

COURT FILE NUMBER 2001-05482

COURT OF QUEEN'S BENCH OF ALBERTA

JS Nov. 27 2020 Justice Eidsvik

CENTRE OF

JUDICIAL CENTRE CALGARY

APPLICANT IN THE MATTER OF THE COMPANIES' CREDITORS

ARRANGEMENT ACT,

R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF

ARRANGEMENT OF JMB CRUSHING SYSTEMS INC.

AND 2161889 ALBERTA LTD.

DOCUMENT TENTH REPORT OF FTI CONSULTING CANADA

INC., IN ITS CAPACITY AS MONITOR OF JMB CRUSHING SYSTEMS INC. AND 2161889 ALBERTA

LTD.

November 20, 2020

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**COURT** 

**MONITOR** 

FTI Consulting Canada Inc.

1610, 520, 5<sup>th</sup> Ave. SW

Calgary, AB T2P 3R7

Deryck Helkaa / Tom Powell

Telephone: (403) 454-6031 / (604) 484-9525

Fax: (403) 232-6116

E-mail: deryck.helkaa@fticonsulting.com

tom.powell@fticonsulting.com

#### **COUNSEL**

McCarthy Tétrault LLP

Suite 4000, 421 7th Avenue S.W.

Calgary, AB T2P 4K9

Sean Collins / Pantelis Kyriakakis

Telephone: (403) 260-3531 / (403) 260-3536

Fax: (403) 260-3501

E-mail: scollins@mccarthy.ca

pkyriakakis@mccarthy.ca



# TENTH REPORT OF THE MONITOR

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#### INTRODUCTION

- On May 1, 2020 (the "Filing Date"), JMB Crushing Systems Inc. ("JMB") and 2161889
  Alberta Ltd. ("216" and together with JMB, the "Applicants") commenced proceedings
  (the "CCAA Proceedings") under the Companies' Creditors Arrangement Act, R.S.C.
  1985, c. C-36, as amended (the "CCAA") pursuant to an order granted by this
  Honourable Court which was subsequently amended and restated on May 11, 2020 (the
  "ARIO").
- 2. The ARIO appointed FTI Consulting Canada Inc. as Monitor in the CCAA Proceedings (the "Monitor") and established a stay of proceedings (the "Stay of Proceedings") in favour of the Applicants until July 31, 2020. On November 12, 2020, this Honourable Court granted an order extending the Stay of Proceedings to December 11, 2020.
- 3. On May 20, 2020, this Honourable Court granted an order (the "MD Lien Order") which set aside the Consent Order, granted on May 11, 2020 and replaced the process set out therein to address the validity of any builders' lien claims associated with any work done or materials furnished (the "Builders' Lien Protocol") with respect to the agreement between the Municipal District of Bonnyville No. 87 (the "MD") and JMB, dated November 1, 2013, as subsequently amended (the "MD Contract").
- 4. On May 29, 2020, following the Builders' Lien Protocol established in the MD Lien Order, this Honourable Court granted an order (the "ED Lien Order" and together with the MD Lien Order, the "Lien Orders") which set out a similar Builders' Lien Protocol but with respect to a project involving 1598313 Alberta Ltd. and Kuwait Petrochemical Limited Partnership as owners and EllisDon Industrial Inc. ("ED") as contractor.
- 5. Details concerning the MD Lien Order and the corresponding Builders' Lien Protocol are set out in the Monitor's Eight Report, dated October 16, 2020.
- 6. Following the issuance of the Monitor's Eight Report, dated October 16, 2020, the determination of RBEE Aggregate Consulting Ltd.'s ("**RBEE**") and Jerry Shankowski's

- and 945441 Alberta Ltd.'s (collectively, "Shankowski") contested builder's lien claims was adjourned, to November 27, 2020, to allow RBEE and Shankowski additional time to advance any trust claims such parties may have against the approximately \$1.85MM held back by the Monitor pursuant to the MD Lien Order (the "MD Holdback Amount").
- 7. Between November 5 and 18,, 2020, six parties filed applications to be heard on November 27, 2020, claiming, among other relief, a trust over the MD Holdback Funds under and pursuant to paragraph 26 of the MD Contract (the "**Trust Claimants**") with such trust claims ("**Trust Claims**") totalling approximately \$2.0 to \$2.1 million in respect of their Trust Claims plus interest and costs are funds held by JMB in trust for the claimants and awarding costs in favour of the claimants.
- 8. The purpose of this report is to provide this Honourable Court and the Applicants' stakeholders with information with respect to:
  - a. the funds received and disbursed by the Monitor pursuant to the Lien Orders;
  - a summary of the Applicants' interim statement of cash receipts and disbursements (the "R&D") for the period of May 1, 2020 to November 13, 2020; and,
  - c. details concerning a contingent claim by the Canada Revenue Agency (the "CRA") in respect of certain withholdings associated with a voluntary disclosure made by JMB's predecessor, JMB Crushing Systems ULC ("JMB ULC")

#### TERMS OF REFERENCE

9. In preparing this report, the Monitor has relied upon certain information (the "Information") including information provided by JMB concerning the various assets subject to the various transactions and JMB's unaudited financial information, books and records and discussions with senior management and the Chief Restructuring Advisor (collectively, "Management").

- 10. Except as described in this report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
- 11. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
- 12. Future oriented financial information reported to be relied on in preparing this report is based on Management's assumptions regarding future events. Actual results may vary from forecast and such variations may be material.
- 13. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

#### MONITOR'S TRUST ACCOUNT

- 14. As discussed in the first report of the Monitor, JMB engaged subcontractors (the "Subcontractors") to perform certain services in respect of projects owned or managed by the MD and ED (the "Projects"). JMB was unable to make payments in full to certain of these Subcontractors for the services they performed. As a result of this non-payment, a number of the Subcontractors filed builders' liens against the Projects.
- 15. Both MD and ED had advised JMB that they would not pay any amounts owing to JMB until the builders' liens registered against their respective Projects had been discharged.
- 16. The Lien Orders established the Builders' Lien Protocol to provide for the orderly payment of amounts owing to Subcontractors who had registered valid builders' liens against the Projects and to facilitate the timely collection of the Project accounts receivable in order to provide liquidity to the Applicants.

- 17. The general terms of the Builders' Lien Protocol are as follows:
  - a. MD and ED remitted to the Monitor the full amount owing to JMB in respect of work performed on the Projects;
  - b. the Monitor, in consultation with its legal counsel, confirmed the validity and quantum of each lien or lien notice claimed by each claimant; and
  - c. where appropriate and in accordance with the terms of the Lien Orders, the Monitor paid to each lien claimant the amount validated by the Monitor in respect of the lien registered by the lien claimant and remit the remainder to the Applicants.
- 18. Pursuant to the Lien Orders, the Monitor opened a trust account to facilitate payments under the Builders' Lien Protocol. A summary of the transactions in the Monitor's trust account is provided below:

Monitor's Trust Account History by Project For the period of May 1, 2020 to November 13, 2020 \$000's				
Description	Date	MD	ED	Balance
Collection of pre-filing accounts receivable from MD	21-May-20	\$ 3,564	\$ -	\$ 3,564
Disbursement to JMB of amounts in excess of MD Holdback	25-May-20	(1,478)	-	2,086
Collection of pre-filing accounts receivable from ED	3-Jun-20	-	1,434	3,521
Disbursement to JMB of amounts in excess of ED Holdback	9-Jun-20	-	(1,020)	2,501
Disbursement to CRA for outstanding source deductions	9-Jun-20	(236)	-	2,265
Collection of pre-filing accounts receivable from ED	24-Jun-20	-	1,012	3,276
Disbursement to JMB of amounts in excess of ED Holdback	8-Jul-20	-	(512)	2,765
Disbursement to JMB of amounts in excess of ED Holdback	20-Aug-20	-	(500)	2,265
Disbursement to valid Lien Claimants	11-Sep-20	-	(208)	2,057
Total	- -	\$ 1,850	\$ 207	\$ 2,057

19. Following the granting of the MD Lien Order, the Monitor collected approximately \$3.6 million (the "MD Lien Funds") in pre-filing accounts receivable from the MD. Pursuant

\$1.5 million was disbursed to JMB and \$236,000 was remitted to the Canada Revenue Agency with respect to unremmitted payroll source deductions, in accordance with paragraph 15(a) of the MD Lien Order; and (ii) approximately \$1.85 million, as the MD Holdback Amount, was held back in trust as security for any lien claims, in accordance with paragraph 6 of the MD Lien Order.

- 20. The Monitor collected approximately \$2.4 million in pre-filing accounts receivable from ED. Pursuant to the ED Lien Order, approximately \$2.0 million was disbursed to JMB, \$208,000 was paid to the corresponding lien claimants in respect of valid and enforceable builders' liens and \$207,000 remains in trust with the Monitor, pending distribution to JMB.
- 21. On October 20, 2020, the application scheduled for October 21, 2020 to determine the validity of RBEE's and Shankowski's builder's lien claims was adjourned to November 27, 2020 to allow the Trust Claimants with additional time to prepare their applications to have the holdback amounts under the Builders' Lien Protocol declared trust funds.

#### INTERIM STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS

- 22. The Applicants' R&D by week for the period of May 1, 2020 to November 13, 2020 is attached as Appendix "A".
- 23. A summary of the R&D is set out below:

R&D For the period of May 1, 2020 to November 13 \$000's	, 20	20
Operating Receipts		
Collection of Pre-Filing AR - Ellis Don	\$	2,032
Collection of Pre-Filing AR - MD of Bonnyville		1,478
Collection of Post Filing AR - MD of Bonnyville		1,566
Post-filing Gravel Sales		49
SISP Proceeds		577
Other Receipts		840
<b>Total Operating Receipts</b>		6,541
Operating Disbursements		
Payroll And Source Deductions		(1,416)
Royalties		(408)
Fuel		(207)
Repair & Maintenance		(52)
Office Administration		(40)
Insurance & Benefits		(207)
Jobsite Lodging		(21)
Equipment Loan & Lease Payments		(137)
Occupancy		(236)
Other		(55)
Total Operating Disbursements		(2,779)
Non-Operating Receipts & Disbursements		
Interim Financing (Repayment)		(211)
Professional Fees		(1,886)
Total Disbursements		(4,876)
Net Cash Flow		1,665
Opening Cash Balance	·	
Ending Cash	\$	1,665

- 24. JMB has collected a total of approximately \$5.1 million in project accounts receivable, of which approximately \$3.5 million was collected pursuant to the Builders' Lien Protocol.
- 25. During the CCAA Proceedings, the Applicants have used only one bank account and do not maintain a segregated account relating to the MD project accounts receivable. For clarity, the holdback amounts have been retained, separately, by the Monitor in accordance with the Builders' Lien Protocol.

26. As at November 13, 2020, the Applicants' are holding an ending cash balance of approximately \$1.7 million.

#### CRA VOLUNTARY DISCLOSURE AND CONTIGENT CLAIM

- 27. Pursuant to the Share Purchase Agreement, dated November 21, 2018 (the "SPA"), between JMB, as purchaser, Resource Land Fund V, LP ("RLF"), as guarantor, JMB ULC, and the Shareholders of JMB ULC (the "Sellers") as vendors, JMB purchased certain shares of JMB ULC.
- 28. During RLF's due diligence leading to the acquisition of the shares of JMB ULC, RLF discovered certain potential tax reporting deficiencies and unresolved potential tax liabilities (the "Unresolved Tax Liabilities"). As a result, the purchase price to be paid under the SPA was subject to certain adjustments on account of such Unresolved Tax Liabilities.
- 29. Pursuant to the SPA and in order to address these Unresolved Tax Liabilities, counsel to the Sellers initiated a voluntary disclosure to the CRA, on or around July 9, 2019 (the "Voluntary Disclosure").
- 30. On November 17, 2020, Counsel to the Sellers first informed the Monitor of: (i) the outstanding adjustment issues under the SPA; and, (ii) the Voluntary Disclosure and corresponding potential CRA claims associated with the Unresolved Tax Liabilities.
- 31. Following the Monitor becoming aware of the Unresolved Tax Liabilities and the pending Voluntary Disclosure on November 17, 2020, and its subsequent correspondence with counsel to the CRA, the Monitor currently understands that: (i) the CRA has not yet completed its review or analysis associated the Voluntary Disclosure; (ii) the CRA may seek to assert a contingent priority claim in connection with any or all of the Unresolved Tax Liabilities; and, (iii) in the event the CRA has a valid deemed trust claim, in priority to the Applicants' secured creditors, depending on the outcome of the Trust Claims and

the corresponding priority to the MD Holdback Amount there may not be sufficient funds to satisfy the CRA's claim.

\*\*\*\*

All of which is respectfully submitted this 20th day of November, 2020.

FTI Consulting Canada Inc. in its capacity as Monitor of the Applicants

Deryck Helkaa

Senior Managing Director

Tom Powell

Senior Managing Director

# **Appendix A**

# Interim Statement of Receipts and Disbursements by Week

# JMB Crushing Systems Inc.

Cash Flow Summary for the Period May 1 to November 13, 2020

Week #	Actual Week 1	Actual Week 2	Actual Week 3	Actual Week 4	Actual Week 5	Actual Week 6	Actual Week 7	Actual Week 8
Week Ending	8-May-20	15-May-20	22-May-20	29-May-20	5-Jun-20	12-Jun-20	19-Jun-20	26-Jun-20
Opening Cash	\$ -	\$ 195,738	\$ 15,348	\$ 28,124	\$ 1,250,180	\$ 928,880 \$	578,301	\$ 719,359
Cash Receipts								
Collection of Canadian Emergency Wage Subsidy		-	-	-	-	-	353,736	-
Collection of Pre-Filing AR - EllisDon (net of lien payouts)		-	-	-	-	1,019,837	-	-
Collection of Pre-Filing AR - MD of Bonnyville		-	-	1,477,612	-	-	-	-
Collection of Post Filing AR - MD of Bonnyville		-	-	-	-	-	-	-
SISP Proceeds		-	-	-	-	-	-	-
Post-Filing Gravel Sales	-	-	-	-	-	-	-	-
Other Receipts	16,371	195	2,623	8,386	670	-	22,936	-
Total Receipts	16,371	195	2,623	1,485,998	670	1,019,837	376,672	-
Operating Disbursements								
Payroll And Source Deductions	(146,505)	(225,403)	(119,022)	-	(150,713)	(43,099)	(123,095)	(59,968)
Royalties		-	-	(115,744)	(46,959)	(64,734)	(44,246)	(73,403)
Fuel	-	(41,501)	(11,000)	(25,000)	(30,000)	(23,041)	(34,000)	(38,500)
Repair & Maintenance	(13,325)	(1,500)	(4,200)	(800)	(13,050)	(8,392)	(7,089)	(200)
Office Administration	-	(574)	(1,100)	(494)	(2,372)	(2,336)	(299)	(1,930)
Insurance & Benefits	-	(23,811)	(2,657)	-	(22,917)	-	(2,657)	-
Jobsite Lodging	-	(4,994)	-	(2,500)	-	(2,351)	(2,579)	(2,955)
Equipment Loan & Lease Payments	-	-	(4,881)	(62,541)	(9,699)	(6,743)	(939)	(8,856)
Occupancy	(29,353)	-	-	-	(29,630)	(3,218)	(1,180)	(565)
Other	-	-	-	(2,465)	(221)	(2,441)	(2,625)	-
Total Disbursements	(189,183)	(297,783)	(142,860)	(209,544)	(305,561)	(156,355)	(218,709)	(186,377)
Non-Operating Receipts & Disbursements								
DIP Financing (Repayment)	427,032	117,198	153,013	-	-	(908,431)	-	-
Professional Fees	(58,482)	-	-	(54,398)	(16,409)	(305,630)	(16,905)	(244)
Total Disbursements	368,550	117,198	153,013	(54,398)	(16,409)	(1,214,061)	(16,905)	
Net Cash Flow	195,738	(180,390)	12,776	1,222,056	(321,300)	(350,579)	141,058	(186,621)
Ending Cash Balance	\$ 195,738	\$ 15,348	\$ 28,124	\$ 1,250,180	\$ 928,880	\$ 578,301 \$	5 719,359	\$ 532,738

## JMB Crushing Systems Inc.

Cash Flow Summary for the Period May 1 to November 13, 202	20 Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual
Week #	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14	Week 15	Week 16
Week Ending	3-Jul-20	10-Jul-20	17-Jul-20	24-Jul-20	31-Jul-20	7-Aug-20	14-Aug-20	21-Aug-20
Opening Cash	\$ 532,73	88 \$ 338,172	\$ 674,962	\$ 797,560	\$ 1,073,205	\$ 984,830	\$ 1,215,403	\$ 1,661,418
Cash Receipts								
Collection of Canadian Emergency Wage Subsidy	128,38		130,669	-	-	-	-	-
Collection of Pre-Filing AR - EllisDon (net of lien payouts)		- 511,684	-	-	-	-	500,000	-
Collection of Pre-Filing AR - MD of Bonnyville			-	-	-	-	-	-
Collection of Post Filing AR - MD of Bonnyville			434,700	295,427	-	311,607	-	524,011
SISP Proceeds			-	-	-	-	-	-
Post-Filing Gravel Sales			-	-	-	-	-	-
Other Receipts		- 8,765	25,410	-	27,564	-	19,568	-
Total Receipts	128,38	520,449	590,779	295,427	27,564	311,607	519,568	524,011
Operating Disbursements								
Payroll And Source Deductions	(140,35	(69,587)	(31,756)	(16,120)	(40,013)	(19,558)	(26,474)	(11,468
Royalties	(62,54	-1)	-	-	-	-	-	-
Fuel	(14	-	(561)	-	(662)	-	-	-
Repair & Maintenance		- (360)	-	-	-	-	-	-
Office Administration	(3,59	(2,232)	(70)	(455)	(4,532)	(864)	(76)	(547)
Insurance & Benefits	(61,77	(2) (1,822)	-	-	(22,917)	-	-	-
Jobsite Lodging	(1,22	(1,000)	(1,000)	(1,000)	(1,000)	-	-	-
Equipment Loan & Lease Payments	(67	(4) (35,805)	-	(1,400)	(674)	(939)	-	(2,338
Occupancy	(31,25	(247)	(645)	(520)	(30,063)	(484)	(147)	(147
Other	(3,09	(10,204)	-	-	-	(2,625)	-	-
Total Disbursements	(304,66	(121,257)	(34,032)	(19,495)	(99,861)	(24,470)	(26,697)	(14,500
Non-Operating Receipts & Disbursements								
DIP Financing (Repayment)			-	-	-	-	-	-
Professional Fees	(18,28	(62,402)	(434,149)	(287)	(16,078)	(56,564)	(46,856)	-
Total Disbursements	(18,28	(62,402)	(434,149)	(287)	(16,078)	(56,564)	(46,856)	-
Net Cash Flow	(194,56	336,790	122,598	275,645	(88,375)	230,573	446,015	509,511
Ending Cash Balance	\$ 338,17	2 \$ 674,962	\$ 797,560	\$ 1,073,205	\$ 984,830	\$ 1,215,403	\$ 1,661,418	\$ 2,170,929

## JMB Crushing Systems Inc.

Cash Flow Summary for the Period May 1 to November 13, 202 Week #	Actual Week 17	Actual Week 18	Actual Week 19	Actual Week 20	Actual Week 21	Actual Week 22	Actual Week 23	Actual Week 24
Week Ending	28-Aug-20	4-Sep-20	11-Sep-20	18-Sep-20	25-Sep-20	2-Oct-20	9-Oct-20	16-Oct-20
Opening Cash	\$ 2,170,929 \$	2,111,492 \$	2,317,188 \$	2,001,304 \$	2,015,341 \$	1,934,814 \$	1,877,587 \$	1,844,606
Cash Receipts								
Collection of Canadian Emergency Wage Subsidy	29,289	-	-	23,716	-	-	-	14,677
Collection of Pre-Filing AR - EllisDon (net of lien payouts)	-	-	-	-	-	-	-	-
Collection of Pre-Filing AR - MD of Bonnyville	-	-	-	-	-	-	-	-
Collection of Post Filing AR - MD of Bonnyville	-	-	-	-	-	-	-	-
SISP Proceeds	-	250,800	26,400	-	-	-	194,265	105,525
Post-Filing Gravel Sales	-	-	-	-	-	-	-	-
Other Receipts	-	2,494	3,069	3,192	-	-	-	4,486
Total Receipts	29,289	253,294	29,469	26,908	-	-	194,265	124,688
Operating Disbursements								
Payroll And Source Deductions	(25,639)	(11,414)	(29,868)	(11,876)	(20,421)	(7,257)	(21,275)	(7,923)
Royalties	-	-	-	-	-	-	-	-
Fuel	(1,052)	-	(669)	(605)	-	(554)	-	-
Repair & Maintenance	-	-	-	-	-	-	-	(1,100)
Office Administration	(941)	(3,349)	(207)	(243)	(1,110)	(3,138)	(2,710)	(929
Insurance & Benefits	-	-	(18,804)	-	(44,353)	-	-	-
Jobsite Lodging	-	-	-	-	-	-	-	-
Equipment Loan & Lease Payments	-	-	-	-	(939)	-	-	-
Occupancy	(545)	(30,210)	(17,520)	(147)	(474)	(29,789)	(147)	(147
Other	-	(2,625)	(9,707)	-	-	(16,489)	-	-
Total Disbursements	(28,177)	(47,598)	(76,775)	(12,871)	(67,297)	(57,227)	(24,132)	(10,099
Non-Operating Receipts & Disbursements								
DIP Financing (Repayment)	-	-	-	-	-	-	-	-
Professional Fees	(60,549)	-	(268,578)	-	(13,230)	-	(203,114)	(3,859
Total Disbursements	(60,549)	-	(268,578)	-	(13,230)	-	(203,114)	(3,859
Net Cash Flow	(59,437)	205,696	(315,884)	14,037	(80,527)	(57,227)	(32,981)	110,730
Ending Cash Balance	\$ 2,111,492 \$	2,317,188 \$	2,001,304 \$	2,015,341 \$	1,934,814 \$	1,877,587 \$	1,844,606 \$	1,955,336

JMB Crushing Systems Inc. 11/19/2020

Cash Flow Summary for the Period May 1 to November 13, 2020

	Actual	Actual	Actual	Actual	
Week #	Week 25	Week 26	Week 27	Week 28	Weeks 1 - 28
Week Ending	23-Oct-20	30-Oct-20	6-Nov-20	13-Nov-20	Total
Opening Cash	\$ 1,955,336 \$	1,804,462 \$	1,689,078	1,648,886	\$ -
Cash Receipts					
Collection of Canadian Emergency Wage Subsidy	-	-	-	-	680,468
Collection of Pre-Filing AR - EllisDon (net of lien payouts)	-	-	-	-	2,031,521
Collection of Pre-Filing AR - MD of Bonnyville	-	-	-	-	1,477,612
Collection of Post Filing AR - MD of Bonnyville	-	-	-	-	1,565,745
SISP Proceeds	-	-	-	-	576,990
Post-Filing Gravel Sales	-	-	-	49,094	49,094
Other Receipts	934	-	160	12,261	159,084
Total Receipts	934	-	160	61,355	6,540,514
Operating Disbursements					
Payroll And Source Deductions	(21,546)	(7,569)	(21,324)	(7,087)	(1,416,338)
Royalties	-	-	-	-	(407,627)
Fuel	-	-	-	-	(207,285)
Repair & Maintenance	(1,900)	-	-	-	(51,916)
Office Administration	(841)	(3,345)	(1,937)	(107)	(40,336)
Insurance & Benefits	-	-	-	(5,000)	(206,710)
Jobsite Lodging	-	-	-	-	(20,605)
Equipment Loan & Lease Payments	(939)	-	-	-	(137,367)
Occupancy	(604)	(28,034)	(315)	(147)	(235,534)
Other		(2,625)	-	-	(55,126)
Total Disbursements	(25,830)	(41,573)	(23,576)	(12,341)	(2,778,844)
Non-Operating Receipts & Disbursements					
DIP Financing (Repayment)	-	-	-	-	(211,188)
Professional Fees	(125,978)	(73,811)	(16,776)	(33,075)	(1,885,657)
Total Disbursements	(125,978)	(73,811)	(16,776)	(33,075)	(2,096,845)
Net Cash Flow	(150,874)	(115,384)	(40,192)	15,939	1,664,825
Ending Cash Balance	\$ 1,804,462 \$	5 1,689,078 \$	1,648,886	1,664,825	\$ 1,664,825
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