a variety of orders that respond to the circumstances of each case and "meet contemporary business and social needs" (*Century Services*, at para. 58) in "real-time" (para. 58, citing R. B. Jones, "The Evolution of Canadian Restructuring: Challenges for the Rule of Law", in J. P. Sarra, ed., *Annual Review of Insolvency Law 2005* (2006), 481, at p. 484). The anchor of this discretionary authority is s. 11, which empowers a judge "to make any order that [the judge] considers appropriate in the circumstances". This section has been described as "the engine" driving the statutory scheme (*Stelco Inc. (Re)* (2005), 253 D.L.R. (4th) 109 (Ont. C.A.), at para. 36).

[49] The discretionary authority conferred by the *CCAA*, while broad in nature, is not boundless. This authority must be exercised in furtherance of the remedial objectives of the *CCAA*, which we have explained above (see *Century Services*, at para. 59). Additionally, the court must keep in mind three "baseline considerations" (at para. 70), which the applicant bears the burden of demonstrating: (1) that the order sought is appropriate in the circumstances, and (2) that the applicant has been acting in good faith and (3) with due diligence (para. 69).

[50] The first two considerations of appropriateness and good faith are widely understood in the *CCAA* context. Appropriateness "is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*" (para. 70). Further, the well-established requirement that parties must act in good faith in insolvency proceedings has recently been made express in s. 18.6 of the *CCAA*, which provides:

> **Good faith**
>
> **18.6 (1)** Any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings.
>
> **Good faith — powers of court**
>
> **(2)** If the court is satisfied that an interested person fails to act in good faith, on application by an interested person, the court may make any order that it considers appropriate in the circumstances.
>
> (See also *BIA*, s. 4.2; *Budget Implementation Act, 2019, No. 1*, S.C. 2019, c. 29, ss. 133 and 140.)

[51] The third consideration of due diligence requires some elaboration. Consistent with the *CCAA* regime generally, the due diligence consideration

TAB 3

CANADA

CONSOLIDATION

CODIFICATION

Companies' Creditors Arrangement Act

Loi sur les arrangements avec les créanciers des compagnies

R.S.C., 1985, c. C-36

L.R.C. (1985), ch. C-36

Current to September 22, 2020

Last amended on November 1, 2019

À jour au 22 septembre 2020

Dernière modification le 1 novembre 2019

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OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité — lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

NOTE

This consolidation is current to September 22, 2020. The last amendments came into force on November 1, 2019. Any amendments that were not in force as of September 22, 2020 are set out at the end of this document under the heading "Amendments Not in Force".

NOTE

Cette codification est à jour au 22 septembre 2020. Les dernières modifications sont entrées en vigueur le 1 novembre 2019. Toutes modifications qui n'étaient pas en vigueur au 22 septembre 2020 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

available to any person specified in the order on any terms or conditions that the court considers appropriate.

R.S., 1985, c. C-36, s. 10; 2005, c. 47, s. 127.

peut être communiqué, aux conditions qu'il estime indiquées, à la personne qu'il nomme.

L.R. (1985), ch. C-36, art. 10; 2005, ch. 47, art. 127.

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

R.S., 1985, c. C-36, s. 11; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 124; 2005, c. 47, s. 128.

Pouvoir général du tribunal

11 Malgré toute disposition de la *Loi sur la faillite et l'insolvabilité* ou de la *Loi sur les liquidations et les restructurations*, le tribunal peut, dans le cas de toute demande sous le régime de la présente loi à l'égard d'une compagnie débitrice, rendre, sur demande d'un intéressé, mais sous réserve des restrictions prévues par la présente loi et avec ou sans avis, toute ordonnance qu'il estime indiquée.

L.R. (1985), ch. C-36, art. 11; 1992, ch. 27, art. 90; 1996, ch. 6, art. 167; 1997, ch. 12, art. 124; 2005, ch. 47, art. 128.

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

2019, c. 29, s. 136.

Redressements normalement nécessaires

11.001 L'ordonnance rendue au titre de l'article 11 en même temps que l'ordonnance rendue au titre du paragraphe 11.02(1) ou pendant la période visée dans l'ordonnance rendue au titre de ce paragraphe relativement à la demande initiale n'est limitée qu'aux redressements normalement nécessaires à la continuation de l'exploitation de la compagnie débitrice dans le cours ordinaire de ses affaires durant cette période.

2019, ch. 29, art. 136.

Rights of suppliers

11.01 No order made under section 11 or 11.02 has the effect of

(a) prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the order is made; or

(b) requiring the further advance of money or credit.

2005, c. 47, s. 128.

Droits des fournisseurs

11.01 L'ordonnance prévue aux articles 11 ou 11.02 ne peut avoir pour effet :

a) d'empêcher une personne d'exiger que soient effectués sans délai les paiements relatifs à la fourniture de marchandises ou de services, à l'utilisation de biens loués ou faisant l'objet d'une licence ou à la fourniture de toute autre contrepartie de valeur qui ont lieu après l'ordonnance;

b) d'exiger le versement de nouvelles avances de fonds ou de nouveaux crédits.

2005, ch. 47, art. 128.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

Suspension : demande initiale

11.02 (1) Dans le cas d'une demande initiale visant une compagnie débitrice, le tribunal peut, par ordonnance, aux conditions qu'il peut imposer et pour la période maximale de dix jours qu'il estime nécessaire :

a) suspendre, jusqu'à nouvel ordre, toute procédure qui est ou pourrait être intentée contre la compagnie sous le régime de la *Loi sur la faillite et l'insolvabilité* ou de la *Loi sur les liquidations et les restructurations*;

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other

Restriction à la disposition d'actifs

36 (1) Il est interdit à la compagnie débitrice à l'égard de laquelle une ordonnance a été rendue sous le régime de la présente loi de disposer, notamment par vente, d'actifs hors du cours ordinaire de ses affaires sans l'autorisation du tribunal. Le tribunal peut accorder l'autorisation sans qu'il soit nécessaire d'obtenir l'acquiescement des actionnaires, et ce malgré toute exigence à cet effet, notamment en vertu d'une règle de droit fédérale ou provinciale.

Avis aux créanciers

(2) La compagnie qui demande l'autorisation au tribunal en avise les créanciers garantis qui peuvent vraisemblablement être touchés par le projet de disposition.

Facteurs à prendre en considération

(3) Pour décider s'il accorde l'autorisation, le tribunal prend en considération, entre autres, les facteurs suivants :

a) la justification des circonstances ayant mené au projet de disposition;

b) l'acquiescement du contrôleur au processus ayant mené au projet de disposition, le cas échéant;

c) le dépôt par celui-ci d'un rapport précisant que, à son avis, la disposition sera plus avantageuse pour les créanciers que si elle était faite dans le cadre de la faillite;

d) la suffisance des consultations menées auprès des créanciers;

e) les effets du projet de disposition sur les droits de tout intéressé, notamment les créanciers;

f) le caractère juste et raisonnable de la contrepartie reçue pour les actifs compte tenu de leur valeur marchande.

Autres facteurs

(4) Si la compagnie projette de disposer d'actifs en faveur d'une personne à laquelle elle est liée, le tribunal, après avoir pris ces facteurs en considération, ne peut accorder l'autorisation que s'il est convaincu :

a) d'une part, que les efforts voulus ont été faits pour disposer des actifs en faveur d'une personne qui n'est pas liée à la compagnie;

b) d'autre part, que la contrepartie offerte pour les actifs est plus avantageuse que celle qui découlerait de

offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

2005, c. 47, s. 131; 2007, c. 36, s. 78; 2017, c. 26, s. 14; 2018, c. 27, s. 269.

toute autre offre reçue dans le cadre du projet de disposition.

Personnes liées

(5) Pour l'application du paragraphe (4), les personnes ci-après sont considérées comme liées à la compagnie :

a) le dirigeant ou l'administrateur de celle-ci;

b) la personne qui, directement ou indirectement, en a ou en a eu le contrôle de fait;

c) la personne liée à toute personne visée aux alinéas a) ou b).

Autorisation de disposer des actifs en les libérant de restrictions

(6) Le tribunal peut autoriser la disposition d'actifs de la compagnie, purgés de toute charge, sûreté ou autre restriction, et, le cas échéant, est tenu d'assujettir le produit de la disposition ou d'autres de ses actifs à une charge, sûreté ou autre restriction en faveur des créanciers touchés par la purge.

Restriction à l'égard des employeurs

(7) Il ne peut autoriser la disposition que s'il est convaincu que la compagnie est en mesure d'effectuer et effectuera les paiements qui auraient été exigés en vertu des alinéas 6(5)a) et (6)a) s'il avait homologué la transaction ou l'arrangement.

Restriction à l'égard de la propriété intellectuelle

(8) Si, à la date à laquelle une ordonnance est rendue à son égard sous le régime de la présente loi, la compagnie est partie à un contrat qui autorise une autre partie à utiliser un droit de propriété intellectuelle qui est compris dans la disposition d'actifs autorisée en vertu du paragraphe (6), cette disposition n'empêche pas l'autre partie d'utiliser le droit en question ni d'en faire respecter l'utilisation exclusive, à condition que cette autre partie respecte ses obligations contractuelles à l'égard de l'utilisation de ce droit, et ce, pour la période prévue au contrat et pour toute prolongation de celle-ci dont elle se prévaut de plein droit.

2005, ch. 47, art. 131; 2007, ch. 36, art. 78; 2017, ch. 26, art. 14; 2018, ch. 27, art. 269.

TAB 4

In the Matter of the Proposal of Komtech Inc.

[Indexed as: Komtech Inc. (Re)]

106 O.R. (3d) 654

2011 ONSC 3230

Ontario Superior Court of Justice,
Kane J.
July 8, 2011

Bankruptcy and insolvency -- Sale of assets -- Court approval -- Presentation by debtor of proposal to its creditors or ability to present proposal not prerequisite for court approval of sale of debtor's assets under s. 65.13 of Bankruptcy and Insolvency Act -- Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, s. 65.13.

K Inc. filed a Notice of Intention to make a proposal under s. 50.4 of the Bankruptcy and Insolvency Act ("BIA"), and a proposal trustee was appointed. K Inc. subsequently brought a motion for approval of a bidding process for the auction of its assets and the preliminary approval of an asset purchase agreement. The trustee recommended that the motion be granted. It was unlikely that K Inc. would be able to present a proposal for approval by its creditors.

Held, the motion should be granted.

Presentation of, or the ability to present, a proposal is not a condition to the exercise of the court's jurisdiction under

s. 65.13 of the BIA to authorize a sale of assets.

The position of K Inc.'s secured and unsecured creditors would not improve if the motion was dismissed, given the past unsuccessful attempts to sell the business and the estimate of the realizable value of the company's assets. The requirements under s. 65.13 of the BIA were met.

Cases referred to

Brainhunter Inc. (Re), [2009] O.J. No. 5578, 62 C.B.R. (5th) 41 (S.C.J.); Hypnotic Clubs Inc. (Re), [2010] O.J. No. 2176, 2010 ONSC 2987, 68 C.B.R. (5th) 267; Nortel Networks Corp. (Re) [Bidding Procedures], [2009] O.J. No. 3169, 55 C.B.R. (5th) 229 (S.C.J.) [page655]

Statutes referred to

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, ss. 14.06(7) [as am.], 50.4, (1) [as am.], 64.1 [as am.], 64.2 [as am.], 65.13 [as am.], (1), (3), (4), 81.4(4), 81.6(2)

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 36 [as am.]

MOTION by the debtor for the approval of the sale of assets.

Keith A. MacLaren, for Komtech Inc.

John O'Toole and Andr Ducasse, for Business Development Bank of Canada.

Karen Perron, for Hubbell Canada LP.

[1] KANE J.: -- The applicant, Komtech Inc. ("Komtech"), designs and manufactures plastic injection products at two facilities in Ontario and employs approximately 150 employees. Faced with serious financial difficulties, Komtech filed a Notice of Intention ("NOI") to make a proposal ("Proposal") under s. 50.4(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, ("BIA") on March 2, 2011. A. Farber & Partners Inc. was appointed Proposal Trustee ("Trustee").

considered on a motion under s. 65.13(4). Parliament could have, but did not include language in s. 65.13 requiring the presentation of or the ability to present a Proposal and the vote thereon by creditors, as a condition to the exercise of the court's jurisdiction to authorize a sale of assets.

[26] A comparable issue under the CCAA with wording remarkably similar to s. 65.13 of the BIA has concluded that the court has jurisdiction to authorize the sale of business assets absent a formal plan of compromising arrangement under s. 36 of the CCAA.

[27] Section 36 of the CCAA reads as follows:

Restriction on disposition of business assets

36(1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition. [page659]

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or

disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors -- related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the

creditor whose security, charge or other restriction is to be affected by the order.

Restriction -- employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement. [page660]

[28] In Nortel Networks Corp. (Re) [Bidding Procedures], [2009] O.J. No. 3169, 55 C.B.R. (5th) 229 (S.C.J.), the court found jurisdiction under the CCAA absent a plan of an arrangement which was described as "skeletal in nature". That court held that an important consideration, in addition to whether the business continues under the debtor stewardship or under a new equity structure, is whether the business can be continued as a going concern in the form of a sale by the debtor.

[29] Following the amendments creating s. 36 of the CCAA, the court in Brainhunter Inc. (Re), [2009] O.J. No. 5578, 62 C.B.R. (5th) 41 (S.C.J.) determined that s. 36 of the CCAA expressly permits the sale of substantially all of the debtor's assets even in the absence of the presentation and vote upon a plan of arrangement.

[30] Section 65.13 of the BIA and s. 36 of the CCAA were introduced in 2005 in An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts (Bill C-55).

[31] There were two Senate Committee meetings. At one of those, the Honourable Jerry Pickard, Parliamentary Secretary to the Minister of Industry, stated:

It is widely accepted that inadequate provisions exist for workers whose employers becomes bankrupt. Previous attempts to bring about better protection for workers have failed, as

TAB 5

COURT FILE NO.: 09-8483-00CL
DATE: 20091204

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER of a Plan of Compromise or Arrangement of Brainhunter Inc., TrekLogic Inc., Brainhunter Canada Inc., Brainhunter (Ottawa) Inc. and Protec Employment Services Limited

Applicants

APPLICATION UNDER SECTION 18.6 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Jay A. Swartz and James D. Bunting, for the applicants
Grant B. Moffat, for Deloitte and Touche Inc.
Edmond Lamek, for Toronto-Dominion Bank
Joseph Bellissimo, for Roynat Capital Inc.
Daniel R. Dowdall, for certain noteholders
Patrick F. Schindler, for an unsecured judgment creditor

HEARD: December 2, 2009

Newbould J.

[1] On December 2, 2009 after hearing submissions from the parties present, I made an initial order granting CCAA protection to the applicants, with reasons to follow. These are my reasons.

[2] There is no question that the Court has jurisdiction to hear the application pursuant to section 9 of the CCAA as the applicants' head offices are located in Toronto, Canada. At the time of the application, Brainhunter Inc. was listed on the TSX. The applicants qualify as debtor

[8] This application is in some respects unusual because the applicants state that they intend at the outset to solicit a going concern asset sale of the business, and that it is likely that there will be no plan of arrangement filed. The factum on their behalf states:

> 5. If protection is granted under the CCAA, the Applicants intend to bring a motion seeking approval of a bid process to solicit going concern asset purchase offers for the Applicants' business, as well as offers to sponsor a plan of arrangement (the "Bid Process"). The Applicants have entered into an agreement to sell substantially all of their assets as a going concern on the understanding that this agreement will serve as a stalking horse bid. The Bid Process will solicit competing offers from prospective investors to bid up the stalking horse bid.
>
> 24. Although the proposed Bid Process could result in the filing of a plan of arrangement or plan of compromise, it is more likely to result in the sale of the Applicants' business.

[9] The applicants submit that this Court has the jurisdiction to provide them with protection under the CCAA in circumstances such as these where the applicants may not file a formal plan of compromise or arrangement.

[10] I agree with the applicants that protection under the CCAA may be granted in these circumstances. I say that for the following reasons.

[11] The initial protection is supported by TD Bank and Roynat. It is also supported by the secured noteholders represented by Mr. Dowdall, being a little more than 60% of the noteholders. Mr. Dowdall has other concerns that I will deal with.

[12] It is well settled in Ontario that a court in a CCAA proceeding may approve a sale of all or substantially all of the assets of a debtor company as a going concern. In *Re Consumers Packaging Inc.* (2001) 27 C.B.R. (4th) 197 (Ont. C.A.), the Court stated:

> The sale of Consumers' Canadian glass operations as a going concern pursuant to the Owens-Illinois bid allows the preservation of Consumers' business (albeit under new ownership), and is therefore consistent with the purposes of the CCAA.

[13] Similarily, it is well settled in Ontario that a court in a CCAA proceeding may order the sale of a business in the absence of a plan of arrangement being put to stakeholders for a vote. In *Re Nortel Networks Corp*. (2009), 55 C.B.R. (5th) 229 Morawetz J. came to this conclusion after analyzing a number of cases that had made such an order. See paras 35 to 40 of his reasons for judgment.

[14] It seems to me that if at some point in time after an initial CCAA protection order has been made, it appears appropriate to undertake a sales process to sell the business without a plan of arrangement in place, there is no reason why CCAA protection should not initially be granted if at the outset it is thought appropriate to undertake a sales process without a plan of arrangement in place. It is simply a matter of timing as to when it appears appropriate to pursue a sale of the business without a plan of arrangement in place.

[15] *Re Nortel* was decided before the new CCAA provisions came into force on September 18, 2009. The new relevant provision does not, however, affect the principles accepted by Morawetz J. in that case. Section. 36(1) provides:

> 36.(1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

[16] In *Re Canwest Global Communications Corp*. released November 12, 2009, Pepall J. stated the following regarding s. 36:

> The CCAA is remedial legislation designed to enable insolvent companies to restructure. As mentioned by me before in this case, the amendments do not detract from this objective. In discussing section 36, the Industry Canada Briefing Book on the amendments states that "The reform is intended to provide the debtor company with greater flexibility in dealing with its property while limiting the possibility of abuse."

TAB 6

July 17/15

R.J. Chadwick and R. Wolfson for the applicants
A. Taylor for the Monitor
S. Weisz for North Shore Power Groups Inc., secured creditor
S. Vora Allen for Canadian Water Projects, secured creditor
J. Mieha for the City of Ottawa
L. Brost for the Ministry of Research and Innovation of Ontario
M. Wasserk for the Employees Committee

The applicants seek approval of (1) a sale transaction with Maynards Industries Ltd. ("Maynards") of certain equipment (the "Equipment"); and (2) settlement agreements among (i) the applicants, Plasco Energy ~~Group Inc.~~ L.P. Holdings S.à.r.l., North Shore Power Groups Inc. ("NSPG") and Canadian Water Projects ("CWP"), referred to as the "Global Settlement", and (ii) among Plasco Energy Group Inc. ("Plasco"), Plasco Trail Road Inc. ("PTR") and the Ministry of Research and Innovation of the Province of Ontario ("MRI"), referred to as the "MRI Settlement". These agreements collectively form a package intended to sell the principal assets of the applicants and ensure the demolition of the applicants' demonstration facility with a view to advancing significantly the winding up and liquidation process of the applicants.

With respect to the Maynards sale agreement, the record establishes that the requirements of s. 36 of the Companies' Creditors Arrangement Act (the "CCAA") as well as the test set out in Royal Bank v. Soundair Corp. have been satisfied. In particular, the transaction is the result of an extensive sales process which failed to

produce any bids for the applicants' business as an entirety and represents the best of the remaining stalking horse and liquidation bids. The applicants also consulted with the secured creditors, who support the transaction, as well as the other creditors and stakeholders likely to be affected by the transaction. In this regard, there is no evidence of any unfairness in the sales process. Accordingly, this transaction is approved.

With respect to the Settlement agreements, the CCAA gives the Court the authority to approve such agreements under section 11 provided always that the approval furthers the purposes of the CCAA which, in this case, entails an orderly wind-up of the applicants' business and a maximization of recoveries for its creditors and other stakeholders. The test for approval requires demonstration that: (1) the settlement is fair and reasonable; (2) the settlement will be beneficial to the debtor and its stakeholders generally; and (3) that the settlement is consistent with the purpose and spirit of the CCAA. I am satisfied that each of the proposed settlements meets this test for the following reasons.

With respect to the Global Settlement, the agreement ~~transfers~~ effectively transfers the current tax losses and the applicants' intellectual property on a basis which recognizes value for such assets after the failure of the sales process to identify a better offer for the applicants' business as an entirety. In doing so, it also recognizes the security in the intellectual property that currently exists in favour of

NSPG and CWP. The settlement advances the CCAA proceedings insofar as it provides for disposition of the assets leased by these parties to the applicants and thereby for the decommissioning of the demonstration facility in a cost effective way through the Maynards transaction. As such, the Global Settlement satisfies the requirements of fairness and reasonableness and is consistent with the purpose of the CCAA. While it appears the shareholders will have no economic interest in the applicants, the settlement is also supported by creditors having approximately 95% of all known unsecured obligations of the applicants, upon which, in addition to the facts above, the Court can rely as evidence that the settlement is beneficial to the applicants and the shareholders generally.

The Global Settlement contemplates implementation of a corporate reorganization by which the shares of Plasco will be transferred to an acquisition corporation owned by NSPG and CWP and the remaining assets of the applicants will be held by a new corporation, referred to as "New Plasco", which will assume all of the liabilities and obligations of ~~the applicants~~ Plasco. I am satisfied that the Court has authority under section 11 of the CCAA to authorize such transactions notwithstanding that the applicants are not proceeding under s. 6(2) of the CCAA insofar as it is not contemplated that the applicants will propose a plan of arrangement or compromise. For this purpose, I consider that the Global Settlement is analogous to such a plan in the context of these

particular proceedings. The reorganization requires an amendment to the articles of Plasco to consolidate the shares and eliminate fractional shares arising on such consolidation. The Court has authority to approve such actions under section 11 of the CCAA which will constitute an order for the purposes of section 191(1) of the Canada Business Corporations Act, which governs Plasco.

Based on the foregoing, but subject to the qualification below, the Global Settlement and the reorganization contemplated therein to implement the Global Settlement are hereby approved.

With respect to the MRI Settlement, the MRI claims in respect of the GE engines will be released in return for payment of an amount approximately equal to the value allocated to the GE engines by Maynards, which is also at arm's length to the applicants. The MRI Settlement resolves a significant claim against the applicants and allows the Maynards transaction to proceed. On this basis, the MRI Settlement is fair and reasonable and furthers the purpose of the CCAA. It is also beneficial to applicants and the stakeholders for the same reasons.

Based on the foregoing, ~~and~~ but subject to the qualification below, the MRI Settlement is hereby approved.

I note that the City of Ottawa, which appeared today, has not consented to any of the

Maynards transaction, the Global Settlement or the MRI Settlement, pending its review of these transactions and has reserved its rights to object thereto at a hearing scheduled for July 24, 2015. The approvals herein are also subject to approval of an order or orders giving effect to such approvals after finalization of the transactions and the determination of any outstanding issues which are to be addressed at such hearing.

W. Hon-Siegel J.

TAB 7

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°: 500-11-057094-191

DATE: October 7, 2019

PRESIDING: THE HONOURABLE LOUIS J. GOUIN, J.S.C.

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

STORNOWAY DIAMOND CORPORATION

-&-

STORNOWAY DIAMONDS (CANADA) INC.

-&-

ASHTON MINING OF CANADA INC.

-&-

FCDC SALES AND MARKETING INC.

Petitioners

-&-

COMPUTERSHARE TRUST COMPANY OF CANADA

-&-

DIAQUEM INC.

-&-

INVESTISSEMENT QUÉBEC

-&-

FONDS DE SOLIDARITÉ DES TRAVAILLEURS DU QUÉBEC

-&-

FONDS RÉGIONAL DE SOLIDARITÉ F.T.Q. NORD-DU-QUÉBEC, SOCIÉTÉ EN COMMANDITE

-&-

NATION CRIE DE MISTISSINI

-&-

GRAND CONSEIL DES CRIS (EEYOU ISTCHEE)

-&-

ADMINISTRATION RÉGIONALE CRIE

-&-

CATERPILLAR FINANCIAL SERVICES LIMITED

-&-

CHUBB LIFE INSURANCE COMPANY OF CANADA

-&-

BANK OF NOVA SCOTIA

-&-

XEROX CANADA LTD.

-&-

ATLAS COPCO CANADA INC.

-&-

CWB NATIONAL LEASING INC.

-&-

OSISKO GOLD ROYALTIES LTD

-&-

CDPQ RESOURCES INC.

-&-

TF R&S CANADA LTD.

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ALBION EXPLORATION FUND LLC

-&-

WASHINGTON STATE INVESTMENT BOARD

-&-

TSX INC.

-&-

ATTORNEY GENERAL OF CANADA

-&-

QUEBEC REVENUE AGENCY

-&-

THE DIRECTOR APPOINTED PURSUANT TO THE CANADA BUSINESS CORPORATIONS ACT

-&-

THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS OF QUEBEC, represented by the QUEBEC MINISTRY OF JUSTICE

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11641603 CANADA INC.

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11641638 CANADA INC.

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11641735 CANADA INC.

-&-

11272420 CANADA INC.

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THE MINISTER OF ECONOMY, SCIENCE AND INNOVATION OF QUEBEC

-&-

THE MINISTER OF FINANCE AND ECONOMY OF QUÉBEC

-&-

THE LAND REGISTRAR FOR THE REGISTRY OFFICE FOR THE REGISTRATION

DIVISION OF SEPT-ILES

-&-

THE REGISTRAR OF PUBLIC REGISTER OF REAL AND IMMOVABLE MINING RIGHTS KEPT BY THE MINISTÈRE DE L'ÉNERGIE ET DES RESSOURCES NATURELLES (QUÉBEC)

Mis-en-cause

-&-

DELOITTE RESTRUCTURING INC.

Monitor

APPROVAL AND VESTING ORDER

[1] **ON READING** the Petitioners' *Motion Seeking (i) Extension of the Stay of Proceedings, (ii) Amendment and Restatement of the Initial Order; and (iii) Leave to Enter Into the Participating Streamers/Diaquem Transaction with Issuance of an Approval and Vesting Order and Ancillary Relief* (the "**Motion**"), the affidavit and the exhibits in support thereof, as well as the Report of the Monitor dated October 2, 2019 (the "**Report**");

[2] **SEEING** the service of the Motion;

[3] **SEEING** the submissions of Petitioners' attorneys;

[4] **SEEING** that it is appropriate to issue an order approving: the purchase and sale and other transactions (the "**Purchase and Sale Transactions**") contemplated in the agreement entitled Share Purchase Agreement dated October 6, 2019 (the "**Purchase Agreement**") by and between the Petitioners, as vendor, and *11272420 Canada Inc.* (the "**Purchaser**"), as purchaser, copy of which is attached as **Schedule "A"** to this Order, forming part hereof, including the pre-closing reorganization transactions contemplated in Exhibit A thereto (the "**Pre-Closing Reorganization**" and, collectively with the other transactions contemplated in the Purchase Agreement, the "**Transactions**");

WHEREFORE, THE COURT:

[5] **GRANTS** the Motion.

[6] **ORDERS** that, unless otherwise indicated or defined herein, capitalized terms used in this Order shall have the meanings given to them in the Purchase Agreement and/or in the Initial Order and/or Initial Motion, as extended, amended and restated from time to time.

PURCHASE AGREEMENT:

[7] **AUTHORIZES** and **APPROVES** the execution by the Petitioners of the Purchase Agreement and the completion of the Transactions, with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

PRE-CLOSING REORGANIZATION

[8] **AUTHORIZES** the Petitioners (including Mises en cause 11641603 Canada Inc., 11641638 Canada Inc. and 11641735 Canada Inc. as the case may be) to implement and complete the Pre-Closing Reorganization contemplated in Exhibit A to the Purchase Agreement, in the sequence provided for therein.

[9] **AUTHORIZES** the Petitioners (including Mises en cause 11641603 Canada Inc., 11641638 Canada Inc. and 11641735 Canada Inc. as the case may be), in completing the transactions contemplated in the Pre-Closing Reorganization:

a) to execute and deliver any documents and assurances governing or giving effect to the Pre-Closing Reorganization as the Petitioners, in their discretion, may deem to be reasonably necessary or advisable to conclude the Pre-Closing Reorganization, including the execution of such deeds, contracts or documents, as may be contemplated in the Purchase Agreement and all such deeds, contracts or documents are hereby ratified, approved and confirmed; and

b) to take such steps as are, in the opinion of the Petitioners, necessary or incidental to the implementation of the Pre-Closing Reorganization.

[10] **ORDERS AND DECLARES** that the Petitioners (including Mises en cause 11641603 Canada Inc., 11641638 Canada Inc. and 11641735 Canada Inc. as the case may be) are hereby permitted to execute and file articles of amendment, amalgamation, continuance or reorganization or such other documents or instruments as may be required to permit or enable and effect the Pre-Closing Reorganization and that such articles, documents or other instruments shall be

deemed to be duly authorized, valid and effective notwithstanding any requirement under federal or provincial law to obtain director or shareholder approval with respect to such actions or to deliver any statutory declarations that may otherwise be required under corporate law to effect the Pre-Closing Reorganization.

[11] **ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the CCAA Parties to proceed with the Pre-Closing Reorganization and that no director, shareholder or regulatory approval shall be required in connection with any of the steps contemplated pursuant to the Pre-Closing Reorganization save for those contemplated in the Purchase Agreement.

[12] **ORDERS** the Director appointed pursuant to Section 260 of the CBCA to accept and receive any articles of amendment, amalgamation, continuance or reorganization or such other documents or instruments as may be required to permit or enable and effect the Pre-Closing Reorganization contemplated in the Purchase Agreement, filed by either the CCAA Parties, as the case may be;

SALE APPROVAL

[13] **AUTHORIZES** the Petitioners (including Mises en cause 11641603 Canada Inc., 11641638 Canada Inc. and 11641735 Canada Inc. as the case may be), the Vendor, the Monitor, as the case may be, and the Purchaser to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Purchase Agreement and any other ancillary document which could be required or useful to give full and complete effect thereto.

[14] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Petitioners and the Vendor, as the case may be, to proceed with the Pre-Closing Reorganization, the Purchase and Sale Transactions, the other Transactions and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

[15] **ORDERS** and **DECLARES** that the Vendor, in consummating the transactions contemplated by the Purchase Agreement, which is a "related party transaction" for purposes of Multilateral Instrument 61-101 - *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") and subject to a court order under applicable bankruptcy or insolvency laws, is not required to comply with both the formal valuation and minority approval requirements under Sections 5.4 and 5.6, respectively, of MI 61-101.

[16] **ORDERS** and **DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "B"** hereto (the "**Certificate**"),

all right, title and interest in and to the Purchased Shares, the COA and the MSA shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, Liabilities (direct, indirect, absolute or contingent), obligations, taxes, prior claims, right of retention, liens, security interests, charges, hypothecs, trusts, deemed trusts (statutory or otherwise), judgments, writs of seizure or execution, notices of sale, contractual rights (including purchase options, rights of first refusal, rights of first offer or any other pre-emptive contractual rights), encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"[1]), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, or security evidenced by registration, publication or filing pursuant to the *Civil Code of Québec* in movable / immovable property, excluding however, the permitted encumbrances listed on **Schedule "C"** hereto (the "**Permitted Encumbrances**") and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Shares, other than the Permitted Encumbrances, be cancelled and discharged as against the Purchased Shares, in each case effective as of the applicable time and date of the Certificate.

[17] **ORDER** and **DECLARES** that upon the issuance of the Certificate, any agreement, contract, plan, indenture, deed, certificate, subscription right, conversion rights, pre-emption rights or other document or instrument governing and/or having been created, granted in connection with the Purchased Shares and/or the share capital of SDCI, Ashton and FCDC shall be deemed terminated and cancelled.

[18] **ORDERS** the Land Registrar of the Land Registry Office for the Registry Division of Sept-Iles and the Registrar of the Public Register of Real and Immovable Mining Rights (known as GESTIM Plus), upon presentation of the Certificate and a certified copy of this Order accompanied by the required application for registration and upon payment of the prescribed fees, to publish this Order and cancel the Encumbrances listed in **Schedule "D"** on the immovable properties identified therein.

[19] **ORDERS** the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to strike the registration listed in **Schedule "D"**.

[20] **ORDERS** and **DECLARES** that upon the issuance of the Certificate, Purchaser and AmalCo (including any predecessor corporations) shall be deemed released from any and all claims, liabilities (direct, indirect, absolute or contingent) or

obligations with respect to any taxes (including penalties and interest thereon) of, or that relate to, the Vendor, including without limiting the generality of the foregoing all taxes that could be assessed against Purchaser and Amalco (including any predecessor corporations) pursuant to section 160 of the *Income Tax Act* (Canada), or any provincial equivalent, in connection with the Vendor.

[21] **ORDERS** that upon issuance of the Certificate, all Persons shall be deemed to have waived any and all defaults of the CCAA Parties then existing or previously committed by the CCAA Parties or caused by the CCAA Parties, directly or indirectly, or non-compliance with any covenant, positive or negative pledge, warranty, representation, term, provision, condition or obligation, express or implied, in any contract, credit document, agreement for sale, lease or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and the CCAA Parties arising from the filing by the CCAA Parties under the CCAA or the completion of the Transactions, and any and all notices of default and demands for payment under any instrument, including any guarantee arising from such default, shall be deemed to have been rescinded.

[22] **ORDERS** that the implementation of the Transactions shall be deemed not to constitute a change in ownership or change in control under any financial instrument, loan or financing agreement, executory contract or unexpired lease or contract, lease or agreement in existence on the Effective Date and to which the CCAA Parties are a party.

[23] **ORDERS and DIRECTS** the Monitor to file with the Court a copy of the Certificate, no later than one business day after the issuance thereof.

[24] **DECLARES** that upon the filing of the Certificate, the Purchase and Sale Transactions shall be deemed to constitute and shall have the same effect as a sale under judicial authority as per the provisions of the *Code of Civil Procedure* and a forced sale as per the provisions of the *Civil Code of Quebec*.

CCAA PETITIONERS

[25] **ORDERS** that upon filing of the Monitor's Certificate:

a) 11641638 Canada Inc. and 11641735 Canada Inc. are companies to which the CCAA applies;

b) 11641638 Canada Inc. and 11641735 Canada Inc. shall be added as Petitioners in these CCAA proceedings and any reference in any Order of this Court in respect of these CCAA proceedings to a "Petitioner", the "Petitioners" or "CCAA Parties" shall refer to 11641638 Canada Inc. and

11641735 Canada Inc., *mutadis mutandis*, and, for greater certainty, each of the Charges (as such term is defined in the Initial Order) shall constitute a charge on the property of 11641638 Canada Inc. and 11641735 Canada Inc.; and

c) SDCI, Ashton, FCDC and 11641603 Canada Inc., as amalgamated shall each be deemed to cease to be Petitioners in these CCAA proceedings, and each such entity shall be deemed to be released from the purview of any Order of this Court granted in respect of these CCAA Proceedings, save and except for the present Order the terms of which (as they related to any such entity) shall continue to apply in all respects.

[26] **ORDERS** that upon the issuance of the Certificate and in accordance with the terms of the Purchase Agreement:

a) all Excluded Assets shall vest absolutely and exclusively in 11641638 Canada Inc. and all Encumbrances shall continue to attach to the Excluded Assets with the same nature and priority as they had immediately prior to their transfer;

b) all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) of Amalco, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise (collectively, "**Obligations**") other than the Assumed Liabilities (all such Obligations that are not expressly identified in the Purchase Agreement as being Assumed Liabilities being referred to as the "**Excluded Liabilities**") shall be transferred to, assumed by and vest absolutely and exclusively in, 11641735 Canada Inc. such that, at the time provided for in the Pre-Closing Reorganization and before the Closing Date, the Excluded Liabilities shall be novated and become obligations of 11641735 Canada Inc. and not obligations of AmalCo, and AmalCo shall be forever released and discharged from such Excluded Liabilities, and all Encumbrances securing Excluded Liabilities shall be forever released and discharged, it being understood that nothing in the present Order shall be deemed to cancel any of the Permitted Encumbrances, as applicable to AmalCo (including any predecessor corporations);

c) the commencement or prosecution, whether directly, indirectly, derivatively or otherwise of any demands, claims, actions, counterclaims, suits, judgements, or other remedy or recovery with respect to any indebtedness, liability, obligation or cause of action against Amalco in respect of the Excluded Liabilities shall be permanently enjoined;

d) the nature of the Obligations retained by Amalco including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Purchase Agreement or the steps and actions taken in accordance with the terms thereof;

e) the nature and priority of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to and assumption by 11641638 Canada Inc. and/or 11641735 Canada Inc.; and

f) any person that, prior to the Closing Date, had a valid right or claim against AmalCo in respect of the Excluded Liabilities (each a "**Claim**") shall no longer have such Claim against AmalCo, but will have an equivalent Claim against 11641638 Canada Inc. and/or 11641735 Canada Inc. in respect of the Excluded Liabilities from and after the Closing Date in its place and stead, and, nothing in this Order limits, lessens or extinguishes the Excluded Liabilities or the Claim of any person as against 11641638 Canada Inc. and/or 11641735 Canada Inc.

RELEASES

[27] **ORDERS** that effective upon the filing of the Certificate, (i) the present and former directors, officers, employees, legal counsel and advisors of the Petitioners (including for purpose of clarity 11641638 Canada Inc., 11641735 Canada Inc. and AmalCo), (ii) the Monitor and its legal counsel, and (iii) the Streamers under the Stream Agreement, Diaquem Inc. and Investissement Québec, including in each case their respective directors, officers, employees, legal counsel and advisors (the persons listed in (i), (ii) and (iii) being collectively the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including, without limitations, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole

or in part on any act or omission, transaction, dealing or other occurrence existing or taking place prior to the issuance of the Certificate or completed pursuant to the terms of this Order and/or in connection with the Transactions, in respect of the Petitioners or their assets, business or affairs wherever or however conducted or governed, the administration and/or management of the Petitioners, the Stream Agreement, the Diaquem Loan Agreement, the Diaquem Royalty Agreement and these proceedings (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, provided that nothing in this paragraph shall waive, discharge, release, cancel or bar any claim against the Directors and Officers of the Petitioners that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

[28] **ORDERS** that, notwithstanding:

a) the pendency of these proceedings;

b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of the Petitioners, 11641638 Canada Inc., 11641735 Canada Inc. or Amalco and any bankruptcy order issued pursuant to any such applications; and

c) any assignment in bankruptcy made in respect of the Petitioners, 11641638 Canada Inc., 11641735 Canada Inc. or Amalco,

the implementation of the Pre-Closing Reorganization (including the transfer of the Excluded Assets to 11641638 Canada Inc. and the transfer of the Excluded Liabilities to 11641638 Canada Inc. and/or to 11641735 Canada Inc.) and the implementation of the Purchase and Sale Transactions under and pursuant to the Purchase Agreement (i) shall be binding on any trustee in bankruptcy that may be appointed in respect of the Petitioners, 11641638 Canada Inc., 11641735 Canada Inc. or Amalco and shall not be void or voidable by creditors of the Petitioners, 11641638 Canada Inc. or 11641735 Canada Inc., as applicable, (ii) shall not constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, and (iii) shall not constitute nor be deemed to be oppressive or unfairly prejudicial conduct by the Petitioners or the Released Parties pursuant to any applicable federal or provincial legislation.

THE MONITOR

[29] **PRAYS ACT** of the Monitor's Second Report.

[30] **ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is authorized, entitled and empowered to assign or cause to be assigned, at any time after the Closing Date, Stornoway Diamond Corporation, 11641638 Canada Inc. and 11641735 Canada Inc. into bankruptcy and the Monitor shall be entitled but not obligated to act as trustee in bankruptcy thereof.

[31] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the assets of the Petitioners. The Monitor shall not, as a result of this Order, be deemed to be in possession of any assets of the Petitioners within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.

[32] **DECLARES** that the Monitor shall incur no liability as a result of acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Monitor.

[33] **DECLARES** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph.

GENERAL

[34] **ORDERS** that the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances as against the assets of AmalCo.

[35] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.

[36] **DECLARES** that the Monitor shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the Monitor shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to Monitor as may be deemed necessary or appropriate for that purpose.

[37] **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America

and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.

[38] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

THE WHOLE WITHOUT COSTS.

J.S.C.

The Honourable Louis J. Gouin, J.S.C.

Date of hearing: October 7, 2019

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TAB 8

Court File No. CV-19-00632079-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE MR.	)	TUESDAY, THE 21ST
	)	
JUSTICE HAINEY	)	DAY OF APRIL, 2020

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF WAYLAND GROUP CORP., MARICANN INC. AND NANOLEAF TECHNOLOGIES INC.

(collectively, the "**Applicants**" and each an "**Applicant**")

APPROVAL AND VESTING ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, *inter alia*, (i) approving the Share Purchase Agreement (the "**Sale Agreement**") among Wayland Group Corp. ("**Wayland**"), Maricann Inc. ("**Maricann**"), and Canadelaar B.V. (the "**Purchaser**") dated April 15, 2020 and attached as Exhibit "A" to the affidavit of Matthew McLeod sworn April 15, 2020 (the "**Seventh McLeod Affidavit**") and the transactions contemplated thereby (the "**Transactions**"), (ii) adding 2751609 Ontario Inc. ("**Residual Co**") as an Applicant to these CCAA proceedings, (iii) vesting all of Maricann's right, title and interest in and to the Excluded Assets (as defined in the Sale Agreement) in Residual Co, (iv) transferring and vesting all of the Excluded Contracts and Excluded Liabilities in Residual Co, (v) vesting all of Wayland's right, title and interest in and to the Transferred Assets (as defined in the Sale Agreement) in Maricann, (vi) vesting all of the right, title and interest in and to the Maricann Shares (as defined in the Sale

Agreement) in the Purchaser, (vii) granting the Payables Charge (as defined below), and (viii) granting certain related relief, was heard this day in writing at Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Seventh McLeod Affidavit, the sixth report of PricewaterhouseCoopers Inc., in its capacity as monitor of the Applicants (the "**Monitor**"), dated April 16, 2020, and on hearing the submissions of counsel for the Applicants, the Monitor, the Purchaser, the DIP Lender and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Karin Sachar sworn April 16, 2020:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein have the meaning ascribed to them in the Seventh McLeod Affidavit and/or the Sale Agreement and/or the Second Amended and Restated Initial Order of this Court in the within proceedings dated December 2, 2019 (as amended and restated on December 16, 2019 and otherwise modified, the "**Initial Order**"), as applicable.

APPROVAL AND VESTING

3. **THIS COURT ORDERS AND DECLARES** that the Sale Agreement and the Transactions are hereby approved and the execution of the Sale Agreement by Wayland and Maricann is hereby authorized and approved, with such minor amendments as the parties thereto may deem necessary, with the approval of the Monitor and the DIP Lender. The Applicants are hereby authorized and directed to perform their obligations under the Sale Agreement and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions and for the conveyance of the Maricann Shares to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Applicants to proceed with the Transactions (including, for certainty, the Pre-Closing Reorganization) and that no shareholder or other approval shall be required in connection therewith.

5. **THIS COURT ORDERS AND DECLARES** that, upon the delivery of the Monitor's certificate (the "**Monitor's Certificate**") to the Purchaser (the "**Effective Time**"), substantially in the form attached as Schedule "A" hereto , the following shall occur and shall be deemed to have occurred at the Effective Time in the following sequence:

(a) first, all of Maricann's right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in Residual Co, and all Claims and Encumbrances (each as defined below) shall continue to attach to the Excluded Assets with the same nature and priority as they had immediately prior to their transfer;

(b) second, (i) all of Wayland's right, title and interest in and to the Transferred Assets shall vest absolutely and exclusively in Maricann free and clear of and from any and all Claims and Encumbrances (each as defined below); and (ii) all Assumed Liabilities which are to be assigned by Wayland to, and assumed by Maricann pursuant to the Sale Agreement shall be and are hereby assigned to, assumed by and shall vest absolutely and exclusively in Maricann; and for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Transferred Assets are hereby expunged and discharged as against the Transferred Assets;

(c) third, all Excluded Contracts and Excluded Liabilities (which, for certainty includes all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) of Maricann other than the Assumed Liabilities) shall be transferred to, assumed by and vest absolutely and exclusively in, Residual Co such that the Excluded Contracts and Excluded Liabilities shall become obligations of Residual Co and shall no longer be

obligations of Maricann, and Maricann and all of its assets, licenses, undertakings and properties of every nature and kind whatsoever and wherever situate (including, for certainty, the Transferred Assets and the Retained Assets, the "**Maricann Property**") shall be and are hereby forever released and discharged from such Excluded Contracts and Excluded Liabilities and all related Claims (as defined below), and all Encumbrances (as defined below) affecting or relating to the Maricann Property are hereby expunged and discharged as against the Maricann Property;

(d) fourth, all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person (as defined below) and are convertible or exchangeable for any securities of Maricann or which require the issuance, sale or transfer by Maricann, of any shares or other securities of Maricann, or otherwise evidencing a right to acquire the Maricann Shares and/or the share capital of Maricann, or otherwise relating thereto, shall be deemed terminated and cancelled; and

(e) fifth, all of the right, title and interest in and to the Maricann Shares shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order, the KERP & SISP Approval Order of this Court dated January 13, 2020, or any other Order of the Court; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule "B" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "C" hereto) and, for

greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Maricann Shares are hereby expunged and discharged as against the Maricann Shares; and

(f) sixth, Maricann shall and shall be deemed to cease to be an Applicant in these CCAA proceedings, and Maricann shall be deemed to be released from the purview of the Initial Order and all other Orders of this Court granted in respect of these CCAA proceedings, save and except for this Order the provisions of which (as they relate to Maricann) shall continue to apply in all respects.

6. **THIS COURT ORDERS** that upon the registration in the Land Registry Office #37 for the Land Titles Division of Norfolk (Simcoe) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* (Ontario) and/or the *Land Registration Reform Act* (Ontario), the Land Registrar is hereby directed to vacate and expunge from title to the subject real property identified in Schedule "D" hereto (the "**Real Property**") all of the Claims listed in Schedule "B" hereto.

7. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof in connection with the Transactions.

8. **THIS COURT ORDERS** that the Monitor may rely on written notice from Wayland and the Purchaser regarding the fulfillment of conditions to closing under the Sale Agreement and shall have no liability with respect to delivery of the Monitor's Certificate.

9. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Maricann Shares (including, for greater certainty, the net proceeds realized from the Cash Payment and any Conditional Payments) (the "**Proceeds**") shall stand in the place and stead of the Maricann Shares, and that from and after the delivery of the Monitor's Certificate and the payment of the Priority Payments pursuant to paragraph 27 hereof, all Claims and Encumbrances shall attach to the remaining Proceeds, if any, following the payment of the Priority Payments with the same priority as they had with respect to the Maricann Shares immediately prior to the sale, as if the Maricann Shares had not been sold and remained in the possession or control of the Person having that possession or control immediately prior to the sale.

10. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Applicants or the Monitor, as the case may be, is authorized, permitted and directed to, at the Effective Time, disclose to the Purchaser all human resources and payroll information in Maricann's records pertaining to past and current employees of Maricann. The Purchaser shall maintain and protect the privacy of such information in accordance with applicable law and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by Maricann.

11. **THIS COURT ORDERS AND DECLARES** that, at the Effective Time and without limiting the provisions of paragraph 5 hereof, the Purchaser and Maricann shall be deemed released from any and all claims, liabilities (direct, indirect, absolute or contingent) or obligations with respect to any Taxes (including penalties and interest thereon) of, or that relate to, the Applicants (provided, as it relates to Maricann, such release shall not apply to Taxes in respect of the business and operations conducted by Maricann after the Effective Time), including without limiting the generality of the foregoing all taxes that could be assessed against the Purchaser or Maricann (including its affiliates and any predecessor corporations) pursuant to section 160 of the *Income Tax Act* (Canada), or any provincial equivalent, in connection with the Applicants.

12. **THIS COURT ORDERS** that except to the extent expressly contemplated by the Sale Agreement, all Contracts to which Maricann is a party upon delivery of the Monitor's Certificate (including, for certainty, those Contracts constituting Transferred Assets) will be and remain in full force and effect upon and following delivery of the Monitor's Certificate and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") who is a party to any such arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

(a) any event that occurred on or prior to the delivery of the Monitor's Certificate and is not continuing that would have entitled such Person to enforce those rights or

remedies (including defaults or events of default arising as a result of the insolvency of any Applicant);

(b) the insolvency of any Applicant or the fact that the Applicants sought or obtained relief under the CCAA;

(c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the Sale Agreement, the Transactions or the provisions of this Order, or any other Order of the Court in these proceedings; or

(d) any transfer or assignment, or any change of control of Maricann arising from the implementation of the Sale Agreement, the Transactions or the provisions of this Order.

13. **THIS COURT ORDERS**, for greater certainty, that (a) nothing in paragraph 12 hereof shall waive, compromise or discharge any obligations of Maricann in respect of any Assumed Liabilities, and (b) the designation of any Claim as an Assumed Liability is without prejudice to Maricann's right to dispute the existence, validity or quantum of any such Assumed Liability, and (c) nothing in this Order or the Sale Agreement shall affect or waive Maricann's rights and defences, both legal and equitable, with respect to any Assumed Liability, including, but not limited to, all rights with respect to entitlements to set-offs or recoupments against such Assumed Liability.

14. **THIS COURT ORDERS** that from and after the Effective Time, all Persons shall be deemed to have waived any and all defaults of any Applicant then existing or previously committed by any Applicant, or caused by any Applicant, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition or obligation, expressed or implied, in any Contract, existing between such Person and Maricann (including, for certainty, those Contracts constituting Transferred Assets) arising directly or indirectly from the filing by the Applicants under the CCAA and the implementation of the Transactions, including without limitation any of the matters or events listed in paragraph 12 hereof and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under a

Contract shall be deemed to have been rescinded and of no further force or effect, provided that nothing herein shall be deemed to excuse Maricann or Wayland from performing their obligations under the Sale Agreement or be a waiver of defaults by Maricann or Wayland under the Sale Agreement and the related documents.

15. **THIS COURT ORDERS** that from and after the Effective Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessment, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against Maricann or the Maricann Property relating in any way to or in respect of any Excluded Assets or Excluded Liabilities and any other claims, Obligations and other matters which are waived, released, expunged or discharged pursuant to this Order.

16. **THIS COURT ORDERS** that, from and after the Effective Time:

(a) the nature of the Assumed Liabilities retained by Maricann, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transactions or this Order;

(b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to Residual Co;

(c) any Person that prior to the Effective Time had a valid right or claim against Maricann under or in respect of any Excluded Contract or Excluded Liability (each an "**Excluded Liability Claim**") shall no longer have such right or claim against Maricann but will have an equivalent Excluded Liability Claim against Residual Co in respect of the Excluded Contract and Excluded Liability from and after the Effective Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against Residual Co; and

(d) the Excluded Liability Claim of any Person against Residual Co following the Effective Time shall have the same rights, priority and entitlement as such Excluded Liability Claim had against Maricann prior to the Effective Time.

17. **THIS COURT ORDERS AND DECLARES** that, as of the Effective Time:

(a) Residual Co shall be a company to which the CCAA applies; and

(b) Residual Co shall be added as an Applicant in these CCAA proceedings and all references in any Order of this Court in respect of these CCAA proceedings to (i) an "Applicant" or the "Applicants" shall refer to and include Residual Co, *mutatis mutandis*, and (ii) "Property" shall include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, of Residual Co. (the "**Residual Co. Property**"), and, for greater certainty, each of the Charges (as defined in the Initial Order and including for greater certainty the Payables Charge (as defined below)), shall constitute a charge on the Residual Co. Property.

CLOSING FUNDING AND CHARGE

18. **THIS COURT ORDERS** that the Closing Funding is hereby approved, and Wayland is hereby authorized and empowered to obtain and borrow the Closing Funding from the Purchaser (or one of its Affiliates) (the "**Closing Funding Lender**") in accordance with the terms of the Sale Agreement, provided that such Closing Funding shall not exceed the aggregate principal amount of $1,000,000 and that the Closing Funding shall be on the terms and subject to the conditions set forth in the Sale Agreement and, without limitation, shall be used solely for the purposes set out in the Sale Agreement.

19. **THIS COURT ORDERS** that the Closing Funding Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Payables Charge**") on the Property of the Applicants (including the entitlement of any Applicant to receive the Conditional Payments), which Payables Charge shall not secure an obligation that exists before this Order is made. The Closing Funding Charge shall have the priority set out in paragraph 22 hereof.

20. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the Purchaser may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Payables Charge; and

(b) upon the failure of the Applicants to comply with their obligations under the Sale Agreement as they relate to the Closing Funding (including the use and repayment thereof), the Purchaser, upon seven (7) days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Sale Agreement and the Payables Charge, including to apply for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants.

21. **THIS COURT ORDERS AND DECLARES** that the Purchaser shall be treated as unaffected in any plan of arrangement or compromise filed by any Applicant under the CCAA, or any proposal filed by any Applicant under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), with respect to any advances of Closing Funding made under the Sale Agreement.

22. **THIS COURT ORDERS** that the Payables Charge shall rank in priority to all Encumbrances (as defined in the Initial Order) other than the Administration Charge, the Directors' Priority Charge, the KERP Charge, and the DIP Lender's Charge, and the priority as among the Charges shall be as follows:

First – Administration Charge (to the maximum amount of $1,000,000);

Second – Directors' Priority Charge (to the maximum amount of $200,000);

Third – KERP Charge (to the maximum amount of $500,000);

Fourth – DIP Lender's Charge;

Fifth – Payables Charge (to the maximum amount of $1,000,000); and

Sixth – Directors' Subordinate Charge (to the maximum amount of $250,000).

23. **THIS COURT ORDERS** that the filing, registration or perfection of the Payables Charge shall not be required, and that the Payables Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected

subsequent to the Payables Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

24. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances (as defined in the Initial Order) over any of their Property that rank in priority to, or *pari passu* with, the Payables Charge unless the Applicants also obtain the prior written consent of the Closing Funding Lender and the beneficiaries of the Directors' Subordinate Charge.

25. **THIS COURT ORDERS** that the Sale Agreement (as it pertains to the Closing Funding) and the Payables Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Purchaser thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances (as defined in the Initial Order), contained in any Agreement which binds any of the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Payables Charge nor the execution, delivery, perfection, registration or performance of the Sale Agreement shall create or be deemed to constitute a breach by any Applicant of any Agreement to which it is a party; and

(b) the Purchaser and the Closing Funding Lender shall have no liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from Wayland and Maricann entering into the Sale Agreement or the creation of the Payables Charge.

26. **THIS COURT ORDERS** that the Payables Charge over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

PRIORITY PAYMENTS

27. **THIS COURT ORDERS AND DIRECTS** that the Proceeds shall be distributed by the Monitor as soon as is practicable following the Effective Time through the following payments in the following order (collectively, the "**Priority Payments**"):

(a) First, an amount equal to $100,000 to the Monitor to establish the Post-Closing Reserve (as defined below);

(b) Second, to the beneficiaries of the Administration Charge, on a *pro rata* basis, in satisfaction of the Applicants' obligations secured thereby up to the maximum amount secured by such charge and set out in Paragraph 22 hereof;

(c) Third, to the beneficiaries of the Directors' Priority Charge, on a *pro rata* basis, in satisfaction of the Applicants' obligations secured thereby (if any) up to the maximum amount secured by such charge and set out in Paragraph 22 hereof;

(d) Fourth, to the beneficiaries of the KERP Charge, on a *pro rata* basis, in satisfaction of the Applicants' obligations secured thereby (if any) up to the maximum amount secured by such charge and set out in Paragraph 22 hereof;

(e) Fifth, to the DIP Lender in satisfaction of the DIP Obligations (as defined in the Initial Order) secured by the DIP Lender's Charge;

(f) Sixth, to the Closing Funding Lender in satisfaction of the Applicants' obligations secured by the Payables Charge; and

(g) Seventh, to the beneficiaries of the Directors' Subordinate Charge, on a *pro rata* basis, in satisfaction of the Applicants' obligations secured thereby (if any) up to the maximum amount secured by such charge.

28. **THIS COURT ORDERS** that any remainder of the Proceeds following the payment in full of the Priority Payments shall be held by the Monitor pending further order of the Court, subject to paragraphs 29 and 30 of this Order.

POST-CLOSING RESERVE

29. **THIS COURT ORDERS** that the Monitor is hereby authorized and directed to establish a cash reserve (the "**Post-Closing Reserve**") from the Proceeds, which shall be held in a segregated account and shall be used to pay costs and fees incurred by the Monitor or the Applicants following the Effective Time in connection with completing these CCAA proceedings, including for greater certainty, (i) the fees and disbursements of the Applicants' counsel, the Monitor, counsel to the Monitor, and other professionals engaged by the Applicants or the Monitor incurred following the Effective Time, including in the exercise of the Applicants' and Monitor's powers and duties pursuant to the CCAA, the Initial Order, this Order, and any other Order granted in these proceedings, and (ii) any fees, expenses, or disbursements incurred in relation to any proceeding under the BIA in respect of any of the Applicants (collectively, the "**Post-Closing Costs**").

30. **THIS COURT ORDERS** that the Monitor is hereby authorized to pay any Post-Closing Costs in its own name or in the name of and on behalf of the Applicants, as it deems necessary, appropriate, or desirable, in its discretion.

RELEASES

31. **THIS COURT ORDERS** that effective upon the filing of the Monitor's Certificate, (i) the current directors, officers, employees, legal counsel and advisors of the Applicants (including, for certainty, Maricann), and (ii) the Monitor and its legal counsel (collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including, without limitations, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place prior to the filing of the Monitor's Certificate (a) undertaken or completed pursuant to the terms of this Order, or (b) arising in connection with or relating to the SPA or the completion of the Transaction (collectively, the "**Released Claims**"), which

Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, provided that nothing in this paragraph shall waive, discharge, release, cancel or bar any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA or that arose in or relates to the period prior to the granting of the Initial Order. For greater certainty, nothing in this paragraph 31: (i) affects any claims against the directors and officers of any of the Applicants for breach of trust arising from acts or omissions occurring before the date of the Initial Order; or (ii) releases, fetters or prejudices: (a) the right of any person or entity to commence a claim against Wayland Group Corp. or any directors and officers of Wayland Group Corp. with respect to the class action or the issues giving rise to the class action against Wayland Group Corp., including without limitation for contribution and indemnity, or contractual indemnity (in each case subject to the stay of proceedings); and (b) the availability of any applicable insurance to satisfy such class action claims (including any future cross and third party claims).

32. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Applicants and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Applicants;

the Sale Agreement, the implementation of the Transactions (including without limitation the transfer and vesting of the Excluded Assets, Excluded Contract and Excluded Liabilities in and to Residual Co, the transfer and vesting of the Transferred Assets in and to Maricann, and the transfer and vesting of the Maricann Shares in and to the Purchaser), the payment of the Priority Payments, the granting of the Payables Charge, and any payments by or to the Purchaser, the Closing Funding Lender, the Applicants or the Monitor authorized herein shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and/or Residual Co and shall not be void or voidable by creditors of the Applicants or Residual Co, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or

any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

GENERAL

33. **THIS COURT ORDERS** that, following the Effective Time, the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances as against the Maricann Shares and the Maricann Property.

34. **THIS COURT ORDERS** that, following the Effective Time, the title of these proceedings is hereby changed to:

> IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
>
> AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF WAYLAND GROUP CORP., 2751609 ONTARIO INC. AND NANOLEAF TECHNOLOGIES INC.

35. **THIS COURT DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.

36. **THIS COURT DECLARES** that the Applicants shall be authorized to apply as they may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the Monitor shall be the foreign representative of the Applicants. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.

37. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the

Applicants and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order.

38. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Prevailing Eastern Time on the date hereof.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

APR 21 2020

PER / PAR:

TAB 9

CV-19-00632079-00CL April 21, 2020

Re WAYLAND

① This motion was heard in writing in accordance with the changes to the operation of the Commercial List in light of the Covid-19 Crisis and the Chief Justice's Notices to the profession.

② This Motion is not opposed. I am satisfied that it should be granted on the Terms of the attached Approval and Vesting Order.

③ This order is effective today and is not required to be entered.

Hainey J.

TAB 10

This motion by the Applicants for an approval and vesting order proceeded before me by Zoom today. The names of the attendees are listed on the attached counsel slip.

The Applicants seek approval of the transaction whereby Wayne Patrick Consumer Products Ltd (the Purchaser) will acquire the operating business of the Applicants. The structure of the transaction is partly by share sale and partly by asset sale. The reason for the structure is to accommodate the licensing requirements of Health Canada. The order is structured as a reverse vesting order, in which excluded liabilities and assets will be transferred to "Residualco", which will then become one of the Applicants in the CCAA proceeding. Reverse vesting orders have been approved by the courts in other cases: see *Re Stornaway Diamond Corporation et al*, Court File No. 500-11-057094- 191 (https://www.insolvencies.deloitte.ca/en) and *Re Wayland Group Corp*. et al, Court File No. CV-19-00632079-CL (https://pwc.com/ca/en/car/wayland/assets/wayland-094_042120)

The transaction is the culmination of a stalking horse sales process approved by the court. The motion is unopposed. The Monitor recommends and supports the transaction in its Fourth Report. In particular, the Monitor states that the proposed transaction is economically superior to the estimated liquidation value of the Beleave Group's assets and operations, will allow the Purchaser to maintain operations and use of the Cannabis licenses and will provide for continued employment for a majority of the existing employees. In my view, the transaction satisfies both s. 36(3) of the CCAA and the *Soundair* test and should be approved.

The proposed order contains a release of all claims (except pursuant to s. 5.1(2)) of the CCAA) of the Applicants' current directors, officers, employees, legal counsel and advisors and of the Monitor and its legal counsel. I note that the release applies only to the current directors and officers, not the former ones who are the subject of litigation in British Columba. I am satisfied that the releases are reasonably connected to the proposed restructuring and are necessary for the successful restructuring of the Applicants. The release has been specifically disclosed in the motion materials and there has been no objection to same.

There is an additional release as between the Applicants and the "117 Parties" that has been included on consent now that the dispute between them has been resolved.

The proposed order further extends the existing stay to November 30, 2020, which is acceptable.

Finally, counsel for the plaintiffs in the BC action advised that the parties are working on and are close to a resolution in that litigation. I have scheduled a motion for **October 1, 2020 before me – 30 minutes starting at 1 p.m. (confirmed with the CL office**) to address the status of that litigation and make whatever orders are appropriate at that time.

I have signed the AVO and attached it to this email. The order is effective from today's date and is enforceable without the need for entry and filing.

Conway J.

Superior Court of Justice (Toronto)

TAB 11

Court File No.CV-20-00642097-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MADAM	)	FRIDAY, THE 18th
	)	
JUSTICE CONWAY	)	DAY OF SEPTEMBER, 2020

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

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF BELEAVE INC., BELEAVE KANNABIS CORP., SEVEN OAKS INC., 9334416 CANADA INC. O/A MEDI-GREEN AND MY-GROW, BELEAVE KANNABIS ABBOTSFORD INC. AND BELEAVE KANNABIS CHILLIWACK INC.

(collectively, the "**Applicants**" and each an "**Applicant**")

APPROVAL AND VESTING ORDER

(Motion returnable September 18, 2020)

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**"), for an order, among other things: (i) approving the Amended and Restated Purchase Agreement, dated September 8, 2020 (the "**APA**"), between Beleave and Wayne Patrick Consumer Products Ltd. (the "**Purchaser**"), for the purchase and sale of all of the issued and outstanding shares of Beleave Kannabis Corp. ("**BKC Shares**") and 9334416 Canada Inc. (the "**933 Shares**" together with the BKC Shares, the "**Subsidiary Shares**") and those assets of Beleave Inc. ("**Beleave**") identified in the APA (the "**Transferred Assets**"); (ii) adding 2775965 Ontario Inc., a subsidiary of Beleave ("**ResidualCo**"), as an applicant in the within proceedings in order to carry out the transaction contemplated by the APA (the "**Transaction**"); (iii) transferring the Excluded Liabilities, Excluded Assets, and Excluded Contracts (all as defined in the Share Purchase Agreement, dated September 8, 2020 among Beleave, BKC and the Purchaser) to, and vesting

the same in ResidualCo; (iv) vesting all of Beleave Parent's right, title and interest in and to the Subsidiary Shares and the Transferred Assets in the Purchaser; (v) authorizing Grant Thornton Limited, in its capacity as court-appointed monitor of the Applicants (the "**Monitor**") to act as trustee in bankruptcy of the Applicants, including ResidualCo (in such capacities, the "**Trustee**"); and (vi) extending the stay of proceedings in respect of the Applicants to November 30, 2020 (the "**Stay Period**") was heard this day by videoconference due to the COVID-19 pandemic.

ON READING the Applicants' Notice of Motion, the affidavit of Bill Panagiotakopoulos, sworn September 9, 2020, and the Fourth Report of the Monitor dated September 17, 2020 (the "**Fourth Report**") and on hearing the submissions of counsel for the Applicants and counsel for the Monitor and counsel for those other parties appearing as indicated by the counsel slip, no one appearing for any other party although duly served as appears from the affidavit of service, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined herein shall have meaning ascribed to them in the APA.

APPROVAL AND VESTING

3. **THIS COURT ORDERS AND DECLARES** that the APA, including the BKC SPA and the 933 SPA, and the Transaction be and are hereby approved and that the execution of the APA by Beleave is hereby authorized, ratified and approved, with such minor amendments as the parties thereto may deem necessary, with the approval of the Monitor. Beleave is hereby authorized and directed to perform its obligations under the APA and to take such additional

steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Subsidiary Shares and the Transferred Assets to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Applicants to proceed with the Transaction and that no shareholder or other approval shall be required in connection therewith.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Monitor's certificate (the "**Monitor's Certificate**") to the Purchaser (the "**Effective Time**"), substantially in the form attached as Schedule "A" hereto, the following shall occur and shall be deemed to have occurred at the Effective Time in the following sequence:

(a) all of the right, title and interest in and to the Excluded Assets of BKC shall vest absolutely and exclusively in ResidualCo, and all Claims and Encumbrances (both defined below) shall continue to attach to the Excluded Assets and to the Proceeds (defined below) in accordance with paragraph 8 of this Order, in either case with the same nature and priority as they had immediately prior to the transfer;

(b) all of Beleave's right, title and interest in and to the Transferred Assets shall vest absolutely and exclusively in the Purchaser free and clear of and from any and all Claims and Encumbrances;

(c) all Excluded Contracts and Excluded Liabilities (which for certainty includes all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) of BKC) shall be transferred to, assumed

by and vest absolutely and exclusively in ResidualCo such that the Excluded Contracts and Excluded Liabilities shall become obligations of ResidualCo and shall no longer be obligations of BKC;

(d) all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person (as defined below) and are convertible or exchangeable for any securities of BKC or 933 (the "**Share Companies**") or which require the issuance, sale or transfer by the Share Companies of any shares or other securities of the Share Companies and/or the share capital of the Share Companies, or otherwise relating thereto, shall be deemed terminated and cancelled; and

(e) all of the right, title and interest in and to the Subsidiary Shares shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypotecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order or any other orders in these CCAA proceedings; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry systems; and (iii) those Claims listed on Schedule "B" hereto (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Subsidiary Shares are hereby expunged and discharged as against the Subsidiary Shares; and

(f) the Share Companies shall be deemed to cease being Applicants in these CCAA proceedings, and the Share Companies shall be deemed to be released from the purview of the Initial Order and all other orders of this Court granted in respect of these CCAA proceedings, save and except for this Order, the provisions of which (as they relate to the Share Companies) shall continue to apply in all respects.

6. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof in connection with the Transaction.

7. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Beleave Group and the Purchaser regarding the fulfilment of conditions to closing under the APA and shall have no liability with respect to delivery of the Monitor's Certificate.

8. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims:

(a) the net proceeds from the sale of the Transferred Assets and the 933 Shares, as allocated by Beleave and the Purchaser in consultation with the Monitor (the "**Asset Proceeds**"), shall stand in the place and stead of the Transferred Assets and 933 Shares and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances relating to the Transferred Assets and 933 Shares shall attach to the Asset Proceeds with the same priority as they had with respect to the Transferred Assets and 933 Shares, respectively, immediately prior to the sale, as if the Transferred Assets and 933 Shares had not been sold and remain in the possession or control of the Person having that possession or control immediately prior to the sale; and

(b) the net proceeds from the sale of the BKC Shares, as allocated by Beleave and the Purchaser in consultation with the Monitor (the "**BKC Proceeds**" together with the

Asset Proceeds, the "**Proceeds**") shall stand in the place and stead of the assets conveyed by BKC through the sale of the BKC Shares and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances against BKC shall attach to the BKC Proceeds with the same priority as they had with respect to BKC immediately prior to the sale, as if the BKC assets conveyed by BKC through the sale of the BKC Shares had not been sold and remain in the possession or control of the Person having that possession or control immediately prior to the sale.

9. **THIS COURT ORDERS** that pursuant to section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Applicants or the Monitor, as the case may be, is authorized, permitted and directed to, at the Effective Time, disclose to the Purchaser all human resources and payroll information in the Share Companies' records pertaining to past and current employees of the Share Companies. The Purchaser shall maintain and protect the privacy of such information in accordance with applicable law and shall be entitled to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Share Companies.

10. **THIS COURT ORDERS AND DECLARES** that, at the Effective Time and without limiting the provisions of paragraph 5 hereof, the Purchaser and BKC shall be deemed released from any and all claims, liabilities (direct, indirect, absolute or contingent) or obligations with respect to any taxes (including penalties and interest thereon) of, or that relate to, the Applicants (provided as it relates to BKC, such release shall not apply to taxes in respect of the business and operations conducted by BKC after the Effective Time), including, without limiting the generality of the foregoing, all taxes that could be assessed against the Purchaser or BKC (including any predecessor corporations) pursuant to section 160 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), or any provincial equivalent, in connection with the Applicants.

11. **THIS COURT ORDERS** that except to the extent expressly contemplated by the APA, all contracts to which the Share Companies and Beleave are parties upon delivery of the Monitor's Certificate will be and remain in full force and effect upon and following delivery of the Monitor's Certificate and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") who is a party to any such arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

(a) any event that occurred on or prior to the delivery of the Monitor's Certificate and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of any Applicant);

(b) the insolvency of any Applicant or the fact that the Applicants sought or obtained relief under the CCAA;

(c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the APA, the Transaction or the provisions of this Order, or any other Order of the Court in these proceedings; or

(d) any transfer or assignment, or any change of control of the Share Companies or Beleave arising from the implementation of the APA, the Transaction or the provisions of this Order.

12. **THIS COURT ORDERS** that from and after the Effective Time, all Persons shall be deemed to have waived any and all defaults of any Applicant then existing or previously committed by any Applicant, or caused by any Applicant, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative

pledge, term, provision, condition or obligation, expressed or implied, in any Contract existing between such Person and BKC arising directly or indirectly from the filing of the Applicants under the CCAA and the implementation of the Transaction, including without limitation any of the matters or events listed in paragraph 11 hereof and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under a contract shall be deemed to have been rescinded and of no further force or effect, provided that nothing herein shall be deemed to excuse BKC from performing its obligations under the APA or be a waiver of defaults by BKC under the APA and the related documents.

13. **THIS COURT ORDERS** that from and after the Effective Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against BKC relating in any way to or in respect of any Excluded Assets, Excluded Liabilities or Excluded Contracts and any other claims, obligations and other matters that are waived, released, expunged or discharged pursuant to this Order.

14. **THIS COURT ORDERS** that from and after the Effective Time:

(a) the nature of the Assumed Liabilities retained by 933, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transaction or this Order;

(b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to ResidualCo;

(c) any Person that prior to the Effective Time had a valid right or claim against BKC under or in respect of any Excluded Contract or Excluded Liability (each an

"**Excluded Liability Claim**") shall no longer have such right or claim against BKC but will have an equivalent Excluded Liability Claim against ResidualCo in respect of the Excluded Contract or Excluded Liability from and after the Effective Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against ResidualCo; and

(d) the Excluded Liability Claim of any Person against ResidualCo following the Effective Time shall have the same rights, priority and entitlement as such Excluded Liability Claim had against BKC prior to the Effective Time.

15. **THIS COURT ORDERS AND DECLARES** that, as of the Effective Time:

(a) ResidualCo shall be a company to which the CCAA applies; and

(b) ResidualCo shall be added as an Applicant in these CCAA proceedings and all references in any Order of this Court in respect of these CCAA proceedings to (i) an "Applicant" or the "Applicants" shall refer to and include ResidualCo, and (ii) "Property" shall include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, of ResidualCo (the "**ResidualCo Property**"), and, for greater certainty, each of the Charges (as defined in the Amended and Restated Initial Order, dated June 15, 2020), shall constitute a charge on the ResidualCo Property.

RELEASES

16. **THIS COURT ORDERS** that effective upon the filing of the Monitor's Certificate, (i) the current directors, officers, employees, legal counsel and advisors of the Applicants (including, for certainty, the Share Companies) and (ii) the Monitor and its legal counsel (collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts,

liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place prior to the filing of the Monitor's Certificate (a) undertaken or completed pursuant to the terms of this Order, (b) arising in connection with or relating to the APA or the completion of the Transaction, (c) arising in connection with or relating to the within CCAA proceedings, or (d) related to the management, operations or administration of the Applicants (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, provided that nothing in this paragraph shall waive, discharge, release, cancel or bar any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

17. **THIS COURT ORDERS** that the relief sought by the Applicants against 1178647 B.C. Ltd. ("**117**") in paragraph 1(e) of the Applicants' notice of motion dated August 13, 2020 filed in the within CCAA proceedings (the "**Notice of Motion**"), and the grounds for such relief described in paragraphs 29-35 thereof, be and are hereby withdrawn by the Applicants on a with prejudice and without costs basis, and that 117 (including its current directors, officers, employees, legal counsel and advisors) (collectively, the "**117 Parties**"), on the one hand, and the Applicants and the Released Parties, on the other hand, shall be deemed to forever and irrevocably release and discharge each other from any and all present and future claims (including without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured

or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place prior to the date of this Order (collectively, the "**Second Released Claims**"), which Second Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the 117 Parties, the Applicants and the Released Parties, respectively, provided that nothing in this paragraph shall waive, discharge, release, cancel or bar any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

18. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C 195, c. B-3, as amended (the "**BIA**"), in respect of the Applicants and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Applicants;

the APA, the implementation of the Transaction (including without limitation the transfer and vesting of the Excluded Assets, Excluded Contracts and Excluded Liabilities in and to ResidualCo, the transfer and vesting of the Transferred Assets and the Subsidiary Shares in and to the Purchaser) the Payments and any payments by or to the Purchaser, the Applicants or the Monitor authorized herein shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and/or ResidualCo and shall not be void or voidable by creditors of the Applicants or ResidualCo, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

GENERAL

19. **THIS COURT ORDERS** that, following the Effective Time, the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances as against the Subsidiary Shares and the Transferred Assets.

20. **THIS COURT ORDERS** that, following the Effective Time, the title of these proceedings is hereby changed to:

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

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF BELEAVE INC., SEVEN OAKS INC., 2775965 ONTARIO INC., BELEAVE KANNABIS ABBOTSFORD INC. AND BELEAVE KANNABIS CHILLIWACK INC.

21. **THIS COURT ORDERS** that Grant Thornton Limited is authorized, but not required, to act as trustee in bankruptcy of Beleave Inc., Seven Oaks Inc., 2775965 Ontario Inc., Beleave Kannabis Abbotsford Inc. and Beleave Kannabis Chilliwack Inc.

STAY PERIOD

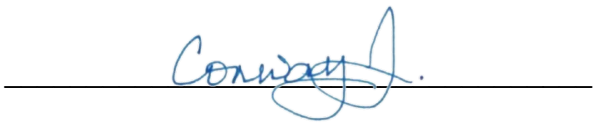
22. **THIS COURT ORDERS** that the Stay Period referred to in the Amended and Restated Initial Order, dated June 15, 2020, be and is hereby extended to November 30, 2020.

OTHER

23. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding,

or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

24. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.



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

Court File No.: CV-20-00642097-00CL

000442

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF **BELEAVE INC., BELEAVE KANNABIS CORP., SEVEN OAKS INC., 9334416 CANADA INC. O/A MEDI-GREEN AND MY-GROW, BELEAVE KANNABIS ABBOTSFORD INC. AND BELEAVE KANNABIS CHILLIWACK INC.**

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at TORONTO

APPROVAL AND VESTING ORDER
(MOTION RETURNABLE SEPTEMBER 18, 2020)

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