

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 CRUSING  
 SYSTEMS INC. AND 2161889 ALBERTA  
 LTD.



COM  
 Oct 1 2020

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  
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 Attention: Robert A. Farmer  
 File No: 15370-112

**AFFIDAVIT OF LISA BALL**  
 Sworn on SEPTEMBER 28, 2020

I, Lisa Ball of Boyle, Alberta, MAKE OATH AND SAY THAT:

1. I am a Director and Officer of 541466 Alberta Ltd. and as such have a personal knowledge of the facts and matters hereinafter deposed to except where otherwise stated.
2. 541466 Alberta Ltd. carries on business in the Province of Alberta as JLG Ball Enterprises and is hereinafter referred to in this Affidavit as "JLG"

**The Purchase and Sale Agreement**

3. Attached as Exhibit "A" is a copy of a Purchase and Sale Agreement (the "JLG Sale Agreement") dated March 15, 2019 between JLG and JMB Crushing Systems Inc. ("JMB") pursuant to which JMB purchased certain Surface Material Rights, Miscellaneous Interests and Goodwill from JLG as more particularly set out in the JLG Sale Agreement.
4. JMB is indebted to JLG in the amount of \$3,000,000 plus accrued interest pursuant to the JLG Sale Agreement. This indebtedness is evidenced by a Closing Promissory Note, a copy of which is attached as Exhibit "B" (the "Promissory Note").
5. The sum of \$600,000 together with accrued interest was due and payable to JLG on March 22, 2020 and to date has not been paid. Attached as Exhibit "C" is a copy of a formal demand for payment dated May 8, 2020 made by counsel for JLG on behalf of JLG.

**The Options**

6. Article 3 of the Agreement grants a series of five options to JMB to purchase from JLG certain Surface Material rights for a period of 180 days from the date upon which JLG receives notification from the relevant Governmental Authority that formal approval has been granted for Surface Material Rights in relation to each of five parcels of land (the "Option(s)"). As of the date of this Affidavit, approval has not been granted by the relevant Governmental Authority.
7. The JLG Sale Agreement specifies that the consideration to be paid to JLG to exercise each respective Option is \$1,000,000.
8. JLG takes the position that in order for each of the respective Options to be exercised, the consideration of \$1,000,000 must be paid and all amounts due under the Promissory Note at the time each respective Option is exercised must be paid. JMB has breached the JLG Sale Agreement by not making payments to JLG when and as required under the JLG Sale Agreement disentitling JMB or any purchaser of JMB's assets from exercising the Options.
9. JLG takes the position that as the Options are no longer capable of being exercised, they cannot be included in the assets acquired from JMB by any potential purchaser of JMB's assets pursuant to these CCAA Proceedings.
10. Attached as Exhibit "D" is a copy of a letter dated May 8, 2020 from counsel for JLG to the Monitor, FTI Consulting Canada Inc. ("FTI") setting out JLG's position concerning the Options.
11. I am informed by counsel for JLG and do believe that as of the date of this Affidavit no substantive response to the May 8, 2020 letter concerning the Options has been received from FTI.

**The Non-Competition Agreement**

12. Pursuant to the JLG Sale Agreement JLG entered into a Non-Competition Agreement with JMB, a copy of which is attached as Exhibit "E" (the "Non-Competition Agreement")
13. JLG takes the position that the rights and obligations granted to JMB pursuant to the Non-Competition Agreement are not an asset of JMB which is capable of being purchased by any potential purchaser of JMB's assets pursuant to these CCAA proceedings.
14. Attached is Exhibit "F" is a copy of a letter dated August 12, 2020 from counsel for JLG to FTI setting out JLG's position concerning the Non-Competition Agreement and also indicating that the Options are terminated or alternatively revoked.
15. I am informed by counsel for JLG and do believe that as of the date of this Affidavit no substantive response to the August 12, 2020 letter concerning the Non-Competition Agreement has been received from FTI.



16. I was not physically present before the commissioner, but was linked with the commissioner utilizing video technology and I am informed by my counsel that the process outlined in the Notice to the Profession dated March 25, 2020 was followed.

SWORN BEFORE ME at the City of  
Edmonton, in the Province of Alberta  
\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
A Commissioner for Oaths in and for  
the Province of Alberta

  
\_\_\_\_\_  
Lisa Ball



This is Exhibit "A" to the Affidavit of Lisa Ball  
Sworn before me this \_\_\_ day of September, 2020.

---

A Commissioner for Oaths in and for the  
Province of Alberta

Robert A. Farmer  
Barrister and Solicitor

A handwritten signature or set of initials, possibly "R.A.F.", written in dark ink in the bottom right corner of the page.

**PURCHASE AND SALE AGREEMENT**

**BETWEEN:**

**541466 ALBERTA LTD. o/a JLG BALL ENTERPRISES**

**(As Vendor)**

**- and -**

**JMB CRUSHING SYSTEMS INC.**

**(As Purchaser)**

**Dated as of March 15, 2019**



**TABLE OF CONTENTS**

	Page
ARTICLE 1 INTERPRETATION .....	3
1.1 Definitions .....	3
1.2 Schedules .....	12
1.3 Words Importing Number or Gender.....	13
1.4 Use of Derivative Terms.....	13
1.5 Use of "Including".....	13
1.6 Statutory References .....	13
1.7 Monetary References.....	13
1.8 References to Time.....	13
1.9 Date for Payments or Other Actions .....	13
1.10 Calculation of Time Periods.....	13
1.11 Knowledge .....	13
ARTICLE 2 PURCHASE AND SALE AND CLOSING .....	14
2.1 Purchase and Sale.....	14
2.2 Closing .....	14
2.3 Purchase Price.....	14
2.4 Allocation.....	15
2.5 GST and Other Sales Taxes.....	15
2.6 Adjustments .....	15
ARTICLE 3 OPTION INTERESTS.....	16
3.1 Option.....	16
3.2 Exercise of Option.....	17
ARTICLE 4 CONDITIONS OF CLOSING .....	18
4.1 Purchaser's Conditions .....	18
4.2 Vendor's Conditions.....	19
4.3 Efforts to Fulfill Conditions Precedent.....	20
ARTICLE 5 CLOSING DELIVERIES .....	20
5.1 Deliveries by Vendor at Closing.....	20
5.2 Deliveries by Purchaser at Closing .....	21
5.3 Delivery of Title and Operating Documents and Miscellaneous Interests .....	21
ARTICLE 6 REPRESENTATIONS AND WARRANTIES .....	22
6.1 Representations and Warranties of Vendor.....	22
6.2 Representations and Warranties of Purchaser.....	29
6.3 Survival of Representations and Warranties .....	30
ARTICLE 7 INDEMNITIES.....	30
7.1 Vendor's Indemnity .....	30
7.2 Purchaser's Indemnity.....	31
7.3 Purchaser's Indemnity regarding Reclamation .....	31
7.4 Time Limitation.....	32
7.5 Equitable Remedies.....	32
7.6 Limitation of Remedies.....	32
ARTICLE 8 TAX MATTERS.....	33
8.1 Preparation of Tax Returns.....	33
8.2 Tax Contests .....	33
8.3 Tax Indemnification Events.....	34
8.4 Tax Cooperation.....	35
ARTICLE 9 INTERIM PERIOD .....	36
9.1 Maintenance of Purchased Interests .....	36

9.2 Interim Period Restrictions on Vendor's Business ..... 37

9.3 Notice of Breach of Representations and Warranties..... 37

ARTICLE 10 TRANSFER OF THE PURCHASED INTERESTS TO THE COMPANY ..... 37

10.1 The Reorganization..... 37

10.2 Completion of the Reorganization..... 38

ARTICLE 11 ACCESS ..... 39

11.1 Production of Documents and Access ..... 39

11.2 Access Conditions..... 39

ARTICLE 12 POST-CLOSING MATTERS ..... 39

12.1 Post-Closing Matters..... 39

ARTICLE 13 GENERAL..... 41

13.1 Further Assurances..... 41

13.2 Entire Agreement ..... 41

13.3 Governing Law ..... 41

13.4 Transaction Costs ..... 41

13.5 Assignment and Enurement..... 41

13.6 Time of Essence ..... 42

13.7 Notices ..... 42

13.8 Invalidity of Provisions..... 43

13.9 Waiver ..... 43

13.10 Survival; No Merger ..... 43

13.11 Remedies Cumulative..... 43

13.12 Amendment..... 43

13.13 Confidentiality and Public Announcements ..... 43

13.14 Counterpart Execution ..... 45

**Schedules:**

Schedule A Part 1 – Lands and Leases  
Part 2 – Option Lands and Leases

Schedule B Form of Non-Competition Agreement

Schedule C Form of Closing Note

Schedule D Option Purchase Agreement

Schedule E Option Note

Schedule F Part 1 – Inventory  
Part 2 – Excluded Inventory

Schedule G Form of Termination of Trust Agreement

## PURCHASE AND SALE AGREEMENT

THIS AGREEMENT made as of March 15, 2019.

BETWEEN:

541466 ALBERTA LTD., a corporation formed under the laws of the Province of Alberta ("Vendor")

- and -

JMB CRUSHING SYSTEMS INC., a corporation amalgamated under the laws of the Province of British Columbia ("Purchaser")

**WHEREAS** Vendor carries on the Business and Purchaser wishes to acquire the Purchased Interests for the purpose of continuing the Business (the "Transaction");

**WHEREAS** prior to Closing, pursuant to the Reorganization, Vendor shall contribute its entire interest in the Purchased Interests to the Company, the Registered Holders shall transfer their legal title to the Leases to the Company, so that the Company shall be the sole legal and beneficial interest holder of the Purchased Interests at the Closing Time, and Vendor shall hold all of the Shares;

**WHEREAS** at Closing, Vendor will sell all of the Shares to Purchaser, and Purchaser will purchase all of the Shares from Vendor, so that Purchaser will wholly-own the Company, upon the terms and subject to the conditions set forth in this Agreement;

**WHEREAS** Vendor will additionally provide the Options to Purchaser, upon the terms and subject to the conditions set forth in this Agreement;

**NOW THEREFORE** the Parties agree as follows:

### ARTICLE 1 INTERPRETATION

#### 1.1 Definitions

In this Agreement, unless the context otherwise requires:

- (a) "AEP" means Alberta Environment and Parks.
- (b) "Affiliates" means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person. A Person shall be deemed to "control" another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; and the term "controlled" shall have a similar meaning.
- (c) "Aggregate Customer" has the meaning ascribed to that term in Clause 9.2(a)(i).
- (d) "Agreement" means this purchase and sale agreement together with the schedules attached hereto, all of which form an essential and integral part hereof.
- (e) "Agreement Date" means the date first written above, which is the date on which this Agreement was executed by Vendor and Purchaser.



- (f) "**Applicable Laws**" means, in relation to any Person, property, operation or circumstance, all laws and statutes, including regulations, rules, by-laws, ordinances and other statutory instruments enacted thereunder, all judgments, decrees, rulings and orders of courts, tribunals, commissions and other similar bodies of competent jurisdiction; all orders, rules, directives, policies and guidelines having force of law issued by any Governmental Authority, and all terms and conditions of any Permits; that are in effect as of the relevant time and are applicable to such Person, property or circumstance.
- (g) "**Business**" means the business conducted by Vendor prior to the Reorganization and by the Company subsequent to the Reorganization, solely relating to the use and ownership of the Purchased Interests and such other activities as may be necessary or incidental thereto.
- (h) "**Business Day**" means a day, other than a Saturday, a Sunday or a statutory holiday in Edmonton, Alberta, on which banks are open generally to conduct commercial business in Edmonton, Alberta.
- (i) "**Claim**" means any claim, demand, lawsuit, action, proceeding, lien, audit, notice of non-compliance or violation, order or direction, arbitration or governmental proceeding or investigation.
- (j) "**Class "A" Common Shares**" means Class "A" Common Shares of the Company.
- (k) "**Client List**" means the list maintained by Vendor, as the Closing Date, of all of the clients of Vendor.
- (l) "**Closing**" means the completion of the Transaction.
- (m) "**Closing Date**" means the later of: (i) March 22, 2019; and (ii) three (3) Business Days following the completion of the Reorganization and receipt by Purchaser of notice thereof, or any other Business Day as Vendor and Purchaser may agree, provided that, following Closing, references to the "Closing Date" shall mean the date on which Closing actually occurred.
- (n) "**Closing Note**" means a promissory note from Purchaser to Vendor that is substantially similar to the form attached as Schedule D.
- (o) "**Closing Place**" means vendor's offices, or another location as Vendor and Purchaser may agree.
- (p) "**Closing Time**" means 10:00 a.m. on the Closing Date or any other time as Vendor and Purchaser may agree.
- (q) "**Company**" means ~~2161889~~ Alberta Ltd., which is a direct wholly-owned subsidiary of Vendor through its ownership of the Shares.
- (r) "**Consequential Losses**" means any consequential, incidental, punitive, special, exemplary or indirect damages, cost or deferred profits or revenues, loss of business opportunity, loss of value, losses based on loss of use or other business interruption losses and damages, including economic loss, provided that this definition shall not apply to and any reference to this definition within this Agreement shall not preclude a Person entitled to indemnification under this Agreement, to the extent provided in this Agreement, for such Person's liability to a Third Party for consequential or indirect Losses and Liabilities which such Third Party suffers, sustains, pays or incurs, or any such Losses and Liabilities that arise as a result of a breach of confidentiality.



- (s) "CWB" means Canadian Western Bank.
- (t) "Disclosure Letter" means a letter delivered by Vendor to Purchaser disclosing any exception to the representations and warranties given by Vendor as set out in Clause 6.1.
- (u) "Dollar" or "\$" has the meaning ascribed to that term in Clause 1.7.
- (v) "Encumbrance" means an option to purchase, a royalty, a net profits interest, a carried working interest, a right to convert a royalty to a working interest, a mortgage, a Claim and any other adverse claim or encumbrance, whether similar or dissimilar to the foregoing, including a Security Interest.
- (w) "Environment" means the components of the earth and includes ambient air, land, surface and sub-surface strata, groundwater, lake, river or other surface water, all layers of the atmosphere, all organic and inorganic matter and living organisms, and the interacting natural systems that include such components and "Environmental" means relating to or in respect of the Environment.
- (x) "Environmental Liabilities" means all past, present and future Losses and Liabilities, Claims and other duties and obligations, whether arising under contract, Applicable Laws or otherwise, arising from, relating to or associated with:
- (i) any damage, pollution, contamination or other adverse situations pertaining to the Environment howsoever and by whomsoever caused and regardless of whether such damage, pollution, contamination or other adverse situations occur or arise in whole or in part prior to, at or subsequent to the Closing Time;
  - (ii) the presence, storage, use, holding, collection, accumulation, assessment, generation, manufacture, processing, treatment, stabilization, disposition, handling, transportation, release, spill, emission or discharge of hazardous substances, environmental contaminants and all other substances and materials regulated under any Applicable Laws, including any forms of energy, or any corrosion to or deterioration of any structures or other property;
  - (iii) compliance with or the consequences of any non-compliance with, or violation or breach of, any Applicable Laws pertaining to the Environment or the protection thereof or to public health or safety matters;
  - (iv) sampling, monitoring or assessing the Environment or any potential impacts thereon; or
  - (v) the protection, reclamation, remediation or restoration of the Environment, including related human health and safety;
- that relate to, arise or may have arisen by virtue of the Purchased Interests or the ownership thereof or any past, present or future operations and activities conducted in connection with any of the Purchased Interests or on or in respect of the Lands or the Option Lands, as applicable, or lands adjacent or in proximity thereto to the extent any Environmental Liabilities, Claims and other duties and obligations affecting such lands relate to, arise or may have arisen by virtue of the Purchased Interests or the ownership thereof.
- (y) "Excluded Inventory" means the excluded extracted aggregate processed and stockpiled on the Lands, as detailed in Part 2 of Schedule F, which for certainty, does not constitute part of the Purchased Interests.



- (z) "**Final Determination**" means a determination made by a Governmental Authority (including pursuant to a settlement) or court of competent jurisdiction where all rights to object to or appeal from the determination (including any right to obtain relief under a competent authority or similar process) have been exhausted or have expired.
- (aa) "**Fundamental Representations**" means, as context requires and as applicable: (i) the representations and warranties of Vendor provided in Clauses 6.1(a), 6.1(b), 6.1(i), 6.1(s)(i) to (vii), 6.1(u) and 6.1(v); or (ii) the representations and warranties of Purchaser provided in Clauses 6.2(a) and 6.2(b).
- (bb) "**Goodwill**" means the value associated with the operation and going concern of the Business, including the Client List.
- (cc) "**Governmental Authority**" means any:
- (i) governmental entity or authority of any nature, including any governmental ministry, agency, branch, department or official, and any court, regulatory board or other tribunal; or
  - (ii) individual or body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, regulatory or taxing authority or power of any nature;
- having jurisdiction or power over any Person, property, operation, transaction or other matter or circumstance.
- (dd) "**GST**" means the goods and services tax/harmonized sales tax provided for under Part IX of the *Excise Tax Act* (Canada) or any successor, harmonized or parallel federal or provincial legislation that imposes a tax on the recipient of goods and services.
- (ee) "**Income Tax Act**" means the *Income Tax Act*, R.S.C. 1985, c.1 (5<sup>th</sup> Supplement), as amended from time to time.
- (ff) "**Indemnified Taxes**" has the meaning ascribed to that term in Clause 7.1(b).
- (gg) "**Interim Period**" means the period from the Agreement Date to the Closing Time.
- (hh) "**Interim Restrictions**" has the meaning ascribed to that term in Clause 9.2(a).
- (ii) "**Inventory**" means any extracted aggregate processed and stockpiled on the Lands as at the Closing Date, as detailed in Part 1 of Schedule F, but for certainty, excludes the Excluded Inventory.
- (jj) "**Lands**" means the lands and premises that are subject to the Leases, as set out in Part 1 of Schedule A.
- (kk) "**Lease Conveyances**" means all conveyances, assignments, transfers, novations, trust declarations and other documents or instruments that are reasonably required or desirable, in accordance with normal industry practices and as required by Applicable Laws, to convey, assign and transfer the legal and beneficial title to the Leases to the Company, including without limitation, executed assignment of disposition forms to be registered with the applicable Governmental Authority respecting the transfer of the registered interest in the Leases to the Company.
- (ll) "**Leases**" means all leases, subleases, permits and licences (and any replacements, renewals or extensions thereof or leases or other instruments derived therefrom or issued

in substitution therefor) pertaining to the Lands by virtue of which the holder thereof is granted certain rights to use, work, take and remove Surface Materials out of the surface within, upon or under the Lands or by virtue of which the holder thereof is deemed to be entitled to a share of Surface Materials removed from the lands specified therein, in accordance with the *Public Lands Act* (Alberta), related regulations and the terms and conditions of each Lease in respect of each such Lands, and shall not include any other right to use Lands for any other purpose.

- (mm) **"Losses and Liabilities"** means all losses, costs, expenses, interest, charges, assessments, damages, liabilities, obligations, fines and penalties, including all reasonable costs incurred in investigating, defending or negotiating the settlement or resolution of any Claim or threatened Claim, and specifically including reasonable legal and other professional fees and expenses on a 'solicitor and his own client' basis, regardless of whether the foregoing arise in, under or by virtue of common law, in equity, under Applicable Laws, under contract, negligence, strict liability, breach of duty or otherwise, but notwithstanding the foregoing, shall not include any losses or liability for Consequential Losses.
- (nn) **"Material Adverse Change"** means any development or change in the value of the Purchased Interests or the Shares, taken as a whole, that could reasonably be expected to equal or exceed, in the aggregate, an amount equal to ten percent (10%) of the Purchase Price; provided, however, that Material Adverse Change shall not include:
- (i) material adverse effects resulting from general changes in pricing of Surface Materials;
  - (ii) any changes in the levels of production of Surface Materials from the Lands (other than where such material adverse change was directly caused by Vendor's gross negligence, wilful misconduct or wilful breach of its obligations hereunder);
  - (iii) general changes in industry, economic or political conditions, or markets;
  - (iv) changes in condition or developments generally applicable to the business of Vendor and related industry in any area or areas where the Purchased Interests are located;
  - (v) acts of God, civil unrest or similar disorder or terrorist acts;
  - (vi) disruptions, curtailments or other constraints at, in, on or associated with Third Party facilities or infrastructure, or any outages, turnarounds or other downtime at such Third Party facilities or infrastructure;
  - (vii) acts or failures to act of Governmental Authorities affecting the business of Vendor or the related industry generally in Alberta other than in direct response to an unexcused failure by Vendor to comply with Applicable Laws;
  - (viii) changes in Applicable Laws or the interpretation or enforcement of such Applicable Laws affecting the business of Vendor or related industry generally in Alberta; or
  - (ix) changes resulting from the announcement of the Transaction or the performance of the covenants set forth herein.
- (oo) **"Miscellaneous Interests"** means, subject to the limitations and exclusions below in this definition, all of Vendor's and/or the Company's, as applicable, right, title and interest in



and to all property and rights that pertain directly to the Surface Material Rights (excluding the Surface Material Rights themselves), including:

- (i) the Title and Operating Documents;
- (ii) the Surface Rights;
- (iii) the Permits;
- (iv) all records, files, reports, data, correspondence and other information, including lease and production files and records;
- (v) the Security with AEP; and
- (vi) all extensions, renewals, replacements, substitutions or amendments of or to any of the agreements and instruments described in paragraphs (i), (ii), and (iii) above;

however, the Miscellaneous Interests shall never include any of the foregoing property or rights to the extent that they include or pertain to Vendor's proprietary technology, evaluations, forecasts or interpretations, as applicable.

- (pp) "**Non-Competition Agreement**" means a non-competition agreement substantially similar to the form attached as Schedule C.
- (qq) "**Ongoing Jobs**" means any jobs and/or bids commenced by Vendor prior to the Closing Date, where there is ongoing work in progress that Purchaser will assume.
- (rr) "**Option Election**" has the meaning ascribed to that term in Clause 3.2(a).
- (ss) "**Option Expiry Date**" means, for each of the Option Interests, the date that is one hundred and eighty (180) days following the Option Vesting Date for each respective Option Interest.
- (tt) "**Option Incorporated Provisions**" means the following provisions of this Agreement that shall apply *mutatis mutandis* to each Option Purchase Agreement, with "Option Lands" replacing "Lands", "Option Lease" replacing "Lease" and "Option Interests" replacing "Purchased Interests", where applicable and as context requires: (i) Clauses 1.3 through 1.11, inclusive; (ii) Article 4 in its entirety; (iii) Article 6 in its entirety; (iv) Article 7 in its entirety; (v) Article 9 in its entirety; (vi) Article 11 in its entirety; (vii) Article 12 in its entirety; and (viii) Clauses 13.4 through 13.13, inclusive.
- (uu) "**Option Interests**" means the respective Surface Material Rights and associated Miscellaneous Interests relating to each of the separate Option Lands, each as set in an Option Purchase Agreement.
- (vv) "**Option Lands**" means the lands and associated Surface Materials located within, upon or under such lands set out in Part 2 of Schedule A, for which the Surface Material Rights have not yet been granted by the relevant Governmental Authority, but Vendor has applied for a lease or disposition in respect thereof.
- (ww) "**Option Note**" a promissory note from Purchaser to Vendor that is substantially similar to the form attached as Schedule F.

- (xx) "**Option Period**" means with respect to each of the Options, the period of time beginning on the respective Option Vesting Date and continuing until the respective Option Expiry Date.
- (yy) "**Option Purchase Agreement**" means a purchase and sale agreement in a form substantially similar as attached as Schedule E.
- (zz) "**Option Vesting Date**" means, for each of the Option interests, the date that Vendor provides notice and evidence to Purchaser of a formal approval and issuance being made by the relevant Governmental Authority for the Surface Material Rights and/or Permit(s) relating to the relevant Option Lands.
- (aaa) "**Options**" has the meaning ascribed to that term in Clause 3.1(c).
- (bbb) "**Ordinary Course of Business**" means the Business as conducted by Vendor in the ordinary course prior to the Agreement Date and/or the Company during and following the completion of the Reorganization, as applicable, but at all times after the Agreement Date subject to the Interim Restrictions during the Interim Period.
- (ccc) "**Other Sales Taxes**" means all sales, value-added or similar taxes or other transfer taxes, fees and charges, other than GST, imposed or levied by any Governmental Authority on or in respect of the sale or supply of goods or services.
- (ddd) "**Outside Date**" means the date that is twelve (12) months following the Agreement Date.
- (eee) "**Parties**" means the parties to this Agreement and "**Party**" means any one of the Parties to this Agreement.
- (fff) "**Permits**" means all licences, permits, approvals and authorizations granted or issued by any Governmental Authority and relating to the production, use or operation of the Purchased Interests or any of them.
- (ggg) "**Permitted Encumbrances**" means:
- (i) the right reserved to or vested in any Governmental Authority by the terms of any lease, license, franchise, grant or permit or by any Applicable Laws, to terminate any such lease, license, franchise, grant or permit, to require payment of rent or other periodic payments as a condition of the continuance thereof or otherwise control or regulate the Purchased Interests in any manner;
  - (ii) easements, rights of way, servitudes and other similar rights in land, including rights of way and servitudes for highways and other roads, railways, sewers, drains, gas and oil pipelines, gas and water mains, electric light, power, telephone, telegraph and cable television conduits, poles, wires and cables;
  - (iii) rights of general application reserved to or vested in any Governmental Authority to levy taxes or require royalty payments (whether in cash or in kind) on Surface Materials or any of them or the income therefrom, or to control, limit or regulate production rates or the operation or use of any property;
  - (iv) statutory exceptions to title and the reservations, limitations, provisos and conditions in any original grants from the Crown of any mines and minerals;
  - (v) the terms and conditions of the Title and Operating Documents; and



- (vi) any Security Interest held by any Third Party in respect of which Vendor delivers a legally effective release or discharge to Purchaser at or prior to Closing.
- (hhh) "**Person**" includes any individual, body corporate, partnership (limited or general), trust, trustee, executor or similar official, Governmental Authority or other entity.
- (iii) "**Pre-Closing Tax Period**" means a taxation year or other fiscal period that ends on or before the Closing Time in respect of the Company.
- (jjj) "**Purchase Price**" has the meaning ascribed to that term in Clause 2.3(a).
- (kkk) "**Purchased Interests**" means the Surface Material Rights, the Miscellaneous Interests, the Inventory and the Goodwill.
- (lll) "**Purchaser's Indemnified Party**" means Purchaser, Purchaser's Affiliates or their respective directors, officers, employees and agents.
- (mmm) "**Reclamation Operations**" means the operations that Vendor has performed prior to Closing wherein Vendor has completed ninety percent (90%) of the required reclamation activities in respect of the Lease No. 060060 to Purchaser's satisfaction.
- (nnn) "**Registered Holders**" means Robert W. Beaverford, Glenn Ball, Jordan Ball, Tor Land Resources Inc., Bonnie Badry, Cathy Ball and Katie Ball.
- (ooo) "**Related Persons**" means, in respect of a Party, that Party's Affiliates, together with that Party's and its Affiliates' directors, officers, employees and other personnel and agents.
- (ppp) "**Reorganization**" has the meaning ascribed to that term in Clause 10.1(a).
- (qqq) "**Security with AEP**" means the arrangements in place as of the Agreement Date, whereby the Company has placed deposits with CWB equal to the sum of the Security Deposit Value and has arranged for letters of credit issued by such bank in favour of AEP in satisfaction of the requirement for security required by AEP related to the ongoing reclamation obligations of the Company in respect of each of the Leases.
- (rrr) "**Security Deposit Value**" means the amount of Five Hundred Forty-One Thousand One Hundred and Ninety \$541,190.00.
- (sss) "**Security Interest**" means security interests in the Purchased Interests or any part or portion of the Purchased Interests or the Shares granted by Vendor or its predecessors in title whether by way of mortgage, charge, pledge, lien, hypothecation, assignment by way of or in effect of security, deed of trust, Bank Act (Canada), debenture, general security agreement or land charge under personal property security legislation or otherwise.
- (ttt) "**Security with AEP Loan**" means funds advanced from Vendor to the Company in respect of the Security with AEP, equal to the Security Deposit Value and without any additional interest, fees or other charges related thereto.
- (uuu) "**Senior Lenders**" means the senior secured lenders of Purchaser, being ATB Financial and Integrated Private Debt Fund V L.P.



- (vvv) "**Shares**" means all of the Class "A" Common Shares of the Company, constituting all of the issued and outstanding capital in the Company, which are legally and beneficially owned wholly by Vendor.
- (www) "**Specific Conveyances**" means all conveyances, assignments, transfers, novations, trust declarations and other documents or instruments that are reasonably required or desirable, in accordance with normal industry practices, to convey, assign and transfer the Purchased Interests, excluding the Leases, to the Company and to make the Company a party to, and to novate the Company into, the applicable Title and Operating Documents in the place and stead of Vendor with respect to the Purchased Interests, but for certainty excluding the Lease Conveyances.
- (xxx) "**Stub Period Returns**" has the meaning ascribed to that term in Clause 8.1(a).
- (yyy) "**Surface Material Rights**" means, as applicable, Vendor's, Company's and/or the Registered Holders' entire right, title and interest in and to:
- (i) rights in, or rights to explore for and to produce, save and market, Surface Materials;
  - (ii) rights to take or remove Surface Materials in situ;
  - (iii) working interests, carried working interests, royalty interests, revenue interests, net profit interests, production payments and similar interests in Surface Materials or the proceeds of the sale of Surface Materials or to payments calculated by reference thereto;
  - (iv) rights to acquire any of the foregoing in paragraphs (i), (ii), (iii);
- but, in each case, only insofar as the foregoing relate to the Lands.
- (zzz) "**Surface Materials**" means sand, gravel and other related materials and all other substances related to any of the foregoing.
- (aaaa) "**Surface Rights**" means all rights to enter, occupy, cross or otherwise use or enjoy the surface of the Lands or any other lands used in connection with the ownership or use of the Surface Material Rights, or used to gain access to any of the Lands.
- (bbbb) "**Tax**" or "**Taxes**" means all taxes whether Canadian federal, provincial, territorial, local, municipal or foreign (including income, gross receipts, license, fees, payroll, employment, excise, severance, premium, windfall profits, customs duties, capital, capital stock, capital gain, value added, franchise, business, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, GST, Other Sales Taxes use, occupation, goods and services, stamp, transfer, registration, alternative or minimum tax, municipal tax, employment insurance contributions and Canada pension plan contributions, and including any interest, penalty, or addition thereto, whether disputed or not, imposed, assessed or collected by, for or under the authority of the Income Tax Act or any Governmental Authority or payable pursuant to the Income Tax Act or tax-sharing agreement or any other contract relating to the sharing or payment of any such tax, levy, assessment, tariff, duty, deficiency or fee).
- (cccc) "**Tax Contest**" has the meaning ascribed to that term in Clause 8.2(a).
- (dddd) "**Tax Notice**" has the meaning ascribed to that term in Clause 8.2(b).



- (eeee) "**Tax Returns**" means all returns, reports, declarations, elections, notices, filings, information returns, and statements in respect of Taxes that are filed or required to be filed with any applicable Governmental Authority, including all amendments, schedules, attachments or supplements thereto and whether in tangible or electronic form.
- (ffff) "**Termination Agreement**" means a termination agreement in respect of the Trust Agreements in a form substantially similar as attached as Schedule G.
- (gggg) "**Third Party**" means any Person other than Vendor or Purchaser.
- (hhhh) "**Title and Operating Documents**" means, to the extent related to the Surface Material Rights and Miscellaneous Interests, or any of them all agreements and documents that relate to the ownership, operation or exploitation of the Surface Material Rights or Miscellaneous Interests, including:
- (i) the Leases;
  - (ii) agreements affecting Vendor's interest in the Surface Material Rights;
  - (iii) agreements pertaining to the Surface Rights; and
  - (iv) the Permits.
- (iiii) "**Transaction**" has the meaning given to it in the recitals of this Agreement.
- (jjjj) "**Trust Agreements**" means collectively, the existing trust agreements between Vendor, as beneficiary, and each Registered Holder, as trustee, providing that, *inter alia*, each Registered Holder holds bare legal title to the applicable Lease specified in such trust agreement, as nominee and bare trustee for, on behalf of and for the benefit of Vendor.

## 1.2 Schedules

- (a) Appended to this Agreement are the following Schedules:

Schedule A	Part 1 – Lands and Leases Part 2 – Option Lands and Leases
Schedule B	Form of Non-Competition Agreement
Schedule C	Form of Closing Note
Schedule D	Option Purchase Agreement
Schedule E	Option Note
Schedule F	Part 1 – Inventory Part 2 – Excluded Inventory
Schedule G	Ongoing Jobs
Schedule H	Form of Termination Agreement related to Trust Agreements

- (b) These schedules are incorporated into and form part of this Agreement. If any term or condition of such schedules conflicts or is inconsistent with any term or condition in the main body of this Agreement, the term or condition in the main body of this Agreement shall prevail to the extent of the conflict or inconsistency.

### 1.3 Words Importing Number or Gender

When the context reasonably permits, words in this Agreement that suggest the singular shall be construed to suggest the plural and vice versa, and words in this Agreement that suggest gender or gender neutrality shall be construed to suggest the masculine, feminine and neutral genders.

### 1.4 Use of Derivative Terms

If a derivative form of a term or expression that is already specifically defined in this Agreement is also used in this Agreement, then such derivative form shall have a meaning that corresponds to the applicable defined term or expression.

### 1.5 Use of "Including"

The use of "including" or "includes" or similar words in this Agreement, when following any general statement, term or matter, is not to be construed to limit such general statement, term or matter to the specific items immediately following such word to those or similar items, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words or phrases of similar import) is used, but rather such references shall be construed to refer to all items that could reasonably fall within the broadest possible scope of such general statement, term or matter.

### 1.6 Statutory References

Any reference in this Agreement to a law, statute, regulation, rule, by-law or other requirement of law or any governmental consent, approval, permit or other authorization shall be deemed to refer to such law, statute, regulation, rule, by-law or other requirement of law or such governmental consent, approval, permit or other authorization as it has been amended, supplemented, re-enacted, varied, or otherwise modified or replaced from time to time up to the applicable time.

### 1.7 Monetary References

Any reference in this Agreement to a monetary amount, including the use of the term "Dollar" or the symbol "\$", shall mean the lawful currency of Canada.

### 1.8 References to Time

Any reference in this Agreement to any particular time shall mean the local time in Edmonton, Alberta on the relevant day.

### 1.9 Date for Payments or Other Actions

Where any payment or calculation is to be made, or any other action is to be taken, on or as of a day that is not a Business Day, that payment or calculation is to be made, or that other action is to be taken, as applicable, on or as of the next following Business Day.

### 1.10 Calculation of Time Periods

Unless otherwise specified, time periods within or following which any payment is to be made or any act is to be done under this Agreement shall be calculated by excluding the day on which the period commences and including the day on which such period ends.

### 1.11 Knowledge

- (a) Where in this Agreement a representation or warranty is limited to the knowledge or awareness of Vendor, such knowledge shall consist of the actual knowledge or awareness

of Lisa Ball and Gordon Ball after commercially reasonable inquiry of the employees who report directly to them.

- (b) Where in this Agreement a representation or warranty is limited to the knowledge or awareness of Purchaser, such knowledge shall consist of the actual knowledge or awareness of its current officers and managers after reasonable inquiry of the employees who report directly to such officer or manager.
- (c) Other than as expressly deemed in this Agreement, in no event shall actual knowledge or awareness include constructive or imputed knowledge or awareness.

## ARTICLE 2 PURCHASE AND SALE AND CLOSING

### 2.1 Purchase and Sale

Subject to the terms and conditions of this Agreement, at Closing, Vendor shall sell, assign and deliver to Purchaser, and Purchaser shall purchase and accept from Vendor, the Shares. Ownership of the Shares shall transfer as of the Closing Date together with all risks, Losses and Liabilities, rights and benefits attendant thereto, including in respect of Vendor's and/or the Company's entire interest in and to the Purchased Interests, which shall for certainty include paying out the outstanding amounts owing to Vendor under the Security with AEP Loan.

### 2.2 Closing

- (a) Subject to all other provisions of this Agreement, Closing shall occur at the Closing Place at the Closing Time.
- (b) Subject to all other provisions of this Agreement, ownership, risk and possession of, the Shares shall pass from Vendor to Purchaser upon Closing.
- (c) At Closing, Vendor shall assign to Purchaser the benefit of any Ongoing Jobs and Purchaser shall assume responsibility for and the benefit of such Ongoing Jobs going forward.

### 2.3 Purchase Price

- (a) The consideration to be paid by Purchaser to Vendor for the Shares (the "**Purchase Price**") shall be Fifteen Million Five Hundred Thousand Dollars (\$15,500,000.00), plus the Security Deposit Value, and as adjusted in accordance with Clause 2.6 and allocated in accordance with Clause 2.4.
- (b) The Purchase Price shall be payable on the Closing Date by Purchaser to Vendor as follows:
  - (i) in respect of Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00) of the Purchase Price as well as the Security Deposit Value, payable by wire transfer of immediately available funds to an account designated by Vendor in writing; and
  - (ii) in respect of remaining Three Million Dollars (\$3,000,000.00) of the Purchase Price, by the delivery by Purchaser of the Closing Note to Vendor.

## 2.4 Allocation

The Purchase Price shall be allocated among the purchase of the Shares and associated interests in the manner set out below. Purchaser and Vendor shall report an allocation of the Purchase Price among the Shares and associated interests in a manner entirely consistent with this Clause 2.4 and shall not take any position inconsistent therewith in the preparation of financial statements, the filing of any Tax Returns or in the course of any audit by any Governmental Authority, Tax review or Tax proceeding relating to any Tax Returns:

- (a) Fifteen Million Four Hundred Ninety-Nine Thousand Nine Hundred Forty Nine (\$15,499,949) to the Shares;
- (b) Five Hundred Forty-One Thousand One Hundred and Ninety (\$541,190.00) to irrevocably and conclusively settle the Security with AEP Loan;
- (c) \$1 to the Non-Competition Agreements; and
- (d) \$10 to the each of the Options.

## 2.5 GST and Other Sales Taxes

- (a) If applicable, as part of the Reorganization, Vendor and the Company shall execute jointly an election under section 167 of the *Excise Tax Act (Canada)* to have the sale of the Purchased Interests and associated leases of equipment used in the Business, including the Leases beneficially owned by the Vendor, whether registered in the name of Vendor or in the name of Registered Holders, take place on a GST-free basis under Part IX of the *Excise Tax Act (Canada)* and Vendor or Purchaser, as applicable, shall cause the Company to file such election with its GST return for the reporting period in which the sale of the foregoing takes place.
- (b) It is the understanding of the Parties that no GST and no Other Sales Taxes are payable in respect of the Transaction and, therefore, at Closing, no amount will be paid by Purchaser to Vendor, and no amount will be collected by Vendor from Purchaser, on account of either GST or Other Sales Taxes in respect of the Transaction. Subject to Clause 7.1(b)(iii), if it is determined that GST or Other Sales Taxes are payable in respect of the Transaction, then Purchaser shall pay such GST and Other Sales Taxes promptly, and in any event not more than five (5) Business Days, after receiving notice or otherwise becoming aware that such GST and Other Sales Taxes are payable in respect of the Transaction; provided that Vendor shall provide to Purchaser invoices which include all prescribed information required by Purchaser to claim any input tax credits or refunds, including a separately itemized amounts of applicable GST and Other Sales Taxes and Vendor's relevant Tax registration number(s).

## 2.6 Adjustments

The Parties acknowledge and agree that there shall be no adjustments in respect of the Purchase Price in this Agreement, except with respect to:

- (a) the work-in-progress costs associated with any Ongoing Jobs to be assumed by Purchaser at the Closing Date, of which Vendor and Purchaser have agreed shall be:
  - (i) no more than the amount of twenty thousand dollars (\$20,000), if the Closing Date occurs on or before March 29, 2019; or

- (ii) such further amount as agreed to by the Parties in writing, provided that Vendor shall have no obligation whatsoever to incur any further costs in respect of Ongoing Jobs unless the Parties agree on such additional amounts,

which amount will be added to the Purchase Price payable on the Closing Date. For certainty, Purchaser will obtain the benefit of any and all accounts receivable or other pending funds associated with the Ongoing Jobs on and following Closing, and to the extent that Vendor receives any funds associated with the Ongoing Jobs following Closing, Vendor shall remit the same to Purchaser;

- (b) any amounts Purchaser or the Company must replace with either AEP or CWB related to the Security with AEP pursuant to Clause 10.1(d), wherein Purchaser shall be entitled to reduce the Security Deposit Value on a proportional basis; and
- (c) any amounts related to the Inventory removed from the Lands by Vendor during the Interim Period, wherein Purchaser shall be entitled to reduce the Purchase Price accordingly.

### ARTICLE 3 OPTION INTERESTS

#### 3.1 Option

- (a) In addition to the sale of the Shares from Vendor to Purchaser, Vendor hereby grants a series of exclusive, irrevocable and unconditional options to Purchaser to purchase any of the Option Interests, in each case upon the Option Vesting Date occurring, in accordance with this Article 3.
- (b) Upon any Option Vesting Date occurring for each of the Option Interests as such interest is granted by the applicable Governmental Authority, Vendor shall promptly provide notice in writing of the same to Purchaser in respect of the applicable Option Interests. For certainty, the Option Period shall not commence until Purchaser receives notice and reasonably sufficient particulars thereof.
- (c) For each individual lease comprising the respective Option Interests, as applicable, during each Option Period, Purchaser shall have the exclusive, irrevocable and unconditional option to acquire each such respective Option Interests of which the applicants of the same are nominees under the direction of Vendor (the "Options") on the following terms:
  - (i) the terms and conditions for the sale of each of the Option Interests shall be set out in the Option Purchase Agreement, which shall include the Option Incorporated Provisions; and
  - (ii) the consideration payable by Purchaser to Vendor for each of the Option Interests purchased by Vendor pursuant to the Options, if any, shall be One Million Dollars (\$1,000,000), comprised of Eight Hundred Thousand Dollars (\$800,000) payable in cash by wire transfer of immediately available funds to an account designated by Vendor in writing and an Option Note for the remaining Two Hundred Thousand Dollars (\$200,000), as set out in the Option Purchase Agreement; and
  - (iii) the Options and the obligations of Vendor set out in this Article 3 shall survive the termination of this Agreement for a period of three (3) years following such termination.

### 3.2 Exercise of Option

- (a) Options may be exercised by Purchaser at any time during each respective Option Period for each of the Option Interests by giving notice in writing to Vendor in respect of each Option Interests, which notice must be received within the respective Option Period (an "Option Election").
- (b) If it has not been exercised and has not previously expired, each Option will expire at the end of the respective Option Period.
- (c) Purchaser in respect of each Option shall not be bound to exercise such Option. Should Purchaser not elect to exercise an Option on or before the end of the respective Option Period, such individual Option shall terminate, and Purchaser shall have no further rights or interests hereunder in respect of such specific Option and the related Option Interests, and all rights and obligations of the Parties hereunder in respect of the same shall terminate.
- (d) For each of the Option Interests wherein Purchaser provides an Option Election, the Parties shall enter into an Option Purchase Agreement to transfer the respective Option Interests in accordance with the terms therein, which for certainty shall include Vendor completing a reorganization substantially similar to the Reorganization to transfer the exercised Option Interests in a new corporation, and following the completion of the same to Purchaser's reasonable satisfaction, the Parties shall deliver the following:
  - (i) in the case of Vendor:
    - (A) original share certificates of any new corporation that holds the entire right in and to the exercised Option Interests, along with the minute book of such corporation;
    - (B) a duly executed receipt for the consideration described in Clause 3.1(c)(ii);
    - (C) specific conveyancing documents, as required and to the satisfaction of Purchaser, acting reasonably, in respect of the relevant Option Interests held by the new entity;
    - (D) a duly executed officer's certificate substantially similar to the certificate delivered pursuant to Clause 5.1(o); and
    - (E) such other items as may be specifically required or reasonably requested by Purchaser.
  - (ii) in the case of Purchaser:
    - (A) the consideration described in Clause 3.1(c)(ii);
    - (B) a duly executed officer's certificate substantially similar to the certificate delivered pursuant to Clause 5.1(b)(i); and
    - (C) such other items as may be specifically required or reasonably requested by Vendor.



**ARTICLE 4**  
**CONDITIONS OF CLOSING**

**4.1 Purchaser's Conditions**

- (a) The obligation of Purchaser to complete the Transaction and purchase the Purchased Interests, Shares and the Business from Vendor is subject to the following conditions precedent, which are for the exclusive benefit of Purchaser and may be waived, in whole or in part, only by Purchaser:
- (i) the representations and warranties of Vendor set forth in Clause 6.1 shall be true and correct in all material respects as of the Agreement Date and as of the Closing Time or, in each case, shall be true and correct in all material respects as of such other date or dates as specified therein, and Vendor shall have delivered a certificate of a senior officer of Vendor (solely in such capacity and not in his or her personal capacity) addressed to Purchaser to that effect dated the Closing Date;
  - (ii) all obligations and covenants of Vendor in this Agreement that are to be performed or complied with prior to or at the Closing Time (other than in respect of the agreements, certificates and other instruments and documents to be delivered at the Closing Time by Vendor pursuant to Clause 5.1) shall have been performed or complied with in all material respects, and Vendor shall have delivered a certificate of a senior officer of Vendor (solely in such capacity and not in his or her personal capacity) addressed to Purchaser to that effect dated the Closing Date;
  - (iii) from the date of this Agreement to the Closing Time, the Purchased Interests and/or the Shares shall have suffered no Material Adverse Change that has not been remedied in all material respects to Purchaser's reasonable satisfaction;
  - (iv) prior to the Closing Time, Purchaser shall have obtained: (A) due authorization for the Transaction from its board of directors; and (B) all required consents from Purchaser's Senior Lenders;
  - (v) at the Closing Time, Vendor shall have completed the Reorganization, in accordance with Clause 10.1, hereof, so that the Company is the sole legal and beneficial owner of the Purchased Interests;
  - (vi) prior to the Closing Time, Purchaser shall have obtained all necessary regulatory approvals from Governmental Authorities to consummate the Transaction, if any;
  - (vii) as of the Closing Date, no action or proceeding shall have been commenced or threatened by a Governmental Authority having jurisdiction over the Purchased Interests or the Shares, against Vendor, Purchaser, of the Company or in respect of any of the Purchased Interests, and no restraining order, preliminary or permanent injunction or other order shall have been issued by any court of competent jurisdiction, in each case that seeks to challenge, restrain or prohibit the Closing; and
  - (viii) at the Closing Time, Vendor shall have duly delivered the agreements, certificates and other instruments and documents required pursuant to Clause 5.1.
- (b) If any of the conditions precedent in Clause 4.1(a) have not been satisfied, complied with or waived by Purchaser at or before the Outside Date, then Purchaser may terminate this Agreement by written notice to Vendor prior to the Outside Date.



- (c) If Purchaser terminates this Agreement as provided in Clause 4.1(b) as a consequence of one or more of the conditions precedent set forth in Clause 4.1(a) not having been satisfied or complied with, then Purchaser and Vendor shall be released and discharged from the further performance of any duties or obligations under this Agreement, except for those duties or obligations provided for in Clauses 11.2 and 13.13.

#### 4.2 Vendor's Conditions

- (a) The obligation of Vendor to complete the Transaction and sell and convey the Purchased Interests, Shares and the Business to Purchaser is subject to the following conditions precedent, which are for the exclusive benefit of Vendor and may be waived, in whole or in part, only by Vendor:
- (i) the representations and warranties of Purchaser set forth in Clause 6.2 shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Time or, in each case, shall be true and correct in all material respects as of such other date or dates as specified therein, and Purchaser shall have delivered a certificate of a senior officer of Purchaser (solely in such capacity and not in his or her personal capacity) addressed to Vendor to that effect dated the Closing Date;
  - (ii) all obligations and covenants of Purchaser in this Agreement that are to be performed or complied with prior to or at the Closing Time (other than in respect of the payments, agreements, certificates and other instruments and documents to be made and delivered at the Closing Time by Purchaser pursuant to Clause 5.2) shall have been performed or complied with in all material respects, and Purchaser shall have delivered a certificate of a senior officer of Purchaser (solely in such capacity and not in his or her personal capacity) addressed to Vendor to that effect dated the Closing Date;
  - (iii) at the Closing Time, Purchaser shall have duly made the payment required pursuant to Clause 5.2(a);
  - (iv) as of the Closing Date, no action or proceeding shall have been commenced or threatened by a Governmental Authority having jurisdiction over the Purchased Interests or the Shares, against Vendor, Purchaser, of the Company or in respect of any of the Purchased Interests, and no restraining order, preliminary or permanent injunction or other order shall have been issued by any court of competent jurisdiction, in each case that seeks to challenge, restrain or prohibit the Closing; and
  - (v) at the Closing Time, Purchaser shall have duly delivered the agreements, certificates and other instruments and documents required pursuant to Clause 5.2.
- (b) If any of the conditions precedent in Clause 4.2(a) have not been satisfied, complied with or waived by Vendor at or before the Outside Date, Vendor may terminate this Agreement by written notice to Purchaser prior to the Outside Date.
- (c) If Vendor terminates this Agreement as provided in Clause 4.2(b) as a consequence of one or more of the conditions precedent set forth in Clause 4.2(a) not having been satisfied or complied with, then Purchaser and Vendor shall be released and discharged from the further performance of any duties or obligations under this Agreement, except for those duties or obligations provided for in Clauses 11.2 and 13.13.



### 4.3 Efforts to Fulfill Conditions Precedent

Purchaser and Vendor shall proceed diligently, honestly and in good faith and use their commercially reasonable efforts to satisfy and comply with the conditions precedent in Clauses 4.1(a) and 4.2(a) and shall provide the other Party with any reasonable assistance in the satisfaction of and compliance with the conditions precedent in Clauses 4.1(a) and 4.2(a) that the other Party may reasonably request.

## ARTICLE 5 CLOSING DELIVERIES

### 5.1 Deliveries by Vendor at Closing

At the Closing Time, Vendor shall deliver, or cause to be delivered, to Purchaser:

- (a) all certificates representing the Shares duly endorsed for transfer or accompanied by a written instrument of transfer to Purchaser;
- (b) the following items: (i) a certificate duly executed by an authorized officer of the Company, dated as of the Closing Date, attached and certifying on behalf of the Company, complete and correct copies of the resolutions of the board of directors of the Company authorizing and approving the Reorganization and the transfer of the Shares to Purchaser; (ii) resignations, effective as of completion of Closing, from, and releases of any Claims by, all directors and officers of the Company against the Company, and releases of any Claims by the Company against such directors and officers; and (iii) releases of any Claims by Vendor against the Company;
- (c) a certificate duly executed by an authorized officer of Vendor, dated as of the Closing Date, attached and certifying on behalf of Vendor complete and correct copies of the resolutions of the board of directors of Vendor (in its capacity as vendor and as sole shareholder of the Company) authorizing the execution, delivery and performance by Vendor of this Agreement and the Transaction, including the Reorganization;
- (d) the minute books and other records of the Company;
- (e) Non-Competition Agreement executed by Lisa Ball and Gordon Ball;
- (f) evidence that all Taxes and similar charges set out in Clause 6.1(m) are fully paid and up to date;
- (g) no interest letters pertaining to the Purchased Interests and/or Shares, and any releases and registerable discharges or no interest letters in respect of all other registered Security Interests pertaining to the Purchased Interests, the Shares or the Company which have been requested by Purchaser not less than three (3) Business Days prior to Closing;
- (h) evidence that all of the Trust Agreements have been duly terminated and shall have no further effect on the Purchased Interests, evidenced by an agreement between Vendor and the Company, in the form of the Termination Agreement;
- (i) evidence that the Security with AEP is validly in place and held by the Company;
- (j) a receipt for the amount paid by Purchaser as specified in Clause 2.3(b)(i), including confirmation that the Security with AEP Loan is irrevocably and conclusively settled, and in respect of the Closing Note;

- (k) a specific assignment with respect to each of the Ongoing Jobs;
- (l) the Client List;
- (m) the Disclosure Letter;
- (n) an intercreditor agreement in respect of the Closing Note for each of the Senior Lenders, which shall include an acknowledgement that the Closing Note is subordinated and postponed to any indebtedness to the Senior Lenders of Purchaser;
- (o) the officer's certificate contemplated in Clauses 4.1(a)(i) and 4.1(a)(ii), which also certifies, in such detail as Purchaser reasonably requests, that all of the conditions precedent described in Clause 4.2 have been satisfied or waived by Vendor; and
- (p) such other items as may be specifically required hereunder or as may be reasonably requested by Purchaser.

## 5.2 Deliveries by Purchaser at Closing

At the Closing Time, Purchaser shall pay or deliver, or cause to be paid or delivered, as applicable, to Vendor:

- (a) the amount to be delivered in cash as specified in Clause 2.3(b)(i), as adjusted pursuant to Clause 2.6;
- (b) the Closing Note duly executed by Purchaser as specified in Clause 2.3(b)(ii);
- (c) a specific assignment with respect to each of the Ongoing Jobs;
- (d) the officer's certificate contemplated in Clauses 4.2(a)(i) and 4.2(a)(ii), which also certifies, in such detail as Vendor reasonably requests, that all of the conditions precedent described in Clause 4.1 have been satisfied or waived by Purchaser; and
- (e) such other items as may be specifically required hereunder or as may be reasonably requested by Vendor.

## 5.3 Delivery of Title and Operating Documents and Miscellaneous Interests

Within three (3) Business Days after the Closing Date or any other day as Vendor and Purchaser may agree, Vendor shall deliver or cause to be delivered to Purchaser the Title and Operating Documents as held by the Company and such other agreements and documents to which the Purchased Interests are subject, the original copies of these contracts, agreements, records, books, documents, licences, reports and data comprising Miscellaneous Interests which are in the possession and control of Vendor and/or the Company. Notwithstanding the foregoing in this Clause:

- (a) if and to the extent any such materials also pertain to assets or interests other than the Purchased Interests, photocopies or other copies of such materials may be provided to Purchaser, at Vendor's own cost, in lieu of original copies; and
- (b) to the extent that there are any pending or threatened Claims, audits or other matters involving or relating to the Purchased Interests that pertain to the period prior to the date of this Agreement at Closing, or should the same arise after Closing, the Company shall, upon request and after reasonable notice from Vendor, provide reasonable access to such materials as Vendor may reasonably require during the Company's normal business hours.

Vendor, at its own cost, may make and retain copies of the relevant portions of such materials.

## ARTICLE 6 REPRESENTATIONS AND WARRANTIES

### 6.1 Representations and Warranties of Vendor

Vendor makes the following representations and warranties to Purchaser in respect of the Transaction:

- (a) Standing: Vendor is duly organized, valid and subsisting and registered to carry on business in the Province of Alberta and has the requisite corporate capacity, power and authority to execute and deliver this Agreement and to perform the obligations that it becomes subject to under this Agreement;
- (b) Enforceability: This Agreement and all other documents executed and delivered by Vendor in furtherance of this Agreement have been validly executed and delivered by Vendor and the execution and delivery of this Agreement and the completion of the Reorganization and the sale of the Shares in accordance with the terms of this Agreement are not and shall not be in violation or breach of, or be in conflict with:
  - (i) any term or provision of the governing documents of Vendor;
  - (ii) the Trust Agreements;
  - (iii) any agreement, instrument, permit or authority to which Vendor is a party or by which Vendor, the Company, the Shares or the Purchased Interests are bound; or
  - (iv) any Applicable Laws or any judicial order, award, judgment or decree applicable to Vendor, the Company, the Shares or the Purchased Interests.
- (c) Binding Obligations: This Agreement and all other agreements delivered or to be delivered by Vendor in connection herewith constitute, or when delivered shall constitute, legal, valid and binding obligations of Vendor, enforceable against Vendor in accordance with their respective terms, subject to all Applicable Laws pertaining to bankruptcy, insolvency and creditors' rights and the general principles of equity;
- (d) No Authorizations: Except as otherwise provided in this Agreement, no authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by Vendor of this Agreement, other than authorizations, approvals or exemptions previously obtained and currently in force;
- (e) Finders' Fees: Vendor has not incurred any obligation or liability, contingent or otherwise, for brokers' or finders' fees in respect of this Agreement or the Transaction for which Purchaser shall have any obligation or liability;
- (f) Residency: Vendor is not a non-resident of Canada within the meaning of the Income Tax Act;
- (g) GST: Vendor's GST registration number is 136123585 RT0001;
- (h) Claims: Except for the Permitted Encumbrances, neither of the Registered Holders nor Vendor have received notice of any Claim in respect of or in connection with the Shares or



the Purchased Interests and there are no unsatisfied judgments or, to Vendor's knowledge, any threatened Claims against Vendor in respect of or in connection with the Shares or the Purchased Interests which might result in impairment or loss of the interest of Vendor in and to any of the Shares or the Purchased Interests or which might otherwise materially affect any of the Purchased Interests;

- (i) Title to Purchased Interests: Except for the Permitted Encumbrances and as described in Part 1 of Schedule A hereto:
- (i) prior to the Reorganization, Vendor is the sole beneficial owner of, and has good and marketable title to, the Surface Material Rights, and is the sole holder of the rights and entitlements deriving from the Surface Material Rights, and following the Reorganization, the Company shall have all such rights and entitlements relating thereto;
  - (ii) prior to the Reorganization, Vendor is the legal Registered Holder of Lease nos. 110026, 110045 and 100085, Robert W. Beaverford is the legal Registered Holder of Lease nos. 110045 and 060060, Glenn Ball is the legal Registered Holder of Lease no. 110047, Jordan Ball is the legal Registered Holder of Lease no. 120005, Tor Land Resource Inc. is the legal Registered Holder of Lease no. 080085, Bonnie Badry is the legal Registered Holder of Lease no. 110025, Cathy Ball is the legal Registered Holder of Lease no. 120006 and Katie Ball is the legal Registered Holder of Lease no. 120100, and following the Reorganization, the Company shall be the sole legal registered holder of all such Leases;
  - (iii) the Leases are in full force and effect, unamended by oral or written agreement and represent a binding and enforceable agreement between Her Majesty the Queen in right of the Province of Alberta, as represented by AEP, or any successor thereto and the Company as of the Closing Date with respect to the Lands;
  - (iv) Vendor is exclusively entitled to the full benefit and advantage of each Lease in accordance with its terms and Vendor has not sublet or assigned any of the Leases or otherwise conveyed any rights in the Leases or in the Lands to any other Person, provided that the Company shall hold the same entitlements as Vendor following the completion of the Reorganization.
  - (v) Except as explicitly disclosed in writing to Purchaser prior to the Agreement Date in the Disclosure Letter, each Lease is in good standing and there has not been any default by any party under any Lease nor is there any dispute between Vendor and/or the Company, on one hand, and AEP, on the other hand, under any Lease. Vendor has not received any notice of early termination from the AEP nor are there any arrears in rent payable under any Lease;
  - (vi) the current use of the Lands, and all of the improvements located within or associated with the Lands, comply with Applicable Laws;
  - (vii) the Lands have full and free legally enforceable access to and from public highways, which access is sufficient for the purposes of the operation of the Business in the Ordinary Course of Business, and Vendor has no knowledge of any fact or condition that would result in the interruption or termination of such access;
  - (viii) a true, correct and complete written copy of each Lease was delivered to Purchaser no later than two (2) Business Days prior to the date of this Agreement;

- (ix) there is no royalty agreement, agreement to lease, license, concession or occupancy agreement with respect to all or part of the Lands that would restrict the ability of Vendor to convey the beneficial title and legal title to the Lands to Purchaser;
  - (x) other than the Leases, there are no leases, agreements to lease, royalty agreements, subleases, license agreements or other occupancy or similar agreements under which Vendor has the right, or pursuant to which Vendor has granted to another Person the right, to use or occupy any real property related to all or any portion of the Lands;
  - (xi) Part 1 of Schedule A lists all of the Leases and set out, in respect of each Lease: (i) the date of such Lease and any amendments to it; (ii) the parties to such Lease and any amendments to it; and (iii) the expiry date of such Lease;
  - (xii) to Vendor's knowledge, the parcels constituting the Lands are not and never have been used at any time by any Person as a landfill or waste disposal site;
  - (xiii) none of the Registered Holders, Vendor nor the Company, as applicable have alienated or encumbered the Shares, the Purchased Interests or any part or portion thereof;
  - (xiv) at the Closing Time, the Shares and the Purchased Interests shall be free and clear of all Encumbrances created by, through or under Vendor, the Company or any Registered Holder, as applicable;
  - (xv) none of the Purchased Interests are subject to any joint venture, partnership, co-ownership or other contract affecting in any material manner the ownership, use, operation or transferability of any of the Purchased Interests;
  - (xvi) to Vendor's knowledge, there are no adverse Claims or challenges against or to the ownership of or title to any of the Purchased Interests and/or any rights thereunder and there is no basis therefor; and
  - (xvii) all accounts for work and services performed and materials placed or furnished upon or in respect of the Purchased Interests at the request of Vendor or the Company, as applicable have been fully paid and satisfied, and no Person is entitled to claim an Encumbrance under Applicable Laws against any Purchased Interests or any part thereof;
- (j) Reduction of Interests: Except for the Permitted Encumbrances and as described in Part 1 of Schedule A hereto, Vendor's interest in the Surface Material Rights is not currently subject to reduction by reference to payout of or production penalty through any right or interest granted or exercised by, through or under Vendor, nor will the Company's interest be subject to the same following the Reorganization;
- (k) Default: Except for the Permitted Encumbrances, none of the Registered Holders nor Vendor have received written notice of any default or purported default under any of the Title and Operating Documents that remains outstanding in any material respect or that has not been remedied in all material respects and to Vendor's knowledge, there has been no act or omission by Vendor or any Registered Holder that reasonably could constitute a breach of or a default under a Title and Operating Document that has not been remedied in all material respects or which, if unremedied, could reasonably be expected to have a material adverse effect on the value of the Purchased Interests that are the subject of the applicable Title and Operating Document;

- (l) Breach of Law: Except as explicitly disclosed in writing to Purchaser prior to the Agreement Date in the Disclosure Letter, Vendor has not received written or verbal notice, and to Vendor's knowledge, no Registered Holder has received written or verbal notice from any Governmental Authority, of any breach or purported breach of any Applicable Laws pertaining to the Purchased Interests or the ownership (excluding any Applicable Laws relating to the Environment) that remains outstanding in any material respect or that has not been remedied in all material respects and, to Vendor's knowledge, there has been no act or omission by Vendor or any Registered Holder that reasonably could constitute a breach of any such Applicable Laws that has not been remedied in all material respects or which, if unremedied, could reasonably be expected to have a material adverse effect on the value of the Purchased Interests that are the subject of the breach;
- (m) Taxes, Rentals and Royalties Paid: To the extent pertaining to the Purchased Interests:
- (i) all Crown and lessor royalties and all lease rentals;
  - (ii) all ad valorem and property taxes; and
  - (iii) all production, severance and similar taxes, charges and assessments based upon or measured by the ownership or production of Surface Materials or any of them or the receipt of proceeds from the sale thereof,
- that became due and payable to Third Parties, including applicable Governmental Authorities, on or prior to the Closing Time have been fully paid;
- (n) Operations: The Business has been operated and the Purchased Interests have been maintained in accordance with Applicable Laws, and Vendor has not done anything to Vendor's knowledge, in the last five (5) years in violation thereof or that could constitute material damage where Environmental Liabilities could arise except specifically the reclamation obligations being assumed by the Company and Purchaser as set out in Clause 7.3;
- (o) Environmental Matters: None of the Registered Holders nor Vendor have received written notice, and, to Vendor's knowledge, it has not received verbal notice from any Governmental Authority, of any orders or directives from any Governmental Authority:
- (i) that are specific to the Purchased Interests or any portion thereof, related to Environmental Liabilities which have not been complied with in all material respects; and
  - (ii) with respect to the breach of any Applicable Laws relating to the Environment that are applicable to the Purchased Interests or any portion thereof which remain outstanding in any material respect;
- (p) Reclamation Operations: Vendor has completed or caused to be completed, the Reclamation Operations;
- (q) Permits:
- (i) Vendor and/or the relevant Registered Holder, as applicable, holds all Permits that are required and necessary under Applicable Laws to use the Purchased Interests;
  - (ii) all such Permits are in force and effect in accordance with their terms; and

- (iii) to Vendor's knowledge, no event has occurred which constitutes a material violation of any such Permit during the period in which Vendor has owned the Purchased Interests to which such Permit pertains, and no event has occurred which constitutes a material violation of any such Permit during the period in which Vendor did not own the Purchased Interests to which such Permit pertains;
- (r) Provision of Documents: Vendor has made available to Purchaser, prior to the date that is three (3) days prior to the date hereof: (i) all of the Title and Operating Documents in Vendor's possession that are relevant to Vendor's title to the Surface Material Rights; (ii) all material correspondence related to the Purchased Interests received from applicable Governmental Authorities; and (iii) all other documents that were specifically requested in writing by Purchaser;
- (s) The Company: At the Closing Time, the Company:
  - (i) shall be duly organized and validly existing under the laws of Alberta;
  - (ii) shall have the corporate power and authority to, prior to the Reorganization, own, lease or otherwise hold the Purchased Interests and conduct the Business in the manner presently conducted;
  - (iii) shall not hold any property other than the Purchased Interests or conduct any business other than the Business;
  - (iv) is not the guarantor of any Person;
  - (v) has no potential, contingent or existing liabilities or other indebtedness, other than normal course reclamation obligations in relation to the Leases and in respect of the Security for AEP Loan owing to Vendor, which shall be settled by Purchaser at the Closing Time, with no further obligations in respect thereof;
  - (vi) is not subject to or involved in any Claims;
  - (vii) to Vendor's knowledge, shall be fully compliant with Applicable Laws;
  - (viii) if applicable, has charged, collected and remitted on a timely basis all Taxes as required under any Applicable Laws on any sale, supply or delivery whatsoever, made by it, and the Company is validly registered as a vendor with the relevant Governmental Authorities for the collection of such Taxes. All input tax credits, refunds, rebates and similar adjustments of Taxes claimed by the Company have been validly claimed and correctly calculated as required by Applicable Laws, and the Company has retained all documentation prescribed by Applicable Laws to support such claims. Where applicable, the Company: (i) has obtained all required information and documentation to support any zero-rating treatment of its supplies, and (ii) has been furnished with valid exemption certificates or their equivalent and has retained all such records and supporting documents in the manner required by Applicable Laws;
  - (ix) if applicable, at the time of completion of the Reorganization, is duly registered with the Canada Revenue Agency under the *Excise Tax Act* (Canada) for GST purposes;
  - (x) if applicable, has prepared and filed when due with each relevant Governmental Authority all Tax Returns required to be filed by or on behalf of it in respect of any Taxes. All such Tax Returns are correct and complete in all material respects, and

no material fact has been omitted therefrom. No extension of time in which to file any such Tax Returns is in effect. No Governmental Authority has asserted that the Company is required to file Tax Returns or pay any Taxes in any jurisdiction where it does not do so;

- (xi) if applicable, has paid in full and when due all Taxes required to be paid by it, whether or not such Taxes are shown on a Tax Return or on any assessments or reassessments;
- (xii) if applicable, has not filed a notice of objection or appeal with respect to any assessments or reassessments of the Taxes, no audit by any Governmental Authority of the Company is currently ongoing and there are no outstanding issues which have been raised and communicated to the Company by any Governmental Authority. None of Vendor or the Company has received any indication from any Governmental Authority that an audit, assessment or reassessment of the Company is proposed in respect of any Taxes, regardless of its merits. Neither the Company has executed or filed with any Governmental Authority any agreement or waiver extending the period for assessment, reassessment or collection of any Taxes;
- (xiii) if applicable, has withheld from each payment made to any Person, including any of its present or former employees, officers and directors, and all Persons who are or are deemed to be non-residents of Canada for purposes of the Income Tax Act, all amounts required by Applicable Law to be withheld, and has remitted such withheld amounts within the prescribed periods to the appropriate Governmental Authority. Each of the Company has remitted all Canada Pension Plan contributions, provincial pension plan contributions, employment insurance premiums, employer health taxes and other Taxes payable or required to be withheld and remitted by it in respect of the employees to the appropriate Governmental Authority within the time required under Applicable Law;
- (xiv) has maintained and continues to maintain at its place of business in Canada all records and books of account required to be maintained under the Income Tax Act, the *Excise Tax Act* (Canada) and any comparable Applicable Law of any province or territory in Canada, including Applicable Laws relating to sales and use taxes;
- (xv) has not entered into any transaction (or series of transactions) with any Person that is (x) a non-resident of Canada for purposes of the Income Tax Act, and (y) not dealing at arm's length with the Company for purposes of the Income Tax Act, and the terms and conditions made or imposed in respect of such transaction or transactions differ from those that would have been made between persons dealing at arm's length for purposes of the Income Tax Act;
- (xvi) if applicable, has made or obtained records or documents that meet the requirements of paragraphs 247(4)(a) to (c) of the Income Tax Act with respect to all material transactions between it and any non-resident of Canada with whom it was not dealing at arm's length for purposes of the Income Tax Act;
- (xvii) is not party to or bound by any tax sharing agreement, tax indemnity obligation in favour of any Person or similar agreement in favour of any Person with respect to Taxes (including any advance pricing agreement or other similar agreement relating to Taxes with any Governmental Authority). Without limiting the generality of the foregoing, the Company has not entered into an agreement contemplated in section 80.04 or 191.3, or subsection 18(2.3), 127(13) to (17), 127(20) or 125(3)



of the Income Tax Act or any analogous provision of any comparable Applicable Law of any province or territory of Canada;

- (xviii) if applicable, the Company will not be required to include in a taxable period ending after the Closing Time any amount of net taxable income (after taking into account deductions claimed for such a period that relate to a prior period) attributable to income that accrued, or that was required to be reported for financial accounting purposes, in a prior taxable period but that was not included in taxable income for that or another prior taxable period;
  - (xix) has not entered into any transactions or events that have resulted, and no circumstances existing, which could result in the application to the Company of sections 80, 80.01, 80.02, 80.03, 80.04 of the Income Tax Act or any analogous provision of any comparable Applicable Law of any province or territory of Canada;
  - (xx) has not incurred any deductible outlay or expense owing to a Person not dealing at arm's length (for purposes of the Income Tax Act) with the Company, the amount of which would, in the absence of an agreement filed under paragraph 78(1)(b) of the Income Tax Act, be included in the Company's income for Canadian income tax purposes, as the case may be, for any taxation year or fiscal period beginning on or after the Closing Date under paragraph 78(1)(a) of the Income Tax Act or any analogous provision of any comparable Applicable Law of any province or territory of Canada; and
  - (xxi) has not acquired property from a Person not dealing at arm's length (for purposes of the Income Tax Act) with it in circumstances that would result in the Company becoming liable to pay Taxes of such Person under subsection 160(1) of the Income Tax Act or any analogous provision of any comparable Applicable Law of any province or territory of Canada;
- (t) Company Records: Vendor has delivered to Purchaser true and complete copies of the articles of incorporation, by-laws and other constating documents of the Company, and the minute books, share certificate book, register of shareholders, register of transfers and register of directors and officers of the Company have been maintained in accordance with Applicable Law and are complete and accurate in all material respects;
- (u) Shares: At the Closing Time, Vendor will be the sole holder of record and will own beneficially all of the Shares, free and clear of any Encumbrances (other than this Agreement) or restrictions on transfer (other than, subject to Clause 5.1(b)(i), as contained in the Company's articles of incorporation, bylaws or other constating documents). There are no other shares, equity interests or other securities of the Company issued or outstanding, and neither Vendor or the Company is a party to any option, warrant, purchase right, right of first refusal, pre-emptive right, subscription right or other contract or commitment that could require it to sell, transfer, or otherwise dispose of any portion of the Shares (other than this Agreement). Upon Closing, Purchaser will acquire good and marketable title to the Shares, free and clear of all Encumbrances (other than this Agreement);
- (v) The Reorganization: The Reorganization has been completed prior to the Closing Date in accordance with Applicable Laws in all respects as set forth in Article 10, and the Reorganization will not have any prejudicial effect on the Company with respect to any Tax liabilities or Tax obligations.

## 6.2 Representations and Warranties of Purchaser

Purchaser hereby makes the following representations and warranties to and in favour of Vendor in respect of the Transaction:

- (a) Standing: Purchaser is duly organized, valid and subsisting and registered to carry on business in the Province of Alberta and has the requisite corporate capacity, power and authority to execute and deliver this Agreement and to perform the obligations that it becomes subject to under this Agreement;
- (b) Enforceability: This Agreement and all other documents executed and delivered by Purchaser in furtherance of this Agreement have been validly executed and delivered by Purchaser and the execution and delivery of this Agreement and the completion of the sale of the Shares in accordance with the terms of this Agreement are not and shall not be in violation or breach of, or be in conflict with:
  - (i) any term or provision of the governing documents of Purchaser;
  - (ii) any agreement, instrument, permit or authority to which Purchaser is a party or by which Purchaser is bound; or
  - (iii) any Applicable Laws or any judicial order, award, judgment or decree applicable to Purchaser;
- (c) Binding Obligations: This Agreement and all other agreements delivered or to be delivered by Purchaser in connection herewith constitute, or when delivered shall constitute, legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, subject to all Applicable Laws pertaining to bankruptcy, insolvency and creditors' rights and the general principles of equity;
- (d) No Authorizations: Except as otherwise provided in this Agreement, no authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by Purchaser of this Agreement, other than authorizations, approvals or exemptions previously obtained and currently in force;
- (e) Residency: Purchaser is not a non-resident of Canada within the meaning of the Income Tax Act;
- (f) Qualification: Purchaser is not aware of any fact or circumstance that would prevent, adversely affect or delay the transfer of the Shares as contemplated in this Agreement, and at Closing, Purchaser shall meet all qualification requirements of Governmental Authorities to purchase and take a transfer of the Shares;
- (g) Finders' Fees: Purchaser has not incurred any obligation or liability, contingent or otherwise, for brokers' or finders' fees in respect of this Agreement or the Transaction for which Vendor shall have any obligation or liability;
- (h) No Agency: Purchaser is entering into this Agreement and will acquire the Shares for itself and not as agent or representative for any Third Party;
- (i) Sufficient Funds: Purchaser has or will have on the Closing Date, sufficient funds available to it to enable it to pay the cash portion of the Purchase Price on the Closing Date and all

other amounts to be paid by it hereunder in accordance with and on the basis contemplated by this Agreement; and

- (j) Independent Investigation: Purchaser has made its own independent investigation, analysis, evaluation, and inspection of the Shares and the Purchased Interests, and of the state and condition thereof, and it has relied solely on such investigation, analysis, evaluation, and inspection as to its assessment of the condition, quantum, and value of the Shares and the Purchased Interests and is not relying upon any representations, or statements in any form of Vendor, except those contained in Clause 6.1 of this Agreement.

### 6.3 Survival of Representations and Warranties

The respective representations and warranties set forth in Clauses 6.1 and 6.2 shall, survive Closing for the periods of time contemplated in Clause 7.3.

## ARTICLE 7 INDEMNITIES

### 7.1 Vendor's Indemnity

- (a) From and after Closing and subject to Clauses 7.3, 7.4 and 7.6, Vendor shall be liable for all Losses and Liabilities suffered, sustained, paid or incurred by Purchaser or its Related Persons and, in addition and as an independent covenant, shall defend, indemnify and keep harmless Purchaser and its Related Persons from and against all Losses and Liabilities suffered, sustained, paid or incurred by Purchaser or its Related Persons and all Claims made against Purchaser or its Related Persons, in either case, directly resulting from:
  - (i) any representations or warranties contained in Clause 6.1 being untrue or incorrect; or
  - (ii) a breach by Vendor of any of its covenants contained in this Agreement.
- (b) Notwithstanding any other provision of this Agreement, Vendor shall indemnify and hold harmless Purchaser from and against any unrecoverable Taxes and other Losses and Liabilities which may be suffered or incurred by Purchaser ("**Indemnified Taxes**"):
  - (i) as a result of, or arising out of or in connection with or related in any manner whatever to any Taxes required to be paid by the Company in respect of a Pre-Closing Tax Period;
  - (ii) as a result of a breach of, or inaccuracy in, the representations and warranties in Clauses 6.1(m) and 6.1(s)(viii) to (xxi), and
  - (iii) in connection with the Reorganization.
- (c) Notwithstanding Clause 7.1(a), Vendor shall have no liability under the foregoing assumption of liability and indemnity provided for in Clause 7.1(a)(i) and (a)(ii):
  - (i) unless the aggregate amount of all such Losses and Liabilities and Claims exceeds Seventy-Five Thousand Dollars (\$75,000.00), in which event Purchaser and its Related Persons shall be entitled to recover the total aggregate amount of all Losses and Liabilities and Claims; or

- (ii) for any act or omission undertaken or omitted to be undertaken by or on behalf of Vendor in connection with Vendor's obligations under Article 12 that was undertaken or omitted to be undertaken at the request of or with the written consent of Purchaser.
- (d) Subject to Clause 7.1(e), the indemnity provided for in this Clause 7.1 and the corresponding liability of Vendor hereunder shall not exceed the aggregate of one half (1/2) of the Purchase Price, inclusive of all cost, including legal and other professional fees.
- (e) The limitations of liability set forth in Clauses 7.1(a)(ii) and 7.1(d) shall not apply with respect to any Losses and Liabilities or Claims directly resulting from Indemnified Taxes, a breach by Vendor of Vendor's Fundamental Representation, or any fraud or willful misconduct of or by Vendor or its Related Persons.

## 7.2 Purchaser's Indemnity

- (a) From and after Closing and subject to Clauses 7.3 and 7.6, Purchaser shall be liable for all Losses and Liabilities suffered, sustained, paid or incurred by Vendor or its Related Persons and, in addition and as an independent covenant, shall defend, indemnify and keep harmless Vendor and its Related Persons from and against all Losses and Liabilities suffered, sustained, paid or incurred by Vendor or its Related Persons and all Claims made against Vendor or its Related Persons, in either case, directly resulting from:
  - (i) any representations or warranties contained in Clause 6.2 being untrue or incorrect;
  - (ii) Vendor taking any action or causing anything to be done at the direction of Purchaser, or otherwise pursuant to Clause 12.1; or
  - (iii) a breach by Purchaser of any of its covenants contained in this Agreement,

provided that Purchaser shall have no liability under the foregoing assumption of liability and indemnity provided for in this Clause 7.2 for any Losses and Liabilities or Claims in respect of any act, omission, circumstance or other matter actually known to Vendor or Vendor's Related Persons as at the Closing Time.
- (b) Notwithstanding Clause 7.2(a), Vendor shall have no liability under the foregoing assumption of liability and indemnity provided for in Clause 7.2(a) unless the aggregate amount of all such Losses and Liabilities and Claims exceeds Seventy-Five Thousand Dollars (\$75,000.00), in which event Vendor and its Related Persons shall be entitled to recover the total aggregate amount of all Losses and Liabilities and Claims.
- (c) Subject to Clause 7.2(d), the indemnity provided for in this Clause 7.2 and the corresponding liability of Purchaser hereunder shall not exceed the aggregate of one half (1/2) the Purchase Price, inclusive of all cost, including legal and other professional fees.
- (d) The limitations of liability set forth in Clause 7.2(b) shall not apply with respect to any Losses and Liabilities or Claims directly resulting from a breach of Purchaser's Fundamental Representations or any fraud or willful misconduct of or by Purchaser or its Related Persons.

## 7.3 Purchaser's Indemnity regarding Reclamation

Subject to the correctness of Vendor's representations and warranties in Clauses 6.1(n) and 6.1(o), from and after the Closing Time, Purchaser and/or the Company shall be liable for all costs and

expense associated with the Leases generally and specifically in respect of all future reclamation obligations and stipulations owing, as stipulated in the Leases and related to each of the Leases or by virtue of the provisions of the *Public Lands Act*, the *Public Lands Act Regulations* and any legislation passed in replacement of such legislation, to AEP. Purchaser acknowledges that such costs may exceed the Security Deposit Value and the Security with AEP and specifically agrees to indemnify and save harmless Vendor, its officers, directors, agents and employees from any claims which may be levied by any Governmental Authority including but not limited to AEP in relation to such future reclamation obligations.

#### 7.4 Time Limitation

- (a) Subject to Clause 7.4(b), neither Vendor nor Purchaser shall make any Claim under or in respect of Clause 7.1 or 7.2, nor shall Vendor or Purchaser shall have any liability under Clause 7.1 or 7.2 unless written notice, with reasonable particulars, of the applicable Losses and Liabilities or Claim has been received by the other Party on or before the date that is twelve (12) months after Closing with respect to the representations and warranties of the Parties and the covenants, obligations or agreements in this Agreement that are to be performed by either Party at or prior to the Closing Time. The indemnity related to reclamation found in Clause 7.3 shall survive the consummation of this transaction and shall not expire whatsoever. All of the covenants and agreements contained in this Agreement that by their nature are required to be performed after the Closing shall survive the Closing in accordance with their terms until fully performed or fulfilled.
- (b) Notwithstanding any other provision of this Agreement, Purchaser's right to commence any claim for indemnification for Taxes under Section 7.1(b) and the representations and warranties in Clause 6.1 shall survive Closing and continue until ninety (90) days after the relevant Governmental Authorities are no longer entitled to assess or reassess the Company in respect of the Taxes in question, having regard, without limitation, to:
- (i) any waiver given by the Company before the Closing Date in respect of such Taxes; and
  - (ii) any entitlement of a Governmental Authority to assess or reassess the Company without limitation in the event of fraud or misrepresentation attributable to neglect, carelessness or willful default.

In the event that written notice of any bona fide claim for indemnification under this Article 7 or under Article 8 shall have been given in accordance with this Agreement within the applicable survival period, the rights and obligations that are the subject of such claim for indemnification shall survive with respect to such claim until such time as such claim is fully and finally resolved.

#### 7.5 Equitable Remedies

If the Closing does not or will not occur as a direct result of the failure of a Party to complete the Transaction on the Closing Date, which failure constitutes a breach by such Party of this Agreement, each Party acknowledges and agrees that the other Party in such instance would suffer irreparable harm for which money damages may not be an adequate remedy at law. It is accordingly agreed that the non-defaulting Party will be entitled to seek equitable remedies, including specific performance, a restraining order and interlocutory, preliminary and permanent injunctive relief and other equitable relief to prevent such breaches of this Agreement by such defaulting Party, and such defaulting Party hereby waives any defences or requirements to post a surety bond in respect thereto in all cases.

#### 7.6 Limitation of Remedies

- (a) From and after Closing, the sole remedy available to:

- (i) Purchaser in respect of any of Vendor's representations and warranties set forth in Clause 6.1 being untrue or incorrect or a breach by Vendor of any of its covenants in this Agreement that are to be performed prior to or at the Closing Time shall be Vendor's assumption of liability and indemnity provided for in Clause 7.1 and Purchaser hereby releases and waives any and all other Claims or any other remedy or relief that it has or hereafter may have in this regard, whether arising at law, in equity or otherwise; and
  - (ii) Vendor in respect of any of Purchaser's representations and warranties set forth in Clauses 6.2, respectively, being untrue or incorrect or a breach by Purchaser of any of their respective covenants in this Agreement that are to be performed prior to or at the Closing Time shall be Purchaser's assumptions of liability and indemnity provided for in Clauses 7.2, and Vendor hereby releases and waives any and all other Claims or any other remedy or relief that it has or hereafter may have in this regard, whether arising at law, in equity or otherwise.
- (b) In no case shall either Party be liable to the other Party for any Consequential Losses whatsoever.

## ARTICLE 8 TAX MATTERS

### 8.1 Preparation of Tax Returns

- (a) Purchaser shall cause to be prepared and filed on a timely basis all Tax Returns for the Company for any Pre-Closing Tax Period for which Tax Returns have not been filed as of the Closing Date ("**Stub Period Returns**"). Purchaser shall prepare each such Stub Period Return on a basis consistent with the Applicable Law. Notwithstanding the foregoing, in any Stub Period Return, the Company shall not deduct any amount in the nature of a reserve or claim any Tax credit that would require the Company as the case may be, to include in a taxable period ending after the Closing Time any amount of income. For the avoidance of doubt, Purchaser may cause the Company to make an election pursuant to subsection 256(9) of the Income Tax Act in respect of the taxation year of the Company ending on the acquisition of control of it by Purchaser. Purchaser shall provide to Vendor for its review a draft of each Stub Period Return no later than thirty (30) days in the case of an income Tax Return, and ten (10) days in the case of any other Tax Return, prior to the due date for filing such Tax Return with the appropriate Governmental Authorities. Vendor shall notify Purchaser in writing within fifteen (15) days in the case of an income Tax Return, and five (5) days in the case of any other Tax Return, after delivery of a Stub Period Return if it has any reasonable comments with respect to items set forth in such Stub Period Return. Purchaser shall consider in good faith all such comments.
- (b) Vendor shall pay all Taxes due with respect to all Tax Returns for the Company for any Pre-Closing Tax Period.

### 8.2 Tax Contests

Notwithstanding any other provision of this Agreement:

- (a) If a Purchaser receives any written proposal to assess or reassess, assessment, reassessment, appeal or notification of similar proceeding with respect to any Tax in respect of which a claim may be made for indemnification under this Agreement (each, a "**Tax Notice**"), such Purchaser shall promptly (but in any event within ten (10) Business Days of receipt) deliver a copy of the Tax Notice to Vendor, together with all correspondence relating to, and any other documents received in respect of, such Tax



Notice. The failure to give such notice shall not relieve Vendor of the Tax indemnification obligations provided hereunder except to the extent that such failure materially prejudices the ability of Vendor to defend a Tax claim or otherwise exercise its rights hereunder.

- (b) Where a Tax Notice relates to a Pre-Closing Tax Period, provided that Vendor has, after receiving written notification of a Tax Notice, unconditionally acknowledged in writing its obligation to indemnify Purchaser in respect of such Taxes, and provided further that Vendor has complied and continues to comply with its obligations under Section 8.1, Vendor shall have the exclusive authority to control, at its own expense, any submissions in respect of such Tax Notice and any objection or appeal in respect of such Tax Notice (each, a "Tax Contest") and may make all decisions in connection with such Tax Contest, provided that Vendor shall reimburse Purchaser for reasonable out-of-pocket expenses incurred as a result of such assumption. Notwithstanding the foregoing, Purchaser shall have the right, at Purchaser's own expense, to participate and to employ counsel of its choice for purposes of such participation. Without limiting the foregoing, Vendor may pursue or forego any and all administrative appeals, proceedings and conferences with any Governmental Authority with respect thereto, and may contest the Tax Contest in any permissible manner, provided that neither Vendor nor Purchaser may settle any Tax Contest without the prior written consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed; provided further that Purchaser shall only require Vendor's consent to settle that portion of a Tax Contest that relates to Taxes for any Pre-Closing Tax Period. If Vendor fails within fifteen (15) Business Days of receipt of a Tax Notice to assume control of a Tax Contest in accordance with this Section 8.2(b), then Vendor shall be deemed to have waived its right to control the Tax Contest and Purchaser's Indemnified Party shall have the right (without prejudice to its right to be indemnified for the Indemnified Taxes at issue) to settle and/or dispute the matter as it deems reasonable in its sole judgment.
- (c) Vendor and Purchaser shall jointly control and participate in all proceedings taken in connection with any Tax Contest relating partly to Pre-Closing Tax Periods and partly to other taxable periods. Neither Vendor nor Purchaser shall settle any such Tax Contest without the prior written consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed.

### 8.3 Tax Indemnification Events

Notwithstanding any other provision of this Agreement, the following provisions shall apply in respect of any claims for Indemnified Taxes:

- (a) In the case of a Tax Notice that is a notice of assessment or reassessment, a notice of confirmation of an assessment or reassessment, a notice of garnishment, or a similar document in respect of any Indemnified Taxes, Vendor shall, within fifteen (15) days of receipt of written notice of such claim, reimburse the applicable Purchaser's Indemnified Party for an amount equal to: (a) the full amount of such Indemnified Taxes in respect of which a Governmental Authority is permitted to take collection action; or (b) the full amount that has been garnished and applied towards any Indemnified Taxes, as applicable.
- (b) Upon the occurrence of a Tax Indemnification Event: (i) to the extent that the total of the amounts previously paid by Vendor in respect of the relevant Indemnified Taxes is less than the amount so determined to be the amount of the Indemnified Taxes, Vendor shall forthwith (and, in any event, within fifteen (15) days of the time that the applicable Purchaser's Indemnified Party notifies Vendor of the occurrence of the Tax Indemnification Event) pay to such Purchaser's Indemnified Party the amount of the Indemnified Taxes less the total of the amounts previously paid; and (ii) to the extent that the total of the amounts previously paid by Vendor in respect of such Indemnified Taxes exceeds the amount so determined to be the amount of the Indemnified Taxes, such Purchaser's

Indemnified Party shall forthwith upon receipt or confirmation of any refund or credit of such Indemnified Taxes (and, in any event, within fifteen (15) days of the receipt or confirmation of such refund or credit) pay to Vendor the amount of such refund or credit (including any interest paid or credited with respect thereto but net of any Taxes payable by Purchaser's Indemnified Party in respect of such refund, credit or interest).

#### 8.4 Tax Cooperation

Each Party shall provide reasonable cooperation to the other Party and its counsel in respect of Tax matters, including:

- (i) providing timely notice to the other Party in writing of any pending or threatened Tax audits or assessments of the Company for taxable periods for which the other may have a liability under this Agreement;
- (ii) providing the other Party and its counsel with draft copies of all filings, motions, applications, correspondence and other documents the Party defending the claim intends to file with or deliver to any Governmental Authority in connection with a Tax Contest at least ten (10) Business Days prior to the date on which such documents are filed or delivered and considering in good faith the comments of the other Party and its counsel regarding such filings, motions, applications, correspondence and other documents;
- (iii) promptly notifying the other Party of any communication the Party defending a Tax Contest receives from any Governmental Authority regarding such Tax Contest and providing the other Party with copies of all correspondence, filings or communications between such Party defending the claim, on the one hand, and any Governmental Authority or members of the staff of any Governmental Authority, on the other hand, in each case to the extent relating to any such Tax Contest; provided that Purchaser shall in all cases have the right to attend any meetings or participate in other discussions (or have Purchaser's counsel attend or participate) with the staff of any Governmental Authority or such Governmental Authority's counsel;
- (iv) keeping the other Party and its counsel advised on a timely and ongoing basis of the status of such Tax Contest and any material changes or developments with respect thereto and promptly and fully responding to all requests for information, questions and comments of the other Party and its counsel from time to time.
- (v) making available to each other in a timely fashion such data, documents and other information as may reasonably be required for the preparation and filing of all Stub Period Returns, or for the conduct of any Tax Contest, and preserving all such data, documents and information until the expiry of the limitation period under Applicable Law with respect to the taxation years or periods covered by such Stub Period Returns, or until a Final Determination has been made in respect of such Tax Contest, as the case may be; and
- (vi) timely signing and delivering such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce) Taxes, or an exemption from (or an extension in respect of) an obligation to file Tax Returns.





**ARTICLE 9  
INTERIM PERIOD**

**9.1 Maintenance of Purchased Interests**

- (a) During the Interim Period, both prior to, during and following the completion of the Reorganization, to the extent that the nature of Vendor's or the Company's interests permits, as applicable, and subject to the Title and Operating Documents:
- (i) Vendor or the Company, as applicable, shall:
    - (A) maintain the Purchased Interests in a proper and prudent manner in all material respects, in accordance with all Applicable Laws pertaining to the Purchased Interests, the terms and conditions of the Title and Operating Documents and any other agreements and documents to which the Purchased Interests are subject;
    - (B) pay or cause to be paid all costs and expenses relating to the Purchased Interests which become due and payable during the Interim Period;
    - (C) continue to maintain its insurance coverage in respect of the Purchased Interests that is in effect as of the date of this Agreement; and
    - (D) provide Purchaser with a report each month that provides reasonably sufficient details of production and sales volumes of Surface Materials related to the Purchased Interests.
  - (ii) Vendor or the Company, as applicable, shall not, without Purchaser's prior consent:
    - (A) surrender or abandon any of the Purchased Interests;
    - (B) terminate or amend, or agree to the amendment, in any material respect, of the terms or conditions of any Title and Operating Documents or enter into any new agreement respecting or affecting the Purchased Interests; or
    - (C) solicit any offers, sell, transfer, assign, encumber or otherwise dispose of, surrender, forfeit or abandon any of the Purchased Interests or any part thereof, create any adverse Claims against the Purchased Interests or agree to do any of the foregoing.
- (b) Vendor shall promptly provide Purchaser with copies of any notices received by Vendor or the Company during the Interim Period in connection with the Purchased Interests. If any right or option respecting the Purchased Interests is proposed in circumstances which would require the written consent of Purchaser, Vendor will promptly give notice thereof to Purchaser, Purchaser will advise Vendor by notice not later than two (2) Business Days prior to the time Vendor is required to respond, and Vendor will make the election authorized by Purchaser. Any election by Purchaser will not result in any reduction in the Purchase Price if Vendor's interest in the pertinent Purchased Interests is terminated,



reduced or altered as a result of that election, nor will such election constitute a breach of Vendor's representations and warranties.

## 9.2 Interim Period Restrictions on Vendor's Business

- (a) From and after the Agreement Date, Vendor shall be restricted in its activities relating broadly to the Business and other business of a similar nature relating to Surface Materials, which shall be deemed to apply equally to the Company during and following the Reorganization until the Closing Date (the "Interim Restrictions"), which shall be as follows:
- (i) Vendor and/or the Company may continue operating in the Ordinary Course of Business, with its remaining Surface Material Rights, including the Lands; provided that Vendor and/or the Company shall not, at any time, provide any Third Party, its Affiliates or their respective Related Persons (collectively, an "Aggregate Customer") in one (1) calendar year, with more than ten thousand (10,000) tonnes of Surface Materials. In each such case, promptly upon becoming aware of an Aggregate Customer, Vendor shall consult with Purchaser and on Purchaser's direction, refer the Aggregate Customer to Purchaser;
  - (ii) Vendor shall restrict its production of Inventory to only reasonably meet the Ongoing Jobs; and
  - (iii) Vendor shall prepare to assign the Ongoing Jobs to Purchaser at Closing and shall otherwise wind-down its business activities and operations in its remaining properties and assets, excluding the Purchased Interests, to be in a position to shut down operations and any similar business of a similar nature to the Business upon the Closing.
- (b) The Interim Restrictions shall survive termination of this Agreement and apply until the earliest of: (i) the date that Closing occurs and the Non-Competition Agreements are duly executed and delivered to Purchaser; or (ii) the date of termination of this Agreement with Closing not having occurred.

## 9.3 Notice of Breach of Representations and Warranties

During the Interim Period, each Party shall, promptly upon becoming aware of the occurrence of any event that causes, or will cause, any representation and warranty of such Party contained in this Agreement to be untrue or inaccurate, give written notice thereof to the Party to whom such representation and warranty was given.

## ARTICLE 10 TRANSFER OF THE PURCHASED INTERESTS TO THE COMPANY

### 10.1 The Reorganization

- (a) Vendor shall transfer all of its interest in the Purchased Interests to the Company or shall, as applicable, cause the Registered Holders to transfer the legal title to each respective Leases to the Company, such that the Company is the sole beneficial and legal owner of all of the Purchased Interests and the Leases prior to the Closing Date (collectively, the "Reorganization").
- (b) As part of the Reorganization, Vendor shall:

- (i) transfer beneficial ownership, risk and possession of, the Purchased Interests and the Leases registered in the name of Vendor from Vendor to the Company;
  - (ii) cause each Registered Holder to: (A) transfer legal title of the applicable Lease which it holds legal title to, to the Company; and (B) do all acts and things necessary to effect the legal title transfer of each Lease to the Company;
  - (iii) complete or cause to be completed by itself and the Registered Holders, as applicable, and registered with AEP, all Lease Conveyances, and otherwise complete all Specific Conveyances relating to the Purchased Interests to convey such Purchased Interests to the Company;
  - (iv) keep Purchaser informed of the status of the Reorganization from time to time and as reasonably requested; and
  - (v) notify and provide reasonably sufficient evidence to Purchaser of the completion of the Reorganization.
- (c) The Company shall be organized in a manner that is satisfactory to Purchaser, acting reasonably, and Vendor shall provide Purchaser's representatives with the opportunity to review the minute book of the Company prior to the Closing Date.
- (d) To the extent that the Company must replace any Security with AEP and/or surcharges in place with Governmental Authorities related to the Purchased Interests as part of the Reorganization, Vendor and the Company shall ensure that such Security with AEP are adequately replaced with AEP prior to Closing, and Vendor confirms that such amounts form part of the Purchased Interests. If Purchaser must replace any amounts related thereto for any reason prior to or on the Closing Date, Purchaser shall be entitled to reduce the Security Deposit Value, and if Purchaser must do the same following the Closing Date, Vendor will promptly pay such amount to Vendor, all in accordance with Clause 2.6(b).
- (e) Vendor shall be solely responsible for implementing the Reorganization prior to the Closing Date and in that regard, and accordingly the following shall be for the sole account of Vendor: (i) all Losses and Liabilities incurred as a result of the Reorganization; (ii) any Taxes which arise on account of the Reorganization; and (iii) any costs related to the implementation and completion of the Reorganization.
- (f) From the Agreement Date to the completion of the Reorganization, vendor shall carry on the Business in the Ordinary Course of Business and, after the completion of the Reorganization to the Closing Date, shall cause the Company to ~~carry on the Business~~ in the Ordinary Course of Business.

## 10.2 Completion of the Reorganization

- (a) Notwithstanding anything to the contrary in this Agreement, to the extent that any of the Leases cannot not be transferred to the Company from the Registered Holders prior to the Outside Date to complete the Reorganization and proceed with the Closing, Vendor shall promptly notify Purchaser of the same, and wherein Purchaser shall have the option in its sole discretion:
  - (i) Purchaser may extend the Outside Date for an additional twelve (12) months, which option may be exercised by Purchaser up to a maximum of two (2) twelve (12) month extensions; or

- (ii) Purchaser may decline to proceed with the Closing and wherein Purchaser shall notify Vendor of the same and, this Agreement shall terminate in accordance with 4.1(b).
- (b) To the extent that any aspect or portion of the Purchased Interests, excluding the Leases, cannot be transferred to the Company to complete the Reorganization, or to the extent that the Company is not otherwise recognized as under such Specific Conveyances, and such transfer or recognition is not reasonably practicable prior to the Outside Date, Vendor may notify Purchaser of the same, and wherein Purchaser shall have the option to expressly but discreetly waive solely such particular portion of the Purchased Interests only as it relates to such Specific Conveyance in respect of the said condition in Clause 4.1(a)(v), and in such cases, Vendor or the Registered Holders, as applicable, shall hold all such interests as bare trustee, in trust, for and on behalf of the Company and in accordance with Clause 12.1, until such time as all such interests to all of the Purchased Interests have been transferred to the Company, and the Company is otherwise recognized under such Specific Conveyances.

## ARTICLE 11 ACCESS

### 11.1 Production of Documents and Access

At all reasonable times from the date hereof until the Closing Time, upon request, Vendor shall, subject to Applicable Laws and all existing contractual and fiduciary obligations and restrictions and to the provisions of Clause 13.13, make available to Purchaser in Vendor's offices all of the Title and Operating Documents, the Miscellaneous Interests and any other agreements and documents to which the Purchased Interests are subject.

### 11.2 Access Conditions

Purchaser shall comply fully with all rules, regulations, and instructions issued by Vendor or its agents regarding Purchaser's actions while upon, entering, or leaving Vendor's offices or property. Purchaser shall be liable to and to indemnify, defend and hold harmless Vendor, Vendor's Related Persons and the other Persons holding an interest in the inspected Purchased Interests, from and against any and all Losses and Liabilities occurring or arising as a result of or in connection with such entry into Vendor's offices or onto any property to so inspect the Purchased Interests.

## ARTICLE 12 POST-CLOSING MATTERS

### 12.1 Post-Closing Matters

- (a) As soon as practicable following Closing, Vendor shall remove:
  - (i) any and all tangible equipment or other personal property owned by Vendor from the Lands; and
  - (ii) any and all of the Excluded Inventory that is located on the Lands,

provided that the costs associated therewith shall be for Vendor's sole account, and Purchaser and the Company will allow Vendor and its agents and Affiliates with a reasonable right of access to the Lands for these purposes. For greater certainty, Purchaser and the Company shall have no obligation or responsibility to maintain or otherwise do anything in respect of Vendor's Excluded Inventory, tangible equipment or other personal property located on the Lands.

- (b) Following Closing, if and to the extent that any of the Inventory is located on lands other than the Lands, Vendor will or otherwise cause to allow Purchaser, the Company and/or their respective agents and Affiliates with a reasonable right of access to such lands to remove the applicable Inventory; provided that the costs associated with the removal thereof shall be for Purchaser's sole account. For greater certainty, Vendor shall have no obligation or responsibility to maintain or otherwise do anything in respect of the Inventory located on the lands other than the Lands.
- (c) Following Closing, if and to the extent that the Company must be novated into, recognized as a party to, or otherwise accepted as assignee or transferee of Vendor's interest in the Purchased Interests or certain of them, including any agreements governing or otherwise pertaining to any Purchased Interests, but excluding the Leases, the following provisions shall apply with respect to the applicable Purchased Interests until such novation, recognition or acceptance has occurred:
- (i) at Purchaser's sole cost and expense, Vendor shall maintain the applicable Purchased Interests on behalf of Purchaser as its bare trustee and use commercially reasonable efforts to maintain the applicable Purchased Interests in good standing and in accordance with Applicable Laws;
  - (ii) Vendor shall not initiate or authorize any operations with respect to the applicable Purchased Interests, except upon the written direction of Purchaser and/or the Company or if Vendor reasonably determines that such operations are required for the protection of life or property, in which case Vendor may take any actions that it reasonably determines are required in the circumstances, provided that, in such latter case, Vendor shall promptly notify Purchaser and the Company of such actions and Vendor's estimate of the costs and expenses associated therewith;
  - (iii) Vendor shall promptly provide to Purchaser and the Company all notices and other information, documents and correspondence relating to the applicable Purchased Interests that Vendor receives and shall respond promptly to such notices and other information and documents pursuant to the written instructions of Purchaser, but only if such instructions are received on a timely basis, provided that, Vendor may, but shall not be obliged to, refuse to follow any such instructions that it reasonably believes to be contrary to Applicable Laws; and
  - (iv) Vendor shall continue to strictly abide by the restrictions on its activities in accordance with Clause 9.2 and the Non-Competition Agreements, but for certainty, such activities carried out by Vendor or its Related Persons solely under this Clause 12.1 shall not be in breach of the same.
- (d) If and to the extent that Vendor holds or ~~maintains~~ any Purchased Interests and takes actions with respect to any Purchased Interests on behalf of Purchaser pursuant to this Clause 12.1, then, Vendor agrees that it shall hold all legal and beneficial right, title, estate and interest in and to such applicable Purchased Interests as bare trustee for the sole use, benefit and enjoyment of Purchaser and be deemed to be the agent of Purchaser in such regard. Purchaser does hereby and shall ratify all actions taken by Vendor or refrained to be taken by Vendor pursuant to the terms of this Clause 12.1 in such capacity, with the intention that all such actions shall be for all purposes deemed to be those of Purchaser, except to the extent such actions constitute gross negligence or willful misconduct by Vendor, its Related Persons or the Registered Holders.
- (e) Vendor shall not have any liability for any Losses and Liabilities as a consequence of Vendor taking any action or causing anything to be done at the direction of Purchaser under



this Clause 12.1, and Purchaser shall indemnify and hold Vendor harmless for any Losses and Liabilities that Vendor may suffer, sustain, pay or incur as a consequence of Vendor taking any action or causing anything to be done at the direction of Purchaser under this Clause 12.1, except to the extent that any such Losses and Liabilities arise as a direct consequence of the negligence or willful misconduct, or breach of this Clause 12.1 of or by Vendor or any of its Related Persons.

- (f) To the extent that any of the Miscellaneous Interests are subject to restrictions that prohibit the sale, transfer or disclosure thereof to Purchaser, Vendor will take commercially reasonable actions, and Purchaser will cooperate fully with Vendor in all commercially reasonable respects, to effect assignment thereof as soon as reasonably practicable following the Closing Date, including by seeking the consent of any relevant Third Parties for the assignment of such Miscellaneous Interests. To the extent that the Parties are unable to obtain such consents or otherwise satisfy the requirements to transfer such Miscellaneous Interests within a reasonable time period following the Closing Date, Vendor shall hold such Miscellaneous Interests in trust for Purchaser in accordance with this Clause 12.1, until such time as the Miscellaneous Interests can be properly conveyed to Purchaser.

### ARTICLE 13 GENERAL

#### 13.1 Further Assurances

Each Party will, from time to time and at all times after Closing, without further consideration, do such further acts and deliver all such further assurances, deeds and documents as shall be reasonably required in order to fully perform and carry out the terms of this Agreement.

#### 13.2 Entire Agreement

The provisions contained in all documents and agreements collateral hereto shall at all times be read subject to the provisions of this Agreement and, in the event of conflict, the provisions of this Agreement shall prevail.

#### 13.3 Governing Law

- (a) This Agreement shall, in all respects, be subject to, interpreted, construed and enforced in accordance with and under the laws of the Province of Alberta and the laws of Canada applicable therein and shall, in every regard, be treated as a contract made in the Province of Alberta.
- (b) The Parties shall attorn and submit to the jurisdiction of the courts of the Province of Alberta and courts of appeal therefrom in respect of all matters arising out of this Agreement.

#### 13.4 Transaction Costs

Except as otherwise expressly provided herein, each Party shall be responsible for all costs and expenses (including any Taxes imposed on such expenses) incurred by it in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the transactions contemplated by this Agreement (including the fees and disbursements of legal counsel, bankers, investment bankers, accountants, brokers and other advisers).

#### 13.5 Assignment and Enurement

This Agreement may not be assigned by a Party without the prior written consent of the other Party,



which consent may be unreasonably and arbitrarily withheld. This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective administrators, trustees, receivers, successors and permitted assigns.

### 13.6 Time of Essence

Time shall be of the essence in this Agreement.

### 13.7 Notices

The addresses for service of the Parties shall be as follows:

Vendor:

541466 Alberta Ltd.  
c/o Bishop & McKenzie LLP  
10180 101 Street  
Edmonton, Alberta T5J 1V3

Attention: Lisa Ball & Gordon Ball  
Email: lball@jlgball.com

With a copy (which does not constitute notice) to:

Bishop & McKenzie LLP  
10180 101 Street  
Edmonton, Alberta T5J 1V3

Attention: Blair R. Willie  
Email: bwillie@bmlp.ca

Purchaser:

JMB Crushing Systems inc.  
P.O. Box 7022  
Bonnyville, AB T9N 2H4

Attention: Jeff Buck  
Email: jeffbuckjmb@gmail.com

with a copy (which does not constitute notice) to:

Blake Cassels & Graydon LLP  
3500 East Tower, Bankers Hall  
855 – 2<sup>nd</sup> Street SW  
Calgary, Alberta T2P 4J8

Attention: Dan McLeod  
Email: daniel.mcleod@blakes.com

All notices, communications and statements required, permitted or contemplated in this Agreement shall be in writing, and shall be delivered by personal delivery or courier service on a Party at the address of such Party set out above, in which case the item so served shall be deemed to have been received on the date of delivery if such delivery takes place prior to 4:00 p.m. on a Business

Day. If the actual delivery of such notice occurs after 4:00 p.m. on a Business Day or on a day that is not a Business Day, then such notice shall be deemed to have been received on the first Business Day following the date of delivery. A Party may from time to time change its address for service by giving written notice of such change to the other Party.

### 13.8 Invalidation of Provisions

In case any of the provisions of this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby.

### 13.9 Waiver

No failure on the part of any Party in exercising any right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any right or remedy in law or in equity or by other Applicable Laws or otherwise conferred. No waiver of any provision of this Agreement, including this Clause 13.9 shall be effective otherwise than by an instrument in writing dated subsequent to the date of this Agreement, executed by a duly authorized representative of the Party making such waiver.

### 13.10 Survival; No Merger

The respective representations, warranties, covenants and indemnities of the Parties contained in this Agreement, including all qualifications thereof and limitations thereon, shall not be merged in any assignments, conveyances, transfers and other documents provided for under this Agreement and shall survive Closing to the extent provided pursuant to the terms thereof.

### 13.11 Remedies Cumulative

No reference to or exercise of any specific right or remedy by a Party hereunder shall prejudice or preclude such Party from exercising or invoking any other remedy in respect thereof, whether allowed at law or in equity or expressly provided for herein. No such remedy shall be exclusive or dependent upon any other such remedy, but each Party may exercise any one or more of such remedies independently or in combination.

### 13.12 Amendment

This Agreement shall not be varied in its terms or amended by oral agreement or by representations or otherwise other than by an instrument in writing dated subsequent to the date of this Agreement, executed by the Parties.

### 13.13 Confidentiality and Public Announcements

- (a) Neither Vendor nor Purchaser may disclose the contents of this Agreement or any information concerning negotiations leading to this Agreement and the Transaction without the prior written consent of the other Parties. Nothing contained in this Agreement shall prevent a Party from disclosing such information: (i) to any Governmental Authority or to the public, but in either case, only if and to the extent that such disclosure is required under any Applicable Laws or any stock exchange rule or policy to which such Party or its Affiliates are subject; (ii) to obtain consents required under, or to comply with any preferential, pre-emptive or first purchase rights contained in, the Title and Operating Documents and any other agreements and documents to which the Purchased Interests are subject; or (iii) if required to obtain the consent to the Transaction by Vendor's or Purchaser's respective lenders or other security holders, including the counsel of such



Persons, and, if applicable, to obtain their release of Security Interests in, or their acknowledgement of "no interest" in, the Shares and/or the Purchased Interests; provided that, in each such instance, the Party that proposes to make such a disclosure shall advise the other Parties of such proposed disclosure and such Party shall use its reasonable efforts to prevent the disclosure of any such information that is not required to be disclosed for the listed purposes.

- (b) Neither Vendor nor Purchaser will make any press release respecting the existence of this Agreement, the contents hereof or the Transaction, without the consent of the other Parties except to the extent any of the other Parties unreasonably withholds or delays consent; provided however, the foregoing shall not restrict disclosures by any Party to the extent that those disclosures are required by Applicable Laws. A Party which proposes to make such a press release shall, to the extent reasonably possible, provide the other Parties with a draft of that release at least one (1) Business Day prior to its release to enable each of the other Parties to review that draft and advise of any comments it may have with respect thereto. The Party proposing to make the press release will not unreasonably refuse to incorporate the requested changes in the public announcement except to the extent its counsel advises that doing so will result in non-compliance with Applicable Laws.

*(Execution Page Follows)*



**13.14 Counterpart Execution**

This Agreement may be executed in any number of counterparts with the same effect as if all signatories to the counterparts had signed one document. All such counterparts shall together constitute and be construed as one instrument. For avoidance of doubt, a signed counterpart provided by electronic means shall be as binding upon the Parties as an originally signed counterpart.

**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the day and year first above written.

**541466 ALBERTA LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

**JMB CRUSHING SYSTEMS INC.**

Per:   
Name: Jeffrey Michael Buck  
Title: Director

*This is the Execution Page for the Purchase and Sale Agreement between 541466 Alberta Ltd., as Vendor, and JMB Crushing Systems Inc., as Purchaser*



**13.14 Counterpart Execution**

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IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

541466 ALBERTA LTD.

Per:  
Name:  
Title:

  
\_\_\_\_\_  
Lisa Grace Bell  
President, LEO

JMB CRUSHING SYSTEMS INC.

Per:  
Name:  
Title:

\_\_\_\_\_

*This is the Execution Page for the Purchase and Sale Agreement between 541466 Alberta Ltd., as Vendor, and JMB Crushing Systems Inc., as Purchaser*



**SCHEDULE A**

ATTACHED TO AND FORMING PART OF THE PURCHASE AND SALE AGREEMENT MADE AS OF MARCH 15, 2019 BETWEEN 541466 ALBERTA LTD., AS VENDOR, AND JMB CRUSHING SYSTEMS INC., AS PURCHASER

**PART 1  
LANDS AND LEASES**

Surface Material Lease No.	Registered Holder	Expiry of Term	Legal Description of Property
110026	541466 Alberta Ltd.	April 10, 2022	SE of 11-061-18-W4M (79.86 Acres)
110046	541466 Alberta Ltd.	March 17, 2025	N of 15-061-18-W4M (70.13 Acres)
100085	541466 Alberta Ltd.	June 23, 2026	N of 12-063-19-W4M (79.99 Acres)
110045	Robert W. Beaverford	March 17, 2025	E of 15-061-18-W4M (77.20 Acres)
110047	Glen Ball	March 17, 2025	S, NW of 15-061-18-W4M (79.53 Acres)
120005	Jordan Ball	October 4, 2027	W of 14-061-18-W4M (78.11 Acres)
060060	Robert W. Beaverford	May 27, 2024	SW of 13-065-18 W4M (41.44 Acres)
080085	Tor Land Resource Inc.	April 25, 2022	NW of 12-063-19-W4M SW of 13-063-19-W4M (79.99 Acres)
110025	Bonnie Badry	February 10, 2024	NE of 11-061-18-W4M (79.17 Acres)
120006	Cathy Ball	October 6, 2027	NW of 14-061-18-W4M (25.70 Acres)
120100	Katie Ball	October 6, 2027	SE of 21-061-18-W4M (79.30 Acres)



**PART 2**  
**OPTION LANDS AND LEASES**

<b>Disposition Name</b>	<b>Disposition Holder</b>	<b>Legal Land Description</b>	<b>Security Held</b>	<b>Ha/Acres</b>
SML 120101	Llana Lefebvre & Donnie W.J. Badry	Parts of N16 & S21-61-18-W4M	\$13,070.00	32.32/79.86
SML 140090	Walter Badry Jr. & Jim Wasuita	SW22-61-18-W4M	\$37,560.00	30.80/76.11
SML 140091	Jason Badry & Dakota Kirk	Parts of E16-61-18-W4M	\$6,240.00	32.14/79.42
SML 140092	John Kozma & Justyn Badry	Parts of NE16, SE21 & SW22-61-18-W4M	\$13,340.00	31.85/78.70
SML 150053	Scott Badry & Donna Lefebvre	Parts of SW23-61-18-W4M	\$9,540.00	32.27/79.75



**SCHEDULE B**  
ATTACHED TO AND FORMING PART OF THE PURCHASE AND SALE AGREEMENT MADE AS OF  
MARCH 15, 2019 BETWEEN 541466 ALBERTA LTD., AS VENDOR, AND JMB CRUSHING  
SYSTEMS INC., AS PURCHASER

**FORM OF NON-COMPETITION AGREEMENT**

Attached.

A handwritten signature or scribble consisting of several overlapping loops and lines, located in the bottom right corner of the page.

**NON-COMPETITION AGREEMENT**

THIS AGREEMENT dated \_\_\_\_\_, 2019 is made,

AMONG:

**541466 ALBERTA LTD.**, a corporation formed under the laws of the Province of Alberta ("541466")

– and –

**LISA BALL**, an individual residing in Boyle, Alberta

– and –

**GORDON BALL**, an individual residing in Boyle, Alberta

(541466, Lisa Ball and Gordon Ball, collectively being the "**Restricted Parties**")

– and –

**JMB CRUSHING SYSTEMS INC.**, a corporation amalgamated under the laws of the Province of British Columbia (the "**Purchaser**")

**WHEREAS** the Purchaser and 541466 have entered into an purchase and sale agreement dated March 15, 2019 (the "**Sale Agreement**") pursuant to which *inter alia* the Purchaser has agreed to purchase from 541466 all the Shares of the Company, which holds the entire right, title to and in the Purchased Interests used in carrying on the Business upon the terms and conditions contained in the Sale Agreement (the "**Transaction**").

**AND WHEREAS** the execution and delivery of this Agreement by the Restricted Parties is a condition precedent to the obligation of the Purchaser to complete the Transaction.

**AND WHEREAS** the Restricted Parties understand that this Agreement is necessary for the Purchaser to receive the full benefit of the goodwill of the Business and to preserve the fair market value of the assets of 541466 being purchased by the Purchaser and, accordingly, the Restricted Parties are willing to enter into this Agreement in order to ensure that such benefit is not impaired and the fair market value of such assets is not diminished by actions of the Restricted Parties.

**AND WHEREAS** the Restricted Parties understand that this Agreement is an integral part of the Transaction under which the Restricted Parties are receiving significant benefit and that the Purchaser is relying on the agreements and acknowledgements given herein by the Restricted Parties.

**NOW THEREFORE**, in consideration of the foregoing and the representations, warranties, covenants, conditions, agreements and promises contained in this Agreement and in the Sale Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:



**ARTICLE 1**  
**INTERPRETATION**

**1.1 Definitions.** Unless context requires otherwise, capitalized terms used in this Agreement but not defined herein shall have the meanings ascribed to such terms in the Sale Agreement, and in addition:

"**Agreement**" means this non-competition agreement.

"**Non-Competition Period**" has the meaning set out in Section 2.1.

"**Permitted Activities**" has the meaning set out in Section 2.7.

"**Restrictive Covenants**" has the meaning set out in Section 2.10.

"**Territory**" means the Province of Alberta.

**1.2 Additional Rules of Interpretation.**

- (a) In this Agreement, unless the context requires otherwise, words in one gender include all genders and words in the singular include the plural and vice versa.
- (b) The inclusion in this Agreement of headings of Articles and Sections are for convenience of reference only and are not intended to be full or precise descriptions of the text to which they refer.
- (c) Unless the context requires otherwise, references in this Agreement to Sections or schedules are to Sections or schedules of this Agreement.
- (d) Wherever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation" and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.
- (e) The words "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions shall be construed as referring to this Agreement in its entirety and not to any particular section or portion of it.
- (f) All references herein to any agreement (including this Agreement), document or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless otherwise specified therein, includes all schedules and exhibits attached thereto.
- (g) The recitals to this Agreement are an integral part of this Agreement.

**ARTICLE 2**  
**NON-COMPETITION**

**2.1 Non-Competition by Restricted Parties**

Subject to Section 2.2 and the Permitted Activities set forth in Section 2.7, the Restricted Parties shall not, and shall ensure that each of their Affiliates do not, without the prior written consent of the Purchaser, at any time within the period of three (3) years following the date of this Agreement (the "**Non-Competition Period**"), either individually or in partnership or jointly or in conjunction with each other or any Person, as principal, agent, director, officer, consultant, lender, contractor, employer, employee, investor or shareholder, or in any other manner, directly or indirectly,





- (a) advise, assist, manage, carry on, establish, acquire control of, be engaged in, have any financial or other interest in (including any interest by way of royalty or other compensation arrangement);
- (b) lend money to, guarantee the debts or obligations of; or
- (c) permit the Restricted Parties' name, trade names or any part thereof to be used or employed by any Person that operates, is engaged in or has an interest in,

a business anywhere within the Territory that is similar to or competes with the Business. Without limiting the effect of the foregoing, competing with the Business includes directly or indirectly selling or permitting the sale to any of the present customers of the Business of any products or services of the type sold by the Business as at the date of this Agreement.

## 2.2 Permitted Shareholdings

The foregoing shall not prevent the Restricted Parties or its Affiliates from purchasing as a passive investor up to two percent (2%) of the outstanding publicly traded shares or other securities of any class of any issuer listed on a recognized stock exchange.

## 2.3 Non-Solicitation

During the Non-Competition Period, the Restricted Parties shall not, and shall ensure that its Affiliates do not, either individually or in partnership or jointly or in conjunction with any other Person, as principal, agent, consultant, contractor, shareholder, interest holder, investor, partner, lender, director, officer, employer, employee or in any other manner, directly or indirectly:

- (a) contact, solicit, induce, divert or interfere with (or attempt to do any of the foregoing) any customer or prospective customer of the Business for the purpose of selling to such customer any products or services which are the same as or similar to those sold by the Business, or to persuade or attempt to persuade any customer to change its relationship or potential relationship with the Business, or to restrict, limit, discontinue or cease considering purchasing any products or services provided by the Business or to reduce the amount of business or potential business which any such customer has customarily done with the Business, or to not grant any new business to the Business (including, without limitation, any new business related to a new line of business in which the Business has or is developing plans to engage);
- (b) contact, solicit, induce, divert or interfere with (or attempt to do any of the foregoing) any supplier or prospective supplier of the Business for the purpose of persuading or attempting to persuade any supplier or prospective supplier of the Business to change its relationship with the Business, or to restrict, limit or discontinue or to reduce the amount of business which any such supplier has customarily done with the Business;
- (c) solicit or attempt to solicit, or assist or encourage any Person to solicit, hire, recruit, attempt to hire or recruit, or induce the termination of employment or cessation of services of any employee of the Business, or any contractor who regularly provides services to the Business, or assist or encourage any such employee or contractor to accept employment or engagement elsewhere, unless such solicitation occurs as a result of general advertisements for employment or contract services not specifically directed at such employees or contractors; and
- (d) in any manner, knowingly do or cause or permit to be done, any acts which may reasonably be expected to impair the relationship between the Business and its suppliers, customers, employees, contractors, or any regulatory authorities or any other Person.

## 2.4 No Disparagement

During the Term, the Restricted Parties agree not to, and agree to cause its Affiliates not to, make any public statement that is intended to disparage the Business or the direct or indirect employees, shareholders, directors, officers, partners, representatives or agents of the Business.

## 2.5 Confidentiality

The Restricted Parties shall not and shall ensure that its Affiliates do not use for the Restricted Parties' own account or disclose to any other Person any confidential or proprietary information or material relating to the Business. Confidential or proprietary information or material includes, without limitation, the following types of information or material, in whatever form, both existing and contemplated, regarding the Business: corporate information, including contractual licensing arrangements, plans, strategies, tactics, policies, resolutions, patent, trade-mark and trade name applications, and any litigation or negotiations; information concerning suppliers; marketing information, including sales, investment and product plans, customer lists, strategies, methods, customers, prospects and market research data; financial information, including cost and performance data, debt arrangements, equity structure, investors and holdings; operational and scientific information, including trade secrets; software; technical information, including technical drawings and designs; and personnel information, including personnel lists, resumes, personnel data, organizational structure and performance evaluations.

## 2.6 Severability and Waiver

- (a) Subject to Section 2.6(b), each provision of this Agreement shall constitute a separate and distinct covenant and shall be severable from all other such separate and distinct covenants contained in this Agreement. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent permitted by applicable law, the Parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.
- (b) The Restricted Parties agree that if the definition of Business or Territory is held to be unreasonable, arbitrary, or against public policy by a court of competent jurisdiction, then such definition shall be modified by the Court and continued in such reduced form as the Court determines to be reasonable, non-arbitrary, and not against public policy, and the modification(s) shall be adopted by the Parties and enforced against the Restricted Parties, without invalidating the remaining portion of the definition of Business or Territory, as the case may be, and without affecting the validity or enforceability of the restrictive covenant contained in Section 2.1.

## 2.7 Permitted Activities

Notwithstanding anything herein, the Restricted Parties shall be permitted to continue certain permitted activities (the "Permitted Activities"), which shall be limited to:

- (a) for the first twelve (12) months of the Non-Competition Period, to continue the following Permitted Activities:
  - (i) civil construction related work such as operating track hoes and other civil construction equipment and the hauling of clay, topsoil, debris and remediation operations; and



- (ii) contract hauling of sand and gravel or gravel products for third parties, which does not involve aggregate (sand or gravel) extraction; and
- (b) for the first twenty-four (24) months of the Non-Competition Period, to complete the physical reclamation work on depleted pits not included in the Sale Agreement.

## 2.8 Remedies

The Restricted Parties acknowledge that a breach by it or any of its Affiliates of any of the covenants contained in this Agreement will cause serious harm to the Purchaser and will result in damages to the Purchaser and that the Purchaser may not be adequately compensated for such damages by monetary award alone. Accordingly, the Restricted Parties agree that in the event of any such breach, in addition to any other remedies available at law or otherwise, the Purchaser shall be entitled as a matter of right to apply to a court of competent jurisdiction for relief by way of injunction (interim and permanent), restraining order, specific performance, decree or otherwise as may be appropriate to ensure compliance by the Restricted Parties and its Affiliates with the provisions of this Agreement, and in each case without necessity of proving actual damage or of posting a bond or other security and the Restricted Parties waive any objection to an assertion that damages are not an adequate remedy or requirement to prove damages or post bond or other security in connection with any injunctive order or order for specific performance. Any remedy expressly set out in this Agreement shall be in addition to and not inclusive of or dependent upon the exercise of any other remedy available at law or otherwise.

## 2.9 Restricted Parties' Acknowledgements and Agreements

The Restricted Parties acknowledge and agree that:

- (a) all restrictions in this Agreement are necessary and fundamental to the protection of the Purchaser and the Business and are reasonable and valid;
- (b) all defences to the strict enforcement of this Agreement against the Restricted Parties or any of its Affiliates are hereby waived;
- (c) it has signed this Agreement voluntarily and without pressure, and intends to comply with all of the covenants contained herein;
- (d) this Agreement constitutes, and will continue to constitute at all times, legal, valid and binding obligations of the Restricted Parties enforceable against the Restricted Parties in accordance with the terms hereof, subject to the actual exceptions as to bankruptcy and the availability of equitable remedies;
- (e) the covenants contained herein are intended to ensure that the Purchaser receives the full benefit of the goodwill of the Business (including, without limitation, the Restricted Parties' relationships with customers and suppliers, and the Business' confidential information) and to preserve the fair market value of the assets of the 541466 being purchased by the Purchaser;
- (f) in executing this Agreement, the Restricted Parties have had sufficient time and opportunity to seek the advice of independent legal counsel, has read and understood all of the terms and provisions of this Agreement and have had sufficient time to review and consider this Agreement thoroughly; and
- (g) the Purchaser is relying on the acknowledgements and agreements contained herein which constitute a material inducement to the Purchaser in proceeding with the Transaction.



## 2.10 Restrictive Covenants

The Parties intend that the conditions set forth in subsection 56.4(7) of the Income Tax Act (and the equivalent provisions of any applicable provincial tax legislation) have been met such that subsection 56.4(5) of the Income Tax Act (and the equivalent provisions of any applicable provincial tax legislation) applies to any 'restrictive covenants' as defined in subsection 56.4(1) of the Income Tax Act granted by the Restricted Parties pursuant to the Agreement (the "**Restrictive Covenants**"). For greater certainty, the Parties hereto agree and acknowledge that: (i) for the purposes of the Income Tax Act, no part of the consideration payable to the Restricted Parties under the Purchase Agreement is allocable to, and no proceeds are receivable by the Restricted Parties for granting, the Restrictive Covenants; (ii) the Restrictive Covenants are integral to the Purchase Agreement and have been granted to maintain or preserve the fair and market value of the Shares; and (iii) the Restrictive Covenants meet the requirements specified in the clause 56.4(7)(b)(ii)(B) of the Income Tax Act.

## 2.11 Breach of Restrictions

If the Restricted Parties are in breach of any of their obligations hereunder, the running of the Non-Competition Period shall be stayed and shall recommence upon the date the Restricted Parties cease to be in breach thereof, whether voluntarily or by injunction.

## ARTICLE 3

### GENERAL

#### 3.1 Notices.

- (a) Any notice, direction, certificate, consent, determination, summons, claim or other legal process or communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent by fax, e-mail (return receipt requested) or other similar means of electronic communication, in each case to the applicable address set out below:

- (iii) if to the Restricted Parties, to:

541466 Alberta Ltd.  
c/o Bishop & McKenzie LLP  
10180 101 Street  
Edmonton, Alberta T5J 1V3

Attention: Lisa Ball & Gordon Ball  
Email: lball@jlgball.com

With a copy (which does not constitute notice) to:

Bishop & McKenzie LLP  
10180 101 Street  
Edmonton, Alberta T5J 1V3

Attention: Blair R. Willie  
Email: bwillie@bmlp.ca

- (iv) if to the Purchaser, to:

JMB Crushing Systems Inc.  
P.O. Box 7022



Bonnyville, AB T9N 2H4

Attention: Jeff Buck  
Email: jeffbuckjmb@gmail.com

with a copy (which does not constitute notice) to:

Blake Cassels & Graydon LLP  
3500 East Tower, Bankers Hall  
855 – 2<sup>nd</sup> Street SW  
Calgary, Alberta T2P 4J8

Attention: Dan McLeod  
Email: daniel.mcleod@blakes.com

- (b) Any such communication so given or made shall 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 faxing, e-mailing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, faxed, e-mailed or sent before 4:30 p.m. on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day. Any such communication sent by mail shall be deemed to have been given and made and to have been received on the fifth Business Day following the mailing thereof; provided however that no such communication shall be mailed during any actual or apprehended disruption of postal services. Any such communication given or made in any other manner shall be deemed to have been given or made and to have been received only upon actual receipt.
- (c) Any Party may from time to time change its address under this Section 3.1 by notice to the other Party given in the manner provided by this Section 3.1.

### 3.2 Further Assurances

Each Party shall from time to time promptly execute and deliver or cause to be executed and delivered all such further documents and instruments and shall do or cause to be done all such further acts and things in connection with this Agreement that the other Party may require as being necessary or desirable in order to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement or any provision hereof.

### 3.3 Amendment

No amendment of this Agreement shall be effective unless made in writing and signed by the Parties.

### 3.4 Waiver

A waiver of any default, breach or non-compliance under this Agreement shall not be effective unless in writing and signed by the Party to be bound by the waiver, and then only in the specific instance and for the specific purpose for which it has been given. No waiver shall be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other Party. The waiver by a Party of any default, breach or non-compliance under this Agreement shall not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).



### 3.5 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and shall be treated in all respects as an Alberta contract.

### 3.6 Attornment

Each Party agrees (a) that any legal proceeding of any kind relating to this Agreement may (but need not) be brought in any court of competent jurisdiction in the Province of Alberta, and for that purpose now irrevocably and unconditionally attorns and submits to the jurisdiction of such Alberta court; (b) that it irrevocably waives any right to, and shall not, oppose any such legal proceeding in the Province of Alberta on any jurisdictional basis, including *forum non conveniens*; and (c) not to oppose the enforcement against it in any other jurisdiction of any order, decision or ruling of any kind duly obtained from an Alberta court as contemplated by this Section 3.6.

### 3.7 Time of the Essence

Time shall be of the essence of this Agreement and every part hereof, and no extension or variation of this Agreement shall operate as a waiver of this provision.

### 3.8 Successors and Assigns; Assignment

This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective successors and permitted assigns. Neither Party may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its respective rights or obligations under this Agreement without the prior written consent of the other Party.

### 3.9 Counterparts

This Agreement may be executed in 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. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Party by facsimile, e-mail in pdf format or other electronic transmission and such transmission shall constitute delivery of an executed copy of this Agreement to the receiving Party.

*(Signature page follows)*

A handwritten signature in black ink, consisting of a stylized, cursive 'M' followed by a large, circular flourish.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

541466 ALBERTA LTD.

JMB CRUSHING SYSTEMS INC.

Per: \_\_\_\_\_  
Name: **Lisa Ball**  
Title: **President**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
LISA BALL

\_\_\_\_\_  
Witness

\_\_\_\_\_  
GORDON BALL

*(Signature page to a Non-Competition Agreement between 541466 Alberta Ltd., Lisa Ball, Gordon Ball, as restricted parties, and JMB Crushing Systems Inc.)*



**SCHEDULE C**

ATTACHED TO AND FORMING PART OF THE PURCHASE AND SALE AGREEMENT MADE AS OF  
MARCH 15, 2019 BETWEEN 541466 ALBERTA LTD., AS VENDOR, AND JMB CRUSHING SYSTEMS  
INC., AS PURCHASER

**FORM OF CLOSING NOTE**

Attached.

A handwritten signature or set of initials, possibly 'JMB', written in black ink in the bottom right corner of the page.



CLOSING PROMISSORY NOTE

Date: \_\_\_\_\_

NOW, FOR VALUE RECEIVED JMB CRUSHING SYSTEMS INC. (the "Borrower") unconditionally promises to pay to 541466 ALBERTA LTD. (o/a JLG Ball Enterprises) (the "Lender") at PO Box 211, Boyle, Alberta, T0A 0M0, or such other place as the Lender may direct in writing, the sum of Cdn.\$3,000,000 (Three Million Canadian Dollars) (the "Principal"), in five (5) equal annual Principal instalments of Cdn.\$600,000 (Six Hundred Thousand Canadian Dollars) per year, plus annual Interest payments accruing thereon on or before the last day of each calendar year beginning on the first-year anniversary following the date hereof and continuing on the anniversary thereof with the final payment on the fifth-year anniversary following the date hereof in such amount as is required to pay in full all Principal and Interest outstanding under this promissory note on such date.

Interest shall be calculated on the daily balance of such outstanding Principal and payable annually on the same date (for certainty, the first such payment of interest shall be due on the first-year anniversary following the date hereof), at the same place, as the Principal payments both before and after maturity, default and judgment, at a nominal rate per annum of 5% (five percent) and interest on overdue interest payable at the same time, place and rate.

Upon default in payment by the Borrower of any instalment of principal or interest when due under this promissory note, which default is not remedied within thirty (30) days after the Lender notifies the Borrower thereof in writing, all principal and interest outstanding under this promissory note shall become immediately due and payable upon demand by the Lender.

The principal amount outstanding under this promissory note may be prepaid in whole or in part, provided that such payment is made concurrently together with a payment of accrued and unpaid interest thereon, at any time and from time to time without notice, bonus or penalty. Any such principal prepayments shall be applied to the principal instalments payable under this promissory note in the reverse order of maturity and may not be re-borrowed.

~~Notwithstanding anything else in this promissory note or elsewhere, the Borrower shall not grant, and the Lender shall not accept, any mortgage, deed of trust, lien, pledge, hypothec (whether movable or immovable), hypothecation, encumbrance, charge, security interest, royalty interest, adverse claim, defect to title or right of set-off in, or any other arrangement having the effect of providing security, on the present and future assets, property and undertaking of the Borrower, real and personal, moveable and immoveable, of whatsoever nature and kind and wheresoever situate as security for the indebtedness of the Borrower under this promissory note.~~

Each of the parties hereto agrees that it will do all acts and things and execute and deliver such further and other agreements, instruments and documents as may be necessary or appropriate to carry out the intent and purpose of and give full effect to this promissory note and the other documents related hereto and every part thereof.

This promissory note shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the laws of Canada applicable in that Province. The Borrower waives presentment for payment, notice of dishonour, protest and notice of protest in respect of this promissory note. This



promissory note shall become effective when it has been executed and delivered. Time shall be of the essence of this promissory note in all respects. This promissory note constitutes the entire agreement of the parties pertaining to the indebtedness evidenced by this promissory note and supersedes all prior agreements, understandings, negotiations and discussions with respect to such indebtedness, whether oral or written.

*(Signature page follows)*

A handwritten signature or set of initials, possibly 'NO', written in black ink in the bottom right corner of the page.

**JMB CRUSHING SYSTEMS INC.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**ACKNOWLEDGED AND AGREED BY THE LENDER:**

**541466 ALBERTA LTD. O/A JLG BALL  
ENTERPRISES**

By: \_\_\_\_\_  
Name: **Lisa Ball**  
Title: **President**

By: \_\_\_\_\_  
Name:  
Title:

*(Signature page to a closing promissory note from JMB Crushing Systems Inc. to 541466 Alberta Ltd.)*

A handwritten signature in black ink, consisting of several overlapping loops and a vertical stroke, located in the bottom right corner of the page.

**SCHEDULE D**

ATTACHED TO AND FORMING PART OF THE PURCHASE AND SALE AGREEMENT MADE AS OF  
MARCH 15, 2019 BETWEEN 541466 ALBERTA LTD., AS VENDOR, AND JMB CRUSHING SYSTEMS  
INC., AS PURCHASER

**FORM OF OPTION PURCHASE AGREEMENT**

Attached.

A handwritten signature or set of initials, possibly 'MB', located in the bottom right corner of the page.

FORM OF OPTION PURCHASE AGREEMENT

THIS AGREEMENT made as of \_\_\_\_\_

BETWEEN:

541466 ALBERTA LTD., a corporation formed under the laws of the Province of Alberta ("Vendor")

- and -

JMB CRUSHING SYSTEMS INC., a corporation amalgamated under the laws of the Province of British Columbia ("Purchaser")

WHEREAS pursuant to the Purchase and Sale Agreement dated \_\_\_\_\_, 2019 between Vendor and Purchaser (the "Purchase Agreement"), Purchaser has provided an Option Notice to Vendor in respect of the Option Interests;

AND WHEREAS Vendor wishes to sell the Option Interests to Purchaser and Purchaser wishes to purchase the Option Interests from Vendor, subject to and in accordance with the terms and conditions of this Agreement.

NOW THEREFORE the Parties agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

in this Agreement, unless as set out in this Clause 1.1 or the context otherwise requires, capitalized terms and phrases shall have the meaning set out in the Purchase Agreement, with the exception of the following:

- (a) "Agreement" means this Option Purchase Agreement, including the attached schedules.
(b) "Applicant" means the Person who has applied for the Option Interests, being
(c) "Closing Date" means the date that is not more than fifteen (15) Business Days following the completion of the Reorganization and receipt by Purchaser of notice thereof, or any other Business Day as Vendor and Purchaser may agree, provided that, following Closing, references to the "Closing Date" shall mean the date on which Closing actually occurred.
(d) "Company" means a corporation incorporated within the jurisdiction of the Province of Alberta, formed for the sole purpose of holding the Option Interests, which shall be a direct wholly-owned subsidiary of Vendor and shall hold the entire right in and to the Option Interests at Closing.
(e) "Option Interests" means the respective Surface Material Rights and associated Miscellaneous Interests pertaining to the Option Lands.
(f) "Option Lands" means the lands and premises that are subject to the Option Lease, as set out in Schedule A.

Handwritten signature or initials.

- (g) "Option Lease" means the Lease related to the Option Lands, as set out in Schedule A.
- (h) "Option Note" a promissory note from Purchaser to Vendor that is in the form attached to the Purchase Agreement as Schedule E.
- (i) "Purchase Agreement" has the meaning given in the recitals to this Agreement.
- (j) "Purchase Price" has the meaning set out in Clause 2.1(a) of this Agreement.
- (k) "Reorganization" has the meaning set out in Clause 3.1 of this Agreement.
- (l) "Security Deposit Value" means the amount of \_\_\_\_\_.
- (m) "Shares" means all of the common shares of the Company, being all of the issued and outstanding capital in the Company.
- (n) "Transaction" means the purchase of the Option Interests by Purchaser from Vendor, on and subject to the terms and conditions, and as more fully described in this Agreement.

## 1.2 Schedule

- (a) Appended to this Agreement are the following Schedule:

Schedule A            Option Lands and Leases

- (b) This schedule is incorporated into and form part of this Agreement. If any term or condition of such schedule conflicts or is inconsistent with any term or condition in the main body of this Agreement, the term or condition in the main body of this Agreement shall prevail to the extent of the conflict or inconsistency.

## 1.3 Purchase Agreement

- (a) This Transaction is subject to the Purchase Agreement, which are incorporated by reference into this Agreement. Specifically, the Option Incorporated Provisions shall apply *mutatis mutandis* to this Agreement.
- (b) In this Agreement, and notwithstanding anything to the contrary, references to the "Lands", "Leases" and the "Purchased Interests" within the Incorporated Provisions, including within such defined terms therein, shall be deemed, *mutatis mutandis*, to mean the "Option Lands", "Option Lease" and the "Option Interests", respectively.
- (c) References herein to Clauses of the Purchase Agreement shall be deemed to be the Option Incorporated Provisions.

## ARTICLE 2 PURCHASE AND SALE AND CONVEYANCE

### 2.1 Purchase and Sale and Conveyance

- (a) Vendor, pursuant to and for the consideration provided for in the Purchase Agreement and this Agreement, the receipt and sufficiency of such consideration being hereby acknowledged by Vendor, hereby sells, assigns, transfers, conveys and sets over to Purchaser, the Option Interests, to have and to hold the same absolutely, together with all benefit and advantage to be derived therefrom.

- (b) Subject to all other provisions of this Agreement, title to, and beneficial ownership, risk and possession of, the Option Interests shall pass from Vendor to Purchaser concurrently with the execution of this Agreement.

## 2.2 Closing

- (a) Subject to all other provisions of this Agreement, Closing shall occur at the Closing Place at the Closing Time.
- (b) Subject to all other provisions of this Agreement, ownership, risk and possession of, the Shares shall pass from Vendor to Purchaser upon Closing.

## 2.3 Purchase Price

Concurrently with the execution and delivery of this Agreement, Purchaser has paid or delivered the following consideration to Vendor for the Option Interests, which is One Million Dollars (\$1,000,000) cumulatively (the "Purchase Price"):

- (a) in respect of Eight Hundred Thousand Dollars (\$800,000) of the Purchase Price plus the Security Deposit Value, payable in cash by wire transfer of immediately available funds to an account designated by Vendor in writing; and
- (b) in respect of Two Hundred Thousand Dollars (\$200,000) of the Purchase Price, by the delivery by Purchaser, of the Option Note to Vendor.

## 2.4 GST and Other Sales Taxes

- (a) If applicable, at the Closing, Vendor and Purchaser shall execute jointly an election under section 167 of the *Excise Tax Act (Canada)* to have the sale of the Option Interests take place on a GST-free basis under Part IX of the *Excise Tax Act (Canada)* and Purchaser shall file such election with its GST return for the reporting period in which the sale of such Option Interests takes place.
- (b) It is the understanding of the Parties that no GST and no Other Sales Taxes are payable in respect of the Transaction and, therefore, at Closing, no amount will be paid by Purchaser to Vendor, and no amount will be collected by Vendor from Purchaser, on account of Other Sales Taxes in respect of the Transaction. However, if it is determined that Other Sales Taxes are payable in respect of the Transaction, then Purchaser shall pay such Other Sales Taxes promptly after receiving notice or otherwise becoming aware that such Other Sales Taxes are payable in respect of the Transaction; provided that Vendor shall provide to Purchaser invoices which include all prescribed information required by Purchaser to claim any input tax credits or refunds, including a separately itemized amounts of applicable GST and Other Sales Taxes and the Vendor's relevant Tax registration number(s).

## 2.5 No Adjustments

The Parties acknowledge and agree that there shall be no adjustments in respect of the Purchase Price in this Agreement.

**ARTICLE 3  
TRANSFER OF THE OPTION INTERESTS TO THE COMPANY**

**3.1 The Reorganization**

- (a) Vendor shall transfer all of its interest in the Option Interests to the Company or shall, as applicable, cause the Applicant to transfer the legal title to the Option Lease to the Company, such that the Company is the sole beneficial and legal owner of all of the Option Interests prior to the Closing Date (collectively, the "Reorganization").
- (b) As part of the Reorganization, Vendor shall:
  - (i) transfer beneficial ownership, risk and possession of, the Option Interests from Vendor to the Company;
  - (ii) cause the Applicant to: (A) transfer legal title of the Option Lease which it holds legal title to, to the Company; and (B) do all acts and things necessary to effect the legal title transfer of the Option Lease to the Company;
  - (iii) complete or cause to be completed by the Registered Holders and registered with AEP, the Lease Conveyance for the Option Lease, and otherwise complete all Specific Conveyances relating to the Option Interests to convey the Option Interests to the Company;
  - (iv) ensure that the Company is the sole legal registered holder of the Option Lease and hold the entire beneficial interest to the Option Interests at the Closing Date;
  - (v) keep Purchaser informed of the status of the Reorganization from time to time and as reasonably requested; and
  - (vi) notify and provide reasonably sufficient evidence to Purchaser of the completion of the Reorganization.
- (c) The Company shall be organized in a manner that is satisfactory to Purchaser, acting reasonably, and Vendor shall provide Purchaser's representatives with the opportunity to review the minute book of the Company prior to the Closing Date.
- (d) To the extent that the Company must replace any security deposits and/or surcharges in place with Governmental Authorities related to the Option Interests as part of the Reorganization, Vendor and the Company shall ensure that such security deposits are adequately replaced with AEP prior to Closing, including at least in the amount of the Security Deposit Value, and Vendor confirms that such amounts form part of the Option Interests. If Purchaser must replace any amounts related thereto for any reason prior to, prior to or on the Closing Date, and if Purchaser must do the same following the Closing Date, Vendor will promptly pay such amount to Vendor.

**ARTICLE 4  
CLOSING DELIVERIES**

**4.1 Deliveries by Vendor at Closing**

At the Closing Time, Vendor shall deliver, or cause to be delivered, to Purchaser:

- (a) all certificates representing the Shares duly endorsed for transfer or accompanied by a written instrument of transfer to Purchaser;



- (b) the following items: (i) a certificate duly executed by an authorized officer of the Company, dated as of the Closing Date, attached and certifying on behalf of the Company, complete and correct copies of the resolutions of the board of directors of the Company authorizing and approving the Reorganization and the transfer of the Shares to Purchaser; (ii) resignations, effective as of completion of Closing, from, and releases of any Claims by, all directors and officers of the Company against the Company, and releases of any Claims by the Company against such directors and officers; and (iii) releases of any Claims by Vendor against the Company;
- (c) a certificate duly executed by an authorized officer of Vendor, dated as of the Closing Date, attached and certifying on behalf of Vendor complete and correct copies of the resolutions of the board of directors of Vendor (in its capacity as vendor and as sole shareholder of the Company) authorizing the execution, delivery and performance by Vendor of this Agreement and the Transaction, including the Reorganization;
- (d) the minute books and other records of the Company;
- (e) no interest letters pertaining to the Option Interests and/or Shares, and any releases and registerable discharges or no interest letters in respect of all other registered Security Interests pertaining to the Option Interests, the Shares or the Company which have been requested by Purchaser not less than three (3) Business Days prior to Closing;
- (f) a receipt for the amount specified in Clause 2.3 and the Option Note;
- (g) if applicable, an intercreditor agreement in respect of the Option Note for each of the Senior Lenders, which shall include an acknowledgement that the Option Note is subordinated and postponed to any indebtedness to the Senior Lenders of Purchaser;
- (h) the officer's certificate that certifies, in such detail as Purchaser reasonably requests, that all of the conditions precedent described in Clause 4.2 of the Purchase Agreement have been satisfied or waived by Vendor; and
- (i) such other items as may be specifically required hereunder or as may be reasonably requested by Purchaser.

#### 4.2 Deliveries by Purchaser at Closing

At the Closing Time, Purchaser shall pay or deliver, or cause to be paid or delivered, as applicable, to Vendor:

- (a) the amount to be delivered in cash as specified in Clause 2.3;
- (b) the Option Note duly executed by Purchaser as specified in Clause 2.3(b);
- (c) the officer's certificate that certifies, in such detail as Vendor reasonably requests, that all of the conditions precedent described in Clause 4.1 of the Purchase Agreement have been satisfied or waived by Purchaser; and
- (d) such other items as may be specifically required hereunder or as may be reasonably requested by Vendor.

#### 4.3 Delivery of Title and Operating Documents and Miscellaneous Interests

Within three (3) Business Days after the Closing Date or any other day as Vendor and Purchaser may agree, Vendor shall deliver or cause to be delivered to Purchaser the Title and Operating

Documents as held by the Company and such other agreements and documents to which the Option Interests are subject, the original copies of those contracts, agreements, records, books, documents, licences, reports and data comprising Miscellaneous Interests which are in the possession and control of Vendor and/or the Company. Notwithstanding the foregoing in this Clause:

- (a) if and to the extent any such materials also pertain to assets or interests other than the Option Interests, photocopies or other copies of such materials may be provided to Purchaser, at Vendor's own cost, in lieu of original copies; and
- (b) to the extent that there are any pending or threatened Claims, audits or other matters involving or relating to the Option Interests that pertain to the period prior to the date of this Agreement at Closing, or should the same arise after Closing, the Company shall, upon request and after reasonable notice from Vendor, provide reasonable access to such materials as Vendor may reasonably require during the Company's normal business hours. Vendor, at its own cost, may make and retain copies of the relevant portions of such materials.

## **ARTICLE 5 GENERAL**

### **5.1 Further Acts**

Each Party will, from time to time and at all times following execution and delivery of this Agreement, without further consideration, do such further acts and deliver all such further assurances, deeds and documents as shall be reasonably required in order to fully perform and carry out the terms of this Agreement.

### **5.2 Governing Law**

This Agreement shall be subject to and interpreted, construed and enforced in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein (other than those relating to conflicts or choice of laws) and shall be treated as a contract made in the Province of Alberta. The Parties irrevocably attorn and submit to the exclusive jurisdiction of the courts of the Province of Alberta and courts of appeal therefrom in respect of all matters arising out of this Agreement, other than the enforcement of judgments.

### **5.3 Counterparts**

This Agreement may be executed in counterparts and all executed counterparts together shall constitute one agreement. A signed counterpart provided by way of email or other electronic means shall be as binding upon the Parties as an originally signed counterpart.

*(Execution Page Follows)*



IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

541466 ALBERTA LTD.

JMB CRUSHING SYSTEMS INC.

Per: \_\_\_\_\_  
Name: **Lisa Ball**  
Title: **President**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*This is the Execution Page for the Option Purchase Agreement between 541466 Alberta Ltd., as Vendor, and JMB Crushing Systems Inc., as Purchaser*

A handwritten signature in black ink, consisting of a large, stylized initial 'M' followed by a vertical stroke.

**EXHIBIT A**  
ATTACHED TO AND FORMING PART OF THE OPTION PURCHASE AGREEMENT MADE AS OF  
\_\_\_\_\_, 2019 BETWEEN 541466 ALBERTA LTD., AS VENDOR, AND JMB CRUSHING SYSTEMS  
INC., AS PURCHASER

**OPTION LANDS AND OPTION LEASE**

[NTD: To be attached for each of the individual Option Interests that Purchaser provides the Option Election to Vendor.]



**SCHEDULE E**

ATTACHED TO AND FORMING PART OF THE PURCHASE AND SALE AGREEMENT MADE AS OF  
MARCH 15, 2019 BETWEEN 541466 ALBERTA LTD., AS VENDOR, AND JMB CRUSHING SYSTEMS  
INC., AS PURCHASER

**FORM OF OPTION NOTE**

Attached.

A handwritten signature or scribble consisting of several overlapping loops and lines, located in the bottom right corner of the page.

## OPTION PROMISSORY NOTE

Date: \_\_\_\_\_

NOW, FOR VALUE RECEIVED JMB CRUSHING SYSTEMS INC. (the "Borrower") unconditionally promises to pay to 541466 ALBERTA LTD. (o/a JLG Ball Enterprises) (the "Lender") at PO Box 211, Boyle, Alberta, T0A 0M0, or such other place as the Lender may direct in writing, the sum of Cdn.\$200,000 (Two Hundred Thousand Dollars) (the "Principal"), in five (5) equal annual Principal instalments of Cdn.\$40,000 (Forty Thousand Dollars) per year, plus annual Interest payments accruing thereon on or before the last day of each calendar year beginning on the first-year anniversary following the date hereof and continuing on the anniversary thereof with the final payment on the fifth-year anniversary following the date hereof in such amount as is required to pay in full all Principal and Interest outstanding under this promissory note on such date.

Interest shall be calculated on the daily balance of such outstanding Principal and payable annually on the same date (for certainty, the first such payment of interest shall be due on the first-year anniversary following the date hereof), at the same place, as the Principal payments both before and after maturity, default and judgment, at a nominal rate per annum of 5% (five percent) and interest on overdue interest payable at the same time, place and rate.

Upon default in payment by the Borrower of any instalment of principal or interest when due under this promissory note, which default is not remedied within thirty (30) days after the Lender notifies the Borrower thereof in writing, all principal and interest outstanding under this promissory note shall become immediately due and payable upon demand by the Lender.

The principal amount outstanding under this promissory note may be prepaid in whole or in part, provided that such payment is made concurrently together with a payment of accrued and unpaid interest thereon, at any time and from time to time without notice, bonus or penalty. Any such principal prepayments shall be applied to the principal instalments payable under this promissory note in the reverse order of maturity and may not be re-borrowed.

Notwithstanding anything else in this promissory note or elsewhere, the Borrower shall not grant, and the Lender shall not accept, any mortgage, deed of trust, lien, pledge, hypothec (whether movable or immovable), hypothecation, encumbrance, charge, security interest, royalty interest, adverse claim, defect to title or right of set-off in, or any other arrangement having the effect of providing security, on the present and future assets, property and undertaking of the Borrower, real and personal, moveable and immoveable, of whatsoever nature and kind and wheresoever situate as security for the indebtedness of the Borrower under this promissory note.

Each of the parties hereto agrees that it will do all acts and things and execute and deliver such further and other agreements, instruments and documents as may be necessary or appropriate to carry out the intent and purpose of and give full effect to this promissory note and the other documents related hereto and every part thereof.

This promissory note shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the laws of Canada applicable in that Province. The Borrower waives presentment for payment, notice of dishonour, protest and notice of protest in respect of this promissory note. This



promissory note shall become effective when it has been executed and delivered. Time shall be of the essence of this promissory note in all respects. This promissory note constitutes the entire agreement of the parties pertaining to the indebtedness evidenced by this promissory note and supersedes all prior agreements, understandings, negotiations and discussions with respect to such indebtedness, whether oral or written.

*(Signature page follows)*

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

**JMB CRUSHING SYSTEMS INC.**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

**ACKNOWLEDGED AND AGREED BY THE LENDER:**

**541466 ALBERTA LTD. O/A JLG BALL  
ENTERPRISES**

By: \_\_\_\_\_

Name: **Lisa Ball**

Title: **President**

By: \_\_\_\_\_

Name:

Title:

*(Signature page to an option promissory note from JMB Crushing Systems Inc. to 541466 Alberta Ltd.)*

A handwritten signature in black ink, appearing to be the name 'Lisa Ball', written in a cursive style.



SCHEDULE F

ATTACHED TO AND FORMING PART OF THE PURCHASE AND SALE AGREEMENT MADE AS OF \_\_\_\_\_, 2019 BETWEEN 541466 ALBERTA LTD., AS VENDOR, AND JMB CRUSHING SYSTEMS INC., AS PURCHASER

PART 1  
INVENTORY

**JLG Aggregate Inventory as of 28 Jan 2019**  
**Processing Costs Only**

Product	Pit	Tonnes	Cost/Tonne	Cost
4-20mm	60060	10,000	\$7.50	\$75,000
Riprap Rock	60060	3,000	\$3.50	\$10,500
Pitrun Stockpiled	60060	25,000	\$1.10	\$27,500
8.25mm	900112	1,000	\$15.50	\$15,500
Radon Rock	900112	4,000	\$15.50	\$62,000
1 3/4" Ballast	900112	3,000	\$15.50	\$46,500
Riprap Rock	900112	3,000	\$3.50	\$10,500
2-25mm	110025	4,000	\$6.15	\$24,600
6-80mm	110025	15,000	\$6.00	\$90,000
2-25mm	110026	4,000	\$6.15	\$24,600
FA1 Unwashed Screened	110045	75,000	\$0.05	\$3,750
8mm Screened Winter Sand	110045	75,000	\$0.05	\$3,750
FA1 Washed Screened	110045	500	\$1.50	\$750
FA1 Concrete Coarse	110045	500	\$1.50	\$750
Natural Washed Weeping Tile	110045	200	\$3.50	\$700
<b>Total Cost of Inventory</b>				<b>\$396,400</b>

PART 2  
EXCLUDED INVENTORY

The Excluded Inventory comprises only the quantities and types of Surface Materials as follows:

- i. 1,000 tonnes of 6-80mm out of pit 25;
- ii. 800 tonnes of 4-20mm out of pit 60;
- iii. 400 tonnes of Radon Rock out of pit 900112; and
- iv. 400 tonnes of 1 3/4 inch Ballast out of pit 900112.



**SCHEDULE G**

ATTACHED TO AND FORMING PART OF THE PURCHASE AND SALE AGREEMENT MADE AS OF MARCH 15, 2019 BETWEEN 541466 ALBERTA LTD., AS VENDOR, AND JMB CRUSHING SYSTEMS INC., AS PURCHASER

**FORM OF TRUST AGREEMENT TERMINATION AGREEMENT**

Attached.

A handwritten signature or scribble consisting of several overlapping loops and lines, located in the bottom right corner of the page.

**FORM OF TERMINATION AGREEMENT**

THIS AGREEMENT made as of \_\_\_\_\_, 2019.

BETWEEN:

**541466 ALBERTA LTD.**, a corporation formed under the laws of the Province of Alberta ("**Vendor**")

- and -

**2161889 ALBERTA LTD.**, a corporation formed under the laws of the Province of Alberta ("**NewCo**")

**WHEREAS** pursuant to the Purchase and Sale Agreement dated March 15, 2019 between Vendor and JMB Crushing Systems Inc. ("**Purchaser**") (the "**Purchase Agreement**"), Vendor has agreed to sell, and Purchaser has agreed to purchase, the Purchased Interests;

**AND WHEREAS** the Registered Holders held legal title to certain of the Leases forming part of the Purchased Interests, and such Registered Holders entered into the Trust Agreements, as trustee, with Vendor, as beneficiary, in respect thereof;

**AND WHEREAS** pursuant to the Reorganization, the Registered Holders and Vendor agreed to transfer legal title to the Leases to NewCo, along with all beneficial title relating thereto;

**AND WHEREAS** Vendor and NewCo wish to confirm that all Trust Agreements are terminated and that no further obligations or liabilities shall remain in respect of the Trust Agreements between the Registered Holders and Vendor, as applicable, and NewCo, subject to and in accordance with the terms and conditions of this Agreement;

**NOW THEREFORE** the Parties agree as follows:

**ARTICLE 1  
INTERPRETATION**

**1.1 Definitions**

In this Agreement, unless as set out in this Clause 1.1 or the context otherwise requires, capitalized terms and phrases shall have the meaning set out in the Purchase Agreement, with the exception of the following:

- (a) "**Affiliates**" means, with respect to any Person, ~~any other Person~~ who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person. A Person shall be deemed to "control" another Person if such Person possesses, directly or indirectly, the power to direct or cause the ~~direction of the management~~ and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; and the term "controlled" shall have a similar meaning.
- (b) "**Agreement**" means this Termination Agreement, including the attached schedules;
- (c) "**Applicable Laws**" means, in relation to any Person, property, operation or circumstance, all laws and statutes, including regulations, rules, by-laws, ordinances and other statutory instruments enacted thereunder; all judgments, decrees, rulings and orders of courts,



tribunals, commissions and other similar bodies of competent jurisdiction; all orders, rules, directives, policies and guidelines having force of law issued by any Governmental Authority, and all terms and conditions of any Permits; that are in effect as of the relevant time and are applicable to such Person, property or circumstance.

- (d) **"Claim"** means any claim, demand, lawsuit, action, proceeding, lien, audit, notice of non-compliance or violation, order or direction, arbitration or governmental proceeding or investigation.
- (e) **"Losses and Liabilities"** means all losses, costs, expenses, interest, charges, assessments, damages, liabilities, obligations, fines and penalties, including all reasonable costs incurred in investigating, defending or negotiating the settlement or resolution of any Claim or threatened Claim, and specifically including reasonable legal and other professional fees and expenses on a 'solicitor and his own client' basis, regardless of whether the foregoing arise in, under or by virtue of common law, in equity, under Applicable Laws, under contract, negligence, strict liability, breach of duty or otherwise.
- (f) **"Parties"** means the parties to this Agreement and **"Party"** means any one of the Parties to this Agreement;
- (g) **"Person"** includes any individual, body corporate, partnership (limited or general), trust, trustee, executor or similar official, Governmental Authority or other entity.
- (h) **"Purchase Agreement"** has the meaning given in the recitals to this Agreement; and
- (i) **"Registered Holders"** means Robert W. Beaverford, Glenn Ball, Jordan Ball, Tor Land Resources Inc., Bonnie Badry, Cathy Ball and Katie Ball.
- (j) **"Related Persons"** means, in respect of a Party, that Party's Affiliates, together with that Party's and its Affiliates' directors, officers, employees and other personnel and agents.
- (k) **"Trust Agreements"** means collectively, the existing trust agreements between Vendor, as beneficiary, and each Registered Holder, as trustee, providing that, *inter alia*, each Registered Holder holds bare legal title to the applicable Lease specified in such trust agreement, as nominee and bare trustee for, on behalf of and for the benefit of Vendor, in addition to the ancillary consulting agreements related to each such trust agreement, as set forth in Schedule "A".

## 1.2 Schedule

- (a) Appended to this Agreement are the following Schedule:

Schedule A      Trust Agreements

- (b) This schedule is incorporated into and forms part of this Agreement. If any term or condition of such schedule conflicts or is inconsistent with any term or condition in the main body of this Agreement, the term or condition in the main body of this Agreement shall prevail to the extent of the conflict or inconsistency.

**ARTICLE 2  
TERMINATION**

**2.1 Termination of Trust Agreements**

The Parties confirm that NewCo now holds legal and beneficial title in and to all of the Leases, and in furtherance of the Reorganization and the consideration provided to Vendor in the Purchase Agreement, the sufficiency and adequacy of which is confirmed by the Parties, Vendor and NewCo hereby agree and acknowledge, irrevocably and conclusively, that the Trust Agreements will no longer be effective and are terminated as of the date of this Agreement. Vendor confirms that it has complied with the termination notice provisions, as applicable, under the Trust Agreements, and that all of the Trust Agreements have no further application or effect as of the date hereof, notwithstanding anything to the contrary.

**ARTICLE 3  
INDEMNIFICATION**

**3.1 Vendor to Indemnify**

- (a) From and after the date of this Agreement, Vendor shall be liable for all Losses and Liabilities suffered, sustained, paid or incurred by NewCo or its Related Persons and, in addition and as an independent covenant, shall defend, indemnify and keep harmless NewCo and its Related Persons from and against all Losses and Liabilities suffered, sustained, paid or incurred by NewCo or its Related Persons and all Claims made against NewCo or its Related Persons, in either case, directly resulting from the Trust Agreements or any action or inaction by the Registered Holders or Vendor relating to the Trust Agreements.
- (b) The indemnity provided for in this Clause 3.1 and the corresponding liability of Vendor hereunder shall not exceed the aggregate of one quarter (1/4) of the Purchase Price, inclusive of all cost, including legal and other professional fees.
- (c) The limitations of liability set forth in Clause 3.1(b) shall not apply with respect to any Losses and Liabilities or Claims directly resulting from any fraud or willful misconduct of or by Vendor, its Related Persons or the Registered Holders.
- (d) NewCo shall make no Claim under or in respect of this Clause 3.1 unless written notice, with reasonable particulars, of the applicable Losses and Liabilities or Claim has been received by Vendor on or before the date that is twenty-four (24) months after the date of this Agreement.

**ARTICLE 4  
GENERAL**

**4.1 Further Acts**

Each Party will, from time to time and at all times following execution and delivery of this Agreement, without further consideration, do such further acts and deliver all such further assurances, deeds and documents as shall be reasonably required in order to fully perform and carry out the terms of this Agreement.

**4.2 Governing Law**

This Agreement shall be subject to and interpreted, construed and enforced in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein (other than those relating

to conflicts or choice of laws) and shall be treated as a contract made in the Province of Alberta. The Parties irrevocably ~~attorn~~ and submit to the exclusive jurisdiction of the courts of the Province of Alberta and courts of appeal therefrom in respect of all matters arising out of this Agreement, other than the enforcement of judgments.

#### 4.3 Entire Agreement

The provisions contained in all documents and agreements collateral hereto shall at all times be read subject to the provisions of this Agreement and, in the event of conflict, the provisions of this Agreement shall prevail, including over any of the Trust Agreements, notwithstanding any of the terms in the Trust Agreement.

#### 4.4 Assignment and Enurement

This Agreement may not be assigned by a Party without the prior written consent of the other Party, which consent may be unreasonably and arbitrarily withheld. This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective administrators, trustees, receivers, successors and permitted assigns.

#### 4.5 Notices

The addresses for service of the Parties shall be as follows:

Vendor:

541466 Alberta Ltd.  
c/o Bishop & McKenzie LLP  
10180 101 Street  
Edmonton, Alberta T5J 1V3

Attention: Lisa Ball & Gordon Ball  
Email: lball@jlgball.com

Purchaser:

~~2161889 Alberta Ltd.~~  
c/o JMB Crushing Systems Inc.  
P.O. Box 7022  
Bonnyville, AB T9N 2H4

Attention: ~~Jeff Buck~~  
Email: jeffbuckjmb@gmail.com

All notices, ~~communications and statements~~ required, permitted or contemplated in this Agreement shall be in writing, and shall be delivered by personal delivery or courier service on a Party at the address of such Party ~~set out above~~, in which case the item so served shall be deemed to have been received on the date of delivery if such delivery takes place prior to 4:00 p.m. on a Business Day. If the actual delivery of such notice occurs after 4:00 p.m. on a Business Day or on a day that is not a Business Day, then such notice shall be deemed to have been received on the first Business Day following the date of delivery. A Party may from time to time change its address for service by giving written notice of such change to the other Party.

#### 4.6 Invalidity of Provisions

In case any of the provisions of this Agreement should be invalid, illegal or unenforceable in any

respect, the validity, legality or enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby.

**4.7 Waiver**

No failure on the part of any Party in exercising any right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any right or remedy in law or in equity or by other Applicable Laws or otherwise conferred. No waiver of any provision of this Agreement, including this Clause 4.7 shall be effective otherwise than by an instrument in writing dated subsequent to the date of this Agreement, executed by a duly authorized representative of the Party making such waiver.

**4.8 Survival; No Merger**

The respective representations, warranties, covenants and indemnities of the Parties contained in this Agreement, including all qualifications thereof and limitations thereon, shall not be merged in any assignments, conveyances, transfers and other documents provided for under this Agreement and shall survive Closing to the extent provided pursuant to the terms thereof.

**4.9 Remedies Cumulative**

No reference to or exercise of any specific right or remedy by a Party hereunder shall prejudice or preclude such Party from exercising or invoking any other remedy in respect thereof, whether allowed at law or in equity or expressly provided for herein. No such remedy shall be exclusive or dependent upon any other such remedy, but each Party may exercise any one or more of such remedies independently or in combination.

**4.10 Amendment**

This Agreement shall not be varied in its terms or amended by oral agreement or by representations or otherwise other than by an instrument in writing dated subsequent to the date of this Agreement, executed by the Parties.

**4.11 Counterparts**

This Agreement may be executed in counterparts and all executed counterparts together shall constitute one agreement. A signed counterpart provided by way of email or other electronic means shall be as binding upon the Parties as an originally signed counterpart.

*(Signature page follows)*

A handwritten signature in black ink, consisting of several overlapping loops and a long vertical stroke, located in the bottom right corner of the page.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

541466 ALBERTA LTD.

2161889 ALBERTA LTD.

Per: \_\_\_\_\_  
Name: Lisa Ball  
Title: President

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*This is the Execution Page for the Termination Agreement between 541466 Alberta Ltd. and 2161889 Alberta Ltd.*

A handwritten signature in black ink, consisting of a large, stylized letter 'A' with a vertical stroke extending downwards.



**SCHEDULE "A"**

ATTACHED TO AND FORMING PART OF THE TERMINATION AGREEMENT BETWEEN 541466 ALBERTA LTD. AND 2161889 ALBERTA LTD. DATED \_\_\_\_\_, 2019

**Trust Agreements**

- Trust Agreement between 541466 Alberta Ltd. and Robert W. Beaverford dated October 11, 2011.
- Consulting Agreement between 541466 Alberta Ltd. and Robert W. Beaverford dated October 1, 2005.
- Trust Agreement between 541466 Alberta Ltd. and Tor Land Resources Inc dated February 16, 2018.
- Consulting Agreement between 541466 Alberta Ltd. and Tor Land Resources Inc dated February 16, 2018.
- Trust Agreement between 541466 Alberta Ltd. and Bonnie Badry dated February 10, 2012.
- Consulting Agreement between 541466 Alberta Ltd. and Bonnie Badry dated April 6, 2011.
- Trust Agreement between 541466 Alberta Ltd. and Robert W. Beaverford dated October 12, 2011.
- Consulting Agreement between 541466 Alberta Ltd. and Robert W. Beaverford dated May 16, 2011.
- Trust Agreement between 541466 Alberta Ltd. and Glenn Ball dated May 16, 2011.
- Consulting Agreement between 541466 Alberta Ltd. and Glenn Ball May 16, 2011.
- Trust Agreement between 541466 Alberta Ltd. and Jordan Ball dated November 21, 2013.
- Consulting Agreement between 541466 Alberta Ltd. and Jordan Ball dated November 21, 2013.
- Trust Agreement between 541466 Alberta Ltd. and Cathy Ball dated September 6, 2013.
- Consulting Agreement between 541466 Alberta Ltd. and Cathy Ball dated September 6, 2013.
- Trust Agreement between 541466 Alberta Ltd. and Katie Ball dated January 22, 2013.
- Consulting Agreement between 541466 Alberta Ltd. and Katie Ball dated January 22, 2013.

A handwritten signature in black ink, consisting of several overlapping loops and a long tail, located in the bottom right corner of the page.

This is Exhibit "B" to the Affidavit of Lisa Ball  
Sworn before me this \_\_\_\_ day of September, 2020.

---

A Commissioner for Oaths in and for the  
Province of Alberta

Robert A. Farmer  
Barrister and Solicitor



CLOSING PROMISSORY NOTE

Date: March 20, 2019

NOW, FOR VALUE RECEIVED JMB CRUSHING SYSTEMS INC. (the "Borrower") unconditionally promises to pay to 541466 ALBERTA LTD. (o/a JLG Ball Enterprises) (the "Lender") at PO Box 211, Boyle, Alberta, T0A 0M0, or such other place as the Lender may direct in writing, the sum of Cdn.\$3,000,000 (Three Million Canadian Dollars) (the "Principal"), in five (5) equal annual Principal instalments of Cdn.\$600,000 (Six Hundred Thousand Canadian Dollars) per year, plus annual interest payments accruing thereon on or before the last day of each calendar year beginning on the first-year anniversary following the date hereof and continuing on the anniversary thereof with the final payment on the fifth-year anniversary following the date hereof in such amount as is required to pay in full all Principal and Interest outstanding under this promissory note on such date.

Interest shall be calculated on the daily balance of such outstanding Principal and payable annually on the same date (for certainty, the first such payment of interest shall be due on the first-year anniversary following the date hereof), at the same place, as the Principal payments both before and after maturity, default and judgment, at a nominal rate per annum of 5% (five percent) and interest on overdue interest payable at the same time, place and rate.

Upon default in payment by the Borrower of any instalment of principal or interest when due under this promissory note, which default is not remedied within thirty (30) days after the Lender notifies the Borrower thereof in writing, all principal and interest outstanding under this promissory note shall become immediately due and payable upon demand by the Lender.

The principal amount outstanding under this promissory note may be prepaid in whole or in part, provided that such payment is made concurrently together with a payment of accrued and unpaid interest thereon, at any time and from time to time without notice, bonus or penalty. Any such principal prepayments shall be applied to the principal instalments payable under this promissory note in the reverse order of maturity and may not be re-borrowed.

Notwithstanding anything else in this promissory note or elsewhere, the Borrower shall not grant, and the Lender shall not accept, any mortgage, deed of trust, lien, pledge, hypothec (whether movable or immovable), hypothecation, encumbrance, charge, security interest, royalty interest, adverse claim, defect to title or right of set-off in, or any other arrangement having the effect of providing security, on the present and future assets, property and undertaking of the Borrower, real and personal, moveable and immovable, of whatsoever nature and kind and wheresoever situate as security for the indebtedness of the Borrower under this promissory note.

Each of the parties hereto agrees that it will do all acts and things and execute and deliver such further and other agreements, instruments and documents as may be necessary or appropriate to carry out the intent and purpose of and give full effect to this promissory note and the other documents related hereto and every part thereof.

This promissory note shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the laws of Canada applicable in that Province. The Borrower waives presentment for payment, notice of dishonour, protest and notice of protest in respect of this promissory note. This promissory note shall become effective when it has been executed and delivered. Time shall be of the essence of this promissory note in all respects. This promissory note constitutes the entire agreement of

31412452.1

the parties pertaining to the indebtedness evidenced by this promissory note and supersedes all prior agreements, understandings, negotiations and discussions with respect to such indebtedness, whether oral or written.

*(Signature page follows)*

314124521

A handwritten signature or scribble consisting of several overlapping loops and lines, located in the bottom right corner of the page.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

JMB CRUSHING SYSTEMS INC.

By: 

Name: Jeffrey Michael Buck

Title: Vice President, Secretary and Treasurer

ACKNOWLEDGED AND AGREED BY THE LENDER:

541466 ALBERTA LTD. O/A JLG BALL  
ENTERPRISES

By: \_\_\_\_\_

Name: Lisa G. Ball

Title: President and Chief Executive Officer

*(Signature page to a closing promissory note from JMB Crushing Systems Inc. to 541466 Alberta Ltd.)*

33412452 1



This is Exhibit "C" to the Affidavit of Lisa Ball  
Sworn before me this \_\_\_\_ day of September, 2020.

---

A Commissioner for Oaths in and for the  
Province of Alberta

Robert A. Farmer  
Barrister and Solicitor

A handwritten signature in black ink, appearing to be "R. A. Farmer", located in the bottom right corner of the page.



**Bishop & McKenzie LLP**

2300, 10180 – 101 Street NW  
Edmonton, AB T5J 1V3  
T: 780 426 5550  
F: 780-426-1305  
[Edmonton@bmlp.ca](mailto:Edmonton@bmlp.ca)  
[www.bmlp.ca](http://www.bmlp.ca)

**ROBERT A. FARMER**  
Direct Line: (780) 421-2438  
Email Address: [rfarmer@bmlp.ca](mailto:rfarmer@bmlp.ca)

**OUR FILE NO.: 15370-106**

May 8, 2020

**VIA REGISTERED MAIL**

JMB Crushing Services Inc.  
c/o Registered Office  
Blake Cassels & Graydon LLP  
3500 East Tower, Bankers Hall  
855 – 2<sup>nd</sup> Street S.W.  
Calgary, AB T2P 4J8

Attention: Dan McLeod

Dear Sir:

**Re: Indebtedness of JMB Crushing Systems Inc. ("JMB") to 541466 Alberta Ltd. (o/a JLG Ball Enterprises) ("JLG")**

We are the solicitors for JLG. As you are aware, pursuant to the March 15, 2019 Purchase and Sale Agreement between JMB and JLG (the "Agreement"), payment of \$3,000,000 of the Purchase Price remained due and owing subsequent to the Closing Date and was to be paid pursuant to the terms of a Closing Promissory Note dated March 22, 2019 (the "Promissory Note").

The Promissory Note provides that the sum of \$3,000,000 is to be paid to JLG in five equal annual installments of \$600,000 plus annual interest at the rate of 5 percent per annum with the first installment scheduled to occur on March 22, 2020. JMB failed to make the required installment payment of \$600,000 plus interest by March 22, 2020, and as of the date of this letter no portion of this installment has been paid. JMB's failure to make this required installment payment when and as required constitutes a default by JMB under the Promissory Note and under the Agreement.

This letter is to serve as notice of default under the Promissory Note and the Agreement. We hereby demand that JMB remedy this default within 30 days of receipt of this letter by making payment of the sum of \$600,000 plus interest on the principal sum owing under the Promissory Note (\$3,000,000) at the rate of 5% per annum until payment is made.

Failure to make this required payment may result in JLG demanding all principal and interest owing under the Promissory Note and may also result in JLG accepting JMB's default as being a repudiation of the Agreement by JMB.

Kindly govern yourselves accordingly.

Yours truly,

**BISHOP & MCKENZIE LLP**

Per:



Robert A. Farmer

/gsc

cc: FTI Consulting Canada Inc., *via regular mail*  
Alex Matthews, Gowling WLG, *via email*  
Sean Collins, McCarthy Tetrault, *via email*  
Client, *via email*





This is Exhibit "D" to the Affidavit of Lisa Ball  
Sworn before me this \_\_\_\_ day of September, 2020.

---

A Commissioner for Oaths in and for the  
Province of Alberta

Robert A. Farmer  
Barrister and Solicitor

A handwritten signature in black ink, appearing to be "Robert A. Farmer", located in the bottom right corner of the page.



**Bishop & McKenzie <sup>LLP</sup>**

2300, 10180 – 101 Street NW  
Edmonton, AB T5J 1V3  
T: 780 426 5550  
F: 780-426-1305  
[Edmonton@bmlp.ca](mailto:Edmonton@bmlp.ca)  
[www.bmlp.ca](http://www.bmlp.ca)

**ROBERT A. FARMER**  
Direct Line: (780) 421-2438  
Email Address: [rfarmer@bmlp.ca](mailto:rfarmer@bmlp.ca)

**OUR FILE NO.: 15370-106**

May 8, 2020

VIA EMAIL

FTI Consulting Canada Inc.  
520 Fifth Avenue S.W.  
Suite 1610  
Calgary, AB T2P 3R7

Attention: Deryck Helkaa and Tom Powell

Dear Sir:

**Re: JMB Crushing Systems Inc. ("JMB") and 2161889 Alberta Ltd. – Companies' Creditors Arrangement Act ("CCAA")**

We are the solicitors for 541466 Alberta Ltd. (o/a JLG Ball Enterprises) ("JLG"). We are in receipt of a copy of the May 1, 2020 Order of Madame Justice Eidsvik (the "Initial Order")

Service List

Please consider this letter to be a formal request on behalf of JLG to have the writer added to the Service List contemplated by paragraph 49 of the Initial Order.

Demand

JMB is indebted to JLG in amount of \$3,000,000 plus accrued interest pursuant to a Purchase and Sale Agreement between JLG and JMB, a copy of which is enclosed (the "Sale Agreement"). This indebtedness is evidenced by a Closing Promissory Note, a copy of which is also enclosed. The sum of \$600,000 together with accrued interest was due and payable to JLG on March 22, 2020 and to date not been paid. Concurrently with this letter, we are issuing a formal demand for payment of the amount which is past due from JMB. A copy of this letter is enclosed.

Option to Purchase Certain Surface Material Rights

Article 3 of the Agreement grants a series of five options to JMB to purchase from JLG certain Surface Material Rights for a period of 180 days from the date upon which JLG receives notification from the relevant Governmental Authority that formal approval has been granted for Surface Material Rights in relation to each of five parcels of land (the "Options"). As of this date approval has not been granted by the relevant Governmental Authority.

The Agreement specifies that the consideration to be paid to JLG to exercise each respective Option is \$1,000,000.

May 8, 2020

A review of the Order indicates that a Sale and Investment Solicitation Process (the "SISP") involving the assets of JMB is contemplated. On behalf of JLG we wish to go on record as taking the position that in order for each of the respective Options to be exercised, the consideration of \$1,000,000 must be paid, AND all amounts due under the Promissory Note at the time each respective Option is being exercised must be paid. JMB is in breach of the Agreement by not making payments when and as required under the Agreement and this breach constitutes a repudiation of the Agreement, disentitling JMB, or any purchaser of JMB from exercising the Options.

JLG will provide notification to the Monitor in the event that Governmental approval is granted for Surface Material Rights in relation to any of the five parcels of land. Concurrently with providing this notification, JLG will also provide a statement of the payment amount needed to reinstate the Agreement and enable the Option(s) to be exercised.

Please contact the undersigned at your convenience in the event that you want to discuss this matter or require any clarification of this letter.

Yours truly,

**BISHOP & MCKENZIE LLP**

Per:



Robert A. Farmer

RAF/gsc

Enclosures (2)

cc: Alex Matthews, Gowling WLG, *via email*  
Sean Collins, McCarthy Tetrault, *via email*  
Client, *via email*



This is Exhibit "E" to the Affidavit of Lisa Ball  
Sworn before me this \_\_\_\_ day of September, 2020.

---

A Commissioner for Oaths in and for the  
Province of Alberta

Robert A. Farmer  
Barrister and Solicitor

A handwritten signature in black ink, appearing to be the initials 'RF' or a similar stylized monogram.

NON-COMPETITION AGREEMENT

THIS AGREEMENT dated March 22, 2019 is made,

AMONG:

541466 ALBERTA LTD., a corporation formed under the laws of the Province of Alberta ("541466")

- and -

LISA BALL, an individual residing in Boyle, Alberta

- and -

GORDON BALL, an individual residing in Boyle, Alberta

(541466, Lisa Ball and Gordon Ball, collectively being the "Restricted Parties")

- and -

JMB CRUSHING SYSTEMS INC., a corporation amalgamated under the laws of the Province of British Columbia (the "Purchaser")

WHEREAS the Purchaser and 541466 have entered into an purchase and sale agreement dated March 15, 2019 (the "Sale Agreement") pursuant to which *inter alia* the Purchaser has agreed to purchase from 541466 all the Shares of the Company, which holds the entire right, title to and in the Purchased Interests used in carrying on the Business upon the terms and conditions contained in the Sale Agreement (the "Transaction").

AND WHEREAS the execution and delivery of this Agreement by the Restricted Parties is a condition precedent to the obligation of the Purchaser to complete the Transaction.

AND WHEREAS the Restricted Parties understand that this Agreement is necessary for the Purchaser to receive the full benefit of the goodwill of the Business and to preserve the fair market value of the assets of 541466 being purchased by the Purchaser and, accordingly, the Restricted Parties are willing to enter into this Agreement in order to ensure that such benefit is not impaired and the fair market value of such assets is not diminished by actions of the Restricted Parties.

AND WHEREAS the Restricted Parties understand that this Agreement is an integral part of the Transaction under which the Restricted Parties are receiving significant benefit and that the Purchaser is relying on the agreements and acknowledgements given herein by the Restricted Parties.

NOW THEREFORE, in consideration of the foregoing and the representations, warranties, covenants, conditions, agreements and promises contained in this Agreement and in the Sale Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:



## ARTICLE 1

### INTERPRETATION

**1.1 Definitions.** Unless context requires otherwise, capitalized terms used in this Agreement but not defined herein shall have the meanings ascribed to such terms in the Sale Agreement, and in addition:

"Agreement" means this non-competition agreement.

"Non-Competition Period" has the meaning set out in Section 2.1.

"Permitted Activities" has the meaning set out in Section 2.7.

"Restrictive Covenants" has the meaning set out in Section 2.10.

"Territory" means the Province of Alberta.

**1.2 Additional Rules of Interpretation.**

- (a) In this Agreement, unless the context requires otherwise, words in one gender include all genders and words in the singular include the plural and vice versa.
- (b) The inclusion in this Agreement of headings of Articles and Sections are for convenience of reference only and are not intended to be full or precise descriptions of the text to which they refer.
- (c) Unless the context requires otherwise, references in this Agreement to Sections or schedules are to Sections or schedules of this Agreement.
- (d) Wherever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation" and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.
- (e) The words "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions shall be construed as referring to this Agreement in its entirety and not to any particular section or portion of it.
- (f) All references herein to any agreement (including this Agreement), document or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless otherwise specified therein, includes all schedules and exhibits attached thereto.
- (g) The recitals to this Agreement are an integral part of this Agreement.

## ARTICLE 2

### NON-COMPETITION

**2.1 Non-Competition by Restricted Parties**

Subject to Section 2.2 and the Permitted Activities set forth in Section 2.7, the Restricted Parties shall not, and shall ensure that each of their Affiliates do not, without the prior written consent of the Purchaser, at any time within the period of three (3) years following the date of this Agreement (the "Non-Competition Period"), either individually or in partnership or jointly or in conjunction with each other or any Person, as principal, agent, director, officer, consultant, lender, contractor, employer, employee, investor or shareholder, or in any other manner, directly or indirectly,



- (a) advise, assist, manage, carry on, ~~establish, acquire control of,~~ be engaged in, have any financial or other interest in (including ~~any interest by way of royalty or other compensation arrangement~~);
- (b) lend money to, guarantee the debts or obligations of; or
- (c) permit the Restricted Parties' name, trade names or any part thereof to be used or employed by any Person that operates, is engaged in or has an interest in,

a business anywhere within the Territory that is similar to or competes with the Business. Without limiting the effect of the foregoing, competing with the Business includes directly or indirectly selling or permitting the sale to any of the present customers of the Business of any products or services of the type sold by the Business as at the date of this Agreement.

## 2.2 Permitted Shareholdings

The foregoing shall not prevent the Restricted Parties or its Affiliates from purchasing as a passive investor up to two percent (2%) of the outstanding publicly traded shares or other securities of any class of any issuer listed on a recognized stock exchange.

## 2.3 Non-Solicitation

During the Non-Competition Period, the Restricted Parties shall not, and shall ensure that its Affiliates do not, either individually or in partnership or jointly or in conjunction with any other Person, as principal, agent, consultant, contractor, shareholder, interest holder, investor, partner, lender, director, officer, employer, employee or in any other manner, directly or indirectly:

- (a) contact, solicit, induce, divert or interfere with (or attempt to do any of the foregoing) any customer or prospective customer of the Business for the purpose of selling to such customer any products or services which are the same as or similar to those sold by the Business, or to persuade or attempt to persuade any customer to change its relationship or potential relationship with the Business, or to restrict, limit, discontinue or cease considering purchasing any products or services provided by the Business or to reduce the amount of business or potential business which any such customer has customarily done with the Business, or to not grant any new business to the Business (including, without limitation, any new business related to a new line of business in which the Business has or is developing plans to engage);
- (b) contact, solicit, induce, divert or interfere with (or attempt to do any of the foregoing) any supplier or prospective supplier of the Business for the purpose of persuading or attempting to persuade any supplier or prospective supplier of the Business to change its relationship with the Business, or to restrict, limit or discontinue or to reduce the amount of business which any such supplier has customarily done with the Business;
- (c) solicit or attempt to solicit, or assist or encourage any Person to solicit, hire, recruit, attempt to hire or recruit, or induce the termination of employment or cessation of services of any employee of the Business, or any contractor who regularly provides services to the Business, or assist or encourage any such employee or contractor to accept employment or engagement elsewhere, unless such solicitation occurs as a result of general advertisements for employment or contract services not specifically directed at such employees or contractors; and
- (d) in any manner, knowingly do or cause or permit to be done, any acts which may reasonably be expected to impair the relationship between the Business and its suppliers, customers, employees, contractors, or any regulatory authorities or any other Person.

## 2.4 No Disparagement

During the Term, the Restricted Parties ~~agree not to~~, and agree to cause its Affiliates not to, make any public statement that is intended to disparage the Business or the direct or indirect employees, shareholders, directors, officers, partners, representatives or agents of the Business.

## 2.5 Confidentiality

The Restricted Parties shall not and shall ensure that its Affiliates do not use for the Restricted Parties' own account or disclose to any other Person any confidential or proprietary information or material relating to the Business. Confidential or proprietary information or material includes, without limitation, the following types of information or material, in whatever form, both existing and contemplated, regarding the Business: corporate information, including contractual licensing arrangements, plans, strategies, tactics, policies, resolutions, patent, trade-mark and trade name applications, and any litigation or negotiations; information concerning suppliers; marketing information, including sales, investment and product plans, customer lists, strategies, methods, customers, prospects and market research data; financial information, including cost and performance data, debt arrangements, equity structure, investors and holdings; operational and scientific information, including trade secrets; software; technical information, including technical drawings and designs; and personnel information, including personnel lists, resumes, personnel data, organizational structure and performance evaluations.

## 2.6 Severability and Waiver

- (a) Subject to Section 2.6(b), each provision of this Agreement shall constitute a separate and distinct covenant and shall be severable from all other such separate and distinct covenants contained in this Agreement. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent permitted by applicable law, the Parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.
- (b) ~~The Restricted Parties agree that if the definition of Business or Territory is held to be unreasonable, arbitrary, or against public policy by a court of competent jurisdiction, then such definition shall be modified by the Court and continued in such reduced form as the Court determines to be reasonable, non-arbitrary, and not against public policy, and the modification(s) shall be adopted by the Parties and enforced against the Restricted Parties, without invalidating the remaining portion of the definition of Business or Territory, as the case may be, and without affecting the validity or enforceability of the restrictive covenant contained in Section 2.1.~~

## 2.7 Permitted Activities

Notwithstanding anything herein, the ~~Restricted Parties~~ shall be permitted to continue certain permitted activities (the "Permitted Activities"), which shall be limited to:

- (a) ~~for the first twelve (12) months of the Non-Competition Period, to continue the following Permitted Activities:~~
  - (i) ~~civil construction related work such as operating track hoes and other civil construction equipment and the hauling of clay, topsoil, debris and remediation operations; and~~





- (ii) contract hauling of sand and gravel or gravel products for third parties, which does not involve aggregate (sand or gravel) extraction; and
- (b) for the first twenty-four (24) months of the Non-Competition Period, to complete the physical reclamation work on depleted pits not included in the Sale Agreement.

## 2.8 Remedies

The Restricted Parties acknowledge that a breach by it or any of its Affiliates of any of the covenants contained in this Agreement will cause serious harm to the Purchaser and will result in damages to the Purchaser and that the Purchaser may not be adequately compensated for such damages by monetary award alone. Accordingly, the Restricted Parties agree that in the event of any such breach, in addition to any other remedies available at law or otherwise, the Purchaser shall be entitled as a matter of right to apply to a court of competent jurisdiction for relief by way of injunction (interim and permanent), restraining order, specific performance, decree or otherwise as may be appropriate to ensure compliance by the Restricted Parties and its Affiliates with the provisions of this Agreement, and in each case without necessity of proving actual damage or of posting a bond or other security and the Restricted Parties waive any objection to an assertion that damages are not an adequate remedy or requirement to prove damages or post bond or other security in connection with any injunctive order or order for specific performance. Any remedy expressly set out in this Agreement shall be in addition to and not inclusive of or dependent upon the exercise of any other remedy available at law or otherwise.

## 2.9 Restricted Parties' Acknowledgements and Agreements

The Restricted Parties acknowledge and agree that:

- (a) all restrictions in this Agreement are necessary and fundamental to the protection of the Purchaser and the Business and are reasonable and valid;
- (b) all defences to the strict enforcement of this Agreement against the Restricted Parties or any of its Affiliates are hereby waived;
- (c) it has signed this Agreement voluntarily and without pressure, and intends to comply with all of the covenants contained herein;
- (d) ~~this Agreement constitutes, and will continue to constitute at all times, legal, valid and binding obligations of the Restricted Parties enforceable against the Restricted Parties in accordance with the terms hereof, subject to the actual exceptions as to bankruptcy and the availability of equitable remedies;~~
- (e) ~~the covenants contained herein are intended to ensure that the Purchaser receives the full benefit of the goodwill of the Business (including, without limitation, the Restricted Parties' relationships with customers and suppliers, and the Business' confidential information) and to preserve the fair market value of the assets of the 541466 being purchased by the Purchaser;~~
- (f) in executing this Agreement, the Restricted Parties have had sufficient time and opportunity to seek the advice of independent legal counsel, has read and understood all of the terms and provisions of this Agreement and have had sufficient time to review and consider this Agreement thoroughly; and
- (g) the Purchaser is relying on the acknowledgements and agreements contained herein which constitute a material inducement to the Purchaser in proceeding with the Transaction.



## 2.10 Restrictive Covenants

The Parties intend that the conditions set forth in subsection 56.4(7) of the Income Tax Act (and the equivalent provisions of any applicable provincial tax legislation) have been met such that subsection 56.4(5) of the Income Tax Act (and the equivalent provisions of any applicable provincial tax legislation) applies to any 'restrictive covenants' as defined in subsection 56.4(1) of the Income Tax Act granted by the Restricted Parties pursuant to the Agreement (the "Restrictive Covenants"). For greater certainty, the Parties hereto agree and acknowledge that: (i) for the purposes of the Income Tax Act, no part of the consideration payable to the Restricted Parties under the Purchase Agreement is allocable to, and no proceeds are receivable by the Restricted Parties for granting, the Restrictive Covenants; (ii) the Restrictive Covenants are integral to the Purchase Agreement and have been granted to maintain or preserve the fair and market value of the Shares; and (iii) the Restrictive Covenants meet the requirements specified in the clause 56.4(7)(b)(ii)(B) of the Income Tax Act.

## 2.11 Breach of Restrictions

If the Restricted Parties are in breach of any of their obligations hereunder, the running of the Non-Competition Period shall be stayed and shall recommence upon the date the Restricted Parties cease to be in breach thereof, whether voluntarily or by injunction.

## ARTICLE 3

### GENERAL

## 3.1 Notices.

- (a) Any notice, direction, certificate, consent, determination, summons, claim or other legal process or communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent by fax, e-mail (return receipt requested) or other similar means of electronic communication, in each case to the applicable address set out below:

- (iii) if to the Restricted Parties, to:

~~541466 Alberta Ltd.  
c/o Bishop & McKenzie LLP  
10180 101 Street  
Edmonton, Alberta T5J 1V3~~

~~Attention: Lisa Ball & Gordon Ball  
Email: lball@jlgball.com~~

~~With a copy (which does not constitute notice) to:~~

~~Bishop & McKenzie LLP  
10180 101 Street  
Edmonton, Alberta T5J 1V3~~

~~Attention: Blair R. Willie  
Email: bwillie@bmlp.ca~~

- (iv) if to the Purchaser, to:

JMB Crushing Systems Inc.  
P.O. Box 7022

Bonnyville, AB T9N 2H4

Attention: Jeff Buck  
Email: jeffbuckjmb@gmail.com

with a copy (which does not constitute notice) to:

Blake Cassels & Graydon LLP  
3500 East Tower, Bankers Hall  
855 – 2<sup>nd</sup> Street SW  
Calgary, Alberta T2P 4J8

Attention: Dan McLeod  
Email: daniel.mcleod@blakes.com

- (b) Any such communication so given or made shall 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 faxing, e-mailing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, faxed, e-mailed or sent before 4:30 p.m. on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day. Any such communication sent by mail shall be deemed to have been given and made and to have been received on the fifth Business Day following the mailing thereof; provided however that no such communication shall be mailed during any actual or apprehended disruption of postal services. Any such communication given or made in any other manner shall be deemed to have been given or made and to have been received only upon actual receipt.
- (c) Any Party may from time to time change its address under this Section 3.1 by notice to the other Party given in the manner provided by this Section 3.1.

### 3.2 Further Assurances

Each Party shall from time to time promptly execute and deliver or cause to be executed and delivered all such further documents and instruments and shall do or cause to be done all such further acts and things in connection with this Agreement that the other Party may require as being necessary or desirable in order to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement or any provision hereof.

### 3.3 Amendment

No amendment of this Agreement shall be effective unless made in writing and signed by the Parties.

### 3.4 Waiver

A waiver of any default, breach or non-compliance under this Agreement shall not be effective unless in writing and signed by the Party to be bound by the waiver, and then only in the specific instance and for the specific purpose for which it has been given. No waiver shall be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other Party. The waiver by a Party of any default, breach or non-compliance under this Agreement shall not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).



### 3.5 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and shall be treated in all respects as an Alberta contract.

### 3.6 Attornment

Each Party agrees (a) that any legal proceeding of any kind relating to this Agreement may (but need not) be brought in any court of competent jurisdiction in the Province of Alberta, and for that purpose now irrevocably and unconditionally attorns and submits to the jurisdiction of such Alberta court; (b) that it irrevocably waives any right to, and shall not, oppose any such legal proceeding in the Province of Alberta on any jurisdictional basis, including *forum non conveniens*; and (c) not to oppose the enforcement against it in any other jurisdiction of any order, decision or ruling of any kind duly obtained from an Alberta court as contemplated by this Section 3.6.

### 3.7 Time of the Essence

Time shall be of the essence of this Agreement and every part hereof, and no extension or variation of this Agreement shall operate as a waiver of this provision.

### 3.8 Successors and Assigns; Assignment

This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective successors and permitted assigns. Neither Party may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its respective rights or obligations under this Agreement without the prior written consent of the other Party.

### 3.9 Counterparts

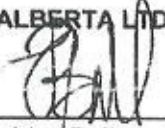
This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Party by facsimile, e-mail in pdf format or other electronic transmission and such transmission shall constitute delivery of an executed copy of this Agreement to the receiving Party.

*(Signature page follows)*

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, located in the bottom right corner of the page.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

541466 ALBERTA LTD.

Per:   
Name: Lisa Ball  
Title: President

JMB CRUSHING SYSTEMS INC.

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

  
Witness

  
LISA BALL

  
Witness

  
GORDON BALL

*(Signature page to a Non-Competition Agreement between 541466 Alberta Ltd., Lisa Ball, Gordon Ball, as restricted parties, and JMB Crushing Systems Inc.)*



This is Exhibit "F" to the Affidavit of Lisa Ball  
Sworn before me this \_\_\_\_ day of September, 2020.

---

A Commissioner for Oaths in and for the  
Province of Alberta

Robert A. Farmer  
Barrister and Solicitor





**Bishop & McKenzie** LLP

2300, 10180 – 101 Street NW  
Edmonton, AB T5J 1V3  
T: 780 426 5550  
F: 780-426-1305  
Edmonton@bmlp.ca  
www.bmlp.ca

**ROBERT A. FARMER**  
Direct Line: 780 421 2438  
Email Address: rfarmer@bmlp.ca

**OUR FILE NO. 15370-112**

August 12, 2020

VIA EMAIL: [deryck.helkaa@fticonsulting.com](mailto:deryck.helkaa@fticonsulting.com)  
[tom.powell@fticonsulting.com](mailto:tom.powell@fticonsulting.com)

FTI Consulting Canada Inc.  
1610, 520 Fifth Avenue S.W.  
Calgary, AB T2P 3R7

Attention: Deryck Helkaa and Tom Powell

Dear Sirs:

**Re: JMB Crushing Systems Inc. ("JMB") and 2161889 Alberta Ltd.  
Companies' Creditors Arrangement Act ("CCAA")**

As you are aware, we are the solicitors for 541466 Alberta Ltd. (o/a JLG Ball Enterprises) ("JLG"). Pursuant to the Sale Agreement Referred to in our May 8, 2020 letter, JLG entered into a Non-Competition Agreement with JMB Crushing Systems Inc. ("JMB"), a copy of which is enclosed. JLG takes the position that the rights and obligations granted to JMB pursuant to the enclosed Non-Competition Agreement are not an asset of JMB which is capable of being purchased but the ultimate purchaser of JMB's assets pursuant to the bid process and that the rights and obligations under this Non-Competition Agreement ought to be expressly excluded from the Order which accepting the successful bid for JMB's assets.

Additionally, as my May 8, 2020 letter indicated, the Purchase and Sale Agreement granted a series of five options to JMB to purchase from JLG certain Surface Material Rights for the consideration of \$1,000,000 per option (the "Options"). As the amounts owed to our JLG under the Promissory Note have not be paid in breach of the Purchase and Sale Agreement, JLG's position is that the Options are terminated or alternatively revoked and do not form part of the assets of JMB.

Please confirm in writing at your earliest convenience that you are willing to include a provision in the Order approving the successful bid expressly excluding the Options and expressly confirming JLG's rights and obligations under the Non-Competition Agreement. If we do not receive confirmation our intention is to submit an Affidavit and to make submissions when the application for an order accepting the bid is heard.

August 12, 2020

I look forward to hearing from you as soon as possible.

Yours truly,

**BISHOP & MCKENZIE LLP**

Per: 

**ROBERT A. FARMER**

RAF/gsc

Enclosure (1)





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 CRUSING  
SYSTEMS INC. AND 2161889 ALBERTA  
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: Robert A. Farmer  
File No: 15370-112

**AFFIDAVIT OF LISA BALL**  
Sworn on **SEPTEMBER 28**, 2020

I, Lisa Ball of Boyle, Alberta, MAKE OATH AND SAY THAT:

1. I am a Director and Officer of 541466 Alberta Ltd. and as such have a personal knowledge of the facts and matters hereinafter deposed to except where otherwise stated.
2. 541466 Alberta Ltd. carries on business in the Province of Alberta as JLG Ball Enterprises and is hereinafter referred to in this Affidavit as "JLG"

**The Purchase and Sale Agreement**

3. Attached as Exhibit "A" is a copy of a Purchase and Sale Agreement (the "JLG Sale Agreement") dated March 15, 2019 between JLG and JMB Crushing Systems Inc. ("JMB") pursuant to which JMB purchased certain Surface Material Rights, Miscellaneous Interests and Goodwill from JLG as more particularly set out in the JLG Sale Agreement.
4. JMB is indebted to JLG in the amount of \$3,000,000 plus accrued interest pursuant to the JLG Sale Agreement. This indebtedness is evidenced by a Closing Promissory Note, a copy of which is attached as Exhibit "B" (the "Promissory Note").
5. The sum of \$600,000 together with accrued interest was due and payable to JLG on March 22, 2020 and to date has not been paid. Attached as Exhibit "C" is a copy of a formal demand for payment dated May 8, 2020 made by counsel for JLG on behalf of JLG.

A handwritten signature in blue ink, located in the bottom right corner of the page.

**The Options**

6. Article 3 of the Agreement grants a series of five options to JMB to purchase from JLG certain Surface Material rights for a period of 180 days from the date upon which JLG receives notification from the relevant Governmental Authority that formal approval has been granted for Surface Material Rights in relation to each of five parcels of land (the "Option(s)"). As of the date of this Affidavit, approval has not been granted by the relevant Governmental Authority.
7. The JLG Sale Agreement specifies that the consideration to be paid to JLG to exercise each respective Option is \$1,000,000.
8. JLG takes the position that in order for each of the respective Options to be exercised, the consideration of \$1,000,000 must be paid and all amounts due under the Promissory Note at the time each respective Option is exercised must be paid. JMB has breached the JLG Sale Agreement by not making payments to JLG when and as required under the JLG Sale Agreement disentitling JMB or any purchaser of JMB's assets from exercising the Options.
9. JLG takes the position that as the Options are no longer capable of being exercised, they cannot be included in the assets acquired from JMB by any potential purchaser of JMB's assets pursuant to these CCAA Proceedings.
10. Attached as Exhibit "D" is a copy of a letter dated May 8, 2020 from counsel for JLG to the Monitor, FTI Consulting Canada Inc. ("FTI") setting out JLG's position concerning the Options.
11. I am informed by counsel for JLG and do believe that as of the date of this Affidavit no substantive response to the May 8, 2020 letter concerning the Options has been received from FTI.

**The Non-Competition Agreement**

12. Pursuant to the JLG Sale Agreement JLG entered into a Non-Competition Agreement with JMB, a copy of which is attached as Exhibit "E" (the "Non-Competition Agreement")
13. JLG takes the position that the rights and obligations granted to JMB pursuant to the Non-Competition Agreement are not an asset of JMB which is capable of being purchased by any potential purchaser of JMB's assets pursuant to these CCAA proceedings.
14. Attached is Exhibit "F" is a copy of a letter dated August 12, 2020 from counsel for JLG to FTI setting out JLG's position concerning the Non-Competition Agreement and also indicating that the Options are terminated or alternatively revoked.
15. I am informed by counsel for JLG and do believe that as of the date of this Affidavit no substantive response to the August 12, 2020 letter concerning the Non-Competition Agreement has been received from FTI.



16. I was not physically present before the commissioner, but was linked with the commissioner utilizing video technology and I am informed by my counsel that the process outlined in the Notice to the Profession dated March 25, 2020 was followed.

SWORN BEFORE ME at the City of )  
Edmonton, in the Province of Alberta )  
24 day of September, 2020. )  
\_\_\_\_\_)  
\_\_\_\_\_)

\_\_\_\_\_  
Lisa Ball

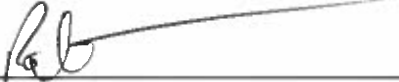
A Commissioner for Oaths in and for  
the Province of Alberta

Robert A. Farmer  
Barrister & Solicitor

*Handwritten initials*

## COMMISSIONER'S CERTIFICATE

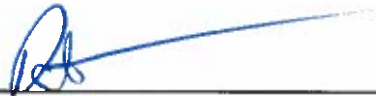
1. I, Robert A. Farmer, certify that:
2. I am the Commissioner for Oaths named in the attached Affidavit of LISA BALL, sworn September 28, 2020 utilizing video technology; and
3. I am satisfied that the process for the remote commissioning of the Affidavit utilizing video technology was necessary because it was impossible or unsafe, for medical reasons, for the deponent and the commissioner to be physically present together.



---

Robert A. Farmer  
Barrister & Solicitor

This is Exhibit "A" to the Affidavit of Lisa Ball  
Sworn before me this 28 day of September, 2020.



---

A Commissioner for Oaths in and for the  
Province of Alberta

Robert A. Farmer  
Barrister and Solicitor



**PURCHASE AND SALE AGREEMENT**

**BETWEEN:**

**541466 ALBERTA LTD. o/a JLG BALL ENTERPRISES**

**(As Vendor)**

**- and -**

**JMB CRUSHING SYSTEMS INC.**

**(As Purchaser)**

**Dated as of March 15, 2019**



TABLE OF CONTENTS

	Page
ARTICLE 1 INTERPRETATION .....	3
1.1 Definitions .....	3
1.2 Schedules .....	12
1.3 Words Importing Number or Gender.....	13
1.4 Use of Derivative Terms.....	13
1.5 Use of "Including".....	13
1.6 Statutory References .....	13
1.7 Monetary References.....	13
1.8 References to Time.....	13
1.9 Date for Payments or Other Actions .....	13
1.10 Calculation of Time Periods .....	13
1.11 Knowledge .....	13
ARTICLE 2 PURCHASE AND SALE AND CLOSING .....	14
2.1 Purchase and Sale.....	14
2.2 Closing .....	14
2.3 Purchase Price.....	14
2.4 Allocation.....	15
2.5 GST and Other Sales Taxes.....	15
2.6 Adjustments .....	15
ARTICLE 3 OPTION INTERESTS.....	16
3.1 Option.....	16
3.2 Exercise of Option.....	17
ARTICLE 4 CONDITIONS OF CLOSING.....	18
4.1 Purchaser's Conditions .....	18
4.2 Vendor's Conditions .....	19
4.3 Efforts to Fulfill Conditions Precedent.....	20
ARTICLE 5 CLOSING DELIVERIES .....	20
5.1 Deliveries by Vendor at Closing.....	20
5.2 Deliveries by Purchaser at Closing .....	21
5.3 Delivery of Title and Operating Documents and Miscellaneous Interests .....	21
ARTICLE 6 REPRESENTATIONS AND WARRANTIES .....	22
6.1 Representations and Warranties of Vendor.....	22
6.2 Representations and Warranties of Purchaser.....	29
6.3 Survival of Representations and Warranties .....	30
ARTICLE 7 INDEMNITIES.....	30
7.1 Vendor's Indemnity .....	30
7.2 Purchaser's Indemnity.....	31
7.3 Purchaser's Indemnity regarding Reclamation .....	31
7.4 Time Limitation.....	32
7.5 Equitable Remedies .....	32
7.6 Limitation of Remedies.....	32
ARTICLE 8 TAX MATTERS.....	33
8.1 Preparation of Tax Returns.....	33
8.2 Tax Contests .....	33
8.3 Tax Indemnification Events.....	34
8.4 Tax Cooperation.....	35
ARTICLE 9 INTERIM PERIOD .....	36
9.1 Maintenance of Purchased Interests .....	36



9.2	Interim Period Restrictions on Vendor's Business .....	37
9.3	Notice of Breach of Representations and Warranties.....	37
<b>ARTICLE 10 TRANSFER OF THE PURCHASED INTERESTS TO THE COMPANY .....</b>		<b>37</b>
10.1	The Reorganization.....	37
10.2	Completion of the Reorganization.....	38
<b>ARTICLE 11 ACCESS .....</b>		<b>39</b>
11.1	Production of Documents and Access .....	39
11.2	Access Conditions.....	39
<b>ARTICLE 12 POST-CLOSING MATTERS .....</b>		<b>39</b>
12.1	Post-Closing Matters.....	39
<b>ARTICLE 13 GENERAL.....</b>		<b>41</b>
13.1	Further Assurances.....	41
13.2	Entire Agreement .....	41
13.3	Governing Law .....	41
13.4	Transaction Costs .....	41
13.5	Assignment and Enurement.....	41
13.6	Time of Essence .....	42
13.7	Notices .....	42
13.8	Invalidity of Provisions.....	43
13.9	Waiver .....	43
13.10	Survival; No Merger .....	43
13.11	Remedies Cumulative.....	43
13.12	Amendment.....	43
13.13	Confidentiality and Public Announcements .....	43
13.14	Counterpart Execution .....	45

**Schedules:**

Schedule A	Part 1 – Lands and Leases
	Part 2 – Option Lands and Leases
Schedule B	Form of Non-Competition Agreement
Schedule C	Form of Closing Note
Schedule D	Option Purchase Agreement
Schedule E	Option Note
Schedule F	Part 1 – Inventory
	Part 2 – Excluded Inventory
Schedule G	Form of Termination of Trust Agreement



## PURCHASE AND SALE AGREEMENT

THIS AGREEMENT made as of March 15, 2019.

BETWEEN:

**541466 ALBERTA LTD.**, a corporation formed under the laws of the Province of Alberta ("**Vendor**")

- and -

**JMB CRUSHING SYSTEMS INC.**, a corporation amalgamated under the laws of the Province of British Columbia ("**Purchaser**")

**WHEREAS** Vendor carries on the Business and Purchaser wishes to acquire the Purchased Interests for the purpose of continuing the Business (the "**Transaction**");

**WHEREAS** prior to Closing, pursuant to the Reorganization, Vendor shall contribute its entire interest in the Purchased Interests to the Company, the Registered Holders shall transfer their legal title to the Leases to the Company, so that the Company shall be the sole legal and beneficial interest holder of the Purchased Interests at the Closing Time, and Vendor shall hold all of the Shares;

**WHEREAS** at Closing, Vendor will sell all of the Shares to Purchaser, and Purchaser will purchase all of the Shares from Vendor, so that Purchaser will wholly-own the Company, upon the terms and subject to the conditions set forth in this Agreement;

**WHEREAS** Vendor will additionally provide the Options to Purchaser, upon the terms and subject to the conditions set forth in this Agreement;

**NOW THEREFORE** the Parties agree as follows:

### ARTICLE 1 INTERPRETATION

#### 1.1 Definitions

In this Agreement, unless the context otherwise requires:

- (a) "**AEP**" means Alberta Environment and Parks.
- (b) "**Affiliates**" means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person. A Person shall be deemed to "control" another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; and the term "controlled" shall have a similar meaning.
- (c) "**Aggregate Customer**" has the meaning ascribed to that term in Clause 9.2(a)(i).
- (d) "**Agreement**" means this purchase and sale agreement together with the schedules attached hereto, all of which form an essential and integral part hereof.
- (e) "**Agreement Date**" means the date first written above, which is the date on which this Agreement was executed by Vendor and Purchaser.

- (f) **"Applicable Laws"** means, in relation to any Person, property, operation or circumstance, all laws and statutes, including regulations, rules, by-laws, ordinances and other statutory instruments enacted thereunder; all judgments, decrees, rulings and orders of courts, tribunals, commissions and other similar bodies of competent jurisdiction; all orders, rules, directives, policies and guidelines having force of law issued by any Governmental Authority, and all terms and conditions of any Permits; that are in effect as of the relevant time and are applicable to such Person, property or circumstance.
- (g) **"Business"** means the business conducted by Vendor prior to the Reorganization and by the Company subsequent to the Reorganization, solely relating to the use and ownership of the Purchased Interests and such other activities as may be necessary or incidental thereto.
- (h) **"Business Day"** means a day, other than a Saturday, a Sunday or a statutory holiday in Edmonton, Alberta, on which banks are open generally to conduct commercial business in Edmonton, Alberta.
- (i) **"Claim"** means any claim, demand, lawsuit, action, proceeding, lien, audit, notice of non-compliance or violation, order or direction, arbitration or governmental proceeding or investigation.
- (j) **"Class "A" Common Shares"** means Class "A" Common Shares of the Company.
- (k) **"Client List"** means the list maintained by Vendor, as the Closing Date, of all of the clients of Vendor.
- (l) **"Closing"** means the completion of the Transaction.
- (m) **"Closing Date"** means the later of: (i) March 22, 2019; and (ii) three (3) Business Days following the completion of the Reorganization and receipt by Purchaser of notice thereof, or any other Business Day as Vendor and Purchaser may agree, provided that, following Closing, references to the "Closing Date" shall mean the date on which Closing actually occurred.
- (n) **"Closing Note"** means a promissory note from Purchaser to Vendor that is substantially similar to the form attached as Schedule D.
- (o) **"Closing Place"** means Vendor's offices, or another location as Vendor and Purchaser may agree.
- (p) **"Closing Time"** means 10:00 a.m. on the Closing Date or any other time as Vendor and Purchaser may agree.
- (q) **"Company"** means 2161889 Alberta Ltd., which is a direct wholly-owned subsidiary of Vendor through its ownership of the Shares.
- (r) **"Consequential Losses"** means any consequential, incidental, punitive, special, exemplary or indirect damages, cost or deferred profits or revenues, loss of business opportunity, loss of value, losses based on loss of use or other business interruption losses and damages, including economic loss, provided that this definition shall not apply to and any reference to this definition within this Agreement shall not preclude a Person entitled to indemnification under this Agreement, to the extent provided in this Agreement, for such Person's liability to a Third Party for consequential or indirect Losses and Liabilities which such Third Party suffers, sustains, pays or incurs, or any such Losses and Liabilities that arise as a result of a breach of confidentiality.

- (s) "CWB" means Canadian Western Bank.
- (t) "Disclosure Letter" means a letter delivered by Vendor to Purchaser disclosing any exception to the representations and warranties given by Vendor as set out in Clause 6.1.
- (u) "Dollar" or "\$" has the meaning ascribed to that term in Clause 1.7.
- (v) "Encumbrance" means an option to purchase, a royalty, a net profits interest, a carried working interest, a right to convert a royalty to a working interest, a mortgage, a Claim and any other adverse claim or encumbrance, whether similar or dissimilar to the foregoing, including a Security Interest.
- (w) "Environment" means the components of the earth and includes ambient air, land, surface and sub-surface strata, groundwater, lake, river or other surface water, all layers of the atmosphere, all organic and inorganic matter and living organisms, and the interacting natural systems that include such components and "Environmental" means relating to or in respect of the Environment.
- (x) "Environmental Liabilities" means all past, present and future Losses and Liabilities, Claims and other duties and obligations, whether arising under contract, Applicable Laws or otherwise, arising from, relating to or associated with:
- (i) any damage, pollution, contamination or other adverse situations pertaining to the Environment howsoever and by whomsoever caused and regardless of whether such damage, pollution, contamination or other adverse situations occur or arise in whole or in part prior to, at or subsequent to the Closing Time;
  - (ii) the presence, storage, use, holding, collection, accumulation, assessment, generation, manufacture, processing, treatment, stabilization, disposition, handling, transportation, release, spill, emission or discharge of hazardous substances, environmental contaminants and all other substances and materials regulated under any Applicable Laws, including any forms of energy, or any corrosion to or deterioration of any structures or other property;
  - (iii) compliance with or the consequences of any non-compliance with, or violation or breach of, any Applicable Laws pertaining to the Environment or the protection thereof or to public health or safety matters;
  - (iv) sampling, monitoring or assessing the Environment or any potential impacts thereon; or
  - (v) the protection, reclamation, remediation or restoration of the Environment, including related human health and safety;
- that relate to, arise or may have arisen by virtue of the Purchased Interests or the ownership thereof or any past, present or future operations and activities conducted in connection with any of the Purchased Interests or on or in respect of the Lands or the Option Lands, as applicable, or lands adjacent or in proximity thereto to the extent any Environmental Liabilities, Claims and other duties and obligations affecting such lands relate to, arise or may have arisen by virtue of the Purchased Interests or the ownership thereof.
- (y) "Excluded Inventory" means the excluded extracted aggregate processed and stockpiled on the Lands, as detailed in Part 2 of Schedule F, which for certainty, does not constitute part of the Purchased Interests.

- (z) **"Final Determination"** means a determination made by a Governmental Authority (including pursuant to a settlement) or court of competent jurisdiction where all rights to object to or appeal from the determination (including any right to obtain relief under a competent authority or similar process) have been exhausted or have expired.
- (aa) **"Fundamental Representations"** means, as context requires and as applicable: (i) the representations and warranties of Vendor provided in Clauses 6.1(a), 6.1(b), 6.1(i), 6.1(s)(i) to (vii), 6.1(u) and 6.1(v); or (ii) the representations and warranties of Purchaser provided in Clauses 6.2(a) and 6.2(b).
- (bb) **"Goodwill"** means the value associated with the operation and going concern of the Business, including the Client List.
- (cc) **"Governmental Authority"** means any:
- (i) governmental entity or authority of any nature, including any governmental ministry, agency, branch, department or official, and any court, regulatory board or other tribunal; or
  - (ii) individual or body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, regulatory or taxing authority or power of any nature;
- having jurisdiction or power over any Person, property, operation, transaction or other matter or circumstance.
- (dd) **"GST"** means the goods and services tax/harmonized sales tax provided for under Part IX of the *Excise Tax Act* (Canada) or any successor, harmonized or parallel federal or provincial legislation that imposes a tax on the recipient of goods and services.
- (ee) **"Income Tax Act"** means the *Income Tax Act*, R.S.C. 1985, c.1 (5<sup>th</sup> Supplement), as amended from time to time.
- (ff) **"Indemnified Taxes"** has the meaning ascribed to that term in Clause 7.1(b).
- (gg) **"Interim Period"** means the period from the Agreement Date to the Closing Time.
- (hh) **"Interim Restrictions"** has the meaning ascribed to that term in Clause 9.2(a).
- (ii) **"Inventory"** means any extracted aggregate processed and stockpiled on the Lands as at the Closing Date, as detailed in Part 1 of Schedule F, but for certainty, excludes the Excluded Inventory.
- (jj) **"Lands"** means the lands and premises that are subject to the Leases, as set out in Part 1 of Schedule A.
- (kk) **"Lease Conveyances"** means all conveyances, assignments, transfers, novations, trust declarations and other documents or instruments that are reasonably required or desirable, in accordance with normal industry practices and as required by Applicable Laws, to convey, assign and transfer the legal and beneficial title to the Leases to the Company, including without limitation, executed assignment of disposition forms to be registered with the applicable Governmental Authority respecting the transfer of the registered interest in the Leases to the Company.
- (ll) **"Leases"** means all leases, subleases, permits and licences (and any replacements, renewals or extensions thereof or leases or other instruments derived therefrom or issued

in substitution therefor) pertaining to the Lands by virtue of which the holder thereof is granted certain rights to use, work, take and remove Surface Materials out of the surface within, upon or under the Lands or by virtue of which the holder thereof is deemed to be entitled to a share of Surface Materials removed from the lands specified therein, in accordance with the *Public Lands Act (Alberta)*, related regulations and the terms and conditions of each Lease in respect of each such Lands, and shall not include any other right to use Lands for any other purpose.

- (mm) **"Losses and Liabilities"** means all losses, costs, expenses, interest, charges, assessments, damages, liabilities, obligations, fines and penalties, including all reasonable costs incurred in investigating, defending or negotiating the settlement or resolution of any Claim or threatened Claim, and specifically including reasonable legal and other professional fees and expenses on a 'solicitor and his own client' basis, regardless of whether the foregoing arise in, under or by virtue of common law, in equity, under Applicable Laws, under contract, negligence, strict liability, breach of duty or otherwise, but notwithstanding the foregoing, shall not include any losses or liability for Consequential Losses.
- (nn) **"Material Adverse Change"** means any development or change in the value of the Purchased Interests or the Shares, taken as a whole, that could reasonably be expected to equal or exceed, in the aggregate, an amount equal to ten percent (10%) of the Purchase Price; provided, however, that Material Adverse Change shall not include:
- (i) material adverse effects resulting from general changes in pricing of Surface Materials;
  - (ii) any changes in the levels of production of Surface Materials from the Lands (other than where such material adverse change was directly caused by Vendor's gross negligence, wilful misconduct or wilful breach of its obligations hereunder);
  - (iii) general changes in industry, economic or political conditions, or markets;
  - (iv) changes in condition or developments generally applicable to the business of Vendor and related industry in any area or areas where the Purchased Interests are located;
  - (v) acts of God, civil unrest or similar disorder or terrorist acts;
  - (vi) disruptions, curtailments or other constraints at, in, on or associated with Third Party facilities or infrastructure, or any outages, turnarounds or other downtime at such Third Party facilities or infrastructure;
  - (vii) acts or failures to act of Governmental Authorities affecting the business of Vendor or the related industry generally in Alberta other than in direct response to an unexcused failure by Vendor to comply with Applicable Laws;
  - (viii) changes in Applicable Laws or the interpretation or enforcement of such Applicable Laws affecting the business of Vendor or related industry generally in Alberta; or
  - (ix) changes resulting from the announcement of the Transaction or the performance of the covenants set forth herein.
- (oo) **"Miscellaneous Interests"** means, subject to the limitations and exclusions below in this definition, all of Vendor's and/or the Company's, as applicable, right, title and interest in

and to all property and rights that pertain directly to the Surface Material Rights (excluding the Surface Material Rights themselves), including:

- (i) the Title and Operating Documents;
- (ii) the Surface Rights;
- (iii) the Permits;
- (iv) all records, files, reports, data, correspondence and other information, including lease and production files and records;
- (v) the Security with AEP; and
- (vi) all extensions, renewals, replacements, substitutions or amendments of or to any of the agreements and instruments described in paragraphs (i), (ii), and (iii) above;

however, the Miscellaneous Interests shall never include any of the foregoing property or rights to the extent that they include or pertain to Vendor's proprietary technology, evaluations, forecasts or interpretations, as applicable.

- (pp) **"Non-Competition Agreement"** means a non-competition agreement substantially similar to the form attached as Schedule C.
- (qq) **"Ongoing Jobs"** means any jobs and/or bids commenced by Vendor prior to the Closing Date, where there is ongoing work in progress that Purchaser will assume.
- (rr) **"Option Election"** has the meaning ascribed to that term in Clause 3.2(a).
- (ss) **"Option Expiry Date"** means, for each of the Option Interests, the date that is one hundred and eighty (180) days following the Option Vesting Date for each respective Option Interest.
- (tt) **"Option Incorporated Provisions"** means the following provisions of this Agreement that shall apply *mutatis mutandis* to each Option Purchase Agreement, with "Option Lands" replacing "Lands", "Option Lease" replacing "Lease" and "Option Interests" replacing "Purchased Interests", where applicable and as context requires: (i) Clauses 1.3 through 1.11, inclusive; (ii) Article 4 in its entirety; (iii) Article 6 in its entirety; (iv) Article 7 in its entirety; (v) Article 9 in its entirety; (vi) Article 11 in its entirety; (vii) Article 12 in its entirety; and (viii) Clauses 13.4 through 13.13, inclusive.
- (uu) **"Option Interests"** means the respective Surface Material Rights and associated Miscellaneous Interests relating to each of the separate Option Lands, each as set in an Option Purchase Agreement.
- (vv) **"Option Lands"** means the lands and associated Surface Materials located within, upon or under such lands set out in Part 2 of Schedule A, for which the Surface Material Rights have not yet been granted by the relevant Governmental Authority, but Vendor has applied for a lease or disposition in respect thereof.
- (ww) **"Option Note"** a promissory note from Purchaser to Vendor that is substantially similar to the form attached as Schedule F.

- (xx) **"Option Period"** means with respect to each of the Options, the period of time beginning on the respective Option Vesting Date and continuing until the respective Option Expiry Date.
- (yy) **"Option Purchase Agreement"** means a purchase and sale agreement in a form substantially similar as attached as Schedule E.
- (zz) **"Option Vesting Date"** means, for each of the Option Interests, the date that Vendor provides notice and evidence to Purchaser of a formal approval and issuance being made by the relevant Governmental Authority for the Surface Material Rights and/or Permit(s) relating to the relevant Option Lands.
- (aaa) **"Options"** has the meaning ascribed to that term in Clause 3.1(c).
- (bbb) **"Ordinary Course of Business"** means the Business as conducted by Vendor in the ordinary course prior to the Agreement Date and/or the Company during and following the completion of the Reorganization, as applicable, but at all times after the Agreement Date subject to the Interim Restrictions during the Interim Period.
- (ccc) **"Other Sales Taxes"** means all sales, value-added or similar taxes or other transfer taxes, fees and charges, other than GST, imposed or levied by any Governmental Authority on or in respect of the sale or supply of goods or services.
- (ddd) **"Outside Date"** means the date that is twelve (12) months following the Agreement Date.
- (eee) **"Parties"** means the parties to this Agreement and **"Party"** means any one of the Parties to this Agreement.
- (fff) **"Permits"** means all licences, permits, approvals and authorizations granted or issued by any Governmental Authority and relating to the production, use or operation of the Purchased Interests or any of them.
- (ggg) **"Permitted Encumbrances"** means:
- (i) the right reserved to or vested in any Governmental Authority by the terms of any lease, license, franchise, grant or permit or by any Applicable Laws, to terminate any such lease, license, franchise, grant or permit, to require payment of rent or other periodic payments as a condition of the continuance thereof or otherwise control or regulate the Purchased Interests in any manner;
  - (ii) easements, rights of way, servitudes and other similar rights in land, including rights of way and servitudes for highways and other roads, railways, sewers, drains, gas and oil pipelines, gas and water mains, electric light, power, telephone, telegraph and cable television conduits, poles, wires and cables;
  - (iii) rights of general application reserved to or vested in any Governmental Authority to levy taxes or require royalty payments (whether in cash or in kind) on Surface Materials or any of them or the income therefrom, or to control, limit or regulate production rates or the operation or use of any property;
  - (iv) statutory exceptions to title and the reservations, limitations, provisos and conditions in any original grants from the Crown of any mines and minerals;
  - (v) the terms and conditions of the Title and Operating Documents; and

- (vi) any Security Interest held by any Third Party in respect of which Vendor delivers a legally effective release or discharge to Purchaser at or prior to Closing.
- (hhh) "Person" includes any individual, body corporate, partnership (limited or general), trust, trustee, executor or similar official, Governmental Authority or other entity.
- (iii) "Pre-Closing Tax Period" means a taxation year or other fiscal period that ends on or before the Closing Time in respect of the Company.
- (jjj) "Purchase Price" has the meaning ascribed to that term in Clause 2.3(a).
- (kkk) "Purchased Interests" means the Surface Material Rights, the Miscellaneous Interests, the Inventory and the Goodwill.
- (lll) "Purchaser's Indemnified Party" means Purchaser, Purchaser's Affiliates or their respective directors, officers, employees and agents.
- (mmm) "Reclamation Operations" means the operations that Vendor has performed prior to Closing wherein Vendor has completed ninety percent (90%) of the required reclamation activities in respect of the Lease No. 060060 to Purchaser's satisfaction.
- (nnn) "Registered Holders" means Robert W. Beaverford, Glenn Ball, Jordan Ball, Tor Land Resources Inc., Bonnie Badry, Cathy Ball and Katie Ball.
- (ooo) "Related Persons" means, in respect of a Party, that Party's Affiliates, together with that Party's and its Affiliates' directors, officers, employees and other personnel and agents.
- (ppp) "Reorganization" has the meaning ascribed to that term in Clause 10.1(a).
- (qqq) "Security with AEP" means the arrangements in place as of the Agreement Date, whereby the Company has placed deposits with CWB equal to the sum of the Security Deposit Value and has arranged for letters of credit issued by such bank in favour of AEP in satisfaction of the requirement for security required by AEP related to the ongoing reclamation obligations of the Company in respect of each of the Leases.
- (rrr) "Security Deposit Value" means the amount of Five Hundred Forty-One Thousand One Hundred and Ninety \$541,190.00.
- (sss) "Security Interest" means security interests in the Purchased Interests or any part or portion of the Purchased Interests or the Shares granted by Vendor or its predecessors in title whether by way of mortgage, charge, pledge, lien, hypothecation, assignment by way of or in effect of security, deed of trust, Bank Act (Canada), debenture, general security agreement or land charge under personal property security legislation or otherwise.
- (ttt) "Security with AEP Loan" means funds advanced from Vendor to the Company in respect of the Security with AEP, equal to the Security Deposit Value and without any additional interest, fees or other charges related thereto.
- (uuu) "Senior Lenders" means the senior secured lenders of Purchaser, being ATB Financial and Integrated Private Debt Fund V L.P.



- (vvv) **"Shares"** means all of the Class "A" Common Shares of the Company, constituting all of the issued and outstanding capital in the Company, which are legally and beneficially owned wholly by Vendor.
- (www) **"Specific Conveyances"** means all conveyances, assignments, transfers, novations, trust declarations and other documents or instruments that are reasonably required or desirable, in accordance with normal industry practices, to convey, assign and transfer the Purchased Interests, excluding the Leases, to the Company and to make the Company a party to, and to novate the Company into, the applicable Title and Operating Documents in the place and stead of Vendor with respect to the Purchased Interests, but for certainty excluding the Lease Conveyances.
- (xxx) **"Stub Period Returns"** has the meaning ascribed to that term in Clause 8.1(a).
- (yyy) **"Surface Material Rights"** means, as applicable, Vendor's, Company's and/or the Registered Holders' entire right, title and interest in and to:
- (i) rights in, or rights to explore for and to produce, save and market, Surface Materials;
  - (ii) rights to take or remove Surface Materials in situ;
  - (iii) working interests, carried working interests, royalty interests, revenue interests, net profit interests, production payments and similar interests in Surface Materials or the proceeds of the sale of Surface Materials or to payments calculated by reference thereto;
  - (iv) rights to acquire any of the foregoing in paragraphs (i), (ii), (iii);
- but, in each case, only insofar as the foregoing relate to the Lands.
- (zzz) **"Surface Materials"** means sand, gravel and other related materials and all other substances related to any of the foregoing.
- (aaaa) **"Surface Rights"** means all rights to enter, occupy, cross or otherwise use or enjoy the surface of the Lands or any other lands used in connection with the ownership or use of the Surface Material Rights, or used to gain access to any of the Lands.
- (bbbb) **"Tax" or "Taxes"** means all taxes whether Canadian federal, provincial, territorial, local, municipal or foreign (including income, gross receipts, license, fees, payroll, employment, excise, severance, premium, windfall profits, customs duties, capital, capital stock, capital gain, value added, franchise, business, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, GST, Other Sales Taxes use, occupation, goods and services, stamp, transfer, registration, alternative or minimum tax, municipal tax, employment insurance contributions and Canada pension plan contributions, and including any interest, penalty, or addition thereto, whether disputed or not, imposed, assessed or collected by, for or under the authority of the Income Tax Act or any Governmental Authority or payable pursuant to the Income Tax Act or tax-sharing agreement or any other contract relating to the sharing or payment of any such tax, levy, assessment, tariff, duty, deficiency or fee).
- (cccc) **"Tax Contest"** has the meaning ascribed to that term in Clause 8.2(a).
- (dddd) **"Tax Notice"** has the meaning ascribed to that term in Clause 8.2(b).

- (eeee) **"Tax Returns"** means all returns, reports, declarations, elections, notices, filings, information returns, and statements in respect of Taxes that are filed or required to be filed with any applicable Governmental Authority, including all amendments, schedules, attachments or supplements thereto and whether in tangible or electronic form.
- (ffff) **"Termination Agreement"** means a termination agreement in respect of the Trust Agreements in a form substantially similar as attached as Schedule G.
- (gggg) **"Third Party"** means any Person other than Vendor or Purchaser.
- (hhhh) **"Title and Operating Documents"** means, to the extent related to the Surface Material Rights and Miscellaneous Interests, any of them all agreements and documents that relate to the ownership, operation or exploitation of the Surface Material Rights or Miscellaneous Interests, including:
- (i) the Leases;
  - (ii) agreements affecting Vendor's interest in the Surface Material Rights;
  - (iii) agreements pertaining to the Surface Rights; and
  - (iv) the Permits.
- (iiii) **"Transaction"** has the meaning given to it in the recitals of this Agreement.
- (jjjj) **"Trust Agreements"** means collectively, the existing trust agreements between Vendor, as beneficiary, and each Registered Holder, as trustee, providing that, *inter alia*, each Registered Holder holds bare legal title to the applicable Lease specified in such trust agreement, as nominee and bare trustee for, on behalf of and for the benefit of Vendor.

## 1.2 Schedules

- (a) Appended to this Agreement are the following Schedules:

Schedule A	Part 1 – Lands and Leases Part 2 – Option Lands and Leases
Schedule B	Form of Non-Competition Agreement
Schedule C	Form of Closing Note
Schedule D	Option Purchase Agreement
Schedule E	Option Note
Schedule F	Part 1 – Inventory Part 2 – Excluded Inventory
Schedule G	Ongoing Jobs
Schedule H	Form of Termination Agreement related to Trust Agreements

- (b) These schedules are incorporated into and form part of this Agreement. If any term or condition of such schedules conflicts or is inconsistent with any term or condition in the main body of this Agreement, the term or condition in the main body of this Agreement shall prevail to the extent of the conflict or inconsistency.

**1.3 Words Importing Number or Gender**

When the context reasonably permits, words in this Agreement that suggest the singular shall be construed to suggest the plural and vice versa, and words in this Agreement that suggest gender or gender neutrality shall be construed to suggest the masculine, feminine and neutral genders.

**1.4 Use of Derivative Terms**

If a derivative form of a term or expression that is already specifically defined in this Agreement is also used in this Agreement, then such derivative form shall have a meaning that corresponds to the applicable defined term or expression.

**1.5 Use of "Including"**

The use of "including" or "includes" or similar words in this Agreement, when following any general statement, term or matter, is not to be construed to limit such general statement, term or matter to the specific items immediately following such word to those or similar items, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words or phrases of similar import) is used, but rather such references shall be construed to refer to all items that could reasonably fall within the broadest possible scope of such general statement, term or matter.

**1.6 Statutory References**

Any reference in this Agreement to a law, statute, regulation, rule, by-law or other requirement of law or any governmental consent, approval, permit or other authorization shall be deemed to refer to such law, statute, regulation, rule, by-law or other requirement of law or such governmental consent, approval, permit or other authorization as it has been amended, supplemented, re-enacted, varied, or otherwise modified or replaced from time to time up to the applicable time.

**1.7 Monetary References**

Any reference in this Agreement to a monetary amount, including the use of the term "Dollar" or the symbol "\$", shall mean the lawful currency of Canada.

**1.8 References to Time**

Any reference in this Agreement to any particular time shall mean the local time in Edmonton, Alberta on the relevant day.

**1.9 Date for Payments or Other Actions**

Where any payment or calculation is to be made, or any other action is to be taken, on or as of a day that is not a Business Day, that payment or calculation is to be made, or that other action is to be taken, as applicable, on or as of the next following Business Day.

**1.10 Calculation of Time Periods**

Unless otherwise specified, time periods within or following which any payment is to be made or any act is to be done under this Agreement shall be calculated by excluding the day on which the period commences and including the day on which such period ends.

**1.11 Knowledge**

- (a) Where in this Agreement a representation or warranty is limited to the knowledge or awareness of Vendor, such knowledge shall consist of the actual knowledge or awareness



of Lisa Ball and Gordon Ball after commercially reasonable inquiry of the employees who report directly to them.

- (b) Where in this Agreement a representation or warranty is limited to the knowledge or awareness of Purchaser, such knowledge shall consist of the actual knowledge or awareness of its current officers and managers after reasonable inquiry of the employees who report directly to such officer or manager.
- (c) Other than as expressly deemed in this Agreement, in no event shall actual knowledge or awareness include constructive or imputed knowledge or awareness.

## ARTICLE 2 PURCHASE AND SALE AND CLOSING

### 2.1 Purchase and Sale

Subject to the terms and conditions of this Agreement, at Closing, Vendor shall sell, assign and deliver to Purchaser, and Purchaser shall purchase and accept from Vendor, the Shares. Ownership of the Shares shall transfer as of the Closing Date together with all risks, Losses and Liabilities, rights and benefits attendant thereto, including in respect of Vendor's and/or the Company's entire interest in and to the Purchased Interests, which shall for certainty include paying out the outstanding amounts owing to Vendor under the Security with AEP Loan.

### 2.2 Closing

- (a) Subject to all other provisions of this Agreement, Closing shall occur at the Closing Place at the Closing Time.
- (b) Subject to all other provisions of this Agreement, ownership, risk and possession of, the Shares shall pass from Vendor to Purchaser upon Closing.
- (c) At Closing, Vendor shall assign to Purchaser the benefit of any Ongoing Jobs and Purchaser shall assume responsibility for and the benefit of such Ongoing Jobs going forward.

### 2.3 Purchase Price

- (a) The consideration to be paid by Purchaser to Vendor for the Shares (the "Purchase Price") shall be Fifteen Million Five Hundred Thousand Dollars (\$15,500,000.00), plus the Security Deposit Value, and as adjusted in accordance with Clause 2.6 and allocated in accordance with Clause 2.4.
- (b) The Purchase Price shall be payable on the Closing Date by Purchaser to Vendor as follows:
  - (i) in respect of Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00) of the Purchase Price as well as the Security Deposit Value, payable by wire transfer of immediately available funds to an account designated by Vendor in writing; and
  - (ii) in respect of remaining Three Million Dollars (\$3,000,000.00) of the Purchase Price, by the delivery by Purchaser of the Closing Note to Vendor.

## 2.4 Allocation

The Purchase Price shall be allocated among the purchase of the Shares and associated interests in the manner set out below. Purchaser and Vendor shall report an allocation of the Purchase Price among the Shares and associated interests in a manner entirely consistent with this Clause 2.4 and shall not take any position inconsistent therewith in the preparation of financial statements, the filing of any Tax Returns or in the course of any audit by any Governmental Authority, Tax review or Tax proceeding relating to any Tax Returns:

- (a) Fifteen Million Four Hundred Ninety-Nine Thousand Nine Hundred Forty Nine (\$15,499,949) to the Shares;
- (b) Five Hundred Forty-One Thousand One Hundred and Ninety (\$541,190.00) to irrevocably and conclusively settle the Security with AEP Loan;
- (c) \$1 to the Non-Competition Agreements; and
- (d) \$10 to the each of the Options.

## 2.5 GST and Other Sales Taxes

- (a) If applicable, as part of the Reorganization, Vendor and the Company shall execute jointly an election under section 167 of the *Excise Tax Act (Canada)* to have the sale of the Purchased Interests and associated leases of equipment used in the Business, including the Leases beneficially owned by the Vendor, whether registered in the name of Vendor or in the name of Registered Holders, take place on a GST-free basis under Part IX of the *Excise Tax Act (Canada)* and Vendor or Purchaser, as applicable, shall cause the Company to file such election with its GST return for the reporting period in which the sale of the foregoing takes place.
- (b) It is the understanding of the Parties that no GST and no Other Sales Taxes are payable in respect of the Transaction and, therefore, at Closing, no amount will be paid by Purchaser to Vendor, and no amount will be collected by Vendor from Purchaser, on account of either GST or Other Sales Taxes in respect of the Transaction. Subject to Clause 7.1(b)(iii), if it is determined that GST or Other Sales Taxes are payable in respect of the Transaction, then Purchaser shall pay such GST and Other Sales Taxes promptly, and in any event not more than five (5) Business Days, after receiving notice or otherwise becoming aware that such GST and Other Sales Taxes are payable in respect of the Transaction; provided that Vendor shall provide to Purchaser invoices which include all prescribed information required by Purchaser to claim any input tax credits or refunds, including a separately itemized amounts of applicable GST and Other Sales Taxes and Vendor's relevant Tax registration number(s).

## 2.6 Adjustments

The Parties acknowledge and agree that there shall be no adjustments in respect of the Purchase Price in this Agreement, except with respect to:

- (a) the work-in-progress costs associated with any Ongoing Jobs to be assumed by Purchaser at the Closing Date, of which Vendor and Purchaser have agreed shall be:
  - (i) no more than the amount of twenty thousand dollars (\$20,000), if the Closing Date occurs on or before March 29, 2019; or

- (ii) such further amount as agreed to by the Parties in writing, provided that Vendor shall have no obligation whatsoever to incur any further costs in respect of Ongoing Jobs unless the Parties agree on such additional amounts,

which amount will be added to the Purchase Price payable on the Closing Date. For certainty, Purchaser will obtain the benefit of any and all accounts receivable or other pending funds associated with the Ongoing Jobs on and following Closing, and to the extent that Vendor receives any funds associated with the Ongoing Jobs following Closing, Vendor shall remit the same to Purchaser;

- (b) any amounts Purchaser or the Company must replace with either AEP or CWB related to the Security with AEP pursuant to Clause 10.1(d), wherein Purchaser shall be entitled to reduce the Security Deposit Value on a proportional basis; and
- (c) any amounts related to the Inventory removed from the Lands by Vendor during the Interim Period, wherein Purchaser shall be entitled to reduce the Purchase Price accordingly.

### ARTICLE 3 OPTION INTERESTS

#### 3.1 Option

- (a) In addition to the sale of the Shares from Vendor to Purchaser, Vendor hereby grants a series of exclusive, irrevocable and unconditional options to Purchaser to purchase any of the Option Interests, in each case upon the Option Vesting Date occurring, in accordance with this Article 3.
- (b) Upon any Option Vesting Date occurring for each of the Option Interests as such interest is granted by the applicable Governmental Authority, Vendor shall promptly provide notice in writing of the same to Purchaser in respect of the applicable Option Interests. For certainty, the Option Period shall not commence until Purchaser receives notice and reasonably sufficient particulars thereof.
- (c) For each individual lease comprising the respective Option Interests, as applicable, during each Option Period, Purchaser shall have the exclusive, irrevocable and unconditional option to acquire each such respective Option Interests of which the applicants of the same are nominees under the direction of Vendor (the "Options") on the following terms:
  - (i) the terms and conditions for the sale of each of the Option Interests shall be set out in the Option Purchase Agreement, which shall include the Option Incorporated Provisions; and
  - (ii) the consideration payable by Purchaser to Vendor for each of the Option Interests purchased by Vendor pursuant to the Options, if any, shall be One Million Dollars (\$1,000,000), comprised of Eight Hundred Thousand Dollars (\$800,000) payable in cash by wire transfer of immediately available funds to an account designated by Vendor in writing and an Option Note for the remaining Two Hundred Thousand Dollars (\$200,000), as set out in the Option Purchase Agreement; and
  - (iii) the Options and the obligations of Vendor set out in this Article 3 shall survive the termination of this Agreement for a period of three (3) years following such termination.

### 3.2 Exercise of Option

- (a) Options may be exercised by Purchaser at any time during each respective Option Period for each of the Option Interests by giving notice in writing to Vendor in respect of each Option Interests, which notice must be received within the respective Option Period (an "Option Election").
- (b) If it has not been exercised and has not previously expired, each Option will expire at the end of the respective Option Period.
- (c) Purchaser in respect of each Option shall not be bound to exercise such Option. Should Purchaser not elect to exercise an Option on or before the end of the respective Option Period, such individual Option shall terminate, and Purchaser shall have no further rights or interests hereunder in respect of such specific Option and the related Option Interests, and all rights and obligations of the Parties hereunder in respect of the same shall terminate.
- (d) For each of the Option Interests wherein Purchaser provides an Option Election, the Parties shall enter into an Option Purchase Agreement to transfer the respective Option Interests in accordance with the terms therein, which for certainty shall include Vendor completing a reorganization substantially similar to the Reorganization to transfer the exercised Option Interests in a new corporation, and following the completion of the same to Purchaser's reasonable satisfaction, the Parties shall deliver the following:
  - (i) in the case of Vendor:
    - (A) original share certificates of any new corporation that holds the entire right in and to the exercised Option Interests, along with the minute book of such corporation;
    - (B) a duly executed receipt for the consideration described in Clause 3.1(c)(ii);
    - (C) specific conveyancing documents, as required and to the satisfaction of Purchaser, acting reasonably, in respect of the relevant Option Interests held by the new entity;
    - (D) a duly executed officer's certificate substantially similar to the certificate delivered pursuant to Clause 5.1(o); and
    - (E) such other items as may be specifically required or reasonably requested by Purchaser.
  - (ii) in the case of Purchaser:
    - (A) the consideration described in Clause 3.1(c)(ii);
    - (B) a duly executed officer's certificate substantially similar to the certificate delivered pursuant to Clause 5.1(b)(i); and
    - (C) such other items as may be specifically required or reasonably requested by Vendor.

**ARTICLE 4  
CONDITIONS OF CLOSING**

**4.1 Purchaser's Conditions**

- (a) The obligation of Purchaser to complete the Transaction and purchase the Purchased Interests, Shares and the Business from Vendor is subject to the following conditions precedent, which are for the exclusive benefit of Purchaser and may be waived, in whole or in part, only by Purchaser:
- (i) the representations and warranties of Vendor set forth in Clause 6.1 shall be true and correct in all material respects as of the Agreement Date and as of the Closing Time or, in each case, shall be true and correct in all material respects as of such other date or dates as specified therein, and Vendor shall have delivered a certificate of a senior officer of Vendor (solely in such capacity and not in his or her personal capacity) addressed to Purchaser to that effect dated the Closing Date;
  - (ii) all obligations and covenants of Vendor in this Agreement that are to be performed or complied with prior to or at the Closing Time (other than in respect of the agreements, certificates and other instruments and documents to be delivered at the Closing Time by Vendor pursuant to Clause 5.1) shall have been performed or complied with in all material respects, and Vendor shall have delivered a certificate of a senior officer of Vendor (solely in such capacity and not in his or her personal capacity) addressed to Purchaser to that effect dated the Closing Date;
  - (iii) from the date of this Agreement to the Closing Time, the Purchased Interests and/or the Shares shall have suffered no Material Adverse Change that has not been remedied in all material respects to Purchaser's reasonable satisfaction;
  - (iv) prior to the Closing Time, Purchaser shall have obtained: (A) due authorization for the Transaction from its board of directors; and (B) all required consents from Purchaser's Senior Lenders;
  - (v) at the Closing Time, Vendor shall have completed the Reorganization, in accordance with Clause 10.1, hereof, so that the Company is the sole legal and beneficial owner of the Purchased Interests;
  - (vi) prior to the Closing Time, Purchaser shall have obtained all necessary regulatory approvals from Governmental Authorities to consummate the Transaction, if any;
  - (vii) as of the Closing Date, no action or proceeding shall have been commenced or threatened by a Governmental Authority having jurisdiction over the Purchased Interests or the Shares, against Vendor, Purchaser, of the Company or in respect of any of the Purchased Interests, and no restraining order, preliminary or permanent injunction or other order shall have been issued by any court of competent jurisdiction, in each case that seeks to challenge, restrain or prohibit the Closing; and
  - (viii) at the Closing Time, Vendor shall have duly delivered the agreements, certificates and other instruments and documents required pursuant to Clause 5.1.
- (b) If any of the conditions precedent in Clause 4.1(a) have not been satisfied, complied with or waived by Purchaser at or before the Outside Date, then Purchaser may terminate this Agreement by written notice to Vendor prior to the Outside Date.





- (c) If Purchaser terminates this Agreement as provided in Clause 4.1(b) as a consequence of one or more of the conditions precedent set forth in Clause 4.1(a) not having been satisfied or complied with, then Purchaser and Vendor shall be released and discharged from the further performance of any duties or obligations under this Agreement, except for those duties or obligations provided for in Clauses 11.2 and 13.13.

#### 4.2 Vendor's Conditions

- (a) The obligation of Vendor to complete the Transaction and sell and convey the Purchased Interests, Shares and the Business to Purchaser is subject to the following conditions precedent, which are for the exclusive benefit of Vendor and may be waived, in whole or in part, only by Vendor:
- (i) the representations and warranties of Purchaser set forth in Clause 6.2 shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Time or, in each case, shall be true and correct in all material respects as of such other date or dates as specified therein, and Purchaser shall have delivered a certificate of a senior officer of Purchaser (solely in such capacity and not in his or her personal capacity) addressed to Vendor to that effect dated the Closing Date;
  - (ii) all obligations and covenants of Purchaser in this Agreement that are to be performed or complied with prior to or at the Closing Time (other than in respect of the payments, agreements, certificates and other instruments and documents to be made and delivered at the Closing Time by Purchaser pursuant to Clause 5.2) shall have been performed or complied with in all material respects, and Purchaser shall have delivered a certificate of a senior officer of Purchaser (solely in such capacity and not in his or her personal capacity) addressed to Vendor to that effect dated the Closing Date;
  - (iii) at the Closing Time, Purchaser shall have duly made the payment required pursuant to Clause 5.2(a);
  - (iv) as of the Closing Date, no action or proceeding shall have been commenced or threatened by a Governmental Authority having jurisdiction over the Purchased Interests or the Shares, against Vendor, Purchaser, of the Company or in respect of any of the Purchased Interests, and no restraining order, preliminary or permanent injunction or other order shall have been issued by any court of competent jurisdiction, in each case that seeks to challenge, restrain or prohibit the Closing; and
  - (v) at the Closing Time, Purchaser shall have duly delivered the agreements, certificates and other instruments and documents required pursuant to Clause 5.2.
- (b) If any of the conditions precedent in Clause 4.2(a) have not been satisfied, complied with or waived by Vendor at or before the Outside Date, Vendor may terminate this Agreement by written notice to Purchaser prior to the Outside Date.
- (c) If Vendor terminates this Agreement as provided in Clause 4.2(b) as a consequence of one or more of the conditions precedent set forth in Clause 4.2(a) not having been satisfied or complied with, then Purchaser and Vendor shall be released and discharged from the further performance of any duties or obligations under this Agreement, except for those duties or obligations provided for in Clauses 11.2 and 13.13.

#### 4.3 Efforts to Fulfill Conditions Precedent

Purchaser and Vendor shall proceed diligently, honestly and in good faith and use their commercially reasonable efforts to satisfy and comply with the conditions precedent in Clauses 4.1(a) and 4.2(a) and shall provide the other Party with any reasonable assistance in the satisfaction of and compliance with the conditions precedent in Clauses 4.1(a) and 4.2(a) that the other Party may reasonably request.

### ARTICLE 5 CLOSING DELIVERIES

#### 5.1 Deliveries by Vendor at Closing

At the Closing Time, Vendor shall deliver, or cause to be delivered, to Purchaser:

- (a) all certificates representing the Shares duly endorsed for transfer or accompanied by a written instrument of transfer to Purchaser;
- (b) the following items: (i) a certificate duly executed by an authorized officer of the Company, dated as of the Closing Date, attached and certifying on behalf of the Company, complete and correct copies of the resolutions of the board of directors of the Company authorizing and approving the Reorganization and the transfer of the Shares to Purchaser; (ii) resignations, effective as of completion of Closing, from, and releases of any Claims by, all directors and officers of the Company against the Company, and releases of any Claims by the Company against such directors and officers; and (iii) releases of any Claims by Vendor against the Company;
- (c) a certificate duly executed by an authorized officer of Vendor, dated as of the Closing Date, attached and certifying on behalf of Vendor complete and correct copies of the resolutions of the board of directors of Vendor (in its capacity as vendor and as sole shareholder of the Company) authorizing the execution, delivery and performance by Vendor of this Agreement and the Transaction, including the Reorganization;
- (d) the minute books and other records of the Company;
- (e) Non-Competition Agreement executed by Lisa Ball and Gordon Ball;
- (f) evidence that all Taxes and similar charges set out in Clause 6.1(m) are fully paid and up to date;
- (g) no interest letters pertaining to the Purchased Interests and/or Shares, and any releases and registerable discharges or no interest letters in respect of all other registered Security Interests pertaining to the Purchased Interests, the Shares or the Company which have been requested by Purchaser not less than three (3) Business Days prior to Closing;
- (h) evidence that all of the Trust Agreements have been duly terminated and shall have no further effect on the Purchased Interests, evidenced by an agreement between Vendor and the Company, in the form of the Termination Agreement;
- (i) evidence that the Security with AEP is validly in place and held by the Company;
- (j) a receipt for the amount paid by Purchaser as specified in Clause 2.3(b)(i), including confirmation that the Security with AEP Loan is irrevocably and conclusively settled, and in respect of the Closing Note;

- (k) a specific assignment with respect to each of the Ongoing Jobs;
- (l) the Client List;
- (m) the Disclosure Letter;
- (n) an intercreditor agreement in respect of the Closing Note for each of the Senior Lenders, which shall include an acknowledgement that the Closing Note is subordinated and postponed to any indebtedness to the Senior Lenders of Purchaser;
- (o) the officer's certificate contemplated in Clauses 4.1(a)(i) and 4.1(a)(ii), which also certifies, in such detail as Purchaser reasonably requests, that all of the conditions precedent described in Clause 4.2 have been satisfied or waived by Vendor; and
- (p) such other items as may be specifically required hereunder or as may be reasonably requested by Purchaser.

## **5.2 Deliveries by Purchaser at Closing**

At the Closing Time, Purchaser shall pay or deliver, or cause to be paid or delivered, as applicable, to Vendor:

- (a) the amount to be delivered in cash as specified in Clause 2.3(b)(i), as adjusted pursuant to Clause 2.6;
- (b) the Closing Note duly executed by Purchaser as specified in Clause 2.3(b)(ii);
- (c) a specific assignment with respect to each of the Ongoing Jobs;
- (d) the officer's certificate contemplated in Clauses 4.2(a)(i) and 4.2(a)(ii), which also certifies, in such detail as Vendor reasonably requests, that all of the conditions precedent described in Clause 4.1 have been satisfied or waived by Purchaser; and
- (e) such other items as may be specifically required hereunder or as may be reasonably requested by Vendor.

## **5.3 Delivery of Title and Operating Documents and Miscellaneous Interests**

Within three (3) Business Days after the Closing Date or any other day as Vendor and Purchaser may agree, Vendor shall deliver or cause to be delivered to Purchaser the Title and Operating Documents as held by the Company and such other agreements and documents to which the Purchased Interests are subject, the original copies of those contracts, agreements, records, books, documents, licences, reports and data comprising Miscellaneous Interests which are in the possession and control of Vendor and/or the Company. Notwithstanding the foregoing in this Clause:

- (a) if and to the extent any such materials also pertain to assets or interests other than the Purchased Interests, photocopies or other copies of such materials may be provided to Purchaser, at Vendor's own cost, in lieu of original copies; and
- (b) to the extent that there are any pending or threatened Claims, audits or other matters involving or relating to the Purchased Interests that pertain to the period prior to the date of this Agreement at Closing, or should the same arise after Closing, the Company shall, upon request and after reasonable notice from Vendor, provide reasonable access to such materials as Vendor may reasonably require during the Company's normal business hours.

Vendor, at its own cost, may make and retain copies of the relevant portions of such materials.

## ARTICLE 6 REPRESENTATIONS AND WARRANTIES

### 6.1 Representations and Warranties of Vendor

Vendor makes the following representations and warranties to Purchaser in respect of the Transaction:

- (a) **Standing:** Vendor is duly organized, valid and subsisting and registered to carry on business in the Province of Alberta and has the requisite corporate capacity, power and authority to execute and deliver this Agreement and to perform the obligations that it becomes subject to under this Agreement;
- (b) **Enforceability:** This Agreement and all other documents executed and delivered by Vendor in furtherance of this Agreement have been validly executed and delivered by Vendor and the execution and delivery of this Agreement and the completion of the Reorganization and the sale of the Shares in accordance with the terms of this Agreement are not and shall not be in violation or breach of, or be in conflict with:
  - (i) any term or provision of the governing documents of Vendor;
  - (ii) the Trust Agreements;
  - (iii) any agreement, instrument, permit or authority to which Vendor is a party or by which Vendor, the Company, the Shares or the Purchased Interests are bound; or
  - (iv) any Applicable Laws or any judicial order, award, judgment or decree applicable to Vendor, the Company, the Shares or the Purchased Interests.
- (c) **Binding Obligations:** This Agreement and all other agreements delivered or to be delivered by Vendor in connection herewith constitute, or when delivered shall constitute, legal, valid and binding obligations of Vendor, enforceable against Vendor in accordance with their respective terms, subject to all Applicable Laws pertaining to bankruptcy, insolvency and creditors' rights and the general principles of equity;
- (d) **No Authorizations:** Except as otherwise provided in this Agreement, no authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by Vendor of this Agreement, other than authorizations, approvals or exemptions previously obtained and currently in force;
- (e) **Finders' Fees:** Vendor has not incurred any obligation or liability, contingent or otherwise, for brokers' or finders' fees in respect of this Agreement or the Transaction for which Purchaser shall have any obligation or liability;
- (f) **Residency:** Vendor is not a non-resident of Canada within the meaning of the Income Tax Act;
- (g) **GST:** Vendor's GST registration number is 136123585 RT0001;
- (h) **Claims:** Except for the Permitted Encumbrances, neither of the Registered Holders nor Vendor have received notice of any Claim in respect of or in connection with the Shares or

the Purchased Interests and there are no unsatisfied judgments or, to Vendor's knowledge, any threatened Claims against Vendor in respect of or in connection with the Shares or the Purchased Interests which might result in impairment or loss of the interest of Vendor in and to any of the Shares or the Purchased Interests or which might otherwise materially affect any of the Purchased Interests;

- (i) **Title to Purchased Interests:** Except for the Permitted Encumbrances and as described in Part 1 of Schedule A hereto:
- (i) prior to the Reorganization, Vendor is the sole beneficial owner of, and has good and marketable title to, the Surface Material Rights, and is the sole holder of the rights and entitlements deriving from the Surface Material Rights, and following the Reorganization, the Company shall have all such rights and entitlements relating thereto;
  - (ii) prior to the Reorganization, Vendor is the legal Registered Holder of Lease nos. 110026, 110045 and 100085, Robert W. Beaverford is the legal Registered Holder of Lease nos. 110045 and 060060, Glenn Ball is the legal Registered Holder of Lease no. 110047, Jordan Ball is the legal Registered Holder of Lease no. 120005, Tor Land Resource Inc. is the legal Registered Holder of Lease no. 080085, Bonnie Badry is the legal Registered Holder of Lease no. 110025, Cathy Ball is the legal Registered Holder of Lease no. 120006 and Katie Ball is the legal Registered Holder of Lease no. 120100, and following the Reorganization, the Company shall be the sole legal registered holder of all such Leases;
  - (iii) the Leases are in full force and effect, unamended by oral or written agreement and represent a binding and enforceable agreement between Her Majesty the Queen in right of the Province of Alberta, as represented by AEP, or any successor thereto and the Company as of the Closing Date with respect to the Lands;
  - (iv) Vendor is exclusively entitled to the full benefit and advantage of each Lease in accordance with its terms and Vendor has not sublet or assigned any of the Leases or otherwise conveyed any rights in the Leases or in the Lands to any other Person, provided that the Company shall hold the same entitlements as Vendor following the completion of the Reorganization.
  - (v) Except as explicitly disclosed in writing to Purchaser prior to the Agreement Date in the Disclosure Letter, each Lease is in good standing and there has not been any default by any party under any Lease nor is there any dispute between Vendor and/or the Company, on one hand, and AEP, on the other hand, under any Lease. Vendor has not received any notice of early termination from the AEP nor are there any arrears in rent payable under any Lease;
  - (vi) the current use of the Lands, and all of the improvements located within or associated with the Lands, comply with Applicable Laws;
  - (vii) the Lands have full and free legally enforceable access to and from public highways, which access is sufficient for the purposes of the operation of the Business in the Ordinary Course of Business, and Vendor has no knowledge of any fact or condition that would result in the interruption or termination of such access;
  - (viii) a true, correct and complete written copy of each Lease was delivered to Purchaser no later than two (2) Business Days prior to the date of this Agreement;

- (ix) there is no royalty agreement, agreement to lease, license, concession or occupancy agreement with respect to all or part of the Lands that would restrict the ability of Vendor to convey the beneficial title and legal title to the Lands to Purchaser;
  - (x) other than the Leases, there are no leases, agreements to lease, royalty agreements, subleases, license agreements or other occupancy or similar agreements under which Vendor has the right, or pursuant to which Vendor has granted to another Person the right, to use or occupy any real property related to all or any portion of the Lands;
  - (xi) Part 1 of Schedule A lists all of the Leases and set out, in respect of each Lease: (i) the date of such Lease and any amendments to it; (ii) the parties to such Lease and any amendments to it; and (iii) the expiry date of such Lease;
  - (xii) to Vendor's knowledge, the parcels constituting the Lands are not and never have been used at any time by any Person as a landfill or waste disposal site;
  - (xiii) none of the Registered Holders, Vendor nor the Company, as applicable have alienated or encumbered the Shares, the Purchased Interests or any part or portion thereof;
  - (xiv) at the Closing Time, the Shares and the Purchased Interests shall be free and clear of all Encumbrances created by, through or under Vendor, the Company or any Registered Holder, as applicable;
  - (xv) none of the Purchased Interests are subject to any joint venture, partnership, co-ownership or other contract affecting in any material manner the ownership, use, operation or transferability of any of the Purchased Interests;
  - (xvi) to Vendor's knowledge, there are no adverse Claims or challenges against or to the ownership of or title to any of the Purchased Interests and/or any rights thereunder and there is no basis therefor; and
  - (xvii) all accounts for work and services performed and materials placed or furnished upon or in respect of the Purchased Interests at the request of Vendor or the Company, as applicable have been fully paid and satisfied, and no Person is entitled to claim an Encumbrance under Applicable Laws against any Purchased Interests or any part thereof;
- (j) **Reduction of Interests:** Except for the Permitted Encumbrances and as described in Part 1 of Schedule A hereto, Vendor's interest in the Surface Material Rights is not currently subject to reduction by reference to payout of or production penalty through any right or interest granted or exercised by, through or under Vendor, nor will the Company's interest be subject to the same following the Reorganization;
- (k) **Default:** Except for the Permitted Encumbrances, none of the Registered Holders nor Vendor have received written notice of any default or purported default under any of the Title and Operating Documents that remains outstanding in any material respect or that has not been remedied in all material respects and to Vendor's knowledge, there has been no act or omission by Vendor or any Registered Holder that reasonably could constitute a breach of or a default under a Title and Operating Document that has not been remedied in all material respects or which, if unremedied, could reasonably be expected to have a material adverse effect on the value of the Purchased Interests that are the subject of the applicable Title and Operating Document;

- (l) **Breach of Law:** Except as explicitly disclosed in writing to Purchaser prior to the Agreement Date in the Disclosure Letter, Vendor has not received written or verbal notice, and to Vendor's knowledge, no Registered Holder has received written or verbal notice from any Governmental Authority, of any breach or purported breach of any Applicable Laws pertaining to the Purchased Interests or the ownership (excluding any Applicable Laws relating to the Environment) that remains outstanding in any material respect or that has not been remedied in all material respects and, to Vendor's knowledge, there has been no act or omission by Vendor or any Registered Holder that reasonably could constitute a breach of any such Applicable Laws that has not been remedied in all material respects or which, if unremedied, could reasonably be expected to have a material adverse effect on the value of the Purchased Interests that are the subject of the breach;
- (m) **Taxes, Rentals and Royalties Paid:** To the extent pertaining to the Purchased Interests:
- (i) all Crown and lessor royalties and all lease rentals;
  - (ii) all ad valorem and property taxes; and
  - (iii) all production, severance and similar taxes, charges and assessments based upon or measured by the ownership or production of Surface Materials or any of them or the receipt of proceeds from the sale thereof,
- that became due and payable to Third Parties, including applicable Governmental Authorities, on or prior to the Closing Time have been fully paid;
- (n) **Operations:** The Business has been operated and the Purchased Interests have been maintained in accordance with Applicable Laws, and Vendor has not done anything to Vendor's knowledge, in the last five (5) years in violation thereof or that could constitute material damage where Environmental Liabilities could arise except specifically the reclamation obligations being assumed by the Company and Purchaser as set out in Clause 7.3;
- (o) **Environmental Matters:** None of the Registered Holders nor Vendor have received written notice, and, to Vendor's knowledge, it has not received verbal notice from any Governmental Authority, of any orders or directives from any Governmental Authority:
- (i) that are specific to the Purchased Interests or any portion thereof, related to Environmental Liabilities which have not been complied with in all material respects; and
  - (ii) with respect to the breach of any Applicable Laws relating to the Environment that are applicable to the Purchased Interests or any portion thereof which remain outstanding in any material respect;
- (p) **Reclamation Operations:** Vendor has completed or caused to be completed, the Reclamation Operations;
- (q) **Permits:**
- (i) Vendor and/or the relevant Registered Holder, as applicable, holds all Permits that are required and necessary under Applicable Laws to use the Purchased Interests;
  - (ii) all such Permits are in force and effect in accordance with their terms; and

- (iii) to Vendor's knowledge, no event has occurred which constitutes a material violation of any such Permit during the period in which Vendor has owned the Purchased Interests to which such Permit pertains, and no event has occurred which constitutes a material violation of any such Permit during the period in which Vendor did not own the Purchased Interests to which such Permit pertains;
- (r) Provision of Documents: Vendor has made available to Purchaser, prior to the date that is three (3) days prior to the date hereof: (i) all of the Title and Operating Documents in Vendor's possession that are relevant to Vendor's title to the Surface Material Rights; (ii) all material correspondence related to the Purchased Interests received from applicable Governmental Authorities; and (iii) all other documents that were specifically requested in writing by Purchaser;
- (s) The Company: At the Closing Time, the Company:
  - (i) shall be duly organized and validly existing under the laws of Alberta;
  - (ii) shall have the corporate power and authority to, prior to the Reorganization, own, lease or otherwise hold the Purchased Interests and conduct the Business in the manner presently conducted;
  - (iii) shall not hold any property other than the Purchased Interests or conduct any business other than the Business;
  - (iv) is not the guarantor of any Person;
  - (v) has no potential, contingent or existing liabilities or other indebtedness, other than normal course reclamation obligations in relation to the Leases and in respect of the Security for AEP Loan owing to Vendor, which shall be settled by Purchaser at the Closing Time, with no further obligations in respect thereof;
  - (vi) is not subject to or involved in any Claims;
  - (vii) to Vendor's knowledge, shall be fully compliant with Applicable Laws;
  - (viii) if applicable, has charged, collected and remitted on a timely basis all Taxes as required under any Applicable Laws on any sale, supply or delivery whatsoever, made by it, and the Company is validly registered as a vendor with the relevant Governmental Authorities for the collection of such Taxes. All input tax credits, refunds, rebates and similar adjustments of Taxes claimed by the Company have been validly claimed and correctly calculated as required by Applicable Laws, and the Company has retained all documentation prescribed by Applicable Laws to support such claims. Where applicable, the Company: (i) has obtained all required information and documentation to support any zero-rating treatment of its supplies, and (ii) has been furnished with valid exemption certificates or their equivalent and has retained all such records and supporting documents in the manner required by Applicable Laws;
  - (ix) if applicable, at the time of completion of the Reorganization, is duly registered with the Canada Revenue Agency under the *Excise Tax Act* (Canada) for GST purposes;
  - (x) if applicable, has prepared and filed when due with each relevant Governmental Authority all Tax Returns required to be filed by or on behalf of it in respect of any Taxes. All such Tax Returns are correct and complete in all material respects, and



no material fact has been omitted therefrom. No extension of time in which to file any such Tax Returns is in effect. No Governmental Authority has asserted that the Company is required to file Tax Returns or pay any Taxes in any jurisdiction where it does not do so;

- (xi) if applicable, has paid in full and when due all Taxes required to be paid by it, whether or not such Taxes are shown on a Tax Return or on any assessments or reassessments;
- (xii) if applicable, has not filed a notice of objection or appeal with respect to any assessments or reassessments of the Taxes, no audit by any Governmental Authority of the Company is currently ongoing and there are no outstanding issues which have been raised and communicated to the Company by any Governmental Authority. None of Vendor or the Company has received any indication from any Governmental Authority that an audit, assessment or reassessment of the Company is proposed in respect of any Taxes, regardless of its merits. Neither the Company has executed or filed with any Governmental Authority any agreement or waiver extending the period for assessment, reassessment or collection of any Taxes;
- (xiii) if applicable, has withheld from each payment made to any Person, including any of its present or former employees, officers and directors, and all Persons who are or are deemed to be non-residents of Canada for purposes of the Income Tax Act, all amounts required by Applicable Law to be withheld, and has remitted such withheld amounts within the prescribed periods to the appropriate Governmental Authority. Each of the Company has remitted all Canada Pension Plan contributions, provincial pension plan contributions, employment insurance premiums, employer health taxes and other Taxes payable or required to be withheld and remitted by it in respect of the employees to the appropriate Governmental Authority within the time required under Applicable Law;
- (xiv) has maintained and continues to maintain at its place of business in Canada all records and books of account required to be maintained under the Income Tax Act, the *Excise Tax Act (Canada)* and any comparable Applicable Law of any province or territory in Canada, including Applicable Laws relating to sales and use taxes;
- (xv) has not entered into any transaction (or series of transactions) with any Person that is (x) a non-resident of Canada for purposes of the Income Tax Act, and (y) not dealing at arm's length with the Company for purposes of the Income Tax Act, and the terms and conditions made or imposed in respect of such transaction or transactions differ from those that would have been made between persons dealing at arm's length for purposes of the Income Tax Act;
- (xvi) if applicable, has made or obtained records or documents that meet the requirements of paragraphs 247(4)(a) to (c) of the Income Tax Act with respect to all material transactions between it and any non-resident of Canada with whom it was not dealing at arm's length for purposes of the Income Tax Act;
- (xvii) is not party to or bound by any tax sharing agreement, tax indemnity obligation in favour of any Person or similar agreement in favour of any Person with respect to Taxes (including any advance pricing agreement or other similar agreement relating to Taxes with any Governmental Authority). Without limiting the generality of the foregoing, the Company has not entered into an agreement contemplated in section 80.04 or 191.3, or subsection 18(2.3), 127(13) to (17), 127(20) or 125(3)

- of the Income Tax Act or any analogous provision of any comparable Applicable Law of any province or territory of Canada;
- (xviii) if applicable, the Company will not be required to include in a taxable period ending after the Closing Time any amount of net taxable income (after taking into account deductions claimed for such a period that relate to a prior period) attributable to income that accrued, or that was required to be reported for financial accounting purposes, in a prior taxable period but that was not included in taxable income for that or another prior taxable period;
  - (xix) has not entered into any transactions or events that have resulted, and no circumstances existing, which could result in the application to the Company of sections 80, 80.01, 80.02, 80.03, 80.04 of the Income Tax Act or any analogous provision of any comparable Applicable Law of any province or territory of Canada;
  - (xx) has not incurred any deductible outlay or expense owing to a Person not dealing at arm's length (for purposes of the Income Tax Act) with the Company, the amount of which would, in the absence of an agreement filed under paragraph 78(1)(b) of the Income Tax Act, be included in the Company's income for Canadian income tax purposes, as the case may be, for any taxation year or fiscal period beginning on or after the Closing Date under paragraph 78(1)(a) of the Income Tax Act or any analogous provision of any comparable Applicable Law of any province or territory of Canada; and
  - (xxi) has not acquired property from a Person not dealing at arm's length (for purposes of the Income Tax Act) with it in circumstances that would result in the Company becoming liable to pay Taxes of such Person under subsection 160(1) of the Income Tax Act or any analogous provision of any comparable Applicable Law of any province or territory of Canada;
- (t) Company Records: Vendor has delivered to Purchaser true and complete copies of the articles of incorporation, by-laws and other constating documents of the Company, and the minute books, share certificate book, register of shareholders, register of transfers and register of directors and officers of the Company have been maintained in accordance with Applicable Law and are complete and accurate in all material respects;
  - (u) Shares: At the Closing Time, Vendor will be the sole holder of record and will own beneficially all of the Shares, free and clear of any Encumbrances (other than this Agreement) or restrictions on transfer (other than, subject to Clause 5.1(b)(i), as contained in the Company's articles of incorporation, bylaws or other constating documents). There are no other shares, equity interests or other securities of the Company issued or outstanding, and neither Vendor or the Company is a party to any option, warrant, purchase right, right of first refusal, pre-emptive right, subscription right or other contract or commitment that could require it to sell, transfer, or otherwise dispose of any portion of the Shares (other than this Agreement). Upon Closing, Purchaser will acquire good and marketable title to the Shares, free and clear of all Encumbrances (other than this Agreement);
  - (v) The Reorganization: The Reorganization has been completed prior to the Closing Date in accordance with Applicable Laws in all respects as set forth in Article 10, and the Reorganization will not have any prejudicial effect on the Company with respect to any Tax liabilities or Tax obligations.

## 6.2 Representations and Warranties of Purchaser

Purchaser hereby makes the following representations and warranties to and in favour of Vendor in respect of the Transaction:

- (a) **Standing**: Purchaser is duly organized, valid and subsisting and registered to carry on business in the Province of Alberta and has the requisite corporate capacity, power and authority to execute and deliver this Agreement and to perform the obligations that it becomes subject to under this Agreement;
- (b) **Enforceability**: This Agreement and all other documents executed and delivered by Purchaser in furtherance of this Agreement have been validly executed and delivered by Purchaser and the execution and delivery of this Agreement and the completion of the sale of the Shares in accordance with the terms of this Agreement are not and shall not be in violation or breach of, or be in conflict with:
  - (i) any term or provision of the governing documents of Purchaser;
  - (ii) any agreement, instrument, permit or authority to which Purchaser is a party or by which Purchaser is bound; or
  - (iii) any Applicable Laws or any judicial order, award, judgment or decree applicable to Purchaser;
- (c) **Binding Obligations**: This Agreement and all other agreements delivered or to be delivered by Purchaser in connection herewith constitute, or when delivered shall constitute, legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, subject to all Applicable Laws pertaining to bankruptcy, insolvency and creditors' rights and the general principles of equity;
- (d) **No Authorizations**: Except as otherwise provided in this Agreement, no authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by Purchaser of this Agreement, other than authorizations, approvals or exemptions previously obtained and currently in force;
- (e) **Residency**: Purchaser is not a non-resident of Canada within the meaning of the Income Tax Act;
- (f) **Qualification**: Purchaser is not aware of any fact or circumstance that would prevent, adversely affect or delay the transfer of the Shares as contemplated in this Agreement, and at Closing, Purchaser shall meet all qualification requirements of Governmental Authorities to purchase and take a transfer of the Shares;
- (g) **Finders' Fees**: Purchaser has not incurred any obligation or liability, contingent or otherwise, for brokers' or finders' fees in respect of this Agreement or the Transaction for which Vendor shall have any obligation or liability;
- (h) **No Agency**: Purchaser is entering into this Agreement and will acquire the Shares for itself and not as agent or representative for any Third Party;
- (i) **Sufficient Funds**: Purchaser has or will have on the Closing Date, sufficient funds available to it to enable it to pay the cash portion of the Purchase Price on the Closing Date and all

other amounts to be paid by it hereunder in accordance with and on the basis contemplated by this Agreement; and

- (j) Independent Investigation: Purchaser has made its own independent investigation, analysis, evaluation, and inspection of the Shares and the Purchased Interests, and of the state and condition thereof, and it has relied solely on such investigation, analysis, evaluation, and inspection as to its assessment of the condition, quantum, and value of the Shares and the Purchased Interests and is not relying upon any representations, or statements in any form of Vendor, except those contained in Clause 6.1 of this Agreement.

### 6.3 Survival of Representations and Warranties

The respective representations and warranties set forth in Clauses 6.1 and 6.2 shall, survive Closing for the periods of time contemplated in Clause 7.3.

## ARTICLE 7 INDEMNITIES

### 7.1 Vendor's Indemnity

- (a) From and after Closing and subject to Clauses 7.3, 7.4 and 7.6, Vendor shall be liable for all Losses and Liabilities suffered, sustained, paid or incurred by Purchaser or its Related Persons and, in addition and as an independent covenant, shall defend, indemnify and keep harmless Purchaser and its Related Persons from and against all Losses and Liabilities suffered, sustained, paid or incurred by Purchaser or its Related Persons and all Claims made against Purchaser or its Related Persons, in either case, directly resulting from:
  - (i) any representations or warranties contained in Clause 6.1 being untrue or incorrect; or
  - (ii) a breach by Vendor of any of its covenants contained in this Agreement.
- (b) Notwithstanding any other provision of this Agreement, Vendor shall indemnify and hold harmless Purchaser from and against any unrecoverable Taxes and other Losses and Liabilities which may be suffered or incurred by Purchaser ("Indemnified Taxes"):
  - (i) as a result of, or arising out of or in connection with or related in any manner whatever to any Taxes required to be paid by the Company in respect of a Pre-Closing Tax Period;
  - (ii) as a result of a breach of, or inaccuracy in, the representations and warranties in Clauses 6.1(m) and 6.1(s)(viii) to (xxi), and
  - (iii) in connection with the Reorganization.
- (c) Notwithstanding Clause 7.1(a), Vendor shall have no liability under the foregoing assumption of liability and indemnity provided for in Clause 7.1(a)(i) and (a)(ii):
  - (i) unless the aggregate amount of all such Losses and Liabilities and Claims exceeds Seventy-Five Thousand Dollars (\$75,000.00), in which event Purchaser and its Related Persons shall be entitled to recover the total aggregate amount of all Losses and Liabilities and Claims; or

- (ii) for any act or omission undertaken or omitted to be undertaken by or on behalf of Vendor in connection with Vendor's obligations under Article 12 that was undertaken or omitted to be undertaken at the request of or with the written consent of Purchaser.
- (d) Subject to Clause 7.1(e), the indemnity provided for in this Clause 7.1 and the corresponding liability of Vendor hereunder shall not exceed the aggregate of one half (1/2) of the Purchase Price, inclusive of all cost, including legal and other professional fees.
- (e) The limitations of liability set forth in Clauses 7.1(a)(ii) and 7.1(d) shall not apply with respect to any Losses and Liabilities or Claims directly resulting from Indemnified Taxes, a breach by Vendor of Vendor's Fundamental Representation, or any fraud or willful misconduct of or by Vendor or its Related Persons.

## **7.2 Purchaser's Indemnity**

- (a) From and after Closing and subject to Clauses 7.3 and 7.6, Purchaser shall be liable for all Losses and Liabilities suffered, sustained, paid or incurred by Vendor or its Related Persons and, in addition and as an independent covenant, shall defend, indemnify and keep harmless Vendor and its Related Persons from and against all Losses and Liabilities suffered, sustained, paid or incurred by Vendor or its Related Persons and all Claims made against Vendor or its Related Persons, in either case, directly resulting from:
  - (i) any representations or warranties contained in Clause 6.2 being untrue or incorrect;
  - (ii) Vendor taking any action or causing anything to be done at the direction of Purchaser, or otherwise pursuant to Clause 12.1; or
  - (iii) a breach by Purchaser of any of its covenants contained in this Agreement,

provided that Purchaser shall have no liability under the foregoing assumption of liability and indemnity provided for in this Clause 7.2 for any Losses and Liabilities or Claims in respect of any act, omission, circumstance or other matter actually known to Vendor or Vendor's Related Persons as at the Closing Time.
- (b) Notwithstanding Clause 7.2(a), Vendor shall have no liability under the foregoing assumption of liability and indemnity provided for in Clause 7.2(a) unless the aggregate amount of all such Losses and Liabilities and Claims exceeds Seventy-Five Thousand Dollars (\$75,000.00), in which event Vendor and its Related Persons shall be entitled to recover the total aggregate amount of all Losses and Liabilities and Claims.
- (c) Subject to Clause 7.2(d), the indemnity provided for in this Clause 7.2 and the corresponding liability of Purchaser hereunder shall not exceed the aggregate of one half (1/2) the Purchase Price, inclusive of all cost, including legal and other professional fees.
- (d) The limitations of liability set forth in Clause 7.2(b) shall not apply with respect to any Losses and Liabilities or Claims directly resulting from a breach of Purchaser's Fundamental Representations or any fraud or willful misconduct of or by Purchaser or its Related Persons.

## **7.3 Purchaser's Indemnity regarding Reclamation**

Subject to the correctness of Vendor's representations and warranties in Clauses 6.1(n) and 6.1(o), from and after the Closing Time, Purchaser and/or the Company shall be liable for all costs and



expense associated with the Leases generally and specifically in respect of all future reclamation obligations and stipulations owing, as stipulated in the Leases and related to each of the Leases or by virtue of the provisions of the *Public Lands Act*, the *Public Lands Act Regulations* and any legislation passed in replacement of such legislation, to AEP. Purchaser acknowledges that such costs may exceed the Security Deposit Value and the Security with AEP and specifically agrees to indemnify and save harmless Vendor, its officers, directors, agents and employees from any claims which may be levied by any Governmental Authority including but not limited to AEP in relation to such future reclamation obligations.

#### **7.4 Time Limitation**

- (a) Subject to Clause 7.4(b), neither Vendor nor Purchaser shall make any Claim under or in respect of Clause 7.1 or 7.2, nor shall Vendor or Purchaser shall have any liability under Clause 7.1 or 7.2 unless written notice, with reasonable particulars, of the applicable Losses and Liabilities or Claim has been received by the other Party on or before the date that is twelve (12) months after Closing with respect to the representations and warranties of the Parties and the covenants, obligations or agreements in this Agreement that are to be performed by either Party at or prior to the Closing Time. The indemnity related to reclamation found in Clause 7.3 shall survive the consummation of this transaction and shall not expire whatsoever. All of the covenants and agreements contained in this Agreement that by their nature are required to be performed after the Closing shall survive the Closing in accordance with their terms until fully performed or fulfilled.
- (b) Notwithstanding any other provision of this Agreement, Purchaser's right to commence any claim for indemnification for Taxes under Section 7.1(b) and the representations and warranties in Clause 6.1 shall survive Closing and continue until ninety (90) days after the relevant Governmental Authorities are no longer entitled to assess or reassess the Company in respect of the Taxes in question, having regard, without limitation, to:
- (i) any waiver given by the Company before the Closing Date in respect of such Taxes; and
  - (ii) any entitlement of a Governmental Authority to assess or reassess the Company without limitation in the event of fraud or misrepresentation attributable to neglect, carelessness or willful default.

In the event that written notice of any bona fide claim for indemnification under this Article 7 or under Article 8 shall have been given in accordance with this Agreement within the applicable survival period, the rights and obligations that are the subject of such claim for indemnification shall survive with respect to such claim until such time as such claim is fully and finally resolved.

#### **7.5 Equitable Remedies**

If the Closing does not or will not occur as a direct result of the failure of a Party to complete the Transaction on the Closing Date, which failure constitutes a breach by such Party of this Agreement, each Party acknowledges and agrees that the other Party in such instance would suffer irreparable harm for which money damages may not be an adequate remedy at law. It is accordingly agreed that the non-defaulting Party will be entitled to seek equitable remedies, including specific performance, a restraining order and interlocutory, preliminary and permanent injunctive relief and other equitable relief to prevent such breaches of this Agreement by such defaulting Party, and such defaulting Party hereby waives any defences or requirements to post a surety bond in respect thereto in all cases.

#### **7.6 Limitation of Remedies**

- (a) From and after Closing, the sole remedy available to:

- (i) Purchaser in respect of any of Vendor's representations and warranties set forth in Clause 6.1 being untrue or incorrect or a breach by Vendor of any of its covenants in this Agreement that are to be performed prior to or at the Closing Time shall be Vendor's assumption of liability and indemnity provided for in Clause 7.1 and Purchaser hereby releases and waives any and all other Claims or any other remedy or relief that it has or hereafter may have in this regard, whether arising at law, in equity or otherwise; and
  - (ii) Vendor in respect of any of Purchaser's representations and warranties set forth in Clauses 6.2, respectively, being untrue or incorrect or a breach by Purchaser of any of their respective covenants in this Agreement that are to be performed prior to or at the Closing Time shall be Purchaser's assumptions of liability and indemnity provided for in Clauses 7.2, and Vendor hereby releases and waives any and all other Claims or any other remedy or relief that it has or hereafter may have in this regard, whether arising at law, in equity or otherwise.
- (b) In no case shall either Party be liable to the other Party for any Consequential Losses whatsoever.

## ARTICLE 8 TAX MATTERS

### 8.1 Preparation of Tax Returns

- (a) Purchaser shall cause to be prepared and filed on a timely basis all Tax Returns for the Company for any Pre-Closing Tax Period for which Tax Returns have not been filed as of the Closing Date ("Stub Period Returns"). Purchaser shall prepare each such Stub Period Return on a basis consistent with the Applicable Law. Notwithstanding the foregoing, in any Stub Period Return, the Company shall not deduct any amount in the nature of a reserve or claim any Tax credit that would require the Company as the case may be, to include in a taxable period ending after the Closing Time any amount of income. For the avoidance of doubt, Purchaser may cause the Company to make an election pursuant to subsection 256(9) of the Income Tax Act in respect of the taxation year of the Company ending on the acquisition of control of it by Purchaser. Purchaser shall provide to Vendor for its review a draft of each Stub Period Return no later than thirty (30) days in the case of an income Tax Return, and ten (10) days in the case of any other Tax Return, prior to the due date for filing such Tax Return with the appropriate Governmental Authorities. Vendor shall notify Purchaser in writing within fifteen (15) days in the case of an income Tax Return, and five (5) days in the case of any other Tax Return, after delivery of a Stub Period Return if it has any reasonable comments with respect to items set forth in such Stub Period Return. Purchaser shall consider in good faith all such comments.
- (b) Vendor shall pay all Taxes due with respect to all Tax Returns for the Company for any Pre-Closing Tax Period.

### 8.2 Tax Contests

Notwithstanding any other provision of this Agreement:

- (a) If a Purchaser receives any written proposal to assess or reassess, assessment, reassessment, appeal or notification of similar proceeding with respect to any Tax in respect of which a claim may be made for indemnification under this Agreement (each, a "Tax Notice"), such Purchaser shall promptly (but in any event within ten (10) Business Days of receipt) deliver a copy of the Tax Notice to Vendor, together with all correspondence relating to, and any other documents received in respect of, such Tax

Notice. The failure to give such notice shall not relieve Vendor of the Tax indemnification obligations provided hereunder except to the extent that such failure materially prejudices the ability of Vendor to defend a Tax claim or otherwise exercise its rights hereunder.

- (b) Where a Tax Notice relates to a Pre-Closing Tax Period, provided that Vendor has, after receiving written notification of a Tax Notice, unconditionally acknowledged in writing its obligation to indemnify Purchaser in respect of such Taxes, and provided further that Vendor has complied and continues to comply with its obligations under Section 8.1, Vendor shall have the exclusive authority to control, at its own expense, any submissions in respect of such Tax Notice and any objection or appeal in respect of such Tax Notice (each, a "Tax Contest") and may make all decisions in connection with such Tax Contest, provided that Vendor shall reimburse Purchaser for reasonable out-of-pocket expenses incurred as a result of such assumption. Notwithstanding the foregoing, Purchaser shall have the right, at Purchaser's own expense, to participate and to employ counsel of its choice for purposes of such participation. Without limiting the foregoing, Vendor may pursue or forego any and all administrative appeals, proceedings and conferences with any Governmental Authority with respect thereto, and may contest the Tax Contest in any permissible manner, provided that neither Vendor nor Purchaser may settle any Tax Contest without the prior written consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed; provided further that Purchaser shall only require Vendor's consent to settle that portion of a Tax Contest that relates to Taxes for any Pre-Closing Tax Period. If Vendor fails within fifteen (15) Business Days of receipt of a Tax Notice to assume control of a Tax Contest in accordance with this Section 8.2(b), then Vendor shall be deemed to have waived its right to control the Tax Contest and Purchaser's Indemnified Party shall have the right (without prejudice to its right to be indemnified for the Indemnified Taxes at issue) to settle and/or dispute the matter as it deems reasonable in its sole judgment.
- (c) Vendor and Purchaser shall jointly control and participate in all proceedings taken in connection with any Tax Contest relating partly to Pre-Closing Tax Periods and partly to other taxable periods. Neither Vendor nor Purchaser shall settle any such Tax Contest without the prior written consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed.

### 8.3 Tax Indemnification Events

Notwithstanding any other provision of this Agreement, the following provisions shall apply in respect of any claims for Indemnified Taxes:

- (a) In the case of a Tax Notice that is a notice of assessment or reassessment, a notice of confirmation of an assessment or reassessment, a notice of garnishment, or a similar document in respect of any Indemnified Taxes, Vendor shall, within fifteen (15) days of receipt of written notice of such claim, reimburse the applicable Purchaser's Indemnified Party for an amount equal to: (a) the full amount of such Indemnified Taxes in respect of which a Governmental Authority is permitted to take collection action; or (b) the full amount that has been garnished and applied towards any Indemnified Taxes, as applicable.
- (b) Upon the occurrence of a Tax Indemnification Event: (i) to the extent that the total of the amounts previously paid by Vendor in respect of the relevant Indemnified Taxes is less than the amount so determined to be the amount of the Indemnified Taxes, Vendor shall forthwith (and, in any event, within fifteen (15) days of the time that the applicable Purchaser's Indemnified Party notifies Vendor of the occurrence of the Tax Indemnification Event) pay to such Purchaser's Indemnified Party the amount of the Indemnified Taxes less the total of the amounts previously paid; and (ii) to the extent that the total of the amounts previously paid by Vendor in respect of such Indemnified Taxes exceeds the amount so determined to be the amount of the Indemnified Taxes, such Purchaser's



Indemnified Party shall forthwith upon receipt or confirmation of any refund or credit of such Indemnified Taxes (and, in any event, within fifteen (15) days of the receipt or confirmation of such refund or credit) pay to Vendor the amount of such refund or credit (including any interest paid or credited with respect thereto but net of any Taxes payable by Purchaser's Indemnified Party in respect of such refund, credit or interest).

#### 8.4 Tax Cooperation

Each Party shall provide reasonable cooperation to the other Party and its counsel in respect of Tax matters, including:

- (i) providing timely notice to the other Party in writing of any pending or threatened Tax audits or assessments of the Company for taxable periods for which the other may have a liability under this Agreement;
- (ii) providing the other Party and its counsel with draft copies of all filings, motions, applications, correspondence and other documents the Party defending the claim intends to file with or deliver to any Governmental Authority in connection with a Tax Contest at least ten (10) Business Days prior to the date on which such documents are filed or delivered and considering in good faith the comments of the other Party and its counsel regarding such filings, motions, applications, correspondence and other documents;
- (iii) promptly notifying the other Party of any communication the Party defending a Tax Contest receives from any Governmental Authority regarding such Tax Contest and providing the other Party with copies of all correspondence, filings or communications between such Party defending the claim, on the one hand, and any Governmental Authority or members of the staff of any Governmental Authority, on the other hand, in each case to the extent relating to any such Tax Contest; provided that Purchaser shall in all cases have the right to attend any meetings or participate in other discussions (or have Purchaser's counsel attend or participate) with the staff of any Governmental Authority or such Governmental Authority's counsel;
- (iv) keeping the other Party and its counsel advised on a timely and ongoing basis of the status of such Tax Contest and any material changes or developments with respect thereto and promptly and fully responding to all requests for information, questions and comments of the other Party and its counsel from time to time.
- (v) making available to each other in a timely fashion such data, documents and other information as may reasonably be required for the preparation and filing of all Stub Period Returns, or for the conduct of any Tax Contest, and preserving all such data, documents and information until the expiry of the limitation period under Applicable Law with respect to the taxation years or periods covered by such Stub Period Returns, or until a Final Determination has been made in respect of such Tax Contest, as the case may be; and
- (vi) timely signing and delivering such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce) Taxes, or an exemption from (or an extension in respect of) an obligation to file Tax Returns.

**ARTICLE 9  
INTERIM PERIOD**

**9.1 Maintenance of Purchased Interests**

- (a) During the Interim Period, both prior to, during and following the completion of the Reorganization, to the extent that the nature of Vendor's or the Company's interests permits, as applicable, and subject to the Title and Operating Documents:
- (i) Vendor or the Company, as applicable, shall:
    - (A) maintain the Purchased Interests in a proper and prudent manner in all material respects, in accordance with all Applicable Laws pertaining to the Purchased Interests, the terms and conditions of the Title and Operating Documents and any other agreements and documents to which the Purchased Interests are subject;
    - (B) pay or cause to be paid all costs and expenses relating to the Purchased Interests which become due and payable during the Interim Period;
    - (C) continue to maintain its insurance coverage in respect of the Purchased Interests that is in effect as of the date of this Agreement; and
    - (D) provide Purchaser with a report each month that provides reasonably sufficient details of production and sales volumes of Surface Materials related to the Purchased Interests.
  - (ii) Vendor or the Company, as applicable, shall not, without Purchaser's prior consent:
    - (A) surrender or abandon any of the Purchased Interests;
    - (B) terminate or amend, or agree to the amendment, in any material respect, of the terms or conditions of any Title and Operating Documents or enter into any new agreement respecting or affecting the Purchased Interests; or
    - (C) solicit any offers, sell, transfer, assign, encumber or otherwise dispose of, surrender, forfeit or abandon any of the Purchased Interests or any part thereof, create any adverse Claims against the Purchased Interests or agree to do any of the foregoing.
- (b) Vendor shall promptly provide Purchaser with copies of any notices received by Vendor or the Company during the Interim Period in connection with the Purchased Interests. If any right or option respecting the Purchased Interests is proposed in circumstances which would require the written consent of Purchaser, Vendor will promptly give notice thereof to Purchaser, Purchaser will advise Vendor by notice not later than two (2) Business Days prior to the time Vendor is required to respond, and Vendor will make the election authorized by Purchaser. Any election by Purchaser will not result in any reduction in the Purchase Price if Vendor's interest in the pertinent Purchased Interests is terminated,



reduced or altered as a result of that election, nor will such election constitute a breach of Vendor's representations and warranties.

## **9.2 Interim Period Restrictions on Vendor's Business**

- (a) From and after the Agreement Date, Vendor shall be restricted in its activities relating broadly to the Business and other business of a similar nature relating to Surface Materials, which shall be deemed to apply equally to the Company during and following the Reorganization until the Closing Date (the "Interim Restrictions"), which shall be as follows:
- (i) Vendor and/or the Company may continue operating in the Ordinary Course of Business, with its remaining Surface Material Rights, including the Lands; provided that Vendor and/or the Company shall not, at any time, provide any Third Party, its Affiliates or their respective Related Persons (collectively, an "Aggregate Customer") in one (1) calendar year, with more than ten thousand (10,000) tonnes of Surface Materials. In each such case, promptly upon becoming aware of an Aggregate Customer, Vendor shall consult with Purchaser and on Purchaser's direction, refer the Aggregate Customer to Purchaser;
  - (ii) Vendor shall restrict its production of Inventory to only reasonably meet the Ongoing Jobs; and
  - (iii) Vendor shall prepare to assign the Ongoing Jobs to Purchaser at Closing and shall otherwise wind-down its business activities and operations in its remaining properties and assets, excluding the Purchased Interests, to be in a position to shut down operations and any similar business of a similar nature to the Business upon the Closing.
- (b) The Interim Restrictions shall survive termination of this Agreement and apply until the earliest of: (i) the date that Closing occurs and the Non-Competition Agreements are duly executed and delivered to Purchaser; or (ii) the date of termination of this Agreement with Closing not having occurred.

## **9.3 Notice of Breach of Representations and Warranties**

During the Interim Period, each Party shall, promptly upon becoming aware of the occurrence of any event that causes, or will cause, any representation and warranty of such Party contained in this Agreement to be untrue or inaccurate, give written notice thereof to the Party to whom such representation and warranty was given.

## **ARTICLE 10 TRANSFER OF THE PURCHASED INTERESTS TO THE COMPANY**

### **10.1 The Reorganization**

- (a) Vendor shall transfer all of its interest in the Purchased Interests to the Company or shall, as applicable, cause the Registered Holders to transfer the legal title to each respective Leases to the Company, such that the Company is the sole beneficial and legal owner of all of the Purchased Interests and the Leases prior to the Closing Date (collectively, the "Reorganization").
- (b) As part of the Reorganization, Vendor shall:

- (i) transfer beneficial ownership, risk and possession of, the Purchased Interests and the Leases registered in the name of Vendor from Vendor to the Company;
  - (ii) cause each Registered Holder to: (A) transfer legal title of the applicable Lease which it holds legal title to, to the Company; and (B) do all acts and things necessary to effect the legal title transfer of each Lease to the Company;
  - (iii) complete or cause to be completed by itself and the Registered Holders, as applicable, and registered with AEP, all Lease Conveyances, and otherwise complete all Specific Conveyances relating to the Purchased Interests to convey such Purchased Interests to the Company;
  - (iv) keep Purchaser informed of the status of the Reorganization from time to time and as reasonably requested; and
  - (v) notify and provide reasonably sufficient evidence to Purchaser of the completion of the Reorganization.
- (c) The Company shall be organized in a manner that is satisfactory to Purchaser, acting reasonably, and Vendor shall provide Purchaser's representatives with the opportunity to review the minute book of the Company prior to the Closing Date.
  - (d) To the extent that the Company must replace any Security with AEP and/or surcharges in place with Governmental Authorities related to the Purchased Interests as part of the Reorganization, Vendor and the Company shall ensure that such Security with AEP are adequately replaced with AEP prior to Closing, and Vendor confirms that such amounts form part of the Purchased Interests. If Purchaser must replace any amounts related thereto for any reason prior to or on the Closing Date, Purchaser shall be entitled to reduce the Security Deposit Value, and if Purchaser must do the same following the Closing Date, Vendor will promptly pay such amount to Vendor, all in accordance with Clause 2.6(b).
  - (e) Vendor shall be solely responsible for implementing the Reorganization prior to the Closing Date and in that regard, and accordingly the following shall be for the sole account of Vendor: (i) all Losses and Liabilities incurred as a result of the Reorganization; (ii) any Taxes which arise on account of the Reorganization; and (iii) any costs related to the implementation and completion of the Reorganization.
  - (f) From the Agreement Date to the completion of the Reorganization, Vendor shall carry on the Business in the Ordinary Course of Business and, after the completion of the Reorganization to the Closing Date, shall cause the Company to carry on the Business in the Ordinary Course of Business.

## 10.2 Completion of the Reorganization

- (a) Notwithstanding anything to the contrary in this Agreement, to the extent that any of the Leases cannot not be transferred to the Company from the Registered Holders prior to the Outside Date to complete the Reorganization and proceed with the Closing, Vendor shall promptly notify Purchaser of the same, and wherein Purchaser shall have the option in its sole discretion:
  - (i) Purchaser may extend the Outside Date for an additional twelve (12) months, which option may be exercised by Purchaser up to a maximum of two (2) twelve (12) month extensions; or

- (ii) Purchaser may decline to proceed with the Closing and wherein Purchaser shall notify Vendor of the same and, this Agreement shall terminate in accordance with 4.1(b).
- (b) To the extent that any aspect or portion of the Purchased Interests, excluding the Leases, cannot be transferred to the Company to complete the Reorganization, or to the extent that the Company is not otherwise recognized as under such Specific Conveyances, and such transfer or recognition is not reasonably practicable prior to the Outside Date, Vendor may notify Purchaser of the same, and wherein Purchaser shall have the option to expressly but discreetly waive solely such particular portion of the Purchased Interests only as it relates to such Specific Conveyance in respect of the said condition in Clause 4.1(a)(v), and in such cases, Vendor or the Registered Holders, as applicable, shall hold all such interests as bare trustee, in trust, for and on behalf of the Company and in accordance with Clause 12.1, until such time as all such interests to all of the Purchased Interests have been transferred to the Company, and the Company is otherwise recognized under such Specific Conveyances.

## ARTICLE 11 ACCESS

### 11.1 Production of Documents and Access

At all reasonable times from the date hereof until the Closing Time, upon request, Vendor shall, subject to Applicable Laws and all existing contractual and fiduciary obligations and restrictions and to the provisions of Clause 13.13, make available to Purchaser in Vendor's offices all of the Title and Operating Documents, the Miscellaneous Interests and any other agreements and documents to which the Purchased Interests are subject.

### 11.2 Access Conditions

Purchaser shall comply fully with all rules, regulations, and instructions issued by Vendor or its agents regarding Purchaser's actions while upon, entering, or leaving Vendor's offices or property. Purchaser shall be liable to and to indemnify, defend and hold harmless Vendor, Vendor's Related Persons and the other Persons holding an interest in the inspected Purchased Interests, from and against any and all Losses and Liabilities occurring or arising as a result of or in connection with such entry into Vendor's offices or onto any property to so inspect the Purchased Interests.

## ARTICLE 12 POST-CLOSING MATTERS

### 12.1 Post-Closing Matters

- (a) As soon as practicable following Closing, Vendor shall remove:
  - (i) any and all tangible equipment or other personal property owned by Vendor from the Lands; and
  - (ii) any and all of the Excluded Inventory that is located on the Lands,

provided that the costs associated therewith shall be for Vendor's sole account, and Purchaser and the Company will allow Vendor and its agents and Affiliates with a reasonable right of access to the Lands for these purposes. For greater certainty, Purchaser and the Company shall have no obligation or responsibility to maintain or otherwise do anything in respect of Vendor's Excluded Inventory, tangible equipment or other personal property located on the Lands.

- (b) Following Closing, if and to the extent that any of the Inventory is located on lands other than the Lands, Vendor will or otherwise cause to allow Purchaser, the Company and/or their respective agents and Affiliates with a reasonable right of access to such lands to remove the applicable Inventory; provided that the costs associated with the removal thereof shall be for Purchaser's sole account. For greater certainty, Vendor shall have no obligation or responsibility to maintain or otherwise do anything in respect of the Inventory located on the lands other than the Lands.
- (c) Following Closing, if and to the extent that the Company must be novated into, recognized as a party to, or otherwise accepted as assignee or transferee of Vendor's interest in the Purchased Interests or certain of them, including any agreements governing or otherwise pertaining to any Purchased Interests, but excluding the Leases, the following provisions shall apply with respect to the applicable Purchased Interests until such novation, recognition or acceptance has occurred:
- (i) at Purchaser's sole cost and expense, Vendor shall maintain the applicable Purchased Interests on behalf of Purchaser as its bare trustee and use commercially reasonable efforts to maintain the applicable Purchased Interests in good standing and in accordance with Applicable Laws;
  - (ii) Vendor shall not initiate or authorize any operations with respect to the applicable Purchased Interests, except upon the written direction of Purchaser and/or the Company or if Vendor reasonably determines that such operations are required for the protection of life or property, in which case Vendor may take any actions that it reasonably determines are required in the circumstances, provided that, in such latter case, Vendor shall promptly notify Purchaser and the Company of such actions and Vendor's estimate of the costs and expenses associated therewith;
  - (iii) Vendor shall promptly provide to Purchaser and the Company all notices and other information, documents and correspondence relating to the applicable Purchased Interests that Vendor receives and shall respond promptly to such notices and other information and documents pursuant to the written instructions of Purchaser, but only if such instructions are received on a timely basis, provided that, Vendor may, but shall not be obliged to, refuse to follow any such instructions that it reasonably believes to be contrary to Applicable Laws; and
  - (iv) Vendor shall continue to strictly abide by the restrictions on its activities in accordance with Clause 9.2 and the Non-Competition Agreements, but for certainty, such activities carried out by Vendor or its Related Persons solely under this Clause 12.1 shall not be in breach of the same.
- (d) If and to the extent that Vendor holds or maintains any Purchased Interests and takes actions with respect to any Purchased Interests on behalf of Purchaser pursuant to this Clause 12.1, then, Vendor agrees that it shall hold all legal and beneficial right, title, estate and interest in and to such applicable Purchased Interests as bare trustee for the sole use, benefit and enjoyment of Purchaser and be deemed to be the agent of Purchaser in such regard. Purchaser does hereby and shall ratify all actions taken by Vendor or refrained to be taken by Vendor pursuant to the terms of this Clause 12.1 in such capacity, with the intention that all such actions shall be for all purposes deemed to be those of Purchaser, except to the extent such actions constitute gross negligence or willful misconduct by Vendor, its Related Persons or the Registered Holders.
- (e) Vendor shall not have any liability for any Losses and Liabilities as a consequence of Vendor taking any action or causing anything to be done at the direction of Purchaser under

this Clause 12.1, and Purchaser shall indemnify and hold Vendor harmless for any Losses and Liabilities that Vendor may suffer, sustain, pay or incur as a consequence of Vendor taking any action or causing anything to be done at the direction of Purchaser under this Clause 12.1, except to the extent that any such Losses and Liabilities arise as a direct consequence of the negligence or willful misconduct, or breach of this Clause 12.1 of or by Vendor or any of its Related Persons.

- (f) To the extent that any of the Miscellaneous Interests are subject to restrictions that prohibit the sale, transfer or disclosure thereof to Purchaser, Vendor will take commercially reasonable actions, and Purchaser will cooperate fully with Vendor in all commercially reasonable respects, to effect assignment thereof as soon as reasonably practicable following the Closing Date, including by seeking the consent of any relevant Third Parties for the assignment of such Miscellaneous Interests. To the extent that the Parties are unable to obtain such consents or otherwise satisfy the requirements to transfer such Miscellaneous Interests within a reasonable time period following the Closing Date, Vendor shall hold such Miscellaneous Interests in trust for Purchaser in accordance with this Clause 12.1, until such time as the Miscellaneous Interests can be properly conveyed to Purchaser.

## **ARTICLE 13 GENERAL**

### **13.1 Further Assurances**

Each Party will, from time to time and at all times after Closing, without further consideration, do such further acts and deliver all such further assurances, deeds and documents as shall be reasonably required in order to fully perform and carry out the terms of this Agreement.

### **13.2 Entire Agreement**

The provisions contained in all documents and agreements collateral hereto shall at all times be read subject to the provisions of this Agreement and, in the event of conflict, the provisions of this Agreement shall prevail.

### **13.3 Governing Law**

- (a) This Agreement shall, in all respects, be subject to, interpreted, construed and enforced in accordance with and under the laws of the Province of Alberta and the laws of Canada applicable therein and shall, in every regard, be treated as a contract made in the Province of Alberta.
- (b) The Parties shall attorn and submit to the jurisdiction of the courts of the Province of Alberta and courts of appeal therefrom in respect of all matters arising out of this Agreement.

### **13.4 Transaction Costs**

Except as otherwise expressly provided herein, each Party shall be responsible for all costs and expenses (including any Taxes imposed on such expenses) incurred by it in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the transactions contemplated by this Agreement (including the fees and disbursements of legal counsel, bankers, investment bankers, accountants, brokers and other advisers).

### **13.5 Assignment and Enurement**

This Agreement may not be assigned by a Party without the prior written consent of the other Party,

which consent may be unreasonably and arbitrarily withheld. This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective administrators, trustees, receivers, successors and permitted assigns.

**13.6 Time of Essence**

Time shall be of the essence in this Agreement.

**13.7 Notices**

The addresses for service of the Parties shall be as follows:

Vendor:

541466 Alberta Ltd.  
c/o Bishop & McKenzie LLP  
10180 101 Street  
Edmonton, Alberta T5J 1V3

Attention: Lisa Ball & Gordon Ball  
Email: lball@jlgball.com

With a copy (which does not constitute notice) to:

Bishop & McKenzie LLP  
10180 101 Street  
Edmonton, Alberta T5J 1V3

Attention: Blair R. Willie  
Email: bwillie@bmlp.ca

Purchaser:

JMB Crushing Systems Inc.  
P.O. Box 7022  
Bonnyville, AB T9N 2H4

Attention: Jeff Buck  
Email: jeffbuckjmb@gmail.com

with a copy (which does not constitute notice) to:

Blake Cassels & Graydon LLP  
3500 East Tower, Bankers Hall  
855 – 2<sup>nd</sup> Street SW  
Calgary, Alberta T2P 4J8

Attention: Dan McLeod  
Email: daniel.mcleod@blakes.com

All notices, communications and statements required, permitted or contemplated in this Agreement shall be in writing, and shall be delivered by personal delivery or courier service on a Party at the address of such Party set out above, in which case the item so served shall be deemed to have been received on the date of delivery if such delivery takes place prior to 4:00 p.m. on a Business



Day. If the actual delivery of such notice occurs after 4:00 p.m. on a Business Day or on a day that is not a Business Day, then such notice shall be deemed to have been received on the first Business Day following the date of delivery. A Party may from time to time change its address for service by giving written notice of such change to the other Party.

### **13.8 Invalidity of Provisions**

In case any of the provisions of this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby.

### **13.9 Waiver**

No failure on the part of any Party in exercising any right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any right or remedy in law or in equity or by other Applicable Laws or otherwise conferred. No waiver of any provision of this Agreement, including this Clause 13.9 shall be effective otherwise than by an instrument in writing dated subsequent to the date of this Agreement, executed by a duly authorized representative of the Party making such waiver.

### **13.10 Survival; No Merger**

The respective representations, warranties, covenants and indemnities of the Parties contained in this Agreement, including all qualifications thereof and limitations thereon, shall not be merged in any assignments, conveyances, transfers and other documents provided for under this Agreement and shall survive Closing to the extent provided pursuant to the terms thereof.

### **13.11 Remedies Cumulative**

No reference to or exercise of any specific right or remedy by a Party hereunder shall prejudice or preclude such Party from exercising or invoking any other remedy in respect thereof, whether allowed at law or in equity or expressly provided for herein. No such remedy shall be exclusive or dependent upon any other such remedy, but each Party may exercise any one or more of such remedies independently or in combination.

### **13.12 Amendment**

This Agreement shall not be varied in its terms or amended by oral agreement or by representations or otherwise other than by an instrument in writing dated subsequent to the date of this Agreement, executed by the Parties.

### **13.13 Confidentiality and Public Announcements**

- (a) Neither Vendor nor Purchaser may disclose the contents of this Agreement or any information concerning negotiations leading to this Agreement and the Transaction without the prior written consent of the other Parties. Nothing contained in this Agreement shall prevent a Party from disclosing such information: (i) to any Governmental Authority or to the public, but in either case, only if and to the extent that such disclosure is required under any Applicable Laws or any stock exchange rule or policy to which such Party or its Affiliates are subject; (ii) to obtain consents required under, or to comply with any preferential, pre-emptive or first purchase rights contained in, the Title and Operating Documents and any other agreements and documents to which the Purchased Interests are subject; or (iii) if required to obtain the consent to the Transaction by Vendor's or Purchaser's respective lenders or other security holders, including the counsel of such

Persons, and, if applicable, to obtain their release of Security Interests in, or their acknowledgement of "no interest" in, the Shares and/or the Purchased Interests; provided that, in each such instance, the Party that proposes to make such a disclosure shall advise the other Parties of such proposed disclosure and such Party shall use its reasonable efforts to prevent the disclosure of any such information that is not required to be disclosed for the listed purposes.

- (b) Neither Vendor nor Purchaser will make any press release respecting the existence of this Agreement, the contents hereof or the Transaction, without the consent of the other Parties except to the extent any of the other Parties unreasonably withholds or delays consent; provided however, the foregoing shall not restrict disclosures by any Party to the extent that those disclosures are required by Applicable Laws. A Party which proposes to make such a press release shall, to the extent reasonably possible, provide the other Parties with a draft of that release at least one (1) Business Day prior to its release to enable each of the other Parties to review that draft and advise of any comments it may have with respect thereto. The Party proposing to make the press release will not unreasonably refuse to incorporate the requested changes in the public announcement except to the extent its counsel advises that doing so will result in non-compliance with Applicable Laws.

*(Execution Page Follows)*

**13.14 Counterpart Execution**

This Agreement may be executed in any number of counterparts with the same effect as if all signatories to the counterparts had signed one document. All such counterparts shall together constitute and be construed as one instrument. For avoidance of doubt, a signed counterpart provided by electronic means shall be as binding upon the Parties as an originally signed counterpart.

**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the day and year first above written.

**541466 ALBERTA LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

**JMB CRUSHING SYSTEMS INC.**

Per:   
Name: Jeffrey Michael Buck  
Title: Director

*This is the Execution Page for the Purchase and Sale Agreement between 541466 Alberta Ltd., as Vendor, and JMB Crushing Systems Inc., as Purchaser*



**13.14 Counterpart Execution**

This Agreement may be executed in any number of counterparts with the same effect as if all signatories to the counterparts had signed one document. All such counterparts shall together constitute and be construed as one instrument. For avoidance of doubt, a signed counterpart provided by electronic means shall be as binding upon the Parties as an originally signed counterpart.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

541466 ALBERTA LTD.

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Lisa Graf Bell

President, LEO

JMB CRUSHING SYSTEMS INC.

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*This is the Execution Page for the Purchase and Sale Agreement between 541466 Alberta Ltd., as Vendor, and JMB Crushing Systems Inc., as Purchaser*

**SCHEDULE A**  
**ATTACHED TO AND FORMING PART OF THE PURCHASE AND SALE AGREEMENT MADE AS OF**  
**MARCH 15, 2019 BETWEEN 541466 ALBERTA LTD., AS VENDOR, AND JMB CRUSHING**  
**SYSTEMS INC., AS PURCHASER**

**PART 1**  
**LANDS AND LEASES**

Surface Material Lease No.	Registered Holder	Expiry of Term	Legal Description of Property
110026	541466 Alberta Ltd.	April 10, 2022	SE of 11-061-18-W4M (79.86 Acres)
110046	541466 Alberta Ltd.	March 17, 2025	N of 15-061-18-W4M (70.13 Acres)
100085	541466 Alberta Ltd.	June 23, 2026	N of 12-063-19-W4M (79.99 Acres)
110045	Robert W. Beaverford	March 17, 2025	E of 15-061-18-W4M (77.20 Acres)
110047	Glen Ball	March 17, 2025	S, NW of 15-061-18-W4M (79.53 Acres)
120005	Jordan Ball	October 4, 2027	W of 14-061-18-W4M (78.11 Acres)
060060	Robert W. Beaverford	May 27, 2024	SW of 13-065-18 W4M (41.44 Acres)
080085	Tor Land Resource Inc.	April 25, 2022	NW of 12-063-19-W4M SW of 13-063-19-W4M (79.99 Acres)
110025	Bonnie Badry	February 10, 2024	NE of 11-061-18-W4M (79.17 Acres)
120006	Cathy Ball	October 6, 2027	NW of 14-061-18-W4M (25.70 Acres)
120100	Katie Ball	October 6, 2027	SE of 21-061-18-W4M (79.30 Acres)

**PART 2  
OPTION LANDS AND LEASES**

<b>Disposition Name</b>	<b>Disposition Holder</b>	<b>Legal Land Description</b>	<b>Security Held</b>	<b>Ha/Acres</b>
SML 120101	Liana Lefebvre & Donnie W.J. Badry	Parts of N16 & S21-61-18-W4M	\$13,070.00	32.32/79.86
SML 140090	Walter Badry Jr. & Jim Wasuita	SW22-61-18-W4M	\$37,560.00	30.80/76.11
SML 140091	Jason Badry & Dakota Kirk	Parts of E16-61-18-W4M	\$6,240.00	32.14/79.42
SML 140092	John Kozma & Justyn Badry	Parts of NE16, SE21 & SW22-61-18-W4M	\$13,340.00	31.85/78.70
SML 150053	Scott Badry & Donna Lefebvre	Parts of SW23-61-18-W4M	\$9,540.00	32.27/79.75



**SCHEDULE B**  
**ATTACHED TO AND FORMING PART OF THE PURCHASE AND SALE AGREEMENT MADE AS OF**  
**MARCH 15, 2019 BETWEEN 541466 ALBERTA LTD., AS VENDOR, AND JMB CRUSHING**  
**SYSTEMS INC., AS PURCHASER**

**FORM OF NON-COMPETITION AGREEMENT**

Attached.



**NON-COMPETITION AGREEMENT**

THIS AGREEMENT dated \_\_\_\_\_, 2019 is made,

**AMONG:**

**541466 ALBERTA LTD.**, a corporation formed under the laws of the Province of Alberta ("541466")

– and –

**LISA BALL**, an individual residing in Boyle, Alberta

– and –

**GORDON BALL**, an individual residing in Boyle, Alberta

(541466, Lisa Ball and Gordon Ball, collectively being the "Restricted Parties")

– and –

**JMB CRUSHING SYSTEMS INC.**, a corporation amalgamated under the laws of the Province of British Columbia (the "Purchaser")

**WHEREAS** the Purchaser and 541466 have entered into an purchase and sale agreement dated March 15, 2019 (the "Sale Agreement") pursuant to which *inter alia* the Purchaser has agreed to purchase from 541466 all the Shares of the Company, which holds the entire right, title to and in the Purchased Interests used in carrying on the Business upon the terms and conditions contained in the Sale Agreement (the "Transaction").

**AND WHEREAS** the execution and delivery of this Agreement by the Restricted Parties is a condition precedent to the obligation of the Purchaser to complete the Transaction.

**AND WHEREAS** the Restricted Parties understand that this Agreement is necessary for the Purchaser to receive the full benefit of the goodwill of the Business and to preserve the fair market value of the assets of 541466 being purchased by the Purchaser and, accordingly, the Restricted Parties are willing to enter into this Agreement in order to ensure that such benefit is not impaired and the fair market value of such assets is not diminished by actions of the Restricted Parties.

**AND WHEREAS** the Restricted Parties understand that this Agreement is an integral part of the Transaction under which the Restricted Parties are receiving significant benefit and that the Purchaser is relying on the agreements and acknowledgements given herein by the Restricted Parties.

**NOW THEREFORE**, in consideration of the foregoing and the representations, warranties, covenants, conditions, agreements and promises contained in this Agreement and in the Sale Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:





## ARTICLE 1

### INTERPRETATION

**1.1 Definitions.** Unless context requires otherwise, capitalized terms used in this Agreement but not defined herein shall have the meanings ascribed to such terms in the Sale Agreement, and in addition:

"Agreement" means this non-competition agreement.

"Non-Competition Period" has the meaning set out in Section 2.1.

"Permitted Activities" has the meaning set out in Section 2.7.

"Restrictive Covenants" has the meaning set out in Section 2.10.

"Territory" means the Province of Alberta.

**1.2 Additional Rules of Interpretation.**

- (a) In this Agreement, unless the context requires otherwise, words in one gender include all genders and words in the singular include the plural and vice versa.
- (b) The inclusion in this Agreement of headings of Articles and Sections are for convenience of reference only and are not intended to be full or precise descriptions of the text to which they refer.
- (c) Unless the context requires otherwise, references in this Agreement to Sections or schedules are to Sections or schedules of this Agreement.
- (d) Wherever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation" and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.
- (e) The words "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions shall be construed as referring to this Agreement in its entirety and not to any particular section or portion of it.
- (f) All references herein to any agreement (including this Agreement), document or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless otherwise specified therein, includes all schedules and exhibits attached thereto.
- (g) The recitals to this Agreement are an integral part of this Agreement.

## ARTICLE 2

### NON-COMPETITION

**2.1 Non-Competition by Restricted Parties**

Subject to Section 2.2 and the Permitted Activities set forth in Section 2.7, the Restricted Parties shall not, and shall ensure that each of their Affiliates do not, without the prior written consent of the Purchaser, at any time within the period of three (3) years following the date of this Agreement (the "**Non-Competition Period**"), either individually or in partnership or jointly or in conjunction with each other or any Person, as principal, agent, director, officer, consultant, lender, contractor, employer, employee, investor or shareholder, or in any other manner, directly or indirectly,

- (a) advise, assist, manage, carry on, establish, acquire control of, be engaged in, have any financial or other interest in (including any interest by way of royalty or other compensation arrangement);
- (b) lend money to, guarantee the debts or obligations of; or
- (c) permit the Restricted Parties' name, trade names or any part thereof to be used or employed by any Person that operates, is engaged in or has an interest in,

a business anywhere within the Territory that is similar to or competes with the Business. Without limiting the effect of the foregoing, competing with the Business includes directly or indirectly selling or permitting the sale to any of the present customers of the Business of any products or services of the type sold by the Business as at the date of this Agreement.

## **2.2 Permitted Shareholdings**

The foregoing shall not prevent the Restricted Parties or its Affiliates from purchasing as a passive investor up to two percent (2%) of the outstanding publicly traded shares or other securities of any class of any issuer listed on a recognized stock exchange.

## **2.3 Non-Solicitation**

During the Non-Competition Period, the Restricted Parties shall not, and shall ensure that its Affiliates do not, either individually or in partnership or jointly or in conjunction with any other Person, as principal, agent, consultant, contractor, shareholder, interest holder, investor, partner, lender, director, officer, employer, employee or in any other manner, directly or indirectly:

- (a) contact, solicit, induce, divert or interfere with (or attempt to do any of the foregoing) any customer or prospective customer of the Business for the purpose of selling to such customer any products or services which are the same as or similar to those sold by the Business, or to persuade or attempt to persuade any customer to change its relationship or potential relationship with the Business, or to restrict, limit, discontinue or cease considering purchasing any products or services provided by the Business or to reduce the amount of business or potential business which any such customer has customarily done with the Business, or to not grant any new business to the Business (including, without limitation, any new business related to a new line of business in which the Business has or is developing plans to engage);
- (b) contact, solicit, induce, divert or interfere with (or attempt to do any of the foregoing) any supplier or prospective supplier of the Business for the purpose of persuading or attempting to persuade any supplier or prospective supplier of the Business to change its relationship with the Business, or to restrict, limit or discontinue or to reduce the amount of business which any such supplier has customarily done with the Business;
- (c) solicit or attempt to solicit, or assist or encourage any Person to solicit, hire, recruit, attempt to hire or recruit, or induce the termination of employment or cessation of services of any employee of the Business, or any contractor who regularly provides services to the Business, or assist or encourage any such employee or contractor to accept employment or engagement elsewhere, unless such solicitation occurs as a result of general advertisements for employment or contract services not specifically directed at such employees or contractors; and
- (d) in any manner, knowingly do or cause or permit to be done, any acts which may reasonably be expected to impair the relationship between the Business and its suppliers, customers, employees, contractors, or any regulatory authorities or any other Person.



## **2.4 No Disparagement**

During the Term, the Restricted Parties agree not to, and agree to cause its Affiliates not to, make any public statement that is intended to disparage the Business or the direct or indirect employees, shareholders, directors, officers, partners, representatives or agents of the Business.

## **2.5 Confidentiality**

The Restricted Parties shall not and shall ensure that its Affiliates do not use for the Restricted Parties' own account or disclose to any other Person any confidential or proprietary information or material relating to the Business. Confidential or proprietary information or material includes, without limitation, the following types of information or material, in whatever form, both existing and contemplated, regarding the Business: corporate information, including contractual licensing arrangements, plans, strategies, tactics, policies, resolutions, patent, trade-mark and trade name applications, and any litigation or negotiations; information concerning suppliers; marketing information, including sales, investment and product plans, customer lists, strategies, methods, customers, prospects and market research data; financial information, including cost and performance data, debt arrangements, equity structure, investors and holdings; operational and scientific information, including trade secrets; software; technical information, including technical drawings and designs; and personnel information, including personnel lists, resumes, personnel data, organizational structure and performance evaluations.

## **2.6 Severability and Waiver**

- (a) Subject to Section 2.6(b), each provision of this Agreement shall constitute a separate and distinct covenant and shall be severable from all other such separate and distinct covenants contained in this Agreement. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent permitted by applicable law, the Parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.
- (b) The Restricted Parties agree that if the definition of Business or Territory is held to be unreasonable, arbitrary, or against public policy by a court of competent jurisdiction, then such definition shall be modified by the Court and continued in such reduced form as the Court determines to be reasonable, non-arbitrary, and not against public policy, and the modification(s) shall be adopted by the Parties and enforced against the Restricted Parties, without invalidating the remaining portion of the definition of Business or Territory, as the case may be, and without affecting the validity or enforceability of the restrictive covenant contained in Section 2.1.

## **2.7 Permitted Activities**

Notwithstanding anything herein, the Restricted Parties shall be permitted to continue certain permitted activities (the "Permitted Activities"), which shall be limited to:

- (a) for the first twelve (12) months of the Non-Competition Period, to continue the following Permitted Activities:
  - (i) civil construction related work such as operating track hoes and other civil construction equipment and the hauling of clay, topsoil, debris and remediation operations; and

- (ii) contract hauling of sand and gravel or gravel products for third parties, which does not involve aggregate (sand or gravel) extraction; and
- (b) for the first twenty-four (24) months of the Non-Competition Period, to complete the physical reclamation work on depleted pits not included in the Sale Agreement.

## **2.8 Remedies**

The Restricted Parties acknowledge that a breach by it or any of its Affiliates of any of the covenants contained in this Agreement will cause serious harm to the Purchaser and will result in damages to the Purchaser and that the Purchaser may not be adequately compensated for such damages by monetary award alone. Accordingly, the Restricted Parties agree that in the event of any such breach, in addition to any other remedies available at law or otherwise, the Purchaser shall be entitled as a matter of right to apply to a court of competent jurisdiction for relief by way of injunction (interim and permanent), restraining order, specific performance, decree or otherwise as may be appropriate to ensure compliance by the Restricted Parties and its Affiliates with the provisions of this Agreement, and in each case without necessity of proving actual damage or of posting a bond or other security and the Restricted Parties waive any objection to an assertion that damages are not an adequate remedy or requirement to prove damages or post bond or other security in connection with any injunctive order or order for specific performance. Any remedy expressly set out in this Agreement shall be in addition to and not inclusive of or dependent upon the exercise of any other remedy available at law or otherwise.

## **2.9 Restricted Parties' Acknowledgements and Agreements**

The Restricted Parties acknowledge and agree that:

- (a) all restrictions in this Agreement are necessary and fundamental to the protection of the Purchaser and the Business and are reasonable and valid;
- (b) all defences to the strict enforcement of this Agreement against the Restricted Parties or any of its Affiliates are hereby waived;
- (c) it has signed this Agreement voluntarily and without pressure, and intends to comply with all of the covenants contained herein;
- (d) this Agreement constitutes, and will continue to constitute at all times, legal, valid and binding obligations of the Restricted Parties enforceable against the Restricted Parties in accordance with the terms hereof, subject to the actual exceptions as to bankruptcy and the availability of equitable remedies;
- (e) the covenants contained herein are intended to ensure that the Purchaser receives the full benefit of the goodwill of the Business (including, without limitation, the Restricted Parties' relationships with customers and suppliers, and the Business' confidential information) and to preserve the fair market value of the assets of the 541466 being purchased by the Purchaser;
- (f) in executing this Agreement, the Restricted Parties have had sufficient time and opportunity to seek the advice of independent legal counsel, has read and understood all of the terms and provisions of this Agreement and have had sufficient time to review and consider this Agreement thoroughly; and
- (g) the Purchaser is relying on the acknowledgements and agreements contained herein which constitute a material inducement to the Purchaser in proceeding with the Transaction.

## 2.10 Restrictive Covenants

The Parties intend that the conditions set forth in subsection 56.4(7) of the Income Tax Act (and the equivalent provisions of any applicable provincial tax legislation) have been met such that subsection 56.4(5) of the Income Tax Act (and the equivalent provisions of any applicable provincial tax legislation) applies to any 'restrictive covenants' as defined in subsection 56.4(1) of the Income Tax Act granted by the Restricted Parties pursuant to the Agreement (the "Restrictive Covenants"). For greater certainty, the Parties hereto agree and acknowledge that: (i) for the purposes of the Income Tax Act, no part of the consideration payable to the Restricted Parties under the Purchase Agreement is allocable to, and no proceeds are receivable by the Restricted Parties for granting, the Restrictive Covenants; (ii) the Restrictive Covenants are integral to the Purchase Agreement and have been granted to maintain or preserve the fair and market value of the Shares; and (iii) the Restrictive Covenants meet the requirements specified in the clause 56.4(7)(b)(ii)(B) of the Income Tax Act.

## 2.11 Breach of Restrictions

If the Restricted Parties are in breach of any of their obligations hereunder, the running of the Non-Competition Period shall be stayed and shall recommence upon the date the Restricted Parties cease to be in breach thereof, whether voluntarily or by injunction.

## ARTICLE 3

### GENERAL

#### 3.1 Notices.

- (a) Any notice, direction, certificate, consent, determination, summons, claim or other legal process or communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent by fax, e-mail (return receipt requested) or other similar means of electronic communication, in each case to the applicable address set out below:

- (iii) if to the Restricted Parties, to:

541466 Alberta Ltd.  
c/o Bishop & McKenzie LLP  
10180 101 Street  
Edmonton, Alberta T5J 1V3

Attention: Lisa Ball & Gordon Ball  
Email: lball@jlgball.com

With a copy (which does not constitute notice) to:

Bishop & McKenzie LLP  
10180 101 Street  
Edmonton, Alberta T5J 1V3

Attention: Blair R. Willie  
Email: bwillie@bmlp.ca

- (iv) if to the Purchaser, to:

JMB Crushing Systems Inc.  
P.O. Box 7022

Bonnyville, AB T9N 2H4

Attention: Jeff Buck  
Email: jeffbuckjmb@gmail.com

with a copy (which does not constitute notice) to:

Blake Cassels & Graydon LLP  
3500 East Tower, Bankers Hall  
855 – 2<sup>nd</sup> Street SW  
Calgary, Alberta T2P 4J8

Attention: Dan McLeod  
Email: daniel.mcleod@blakes.com

- (b) Any such communication so given or made shall 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 faxing, e-mailing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, faxed, e-mailed or sent before 4:30 p.m. on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day. Any such communication sent by mail shall be deemed to have been given and made and to have been received on the fifth Business Day following the mailing thereof; provided however that no such communication shall be mailed during any actual or apprehended disruption of postal services. Any such communication given or made in any other manner shall be deemed to have been given or made and to have been received only upon actual receipt.
- (c) Any Party may from time to time change its address under this Section 3.1 by notice to the other Party given in the manner provided by this Section 3.1.

### **3.2 Further Assurances**

Each Party shall from time to time promptly execute and deliver or cause to be executed and delivered all such further documents and instruments and shall do or cause to be done all such further acts and things in connection with this Agreement that the other Party may require as being necessary or desirable in order to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement or any provision hereof.

### **3.3 Amendment**

No amendment of this Agreement shall be effective unless made in writing and signed by the Parties.

### **3.4 Waiver**

A waiver of any default, breach or non-compliance under this Agreement shall not be effective unless in writing and signed by the Party to be bound by the waiver, and then only in the specific instance and for the specific purpose for which it has been given. No waiver shall be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other Party. The waiver by a Party of any default, breach or non-compliance under this Agreement shall not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).

### **3.5 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and shall be treated in all respects as an Alberta contract.

### **3.6 Attornment**

Each Party agrees (a) that any legal proceeding of any kind relating to this Agreement may (but need not) be brought in any court of competent jurisdiction in the Province of Alberta, and for that purpose now irrevocably and unconditionally attorns and submits to the jurisdiction of such Alberta court; (b) that it irrevocably waives any right to, and shall not, oppose any such legal proceeding in the Province of Alberta on any jurisdictional basis, including *forum non conveniens*; and (c) not to oppose the enforcement against it in any other jurisdiction of any order, decision or ruling of any kind duly obtained from an Alberta court as contemplated by this Section 3.6.

### **3.7 Time of the Essence**

Time shall be of the essence of this Agreement and every part hereof, and no extension or variation of this Agreement shall operate as a waiver of this provision.

### **3.8 Successors and Assigns; Assignment**

This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective successors and permitted assigns. Neither Party may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its respective rights or obligations under this Agreement without the prior written consent of the other Party.

### **3.9 Counterparts**

This Agreement may be executed in 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. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Party by facsimile, e-mail in pdf format or other electronic transmission and such transmission shall constitute delivery of an executed copy of this Agreement to the receiving Party.

*(Signature page follows)*



**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the date first written above.

**541466 ALBERTA LTD.**

**JMB CRUSHING SYSTEMS INC.**

Per: \_\_\_\_\_  
Name: **Lisa Ball**  
Title: **President**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**LISA BALL**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**GORDON BALL**

*(Signature page to a Non-Competition Agreement between 541466 Alberta Ltd., Lisa Ball, Gordon Ball, as restricted parties, and JMB Crushing Systems Inc.)*





**SCHEDULE C**  
**ATTACHED TO AND FORMING PART OF THE PURCHASE AND SALE AGREEMENT MADE AS OF**  
**MARCH 15, 2019 BETWEEN 541466 ALBERTA LTD., AS VENDOR, AND JMB CRUSHING SYSTEMS**  
**INC., AS PURCHASER**

**FORM OF CLOSING NOTE**

Attached.



**CLOSING PROMISSORY NOTE**

Date: \_\_\_\_\_

**NOW, FOR VALUE RECEIVED JMB CRUSHING SYSTEMS INC. (the "Borrower") unconditionally promises to pay to 541466 ALBERTA LTD. (o/a JLG Ball Enterprises) (the "Lender") at PO Box 211, Boyle, Alberta, T0A 0M0, or such other place as the Lender may direct in writing, the sum of Cdn.\$3,000,000 (Three Million Canadian Dollars) (the "Principal"), in five (5) equal annual Principal instalments of Cdn.\$600,000 (Six Hundred Thousand Canadian Dollars) per year, plus annual Interest payments accruing thereon on or before the last day of each calendar year beginning on the first-year anniversary following the date hereof and continuing on the anniversary thereof with the final payment on the fifth-year anniversary following the date hereof in such amount as is required to pay in full all Principal and Interest outstanding under this promissory note on such date.**

Interest shall be calculated on the daily balance of such outstanding Principal and payable annually on the same date (for certainty, the first such payment of interest shall be due on the first-year anniversary following the date hereof), at the same place, as the Principal payments both before and after maturity, default and judgment, at a nominal rate per annum of 5% (five percent) and interest on overdue interest payable at the same time, place and rate.

Upon default in payment by the Borrower of any instalment of principal or interest when due under this promissory note, which default is not remedied within thirty (30) days after the Lender notifies the Borrower thereof in writing, all principal and interest outstanding under this promissory note shall become immediately due and payable upon demand by the Lender.

The principal amount outstanding under this promissory note may be prepaid in whole or in part, provided that such payment is made concurrently together with a payment of accrued and unpaid interest thereon, at any time and from time to time without notice, bonus or penalty. Any such principal prepayments shall be applied to the principal instalments payable under this promissory note in the reverse order of maturity and may not be re-borrowed.

Notwithstanding anything else in this promissory note or elsewhere, the Borrower shall not grant, and the Lender shall not accept, any mortgage, deed of trust, lien, pledge, hypothec (whether movable or immovable), hypothecation, encumbrance, charge, security interest, royalty interest, adverse claim, defect to title or right of set-off in, or any other arrangement having the effect of providing security, on the present and future assets, property and undertaking of the Borrower, real and personal, moveable and immoveable, of whatsoever nature and kind and wheresoever situate as security for the indebtedness of the Borrower under this promissory note.

Each of the parties hereto agrees that it will do all acts and things and execute and deliver such further and other agreements, instruments and documents as may be necessary or appropriate to carry out the intent and purpose of and give full effect to this promissory note and the other documents related hereto and every part thereof.

This promissory note shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the laws of Canada applicable in that Province. The Borrower waives presentment for payment, notice of dishonour, protest and notice of protest in respect of this promissory note. This



promissory note shall become effective when it has been executed and delivered. Time shall be of the essence of this promissory note in all respects. This promissory note constitutes the entire agreement of the parties pertaining to the indebtedness evidenced by this promissory note and supersedes all prior agreements, understandings, negotiations and discussions with respect to such indebtedness, whether oral or written.

*(Signature page follows)*



**JMB CRUSHING SYSTEMS INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGED AND AGREED BY THE LENDER:**

**541466 ALBERTA LTD. O/A JLG BALL  
ENTERPRISES**

By: \_\_\_\_\_  
Name: **Lisa Ball**  
Title: **President**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*(Signature page to a closing promissory note from JMB Crushing Systems Inc. to 541466 Alberta Ltd.)*



**SCHEDULE D**  
**ATTACHED TO AND FORMING PART OF THE PURCHASE AND SALE AGREEMENT MADE AS OF**  
**MARCH 15, 2019 BETWEEN 541466 ALBERTA LTD., AS VENDOR, AND JMB CRUSHING SYSTEMS**  
**INC., AS PURCHASER**

**FORM OF OPTION PURCHASE AGREEMENT**

Attached.



**FORM OF OPTION PURCHASE AGREEMENT**

THIS AGREEMENT made as of \_\_\_\_\_ .

**BETWEEN:**

**541466 ALBERTA LTD.**, a corporation formed under the laws of the Province of Alberta ("Vendor")

- and -

**JMB CRUSHING SYSTEMS INC.**, a corporation amalgamated under the laws of the Province of British Columbia ("Purchaser")

**WHEREAS** pursuant to the Purchase and Sale Agreement dated \_\_\_\_\_, 2019 between Vendor and Purchaser (the "Purchase Agreement"), Purchaser has provided an Option Notice to Vendor in respect of the Option Interests;

**AND WHEREAS** Vendor wishes to sell the Option Interests to Purchaser and Purchaser wishes to purchase the Option Interests from Vendor, subject to and in accordance with the terms and conditions of this Agreement.

**NOW THEREFORE** the Parties agree as follows:

**ARTICLE 1  
INTERPRETATION**

**1.1 Definitions**

In this Agreement, unless as set out in this Clause 1.1 or the context otherwise requires, capitalized terms and phrases shall have the meaning set out in the Purchase Agreement, with the exception of the following:

- (a) "Agreement" means this Option Purchase Agreement, including the attached schedules.
- (b) "Applicant" means the Person who has applied for the Option Interests, being \_\_\_\_\_ .
- (c) "Closing Date" means the date that is not more than fifteen (15) Business Days following the completion of the Reorganization and receipt by Purchaser of notice thereof, or any other Business Day as Vendor and Purchaser may agree, provided that, following Closing, references to the "Closing Date" shall mean the date on which Closing actually occurred.
- (d) "Company" means a corporation incorporated within the jurisdiction of the Province of Alberta, formed for the sole purpose of holding the Option Interests, which shall be a direct wholly-owned subsidiary of Vendor and shall hold the entire right in and to the Option Interests at Closing.
- (e) "Option Interests" means the respective Surface Material Rights and associated Miscellaneous Interests pertaining to the Option Lands.
- (f) "Option Lands" means the lands and premises that are subject to the Option Lease, as set out in Schedule A.

- (g) "Option Lease" means the Lease related to the Option Lands, as set out in Schedule A.
- (h) "Option Note" a promissory note from Purchaser to Vendor that is in the form attached to the Purchase Agreement as Schedule E.
- (i) "Purchase Agreement" has the meaning given in the recitals to this Agreement.
- (j) "Purchase Price" has the meaning set out in Clause 2.1(a) of this Agreement.
- (k) "Reorganization" has the meaning set out in Clause 3.1 of this Agreement.
- (l) "Security Deposit Value" means the amount of \_\_\_\_\_ .
- (m) "Shares" means all of the common shares of the Company, being all of the issued and outstanding capital in the Company.
- (n) "Transaction" means the purchase of the Option Interests by Purchaser from Vendor, on and subject to the terms and conditions, and as more fully described in this Agreement.

## 1.2 Schedule

- (a) Appended to this Agreement are the following Schedule:

Schedule A            Option Lands and Leases

- (b) This schedule is incorporated into and form part of this Agreement. If any term or condition of such schedule conflicts or is inconsistent with any term or condition in the main body of this Agreement, the term or condition in the main body of this Agreement shall prevail to the extent of the conflict or inconsistency.

## 1.3 Purchase Agreement

- (a) This Transaction is subject to the Purchase Agreement, which are incorporated by reference into this Agreement. Specifically, the Option Incorporated Provisions shall apply *mutatis mutandis* to this Agreement.
- (b) In this Agreement, and notwithstanding anything to the contrary, references to the "Lands", "Leases" and the "Purchased Interests" within the Incorporated Provisions, including within such defined terms therein, shall be deemed, *mutatis mutandis*, to mean the "Option Lands", "Option Lease" and the "Option Interests", respectively.
- (c) References herein to Clauses of the Purchase Agreement shall be deemed to be the Option Incorporated Provisions.

## ARTICLE 2 PURCHASE AND SALE AND CONVEYANCE

### 2.1 Purchase and Sale and Conveyance

- (a) Vendor, pursuant to and for the consideration provided for in the Purchase Agreement and this Agreement, the receipt and sufficiency of such consideration being hereby acknowledged by Vendor, hereby sells, assigns, transfers, conveys and sets over to Purchaser, the Option Interests, to have and to hold the same absolutely, together with all benefit and advantage to be derived therefrom.

- (b) Subject to all other provisions of this Agreement, title to, and beneficial ownership, risk and possession of, the Option Interests shall pass from Vendor to Purchaser concurrently with the execution of this Agreement.

## 2.2 Closing

- (a) Subject to all other provisions of this Agreement, Closing shall occur at the Closing Place at the Closing Time.
- (b) Subject to all other provisions of this Agreement, ownership, risk and possession of, the Shares shall pass from Vendor to Purchaser upon Closing.

## 2.3 Purchase Price

Concurrently with the execution and delivery of this Agreement, Purchaser has paid or delivered the following consideration to Vendor for the Option Interests, which is One Million Dollars (\$1,000,000) cumulatively (the "Purchase Price"):

- (a) in respect of Eight Hundred Thousand Dollars (\$800,000) of the Purchase Price plus the Security Deposit Value, payable in cash by wire transfer of immediately available funds to an account designated by Vendor in writing; and
- (b) in respect of Two Hundred Thousand Dollars (\$200,000) of the Purchase Price, by the delivery by Purchaser, of the Option Note to Vendor.

## 2.4 GST and Other Sales Taxes

- (a) If applicable, at the Closing, Vendor and Purchaser shall execute jointly an election under section 167 of the *Excise Tax Act (Canada)* to have the sale of the Option Interests take place on a GST-free basis under Part IX of the *Excise Tax Act (Canada)* and Purchaser shall file such election with its GST return for the reporting period in which the sale of such Option Interests takes place.
- (b) It is the understanding of the Parties that no GST and no Other Sales Taxes are payable in respect of the Transaction and, therefore, at Closing, no amount will be paid by Purchaser to Vendor, and no amount will be collected by Vendor from Purchaser, on account of Other Sales Taxes in respect of the Transaction. However, if it is determined that Other Sales Taxes are payable in respect of the Transaction, then Purchaser shall pay such Other Sales Taxes promptly after receiving notice or otherwise becoming aware that such Other Sales Taxes are payable in respect of the Transaction; provided that Vendor shall provide to Purchaser invoices which include all prescribed information required by Purchaser to claim any input tax credits or refunds, including a separately itemized amounts of applicable GST and Other Sales Taxes and the Vendor's relevant Tax registration number(s).

## 2.5 No Adjustments

The Parties acknowledge and agree that there shall be no adjustments in respect of the Purchase Price in this Agreement.



**ARTICLE 3  
TRANSFER OF THE OPTION INTERESTS TO THE COMPANY**

**3.1 The Reorganization**

- (a) Vendor shall transfer all of its interest in the Option Interests to the Company or shall, as applicable, cause the Applicant to transfer the legal title to the Option Lease to the Company, such that the Company is the sole beneficial and legal owner of all of the Option Interests prior to the Closing Date (collectively, the "Reorganization").
- (b) As part of the Reorganization, Vendor shall:
  - (i) transfer beneficial ownership, risk and possession of, the Option Interests from Vendor to the Company;
  - (ii) cause the Applicant to: (A) transfer legal title of the Option Lease which it holds legal title to, to the Company; and (B) do all acts and things necessary to effect the legal title transfer of the Option Lease to the Company;
  - (iii) complete or cause to be completed by the Registered Holders and registered with AEP, the Lease Conveyance for the Option Lease, and otherwise complete all Specific Conveyances relating to the Option Interests to convey the Option Interests to the Company;
  - (iv) ensure that the Company is the sole legal registered holder of the Option Lease and hold the entire beneficial interest to the Option Interests at the Closing Date;
  - (v) keep Purchaser informed of the status of the Reorganization from time to time and as reasonably requested; and
  - (vi) notify and provide reasonably sufficient evidence to Purchaser of the completion of the Reorganization.
- (c) The Company shall be organized in a manner that is satisfactory to Purchaser, acting reasonably, and Vendor shall provide Purchaser's representatives with the opportunity to review the minute book of the Company prior to the Closing Date.
- (d) To the extent that the Company must replace any security deposits and/or surcharges in place with Governmental Authorities related to the Option Interests as part of the Reorganization, Vendor and the Company shall ensure that such security deposits are adequately replaced with AEP prior to Closing, including at least in the amount of the Security Deposit Value, and Vendor confirms that such amounts form part of the Option Interests. If Purchaser must replace any amounts related thereto for any reason prior to, prior to or on the Closing Date, and if Purchaser must do the same following the Closing Date, Vendor will promptly pay such amount to Vendor.

**ARTICLE 4  
CLOSING DELIVERIES**

**4.1 Deliveries by Vendor at Closing**

At the Closing Time, Vendor shall deliver, or cause to be delivered, to Purchaser:

- (a) all certificates representing the Shares duly endorsed for transfer or accompanied by a written instrument of transfer to Purchaser;

- (b) the following items: (i) a certificate duly executed by an authorized officer of the Company, dated as of the Closing Date, attached and certifying on behalf of the Company, complete and correct copies of the resolutions of the board of directors of the Company authorizing and approving the Reorganization and the transfer of the Shares to Purchaser; (ii) resignations, effective as of completion of Closing, from, and releases of any Claims by, all directors and officers of the Company against the Company, and releases of any Claims by the Company against such directors and officers; and (iii) releases of any Claims by Vendor against the Company;
- (c) a certificate duly executed by an authorized officer of Vendor, dated as of the Closing Date, attached and certifying on behalf of Vendor complete and correct copies of the resolutions of the board of directors of Vendor (in its capacity as vendor and as sole shareholder of the Company) authorizing the execution, delivery and performance by Vendor of this Agreement and the Transaction, including the Reorganization;
- (d) the minute books and other records of the Company;
- (e) no interest letters pertaining to the Option Interests and/or Shares, and any releases and registerable discharges or no interest letters in respect of all other registered Security Interests pertaining to the Option Interests, the Shares or the Company which have been requested by Purchaser not less than three (3) Business Days prior to Closing;
- (f) a receipt for the amount specified in Clause 2.3 and the Option Note;
- (g) if applicable, an intercreditor agreement in respect of the Option Note for each of the Senior Lenders, which shall include an acknowledgement that the Option Note is subordinated and postponed to any indebtedness to the Senior Lenders of Purchaser;
- (h) the officer's certificate that certifies, in such detail as Purchaser reasonably requests, that all of the conditions precedent described in Clause 4.2 of the Purchase Agreement have been satisfied or waived by Vendor; and
- (i) such other items as may be specifically required hereunder or as may be reasonably requested by Purchaser.

#### **4.2 Deliveries by Purchaser at Closing**

At the Closing Time, Purchaser shall pay or deliver, or cause to be paid or delivered, as applicable, to Vendor:

- (a) the amount to be delivered in cash as specified in Clause 2.3;
- (b) the Option Note duly executed by Purchaser as specified in Clause 2.3(b);
- (c) the officer's certificate that certifies, in such detail as Vendor reasonably requests, that all of the conditions precedent described in Clause 4.1 of the Purchase Agreement have been satisfied or waived by Purchaser; and
- (d) such other items as may be specifically required hereunder or as may be reasonably requested by Vendor.

#### **4.3 Delivery of Title and Operating Documents and Miscellaneous Interests**

Within three (3) Business Days after the Closing Date or any other day as Vendor and Purchaser may agree, Vendor shall deliver or cause to be delivered to Purchaser the Title and Operating

Documents as held by the Company and such other agreements and documents to which the Option Interests are subject, the original copies of those contracts, agreements, records, books, documents, licences, reports and data comprising Miscellaneous Interests which are in the possession and control of Vendor and/or the Company. Notwithstanding the foregoing in this Clause:

- (a) if and to the extent any such materials also pertain to assets or interests other than the Option Interests, photocopies or other copies of such materials may be provided to Purchaser, at Vendor's own cost, in lieu of original copies; and
- (b) to the extent that there are any pending or threatened Claims, audits or other matters involving or relating to the Option Interests that pertain to the period prior to the date of this Agreement at Closing, or should the same arise after Closing, the Company shall, upon request and after reasonable notice from Vendor, provide reasonable access to such materials as Vendor may reasonably require during the Company's normal business hours. Vendor, at its own cost, may make and retain copies of the relevant portions of such materials.

## **ARTICLE 5 GENERAL**

### **5.1 Further Acts**

Each Party will, from time to time and at all times following execution and delivery of this Agreement, without further consideration, do such further acts and deliver all such further assurances, deeds and documents as shall be reasonably required in order to fully perform and carry out the terms of this Agreement.

### **5.2 Governing Law**

This Agreement shall be subject to and interpreted, construed and enforced in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein (other than those relating to conflicts or choice of laws) and shall be treated as a contract made in the Province of Alberta. The Parties irrevocably attorn and submit to the exclusive jurisdiction of the courts of the Province of Alberta and courts of appeal therefrom in respect of all matters arising out of this Agreement, other than the enforcement of judgments.

### **5.3 Counterparts**

This Agreement may be executed in counterparts and all executed counterparts together shall constitute one agreement. A signed counterpart provided by way of email or other electronic means shall be as binding upon the Parties as an originally signed counterpart.

*(Execution Page Follows)*



**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the day and year first above written.

**541466 ALBERTA LTD.**

**JMB CRUSHING SYSTEMS INC.**

Per: \_\_\_\_\_  
Name: **Lisa Ball**  
Title: **President**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*This is the Execution Page for the Option Purchase Agreement between 541466 Alberta Ltd., as Vendor, and JMB Crushing Systems Inc., as Purchaser*



**EXHIBIT A**  
**ATTACHED TO AND FORMING PART OF THE OPTION PURCHASE AGREEMENT MADE AS OF**  
**\_\_\_\_\_, 2019 BETWEEN 541466 ALBERTA LTD., AS VENDOR, AND JMB CRUSHING SYSTEMS**  
**INC., AS PURCHASER**

**OPTION LANDS AND OPTION LEASE**

**[NTD: To be attached for each of the individual Option Interests that Purchaser provides the Option Election to Vendor.]**



**SCHEDULE E**  
**ATTACHED TO AND FORMING PART OF THE PURCHASE AND SALE AGREEMENT MADE AS OF**  
**MARCH 15, 2019 BETWEEN 541466 ALBERTA LTD., AS VENDOR, AND JMB CRUSHING SYSTEMS**  
**INC., AS PURCHASER**

**FORM OF OPTION NOTE**

Attached.



## OPTION PROMISSORY NOTE

Date: \_\_\_\_\_

**NOW, FOR VALUE RECEIVED JMB CRUSHING SYSTEMS INC. (the "Borrower") unconditionally promises to pay to 541466 ALBERTA LTD. (o/a JLG Ball Enterprises) (the "Lender") at PO Box 211, Boyle, Alberta, T0A 0M0, or such other place as the Lender may direct in writing, the sum of Cdn.\$200,000 (Two Hundred Thousand Dollars) (the "Principal"), in five (5) equal annual Principal instalments of Cdn.\$40,000 (Forty Thousand Dollars) per year, plus annual Interest payments accruing thereon on or before the last day of each calendar year beginning on the first-year anniversary following the date hereof and continuing on the anniversary thereof with the final payment on the fifth-year anniversary following the date hereof in such amount as is required to pay in full all Principal and Interest outstanding under this promissory note on such date.**

Interest shall be calculated on the daily balance of such outstanding Principal and payable annually on the same date (for certainty, the first such payment of interest shall be due on the first-year anniversary following the date hereof), at the same place, as the Principal payments both before and after maturity, default and judgment, at a nominal rate per annum of 5% (five percent) and interest on overdue interest payable at the same time, place and rate.

Upon default in payment by the Borrower of any instalment of principal or interest when due under this promissory note, which default is not remedied within thirty (30) days after the Lender notifies the Borrower thereof in writing, all principal and interest outstanding under this promissory note shall become immediately due and payable upon demand by the Lender.

The principal amount outstanding under this promissory note may be prepaid in whole or in part, provided that such payment is made concurrently together with a payment of accrued and unpaid interest thereon, at any time and from time to time without notice, bonus or penalty. Any such principal prepayments shall be applied to the principal instalments payable under this promissory note in the reverse order of maturity and may not be re-borrowed.

Notwithstanding anything else in this promissory note or elsewhere, the Borrower shall not grant, and the Lender shall not accept, any mortgage, deed of trust, lien, pledge, hypothec (whether movable or immovable), hypothecation, encumbrance, charge, security interest, royalty interest, adverse claim, defect to title or right of set-off in, or any other arrangement having the effect of providing security, on the present and future assets, property and undertaking of the Borrower, real and personal, moveable and immoveable, of whatsoever nature and kind and wheresoever situate as security for the indebtedness of the Borrower under this promissory note.

Each of the parties hereto agrees that it will do all acts and things and execute and deliver such further and other agreements, instruments and documents as may be necessary or appropriate to carry out the intent and purpose of and give full effect to this promissory note and the other documents related hereto and every part thereof.

This promissory note shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the laws of Canada applicable in that Province. The Borrower waives presentment for payment, notice of dishonour, protest and notice of protest in respect of this promissory note. This

promissory note shall become effective when it has been executed and delivered. Time shall be of the essence of this promissory note in all respects. This promissory note constitutes the entire agreement of the parties pertaining to the indebtedness evidenced by this promissory note and supersedes all prior agreements, understandings, negotiations and discussions with respect to such indebtedness, whether oral or written.

*(Signature page follows)*

A handwritten signature in blue ink, consisting of a stylized initial 'P' followed by a horizontal line extending to the right.



**JMB CRUSHING SYSTEMS INC.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**ACKNOWLEDGED AND AGREED BY THE LENDER:**

**541466 ALBERTA LTD. O/A JLG BALL  
ENTERPRISES**

By: \_\_\_\_\_  
Name: **Lisa Ball**  
Title: **President**

By: \_\_\_\_\_  
Name:  
Title:

*(Signature page to an option promissory note from JMB Crushing Systems Inc. to 541466 Alberta Ltd.)*

**SCHEDULE F**  
 ATTACHED TO AND FORMING PART OF THE PURCHASE AND SALE AGREEMENT MADE AS OF  
 \_\_\_\_\_, 2019 BETWEEN 541466 ALBERTA LTD., AS VENDOR, AND JMB CRUSHING SYSTEMS  
 INC., AS PURCHASER

**PART 1  
 INVENTORY**

**JLG Aggregate Inventory as of 28 Jan 2019  
 Processing Costs Only**

Product	Pit	Tonnes	Cost/Tonne	Cost
4-20mm	60060	10,000	\$7.50	\$75,000
Riprap Rock	60060	3,000	\$3.50	\$10,500
Pitrun Stockpiled	60060	25,000	\$1.10	\$27,500
8.25mm	900112	1,000	\$15.50	\$15,500
Radon Rock	900112	4,000	\$15.50	\$62,000
1 3/4" Ballast	900112	3,000	\$15.50	\$46,500
Riprap Rock	900112	3,000	\$3.50	\$10,500
2-25mm	110025	4,000	\$6.15	\$24,600
6-80mm	110025	15,000	\$6.00	\$90,000
2-25mm	110026	4,000	\$6.15	\$24,600
FA1 Unwashed Screened	110045	75,000	\$0.05	\$3,750
8mm Screened Winter Sand	110045	75,000	\$0.05	\$3,750
FA1 Washed Screened	110045	500	\$1.50	\$750
FA1 Concrete Coarse	110045	500	\$1.50	\$750
Natural Washed Weeping Tile	110045	200	\$3.50	\$700
<b>Total Cost of Inventory</b>				<b>\$396,400</b>

**PART 2  
 EXCLUDED INVENTORY**

The Excluded Inventory comprises only the quantities and types of Surface Materials as follows:

- i. 1,000 tonnes of 6-80mm out of pit 25;
- ii. 800 tonnes of 4-20mm out of pit 60;
- iii. 400 tonnes of Radon Rock out of pit 900112; and
- iv. 400 tonnes of 1¾ inch Ballast out of pit 900112.

**SCHEDULE G**

**ATTACHED TO AND FORMING PART OF THE PURCHASE AND SALE AGREEMENT MADE AS OF MARCH 15, 2019 BETWEEN 541466 ALBERTA LTD., AS VENDOR, AND JMB CRUSHING SYSTEMS INC., AS PURCHASER**

**FORM OF TRUST AGREEMENT TERMINATION AGREEMENT**

Attached.



**FORM OF TERMINATION AGREEMENT**

THIS AGREEMENT made as of \_\_\_\_\_, 2019.

BETWEEN:

**541466 ALBERTA LTD.**, a corporation formed under the laws of the Province of Alberta ("**Vendor**")

- and -

**2161889 ALBERTA LTD.**, a corporation formed under the laws of the Province of Alberta ("**NewCo**")

**WHEREAS** pursuant to the Purchase and Sale Agreement dated March 15, 2019 between Vendor and JMB Crushing Systems Inc. ("**Purchaser**") (the "**Purchase Agreement**"), Vendor has agreed to sell, and Purchaser has agreed to purchase, the Purchased Interests;

**AND WHEREAS** the Registered Holders held legal title to certain of the Leases forming part of the Purchased Interests, and such Registered Holders entered into the Trust Agreements, as trustee, with Vendor, as beneficiary, in respect thereof;

**AND WHEREAS** pursuant to the Reorganization, the Registered Holders and Vendor agreed to transfer legal title to the Leases to NewCo, along with all beneficial title relating thereto;

**AND WHEREAS** Vendor and NewCo wish to confirm that all Trust Agreements are terminated and that no further obligations or liabilities shall remain in respect of the Trust Agreements between the Registered Holders and Vendor, as applicable, and NewCo, subject to and in accordance with the terms and conditions of this Agreement;

**NOW THEREFORE** the Parties agree as follows:

**ARTICLE 1  
INTERPRETATION**

**1.1 Definitions**

In this Agreement, unless as set out in this Clause 1.1 or the context otherwise requires, capitalized terms and phrases shall have the meaning set out in the Purchase Agreement, with the exception of the following:

- (a) "**Affiliates**" means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person. A Person shall be deemed to "control" another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; and the term "controlled" shall have a similar meaning.
- (b) "**Agreement**" means this Termination Agreement, including the attached schedules;
- (c) "**Applicable Laws**" means, in relation to any Person, property, operation or circumstance, all laws and statutes, including regulations, rules, by-laws, ordinances and other statutory instruments enacted thereunder; all judgments, decrees, rulings and orders of courts,

tribunals, commissions and other similar bodies of competent jurisdiction; all orders, rules, directives, policies and guidelines having force of law issued by any Governmental Authority, and all terms and conditions of any Permits; that are in effect as of the relevant time and are applicable to such Person, property or circumstance.

- (d) **"Claim"** means any claim, demand, lawsuit, action, proceeding, lien, audit, notice of non-compliance or violation, order or direction, arbitration or governmental proceeding or investigation.
- (e) **"Losses and Liabilities"** means all losses, costs, expenses, interest, charges, assessments, damages, liabilities, obligations, fines and penalties, including all reasonable costs incurred in investigating, defending or negotiating the settlement or resolution of any Claim or threatened Claim, and specifically including reasonable legal and other professional fees and expenses on a 'solicitor and his own client' basis, regardless of whether the foregoing arise in, under or by virtue of common law, in equity, under Applicable Laws, under contract, negligence, strict liability, breach of duty or otherwise.
- (f) **"Parties"** means the parties to this Agreement and **"Party"** means any one of the Parties to this Agreement;
- (g) **"Person"** includes any individual, body corporate, partnership (limited or general), trust, trustee, executor or similar official, Governmental Authority or other entity.
- (h) **"Purchase Agreement"** has the meaning given in the recitals to this Agreement; and
- (i) **"Registered Holders"** means Robert W. Beaverford, Glenn Ball, Jordan Ball, Tor Land Resources Inc., Bonnie Badry, Cathy Ball and Katie Ball.
- (j) **"Related Persons"** means, in respect of a Party, that Party's Affiliates, together with that Party's and its Affiliates' directors, officers, employees and other personnel and agents.
- (k) **"Trust Agreements"** means collectively, the existing trust agreements between Vendor, as beneficiary, and each Registered Holder, as trustee, providing that, *inter alia*, each Registered Holder holds bare legal title to the applicable Lease specified in such trust agreement, as nominee and bare trustee for, on behalf of and for the benefit of Vendor, in addition to the ancillary consulting agreements related to each such trust agreement, as set forth in Schedule "A".

## 1.2 Schedule

- (a) Appended to this Agreement are the following Schedule:

Schedule A            Trust Agreements

- (b) This schedule is incorporated into and form part of this Agreement. If any term or condition of such schedule conflicts or is inconsistent with any term or condition in the main body of this Agreement, the term or condition in the main body of this Agreement shall prevail to the extent of the conflict or inconsistency.

**ARTICLE 2  
TERMINATION**

**2.1 Termination of Trust Agreements**

The Parties confirm that NewCo now holds legal and beneficial title in and to all of the Leases, and in furtherance of the Reorganization and the consideration provided to Vendor in the Purchase Agreement, the sufficiency and adequacy of which is confirmed by the Parties, Vendor and NewCo hereby agree and acknowledge, irrevocably and conclusively, that the Trust Agreements will no longer be effective and are terminated as of the date of this Agreement. Vendor confirms that it has complied with the termination notice provisions, as applicable, under the Trust Agreements, and that all of the Trust Agreements have no further application or effect as of the date hereof, notwithstanding anything to the contrary.

**ARTICLE 3  
INDEMNIFICATION**

**3.1 Vendor to Indemnify**

- (a) From and after the date of this Agreement, Vendor shall be liable for all Losses and Liabilities suffered, sustained, paid or incurred by NewCo or its Related Persons and, in addition and as an independent covenant, shall defend, indemnify and keep harmless NewCo and its Related Persons from and against all Losses and Liabilities suffered, sustained, paid or incurred by NewCo or its Related Persons and all Claims made against NewCo or its Related Persons, in either case, directly resulting from the Trust Agreements or any action or inaction by the Registered Holders or Vendor relating to the Trust Agreements.
- (b) The indemnity provided for in this Clause 3.1 and the corresponding liability of Vendor hereunder shall not exceed the aggregate of one quarter (1/4) of the Purchase Price, inclusive of all cost, including legal and other professional fees.
- (c) The limitations of liability set forth in Clause 3.1(b) shall not apply with respect to any Losses and Liabilities or Claims directly resulting from any fraud or willful misconduct of or by Vendor, its Related Persons or the Registered Holders.
- (d) NewCo shall make no Claim under or in respect of this Clause 3.1 unless written notice, with reasonable particulars, of the applicable Losses and Liabilities or Claim has been received by Vendor on or before the date that is twenty-four (24) months after the date of this Agreement.

**ARTICLE 4  
GENERAL**

**4.1 Further Acts**

Each Party will, from time to time and at all times following execution and delivery of this Agreement, without further consideration, do such further acts and deliver all such further assurances, deeds and documents as shall be reasonably required in order to fully perform and carry out the terms of this Agreement.

**4.2 Governing Law**

This Agreement shall be subject to and interpreted, construed and enforced in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein (other than those relating

to conflicts or choice of laws) and shall be treated as a contract made in the Province of Alberta. The Parties irrevocably attorn and submit to the exclusive jurisdiction of the courts of the Province of Alberta and courts of appeal therefrom in respect of all matters arising out of this Agreement, other than the enforcement of judgments.

#### **4.3 Entire Agreement**

The provisions contained in all documents and agreements collateral hereto shall at all times be read subject to the provisions of this Agreement and, in the event of conflict, the provisions of this Agreement shall prevail, including over any of the Trust Agreements, notwithstanding any of the terms in the Trust Agreement.

#### **4.4 Assignment and Enurement**

This Agreement may not be assigned by a Party without the prior written consent of the other Party, which consent may be unreasonably and arbitrarily withheld. This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective administrators, trustees, receivers, successors and permitted assigns.

#### **4.5 Notices**

The addresses for service of the Parties shall be as follows:

Vendor:

541466 Alberta Ltd.  
c/o Bishop & McKenzie LLP  
10180 101 Street  
Edmonton, Alberta T5J 1V3

Attention: Lisa Ball & Gordon Ball  
Email: lball@jlgball.com

Purchaser:

2161889 Alberta Ltd.  
c/o JMB Crushing Systems Inc.  
P.O. Box 7022  
Bonnyville, AB T9N 2H4

Attention: Jeff Buck  
Email: jeffbuckjmb@gmail.com

All notices, communications and statements required, permitted or contemplated in this Agreement shall be in writing, and shall be delivered by personal delivery or courier service on a Party at the address of such Party set out above, in which case the item so served shall be deemed to have been received on the date of delivery if such delivery takes place prior to 4:00 p.m. on a Business Day. If the actual delivery of such notice occurs after 4:00 p.m. on a Business Day or on a day that is not a Business Day, then such notice shall be deemed to have been received on the first Business Day following the date of delivery. A Party may from time to time change its address for service by giving written notice of such change to the other Party.

#### **4.6 Invalidity of Provisions**

In case any of the provisions of this Agreement should be invalid, illegal or unenforceable in any

respect, the validity, legality or enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby.

**4.7 Waiver**

No failure on the part of any Party in exercising any right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any right or remedy in law or in equity or by other Applicable Laws or otherwise conferred. No waiver of any provision of this Agreement, including this Clause 4.7 shall be effective otherwise than by an instrument in writing dated subsequent to the date of this Agreement, executed by a duly authorized representative of the Party making such waiver.

**4.8 Survival; No Merger**

The respective representations, warranties, covenants and indemnities of the Parties contained in this Agreement, including all qualifications thereof and limitations thereon, shall not be merged in any assignments, conveyances, transfers and other documents provided for under this Agreement and shall survive Closing to the extent provided pursuant to the terms thereof.

**4.9 Remedies Cumulative**

No reference to or exercise of any specific right or remedy by a Party hereunder shall prejudice or preclude such Party from exercising or invoking any other remedy in respect thereof, whether allowed at law or in equity or expressly provided for herein. No such remedy shall be exclusive or dependent upon any other such remedy, but each Party may exercise any one or more of such remedies independently or in combination.

**4.10 Amendment**

This Agreement shall not be varied in its terms or amended by oral agreement or by representations or otherwise other than by an instrument in writing dated subsequent to the date of this Agreement, executed by the Parties.

**4.11 Counterparts**

This Agreement may be executed in counterparts and all executed counterparts together shall constitute one agreement. A signed counterpart provided by way of email or other electronic means shall be as binding upon the Parties as an originally signed counterpart.

*(Signature page follows)*





**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the day and year first above written.

**541466 ALBERTA LTD.**

**2161889 ALBERTA LTD.**

Per: \_\_\_\_\_  
Name: **Lisa Ball**  
Title: **President**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*This is the Execution Page for the Termination Agreement between 541466 Alberta Ltd. and 2161889 Alberta Ltd.*



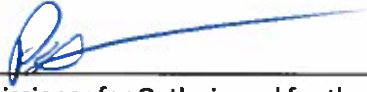
**SCHEDULE "A"**  
**ATTACHED TO AND FORMING PART OF THE TERMINATION AGREEMENT BETWEEN 541466**  
**ALBERTA LTD. AND 2161889 ALBERTA LTD. DATED \_\_\_\_\_, 2019**

**Trust Agreements**

- Trust Agreement between 541466 Alberta Ltd. and Robert W. Beaverford dated October 11, 2011.
- Consulting Agreement between 541466 Alberta Ltd. and Robert W. Beaverford dated October 1, 2005.
- Trust Agreement between 541466 Alberta Ltd. and Tor Land Resources Inc dated February 16, 2018.
- Consulting Agreement between 541466 Alberta Ltd. and Tor Land Resources Inc dated February 16, 2018.
- Trust Agreement between 541466 Alberta Ltd. and Bonnie Badry dated February 10, 2012.
- Consulting Agreement between 541466 Alberta Ltd. and Bonnie Badry dated April 6, 2011.
- Trust Agreement between 541466 Alberta Ltd. and Robert W. Beaverford dated October 12, 2011.
- Consulting Agreement between 541466 Alberta Ltd. and Robert W. Beaverford dated May 16, 2011.
- Trust Agreement between 541466 Alberta Ltd. and Glenn Ball dated May 16, 2011.
- Consulting Agreement between 541466 Alberta Ltd. and Glenn Ball May 16, 2011.
- Trust Agreement between 541466 Alberta Ltd. and Jordan Ball dated November 21, 2013.
- Consulting Agreement between 541466 Alberta Ltd. and Jordan Ball dated November 21, 2013.
- Trust Agreement between 541466 Alberta Ltd. and Cathy Ball dated September 6, 2013.
- Consulting Agreement between 541466 Alberta Ltd. and Cathy Ball dated September 6, 2013.
- Trust Agreement between 541466 Alberta Ltd. and Katie Ball dated January 22, 2013.
- Consulting Agreement between 541466 Alberta Ltd. and Katie Ball dated January 22, 2013.



This is Exhibit "B" to the Affidavit of Lisa Ball  
Sworn before me this 21 day of September, 2020.



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A Commissioner for Oaths in and for the  
Province of Alberta

Robert A. Farmer  
Barrister and Solicitor



CLOSING PROMISSORY NOTE

Date: March 29, 2019

NOW, FOR VALUE RECEIVED JMB CRUSHING SYSTEMS INC. (the "Borrower") unconditionally promises to pay to 541466 ALBERTA LTD. (o/a JLG Ball Enterprises) (the "Lender") at PO Box 211, Boyle, Alberta, T0A 0M0, or such other place as the Lender may direct in writing, the sum of Cdn.\$3,000,000 (Three Million Canadian Dollars) (the "Principal"), in five (5) equal annual Principal instalments of Cdn.\$600,000 (Six Hundred Thousand Canadian Dollars) per year, plus annual interest payments accruing thereon on or before the last day of each calendar year beginning on the first-year anniversary following the date hereof and continuing on the anniversary thereof with the final payment on the fifth-year anniversary following the date hereof in such amount as is required to pay in full all Principal and interest outstanding under this promissory note on such date.

Interest shall be calculated on the daily balance of such outstanding Principal and payable annually on the same date (for certainty, the first such payment of interest shall be due on the first-year anniversary following the date hereof), at the same place, as the Principal payments both before and after maturity, default and judgment, at a nominal rate per annum of 5% (five percent) and interest on overdue interest payable at the same time, place and rate.

Upon default in payment by the Borrower of any instalment of principal or interest when due under this promissory note, which default is not remedied within thirty (30) days after the Lender notifies the Borrower thereof in writing, all principal and interest outstanding under this promissory note shall become immediately due and payable upon demand by the Lender.

The principal amount outstanding under this promissory note may be prepaid in whole or in part, provided that such payment is made concurrently together with a payment of accrued and unpaid interest thereon, at any time and from time to time without notice, bonus or penalty. Any such principal prepayments shall be applied to the principal instalments payable under this promissory note in the reverse order of maturity and may not be re-borrowed.

Notwithstanding anything else in this promissory note or elsewhere, the Borrower shall not grant, and the Lender shall not accept, any mortgage, deed of trust, lien, pledge, hypothec (whether movable or immovable), hypothecation, encumbrance, charge, security interest, royalty interest, adverse claim, defect to title or right of set-off in, or any other arrangement having the effect of providing security, on the present and future assets, property and undertaking of the Borrower, real and personal, moveable and immovable, of whatsoever nature and kind and wheresoever situate as security for the indebtedness of the Borrower under this promissory note.

Each of the parties hereto agrees that it will do all acts and things and execute and deliver such further and other agreements, instruments and documents as may be necessary or appropriate to carry out the intent and purpose of and give full effect to this promissory note and the other documents related hereto and every part thereof.

This promissory note shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the laws of Canada applicable in that Province. The Borrower waives presentment for payment, notice of dishonour, protest and notice of protest in respect of this promissory note. This promissory note shall become effective when it has been executed and delivered. Time shall be of the essence of this promissory note in all respects. This promissory note constitutes the entire agreement of

the parties pertaining to the indebtedness evidenced by this promissory note and supersedes all prior agreements, understandings, negotiations and discussions with respect to such indebtedness, whether oral or written.


*(Signature page follows)*

314124521



IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

**JMB CRUSHING SYSTEMS INC.**

By:   
Name: Jeffrey Michael Buck  
Title: Vice President, Secretary and Treasurer

**ACKNOWLEDGED AND AGREED BY THE LENDER:**

**541466 ALBERTA LTD. O/A JLG BALL  
ENTERPRISES**

By: \_\_\_\_\_  
Name: Lisa G. Ball  
Title: President and Chief Executive Officer

*(Signature page to a closing promissory note from JMB Crushing Systems Inc. to 541466 Alberta Ltd.)*

31412452 1



This is Exhibit "C" to the Affidavit of Lisa Ball  
Sworn before me this 28 day of September, 2020.



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A Commissioner for Oaths in and for the  
Province of Alberta

Robert A. Farmer  
Barrister and Solicitor





**ROBERT A. FARMER**  
Direct Line: (780) 421-2438  
Email Address: [rfarmer@bmlip.ca](mailto:rfarmer@bmlip.ca)

**OUR FILE NO.: 15370-106**

**2300, 10180 – 101 Street NW**  
**Edmonton, AB T5J 1V3**  
T: 780 426 5550  
F. 780-426-1305  
[Edmonton@bmlip.ca](mailto:Edmonton@bmlip.ca)  
[www.bmlip.ca](http://www.bmlip.ca)

May 8, 2020

**VIA REGISTERED MAIL**

JMB Crushing Services Inc.  
c/o Registered Office  
Blake Cassels & Graydon LLP  
3500 East Tower, Bankers Hall  
855 – 2<sup>nd</sup> Street S.W.  
Calgary, AB T2P 4J8

Attention: Dan McLeod

Dear Sir:

**Re: Indebtedness of JMB Crushing Systems Inc. ("JMB") to 541466 Alberta Ltd. (o/a JLG Ball Enterprises) ("JLG")**

We are the solicitors for JLG. As you are aware, pursuant to the March 15, 2019 Purchase and Sale Agreement between JMB and JLG (the "Agreement"), payment of \$3,000,000 of the Purchase Price remained due and owing subsequent to the Closing Date and was to be paid pursuant to the terms of a Closing Promissory Note dated March 22, 2019 (the "Promissory Note").

The Promissory Note provides that the sum of \$3,000,000 is to be paid to JLG in five equal annual installments of \$600,000 plus annual interest at the rate of 5 percent per annum with the first installment scheduled to occur on March 22, 2020. JMB failed to make the required installment payment of \$600,000 plus interest by March 22, 2020, and as of the date of this letter no portion of this installment has been paid. JMB's failure to make this required installment payment when and as required constitutes a default by JMB under the Promissory Note and under the Agreement.

This letter is to serve as notice of default under the Promissory Note and the Agreement. We hereby demand that JMB remedy this default within 30 days of receipt of this letter by making payment of the sum of \$600,000 plus interest on the principal sum owing under the Promissory Note (\$3,000,000) at the rate of 5% per annum until payment is made.

Failure to make this required payment may result in JLG demanding all principal and interest owing under the Promissory Note and may also result in JLG accepting JMB's default as being a repudiation of the Agreement by JMB.

A handwritten signature in blue ink, appearing to be the initials 'RF', is located in the bottom right corner of the page.



Kindly govern yourselves accordingly.

Yours truly,

**BISHOP & MCKENZIE LLP**

Per:



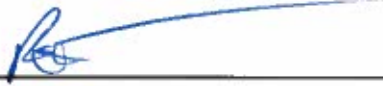
Robert A. Farmer

/gsc

cc: FTI Consulting Canada Inc., *via regular mail*  
Alex Matthews, Gowling WLG, *via email*  
Sean Collins, McCarthy Tetrault, *via email*  
Client, *via email*



This is Exhibit "D" to the Affidavit of Lisa Ball  
Sworn before me this 28 day of September, 2020.



---

A Commissioner for Oaths in and for the  
Province of Alberta

Robert A. Farmer  
Barrister and Solicitor





**ROBERT A. FARMER**  
Direct Line: (780) 421-2438  
Email Address: [rfarmer@bmlp.ca](mailto:rfarmer@bmlp.ca)

**2300, 10180 – 101 Street NW**  
Edmonton, AB T5J 1V3  
T: 780 426 5550  
F: 780-426-1305  
[Edmonton@bmlp.ca](mailto:Edmonton@bmlp.ca)  
[www.bmlp.ca](http://www.bmlp.ca)

**OUR FILE NO.: 15370-106**

May 8, 2020

**VIA EMAIL**

FTI Consulting Canada Inc.  
520 Fifth Avenue S.W.  
Suite 1610  
Calgary, AB T2P 3R7

**Attention: Deryck Helkaa and Tom Powell**

Dear Sir:

**Re: JMB Crushing Systems Inc. ("JMB") and 2161889 Alberta Ltd. – Companies' Creditors Arrangement Act ("CCAA")**

We are the solicitors for 541466 Alberta Ltd. (o/a JLG Ball Enterprises) ("JLG"). We are in receipt of a copy of the May 1, 2020 Order of Madame Justice Eidsvik (the "Initial Order")

**Service List**

Please consider this letter to be a formal request on behalf of JLG to have the writer added to the Service List contemplated by paragraph 49 of the Initial Order.

**Demand**

JMB is indebted to JLG in amount of \$3,000,000 plus accrued interest pursuant to a Purchase and Sale Agreement between JLG and JMB, a copy of which is enclosed (the "Sale Agreement"). This indebtedness is evidenced by a Closing Promissory Note, a copy of which is also enclosed. The sum of \$600,000 together with accrued interest was due and payable to JLG on March 22, 2020 and to date not been paid. Concurrently with this letter, we are issuing a formal demand for payment of the amount which is past due from JMB. A copy of this letter is enclosed.

**Option to Purchase Certain Surface Material Rights**

Article 3 of the Agreement grants a series of five options to JMB to purchase from JLG certain Surface Material Rights for a period of 180 days from the date upon which JLG receives notification from the relevant Governmental Authority that formal approval has been granted for Surface Material Rights in relation to each of five parcels of land (the "Options"). As of this date approval has not been granted by the relevant Governmental Authority.

The Agreement specifies that the consideration to be paid to JLG to exercise each respective Option is \$1,000,000.

A handwritten signature in blue ink, appearing to be the initials 'DF', is located in the bottom right corner of the page.

May 8, 2020

A review of the Order indicates that a Sale and Investment Solicitation Process (the "SISP") involving the assets of JMB is contemplated. On behalf of JLG we wish to go on record as taking the position that in order for each of the respective Options to be exercised, the consideration of \$1,000,000 must be paid, AND all amounts due under the Promissory Note at the time each respective Option is being exercised must be paid. JMB is in breach of the Agreement by not making payments when and as required under the Agreement and this breach constitutes a repudiation of the Agreement, disentitling JMB, or any purchaser of JMB from exercising the Options.

JLG will provide notification to the Monitor in the event that Governmental approval is granted for Surface Material Rights in relation to any of the five parcels of land. Concurrently with providing this notification, JLG will also provide a statement of the payment amount needed the reinstate the Agreement and enable the Option(s) to be exercised.

Please contact the undersigned at your convenience in the event that you want to discuss this matter or require any clarification of this letter.

Yours truly,

**BISHOP & MCKENZIE LLP**

Per:



Robert A. Farmer

RAF/gsc

Enclosures (2)

cc: Alex Matthews, Gowling WLG, *via email*  
Sean Collins, McCarthy Tetrault, *via email*  
Client, *via email*



This is Exhibit "E" to the Affidavit of Lisa Ball  
Sworn before me this 28 day of September, 2020.



---

A Commissioner for Oaths in and for the  
Province of Alberta

Robert A. Farmer  
Barrister and Solicitor



**NON-COMPETITION AGREEMENT**

**THIS AGREEMENT** dated March 22, 2019 is made,

**AMONG:**

**541466 ALBERTA LTD.**, a corporation formed under the laws of the Province of Alberta  
("541466")

- and -

**LISA BALL**, an individual residing in Boyle, Alberta

- and -

**GORDON BALL**, an individual residing in Boyle, Alberta

(541466, Lisa Ball and Gordon Ball, collectively being the "Restricted Parties")

- and -

**JMB CRUSHING SYSTEMS INC.**, a corporation amalgamated under the laws of the  
Province of British Columbia (the "Purchaser")

**WHEREAS** the Purchaser and 541466 have entered into an purchase and sale agreement dated March 15, 2019 (the "Sale Agreement") pursuant to which *inter alia* the Purchaser has agreed to purchase from 541466 all the Shares of the Company, which holds the entire right, title to and in the Purchased Interests used in carrying on the Business upon the terms and conditions contained in the Sale Agreement (the "Transaction").

**AND WHEREAS** the execution and delivery of this Agreement by the Restricted Parties is a condition precedent to the obligation of the Purchaser to complete the Transaction.

**AND WHEREAS** the Restricted Parties understand that this Agreement is necessary for the Purchaser to receive the full benefit of the goodwill of the Business and to preserve the fair market value of the assets of 541466 being purchased by the Purchaser and, accordingly, the Restricted Parties are willing to enter into this Agreement in order to ensure that such benefit is not impaired and the fair market value of such assets is not diminished by actions of the Restricted Parties.

**AND WHEREAS** the Restricted Parties understand that this Agreement is an integral part of the Transaction under which the Restricted Parties are receiving significant benefit and that the Purchaser is relying on the agreements and acknowledgements given herein by the Restricted Parties.

**NOW THEREFORE**, in consideration of the foregoing and the representations, warranties, covenants, conditions, agreements and promises contained in this Agreement and in the Sale Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:



**ARTICLE 1**  
**INTERPRETATION**

**1.1 Definitions.** Unless context requires otherwise, capitalized terms used in this Agreement but not defined herein shall have the meanings ascribed to such terms in the Sale Agreement, and in addition:

"Agreement" means this non-competition agreement.

"Non-Competition Period" has the meaning set out in Section 2.1.

"Permitted Activities" has the meaning set out in Section 2.7.

"Restrictive Covenants" has the meaning set out in Section 2.10.

"Territory" means the Province of Alberta.

**1.2 Additional Rules of Interpretation.**

- (a) In this Agreement, unless the context requires otherwise, words in one gender include all genders and words in the singular include the plural and vice versa.
- (b) The inclusion in this Agreement of headings of Articles and Sections are for convenience of reference only and are not intended to be full or precise descriptions of the text to which they refer.
- (c) Unless the context requires otherwise, references in this Agreement to Sections or schedules are to Sections or schedules of this Agreement.
- (d) Wherever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation" and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.
- (e) The words "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions shall be construed as referring to this Agreement in its entirety and not to any particular section or portion of it.
- (f) All references herein to any agreement (including this Agreement), document or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless otherwise specified therein, includes all schedules and exhibits attached thereto.
- (g) The recitals to this Agreement are an integral part of this Agreement.

**ARTICLE 2**  
**NON-COMPETITION**

**2.1 Non-Competition by Restricted Parties**

Subject to Section 2.2 and the Permitted Activities set forth in Section 2.7, the Restricted Parties shall not, and shall ensure that each of their Affiliates do not, without the prior written consent of the Purchaser, at any time within the period of three (3) years following the date of this Agreement (the "Non-Competition Period"), either individually or in partnership or jointly or in conjunction with each other or any Person, as principal, agent, director, officer, consultant, lender, contractor, employer, employee, investor or shareholder, or in any other manner, directly or indirectly,

- (a) advise, assist, manage, carry on, establish, acquire control of, be engaged in, have any financial or other interest in (including any interest by way of royalty or other compensation arrangement);
- (b) lend money to, guarantee the debts or obligations of; or
- (c) permit the Restricted Parties' name, trade names or any part thereof to be used or employed by any Person that operates, is engaged in or has an interest in,

a business anywhere within the Territory that is similar to or competes with the Business. Without limiting the effect of the foregoing, competing with the Business includes directly or indirectly selling or permitting the sale to any of the present customers of the Business of any products or services of the type sold by the Business as at the date of this Agreement.

## **2.2 Permitted Shareholdings**

The foregoing shall not prevent the Restricted Parties or its Affiliates from purchasing as a passive investor up to two percent (2%) of the outstanding publicly traded shares or other securities of any class of any issuer listed on a recognized stock exchange.

## **2.3 Non-Solicitation**

During the Non-Competition Period, the Restricted Parties shall not, and shall ensure that its Affiliates do not, either individually or in partnership or jointly or in conjunction with any other Person, as principal, agent, consultant, contractor, shareholder, interest holder, investor, partner, lender, director, officer, employer, employee or in any other manner, directly or indirectly:

- (a) contact, solicit, induce, divert or interfere with (or attempt to do any of the foregoing) any customer or prospective customer of the Business for the purpose of selling to such customer any products or services which are the same as or similar to those sold by the Business, or to persuade or attempt to persuade any customer to change its relationship or potential relationship with the Business, or to restrict, limit, discontinue or cease considering purchasing any products or services provided by the Business or to reduce the amount of business or potential business which any such customer has customarily done with the Business, or to not grant any new business to the Business (including, without limitation, any new business related to a new line of business in which the Business has or is developing plans to engage);
- (b) contact, solicit, induce, divert or interfere with (or attempt to do any of the foregoing) any supplier or prospective supplier of the Business for the purpose of persuading or attempting to persuade any supplier or prospective supplier of the Business to change its relationship with the Business, or to restrict, limit or discontinue or to reduce the amount of business which any such supplier has customarily done with the Business;
- (c) solicit or attempt to solicit, or assist or encourage any Person to solicit, hire, recruit, attempt to hire or recruit, or induce the termination of employment or cessation of services of any employee of the Business, or any contractor who regularly provides services to the Business, or assist or encourage any such employee or contractor to accept employment or engagement elsewhere, unless such solicitation occurs as a result of general advertisements for employment or contract services not specifically directed at such employees or contractors; and
- (d) in any manner, knowingly do or cause or permit to be done, any acts which may reasonably be expected to impair the relationship between the Business and its suppliers, customers, employees, contractors, or any regulatory authorities or any other Person.



## **2.4 No Disparagement**

During the Term, the Restricted Parties agree not to, and agree to cause its Affiliates not to, make any public statement that is intended to disparage the Business or the direct or indirect employees, shareholders, directors, officers, partners, representatives or agents of the Business.

## **2.5 Confidentiality**

The Restricted Parties shall not and shall ensure that its Affiliates do not use for the Restricted Parties' own account or disclose to any other Person any confidential or proprietary information or material relating to the Business. Confidential or proprietary information or material includes, without limitation, the following types of information or material, in whatever form, both existing and contemplated, regarding the Business: corporate information, including contractual licensing arrangements, plans, strategies, tactics, policies, resolutions, patent, trade-mark and trade name applications, and any litigation or negotiations; information concerning suppliers; marketing information, including sales, investment and product plans, customer lists, strategies, methods, customers, prospects and market research data; financial information, including cost and performance data, debt arrangements, equity structure, investors and holdings; operational and scientific information, including trade secrets; software; technical information, including technical drawings and designs; and personnel information, including personnel lists, resumes, personnel data, organizational structure and performance evaluations.

## **2.6 Severability and Waiver**

- (a) Subject to Section 2.6(b), each provision of this Agreement shall constitute a separate and distinct covenant and shall be severable from all other such separate and distinct covenants contained in this Agreement. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent permitted by applicable law, the Parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.
- (b) The Restricted Parties agree that if the definition of Business or Territory is held to be unreasonable, arbitrary, or against public policy by a court of competent jurisdiction, then such definition shall be modified by the Court and continued in such reduced form as the Court determines to be reasonable, non-arbitrary, and not against public policy, and the modification(s) shall be adopted by the Parties and enforced against the Restricted Parties, without invalidating the remaining portion of the definition of Business or Territory, as the case may be, and without affecting the validity or enforceability of the restrictive covenant contained in Section 2.1.

## **2.7 Permitted Activities**

Notwithstanding anything herein, the Restricted Parties shall be permitted to continue certain permitted activities (the "Permitted Activities"), which shall be limited to:

- (a) for the first twelve (12) months of the Non-Competition Period, to continue the following Permitted Activities:
  - (i) civil construction related work such as operating track hoes and other civil construction equipment and the hauling of clay, topsoil, debris and remediation operations; and

- (ii) contract hauling of sand and gravel or gravel products for third parties, which does not involve aggregate (sand or gravel) extraction; and
- (b) for the first twenty-four (24) months of the Non-Competition Period, to complete the physical reclamation work on depleted pits not included in the Sale Agreement.

## **2.8 Remedies**

The Restricted Parties acknowledge that a breach by it or any of its Affiliates of any of the covenants contained in this Agreement will cause serious harm to the Purchaser and will result in damages to the Purchaser and that the Purchaser may not be adequately compensated for such damages by monetary award alone. Accordingly, the Restricted Parties agree that in the event of any such breach, in addition to any other remedies available at law or otherwise, the Purchaser shall be entitled as a matter of right to apply to a court of competent jurisdiction for relief by way of injunction (interim and permanent), restraining order, specific performance, decree or otherwise as may be appropriate to ensure compliance by the Restricted Parties and its Affiliates with the provisions of this Agreement, and in each case without necessity of proving actual damage or of posting a bond or other security and the Restricted Parties waive any objection to an assertion that damages are not an adequate remedy or requirement to prove damages or post bond or other security in connection with any injunctive order or order for specific performance. Any remedy expressly set out in this Agreement shall be in addition to and not inclusive of or dependent upon the exercise of any other remedy available at law or otherwise.

## **2.9 Restricted Parties' Acknowledgements and Agreements**

The Restricted Parties acknowledge and agree that:

- (a) all restrictions in this Agreement are necessary and fundamental to the protection of the Purchaser and the Business and are reasonable and valid;
- (b) all defences to the strict enforcement of this Agreement against the Restricted Parties or any of its Affiliates are hereby waived;
- (c) it has signed this Agreement voluntarily and without pressure, and intends to comply with all of the covenants contained herein;
- (d) this Agreement constitutes, and will continue to constitute at all times, legal, valid and binding obligations of the Restricted Parties enforceable against the Restricted Parties in accordance with the terms hereof, subject to the actual exceptions as to bankruptcy and the availability of equitable remedies;
- (e) the covenants contained herein are intended to ensure that the Purchaser receives the full benefit of the goodwill of the Business (including, without limitation, the Restricted Parties' relationships with customers and suppliers, and the Business' confidential information) and to preserve the fair market value of the assets of the 541466 being purchased by the Purchaser;
- (f) in executing this Agreement, the Restricted Parties have had sufficient time and opportunity to seek the advice of independent legal counsel, has read and understood all of the terms and provisions of this Agreement and have had sufficient time to review and consider this Agreement thoroughly; and
- (g) the Purchaser is relying on the acknowledgements and agreements contained herein which constitute a material inducement to the Purchaser in proceeding with the Transaction.



## 2.10 Restrictive Covenants

The Parties intend that the conditions set forth in subsection 56.4(7) of the Income Tax Act (and the equivalent provisions of any applicable provincial tax legislation) have been met such that subsection 56.4(5) of the Income Tax Act (and the equivalent provisions of any applicable provincial tax legislation) applies to any 'restrictive covenants' as defined in subsection 56.4(1) of the Income Tax Act granted by the Restricted Parties pursuant to the Agreement (the "Restrictive Covenants"). For greater certainty, the Parties hereto agree and acknowledge that: (i) for the purposes of the Income Tax Act, no part of the consideration payable to the Restricted Parties under the Purchase Agreement is allocable to, and no proceeds are receivable by the Restricted Parties for granting, the Restrictive Covenants; (ii) the Restrictive Covenants are integral to the Purchase Agreement and have been granted to maintain or preserve the fair and market value of the Shares; and (iii) the Restrictive Covenants meet the requirements specified in the clause 56.4(7)(b)(ii)(B) of the Income Tax Act.

## 2.11 Breach of Restrictions

If the Restricted Parties are in breach of any of their obligations hereunder, the running of the Non-Competition Period shall be stayed and shall recommence upon the date the Restricted Parties cease to be in breach thereof, whether voluntarily or by injunction.

## ARTICLE 3

### GENERAL

## 3.1 Notices.

(a) Any notice, direction, certificate, consent, determination, summons, claim or other legal process or communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent by fax, e-mail (return receipt requested) or other similar means of electronic communication, in each case to the applicable address set out below:

(iii) if to the Restricted Parties, to:

541466 Alberta Ltd.  
c/o Bishop & McKenzie LLP  
10180 101 Street  
Edmonton, Alberta T5J 1V3

Attention: Lisa Ball & Gordon Ball  
Email: lball@jlgball.com

With a copy (which does not constitute notice) to:

Bishop & McKenzie LLP  
10180 101 Street  
Edmonton, Alberta T5J 1V3

Attention: Blair R. Willie  
Email: bwillie@bmlp.ca

(iv) if to the Purchaser, to:

JMB Crushing Systems Inc.  
P.O. Box 7022

Bonnyville, AB T9N 2H4

Attention: Jeff Buck  
Email: jeffbuckjmb@gmail.com

with a copy (which does not constitute notice) to:

Blake Cassels & Graydon LLP  
3500 East Tower, Bankers Hall  
855 – 2<sup>nd</sup> Street SW  
Calgary, Alberta T2P 4J8

Attention: Dan McLeod  
Email: daniel.mcleod@blakes.com

- (b) Any such communication so given or made shall 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 faxing, e-mailing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, faxed, e-mailed or sent before 4:30 p.m. on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day. Any such communication sent by mail shall be deemed to have been given and made and to have been received on the fifth Business Day following the mailing thereof; provided however that no such communication shall be mailed during any actual or apprehended disruption of postal services. Any such communication given or made in any other manner shall be deemed to have been given or made and to have been received only upon actual receipt.
- (c) Any Party may from time to time change its address under this Section 3.1 by notice to the other Party given in the manner provided by this Section 3.1.

### 3.2 Further Assurances

Each Party shall from time to time promptly execute and deliver or cause to be executed and delivered all such further documents and instruments and shall do or cause to be done all such further acts and things in connection with this Agreement that the other Party may require as being necessary or desirable in order to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement or any provision hereof.

### 3.3 Amendment

No amendment of this Agreement shall be effective unless made in writing and signed by the Parties.

### 3.4 Waiver

A waiver of any default, breach or non-compliance under this Agreement shall not be effective unless in writing and signed by the Party to be bound by the waiver, and then only in the specific instance and for the specific purpose for which it has been given. No waiver shall be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other Party. The waiver by a Party of any default, breach or non-compliance under this Agreement shall not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).

**3.5 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and shall be treated in all respects as an Alberta contract.

**3.6 Attornment**

Each Party agrees (a) that any legal proceeding of any kind relating to this Agreement may (but need not) be brought in any court of competent jurisdiction in the Province of Alberta, and for that purpose now irrevocably and unconditionally attorns and submits to the jurisdiction of such Alberta court; (b) that it irrevocably waives any right to, and shall not, oppose any such legal proceeding in the Province of Alberta on any jurisdictional basis, including *forum non conveniens*; and (c) not to oppose the enforcement against it in any other jurisdiction of any order, decision or ruling of any kind duly obtained from an Alberta court as contemplated by this Section 3.6.

**3.7 Time of the Essence**

Time shall be of the essence of this Agreement and every part hereof, and no extension or variation of this Agreement shall operate as a waiver of this provision.

**3.8 Successors and Assigns; Assignment**

This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective successors and permitted assigns. Neither Party may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its respective rights or obligations under this Agreement without the prior written consent of the other Party.

**3.9 Counterparts**

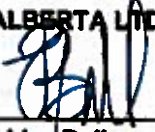
This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Party by facsimile, e-mail in pdf format or other electronic transmission and such transmission shall constitute delivery of an executed copy of this Agreement to the receiving Party.

*(Signature page follows)*



IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

541486 ALBERTA LTD.

Per:   
Name: Lisa Ball  
Title: President

JMB CRUSHING SYSTEMS INC.

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

  
Witness

  
LISA BALL

  
Witness

  
GORDON BALL

*(Signature page to a Non-Competition Agreement between 541486 Alberta Ltd., Lisa Ball, Gordon Ball, as restricted parties, and JMB Crushing Systems Inc.)*



This is Exhibit "F" to the Affidavit of Lisa Ball  
Sworn before me this 28 day of September, 2020.



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A Commissioner for Oaths in and for the  
Province of Alberta

Robert A. Farmer  
Barrister and Solicitor





**ROBERT A. FARMER**  
Direct Line: 780 421 2438  
Email Address: [rfarmer@bmlp.ca](mailto:rfarmer@bmlp.ca)

**2300, 10180 – 101 Street NW**  
Edmonton, AB T5J 1V3  
T: 780 426 5550  
F. 780-426-1305  
[Edmonton@bmlp.ca](mailto:Edmonton@bmlp.ca)  
[www.bmlp.ca](http://www.bmlp.ca)

**OUR FILE NO. 15370-112**

August 12, 2020

VIA EMAIL: [deryck.helkaa@fticonsulting.com](mailto:deryck.helkaa@fticonsulting.com)  
[tom.powell@fticonsulting.com](mailto:tom.powell@fticonsulting.com)

FTI Consulting Canada Inc.  
1610, 520 Fifth Avenue S.W.  
Calgary, AB T2P 3R7

Attention: Deryck Helkaa and Tom Powell

Dear Sirs:

**Re: JMB Crushing Systems Inc. ("JMB") and 2161889 Alberta Ltd.  
Companies' Creditors Arrangement Act ("CCAA")**

As you are aware, we are the solicitors for 541466 Alberta Ltd. (o/a JLG Ball Enterprises) ("JLG"). Pursuant to the Sale Agreement Referred to in our May 8, 2020 letter, JLG entered into a Non-Competition Agreement with JMB Crushing Systems Inc. ("JMB"), a copy of which is enclosed. JLG takes the position that the rights and obligations granted to JMB pursuant to the enclosed Non-Competition Agreement are not an asset of JMB which is capable of being purchased but the ultimate purchaser of JMB's assets pursuant to the bid process and that the rights and obligations under this Non-Competition Agreement ought to be expressly excluded from the Order which accepting the successful bid for JMB's assets.

Additionally, as my May 8, 2020 letter indicated, the Purchase and Sale Agreement granted a series of five options to JMB to purchase from JLG certain Surface Material Rights for the consideration of \$1,000,000 per option (the "Options"). As the amounts owed to our JLG under the Promissory Note have not be paid in breach of the Purchase and Sale Agreement, JLG's position is that the Options are terminated or alternatively revoked and do not form part of the assets of JMB.

Please confirm in writing at your earliest convenience that you are willing to include a provision in the Order approving the successful bid expressly excluding the Options and expressly confirming JLG's rights and obligations under the Non-Competition Agreement. If we do not receive confirmation our intention is to submit an Affidavit and to make submissions when the application for an order accepting the bid is heard.

A handwritten signature in blue ink, appearing to be the initials "DJ", is located in the bottom right corner of the page.



I look forward to hearing from you as soon as possible.

Yours truly,

**BISHOP & MCKENZIE LLP**

Per: 

**ROBERT A. FARMER**

RAF/gsc  
Enclosure (1)

