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Justice Eidsvik
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Sep 2, 2021

Form 49
[Rule 3.8] 900190

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 2324159 ALBERTA INC.



DOCUMENT **AFFIDAVIT OF ALANE MACDONALD**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

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AFFIDAVIT OF ALANE MACDONALD SWORN ON THE 31ST DAY OF AUGUST, 2021

I, **ALANE MACDONALD**, of the City of Oakville, in the Province of Ontario, **SWEAR AND SAY THAT:**

1. I am a Senior Manager with TD Equipment Finance ("**TDEF**") and as such, I have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary these matters are within my own knowledge and are true. Where I have indicated that I have obtained facts from other sources, I have identified the source and I verily believe those facts to be true.
2. TDEF is a finance company carrying on business nationwide, including in the province of Alberta.
3. On March 15, 2017, JMB Crushing Systems ULC ("**JMB**") entered into Master Equipment Lease No. 25904 with TDEF (the "**Lease**"). Attached hereto to this my Affidavit and marked as Exhibit "A" is a true copy of the Lease.
4. Pursuant to the Lease, TDEF agreed to lease to JMB equipment described as:

- a. (1) 2014 AMI Thunderbird II 3054JVE Electric Portable Jaw Plant w/Switchgear Serial No. 2807-14
 - b. (1) 2014 CR 30X54 Jaw Crusher Serial No. TRXJ3054COKEE0657
 - c. (1) 2014 AMI 50X20 C04521 VGF Serial No. 2806-14
 - d. (1) 2015 Terex/Cedarapids 6203 Portable Screening Plant Serial No. TRX620HSCOKFK0807
 - e. (7) 2015 36X50 Superior Stackable Conveyors with Legs Serial Nos. 817775, 847651, 847652, 847655, 847656, 847657, 847658
(collectively, the "**Equipment**").
5. On or around May 1, 2020, JMB Crushing Systems Inc. and 2161889 Alberta Ltd. initiated proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA Proceedings**").
 6. On June 2, 2020, TDEF received advice that its assets were not being used and would not be included in any further going concern bids and TDEF was given approval to inspect and remove its assets. In essence, the assets were subject to the CCAA Proceedings for approximately one month from the time of the initial Order to the release by the Monitor/JMB. Attached hereto as Exhibit "B" is a copy of this June 2, 2020 Notice.
 7. Following the commencement of the CCAA Proceedings, and approval of removal as referenced above, TDEF repossessed the Equipment pursuant to the Lease.
 8. On or around April 21, 2021, TDEF was provided a Notice by Debtor Company to Disclaim or Resiliate an Agreement form in relation to the Lease (the "**Disclaimer Form**"). Attached hereto to this Affidavit and marked as Exhibit "C" is the Disclaimer Form.
 9. TDEF has received no payments in accordance with the Lease following the commencement of the CCAA Proceedings. TDEF, through its counsel, did request payment from JMB and the Monitor pursuant to a letter dated September 3, 2020 and a follow up email of February 3, 2021. Attached

hereto as Exhibits "D" and "E" are the initial letter and the follow up email. Both JMB and the Monitor were aware of this request. I note at paragraph 41(c) of the Monitor's Bench Brief that approximately \$128,000.00 was paid to various creditors during the term of the CCAA Proceedings. Despite TDEF's entitlement to payment, it received nothing.


10. I make this Affidavit with respect to application brought by FTI Consulting Canada Inc., in its capacity as the court-appointed monitor, in which costs are being sought from, among others, TDEF, and for no other or improper purpose.

SWORN BEFORE ME by video conference
at the City of Oakville, in the
Province of Ontario, this 31st
day of August, 2021

 (KOR)

A Commissioner, etc.

Commissioned by videoconference pursuant to the
Law Society of Ontario's guidance during the COVID-19 crisis


ALANE MACDONALD

This is Exhibit "A" referred to in the Affidavit of Alane MacDonald sworn/affirmed before me at the City of London, in the Province of Ontario this 31st day of August, 2021

A handwritten signature in blue ink, appearing to be 'Mn (KDE)', written over a horizontal line.

A Commissioner for taking Affidavits



MASTER EQUIPMENT LEASE NO. 26904

LESSOR: TD EQUIPMENT FINANCE CANADA, a division of The Toronto-Dominion Bank ("Lessor")
2020 Winston Park Drive, Suite 301, Oakville, Ontario L6H 6X7
Phone: (905) 403-4770 Fax: (905) 403-4771

LESSEE: JMB CRUSHING SYSTEMS ULC ("Lessee")
61329 RANGE RD 455 BONNYVILLE AB T0N 2H4

1. **LEASE.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, the personal property described in a schedule or schedules in the form attached hereto as "Schedule A" (each a "Schedule" and collectively the "Schedules") executed herewith or executed hereafter and made a part of this Master Equipment Lease No. 26904 (together with each Schedule and any Certificates and appendices attached hereto, hereinafter called this "Lease"), together with all replacements, additions, attachments and accessories relating thereto or affixed thereon (all hereafter referred to as the "Equipment"). The parties may from time to time by mutual agreement lease other items of Equipment pursuant to this Lease for such terms and at such rates as may be agreed, by execution of additional Schedules covering such items and such Schedules shall constitute part of this Lease for all purposes as if the provisions thereof were set forth at length herein. In the event of a conflict between the terms of this Lease and any Schedule, the terms of the Schedule will govern. Terms not otherwise defined herein shall have the same meaning ascribed under the Schedule.
2. **SELECTION OF EQUIPMENT.** Lessee acknowledges that: (i) the Equipment and the Supplier (each time used herein, as defined in each Schedule) have been selected by Lessee based on Lessee's own judgment; (ii) Lessee has requested Lessor to acquire title and ownership of the Equipment; (iii) the Equipment has been, or forthwith upon the execution of a Schedule by Lessor will be, ordered from the Supplier.
3. **DELIVERY AND ACCEPTANCE.** Lessee is responsible, at Lessee's own cost and expense, to arrange for the delivery and installation of the Equipment. Lessee will acknowledge acceptance of the Equipment on the day that the Equipment is delivered by executing a Delivery and Acceptance Certificate in the form attached hereto as Appendix 1 ("Certificate") and each such Certificate shall form part of this Lease. The execution of a Certificate shall be conclusive proof as between Lessee and Lessor as to the delivery and acceptance of the Equipment described therein by Lessee. Lessee agrees that Lessor has no duty to inspect or test the Equipment either before or after its delivery.
4. **TERM.** The term of the lease for any Equipment (the "Lease Term") and its commencement date (the "Lease Commencement Date") will be as provided under the "Terms of Payment" section of the Schedule related to such Equipment and unless sooner terminated as set forth herein, shall end upon payment to Lessor of the Number of Rental Payments specified under the "Terms of Payment" section in each Schedule. All terms and conditions of this Lease including the obligation to make additional Rental Payments in the same amount as required during the Lease Term shall apply after the Lease Term or Extended Lease Term, as applicable, of the Lease until the Equipment has been returned to, or purchased by, Lessor in accordance with the terms hereof.
5. **WARRANTIES.** Lessor hereby assigns to Lessee, for the Lease Term or Extended Lease Term, as applicable, heretofore and to the extent permitted by law, all warranties, if any, resulting from the sale of the Equipment by the Supplier to Lessor. Upon expiry of the Lease Term or Extended Lease Term, as applicable, or upon termination of this Lease or of any Schedule hereto for any reason, Lessee hereby immediately reassigns all such warranties in respect of the subject Equipment to Lessor. Lessee acknowledges that Lessor is not the manufacturer of the Equipment, nor the manufacturer's or Supplier's agent. Nor is the Supplier or manufacturer an agent of Lessor. Lessee disclaims any reliance upon any statements or representations made by Lessor. LESSOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE DURABILITY, QUALITY, WORKMANSHIP, DESIGN, MERCHANTABILITY, SUITABILITY, OR FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED. Lessor shall not be liable to Lessee for any loss, cost, damage or expense of any kind or nature caused directly or indirectly by the Equipment or the use, ownership or maintenance thereof or for any loss of business or other damages whatsoever and howsoever caused. In the event that the Equipment is not properly installed, does not perform as represented by the Supplier or manufacturer, fails to function or perform, or is unacceptable for any reason whatsoever, Lessee will look to the Supplier or manufacturer as to any warranty, guarantee, or other obligation made by the Supplier or manufacturer in respect of the Equipment. The failure or breach of any representation or warranty as to the Equipment or any other matter by the Supplier or manufacturer shall in no way relieve Lessee of any obligations hereunder.
6. **TITLE.** Lessee acknowledges that ownership and title to the Equipment and the right to the benefit of any capital cost allowance under the Income Tax Act (Canada) or similar provincial legislation shall, throughout the Lease Term or Extended Lease Term, as applicable, remain vested in Lessor and Lessee shall have no right of property therein except the right to possess and use the Equipment as provided in this Lease. Lessor may require plates or markings to be affixed to or placed on the Equipment indicating that Lessor is the owner. Lessee shall keep the Equipment free of liens, security interests, charges, encumbrances, hypothecs, claims, legal processes of creditors and any other rights of third parties of any kind or nature (collectively, "Encumbrances"). Lessee agrees not to sell, pledge, hypothecate, or otherwise encumber or suffer a lien or charge upon or against any interest in this Lease or in the Equipment.
7. **PERSONAL PROPERTY.** The Equipment shall at all times during the Lease Term or Extended Lease Term, as applicable, be and remain personal or moveable property, regardless of the manner in which it may be attached to any real estate. Lessee shall cause the Equipment to be installed in a manner which will permit its removal without material injury to it or to the place of installation. Lessee shall obtain any landlord or mortgagee waivers that Lessor may require. Lessee shall be responsible for any damage done to any real estate, building or structure by the removal of the Equipment and shall indemnify and save harmless Lessor therefrom.
8. **LOCATION OF EQUIPMENT.** The Equipment shall be located and used at the place designated in the "Equipment Location" section of each Schedule and not elsewhere without the prior written consent of Lessor.
9. **RIGHT OF INSPECTION.** At any time during normal business hours, Lessor or its authorized representatives shall have the right to inspect the Equipment and any records of Lessee relating thereto.
10. **NON-CANCELLABLE LEASE.** This Lease shall be binding upon the parties hereto and cannot be cancelled or terminated except as expressly provided herein.
11. **RENTAL PAYMENTS.** Lessee agrees to pay Lessor the Rental Payment for the Number of Rental Payments, each as specified under the "Terms of Payment" section of each Schedule together with all applicable taxes and any other sums as may become payable under this Lease. The first Rental Payment is due on the First Rental Payment Date as specified under the "Terms of Payment" section of each Schedule. The second Rental Payment is due on the Subsequent Rental Payment Date as specified under the "Terms of Payment" section of each Schedule. The remaining Rental Payments are due on the monthly, quarterly or annual anniversary of the Subsequent Rental Payment Date as specified under the "Terms of Payment" section of each Schedule. Payments shall be made without demand or invoice at the address of Lessor herein noted or as otherwise instructed by Lessor from time to time. The Rental Payments specified under the "Terms of Payment" section of each Schedule shall be absolutely net and carefree to Lessor free of all set-offs, expenses and outgoings of any kind or nature and Lessee agrees unconditionally to pay each of the Rental Payments specified under the "Terms of Payment" section of each Schedule, including applicable taxes, and all other payments required hereunder without cancellation, defence, deduction, recoupment, reduction, abatement, compensation, set-off, claim or counterclaim or any other right whatsoever due or alleged to be due because of any past, present or future claim by Lessee against Lessor, the manufacturer or Supplier of the Equipment under this Lease or otherwise. This Lease shall not terminate nor the obligations of Lessee be affected because of any defect in, change to, destruction, loss of possession or use of the Equipment from any cause whatsoever, whether within or beyond the control of Lessee, including, without limitation, wear and tear, act of God, government regulations, strike, loss or damage, obsolescence or Equipment failure, any present or future law to the contrary notwithstanding, it being the intention of the parties that each of the Rental Payments specified under the "Terms of Payment" section of each Schedule, including applicable taxes, and other sums as may become payable by Lessee shall continue to be payable in all events unless the obligation to pay shall be terminated by the express provisions of this Lease.
12. **COSTS AND EXPENSES.** Lessee shall pay or reimburse Lessor on demand for all expenses, fees, charges, claims and fines incurred or arising in connection with this Lease, and the ongoing administration, monitoring and enforcement thereof, including without limitation the registration, licensing, possession, use or operation of the Equipment and all taxes and duties on or relating to the Equipment together with all other expenses and outgoings relating to the Equipment.
13. **COMPLETION OF LEASE.** Lessee appoints Lessor as its attorney for the purpose of filing in the Lease Commencement Date and First Rental Payment Date in each Schedule; to complete the Equipment description in each Schedule, including without limitation selling out serial numbers and any other identifying references to the Equipment; and adjustment of the Rental Payment to reflect tax rate changes, as provided for under the "Terms of Payment" section in each Schedule.
14. **PREPAID RENTALS.** The number and amounts of rentals to be prepaid as set forth in the "Terms of Payment" section of each Schedule, if any, shall be paid to Lessor by Lessee on or before the Lease Commencement Date. Such prepaid rentals, when paid to Lessor, shall be deemed to have been received by Lessor not as a deposit nor as a security to compensate Lessor for any damages it may suffer by reason of a breach by Lessee of any covenant or condition of this Lease, but as a condition

preliminary for the execution thereof, and shall remain the absolute property of Lessor, shall not be refundable to Lessee under any circumstances but shall be applied by Lessor against rentals in reverse order of their maturities if this Lease remains in force and in good standing.

15. MAINTENANCE AND USE. Lessee shall, at Lessee's own cost and expense, be responsible for the maintenance and repair of the Equipment by qualified parties, not disapproved of by Lessor. Lessee shall, at its own cost and expense, keep the Equipment in good repair, condition and working order (including necessary replacements), maintained and operated carefully in compliance with manufacturer's recommendations and all applicable laws and regulations, by competent and duly qualified personnel only. Lessee shall comply with and conform to all laws, ordinances and regulations present or future, in any way relating to the possession, use or maintenance of the Equipment throughout the Lease Term or Extended Lease Term, as applicable, and to the perfect exoneration from liability of Lessor. Lessee may make replacements, alterations, additions or improvements to the Equipment provided that all such replacements, alterations, additions or improvements do not impair the value or utility of the Equipment, are completed by qualified parties not disapproved of by Lessor, are at Lessee's expense and shall belong to, and become property of, Lessor immediately upon being made. Lessee acknowledges that Lessor is not responsible for providing any required maintenance and/or service for the Equipment. Lessee will make all claims for service and/or maintenance solely to the relevant Supplier and/or manufacturer and/or other person and such claims will not affect Lessee's obligation to make all required Rental Payments.

16. LESSOR'S PAYMENT. If Lessee fails to perform or comply with any of its agreements contained herein, including, without limitation, the agreement of Lessee to maintain insurance on the Equipment in accordance with section 18 hereof and to pay any fees, taxes or other lawful charges in accordance with section 35 hereof, then Lessor may itself perform or comply with such agreement, and the amount of the reasonable expenses of Lessor incurred in connection with the performance of or compliance with such agreement, as the case may be, shall be deemed additional rent hereunder and shall be payable, with interest at the rate of twenty four percent (24%) per annum, by Lessee upon demand.

17. LOSS AND DAMAGE. Lessee assumes and shall bear the entire risk of loss or destruction of, or damage to the Equipment from any cause whatsoever, whether or not insured. In the event that the Equipment or any item thereof shall become lost, stolen, destroyed or damaged beyond repair for any reason or in the event of any condemnation, confiscation, theft or seizure or expropriation of such item, Lessee will, at the option of Lessor, immediately (a) replace the Equipment or such item by providing Lessor with title to such replacement equipment satisfactory to Lessor which replacement equipment shall be of equal value and free of any Encumbrance, or (b) pay to Lessor the present value of: (i) the aggregate of all unpaid amounts due under the related Schedule as rental or otherwise to the expiration of the Lease Term or the Extended Lease Term, as applicable; and (ii) Lessor's residual value of the related Equipment at the expiration of the Lease Term or Extended Lease Term, as applicable (calculated by discounting such amounts at an interest rate of two percent (2%) per annum compounded monthly).

18. INSURANCE. Lessee shall, at its own expense, keep the Equipment insured throughout the Lease Term or Extended Lease Term, as applicable, against all perils and risks of loss (including without limitation, loss or damage by fire or theft) in such amounts as would normally be insured against by prudent owners or users of similar equipment to the Equipment, or as Lessor may at any time or from time to time require. The insurance shall, at a minimum, cover the full replacement value of the Equipment, including taxes and installation costs, and will not be subject to any deductible or co-insurance clause unless and to the extent agreed to by Lessor in writing. Lessee will also, at its expense, place and maintain insurance throughout the Lease Term or Extended Lease Term, as applicable, against third party liability, including liability imposed on Lessor or Lessee for injury to, or death of, persons, or damage to or destruction of property, to the extent of not less than \$2,000,000 per occurrence or such other amount as Lessor may from time to time require. All insurance policies will be with reputable insurers reasonably acceptable to Lessor and will name Lessor as an additional insured and Lessor may from time to time require. All insurance policies will be with reputable insurers reasonably acceptable to Lessor and will name Lessor as an additional insured and first loss payee. Lessee must renew or replace such insurance throughout the Lease Term or Extended Lease Term, as applicable, as required in order to be in compliance with this section. Evidence of the renewal of such insurance shall be produced to Lessor at least thirty (30) days before the termination thereof or Lessor may obtain the renewal of such insurance at Lessee's expense. On Lessor's request, and in any event, at least once each year, Lessee must supply Lessor with evidence, satisfactory to Lessor, of the existence of such insurance. All such insurance will require the insurer to give at least 30 days' prior written notice to Lessor of any cancellation or alteration in the terms of the insurance and will also provide that the insurance, as to the interests of Lessor, shall not be invalidated by any act or omission of Lessee. Lessee now appoints Lessor, with full power of substitution and coupled with an interest, as Lessee's attorney-in-fact to make, claim for, receive payment of proceeds and execute and endorse all documents, cheques or drafts for loss or damage under any such policy. Lessee will not make any adjustments to any insurance policy without obtaining the prior written consent of Lessor. Lessee will promptly notify Lessor of any damage to or loss of the Equipment or any part thereof and, at its own expense, make all proofs of loss and take all other steps necessary to recover any insurance benefits unless advised in writing by Lessor that Lessor desires to do so at Lessee's expense. Performance by Lessee under this section will not affect or release Lessee's obligations and liabilities to pay each Rental Payment or perform as herein otherwise provided.

19. PURCHASE MONEY SECURITY INTEREST AND PROCEEDS. This Lease grants to Lessor a purchase money security interest in the Equipment and in the proceeds of the Equipment of whatever nature and kind and howsoever arising within the meaning of the personal property security acts of any province or territory in Canada in force or to come into force from time to time.

20. REPRESENTATIONS AND WARRANTIES. Lessee warrants, covenants and represents that: (a) if Lessee is a corporation or other form of business organization it is validly existing, in good standing, under the laws of the jurisdiction of its organization, with adequate power to enter into this Lease; (b) this Lease has been duly authorized, executed and delivered by all necessary action on the part of Lessee; (c) Lessee is engaged in an industrial or commercial enterprise and that Lessee intends to use the Equipment in its business and not for personal, family, household or farming purposes; (d) Lessee has obtained all consents required in connection with any aspect of the Equipment; (e) the name of Lessee has not been set out in its official formation filings in its jurisdiction of organization, in an English form and a French form, or in a combined English and French form; and (f) all information that Lessee has provided to Lessor is accurate and complete respecting, where applicable: (i) the names of Lessee's directors and the names and addresses of Lessee's beneficial owners; (ii) the names and addresses of Lessee's trustees, known beneficiaries and/or settlors; and (iii) Lessee's ownership, control and structure.

21. EVENTS OF DEFAULT. The occurrence or happening of any one or more of the following events shall constitute an Event of Default (each an "Event of Default"): (a) Lessee fails to pay any Rental Payment or other sum due hereunder or under any other agreement or lease entered into with Lessor within 5 days of its due date; (b) Lessee fails to observe or perform any term, covenant or condition of this Lease or of any other lease or other agreement between Lessor and Lessee or between affiliates of Lessor and Lessee, including, without limitation, any agreement between The Toronto-Dominion Bank and Lessee, and, if such default is capable to being remedied, the default continues unremedied for 5 business days after the occurrence; (c) there exists an event, the effect of which with lapse of time or giving of notice, will constitute an event of default or a default under any other agreement for borrowed money entered into by Lessee; (d) any representation, warranty or statement made hereunder or made in connection with the execution and delivery of this Lease is false or misleading at any time; (e) if Lessee makes any assignment for the benefit of creditors, files or presents a petition, makes a proposal or commits any act of bankruptcy, or if any action is taken for the winding up, liquidation or the appointment of a liquidator, trustee in bankruptcy, custodian, curator, sequestrator, receiver or any other officer with similar powers or if a judgment or order shall be entered by any court approving a petition for reorganization, arrangement or composition of or in respect of Lessee, or if Lessee is insolvent or declared bankrupt; (f) if there exists a voluntary or involuntary suspension of business of Lessee; (g) if action is taken by an encumbrancer against Lessee to take possession of property or enforce proceedings against any assets; (h) if Lessee sells, leases, assigns, transfers, conveys or otherwise disposes of all or substantially all of its now owned or hereafter acquired assets; (i) if any final judgment for the payment of monies is made against Lessee and it is not discharged within 30 days from the imposition of such judgment; (j) if a guarantee in respect of this Lease is terminated for any reason whatsoever or a guarantor denies any liability under the guarantee; (k) if Lessor, in good faith, believes the ability of Lessee to pay or perform any term or condition of this Lease is impaired, or that all or any part of said Equipment is in imminent danger of being lost, damaged, confiscated, sequestered or seized under legal process; (l) if Lessee amalgamates or is subject to a direct or indirect change in control without Lessor's prior written consent; or (m) if, in Lessor's determination, a material adverse change occurs in the financial condition, business, operations or prospects of Lessee or of any guarantors of the obligations of Lessee under this Lease.

22. REMEDIES UPON DEFAULT. Upon the occurrence of an Event of Default, Lessor may, at its option and upon notice to Lessee, (a) elect to terminate this Lease or any or all of the Schedules, take possession of all Equipment which is subject to any or all of the Schedules, and sell, lease or otherwise dispose of such Equipment in such manner and upon such terms and conditions as it may deem fit, or (b) elect not to terminate this Lease or any or all of the Schedules and, as agent for Lessee, with or without taking possession of said Equipment, re-lease such Equipment for such period and upon such terms as it may deem fit and apply the net proceeds of such re-leasing against any amount payable hereunder by Lessee. Lessee acknowledges that such Equipment was acquired for, and leased to, Lessee at Lessee's request and that the related rental, the related lease term and the ultimate disposition of such Equipment were predicated upon Lessor receiving a minimum return. Therefore, in addition to Lessor's right to take possession and to sell or re-lease or otherwise dispose of such Equipment, and irrespective of whether or not Lessor has elected to terminate the Lease or any or all of the Schedules, Lessor shall be entitled to claim and to recover immediately from Lessee as a genuine pre-estimate of liquidated damages for the breach of this Lease and not as a penalty an amount in respect of each Schedule equal to the present value (calculated on the basis of an interest rate of two percent (2%) per annum compounded monthly) of the total of: (i) all amounts due under the related Schedule as rent or otherwise to the expiration of each related Lease Term or the related Extended Lease Term, as applicable and (ii) Lessor's residual value of the related Equipment at the expiration of the related Lease Term or related Extended Lease Term, as applicable; provided that if Lessee has paid the said liquidated damages, the net amount received by Lessor in any sale, re-lease or disposition of such Equipment after deducting all costs and expenses, including legal fees and disbursements on a solicitor and own client basis will be paid to Lessee or if Lessee has not paid such liquidated damages, the said net

amount will be deducted from such liquidated damages. The amount payable by Lessee as liquidated damages shall bear interest at the rate of twenty-four percent (24%) per annum, calculated monthly from the date Lessor gives notice to Lessee of an Event of Default. Upon the occurrence of an Event of Default, Lessee authorizes Lessor to debit any account Lessee has with any affiliate of Lessor for any sums payable under this Lease.

23. **REMEDIES CUMULATIVE.** All rights and remedies herein provided are cumulative and not exclusive of any rights or remedies otherwise provided by law. Any single or partial exercise of any right or remedy shall not preclude the further exercise of any other right or remedy.

24. **COLLECTION CHARGES AND INTEREST.** Should Lessee fail to pay when due the whole or any part of any Rental Payment, as specified under the 'Terms of Payment' section in each Schedule or any other sum owed by Lessee under this Lease, Lessee shall pay to Lessor in addition thereto, a collection charge equal to the greater of ten dollars (\$10.00) for each month or part thereof for which said rent or other sum shall be overdue or the interest on any and all overdue payments and amounts in default from date thereof until paid in full at the rate of twenty-four percent (24%) per annum (or such other rate as may be notified to Lessee from time to time) calculated and compounded monthly. Such collection charges shall be due and payable on demand. Lessor shall have the right to deduct such collection charges and interest from any payment received before crediting the balance of such payment to rental, other overdue payments and amounts in default. Lessee further agrees to pay to Lessor a fee for payment received before crediting the balance of such payment to rental, other overdue payments and amounts in default. Lessee further agrees to pay to Lessor a fee for cheques returned due to non-sufficient funds or other reasons (an "NSF Cheque") to reimburse Lessor for its time and expense incurred with respect to an NSF Cheque. Such NSF charge shall be \$100.00 (which amount is subject to change at the sole discretion of Lessor). If any provision of this Lease would obligate Lessee to make any payment of interest or other amount payable to Lessor in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by Lessor of interest at a criminal rate (as such terms are construed under the Criminal Code (Canada)) then, notwithstanding such provisions, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by Lessor of interest at a criminal rate, such adjustment to be effected, to the extent necessary, as follows: (1) firstly, by reducing the amount or rate of interest required to be paid to Lessor under this Lease, and (2) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to Lessor which would constitute 'interest' for purposes of Section 347 of the Criminal Code (Canada).

25. **RETURN OF EQUIPMENT UPON TERMINATION.** Upon the expiration or earlier termination of this Lease or a Schedule, Lessee shall at Lessee's expense deliver the related Equipment to Lessor, or its designated agent, at such location as Lessor shall designate, or deliver or dispose of the Equipment as Lessor may otherwise direct. Lessee shall bear all expenses in connection with the return of such Equipment including dismantling, packing, crating, loading, rigging, transportation, drayage, insurance and other costs and charges but not any charges or expenses in connection with de-crating or installation of such Equipment at such address designated by Lessor. Lessee agrees that upon return of such Equipment, such Equipment will be in such condition that the manufacturer thereof will accept it for maintenance under the standard maintenance agreement of the manufacturer. Lessee agrees that any name or other identification of Lessee will be removed from such Equipment upon its return. Such Equipment shall be returned in as good condition and working order as when delivered to Lessee, reasonable wear and tear only excepted, and free from any Encumbrances. Lessor shall be the sole judge of the condition of such Equipment. Lessee agrees to pay to Lessor the cost of repairing or restoring such Equipment in accordance with the provisions hereof and the cost of discharging any Encumbrances. If Lessee fails to return the Equipment within ten (10) days of the expiration or earlier termination of this Lease, as applicable, Lessor shall have the right to enter upon the premises where such Equipment may be and take possession of and remove it at Lessee's expense with or without legal process. Lessee hereby waives any claims for damages which it might otherwise have by reason of any such entry, taking or removal.

26. **NOTICES.** Any notice to be given hereunder shall be in writing and may be personally delivered, sent by registered mail or transmitted by electronic mail or fax to the address of each party contained herein. Every notice shall be deemed to have been given and received: if personally delivered, upon delivery; if sent by mail, on the earlier of actual receipt or five days after posting; and if transmitted by electronic mail or fax, on the earlier of actual receipt and two days following the date of transmission; in each case excluding Saturday, Sunday and those statutory holidays on which the offices of either party are closed. Either party may by notice change its address to which notice may be given.

27. **FINANCING STATEMENT.** Lessor may file a financing statement or similar registration with respect to this Lease so as to give notice to any interested parties. To the extent permitted by law, Lessee agrees to waive all right to notice as may be applicable under any such registration of this Lease, including without limitation, notice of any financing statement, financing change statement, amendment or verification statement evidencing any such financing statement, financing change statement or amendment.

28. **ASSIGNMENTS AND SUBLETTING.** Lessee shall not transfer, deliver up possession of or sublet the Equipment and this Lease shall not be assignable by Lessee without prior written permission of Lessor. In the event of an assignment, Lessee agrees to pay an assignment fee to Lessor of \$500.00 (which amount is subject to change at the sole discretion of Lessor) or Lessor's actual costs, whichever is greater. This Lease and all rights of Lessor hereunder may be assigned by Lessor without Lessee's consent but Lessee shall not be obligated to make payments to any assignee of Lessor except after written notice of such assignment from Lessor. Lessee agrees to make each Rental Payment as specified under the 'Terms of Payment' section in each Schedule, including applicable taxes, unconditionally to any such assignee, without abatement, defense, set off, compensation or counterclaim. Such assignment shall not operate to release Lessee from any of its obligations hereunder.

29. **ENGLISH LANGUAGE.** The parties hereto confirm their express wish that this Lease as well as all other documents related hereto, including notices, be drawn up in the English language only and declare themselves satisfied therewith; les parties aux présentes confirment leur volonté expresse de voir le présent bail de même que tous les documents, y compris tous avis, s'y rattachant, rédigés en langue anglaise seulement et s'en déclarent satisfaits.

30. **JURISDICTION.** This Lease shall be governed by and construed in accordance with the laws of the Province of Alberta and the applicable laws of Canada. The parties irrevocably allot to the non-exclusive jurisdiction of the courts of the Province of Alberta.

31. **FURTHER ASSURANCES.** Lessee will promptly and duly execute and deliver to Lessor such further documents and instruments and take such further action as Lessor may from time to time request in order to more effectively carry out the intent and purpose hereof and to establish and protect the rights, interests and remedies intended to be created in favour of Lessor hereby including, without limitation, (i) the filing or recording of this Lease including any schedule or amendment hereto, or a financing, renewal or continuation statement with respect hereto or thereto in accordance with the laws of any applicable jurisdiction and (ii) the taking of such further action as Lessor may deem desirable to fully protect Lessor's interest hereunder. Lessee hereby authorizes Lessor to effect any such filing or recording as aforesaid (including the filing of any such financing statement without the signature of Lessee). Lessee shall also upon the request of Lessor provide evidence satisfactory to Lessor of the due authorizations, execution and delivery of any schedule or amendment hereto.

32. **CONSENT TO THE COLLECTION, USE AND/OR DISCLOSURE OF INFORMATION - INDIVIDUALS.** In this section, "you" means: (i) any individual, or that individual's authorized representative, who is Lessee; (ii) any individual who is a partner of Lessee; and (iii) the signing authorities, as identified to us, of Lessee. In this section and in section 33 below, the words "we", "us" and "our" mean TD Bank Group ("TD"). TD includes The Toronto-Dominion Bank and its world-wide affiliates, including Lessor, which provide deposit, investment, loan, securities, trust, insurance and other products or services. "Information" means financial, personal and other details about you, that you provide to us and that we obtain from others outside our organization, including through the products and services that are provided by us to Lessee. You agree that, at the time you request to begin a relationship with us and during the course of your relationship with us we may share your information with our world-wide affiliates, and collect, use and disclose your information as described in the Privacy Agreement which has or will be provided to you and is available online at td.com, including for, but not limited to, the purpose of identifying you, providing you with ongoing service, helping us serve you better, protecting us both from fraud and error, complying with legal and regulatory requirements, and marketing products and services to you. We may communicate with you for any of these purposes by telephone, fax, text messaging, or by other electronic means, and by automatic dialing-announcing device, at the numbers you have provided to us or by ATM, internet, mail, email and other methods. To understand how you can withdraw your consent, refer to the 'Marketing Purposes' section of the Privacy Agreement or contact Lessor at 1-888-587-8888. If:

- a) there are changes to the signing authorities of Lessee; or
- b) at the time of entering into this Lease, Lessee, if a corporation, has any individual who owns or controls, directly or indirectly, 25 per cent or more of the shares of such corporation, or has any director, where such individual or director is not, at such time, either a signing authority of such corporation or a personal banking customer of TD; or
- c) at the time of entering into this Lease, Lessee, if other than a corporation, has any individual who owns or controls, directly or indirectly, 25 per cent or more of Lessee, where such individual is not, at such time, either a signing authority of Lessee or a personal banking customer of TD;

then Lessee agrees to make such signing authorities and any such individual or director aware of the Privacy Agreement, advise them that they are subject to such agreement and inform them that a copy of such agreement is available online at td.com. This definition of "you" in the Privacy Agreement shall be deemed to include any such individual or director. Notwithstanding the foregoing, b) and c) shall not apply where Lessee is a public body, or a corporation that has minimum net assets of \$75 million on its last audited balance sheet and whose shares are traded on a Canadian stock exchange or a stock exchange that is prescribed by Section 3201 of the Income Tax Regulations, as may be amended from time to time, and operates in a country that is a member of the Financial Action Task Force.

33. **CONSENT TO THE COLLECTION AND/OR DISCLOSURE OF INFORMATION - BUSINESS CUSTOMER (OTHER THAN AN INDIVIDUAL).** In this section, "you" means the business customer that is not an individual. In addition to any rights TD may have regarding the collection and disclosure of your information, you authorize TD to obtain information about you from, and disclose information about you to, our world-wide affiliates, other lenders, credit reporting or credit rating agencies, credit bureaus and any supplier, agent or other party that performs services for you or on TD's behalf.

34. **INTERPRETATION.** It is hereby agreed by and between the parties that whenever the context of this Lease so requires the singular number shall include the plural and vice versa and that words importing the masculine gender shall include the feminine and neuter genders. The captions and headings in this Lease are for convenience only and shall not define or limit any of the terms hereof.

35. **TAXES.** Lessee shall pay when due all license fees, taxes, levies and other charges of any nature or kind and, make and file all declarations and returns in connection with all charges and taxes (local, municipal, county, state, provincial and federal, as applicable) which may now or hereafter be imposed upon or measured by the ownership, leasing, rental, sale, purchase, possession or use of the Equipment, excluding however, all taxes on or measured by Lessor's net income. The indemnities contained in this section shall survive the termination of this Lease.

36. **INDEMNIFICATION OF LESSOR BY LESSEE.** Lessee hereby agrees to indemnify, protect, save and keep harmless Lessor, its shareholders, affiliates and each of their agents and servants, officers, employees and directors, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including without limitation legal fees and disbursements on a solicitor and own client basis, of whatsoever kind and nature imposed or assumed by, incurred by or asserted against Lessor in any way relating to or arising out of: (i) the manufacture, order, acceptance or rejection, purchase, ownership, delivery, lease, possession, use, importation, installation, condition, sale, return or other disposition of the Equipment (including, without limitation, any costs or expenses incurred by Lessor in the acquisition of any of the Equipment which are in excess of or were not included or contemplated in the selection and acquisition of the Equipment); (ii) environmental damage or loss caused by the Equipment; (iii) any claim relating to any latent or other defects whether or not discoverable by Lessee; (iv) any claim for patent, trademark, design or copyright infringement; (v) any claim based on Lessor's ownership of the Equipment; (vi) the non-acceptance by Lessee or the failure, refusal or neglect of Lessee to accept the Equipment; or (vii) the failure of Lessee to comply with any terms of this Lease. Lessee agrees to give Lessor prompt notice of any claim or liability hereby indemnified against. This section shall be effective and in full force and effect from the date of the execution of this Lease even though the Lease Term of any Equipment under this Lease has not yet commenced. The indemnities contained in this section shall continue in full force and effect notwithstanding the expiration or other termination of this Lease and shall be payable on demand.

37. **WAIVERS.** To the extent permitted by law or statute and to the extent the same extends to and relates to the Lease as amended or renewed or any collateral security thereto, Lessee hereby waives the benefit of all provisions of any applicable statutes and regulations made thereunder in any and all provinces of Canada, which would in any manner, affect, restrict, or limit the rights of Lessor hereunder including, without limiting the generality of the foregoing, all of its rights, benefits and protection given or afforded to it by the provisions of The Limitation of Civil Rights Act (Saskatchewan), the Sale of Goods Act (British Columbia) and the Law of Property Act (Alberta) and any amendments thereto. Lessee also waives and assigns to Lessor the right of any statutory exemption from execution or otherwise and further waives any right to demand security for costs in the event of litigation.

38. **FINANCIAL DATA AND OTHER INFORMATION.** Lessee will provide Lessor with financial data and information as Lessor may request from time to time, including, without limitation, (i) annually, within ninety (90) days of the end of each financial year of Lessee, Lessee shall deliver to Lessor a copy of Lessee's audited or unaudited financial statements (as required by Lessor) for each financial year of Lessee; and (ii) such updated information and/or additional supporting information as Lessor may require with respect to any or all the matters in Lessee's representation and warranty in section 20(f).

39. **WAIVER BY LESSOR.** Any failure by Lessor to object to or take action with respect to a breach of this Lease or upon the occurrence of an Event of Default shall not constitute a waiver of Lessor's right to take action at a later date on that breach. No course of conduct by Lessor will give rise to any reasonable expectation which is in any way inconsistent with the terms and conditions of this Lease or Lessor's rights hereunder.

40. **PRE-AUTHORIZED PAYMENTS.** If Lessee has completed the Pre-Authorized Debit (PAD) Agreement (attached hereto as Appendix 2 which forms part of this Lease), Lessee warrants on a continuing basis that all persons whose signatures are required to sign on the specified PAD account have signed the authorization. Lessee will notify Lessor in writing of any changes in the account information.

41. **ADDITIONAL COLLATERAL SECURITY.** As a general and continuing collateral security for the payment and performance of all present and future debts, obligations and liabilities of Lessee to Lessor and any of its affiliates from time to time, Lessee hereby grants a continuing security interest in, and charges and hypothecates all its right, title and interest in and to any equipment and assets now or hereafter leased to, or sold to, Lessee by Lessor, together with all proceeds thereof of whatever nature and kind howsoever arising. Lessee acknowledges that the security interest granted hereby attaches upon the execution of this Lease and that value has been given. A security interest in any after acquired property included in the collateral in which a security interest is granted hereunder attaches to that property on the acquisition of rights therein by Lessee.

42. **ELECTRONIC COMMUNICATIONS.** Any electronic communication between Lessee and Lessor will take place according to the provisions of this section. The term "electronic communication" means any communication of instructions or information whether by telephone, internet, telex, tape, disk, wire or other means of telecommunication or electronic transmission, including a facsimile transmission. Lessor will consider any electronic communication received from Lessee or in Lessee's name, or from Lessee's premises or equipment, to be duly authorized by Lessee and binding on Lessee. Lessee authorizes Lessor to rely and act on any such communication. If the communication is by facsimile transmission, Lessor will be entitled to act upon any signature purporting to be Lessee's signature or that of Lessee's authorized signing officer. If Lessor tries to verify the signature on a facsimile transmission or the validity of any instructions electronically communicated (although Lessor is not obligated to do so) and is unable to do so to Lessor's satisfaction, Lessor may delay in acting on or refuse to act on such instructions. Lessee agrees that Lessor's records regarding any electronic communication will be admissible in any legal, administrative or other proceedings as if such records were original written documents. Lessor's records will be conclusive proof of the existence, content and accuracy of the electronic communication.

43. **CUSTOMER RESOLUTION PROCESS.** If Lessee has a problem or concern, Lessee may contact Lessor toll free at 1-800-223-6808, by email at customer.service@td.com or Lessee may visit Lessor at 2020 Winston Park Drive, Suite 301, Oakville, Ontario L6H 6X7. For a more detailed overview of Lessor's complaint process visit www.td.com. Financial Consumer Agency of Canada (FCAC) - If Lessee has a complaint regarding a potential violation of a consumer protection law, a public commitment, or an industry code of conduct, Lessee can contact the FCAC in writing at: 6th Floor, Enterprise Building, 427 Laurier Ave. West, Ottawa, Ontario K1R 1B9. The FCAC can also be contacted by telephone at 1-888-481-3222 (en français 1-866-481-2232) or through its website at www.fcac-afca.gc.ca. Please note that the FCAC does not become involved in matters of redress or compensation.

44. **TIME.** Time is of the essence of this Lease.

45. **MISCELLANEOUS.** This Lease constitutes the entire agreement between the parties with respect to the Equipment. There are no conditions, covenants, agreements, understandings, representations, warranties or other provisions, oral or written, express or implied, collateral, statutory or otherwise, relating to the Equipment except as herein provided. Any modification, amendment, change or alteration to the terms of this Lease shall not be effective and binding on Lessor unless the same is in writing and signed by Lessor. No term, covenant or condition of this Lease can be waived except by written consent of Lessor. If more than one Lessee is named in this Lease, the liability of each shall be joint and several. Provisions of this Lease, which contravene the applicable law of any jurisdiction, are severable and void to such extent. Lessee acknowledges executing and receiving a fully executed copy of this Lease. Lessee acknowledges and agrees that clerical errors shall not affect the validity of this Lease and Lessor shall be entitled to unilaterally correct the same. Lessee confirms that, except as permitted by Lessor, this Lease shall not be entered into on behalf of or for the benefit of any third party. This Lease shall apply to and bind Lessee's heirs, executors, administrators, successors and permitted assigns and shall enture to the benefit of Lessor.

This Lease, consisting of the foregoing, including the Schedule(s), Certificates and any appendices attached hereto, correctly sets forth the entire Lease between Lessor and Lessee. Neither this Lease nor any other agreements or understandings shall be binding upon Lessor unless in writing, accepted by an authorized representative of Lessor.

Executed this 15 day of March 2017. *[Signature]*
By execution hereof, the signer hereby certifies that he/she has read this Lease, and that he/she is duly authorized to execute this Lease on behalf of Lessee.

LESSOR: TD EQUIPMENT FINANCE CANADA, a division of
The Toronto-Dominion Bank

By: *[Signature]*
Authorized Signature and Title

Jennifer Smith
Manager Business Banking

LESSOR: JMB CRUSHING SYSTEMS ULC

By: *[Signature]* President
Authorized Signature and Title

By: *[Signature]* Vice President
Authorized Signature and Title



SCHEDULE "A"

TD EQUIPMENT FINANCE CANADA, a division of The Toronto-Dominion Bank
2020 Winston Park Drive, Suite 301, Oakville, Ontario L0H 0X7
Phone: (905) 403-4770 Fax: (905) 403-4771

MASTER EQUIPMENT LEASE NO. 25904

SCHEDULE NO. 1

Attached to and forming part of the Master Equipment Lease No. 25904 made between TD Equipment Finance Canada, a division of The Toronto-Dominion Bank, as Lessor and JMB CRUSHING SYSTEMS ULC as Lessee dated the 15 day of March, 2017 (the "Master Lease Agreement").

Lessor hereby agrees to lease to Lessee and Lessee hereby agrees to lease from Lessor, upon and subject to the terms, conditions and provisions set forth in this Schedule and in the above referenced Master Lease Agreement, the Equipment described or identified in the "Equipment To Be Leased" section below and/or on an appendix attached hereto, if applicable, together with all replacements, additions, attachments and accessories relating thereto or affixed thereon (the "Equipment"). Any capitalized term not defined herein shall have the meaning ascribed to it in the Master Lease Agreement. All appendices, if any, attached to this Schedule shall form part of this Schedule.

LEGAL NAME AND ADDRESS OF LESSEE		SUPPLIER OF EQUIPMENT					
LESSEE NAME	JMB CRUSHING SYSTEMS ULC ("Lessee")	NAME	VALLEY EQUIPMENT COMPANY INC ("Supplier")				
Date of Birth (if Lessee is an Individual)							
ADDRESS:	61329 RANGE RD 455 BONNYVILLE AB T0N 2H4	ADDRESS:	PO BOX 17549 SALEM OR 97305-7540				
CONTACT:	TEL: FAX:	SALESPERSON:	TEL:	FAX:			
EQUIPMENT LOCATION (if different from Lessee address above): 32725 8E CARMICHAEL RD, FALL CITY WA 98024							
NAME AND ADDRESS OF LANDLORD IF EQUIPMENT IS TO BE PLACED IN RENTED PREMISES:							
EQUIPMENT TO BE LEASED							
NO. OF UNITS	DESCRIPTION: Type of Equipment, Serial Number, Model No., Manufacturer And other particulars						
	SEE ATTACHED SCHEDULE "B" - EQUIPMENT DESCRIPTION						
TERMS OF PAYMENT (RENTAL PAYMENTS PAYABLE ARE SUBJECT TO CHANGE TO REFLECT TAX RATE CHANGES)							
LEASE TERM (NO. OF MONTHS)	NO. OF RENTAL PAYMENTS	PAYMENTS WILL BE MADE IN ADVANCE:	PREPAID RENTALS HELD AGAINST THE NUMBER OF RENTAL PAYMENTS	RENTAL PAYMENT, excluding taxes	PROVINCIAL SALES TAX*	GST/HST*	RENTAL PAYMENT, including taxes (the "Rental Payment")
60	60	MONTHLY <input checked="" type="checkbox"/> QUARTERLY <input type="checkbox"/> SEMI-ANNUALLY <input type="checkbox"/>	NO. TOTALLING \$	\$10,205.33	N/A	EXEMPT	\$10,205.33
LEASE COMMENCEMENT DATE AND FIRST RENTAL PAYMENT DATE:				SUBSEQUENT RENTAL PAYMENT DATE:			
MONTH	DAY	YEAR	MONTH	DAY	YEAR		
March	15	2017	April	15	2017		
PURCHASE OPTION: As provided in section 2 of this Schedule, Lessee may elect to purchase the Equipment on the expiry of the Lease Term or Extended Lease Term (the "Purchase Option Date") for an amount equal to the then Fair Market Value of the Equipment.							
ADDITIONS AND AMENDMENTS TO THE TERMS AND CONDITIONS OF THIS LEASE:						CORRESPONDENCE TO BE IN	
n/a						ENGLISH <input checked="" type="checkbox"/> FRENCH <input type="checkbox"/>	

ADDITIONAL TERMS AND CONDITIONS

1. EXTENSION OF LEASE TERM: Provided Lessee is not in default hereunder, at the expiration of the Lease Term this Lease shall be automatically renewed on a month-to-month basis for the Equipment described in this Schedule ("Extended Lease Term") upon and subject to the terms and conditions set forth herein, unless either Lessor or Lessee has notified the other in writing no later than thirty (30) days prior to the expiration of the Lease Term of its intent to terminate this Lease for the Equipment described in this Schedule. During the Extended Lease Term, if any, or if the Equipment is not returned in the condition required by this Lease on or prior to expiry of the Lease Term or Extended Lease Term, as applicable, Lessee shall pay the Rental Payment to Lessor. Notwithstanding the foregoing, neither payment nor the obligation by Lessee to pay any amount under this

Initial

section due to Lessee's failure to return the Equipment in the required condition by the required date, nor acceptance of any such payment by Lessor, constitutes an agreement by Lessor to extend the term of the Lease in respect of the subject Equipment or consent to retention by Lessee of the Equipment after the required return date, nor a waiver of Lessor's right to insist on prompt return of the Equipment or to recover damages for breach of Lessee's obligations hereunder (but such payment may mitigate or partially mitigate such damages).

2. **OPTION TO PURCHASE:** Provided Lessee is not in default of any of the terms or conditions of this Lease, then Lessee shall have the option to purchase the Equipment on an "as is, where is" basis, without warranties or representations whatever, either express or implied, statutory or otherwise, as to the durability, quality, workmanship, design, merchantability, suitability or condition of the Equipment, or fitness of the Equipment for any particular purpose, for the then Fair Market Value of the Equipment plus all applicable taxes, at the Purchase Option Date. Lessee will give Lessor written notice at least sixty (60) days but not more than ninety (90) days prior to the Purchase Option Date of its intention to exercise this purchase option. After receipt of such notice, Lessor shall invoice Lessee for the Purchase Option Price plus all applicable taxes and all amounts outstanding under the Lease in respect of this Schedule, and pass title to the Equipment to Lessee upon receipt of payment in full. "Fair Market Value" shall be defined as the purchase price that would be obtained in an arm's length retail (non-dealer) transaction between a willing seller and a willing purchaser, neither under the compulsion to buy or sell. In the event Lessor and Lessee cannot agree upon the Fair Market Value, then such value shall be determined by an independent appraiser selected by Lessor but reasonably satisfactory to Lessee. The cost of such appraisal shall be borne equally by Lessor and Lessee. In the event that Lessee elects to return the Equipment rather than purchase same as herein provided, Lessee shall, contemporaneously with such return of the Equipment, pay to Lessor a restocking fee equal to fifteen percent (15%) of Lessor's original cost of the Equipment. In the event that Lessor resells the Equipment for a purchase price in excess of 20% of Lessor's original cost of the Equipment, such restocking fee will be refunded in full to Lessee upon receipt of sales proceeds.

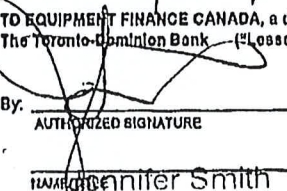

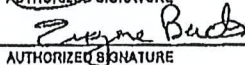
3. **2.1 Assignment of Purchase Option:** Lessee acknowledges that Lessor has assigned certain Lessor rights and benefits under this Lease to Somerset Capital Group Ltd., ("Somerset"), including, without limitation, the right and benefits of the "Option to Purchase" (section 2) provision above. Somerset shall have the exclusive right to administer the Option to Purchase provision and Lessee agrees to provide all required notices and make all required payments to Somerset as it may direct Lessee in writing from time to time. Lessee expressly authorizes Lessor (The Toronto-Dominion Bank) to provide Somerset, upon its written request, from time to time, with any information Lessor may have in its possession about the Lessee's business and affairs relating to this Lease and/or as may be reasonably required in connection with Somerset's administration of the Option to Purchase. **AGREEMENT.** This Schedule shall be deemed to take effect and form part of the Lease on the Lease Commencement Date. Lessee authorizes Lessor to file Uniform Commercial Code financing statements against Lessee and the Equipment to the extent that Lessor deems it necessary to protect its interests in the Equipment and this Equipment Schedule.

4. **MISCELLANEOUS.** Lessee requests Lessor to purchase the above-described Equipment from the Supplier and to lease said Equipment to Lessee upon the terms and conditions of the within Lease; and upon written acceptance hereof, signed by Lessor below, agrees to lease said Equipment. Lessee acknowledges having read the terms and conditions of this Schedule. Lessee and Lessor agree to the provisions of this Schedule and, in consideration of those provisions, sign and deliver this Schedule to be effective on the date signed by Lessee and Lessor.

5. **LANGUAGE.** Lessee hereby confirms that it has expressly requested that this Schedule as well as all other documents related hereto, including notices, be drawn up in the English language only; le crédit-préneur confirme sa demande expresse de voir cette annexe de même que tous les documents, y compris tous avis, s'y rattachant, rédigés en langue anglaise seulement.

6. **ATTESTATION.** All information that the Lessee has provided to Lessor is accurate and complete respecting, where applicable:

- the names of Lessee's directors and the names and addresses of the Lessee's beneficial owners;
- the names and addresses of Lessee's trustees, known beneficiaries and/or settlors; and
- Lessee's ownership, control and structure of the customer;
- TD reserves the right at any time to request updated customer information and/or additional supporting information.

DATE OF ACCEPTANCE BY LESSOR: <u>3/24/17</u>	DATE EXECUTED BY LESSEE: March 15, 2017
TO EQUIPMENT FINANCE CANADA, a division of The Toronto-Dominion Bank ("Lessor")	FULL LEGAL NAME OF LESSEE: JMB CRUSHING SYSTEMS ULC THE UNDERSIGNED AFFIRM THEY ARE DULY AUTHORIZED TO EXECUTE THIS SCHEDULE
By:  AUTHORIZED SIGNATURE Jennifer Smith Manager Business Banking	BY:  Jeff Buck, President AUTHORIZED SIGNATURE NAME/TITLE BY:  Eugene Buck, Vice President AUTHORIZED SIGNATURE NAME/TITLE
	Individual(s) (if any): _____ Full Legal Name(s): _____ Witness: _____ (a witness is mandatory for individuals) Name/Address of Witness: _____

Schedule "B"
Equipment Description
Page 1 of 1

This Schedule "B" is an integral part of Lease 25904-1 between JMB CRUSHING SYSTEMS ULC as Lessee and TD EQUIPMENT FINANCE CANADA, a division of The Toronto-Dominion Bank as Lessor

Jaw Crusher Plant:

2014 AMI Thunderbird II 3054JVE electric portable Jaw Plant w/Switchgear
AMI Plant Serial# 2807-14
2014 CR 30X54 Jaw Crusher S# TRXJ3054COKEE0657
2014 AMI 50X20 C04521 VGF S# 2806-14

Scalper Screen Plant:

2015 Terex/Cedarapids 6203 Portable Screening Plant S# TRX620HSCOKFK0807

Superior Stackable Conveyors with Legs:

2015 36X50 S# 817775
2015 36X50 S# 847651
2015 36X50 S# 847652
2015 36X50 S# 847655
2015 36X50 S# 847656
2015 36X50 S# 847657
2015 36X50 S# 847658

LESSOR:
TD EQUIPMENT FINANCE CANADA,
a division of The Toronto-Dominion Bank

By: _____
Title: Jennifer Smith
Manager Business Banking

LESSEE : JMB CRUSHING SYSTEMS ULC

By: _____
Title: Jeff Buck, President

By: Eugene Buck
Title: Eugene Buck Vice-President

APPENDIX 1
Delivery and Acceptance Certificate

TO: TD EQUIPMENT FINANCE CANADA, a division of The Toronto-Dominion Bank

RE: Schedule No. 1 to Master Equipment Lease No. 25904 between JMB CRUSHING SYSTEMS ULC as Lessee and TD Equipment Finance Canada, a division of The Toronto-Dominion Bank as Lessor (the "Lease")

Unless otherwise defined herein, capitalized terms used herein shall have the meaning ascribed thereto in the Lease.

Lessee represents, warrants and acknowledges that:

1. All Equipment described in the Lease between Lessor and Lessee has been delivered to Lessee;
2. Lessee has fully inspected the Equipment and the Equipment has been received in good condition, installed, and has been prepared and is operating satisfactorily for its intended purpose and in accordance with the supplier's or manufacturer's specifications;
3. Lessee has accepted the Equipment;
4. Lessee is aware of and understands the terms of the Lease, and, in particular that the Lease is non-cancellable;
5. Lessor is not the manufacturer or supplier of the Equipment nor is it an agent of the same and Lessor has not made any representations or warranties with respect to the Equipment;
6. Lessee will not make any claims whatsoever against Lessor if, at any time, the Equipment is not satisfactory to Lessee;
7. In reliance upon this Certificate, Lessor will pay the applicable supplier(s) for such Equipment;
8. Lessee's obligations commence as of the Lease Commencement Date as set out on in the Lease and it is obligated to pay each of the Rental Payments, including applicable taxes, to Lessor without any setoff or abatement and as stipulated in the Lease.

Dated this 14th day of March, 2017

LESSEE: JMB CRUSHING SYSTEMS ULC

Per: 

Name/Title: Jeff Buck, President

Per: 

Name/Title: Eugene Buck, Vice-President

This is Exhibit "B" referred to in the Affidavit of Alane MacDonald sworn/affirmed before me at the City of London, in the Province of Ontario this 31st day of August, 2021



A Commissioner for taking Affidavits

Liz Pawley

From: Dan Reason
Subject: FW: JMB Crushing Systems

From: "Cumming, Tom" <Tom.Cumming@gowlingwlg.com>
Date: June 2, 2020 at 7:12:10 PM EDT
To: Dan Reason <dreason@harrisonpensa.com>
Cc: Blake Elyea <blakeelyea@jmbcrush.com>
Subject: RE: JMB Crushing Systems

[EXTERNAL EMAIL]

Dan

I have discussed the TD equipment with JMB. They are no longer using the leased equipment and there is no intention to include it in the a going concern bid that is being contemplated by the equity holder. JMB is happy to make arrangements for TD's representative to inspect the equipment. It is apparently at the Bonnyville location. The contact at JMB is Blake Elyea (copied):



Blake M. Elyea, CPA, CGA, CIRP, LIT
Chief Restructuring Advisor
JMB Crushing Systems Inc.
Tel: 604-376-1807
Email: blakeelyea@jmbcrush.com | Website: www.jmbcrush.com
Follow us on: [Facebook](#) | [LinkedIn](#)

Sequeira Partners as Sale Advisor is running the SISF on behalf of the Monitor and can include the TD equipment in the sale process. If that is of interest to TD, can you let us know?

In the event that TD wishes to take possession of the equipment subject to its security, JMB would require an accounting for any excess of the sale proceeds over the amount remaining owing to TD.

If you have time to discuss this tomorrow, please let me know.

Kind regards,

Tom

Tom Cumming
Partner
T +1 403 298 1938
M +1 403 606 4592

tom.cumming@gowlingwlg.com



Gowling WLG (Canada) LLP
Suite 1600, 421 7th Avenue SW
Calgary AB T2P 4K9
Canada



gowlingwlg.com

[Gowling WLG](#) | 1,400+ legal professionals | 18 offices worldwide

can verify the sender and know the content is safe.]

This is Exhibit "C" referred to in the Affidavit of Alane MacDonald sworn/affirmed before me at the City of London, in the Province of Ontario this 31st day of August, 2021



A Commissioner for taking Affidavits

FORM 4

NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIAE AN AGREEMENT

To: TD Equipment Finance Canada (the "**Counterparty**")

And To: FTI Consulting Canada Inc. (the "**Monitor**")

Take notice that:

1. Proceedings under the *Companies' Creditors Arrangement Act* (the "**Act**") in respect of JMB Crushing Systems Inc. (the "**Debtor Company**") were commenced on the 1st day of May, 2020 (the "**Proceedings**").
2. In accordance with subsection 32(1) of the Act, the Debtor Company gives you notice of its intention to disclaim or resiliate the following agreement:

Master Equipment Lease between the Counterparty and the Debtor Company dated March 15, 2017 (the "**Agreement**").
3. In accordance with subsection 32(2) of the Act, any party to the agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the monitor, apply to court for an order that the agreement is not to be disclaimed or resiliated.
4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the agreement is disclaimed or resiliated on the 21st day of May, 2021, being 30 days after the day on which this notice has been given.
5. Disclaimer of the above agreement is subject to: (a) the requirement of the Counterparty to account as set out in the Amended Reverse Vesting Order granted March 31, 2021 in the Proceedings, and (b) the liability of the Counterparty for its allocation of the costs of the Proceedings, neither of which shall be affected by the disclaimer.

Dated at Calgary, Alberta, on April 21, 2021.

JMB CRUSHING SYSTEMS INC.

By:



Name: Blake Elyea

Title: Chief Restructuring Officer

The Monitor hereby approves the disclaimer or resiliation of the Agreement.

Dated at Calgary, Alberta, on April 21, 2021.

FTI CONSULTING CANADA INC.

By:



Name: Michael Clark

Title: Senior Director

This is Exhibit "D" referred to in the Affidavit of Alane MacDonald sworn/affirmed before me at the City of London, in the Province of Ontario this 31st day of August, 2021



A Commissioner for taking Affidavits



HARRISON PENSA

K. Daniel Reason

Direct Line: 519-661-6725
dreason@harrisonpensa.com

Assistant: Liz Pawley

Direct Line: 519-850-5591
lpawley@harrisonpensa.com

September 3, 2020

WITHOUT PREJUDICE

VIA E-MAIL: pkyriakakis@mccarthy.ca

Pantelis Kyriakakis
McCarthy Tétrault
4000, 421 – 7th Avenue SW
Calgary, Alberta T2P 4K9

Dear Pantelis,

**Re: JMB Crushing Systems Inc.
Our File No. 182522**

This follows our email to you of August 6, 2020. At that time, we provided you with a copy of our client's Master Equipment Lease Number 25904 and Schedule Number 1 to Master Equipment Lease 25904. This of course related to equipment leased by our client to JMB Crushing Systems Inc.

Four weeks has passed and we expect that at this point you have had an opportunity to provide your client with an opinion with respect to our client's lease, and to obtain instructions in that regard.

We refer you to paragraph 18 of the CCAA Initial Order dated May 1, 2020 and the Amended and Restated CCAA Initial Order dated May 11, 2020 (the "**Orders**") which states:

"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."

It is our client's position that they are entitled to on-going payments pursuant to section 18 of Orders and of course, section 11.01 of the CCAA.

HARRISON PENSA LLP
Lawyers

Secondly, our client's position is that they are entitled to possession of their leased assets as further described in the equipment schedule which was provided to you previously.

We enclose herein at Schedule "A" details of the total amount owing as of the date of this letter. The total amount owing as of today is \$89,369.01. The next payment will be due September 15, 2020 in the amount of \$18,148.75.

We look forward to hearing from you at your earliest convenience.

Yours very truly,

HARRISON PENSA LLP

Per:



K. Daniel Reason
Direct: 519-661-6725
Email: dreason@harrisonpensa.com
\sda

Encl.

cc: Sean Collins, McCarthy Tétrault LLP, via email (scollins@mccarthy.ca)
cc: Darren Cooke, President, TD Equipment Finance, a Division of the Toronto-Dominion Bank, via email (Darren.Cooke@td.com)

SCHEDULE "A"

<i>DUE DATE</i>	<i>PRINCIPAL</i>	<i>INTEREST</i>
April 15, 2020	\$16,774.01	\$0.00
May 15, 2020	\$16,831.55	\$1,317.20
June 15, 2020	\$16,889.30	\$1,259.45
July 15, 2020	\$16,947.24	\$1,201.51
August 15, 2020	\$17,005.38	\$1,143.37

TOTAL: \$89,369.01

Next Payment Due:

September 15, 2020	\$17,063.72	\$1,085.03
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This is Exhibit "E" referred to in the Affidavit of Alane MacDonald sworn/affirmed before me at the City of London, in the Province of Ontario this 31st day of August, 2021


A Commissioner for taking Affidavits

Liz Pawley

From: Liz Pawley on behalf of Dan Reason
Sent: Wednesday, February 3, 2021 9:45 AM
To: Tom.Cumming@gowlingwlg.com
Cc: pkyriakakis@mccarthy.ca
Subject: JMB Crushing Systems Inc.
Attachments: September 15, 2020 email.pdf; September 3, 2020 letter.pdf; Form 4.pdf; Sept. 28, 2020 emails.pdf; June 2, 2020 email.pdf

Without Prejudice

Tom,

We would like to address your email of September 15, 2020. We attach copy of that email and our email to you in relation to the same issue.

Attached is copy of our letter of September 3, 2020 to Pantelis which sets out the monthly payments which are owing by JMB Crushing Systems Inc. ("JMB") to TD. Obviously those amounts remain unpaid.

TD has taken possession of its leased assets and the PPSA Notice has expired. It is in the process of liquidating its assets and, as we have recently indicated to Pantelis, we will provide a full accounting once it is available.

As you are aware, there is a formal process to be followed under the CCAA for the repudiation of a contract. Attached is copy of the Form 4 Notice by Debtor Company to Disclaim or Resiliate an Agreement. Following the issuance of this Notice, the Monitor was to approve of the disclaimer. We have not received this Notice in relation to TD's equipment.

We believe it is arguable that the formal disclaimer of the Monitor did not occur until September 29, 2020. We attach hereto emails between the undersigned and various parties of September 28, 2020 culminating in the email of Tom Powell of September 29, 2020 at 9:42a.m. whereby the approval of the release of the equipment was given.

Pursuant to s.32(5) of the CCAA, the disclaimer becomes effective 30 days after the day on which the disclaimer notice is given. Based on the approval of the Monitor on September 29, 2020, this would take TD's claim through to the end of October, 2020.

Our client recognizes that there were limited funds recovered in the CCAA process, and is willing to compromise its claim. At a very minimum, we recognize a form of notice was given by you in an email on June 2, 2020 at 7:12p.m. (copy attached). This was one month after the making of the initial Order. If we then take another 30 days for that "notice" to be effective (s.32(5) of the CCAA), then in our calculation, TD would be entitled to two months of payments.

If you obtain instructions with respect to payment of two months as further described in the letter to Pantelis of September 3, 2020 as referenced above, we will recommend to our client that they settle for that amount.

We look forward to hearing from you.

Yours very truly,

K. Daniel Reason

K. Daniel Reason | [HARRISON PENZA LLP](#) | 450 Talbot St., London, Ontario N6A 5J6 | *tel* 519-661-6725 | *fax* 519-667-3362 | dreason@harrisonpensa.com

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